

**DAWSON COUNTY BOARD OF COMMISSIONERS
WORK SESSION AGENDA - THURSDAY, MAY 26, 2016
DAWSON COUNTY GOVERNMENT CENTER ASSEMBLY ROOM
4:00 PM**

NEW BUSINESS

1. Presentation of request to grant the Dawson County Civitan Club space at Veterans Memorial Park to donate and install an inclusive playground swing set - Parks & Recreation Director Lisa Henson
2. Presentation of Bid #275-16 IFB Dawson Forest Road Rehabilitation - Public Works Director David McKee

To view the solicitation documents click [here.](#)
3. Presentation of Bid #276-16 IFB Dawson Forest Pipe Rehabilitation - Public Works Director David McKee

To view solicitation documents click [here.](#)
4. Presentation of the 2016 Local Emergency Operations Plan Update - Emergency Services Director Lanier Swafford
5. Presentation of proposed Memorandum of Agreement between Lanier Technical College and the Dawson County Board of Commissioners - Emergency Services Director Lanier Swafford
6. Presentation of Memorandum of Understanding between Northeast Georgia Medical Center and the Dawson County Board of Commissioners regarding data sharing for the purpose of attempting to improve outcomes for patients who suffer sudden cardiac arrest - Emergency Services Director Lanier Swafford
7. Presentation of proposed Memorandum of Understanding between the City of Dawsonville and the Dawson County Board of Commissioners for Domestic Water Fire Protection Inspection - Emergency Services Director Lanier Swafford
8. Presentation of Approval of Courthouse Canopy Final Revisions - County Manager Randall Dowling
9. County Manager Report
10. County Attorney Report

Backup material for agenda item:

1. Presentation of request to grant the Dawson County Civitan Club space at Veterans Memorial Park to donate and install an inclusive playground swing set - Parks & Recreation Director Lisa Henson



DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA FORM

Department: Parks & Recreation

Work Session: 5-26-16

Prepared By: Randall Dowling

Voting Session: 6-2-16

Presenter: Lisa Henson, Parks & Recreation Director

Public Hearing: Yes _____ No

Agenda Item Title: Granting the Dawson County Civitan Club space at Veterans Memorial Park to donate and install an inclusive playground swing set.

Background Information:

The Dawson County Civitan Club is a civic organization that assists in making the lives of Dawson County citizens with disabilities just a bit easier. This organization has a desire to make Veterans Memorial Park playground a more inclusive playground.

Current Information:

The Dawson County Civitan Club requests the Board of Commissioners to allocate a small space in Veterans Memorial Park for the club to donate and install new inclusive playground equipment (swing set). The club will ensure the equipment is installed properly. There is no cost to the county except for maintenance after installation.

Budget Information: Applicable: _____ Not Applicable:

Budgeted: Yes _____ No

Fund	Dept.	Acct No.	Budget	Balance	Requested	Remaining

Recommendation/Motion: Approve the allocation of space at Veterans Memorial Park to the Dawson County Civitan Club to donate and install new inclusive playground equipment.

Department Head Authorization: _____

Date: _____

Finance Dept. Authorization: Vickie Neikirk

Date: 5-17-16

County Manager Authorization: Randall Dowling

Date: 5-16-16

County Attorney Authorization: _____

Date: _____

Comments/Attachments:

Attached: 1) letter dated May 6, 2016 from the Civitan Club. 2) map of Veterans Memorial Park with the allocated space for the swing set.



May 6, 2016

Dawson County Park and Rec

Dawsonville, Georgia

Dear Park and Rec,

The Dawson County Civitan Club is working diligently to raise funds to purchase inclusive playground equipment which we would like to donate to Veteran's Park. In addition to Civitan Club fundraisers, we will be seeking assistance for funding through various grant projects.

At this time, without having a definitive knowledge of the funds we will have available, we would like to pledge an inclusive swing set. Our estimation of the use zone for the set is approximately 32'x35.5'. It is our greatest desire to provide additional equipment to each park in Dawson County as our funding allows. We request at this time to be informed if there is space for the initial swing set at Veterans Park and of any space which may be available for future donations.

The Civitan Club will ensure that site preparation and installation is provided by either the insured equipment supplier or a licensed and insured contractor. We will of course coordinate and have all equipment, preparation and installation approved by the park at the parks convenience.

Thank you for your consideration of this project.

Regards,

Tiffany Muilenburg

Dawsonville Civitan Club

IMPROVEMENT CONTRACT-CONSTRUCTION OF PLAYGROUND EQUIPMENT

This contract is hereby made this ____ day of _____, 2016 between Dawson County, Georgia, hereinafter referenced as "Dawson County", and the Dawson County Civitan Club, Inc., hereinafter referenced as "Civitan Club".

In consideration of the covenants set forth herein, Dawson County and the Civitan Club agree as follows:

1. Description of Work

The Civitan Club shall purchase or procure and install playground equipment on real property designated by Dawson County located at Veterans Memorial Park, which is owned by Dawson County. The Civitan Club shall provide and install all playground equipment, site preparation, any material needed for drainage, and any ground covering or landscaping for use of the playground equipment. Additionally, the Civitan Club shall pay to Dawson County \$ _____ annually for upkeep and maintenance of the items set forth herein.

2. Time of Commencement and Completion

The work shall begin on or about _____, and the work (other than the annual maintenance obligation) shall be substantially completed on or about _____. All work in accord with this agreement shall be completed on or before _____. Additional work may not be performed without prior written authorization of Dawson County. Authorization for any additional work shall be on a contract change order form showing the agreed terms and reasons for the changes and shall be approved by both parties in writing. Any change order forms shall be incorporated in, and become a part of, this contract.

3. Payment of Fees

The Civitan Club shall be solely responsible for payment for the playground equipment and preparing the site for the playground equipment set forth herein in exchange for goodwill for the Civitan Club and installing the Civitan Club insignia on the premises at Veterans Memorial Park. The parties acknowledge receiving good and valuable consideration in exchange for the terms hereof. Dawson County agrees to waive all County construction/building permit fees for construction of the playground equipment.

4. Warranty and Disclaimer

The Civitan Club warrants all work performed in accord with the terms hereof. The Civitan Club agrees to restore the real property to the original condition if the Civitan Club terminates this contract, abandons the project, or otherwise defaults. The Civitan Club shall comply with all local and state codes and other applicable law when performing work in accord with the terms hereof.

5. Indemnification/Limitation of Liability

The Civitan Club agrees to protect, defend, indemnify and hold harmless Dawson County and all agents and employees of Dawson County from and against any liability, damage, claim, including attorney fees and expenses of litigation, suit, lien, and judgment caused by the Civitan Club or any contractor/sub-contractor of the Civitan Club. The Civitan Club shall insure that any contractor or sub-contractor of the Civitan Club performing services in accord with the terms of this agreement maintains workers' compensation and comprehensive general liability insurance to protect the County from any claim for damages or bodily injury that may arise from acts or omissions of the Civitan Club or the contractor/sub-contractor under this agreement.

6. Dawson County's Responsibilities

Dawson County shall be responsible for the location of the playground equipment upon real property within Veterans Memorial Park. Dawson County shall approve all design plans, diagrams, equipment, work schedules and task orders related to the playground equipment before issuing a notice to proceed to the Civitan Club. Dawson County shall provide access to the playground equipment site for the Civitan Club. The parties acknowledge, consent, and agree that Dawson County performs a governmental function, as opposed to a proprietary function, by entering into this agreement to provide playground equipment for recreational purposes.

7. Multi-Year Agreement

This agreement shall terminate absolutely and without further obligation on the part of Dawson County at the close of the calendar year in which this agreement is executed and at the close of each succeeding calendar year for which the agreement may be renewed. This agreement shall automatically renew, unless positive action is taken by Dawson County to terminate this agreement, which shall be providing thirty (30) days written notice of intent not to renew. The total obligation of Dawson County for 2016 is staff time to review design plans, diagrams, equipment, work schedules and task orders related to the playground equipment. The total obligation that will be incurred in each calendar year renewal term shall be the same as 2016. Title to any supplies, materials, equipment, or other personal property shall remain in the Civitan Club or the subcontractor of the Civitan Club, unless fully paid for by Dawson County. This agreement shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy any obligation of Dawson County under the terms hereof.

8. Care and Repair of Premises

The Civitan Club shall commit no act of waste and shall take good care of the premises and shall be solely responsible for payment for repairs to the playground equipment and other items referenced within the work to be performed in Paragraph 1 of this contract.

9. Notices

Any notice to be given in accord with the terms hereof may be effected either by personal delivery, by registered or certified mail, postage prepaid with return receipt requested, or by recognized overnight delivery service. Notice shall be delivered as follows:

Dawson County:
Dawson Co. Board of Commissioners
ATTN: Purchasing Director
25 Justice Way, Suite 2223
Dawsonville, GA 30534

Civitan Club:

ATTN: _____

Dawsonville, GA 30534

10. Entire Agreement

This agreement contains the entire agreement of the parties regarding the subject matter hereof and supersedes any prior written or oral agreement between the parties.

11. Amendment

This agreement may be modified or amended only if the modification or amendment is made in writing and executed by both parties.

12. Severability

If any provision of this agreement shall be held invalid or unenforceable for any reason, then the remaining provisions shall continue to be valid and enforceable.

13. Non-waiver

The failure of either party to enforce any provision of this agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this contract.

14. Governing Law

This contract shall be governed by and construed in accordance with the laws of the state of Georgia.

DAWSON COUNTY

ATTEST:

By: _____
Mike Berg, Chairman

By: _____
Danielle Yarbrough, County Clerk

**CIVITAN CLUB OF
DAWSON COUNTY**

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____



11' x 16'

9

ation Rd

Backup material for agenda item:

2. Presentation of Bid #275-16 IFB Dawson Forest Road Rehabilitation - Public Works
Director David McKee

To view the solicitation documents click [here](#).



DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA FORM

Department: Public Works

Work Session: 5-26-16

Prepared By: Cara Ingley

Voting Session: 6-2-16

Presenter: David McKee

Public Hearing: Yes No

Agenda Item Title: Dawson Forest Road Rehabilitation

Background Information:

Dawson Forest Road was originally constructed in the 1950s to access the government property at Dawson Forest Wildlife Management Area (WMA). This six mile road is currently heavily traveled by both commercial and residential traffic and is home to multiple schools and one fire station. The base failure of this road is currently at 42% and its current condition poses a safety hazard. The rehabilitation of this road is a SPLOST-VI approved expenditure.

Current Information:

This road resurfacing project was competitively bid out. The bid was segmented into three segments: "Segment 1 – Dawson Forest WMA property line to SR 9," "Segment 2 – SR 9 to Round a bout," and "Segment 3 – Power Center Drive to SR 53." Two pricing options were requested for each segment: Full Depth Reclamation and Deep Patch and Pave. At the mandatory pre-bid meeting on 4/15/16, 10 vendors were present. At the bid deadline, 4 bids were received. The bidders were: Blount, CW Matthews, Baldwin Paving, and Bartow Paving. Blount was the lowest bidder, bidding \$2,367,486.50 for Full Depth Reclamation. Staff will be present during the entire project to inspect all contracted work. The portion of this road between Segment 2 and 3 will be resurfaced by a private developer's contractor and will be coordinated with this project. This project will also be coordinated with the drainage pipe project.

Budget Information: Applicable: Not Applicable:

Budgeted: Yes No

Fund	Dept.	Acct No.	Budget	Balance	Requested	Remaining
324	4220	541401-R21	\$700,000	\$700,000	\$2,367,486.50	(\$1,667,486.50)

Recommendation/Motion: Staff recommends the Board award this road resurfacing bid to the lowest bidder, Blount, at a cost of \$2,367,486.50 and use the Full Depth Reclamation option that is the best use of SPLOST-VI funds.

Department Head Authorization: David McKee

Date: 5/17/16

Finance Dept. Authorization: Vickie Neikirk

Date: 5/17/16

County Manager Authorization: Randall Dowling

Date: 5-17-16

County Attorney Authorization:

Date:

Comments/Attachments:

See attached PowerPoint.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

BID #275-16 IFB DAWSON FOREST ROAD REHABILITATION

This Agreement is made by and between Dawson County, a political subdivision of the State of Georgia, (hereinafter referred to as the "Owner") and Blount Construction Company, Inc., (hereinafter referred to as the "Contractor") under seal for all work called for in the Dawson County **Request for Proposal Bid #275-16 IFB Dawson Forest Road Rehabilitation** for furnishing materials, labor, and equipment necessary for job description as listed in the specifications and proposed by the Contractor.

ARTICLE 1

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract

1.1.1 The Contract between the Owner and the Contractor, consists of the Contract Documents and shall be effective on the date this Agreement is executed by the last party to execute it. If any items in the Contract conflict with the law of the State of Georgia law, law of the State of Georgia shall prevail.

1.2 The Contract Documents

1.2.1 The Contract Documents consist of this Document, the Request for Proposal Bid **#275-16 IFB Dawson Forest Road Rehabilitation** and all addenda, the Contractor's Bid Schedule, all Change Orders and Field Orders issued hereafter, and any other amendments executed by the parties hereafter. Documents not enumerated in this paragraph are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement

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

1.4 No Privity with Others

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

1.5 Intent and Interpretation

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

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

1.6 Ownership of Contract Documents

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

ARTICLE II

THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract, all in accordance with plans, specifications and drawings of the Project and in accordance with the bid and specifications as outlined in Request for Proposal Bid #275-16 IFB Dawson Forest Road Rehabilitation.

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

Contractor shall provide all required labor, materials, tools, and equipment, supervision, insurance, bonds, etc. to perform the scope of work listed in the RFP and any addenda issued for the intermediate jail demolition. The purpose of this project is to replace all existing fenestrations that meet or exceed the International Building Code.

ARTICLE III

CONTRACT TIME

3.1 Time and Liquidated Damages

3.1.1 The Contractor shall complete the work within 120 days calendar day period after notice to proceed.

3.1.2 The Contractor shall pay the Owner the sum of one hundred dollars (\$100.00) per day for each and every calendar day of delay not excused by Section 8.2.5.1 in achieving completion beyond the time set forth herein for completion of the work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving completion, or any part there, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.2 Substantial Completion

3.2.1. "Substantial Completion" shall mean that state in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the work and can utilize the work for its intended purpose.

3.3 Time is of the Essence

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

ARTICLE IV

CONTRACT PRICE

4.1 The Contract Price

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the work required in the Bid Documents, the fixed sum of \$ 2,367,486.50 for furnishing materials, labor, and equipment necessary for the completion of Project #275-16. The sum set forth in this Paragraph 4.1.1 shall constitute the Contract Price which shall not be modified except by Change Order as provided in this Contract. Actual quantities used for the subject work will be verified and paid using unit pricing as detailed in Request for Proposal Document, unless stipulated as "lump sum".

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 Payment Procedure

5.1.1 Based upon the Contractor's applications and certificates for payment issued to the Owner, Owner shall make progress payments to the Contractor to be applied toward the Contract Price.

5.1.2 On or before the tenth day of each month after commencement of the work, the Contractor shall submit an Application for Payment for the period ending the last day of the prior month to the Owner in such form and manner, and with such supporting data and content, as the Owner may reasonably require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, i.e., labor, materials and equipment properly incorporated in the work plus ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment incorporated in the work, less the total amount of previous payments received from the Owner for such labor, materials, and equipment. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the work has been properly performed in full accordance with this Contract. When Owner determines amounts requested to be properly owing to the Contractor, the Owner shall make partial payments on account of the Contract Price to the Contractor on a day to be determined each month in which application for payment is made.

5.1.3 The Contractor warrants that upon submittal of an Application for Payment, all work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever. The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall

have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees.

5.1.4 No progress payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any work not in compliance with this Contract.

5.2 Withheld Payment

5.2.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor to protect the Owner from loss because of:

- a) Defective work not remedied by the Contractor;
- b) Claims of third parties against the Owner;
- c) Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- d) Evidence that the balance of the work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- e) Evidence that the work will not be completed in the time required for substantial or final completion;
- f) Persistent failure to carry out the work in accordance with the Contract; or
- g) Damage to the Owner or a third party to whom the Owner is, or may be, liable

5.3 Completion and Final Payment

5.3.1 When all of the work is finally complete and the Contractor is ready for a final inspection, Contractor shall notify the Owner in writing. Thereupon, the Owner will make final inspection of the work and, if the work is complete in compliance with this Contract and this Contract has been fully performed, then the Contractor will promptly issue a final Application for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract.

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

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

5.3.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor,

pending at the time of final payment, and identified in writing by the contractor as unsettled at the time of its request for final payment.

5.3.5 Payment shall be made at the unit rates as set out in the Pricing Schedule submitted by the Contractor for the Work for the quantities actually installed into the Work except as follows:

- (a) There are no exceptions.

ARTICLE VI

THE OWNER

6.1 Information, Services and Things Required From Owner

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession that are necessary to facilitate the completion of this project in a timely manner, if any.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction.

6.1.3 The Owner shall furnish the Contractor, free of charge, three copies of the Contract Documents for execution of the Work.

6.2 Right to Stop Work

6.2.1 If the Contractor fails or refuses to perform the work in accordance with this Contract, the Owner may order the Contractor to stop the work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that work be resumed. In such event, the Contractor shall immediately obey such order. The stop work order referenced herein must be in writing and must specify in detail the alleged failure of the Contractor in accordance with the contract documents.

6.3 Owner's Right to Perform Work

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

ARTICLE VII

THE CONTRACTOR

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

7.2 The Contractor shall supervise and direct the work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees, subcontractors, and others engaged in the work on behalf of the Contractor.

7.3 Warranty

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

7.4 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the work. The Contractor shall comply with all lawful requirements applicable to the work and shall give and maintain any and all notices required by applicable law pertaining to the work.

7.5 Supervision

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

7.6 Cleaning the Site and the Project

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

7.7 Access to Work

7.7.1 The Owner and the Project Manager shall have access to the work at all times from commencement of the work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

7.8 Indemnity

7.8.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the work, provided that such liability, claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

7.8.2.1 In claims against any person or entity indemnified under this Paragraph 7.8 by an employee of the Contractor, a Subcontractor, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.8 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 Administration

8.1.1 The Dawson County Project Manager shall be the Owner's representative from the effective date of this Contract until final payment has been made for work site operations. Any and all change orders must be submitted through the Dawson County Project Manager to the County Manager.

8.1.2. The Owner and the Contractor shall communicate with each other in the first instance through the Project Manager for all site work.

8.1.3 The Owner's Representative shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance by the Contractor.

8.1.4 The Owner's Representative shall have authority to reject work that is defective or does not conform to the requirements of this Contract.

8.1.5 The Owner's Representative will review the Contractor's Applications for Payment and will certify those amounts then due the Contractor as provided in this Contract.

8.1.6 The Owner's Representative, shall, upon request from the Contractor, conduct inspections to determine the date of final completion, will receive records, written warranties and related documents required by this contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2 Claims by the Contractor

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

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

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

8.2.4 *Claims for Additional Costs*

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

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

8.2.5 *Claims for Additional Time*

8.2.5.1 If the Contractor is delayed in progressing any task, which at the time of delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting on the Owner's behalf or by changes ordered in the work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving completion of the work shall be extended upon the written notice and claim of the Contractor to the Owner's Representative for such reasonable time as the Owner's representative may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than fifteen (15) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project.

8.2.6 *Claims for Weather Delays*

8.2.6.1 Claims for weather delays shall not be considered unless work is not feasible for more than one-half of a day due to weather conditions. Claims for weather delays shall not be considered for Sundays unless the Contractor consistently works on Sundays prior to the claim. Weather Days are to be turned in within four weeks of the occurrence.

ARTICLE IX

CHANGES IN THE WORK

9.1 Changes Permitted

9.1.1 Changes in the work within the general scope of this Contract consisting of additions, deletions, revisions, or any combination thereof may be ordered without invalidating this Contract by Change Order. Change Orders are to be processed through the Dawson County Project Manager with the County Manager's signature required as authorization.

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

9.2 Change Order Defined

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

9.3 Changes in the Contract Price

9.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then as provided in Subparagraph 9.3.2 below.

9.3.2 If no mutual agreement occurs between the Owner and the contractor as contemplated in Subparagraph 9.3.1 above, the change in the Contract Price, if any, shall then be determined by the Owner on the basis of the reasonable expenditures or savings of performing, deleting or revising the work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order.

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

9.4 Notice to Surety; Consent

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

ARTICLE X

CONTRACT TERMINATION

10.1 Termination by the Contractor

10.1.1 If the work is stopped for a period of ninety (90) days by an order of any court or other public authority or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner, terminate performance under this contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor for all work executed.

10.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, then the Contractor may terminate performance under this Contract by written notice

to the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 10.2.1.

10.2 Termination by the Owner

10.2.1 For Convenience

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

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

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

10.2.1.4

- (a) The Contractor shall submit a termination claim to the Owner specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, then the Owner shall pay the Contractor an amount derived in accordance with subparagraph (c) below.
- (b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.
- (c) Absent agreement of the amount due to the contractor, the Owner shall pay the Contractor the following amounts:
 - i. Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - ii. Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - iii. Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 10.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof;

- iv. The total sum to be paid the Contractor under this Subparagraph 10.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

10.2.2 For Cause

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

10.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, then the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

10.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to subparagraph 10.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 10.2.1 and the provisions of Subparagraph 10.2.1 shall apply.

ARTICLE XI

INSURANCE

11.1 Contractor's Insurance Requirements

11.1.1 The Contractor shall maintain in full force and effect at all times during the Contract period Comprehensive General Liability Insurance in an amount equal to One Million (\$1,000,000.00) Dollars.

11.1.2 The Contractor shall provide to the Owner Certificates of Insurance naming the Owner as additional insured party under the policy or policies of Comprehensive General Liability Insurance required by Paragraph 11.1.1.

11.1.3 The insurance policy or policies as aforesaid shall provide that thirty (30) days written notice be given to the Owner prior to cancellation thereof.

11.1.4 The Contractor shall maintain in full force and effect at all times during the Contract period Workers' Compensation Insurance as provided by Georgia law.

ARTICLE XII

MISCELLANEOUS

12.1 Governing Law

12.1.1 This Agreement is to be governed by the law of the State of Georgia and venue for any dispute shall be Dawson County, Georgia

12.2 Successors and Assigns

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

12.3 Surety Bonds

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

IN WITNESS WHEREOF, the Undersigned have set their hands and seals on the day and date appearing below the signatures of their authorized representatives.

**OWNER:
DAWSON COUNTY, GEORGIA**

CONTRACTOR:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

Attest:

By: _____

By: _____

Name: _____

Name: _____

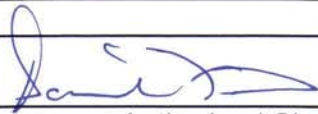
Title: County Clerk

Title: _____

**BID #275-16 #275-16 IFB DAWSON FOREST ROAD REHABILITATION
2 REVISED - VENDOR'S PRICE PROPOSAL FORM WITH ESTIMATED QUANTITIES**

Option 2 - Full Depth Reclamation Method

Line Item	Description	Estimated Quantity	Unit	Unit Cost	Total Estimated Cost
Segment 1 - Dawson Forest Management Area to Intersection of Hwy 9 Approx 1.2 Miles					
Seg 1-1	Traffic Control, Shoulders, Mobilization	1	LS	\$ 12,650.00	\$12,650.00
Seg 1-2	10" Cement Reclaimed Base	17,835	SY	\$ 4.75	\$84,716.25
Seg 1-3	Portland Cement - 55lb/SY	488	TN	\$ 132.25	\$64,538.00
Seg 1-4	19MM Asphalt Binder 2" Depth	2,000	TN	\$ 77.00	\$154,000.00
Seg 1-5	1.5" 12.5MM SP Asphalt Topping	1,622	TN	\$ 82.50	\$133,815.00
Seg 1-6	1.5" Milling Turn Lanes & Tie In Sections	1,917	SY	\$ 3.75	\$ 7,188.75
Seg 1-7	Striping (Includes all riased temporary markers where necessary & high build per GDOT specs)	1	LS	\$ 13,755.00	\$13,755.00
Sub-Total Segment 1					\$470,663.00
Segment 2 - Intersection of Hwy 9 to Lumpkin Campground Intersection Roundabout - 3.7 Miles					
Seg 2-1	Traffic Control, Shoulders, Mobilization	1	LS	\$ 41,500.00	\$ 41,500.00
Seg 2-2	10" Cement Reclaimed Base	62,000	SY	\$ 4.75	\$294,500.00
Seg 2-3	Portland Cement - 55lb/SY	1,615	TN	\$ 132.25	\$213,583.75
Seg 2-4	19MM Asphalt Binder 2" Depth	6,520	TN	\$ 77.00	\$502,040.00
Seg 2-5	1.5" 12.5MM SP Asphalt Topping	5,298	TN	\$ 82.50	\$437,085.00
Seg 2-6	1.5" Milling Turn Lanes & Tie In Sections	4,939	SY	\$ 3.75	\$18,521.25
Seg 2-7	Striping (Includes all riased temporary markers where necessary & high build per GDOT specs)	1	LS	\$38,062.50	\$38,062.50
Sub-Total for Segment 2					\$1,545,292.50
Segment 3 - Power Center Dr to Intersection of Hwy 53 - Approx .8 Miles					
Seg 3-1	Traffic Control, Shoulders, Mobilization	1	LS	\$12,400.00	\$12,400.00
Seg 3-2	10" Cement Reclaimed Base	12,815	SY	\$ 4.75	\$60,871.25
Seg 3-3	Portland Cement - 55lb/SY	353	TN	\$ 132.25	\$46,689.25
Seg 3-4	19MM Asphalt Binder 2" Depth	1,409	TN	\$ 77.00	\$108,493.00
Seg 3-5	1.5" 12.5MM SP Asphalt Topping	1,216	TN	\$ 82.50	\$100,320.00
Seg 3-6	1.5" Milling Turn Lanes & Tie In Sections	1,926	SY	\$ 3.75	\$ 7,222.50
Seg 3-7	Striping (Includes all riased temporary markers where necessary & high build per GDOT specs)	1	LS	\$15,540.00	\$15,540.00
Sub-Total for Segment 3					\$351,531.00
TOTAL ESTIMATED COSTS FOR ALL WORK:					\$2,367,486.50
Start Date:					June 20th 2016
Days to Complete Project:					120 Days
Warranty:					2 Years



Authorized Signature

David Faust

Print Name

Vice President

Title

April 29, 2016

Date

Dawson Forest Road Rehabilitation Bid #275-16 IFB

WORK SESSION MAY 26, 2016



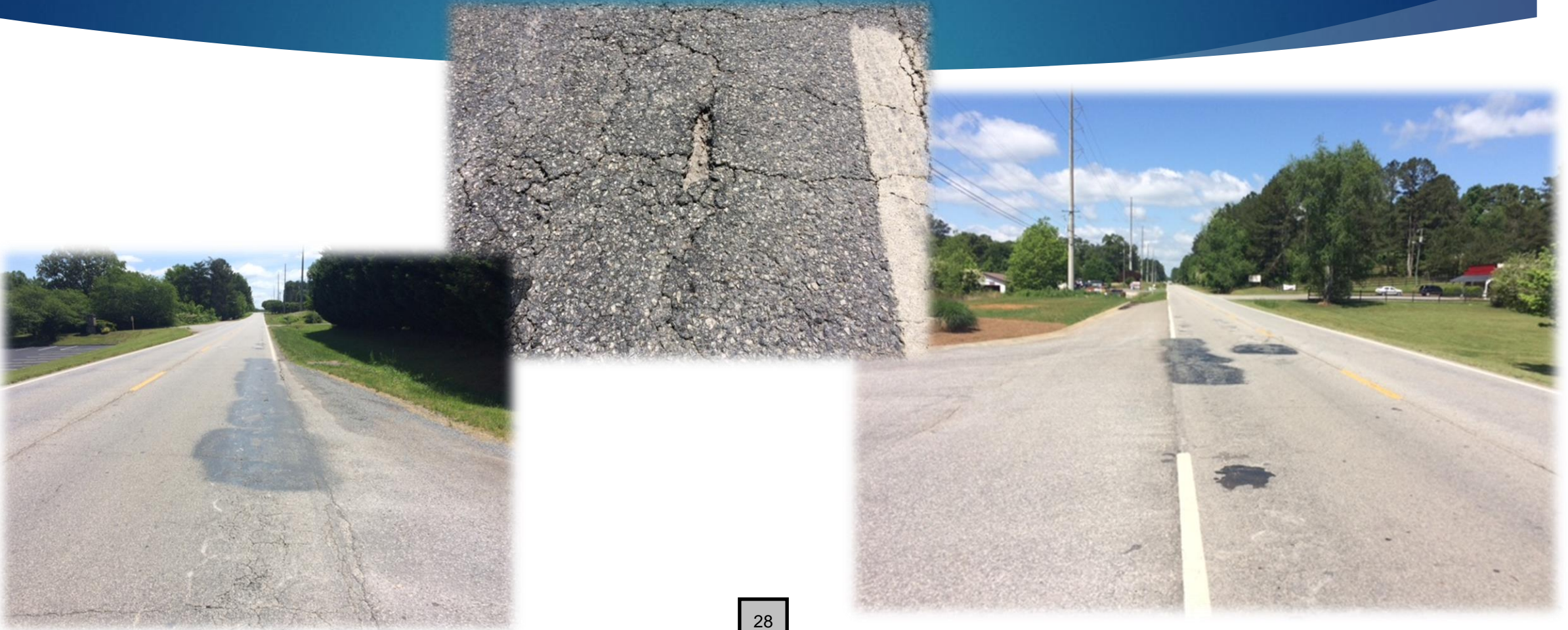
Background

- ▶ Originally constructed in the 1950's to access the Government property at Dawson Forest WMA
- ▶ SPLOST VI approved expenditure
- ▶ 30% base failure rule
- ▶ Heavily traveled east-west thoroughfare
 - ▶ Both commercial and residential traffic
- ▶ Multiple Schools, and Fire Station (Blacks Mill, Riverview Middle and Elementary, Fire Station 7)

Existing conditions



Existing conditions



Kelly Bridge Road Case Study

- ▶ Patched and repaved in 2-5 years ago
 - ▶ Base failure similar to what is present on Dawson Forest
 - ▶ 1800' were reclaimed full depth 10" with 55lb/SY Portland cement
- ▶ Within 3 months of completion similar problems occurred and continue to occur today, on patched section



Kelly Bridge Road Continued



Scope of Work

- ▶ Driving factors of the scope
 - ▶ Percent of Base failure – Currently approximately 42%
 - ▶ Longevity of the rehabilitated road – Case study
 - ▶ Safety
 - ▶ Adopted County road standards

- ▶ Segmented into three segments and two pricing options were requested for each segment
 - ▶ Segment 1 – Dawson Forest WMA property line to SR 9
 - ▶ Segment 2 – SR 9 to Round a bout
 - ▶ Segment 3 – Power Center Drive to SR 53

- ▶ Quantity pricing requested

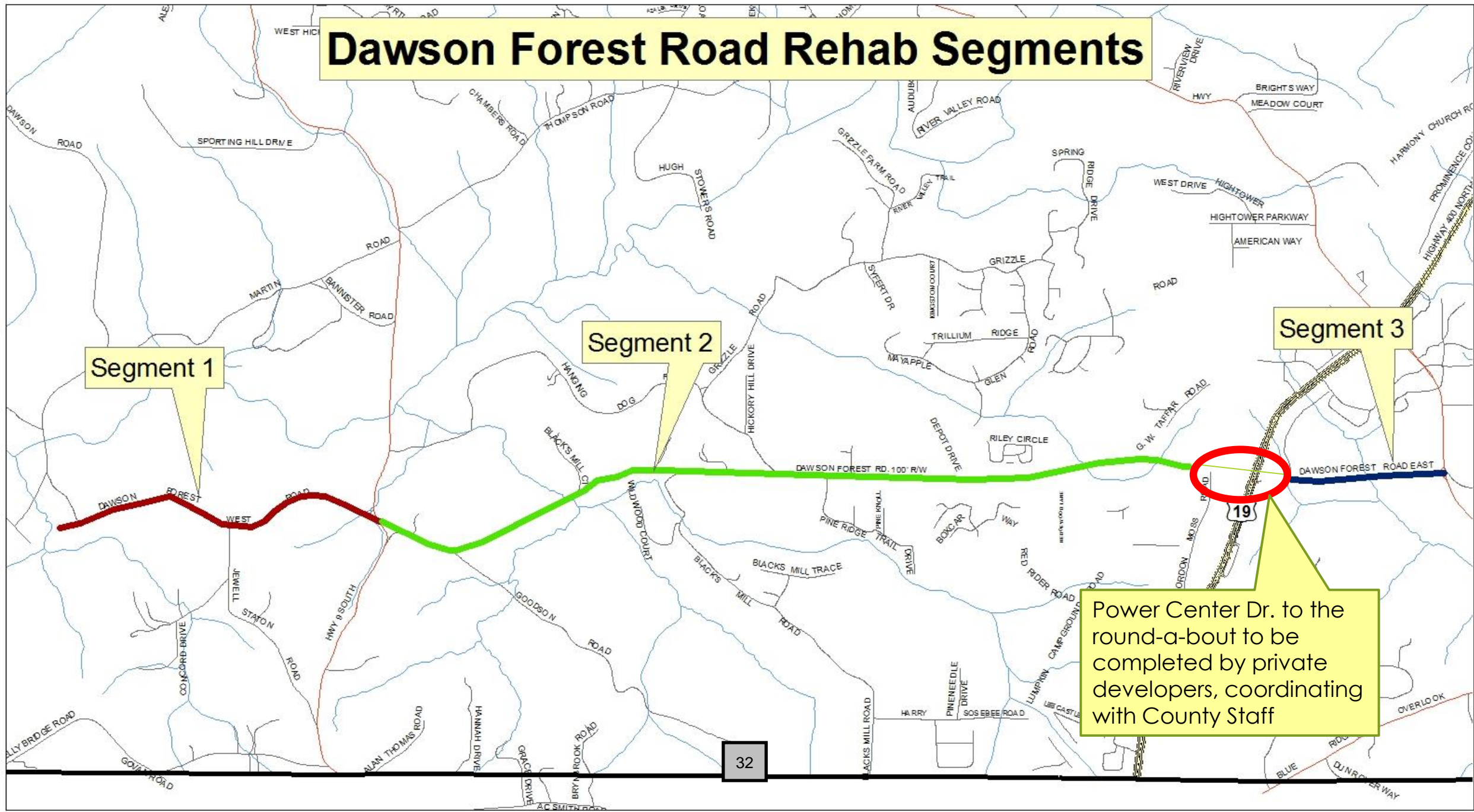
Dawson Forest Road Rehab Segments

Segment 1

Segment 2

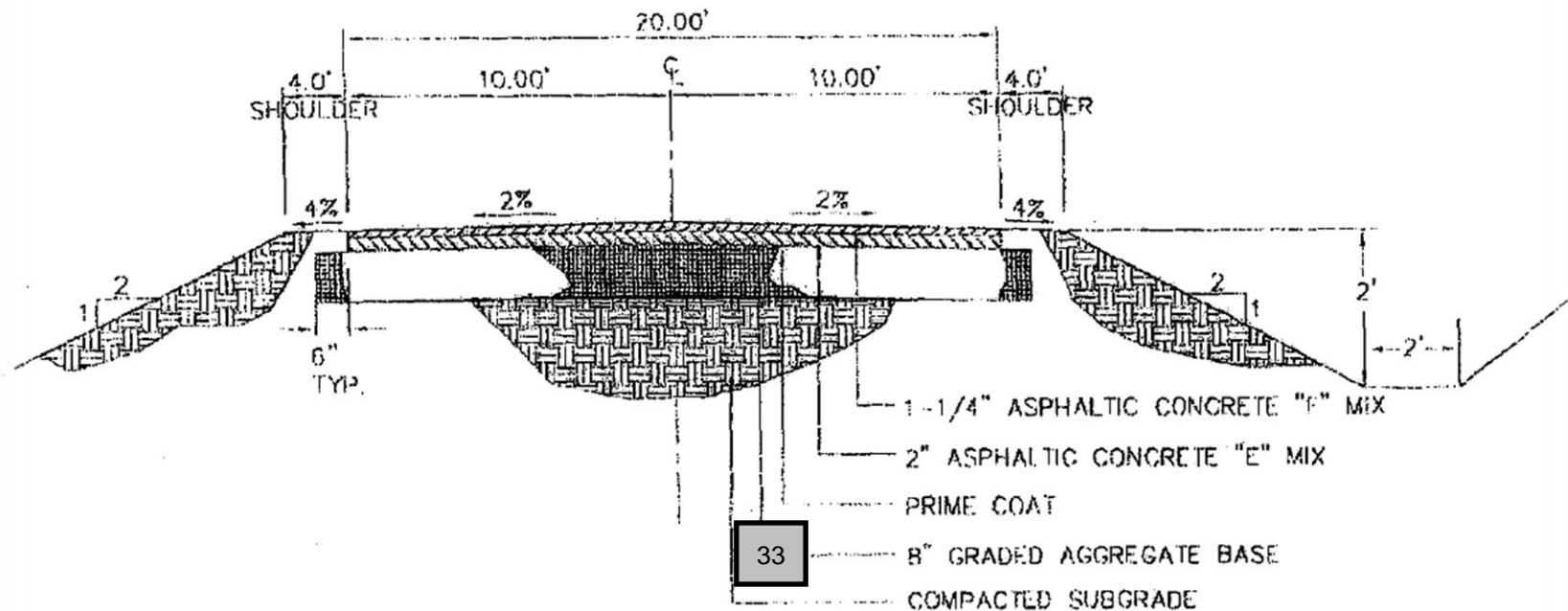
Segment 3

Power Center Dr. to the round-a-bout to be completed by private developers, coordinating with County Staff



County Road Standards

TYPICAL ROAD SECTION FOR COLLECTOR ROADS



Scope of Work Continued

Option 1 Deep Patch and Pave (DPP)

- ▶ Deep Patch width varied from 20'-22'
 - ▶ Areas identified and marked by Dawson County
- ▶ Widen out to get to 24' or 26'
- ▶ Mill 2" off
- ▶ 2" Perma Flex
- ▶ 1.5" 12.5MM topping
- ▶ Build Shoulders
- ▶ Striping

Option 2 Full Depth Reclamation (FDR)

- ▶ FDR 24'-26'
- ▶ 10" Deep with 55lb/SY
- ▶ 2" Asphalt Binder 19MM
- ▶ 1.5" Asphalt Topping 12.5MM
- ▶ 1.5" mill turn lanes and tie in sections
- ▶ Build Shoulders
- ▶ Striping

Budget

- ▶ Funds are available to complete the entire project as scoped, with SPLOST VI Public Works program changes

Total SPLOST VI Collections	\$4,385,575.60
Encumbered Balance	-\$1,960,346.97
YTD Remaining SPLOST VI Budget	\$2,425,228.63

Inspections of contracted work

- ▶ Staff will be present during the entire process
 - ▶ Verify asphalt and Portland load tickets
 - ▶ Test Portland cement content to verify meets or exceeds 55lb/SY
 - ▶ Verify asphalt mix and thickness complies with mix design
 - ▶ Verify asphalt test strip
 - ▶ Assure entire road is in compliance with the test strip
 - ▶ Staff will verify all quantities and audit invoices based on field observations

Acquisition Strategy & Methodology

- ▶ Advertised in Legal Organ
- ▶ Posted on County Website
- ▶ Posted on GLGA Marketplace
- ▶ Posted on Georgia Procurement Registry
- ▶ Emailed notification through vendor registry
- ▶ Notification through County's Facebook and Twitter accounts
- ▶ Notification through Chamber of Commerce
- ▶ Notified previous vendors
- ▶ **Mandatory Pre-Bid Meeting April 15, 2016 – 10 vendors present**
- ▶ **4 bids received**

Evaluation Committee

- ▶ David McKee, Public Works Director/SPLOST Administrator
- ▶ Eddie Savage, Operations Manager
- ▶ Gary Millholland, Foreman
- ▶ Steven Thomas, Foreman
- ▶ Davida Simpson, Purchasing Director (facilitator)

Pricing

Company	Option 2 FDR	Option 1 DPP
BLOUNT *	\$2,367,486.50	-
CW MATTHEWS	\$2,677,351.16	\$2,974,133.85
BALDWIN PAVING	\$2,715,152.82	-
BARTOW PAVING	\$2,834,903.85	\$2,955,529.55

*Authorize work to begin 7-1-16 (Total 4 month project duration to be completed November/December of 2016)

Recommendation

Staff respectfully requests the Board to award bid #275-16 IFB Dawson Forest Road Rehabilitation to the most responsive, responsible bidder, Blount Construction Company, Inc. from Marietta, GA for full depth reclamation services on Dawson Forest Road for a total expenditure of \$2,367,486.50 from SPLOST VI funds and approve the contract as submitted.

Backup material for agenda item:

3. Presentation of Bid #276-16 IFB Dawson Forest Pipe Rehabilitation - Public Works
Director David McKee

To view solicitation documents click [here](#).



DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA FORM

Department: Public Works

Work Session: 5-26-16

Prepared By: Cara Ingley

Voting Session: 6-2-16

Presenter: David McKee

Public Hearing: Yes _____ No X

Agenda Item Title: Dawson Forest Road Pipe Rehabilitation

Background Information:

Dawson Forest Road is in need of major rehabilitation regarding drainage pipes and resurfacing. The 2009 county-wide culvert assessment identified structures #1082 and #1087 as needing rehabilitation. Structure #1082 is a 48" Reinforced Concrete Pipe (RCP) that is 127' in length. Structure #1087 is a 60" Coated Corrugated Metal Pipe (CMP) that is 120' in length. This is a SPLOST-VI approved expenditure. No road closures are expected.

Current Information:

This drainage pipe rehabilitation project was competitively bid out. A mandatory pre-bid meeting was held on 4-5-16 and 12 vendors were present. On the deadline date, 4 bids were received. The bidders were: IPR Southeast LLC, Townley Construction, Proshot Concrete, and Layne Inliner. IPR Southeast LLC was the lowest bidder with a lump sum of \$143,000 for both drainage structures. This pipe project will be coordinated with the road resurfacing project.

Budget Information: Applicable: X Not Applicable: _____

Budgeted: Yes X No _____

Fund	Dept.	Acct No.	Budget	Balance	Requested	Remaining
324	4220	541401-R21	\$300,000	\$300,000	\$143,000	\$157,000

Recommendation/Motion: Staff recommends the Board award this pipe rehabilitation project to the lowest bidder, IPR Southeast LLC, for a cost of \$143,000.

Department Head Authorization: David McKee

Date: 5/17/16

Finance Dept. Authorization: Vickie Neikirk

Date: 5/17/16

County Manager Authorization: Randall Dowling

Date: 5-17-16

County Attorney Authorization: _____

Date: _____

Comments/Attachments:

See attached PowerPoint.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

BID #276-16 IFB DAWSON FOREST PIPE REHABILITATION

This Agreement is made by and between Dawson County, a political subdivision of the State of Georgia, (hereinafter referred to as the "Owner") and IJR Southeast, LLC, (hereinafter referred to as the "Contractor") under seal for all work called for in the Dawson County **Request for Proposal Bid #276-16 IFB Dawson Forest Pipe Rehabilitation** for furnishing materials, labor, and equipment necessary for job description as listed in the specifications and proposed by the Contractor.

ARTICLE 1

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract

1.1.1 The Contract between the Owner and the Contractor, consists of the Contract Documents and shall be effective on the date this Agreement is executed by the last party to execute it. If any items in the Contract conflict with the law of the State of Georgia law, law of the State of Georgia shall prevail.

1.2 The Contract Documents

1.2.1 The Contract Documents consist of this Document, the Request for Proposal Bid **#276-16 IFB Dawson Forest Pipe Rehabilitation** and all addenda, the Contractor's Bid Schedule, all Change Orders and Field Orders issued hereafter, and any other amendments executed by the parties hereafter. Documents not enumerated in this paragraph are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement

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

1.4 No Privity with Others

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

1.5 Intent and Interpretation

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

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

1.6 Ownership of Contract Documents

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

ARTICLE II

THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract, all in accordance with plans, specifications and drawings of the Project and in accordance with the bid and specifications as outlined in Request for Proposal Bid #276-16 **IFB Dawson Forest Pipe Rehabilitation**.

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

Contractor shall provide all required labor, materials, tools, and equipment, supervision, insurance, bonds, etc. to perform the scope of work listed in the RFP and any addenda issued for the intermediate jail demolition. The purpose of this project is to replace all existing fenestrations that meet or exceed the International Building Code.

ARTICLE III

CONTRACT TIME

3.1 Time and Liquidated Damages

3.1.1 The Contractor shall complete the work within 60 calendar day period after notice to proceed.

3.1.2 The Contractor shall pay the Owner the sum of one hundred dollars (\$100.00) per day for each and every calendar day of delay not excused by Section 8.2.5.1 in achieving completion beyond the time set forth herein for completion of the work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving completion, or any part there, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.2 Substantial Completion

3.2.1. "Substantial Completion" shall mean that state in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the work and can utilize the work for its intended purpose.

3.3 Time is of the Essence

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

ARTICLE IV

CONTRACT PRICE

4.1 The Contract Price

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the work required in the Bid Documents, the fixed sum of \$ 143,000.00 for furnishing materials, labor, and equipment necessary for the completion of Project #276-16. The sum set forth in this Paragraph 4.1.1 shall constitute the Contract Price which shall not be modified except by Change Order as provided in this Contract. Actual quantities used for the subject work will be verified and paid using unit pricing as detailed in Request for Proposal Document, unless stipulated as "lump sum".

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 Payment Procedure

5.1.1 Based upon the Contractor's applications and certificates for payment issued to the Owner, Owner shall make progress payments to the Contractor to be applied toward the Contract Price.

5.1.2 On or before the tenth day of each month after commencement of the work, the Contractor shall submit an Application for Payment for the period ending the last day of the prior month to the Owner in such form and manner, and with such supporting data and content, as the Owner may reasonably require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, i.e., labor, materials and equipment properly incorporated in the work plus ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment incorporated in the work, less the total amount of previous payments received from the Owner for such labor, materials, and equipment. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the work has been properly performed in full accordance with this Contract. When Owner determines amounts requested to be properly owing to the Contractor, the Owner shall make partial payments on account of the Contract Price to the Contractor on a day to be determined each month in which application for payment is made.

5.1.3 The Contractor warrants that upon submittal of an Application for Payment, all work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever. The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall

have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees.

5.1.4 No progress payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any work not in compliance with this Contract.

5.2 Withheld Payment

5.2.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor to protect the Owner from loss because of:

- a) Defective work not remedied by the Contractor;
- b) Claims of third parties against the Owner;
- c) Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- d) Evidence that the balance of the work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- e) Evidence that the work will not be completed in the time required for substantial or final completion;
- f) Persistent failure to carry out the work in accordance with the Contract; or
- g) Damage to the Owner or a third party to whom the Owner is, or may be, liable

5.3 Completion and Final Payment

5.3.1 When all of the work is finally complete and the Contractor is ready for a final inspection, Contractor shall notify the Owner in writing. Thereupon, the Owner will make final inspection of the work and, if the work is complete in compliance with this Contract and this Contract has been fully performed, then the Contractor will promptly issue a final Application for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract.

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

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

5.3.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor,

pending at the time of final payment, and identified in writing by the contractor as unsettled at the time of its request for final payment.

5.3.5 Payment shall be made at the unit rates as set out in the Pricing Schedule submitted by the Contractor for the Work for the quantities actually installed into the Work except as follows:

- (a) There are no exceptions.

ARTICLE VI

THE OWNER

6.1 Information, Services and Things Required From Owner

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession that are necessary to facilitate the completion of this project in a timely manner, if any.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction.

6.1.3 The Owner shall furnish the Contractor, free of charge, three copies of the Contract Documents for execution of the Work.

6.2 Right to Stop Work

6.2.1 If the Contractor fails or refuses to perform the work in accordance with this Contract, the Owner may order the Contractor to stop the work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that work be resumed. In such event, the Contractor shall immediately obey such order. The stop work order referenced herein must be in writing and must specify in detail the alleged failure of the Contractor in accordance with the contract documents.

6.3 Owner's Right to Perform Work

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

ARTICLE VII

THE CONTRACTOR

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

7.2 The Contractor shall supervise and direct the work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees, subcontractors, and others engaged in the work on behalf of the Contractor.

7.3 Warranty

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

7.4 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the work. The Contractor shall comply with all lawful requirements applicable to the work and shall give and maintain any and all notices required by applicable law pertaining to the work.

7.5 Supervision

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

7.6 Cleaning the Site and the Project

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

7.7 Access to Work

7.7.1 The Owner and the Project Manager shall have access to the work at all times from commencement of the work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

7.8 Indemnity

7.8.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the work, provided that such liability, claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

7.8.2.1 In claims against any person or entity indemnified under this Paragraph 7.8 by an employee of the Contractor, a Subcontractor, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.8 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 Administration

8.1.1 The Dawson County Project Manager shall be the Owner's representative from the effective date of this Contract until final payment has been made for work site operations. Any and all change orders must be submitted through the Dawson County Project Manager to the County Manager.

8.1.2. The Owner and the Contractor shall communicate with each other in the first instance through the Project Manager for all site work.

8.1.3 The Owner's Representative shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance by the Contractor.

8.1.4 The Owner's Representative shall have authority to reject work that is defective or does not conform to the requirements of this Contract.

8.1.5 The Owner's Representative will review the Contractor's Applications for Payment and will certify those amounts then due the Contractor as provided in this Contract.

8.1.6 The Owner's Representative, shall, upon request from the Contractor, conduct inspections to determine the date of final completion, will receive records, written warranties and related documents required by this contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2 Claims by the Contractor

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

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

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

8.2.4 *Claims for Additional Costs*

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

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

8.2.5 *Claims for Additional Time*

8.2.5.1 If the Contractor is delayed in progressing any task, which at the time of delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting on the Owner's behalf or by changes ordered in the work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving completion of the work shall be extended upon the written notice and claim of the Contractor to the Owner's Representative for such reasonable time as the Owner's representative may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than fifteen (15) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project.

8.2.6 *Claims for Weather Delays*

8.2.6.1 Claims for weather delays shall not be considered unless work is not feasible for more than one-half of a day due to weather conditions. Claims for weather delays shall not be considered for Sundays unless the Contractor consistently works on Sundays prior to the claim. Weather Days are to be turned in within four weeks of the occurrence.

ARTICLE IX

CHANGES IN THE WORK

9.1 **Changes Permitted**

9.1.1 Changes in the work within the general scope of this Contract consisting of additions, deletions, revisions, or any combination thereof may be ordered without invalidating this Contract by Change Order. Change Orders are to be processed through the Dawson County Project Manager with the County Manager's signature required as authorization.

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

9.2 Change Order Defined

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

9.3 Changes in the Contract Price

9.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then as provided in Subparagraph 9.3.2 below.

9.3.2 If no mutual agreement occurs between the Owner and the contractor as contemplated in Subparagraph 9.3.1 above, the change in the Contract Price, if any, shall then be determined by the Owner on the basis of the reasonable expenditures or savings of performing, deleting or revising the work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order.

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

9.4 Notice to Surety; Consent

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

ARTICLE X

CONTRACT TERMINATION

10.1 Termination by the Contractor

10.1.1 If the work is stopped for a period of ninety (90) days by an order of any court or other public authority or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner, terminate performance under this contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor for all work executed.

10.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, then the Contractor may terminate performance under this Contract by written notice

to the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 10.2.1.

10.2 Termination by the Owner

10.2.1 For Convenience

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

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

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

10.2.1.4

- (a) The Contractor shall submit a termination claim to the Owner specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, then the Owner shall pay the Contractor an amount derived in accordance with subparagraph (c) below.
- (b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.
- (c) Absent agreement of the amount due to the contractor, the Owner shall pay the Contractor the following amounts:
 - i. Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - ii. Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - iii. Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 10.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof;

- iv. The total sum to be paid the Contractor under this Subparagraph 10.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

10.2.2 For Cause

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

10.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, then the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

10.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to subparagraph 10.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 10.2.1 and the provisions of Subparagraph 10.2.1 shall apply.

ARTICLE XI

INSURANCE

11.1 Contractor's Insurance Requirements

11.1.1 The Contractor shall maintain in full force and effect at all times during the Contract period Comprehensive General Liability Insurance in an amount equal to One Million (\$1,000,000.00) Dollars.

11.1.2 The Contractor shall provide to the Owner Certificates of Insurance naming the Owner as additional insured party under the policy or policies of Comprehensive General Liability Insurance required by Paragraph 11.1.1.

11.1.3 The insurance policy or policies as aforesaid shall provide that thirty (30) days written notice be given to the Owner prior to cancellation thereof.

11.1.4 The Contractor shall maintain in full force and effect at all times during the Contract period Workers' Compensation Insurance as provided by Georgia law.

ARTICLE XII

MISCELLANEOUS

12.1 Governing Law

12.1.1 This Agreement is to be governed by the law of the State of Georgia and venue for any dispute shall be Dawson County, Georgia

12.2 Successors and Assigns

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

12.3 Surety Bonds

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

IN WITNESS WHEREOF, the Undersigned have set their hands and seals on the day and date appearing below the signatures of their authorized representatives.

**OWNER:
DAWSON COUNTY, GEORGIA**

CONTRACTOR:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

Attest:

By: _____

By: _____

Name: _____

Name: _____

Title: County Clerk

Title: _____



**BID #276-16 #276-16 IFB DAWSON FOREST PIPE REHABILITATION
VENDOR'S PRICE PROPOSAL FORM**

COMPANY NAME: IPR Southeast LLC

Vendor to provide all materials, labor and equipment needed to complete the Scope of Work.

	Price
Structure #1082	\$68,000.00
Structure #1087	\$ 75,000.00
Lump Sum Total	\$ 143,000.00 **
Start Date	30-45 DAYS AFTER OWNER'S NTP
Days to Complete Project	60 DAYS AFTER START
Warranty	2 YEAR WARRANTY

- Vendors must attached applicable licenses and certifications

** PRICING BASED ON DIAMETERS & FOOTAGES AS PRESENTED IN CONTRACT DOCUMENTS. CURED-IN-PLACE PIPE (CIPP) BASED ON STYRENE RESIN & FELT LINER. WATER RECLAMATION NOT INCLUDED.



Authorized Signature

Patrick Maginn

Print Name

General Manager

Title

04-26-2016

Date

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR PROPOSAL

Dawson Forest Pipe Rehabilitation Bid #276-16 IFB

WORK SESSION MAY 26, 2016



Background

- ▶ SPLOST VI approved expenditure
- ▶ Anticipated budget \$300,000
- ▶ Road is in need of rehabilitation
- ▶ 2009 Countywide Culvert assessment completed by staff
- ▶ Culverts identified in report as Structure #1082 and #1087
 - ▶ Structure #1082
 - ▶ 48" RCP 127' in length
 - ▶ Structure #1087
 - ▶ 60" Coated CMP, 120' in length

Scope of Work

- ▶ Two factors driving the scope:
 - ▶ The depth at the inverts and the depth of the pipes
- ▶ Structure #1082 is approximately 12'-15' deep at the inverts, RCP. Mainline of the pipe is in good shape, with the downstream invert needing improvements.
 - ▶ Backfill eroded areas; replace pipe sections and headwall; Erosion control
 - ▶ No road closures expected
- ▶ Structure #1087 is approximately 40'-50' deep at inverts, coated CMP. Pipe is assumed to be fully deteriorated.
 - ▶ Jointless cured in place pipe (CIPP)
 - ▶ Same scope/material performed under industrial park road
 - ▶ No road closures expected

Structure #1082



59



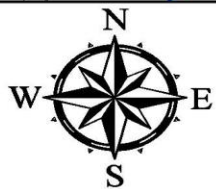
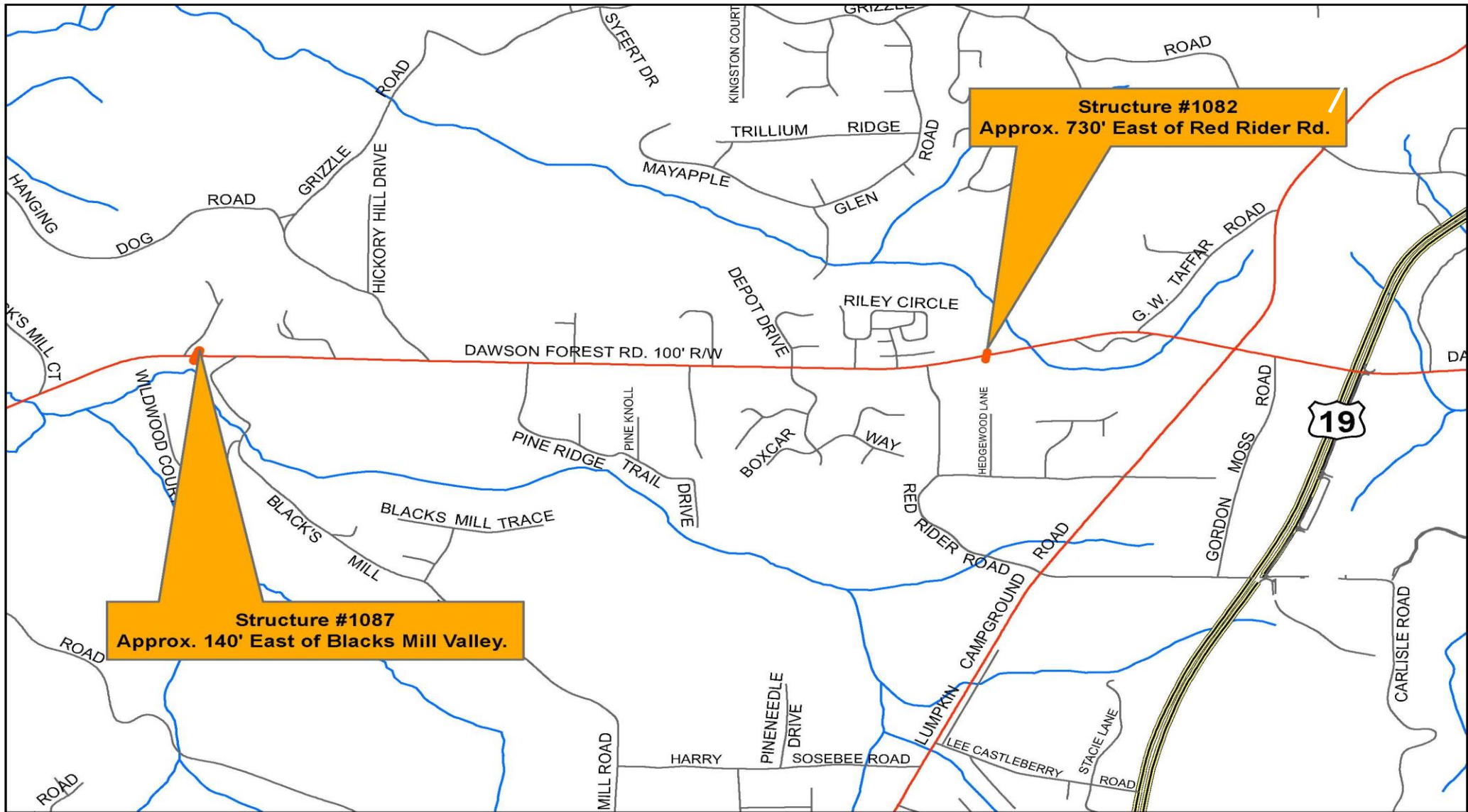
Structure #1087



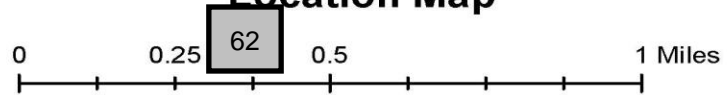
Acquisition Strategy & Methodology

- ▶ Advertised in Legal Organ
- ▶ Posted on County Website
- ▶ Posted on GLGA Marketplace
- ▶ Posted on Georgia Procurement Registry
- ▶ Emailed notification through vendor registry
- ▶ Notification through County's Facebook and Twitter accounts
- ▶ Notification through Chamber of Commerce
- ▶ Notified previous vendors
- ▶ **Mandatory Pre-Bid Meeting April 15, 2016 – 12 vendors present**
- ▶ **4 bids received**

Pipe Locations



Dawson Forest Pipe Rehabilitation Location Map



Evaluation Committee

- ▶ David McKee, Public Works Director/SPLOST Administrator
- ▶ Eddie Savage, Operations Manager
- ▶ Gary Millholland, Foreman
- ▶ Steven Thomas, Foreman
- ▶ Davida Simpson, Purchasing Director (facilitator)

Pricing

Company	Structure #1082	Structure #1087	Lump Sum
IPR SOUTHEAST LLC	\$68,000.00	\$75,000.00	\$143,000.00
TOWNLEY CONSTRUCTION	\$29,448.00	\$130,000.00	\$159,448.00
PROSHOT CONCRETE	\$118,406.00	\$69,488.00	\$187,894.00
LAYNE INLINER	\$223,172.40	\$128,319.10	\$351,491.50

Recommendation

Staff respectfully requests the Board to award bid #276-16 IFB Dawson Forest Road Pipe Rehabilitation to the most responsive, responsible bidder, IPR Southeast, LLC. from Stone Mountain, GA for pipe rehabilitation services on Dawson Forest Road for a total expenditure of \$143,000.00 from SPLOST VI funds and approve the contract as submitted.

Backup material for agenda item:

4. Presentation of the 2016 Local Emergency Operations Plan Update - Emergency Services
Director Lanier Swafford



DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA FORM

Department: Emergency Services

Work Session: May 26, 2016

Prepared By: Lanier Swafford

Voting Session: June 2, 2016

Presenter: Lanier Swafford

Public Hearing: Yes No

Agenda Item Title: Presentation of the 2016 Revision of the Local Emergency Operations Plan

Background Information:

The Local Emergency Operations Plan is one of several plans required for local governments by Georgia Emergency Management – Homeland Security Agency (GEMA-HS). This plan is renewed every four years and was last approved by this board in 2012. The revisions are valid for a period of four years; although constant updates are required to the appendix's to maintain the plans accuracy.

Current Information:

This year's plan revision offered no changes in roles and responsibilities concerning the 15 Emergency Support Functions. The only changes were to the contact names and numbers for local and state wide agencies, local elected officials, and GEMA Area and County Maps.

Budget Information: Applicable: Not Applicable: Budgeted: Yes No

Fund	Dept.	Acct No.	Budget	Balance	Requested	Remaining

Recommendation/Motion: I move that the Dawson County Board of Commissioners approve the May 2016 Revision of the Local Emergency Operations Plan for Dawson County

Department Head Authorization: Lanier Swafford

Date: May 16, 2016

Finance Dept. Authorization: Vickie Neikirk

Date: 5/16/16

County Manager Authorization: Randall Dowling

Date: 5-16-16

County Attorney Authorization:

Date:

Comments/Attachments:

The 400+ page plan is available for review in the County Clerk's Office.



Dawson County Emergency Services

Lanier Swafford, Chief
Tim Satterfield, Deputy Chief - Operations
Ricky Rexroat, Deputy Chief - Administration
Danny Speaks, Assistant Chief / Training

393 Memory Lane
Dawsonville, Georgia 30534

(706) 344-3666 Office
(706) 344-3669 Fax

May 16, 2016

Dawson County Board of Commissioners

Ref: 2016 Update to the Local Emergency Operations Plan

Commissioners,

I have provided a copy for your review to the updates to the Local Emergency Operations Plan. This is a local plan required by the Georgia Emergency Management/Homeland Security Agency. It describes the fifteen (15) Emergency Support Functions and local responsibilities within each Emergency Support Function. The document is required to be officially updated every four years and submitted to GEMA/HS.

The proposed document has been updated to reflect the appropriate contacts, along with their information for each listed agency/office. In addition, it contains an updated Emergency Operations Center policy and updated county, GEMA Field Coordinator, and GEMA School Safety Maps. No other changes have been made to the plan, as it continues to reflect the appropriate staffing agencies, responsibilities, and intended outcomes for the community.

I welcome any questions and hope you will consider approving this document revision on the May 26th Work Session.

With regards,

Lanier Swafford

Fire Chief/EMA Director

Mission Statement

Dawson County Emergency Services is committed to the preservation of life and protection of property of the citizens of Dawson

Mission Statement

Dawson County Emergency Services is committed to the preservation of life and protection of property of the citizens of Dawson

Backup material for agenda item:

5. Presentation of proposed Memorandum of Agreement between Lanier Technical College and the Dawson County Board of Commissioners - Emergency Services Director Lanier Swafford



DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA FORM

Department: Emergency Services

Work Session: 05/26/16

Prepared By: Lanier Swafford

Voting Session: 06/02/2016

Presenter: Lanier Swafford

Public Hearing: Yes No

Agenda Item Title: Memorandum of Agreement between Lanier Technical College and Dawson County Board of Commissioners

Background Information:

For many years the EMT/Paramedic Training Programs at Lanier Technical College have partnered with area ambulance services to provide students with field experience during their training programs. The technical college arranges these opportunities with local participating departments and provides and assumes the liability for the students while on duty. Dawson County has participated in this program in the past.

Current Information:

Lanier Technical College has approached DCES about again becoming a clinical site for the EMT and Paramedic Students. This is due to the fact the caliber of employees and level of treatment provided here makes Dawson County a desirable site for clinical training experiences. In turn, Dawson County has the opportunity to evaluate students in training to possibly identify future employees.

Budget Information: Applicable: Not Applicable: Budgeted: Yes No

Fund	Dept.	Acct No.	Budget	Balance	Requested	Remaining

Recommendation/Motion: I move that Dawson County approve the MOA with Lanier Technical College for clinical opportunities for EMT and Paramedic Students.

Department Head Authorization: Lanier Swafford

Date: 05/10/2016

Finance Dept. Authorization: Vickie Neikirk

Date:

County Manager Authorization: Randall Dowling

Date: 5-16-16

County Attorney Authorization:

Date:

Comments/Attachments:

The County Attorney has reviewed the attached MOU.

**Memorandum of Agreement
between
Lanier Technical College
and
Dawson County Board of Commissioners**

I. Purpose

The purpose of this Memorandum of Agreement (“Agreement”) is to provide instruction and practice for Lanier Technical College Students (“Students”) at the Dawson County Fire & Emergency Services. The instruction and practice is intended to benefit the College’s Students in accomplishing their educational goals and create a highly trained work force.

II. Parties

Lanier Technical College (hereinafter the “College”) and Dawson County Board of Commissioners (hereinafter the “Facility”).

III. Affiliating Agreement

This is a mutual Agreement between the Facility and the College that provides for the Facility to accept Students in the Emergency Medical Services programs for College faculty coordinated clinical experience in the Students’ field of study. In addition, this agreement provides:

- A. Educational experiences will be provided by the College and the Facility without regard to race, color, national origin, sex, religion, disability, genetic information or age of the persons involved. Provided however, that with respect to disability, the disability must not be such as would, even with reasonable accommodation, in and of itself preclude Participant’s participation in the program.
- B. While the educational experiences contemplated by this agreement shall be offered jointly, the College shall maintain control over the curriculum offered the College’s Students and the Facility shall maintain control and responsibility for its patients/clients.
- C. Educational experiences will be of such content and cover such periods of time as may from time to time be mutually agreed upon by the College and the Facility. The starting and ending date for each individual educational experience shall be agreed upon before the experience commences.
- D. The number of Students participating in each educational experience shall be

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determined by mutual agreement of the parties and at any time may be modified by mutual agreement.

- E. The Facility will serve as a clinical laboratory and will furnish facilities for the Students in such manner and at such time as the parties herein mutually agree.
- F. The Facility will not be required to provide free treatment for Students or College faculty. Students or College faculty may request treatment from the Facility at their own personal expense. The College does not accept any liability or responsibility whatsoever for treatment individually requested by a College Student or College faculty member.
- G. Clinical rotation(s) will be planned by the College faculty of the College program(s), in conjunction with the Facility's representative, in order to meet requirements mandated by the College or licensing/certification Board.
- H. No College faculty or Student will receive monetary or other type of reimbursement from the Facility for work done during the clinical rotation. Nor shall any College faculty or Student hold him or herself out as an employee or agency of the Facility during the clinical rotation.

IV. The Facility Agrees To The Following:

- A. Provide a program of clinical experience for the Students to engage in so as to benefit their knowledge of the Student's program of study at the College. The number of hours and experience may vary each year but will be mutually agreed upon with the College.
- B. The Facility will retain responsibility for the care of the patients, clients and/or customers and will maintain administrative and professional supervision of Students, insofar as their presence affects the operation of the Facility and/or patient, client or customer care.
- C. Observe the following personnel policies:
 - 1. College faculty and Students will be permitted to observe the College's calendar for holidays and events.
 - 2. Students will be allowed to make up time lost due to unavoidable absences.

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3. Students shall wear the accepted College uniform or conform to Facility policies regarding acceptable dress during the clinical experience.
 4. Faculty employed by the Technical College System of Georgia (“TCSG”) or the College will be under the full jurisdiction of the College’s administration.
- D. The Facility shall maintain insurance as it deems advisable to protect itself as appropriate given the College’s limitations on liability for damages as described below in Paragraph V, subsections (I), (J) and (K).
- E. Make provisions for orientation of College faculty members to the facilities, philosophies, and policies of the respective Facility. Such orientation shall include instruction on the Facility’s privacy policies and procedures, particularly as related to patient health or other confidential information.
- F. Assist in the orientation of the Students to the Facility and clear channels of administration for the use of equipment and records as necessary for teaching purposes and in accordance with Facility policies. Such orientation shall include instruction on the Facility’s privacy policies and procedures, particularly as related to patient health or other confidential information.
- G. In a case of improper exposure to bodily fluids, airborne tuberculosis, pathogens, antibody and or antigen by a Student or College faculty member, the Facility will use its best efforts to appropriately test the source patient and to obtain the patient’s consent for disclosure of test results to the College’s infection control personnel.
- H. Facility staff shall, upon request, assist the College and College faculty in the evaluation of the learning and performance of participating Students. The Facility agrees to keep confidential any Student records or information it may obtain unless it has otherwise obtained prior written consent of the Student.
- I. Provide on the job training that complies with the Fair Labor Standards Act regarding trainees by meeting all six of the following criteria:
1. The training, even though it includes actual operation of the Facility, is similar to that which would be given at the College;
 2. The training is for the benefit of the Students;
 3. The Students do not displace regular employees of the Facility, but work under constant supervision of Facility employees;

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4. The Facility that provides the internship derives no immediate advantage, economic or otherwise, from the activities of the Students and, on occasion, the operations of the Facility may even be impeded;
 5. The Students are not necessarily entitled to a job at the Facility at the conclusion of the training period; and
 6. The Facility and the Students understand that the Students are not entitled to wages for the time spent in training.
- J. Provide a safe work environment for College faculty and Students.
- K. Assist and cooperate with the College in investigations related to complaints related to the educational experience at the Facility.

V. The College Agrees To The Following:

- A. Ensure that the College's Student Code of Conduct is enforced for the Students at the Facility. Any Student whose behavior, conduct, attitude, or attire is in conflict with the College's Student Code of Conduct will be subject to appropriate disciplinary actions.
- B. Provide College faculty in accordance with the required student-faculty ratio as mandated by the state licensing/certification agency or by the local Facility regulation(s).
- C. Provide College faculty who have experience in specialty area where they will be supervising Students.
- D. Assure that Students with unsatisfactory performance in the classroom and/or clinical practicum will not be placed on clinical assignments.
- E. Provide specific written clinical behavioral objectives for the Facility staff prior to Student rotation. Conferences will be scheduled with Facility staff during rotation to discuss Student learning, Student performance, and patient services.
- F. Submit a schedule with names of attending Students at least two weeks prior to the beginning of the Student's first day at the Facility.
- G. Provide for all administrative functions required by the Facility necessary for smooth operation of the program (i.e., joint review of the use of clinical

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facilities).

- H. Require the observance of Facility policies and procedures by the Students and faculty.
- I. Assure that each Student and College faculty member has professional liability insurance with minimum coverage of one million dollars to cover his or her acts or omissions.
- J. The College is self-insured under the State of Georgia, Department of Administrative Services, Risk Management Division, against tort claims, including comprehensive automobile liability, in the amount of one million (\$1,000,000) per person and three million (\$3,000,000) per occurrence; the College also maintains workers' compensation insurance through the State of Georgia.
- K. The College is prohibited by the Constitution of Georgia from contracting to indemnify or hold harmless any individual or entity. Article VII, Sec. 4, Paragraph 8; Article III, Sec. 6, Para. 6, Constitution of the State of Georgia. The College will be liable only for personal injury or property damage caused by acts or omissions of its employees in the performance of this contract to the extent provided by the Georgia Tort Claim Act (O.C.G.A. § 50-21-20 et seq.)
- L. The College shall, to the extent required by law or policy, offer to Students and College faculty at substantial risk of directly contacting body fluids or airborne tuberculosis, pathogens, antibody and or antigen testing and vaccination in accordance with requirements of the Occupational Health and Safety Administration and the Centers for Disease Control and Prevention. The College shall follow then current Technical College System of Georgia Policy following an exposure of a college faculty or Student.
- M. Maintain the following information on each Student and College faculty member who will be participating in clinicals:
 - Student contact information and student academic records.
- a. Before the student begins, the facility will provide a listing of health related documentation required. Student will provide these documents to Lanier Technical College with assigned personnel to maintain on behalf of the facility.

VI. Withdrawal of Student from Facility

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Dawson County Board of Commissioners
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- A. The Facility may request the College withdraw any Student from the educational experience at the Facility whose work or conduct may have a detrimental effect on patients or personnel; and/or reserves the right not to accept any Student who has previously been discharged by the Clinical Institute for non-discriminatory reasons, including but not limited to criminal or fraudulent activity, perceived lack of competency or failure to comply with the policies, procedures and rules of the College or Facility.
- B. The College may request the withdrawal from the Facility of any Student whose progress, achievement, or adjustment does not justify continuance in the educational experience at the Facility.

VII. Representatives

Any communication regarding this contract should be directed to the following representatives:

For the College:

Dr. Deanne Dotson Collins
Dean of Allied Health
2990 Landrum Education Drive
Oakwood, GA 30566
dcollins@laniertech.edu

For the Facility:

Dawson County Board of Commissioners
Lanier Swafford, Chief (POC)
25 Justice Way, Suite 2313
Dawsonville, GA 30534

VIII. Prohibition of Gratuities

All of the parties hereby certify that the provisions of O.C.G.A. § 45-10-20 through § 45-10-28, which prohibit and regulate certain transactions between State Officials, employees and the State of Georgia, and O.C.G.A. § 45-1-6, which prohibits gratuities,

Memorandum of Agreement
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have not been violated and will not be violated in any respect throughout the term of this Contract.

IX. Additional Mutual Agreements

A. Background Check and Drug Screen

Before the Student begins his or her educational experience at the Facility, each Student may be required by the Facility to submit to [drug testing, background check, etc.]. All testing and results are to be controlled by the Facility. Students who refuse or fail to meet the Facility's standards on these tests may be withdrawn from participation in the clinical experience at the Facility at the Facility's request. No information regarding the specific deficiencies of the Student's test results shall be shared with the College.

B. Confidentiality

Students and College Faculty shall not disclose to any third party, except as permitted or required by law or approved by the Facility in writing, any medical record or other patient information. Students and College faculty shall comply with all federal and state laws and regulations, and all bylaws, rules, regulations and policies of the Facility regarding the confidentiality of patient information.

College acknowledges that the Facility must comply with the applicable provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320 et seq. ("HIPAA") and its related regulations. College, Students and College faculty shall not request, use or further disclose any Protected Health Information ("PHI") other than for the treatment and training purposes specified in this Agreement. The College will promptly report to the Facility any uses or disclosures of which the College becomes aware of PHI in violation of this Agreement.

C. Licensing

The College will not knowingly assign any College faculty to the Facility who is not appropriately licensed or certified, and will make evidence of the licensure or certification of its assigned faculty available to the Facility upon request.

D. Exposures to Bloodborne or Other Pathogens

In the event of an exposure, the College will be responsible for offering appropriate testing to the affected Student or College faculty, providing appropriate medical care, counseling, and

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recordkeeping in accordance with the College exposure control plan. In no instance shall the College's responsibility as defined in the paragraph exceed a period of one year after the Student or College faculty leaves the program in accordance with State Policy.

X. Miscellaneous

A. Term

1. The terms and conditions of this agreement shall be periodically reviewed by the parties.
2. This agreement will remain in effect until January 1, 2018.
3. Either party may terminate this agreement upon a 90 day notice in writing to the other party. However, if either party wishes to terminate this agreement it is understood that Students then enrolled in the educational experience at the facility shall be given the opportunity to complete the educational experience.

B. Entire Agreement

This Agreement, together with any documents incorporated herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or contracts. No written or oral agreements, representations, statements, negotiations, understandings, or discussions which are not set out, referenced, or specifically incorporated into this Agreement shall in any way be binding or of effect between the parties.

C. Assignment

Neither party shall assign this Agreement, in whole or in part, without the prior written consent of the other party, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

D. Applicable law

This Agreement shall be governed in all respects by the laws of the State of Georgia.

E. Amendments in Writing

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Dawson County Board of Commissioners

No amendment of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party except by a writing executed by both parties.

Lanier Technical College

Dawson County Board of Commissioners



President

Signing Party, Title

4/5/16

Date

Date

Lanier Technical College does not discriminate on the basis of race, color, religion, national origin, sex, disability, or age in its programs, admissions, employment, or any other activities. The following person has been designated to handle inquiries regarding the nondiscrimination policies that include Title VI, Title IX, 4505. Inquiries concerning application of this policy may be referred to Ms. Nancy Beaver, 2990 Landrum Education Drive, Oakwood, GA 305

Backup material for agenda item:

6. Presentation of Memorandum of Understanding between Northeast Georgia Medical Center and the Dawson County Board of Commissioners regarding data sharing for the purpose of attempting to improve outcomes for patients who suffer sudden cardiac arrest
- Emergency Services Director Lanier Swafford



DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA FORM

Department: Emergency Services

Work Session: May 26, 2016

Prepared By: Lanier Swafford

Voting Session: June 2, 2016

Presenter: Lanier Swafford

Public Hearing: Yes No

Agenda Item Title: MOU Between Northeast Georgia Medical Center (NEGMC) and the Dawson County Board of Commissioners Regarding Sharing Cardiac Arrest Data

Background Information:

In an attempt to better track crucial data associated with cardiac arrest patients across their service area, NEGMC is requesting a MOU between the hospital and Dawson County to share specific data regarding this type of medical event.

Current Information:

Current, national survival rates for cardiac arrest are 10%. This can only be improved through research, education, technological advances, and personal choices of individuals. Dawson County has recently made a significant investment in cardiac care with the purchase of three LUCAS mechanical chest compression devices and two new cardiac monitors capable of take 12 lead electro cardio grams and transmitting that data to the receiving hospital prior to the patient's arrival.

Budget Information: Applicable: Not Applicable: Budgeted: Yes No

Fund	Dept.	Acct No.	Budget	Balance	Requested	Remaining

Recommendation/Motion: I move to approve the Memorandum of Understanding between Northeast Georgia Medical Center and the Dawson County Board of Commissioners.

Department Head Authorization: Lanier Swafford

Date: May 13, 2016

Finance Dept. Authorization: Vickie Neikirk

Date: 05.19.16

County Manager Authorization: Randall Dowling

Date: 5-26-16

County Attorney Authorization:

Date:

Comments/Attachments:

MOU is attached. The county attorney has reviewed the MOU and his recommended changes have been incorporated into the MOU.

Northeast Georgia Regional STEMI System

Out of Hospital Cardiac Arrest

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into by and between:

Northeast Georgia Regional STEMI System / Northeast Georgia Medical Center (NEGMC) and Dawson County Board of Commissioners (Dawson County)

- A. Purpose:** To track the location and survivability of out of hospital cardiac arrest in the county in which Dawson County provides emergency 911 response and improve survival of out of hospital cardiac arrest throughout the county and region. Without the collaborative effort between pre-hospital agencies and hospitals the dismal survivor rate of less than 10% will never improve. Objective results will allow those in leadership to make clear decisions as to where to increase education, personnel, EMS presence, and other resources needed to protect the citizens of each county. This program has been approved by and is overseen by a formal Cardiac Arrest Committee as well as approved by the NEGMC Institutional Review Board (IRB).
- B. Roles and Responsibilities:** Each agency has specific information and data crucial to the overall understanding of how to increase the survivability of out of hospital cardiac arrest. To make sure this is compiled, entered, and analyzed effectively each agency must agree to certain roles and responsibilities as outlined below.

NEGMC agrees to: **Responsibility / Activity**

Input data into and maintain the International Cardiac Arrest registry (INTCAR) on all cardiac arrest with ROSC transported to the Northeast Georgia Medical Center.

Input data into and maintain the internal cardiac arrest database for all patients transported to Northeast Georgia Medical Center.

Input data into and maintain the internal cardiac arrest database for all patients NOT transported to Northeast Georgia Medical Center. These data will contain no PHI.

Provide feedback to Dawson County in the form of outcome reports as well as dataset analysis on a regular and as needed basis.

Dawson County agrees to: **Responsibility / Activity**

Designate and internal staff member to be responsible for data collection and communication between NEGMC and Dawson County.

Provide the patient name, age, date of service, and other pertinent information for each cardiac arrest transported to NEGMC.

Provide limited non-PHI for each cardiac arrest NOT transported to NEGMC

Provide a patient care report for each patient transported NEGMC.

- C. **Reporting Requirements:** Northeast Georgia Medical Center will be responsible for all collecting, collating, and submitting data monthly as well as provide specific information for internal review and adjudication. Dawson County will ensure all data are submitted by the 15th of the month for all cardiac arrest patients from the previous month.
- D. **Timeframe:** This MOU shall commence on the 1st day of July, 2016 and shall continue through the 31st day of December, 2016. The terms hereof shall automatically renew each year unless either party hereto provides thirty (30) days' notice of intent to terminate the terms hereof. The total obligation of the County for the calendar year of execution and for each renewal term shall be the obligation set forth herein. The terms hereof shall terminate absolutely and without further obligation on the part of either party at the close of 2016 and at the close of each succeeding calendar year for which the terms hereof are renewed. The terms hereof shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the county.
- E. **Confidentiality:** In order to ensure the safety of patients, all parties to the Memorandum of Understanding (MOU) agree to adhere to the confidentiality expectations as outlined in Federal HIPAA Privacy Rules. Any data collected as of the date of the termination shall remain with Northeast Georgia Medical Center and become the exclusive property of Northeast Georgia Medical Center.

This Memorandum of Understanding is the complete agreement between Northeast Georgia Medical Center and the Dawson County Board of Commissioners and may be amended only by a written agreement signed by each of the parties involved.

Northeast Georgia Medical Center

Authorized Official: _____

Printed Name and Title _____

Address: 743 Spring Street Gainesville, GA 30501

Telephone: (770) 219-2044

Email Address: Jason.grady@nghs.com

Dawson County Board of Commissioners

Authorized Official: _____

Printed Name and Title: _____

Address: 25 Justice Way Dawsonville, GA 30534

Telephone: (706) 344-3500

Email Address: chairman@dawsoncounty.org

Backup material for agenda item:

7. Presentation of proposed Memorandum of Understanding between the City of Dawsonville and the Dawson County Board of Commissioners for Domestic Water Fire Protection Inspection - Emergency Services Director Lanier Swafford



DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA FORM

Department: Emergency Services

Work Session: May 26, 2016

Prepared By: Lanier Swafford

Voting Session: June 2, 2016

Presenter: Lanier Swafford

Public Hearing: Yes No

Agenda Item Title: City / County MOU for Domestic Water Fire Protection Inspection

Background Information:

In an attempt to provide employees of Dawson County Emergency Services continuity in how and when fire hydrants are inspected to comply with the current recommendations of the Insurance Services Office (ISO), the city has drafted this MOU to outline and define each party's roles and responsibilities.

Current Information:

This agreement is very similar to the current agreement between the County and Etowah Water and Sewer Authority as addressed in the MOU for the Splash Pad at Rock Creek Park, where each party's roles and responsibilities are outlined. This is important as it provides detailed responsibility needed to perform the water system evaluation, which is 40% of the ISO Public Protection Class Rating which now is a combined rating for both the County and the City.

Budget Information: Applicable: Not Applicable: Budgeted: Yes No

Fund	Dept.	Acct No.	Budget	Balance	Requested	Remaining

Recommendation/Motion: I move that the Memorandum of Understanding between the City of Dawsonville and the Dawson County Board of Commissioners be approved.

Department Head Authorization: Lanier Swafford

Date: 05/13/2016

Finance Dept. Authorization: _____

Date: _____

County Manager Authorization: Randall Dowing

Date: 5/23/16

County Attorney Authorization: _____

Date: _____

Comments/Attachments:

The attached MOU was provided to Mr. Homan, County Attorney, for review on 05/13/16.

MEMORANDUM OF UNDERSTANDING

BETWEEN THE CITY OF DAWSONVILLE AND THE DAWSON COUNTY EMERGENCY

SERVICES DOMESTIC WATER FIRE PROTECTION INSPECTION TO BE DETERMINED FOR

I.S.O. RATING

This memorandum of understanding (MOU) is made and entered into between the City of Dawsonville and the Dawson County Fire Department this ____ day of _____, 2016 for the purposes of providing domestic water fire protection inspection to be determined for annual I.S.O. rating.

WHEREAS, The City of Dawsonville desires to enter into a MOU with the Dawson County Emergency Services for Domestic Water Fire Protection Inspection services of its existing service lines within the Emergency Services District inside of the city of Dawsonville city limits. The purpose of this MOU is to ensure that the Emergency Services has access to water wherever available for firefighting purposes; and that the service line flows meet the requirements of the Adopted 2012 edition for the International Fire Code approved by the City, County and DCA and Section 507.

WHEREAS, This MOU WILL COVER THE REQUIREMENTS OF BOTH Insurance Services Organizations (ISO) and National Fire Protection Agency (NFPA) GUIDELINES TO ensure maximum available coverage in the areas inside or outside the Dawsonville City limits; and,

WHEREAS, The parties desire to enter into this MOU in order to show secured, tested, inspected and maintained water sources for firefighting operations, which will result in improved ISO ratings to outlying coverage areas, lowering insurance premiums for all residents and businesses within those areas.

NOW THEREFORE THE City of DAWSONVILLE AND DAWSON COUNTY EMERGENCY SERVICES MUTUALLY AGREE AS FOLLOWS:

1. City hereby grants the Fire Department the following:
 - Permission to use its fire hydrants for firefighting operations;
 - Permission to test at will annually and maintain as required its fire hydrants. It is recommended these tests are conducted during the times school is not in session, (spring break, etc);
 - Provide maps of the water system and water mains, water main types, water main sizes, wells, storage tanks, and fire hydrant locations;
 - Authority to provide identification system for tracking and record keeping of fire hydrants; and

- Authority to paint, provide lubricants and any other materials required to perform maintenance and testing.

2. The Emergency Services shall provide to the City of Dawsonville:
 - A record of water amounts used during firefighting operations;
 - Personnel to perform maintenance and annual testing of fire hydrants; complete records documenting maintenance and annual testing performed and hydrant pressure; and
 - Reports outlining any issues requiring repair found during maintenance and testing.

3. The Emergency Services shall contact the City to schedule tests. Tests are to be performed at the discretion of the Fire Department without interruption in order to meet the required testing results set forth in the adopted City, County, DCA Fire Code Manual.

4. This MOU shall terminate pursuant to the terms hereof or by operation of law. This MOU may be terminated by either party upon delivery of written notice to the other party not less than thirty (30) days prior to the effective date of the termination. Termination by either of the parties shall not nullify any obligation hereunder required to have been performed prior to the date of termination.

5. Any amendments to this MOU shall be in writing signed by both parties.

6. This MOU shall be governed by the laws of the state of Georgia.

7. This MOU constitutes the entire agreement of the party and there are no other agreements, verbal or otherwise, that are a part of this MOU.

8. To the extent permitted by law, each party shall indemnify and hold harmless the other party from and against liability, claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from performance of the obligation of each respective party caused by any act or omission of such party or a contractor of such party.

9. This MOU is contingent upon each of the parties making such appropriations as are necessary to effectuate the MOU. The decision by the governing body of the party as to appropriations shall be final.

IN WITNESS HEREOF, the parties have executed the MOU as of the date first written above.

SIGNATURES ON THE FOLLOWING PAGE

City of Dawsonville

Dawson County Emergency Services

James Grogan, Mayor

Lanier Swafford, Director of EMS

ATTEST:

Approved: Dawson County Board of
Commissioners

Bonnie Warne, City Clerk

Mike Berg, Chairman

ATTEST:

APPROVED AS TO FORM:

Danielle Yarbrough, County Clerk

Dana Miles, Esq., City of Dawsonville
Attorney

Backup material for agenda item:

8. Presentation of Approval of Courthouse Canopy Final Revisions - County Manager
Randall Dowling



DAWSON COUNTY BOARD OF COMMISSIONERS AGENDA FORM

Department: Administration

Work Session: 5-26-16

Prepared By: Randall Dowling

Voting Session: 6-2-16

Presenter: Randall Dowling, County Manager

Public Hearing: Yes _____ No

Agenda Item Title: Approval of Courthouse Canopy Final Revisions

Background Information:

The Board of County Commissioners requested a canopy to be constructed in front of the courthouse connecting the front door to the handicapped parking spaces including a vehicle drop-off area. Rosser, the original architect firm for the courthouse, prepared three canopy options for the Board's consideration and presented those three options during the April 14, 2016 work session. During the April 21, 2016 voting session, the Board approved Option #3 with revisions.

Current Information:

Rosser has completed the revisions to Option #3 as attached. If approved, Rosser will complete the canopy design suitable for bidding, county staff will competitively bid this project out, and the Board will award the bid. The project should be completed by the end of the year. This is a SPLOST – V project and is budgeted at \$250,000. Thus far, \$12,010 has been committed for design fees.

Budget Information: Applicable: Not Applicable: _____

Budgeted: Yes No _____

Fund	Dept.	Acct No.	Budget	Balance	Requested	Remaining
315	1565	541300-C63	\$250,000	\$250,000	\$250,000	\$0

Recommendation/Motion: Approved the revisions to Option #3 and authorized staff to bid out the project.

Department Head Authorization: _____

Date: _____

Finance Dept. Authorization: Vickie Neikirk

Date: 5/17/16

County Manager Authorization: Randall Dowling

Date: 5-17-16

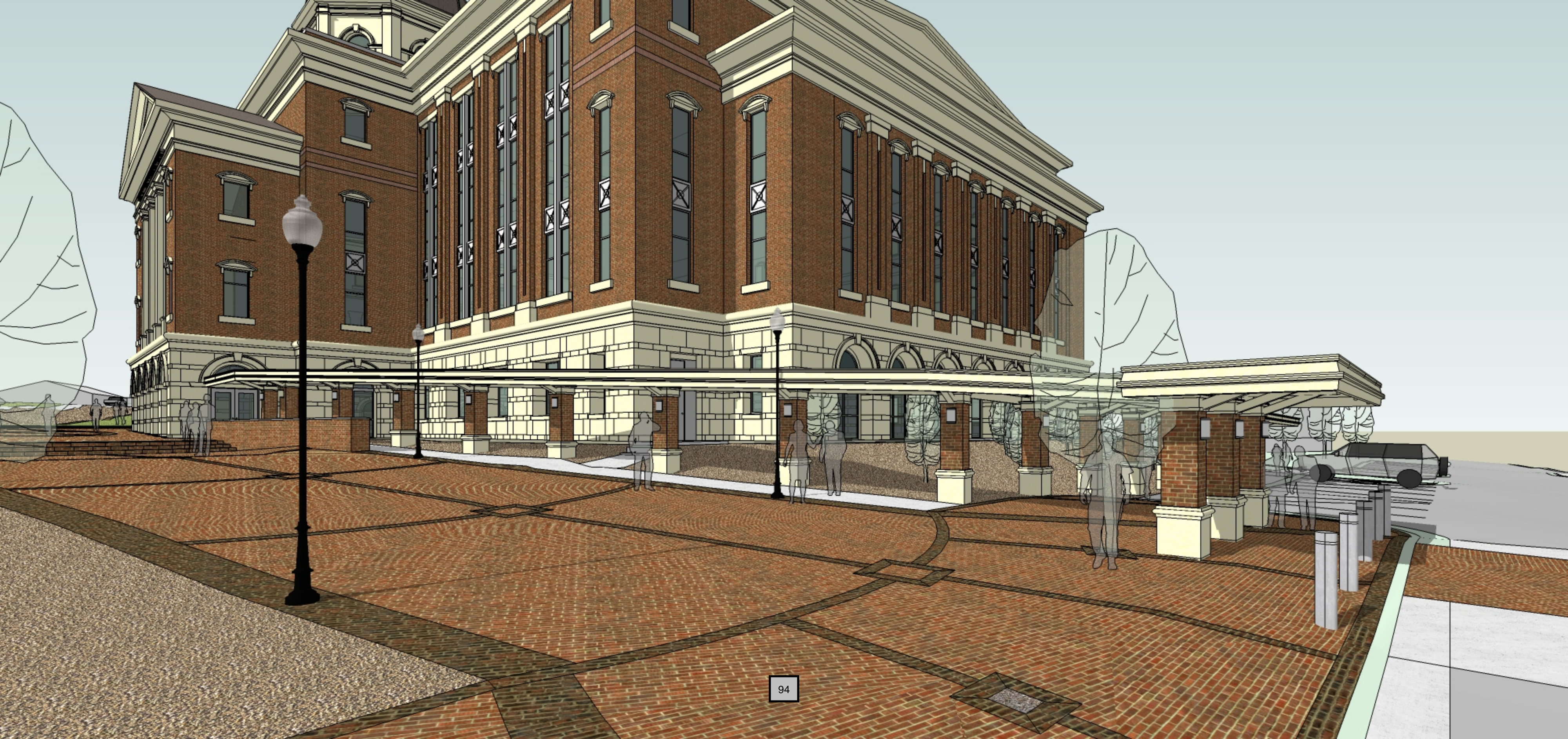
County Attorney Authorization: _____

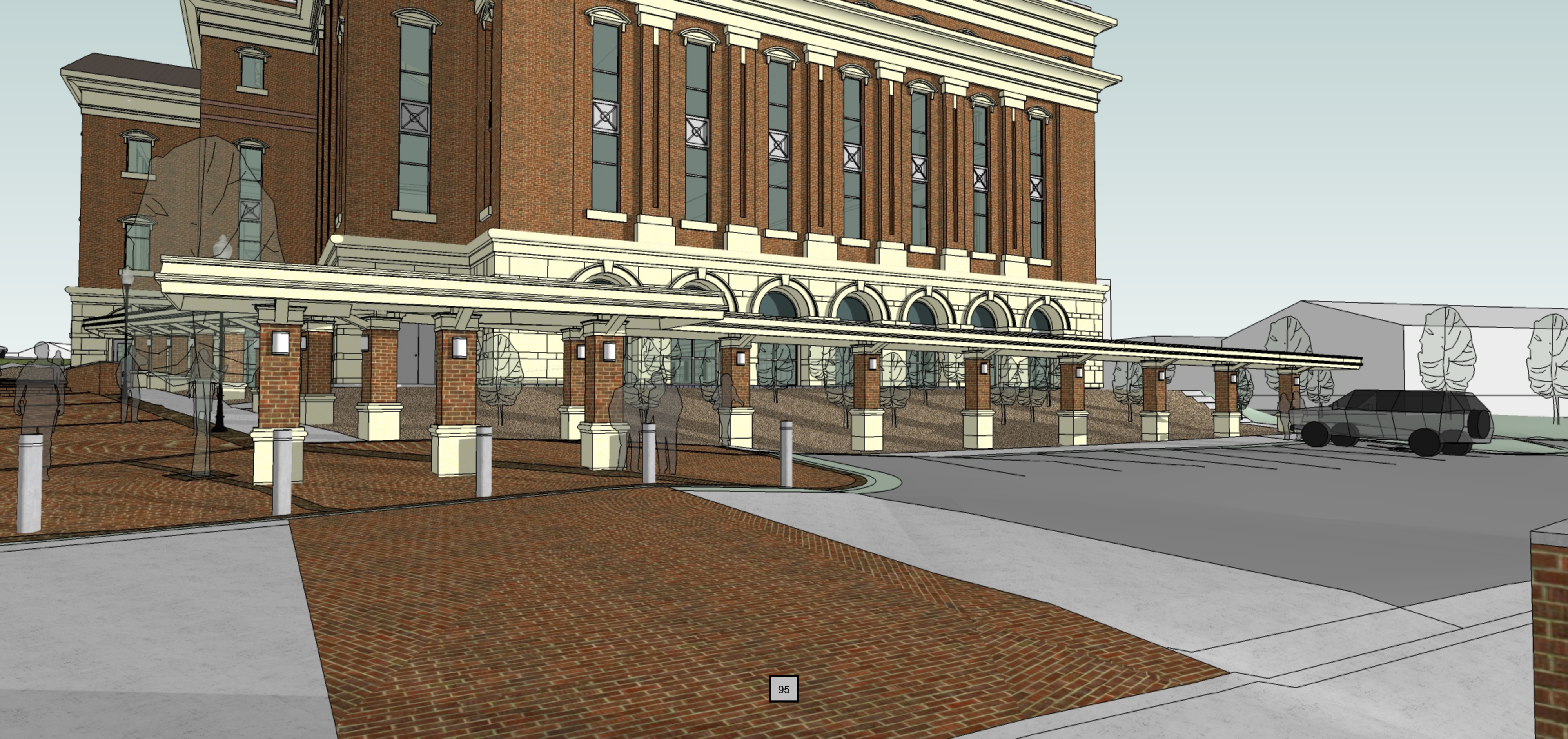
Date: _____

Comments/Attachments:

Attached are: 1) canopy revisions as requested from the April 21 voting session. 2) minutes from the April 21 voting session.







Sean Courtney, 4212 Post Road, Cumming, GA- spoke on behalf of the applicants. Courtney stated that the applicants had purchased their property back in 2009 with the intent of being able to raise farm animals. There have been no complaints from neighbors nor have they been considered a nuisance. It is their intent to remain in the home for many more years and wish to rezone just in case regulations were to change in the future.

Chairman Berg asked if anyone wished to speak for or against the application and hearing none, closed the hearing.

Motion passed unanimously to approve ZA 16-01. Nix/Swofford

PUBLIC HEARING:

Electronic Cigarette Ordinance (1st of 2 hearings)

Chairman Berg opened the hearing and asked if there was anyone present who wished to be heard on the matter of the Electronic Cigarette Ordinance, and hearing none, closed the hearing. The next hearing will be held on May 5, 2016.

Vacant and Burned Structures Ordinance (1st of 2 hearings)

Chairman Berg opened the hearing and asked if there was anyone present who wished to be heard on the matter of the Vacant and Burned Structures Ordinance, and hearing none, closed the hearing. The next hearing will be held on May 5, 2016.

UNFINISHED BUSINESS:

None

NEW BUSINESS:

Consideration of Courthouse Canopy Options

→ Motion passed unanimously to go with a revised version of Option 3 to include a smaller canopy which would go out to the edge of the street. Swafford/Hamby

Consideration of 2016 Arbor Day Proclamation

Motion passed unanimously to approve the 2016 Arbor Day Proclamation. Nix/Hamby

Re-Consideration of Bid #265-16 RFP IT Servers- Revised

Motion passed unanimously to table re-consideration of Bid #265-16 RFP IT Servers- Revised until the Voting Session on May 5, 2016. Swafford/Nix

Consideration of request for additional funds for the District Attorney to cover legal expenses associated with murder trial

Motion passed unanimously to approve request for additional funds for the District Attorney to cover legal expenses associated with murder trial. Hamby/Nix

Consideration to move forward with public hearings on May 17, 2016 and May 19, 2016 regarding adoption of the 2016 Land Use District Map

Motion passed unanimously to move forward with public hearings on May 17, 2016 and May 19, 2016 regarding adoption of the 2016 Land Use District Map. Swafford/Hamby

Backup material for agenda item:


10. County Attorney Report

Fox, Chandler, Homans, Hicks & McKinnon, L.L.P.

Memorandum

To: Dawson County Board of Commissioners

Date: May 26, 2016

From: Joey Homans 

Re: County Attorney Report

1. Tisdale Litigation. I am providing you a copy of the Complaint that Ms. Tisdale filed in federal court. The County's answer is due June 3. The County's liability carrier retained Terry Williams as lead counsel. My firm and I will serve as co-counsel. The lawsuit names the three individual officers and does not name the Sheriff nor the County as a Defendant. However, the individuals were acting as Deputy Sheriffs, so the County provides a defense.
2. Changes to FLSA Overtime Regulations. I am providing you information from Kelly Pridgen, General Counsel for ACCG, regarding changes to overtime regulations that take effect December 1, 2016. These changes may affect the County's budget beginning with the 2017 budget.
3. Ingram Litigation. Ms. Ingram filed suit alleging an improper tax sale in 2015 and seeking damages. The County filed an Answer and seeks dismissal on various legal grounds. Judge Fuller scheduled the trial for June 30.

Joey

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Georgia

Nydia Tisdale

Plaintiff(s)

v.

Captain Henry Anthony Wooten
Corporal Laura Bishop
Corporal Russell Smith

Defendant(s)

Civil Action No. 2:16-cv-00092-WCO

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Corporal Russell Smith
232 Kingston Ct.
Dawsonville, Georgia 30534

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael A. Caplan
CAPLAN COBB LLP
75 Fourteenth Street, NE, Suite 2750
Atlanta, GA 30309
(404) 596-5600 – Office

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



JAMES N. HATTEN
CLERK OF COURT

Date: 05/10/2016

s/Shane Gazaway
Signature of Clerk or Deputy Clerk

Civil Action No. 2:16-cv-00092-WCO

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As

100

Reset

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

Nydia Tisdale

DEFENDANT(S)

Captain Henry Anthony Wooten
Corporal Laura Bishop
Corporal Russell Smith

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF FULTON COUNTY, GA (EXCEPT IN U.S. PLAINTIFF CASES),

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Douglas County, GA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
2 U.S. GOVERNMENT DEFENDANT
3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- PLF DEF 1 1 CITIZEN OF THIS STATE
2 2 CITIZEN OF ANOTHER STATE
3 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY
PLF DEF 4 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
5 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
6 6 FOREIGN NATION

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
2 REMOVED FROM STATE COURT
3 REMANDED FROM APPELLATE COURT
4 REINSTATED OR REOPENED
5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
6 MULTIDISTRICT LITIGATION
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Count I - 42 U.S.C. § 1983, violation of First Amendment Rights; Count II - 42 U.S.C. § 1983, violation of Fourth and Fourteenth Amendment Rights; Count III - 42 U.S.C. § 1983, violation of Fourth and Fourteenth Amendment Rights; Count IV - 42 U.S.C. § 1983, violation of Fourth and Fourteenth Amendment Rights; Count V - 42 U.S.C. § 1983, violation of Fourth and Fourteenth

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 440 OTHER CIVIL RIGHTS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 865 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 QUI TAM 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/CC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Cv.P. 23 DEMAND \$ _____

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S));
- 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Michael A. Caplan

SIGNATURE OF ATTORNEY OF RECORD

DATE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

NYDIA TISDALE,

Plaintiff,

v.

CAPTAIN HENRY ANTHONY
WOOTEN, in his individual capacity,
CORPORAL LAURA BISHOP, in her
individual capacity, CORPORAL
RUSSELL SMITH, in his individual
capacity.

Defendants.

)
)
)
) Case No. 2:16-cv-00092-WCO
)
)

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Nydia Tisdale brings this suit pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 2000aa to vindicate her rights to free speech and freedom of the press, as well as her rights to be free from unreasonable searches and seizures and the use of excessive force by officers acting under color of state law.

INTRODUCTION AND SUMMARY OF THE ACTION

1.

The First Amendment to the United States Constitution protects the rights of citizens to participate in the public discourse about candidates seeking public office.

2.

The First Amendment also protects the rights of journalists to report the public statements of political candidates because the free exchange of information is a fundamental precept of a participatory democracy.

3.

In this case, police officers tasked with preserving those rights instead used excessive force, unconstitutional arrest, and, ultimately, bogus criminal charges to silence a citizen journalist engaged in the most objective form of political expression: videotaping what candidates for public office said at a public rally.

4.

This case is about vindicating the constitutional rights of a well-known citizen-journalist and open-government advocate, Nydia Tisdale.

5.

With the invitation of and express permission from the property owners and event organizers, Ms. Tisdale filmed a public political rally at Burt's Farm in Dawson County, Georgia on August 24, 2015.

6.

After some attendees apparently became concerned about their own public statements being recorded and made publicly available, Dawson County Sheriff's

Deputy Captain Anthony Wooten (Capt. Wooten) took it upon himself to silence Ms. Tisdale by force.

7.

Despite her protests that her actions were authorized—by the property owners, as well as by the First Amendment to the United States Constitution—Capt. Wooten dragged her from her seat, bound her hand behind her back, frogmarched her from the event in front of shocked onlookers to an unoccupied barn, slammed her against a countertop, and pinned her there with his groin pressed into her buttocks.

8.

He then summoned two other officers of the Dawson County Sheriff's Office, Corporal Laura Bishop (Cpl. Bishop) and Corporal Russell Smith (Cpl. Smith), to help him effectuate the arrest. Neither officer intervened in the unconstitutional arrest or independently verified whether probable cause existed to arrest Ms. Tisdale.

9.

The officers took Ms. Tisdale from the rally in a squad car, photographed the bruises and scrapes covering her body, and seized her camera and video recordings.

10.

When her camera was finally returned to her nearly a week later, critical portions of the footage of her assault were deleted.

11.

Although he knew he lacked probable cause to do so, Capt. Wooten charged Ms. Tisdale with felony obstruction and criminal trespass.

12.

No action was taken on those bogus charges for over a year.

13.

In August of 2015, Ms. Tisdale gave written notice that she would take action to vindicate her constitutional rights. Within several weeks, and just days before Capt. Wooten announced his intent to run for Sheriff of Dawson County, Capt. Wooten instituted a prosecution against Ms. Tisdale.

14.

This is Ms. Tisdale's action to vindicate her rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution for these officers' attempts to silence her by seizing her property, arresting her, and maliciously prosecuting her.

JURISDICTION AND VENUE

15.

Pursuant to 28 U.S.C. § 1331, this Court has jurisdiction over this matter because it arises under the laws and Constitution of the United States.

16.

This Court has personal jurisdiction over each of the Defendants because each Defendant resides in Georgia.

17.

Venue is proper in this District, pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), because at least one Defendant resides in this judicial district, all Defendants reside in the State of Georgia, and a substantial part of the events giving rise to the claim occurred in this District.

PARTIES

Plaintiff

18.

Ms. Tisdale is an individual who resides in Roswell, Georgia.

19.

She is a citizen-journalist¹ who has dedicated herself to ensuring the public has access to meetings of public officials.

20.

To achieve that goal, Ms. Tisdale films public meetings around the state and posts the videos for free online to inform Georgia's citizens about the workings of their government.

21.

For her work, Ms. Tisdale was honored as a Citizen Advocate in 2014 by Common Cause Georgia.

22.

And in 2015, the Georgia First Amendment Foundation honored Ms. Tisdale with their Open Government Hero award.

Defendants

23.

Defendant Capt. Wooten is a deputy of the Dawson County Sheriff's Office

¹ See Timothy Pratt, *How one woman's 'hyperlocal C-Span' brings transparency to politics in Georgia*, Columbia Journalism Review, April 28, 2016, available at http://www.cjr.org/united_states_project/nydia_tisdale_georgia_citizen_journalist.php.

who may be served at

24.

Defendant Cpl. Bishop is an officer of the Dawson County Sheriff's Office

who may be served at

25.

Defendant Cpl. Smith is an officer of the Dawson County Sheriff's Office

who may be served at

FACTS

A. Factual Background

26.

Ms. Tisdale is a citizen-journalist who records public meetings and events involving local and state politicians and makes those recordings available online to foster greater participation in government.

27.

Through public advertising, the Georgia Republican Party, the Lumpkin County Republican Party, the Dawson County Republican Party, and the Nathan Deal for Governor Campaign announced that they would hold a public campaign event for candidates for political office in Georgia at Burt's Farm on August 23,

2014 (the "Event").

28.

Advertisements for the Event invited members of the public to attend.

29.

Before attending, Ms. Tisdale reviewed Burt's Farm's "Guest Policies" and the public statements about and advertisements for the Event to confirm that she could record the events, as she does with other public events.

30.

No advertisement, no statement by the hosts, and no sign posted at the Event indicated any limitation on the rights of members of the press or the public to film the Event.

31.

Ms. Tisdale also confirmed that Burt's Farm has no policy prohibiting the use of video or audio recording in its "Guest Policies." In fact, photography and video recording are common and encouraged as part of Burt's Farm's business.²

B. The Event

32.

On August 23, 2014, Ms. Tisdale attended the Event.

² See <http://www.burtsfarm.com/visitor-info/>.

33.

Upon arriving, Ms. Tisdale obtained express permission to film the Event from the Event's organizers.

34.

She also spoke with one of the property owners, Kathy Burt, who authorized her to film.

35.

Ms. Tisdale also informed several of the public officials attending the Event that she intended to film it, and each official with whom she spoke authorized Ms. Tisdale to record their speeches.

36.

At least one other member of the press was also present and recorded the Event.³

37.

The Event's organizers contacted the Dawson County Sheriff's Office and requested that the Office provide security for the Event.

³ See Brian K. Pritchard, *Video Journalist Forcefully Removed From Republican Meeting!*, FetchYourNews.com, August 26, 2014, available at <http://fannin.fetchyournews.com/2014/08/26/video-journalist-forcefully-removed-from-republican-meeting/>.

38.

The Dawson County Sherriff's Office agreed to provide security, and Capt. Wooten agreed to take the assignment.

39.

Wearing a shirt identifying him as a deputy of the Dawson County Sheriff's Office, carrying a holstered weapon, and with a badge clipped to his belt, Capt. Wooten attended the Event to provide security.

40.

Before the Event began, Ms. Tisdale took footage around Burt's Farm and then sat with her camera on a tripod in the front row of chairs set up for attendees in the open-air structure where the Event was held.

41.

During the Event, many public officials and candidates for public office spoke about matters of public concern.

42.

Without incident, Ms. Tisdale filmed the speeches given by the first few public officials and candidates at the Event as they discussed important issues facing the citizens of Georgia and potential policy solutions to those issues.

C. Capt. Wooten Wrongfully and Forcibly Ejects Ms. Tisdale from the Event

43.

Several minutes into the Event, however, Capt. Wooten approached Ms. Tisdale from behind and ordered her to stop filming or leave. Capt. Wooten did not identify himself or indicate that he was the property owner or that he had been directed by the property owners to instruct her to leave.

44.

Before Ms. Tisdale had the opportunity to turn around and respond, Capt. Wooten grabbed her, dragged her from her seat, bent her arm behind her back, and forcibly frogmarched her out of the Event (to the shock of onlookers) to an unoccupied barn located on the property.⁴

45.

While Capt. Wooten was forcibly removing Ms. Tisdale from the public

⁴ Capt. Wooten's assault on Ms. Tisdale, his refusal to identify himself, and the physical violence he used were largely caught on tape. The tape also showed that Capt. Wooten wore a shirt identifying him as an officer of the Dawson County Sheriff's Office. The video can be viewed at the following link: Jim Galloway, *Watch Nydia Tisdale's video adventure at the Dawsonville GOP rally*, The Atlanta Journal-Constitution, August 30, 2014, available at <http://politics.blog.ajc.com/2014/08/30/watch-nydia-tisdales-video-adventure-at-the-dawsonville-gop-rally/>. An audio recording of the Event can be found at the following link: <http://fannin.fetchyournews.com/2014/08/26/video-journalist-forcefully-removed-from-republican-meeting/>.

Event, Ms. Tisdale repeatedly explained that she had obtained specific authorization to attend and film the Event from one of the property's owners, but Capt. Wooten ignored her.

46.

Ms. Tisdale also requested that Capt. Wooten identify himself, but Capt. Wooten refused.

47.

The force Capt. Wooten used to drag Ms. Tisdale from the Event was so great that it broke the tips off of the heels of Ms. Tisdale's shoes and caused some of the straps to separate from the soles.

48.

Once in the barn, Capt. Wooten slammed Ms. Tisdale against a counter, bent her upper body forward, pressed his groin into her buttocks, and pinned her down for an extended period of time while she screamed for help.

49.

The force of Capt. Wooten's grip and the weight of his body pressing her into the counter caused her significant pain and emotional distress and left stripes of bruises across her torso.

50.

While Capt. Wooten was restraining Ms. Tisdale, representatives of the Event's organizers and one of the property's owners entered the barn to explain that Ms. Tisdale had authorization to film and should not be arrested.

51.

The chairwoman of the Dawson County Republican Party, one of the Event's Organizers, approached and apologized to Ms. Tisdale, telling Capt. Wooten: "I am the chair! This is wrong!" But Capt. Wooten continued to forcibly restrain Ms. Tisdale.

52.

Capt. Wooten acted with reckless, callous indifference to Mr. Tisdale's right to be free from excessive force and unlawful restraint.

D. Capt. Wooten, Cpl. Smith, and Cpl. Bishop Unlawfully and Forcibly Arrest Ms. Tisdale.

53.

Once he had Ms. Tisdale restrained in the barn, Capt. Wooten contacted the Dawson County Sheriff's Office and requested that other officers provide him assistance in arresting her.

54.

Cpl. Smith and Cpl. Bishop arrived shortly thereafter.

55.

Once other officers arrived, Capt. Wooten finally identified himself as “Captain Tony Wooten” of the Dawson County Sheriff’s Office and announced to Ms. Tisdale: “You are under arrest.”

56.

Without intervening in the unconstitutional arrest or conducting any independent investigation into the existence of probable cause to detain Ms. Tisdale, Cpl. Smith and Capt. Wooten then cuffed her so roughly and tightly that her wrists were bruised and scratched.

57.

Without intervening in the unconstitutional arrest or conducting any independent investigation into the existence of probable cause to detain Ms. Tisdale, Cpl. Bishop placed Ms. Tisdale into a Dawson County Sheriff’s Office vehicle and transported Ms. Tisdale to jail.

58.

Neither Capt. Wooten, Cpl. Bishop, nor Cpl. Smith provided Ms. Tisdale with any of the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966), and its progeny.

59.

Later that day, Capt. Wooten arrived at the station and informed Ms. Tisdale that she was being charged with criminal trespass and felony obstruction of an officer in the performance of his duty.

60.

Cpl. Bishop photographed the bruises and cuts on Ms. Tisdale's arms, elbow, chest, and wrists.

61.

Capt. Wooten also confiscated Ms. Tisdale's camera and the footage contained on it.

62.

Cpl. Bishop, Cpl. Smith, and Capt. Wooten, acted with reckless, callous indifference to Ms. Tisdale's right to be free from unreasonable seizures.

E. Ms. Tisdale's Injuries and the Aftermath of Ms. Tisdale's Arrest

63.

In the early morning hours after her arrest, Ms. Tisdale hired a bonding company to pay \$6,200 as bond so that she could be released.

64.

The severity of the bruising Ms. Tisdale discovered when she returned home

and pain in her torso were so severe that she was concerned her pelvis might be fractured. She visited her doctor and received x-rays to confirm that she had not suffered any broken bones. She found it painful to sleep, to walk, and to stand for weeks afterwards.

65.

Ms. Tisdale also suffered psychological injuries so great that she cried daily for weeks, lost weight, missed meetings, continues to have nightmares, and still cries when the painful memory of the trauma she suffered overwhelms her.

66.

For six days, the Dawson County Sheriff's Office retained as purported "evidence" Ms. Tisdale's camera along with the footage she had taken of the public Event.

67.

While the camera was in the custody of the Dawson County Sheriff's Office, the video file from the Event was altered: the footage was spliced, and Ms. Tisdale's six screams for help during Capt. Wooten's assault, as well as portions of Ms. Tisdale's conversations with one of the public officials who attended the Event, was deleted.

68.

For more than a year, the bogus criminal charges Capt. Wooten announced on the night of Ms. Tisdale's arrest hung over her head, without any action.

69.

However, just weeks after Ms. Tisdale filed the ante-litem notice Georgia law required in which she gave notice that she might file an action to vindicate her rights violated on the day of the Event nearly a year earlier, criminal proceedings on the bogus charges were initiated against Ms. Tisdale.

LEGAL CLAIMS

COUNT I: DEPRIVATION OF FIRST AMENDMENT RIGHTS **(Capt. Wooten)**

70.

Ms. Tisdale incorporates and restates the allegations in paragraphs 1 through 69 as if fully set forth herein.

71.

Under the Free Speech and Freedom of the Press clauses of the First Amendment to the United States Constitution, Ms. Tisdale had the right to speak about and report upon matters of public importance, like the Event and what candidates for office and public officials said at it, that governmental officials shall

not infringe.⁵

72.

Ms. Tisdale engaged in protected conduct by attending the Event, which was open to the public, and by filming the Event in an exercise of her speech rights so that members of the public who were unable to attend could see and hear the individuals seeking public office who spoke at the Event.

73.

Acting under color of state law, Capt. Wooten deprived Ms. Tisdale of these rights by singling Ms. Tisdale out and retaliating against Ms. Tisdale solely because of her reporting and filming in the exercise of her rights to free speech and press.

74.

Capt. Wooten's actions violated Ms. Tisdale's rights under the First

⁵ The First Amendment to the United States Constitution provides that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend I. "Freedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action." *Lovell v. City of Griffin, Ga.*, 303 U.S. 444, 450 (1938).

Amendment to the United States Constitution.

75.

Pursuant to 42 U.S.C. § 1983,⁶ Ms. Tisdale is entitled to nominal, actual, and punitive damages resulting from Capt. Wooten's violation of her rights under the First Amendment to the United States Constitution.

**COUNT II: UNLAWFUL ARREST IN VIOLATION OF THE FOURTH
AND FOURTEENTH AMENDMENTS**
(All Defendants)

76.

Ms. Tisdale incorporates and restates the allegations in paragraphs 1 through 75 as if fully set forth herein.

⁶ The applicable text of this statute reads:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983.

77.

Ms. Tisdale was expressly authorized by one of the property's owners as well as by representatives of the Event's organizers to film the Event.

78.

Moreover, Ms. Tisdale was impliedly authorized to film the Event because the Event was open to the press, was of public import, was attended by other members of the press who recorded parts of the Event, and was held at an event space and business that holds itself out as a place to "make some special family memories," including by photograph and video.

79.

No reasonable officer could have believed that Ms. Tisdale attended the Event without legal right or permission to do so and with criminal intent, as would be required to arrest an individual for criminal trespass in Georgia.

80.

Statements made by a representative of at least one of the Event's organizers and by one of the property owners to Capt. Wooten after he detained Ms. Tisdale affirmed that Ms. Tisdale was authorized to film and should not be arrested.

81.

Capt. Wooten did not have arguable probable cause to effect Ms. Tisdale's

arrest.

82.

Likewise, Cpl. Smith lacked arguable probable cause to effect Ms. Tisdale's arrest.

83.

When confronted with Capt. Wooten's unlawful seizure of Ms. Tisdale, Cpl. Smith had the power to prevent it but chose not to act. Instead, Cpl. Smith actively participated in the unlawful arrest and did not conduct any investigation to determine whether probable cause existed to arrest Ms. Tisdale.

84.

Similarly, Cpl. Bishop lacked arguable probable cause to effect Ms. Tisdale's arrest.

85.

When confronted with Capt. Wooten's unlawful seizure of Ms. Tisdale, Cpl. Bishop had the power to prevent it but chose not to act. Instead, Cpl. Bishop actively participated in the unlawful arrest and did not conduct any investigation to determine whether probable cause existed to arrest Ms. Tisdale.

86.

Each of these officers acted under color of state law in taking these actions

that violated Ms. Tisdale's rights under the Fourth Amendment⁷ to be free from unlawful seizure and to due process under the Fourteenth Amendment to the United States Constitution.⁸

87.

Pursuant to 42 U.S.C. § 1983, Ms. Tisdale is entitled to nominal, actual, and punitive damages resulting from Capt. Wooten's, Cpl. Smith's, and Cpl. Bishop's violation of her her rights under the Fourth and Fourteenth Amendments to the United States Constitution.

**COUNT III: UNLAWFUL SEIZURE OF PROPERTY IN VIOLATION OF
THE FOURTH AND FOURTEENTH AMENDMENTS**
(All Defendants)

88.

Ms. Tisdale incorporates and restates the allegations in paragraphs 1 through

⁷ The Fourth Amendment to the United States Constitution states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

⁸ The first section of the Fourteenth Amendment provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

87 as if fully set forth herein.

89.

Ms. Tisdale was authorized to film the Event.

90.

Thus, Capt. Wooten lacked arguable probable cause to seize her camera.

91.

Despite this, Capt. Wooten not only seized the camera, but as a result of that seizure, the camera was held for six days and portions of the footage of the Event and Capt. Wooten's assault of Ms. Tisdale that were Ms. Tisdale's property were deleted.

92.

When Cpl. Smith and Cpl. Bishop were confronted with Capt. Wooten's unlawful seizure of Ms. Tisdale's camera, both officers had the power to prevent it but chose not to act. Instead, Cpl. Bishop and Cpl. Smith actively participated in the unlawful seizure and did not conduct any investigation to determine whether the seizure was constitutionally justified.

93.

Pursuant to 42 U.S.C. § 1983, Ms. Tisdale is entitled to nominal, actual, and punitive damages resulting from this seizure, which violated her rights under the

Fourth and Fourteenth Amendments to the United States Constitution.

**COUNT IV: EXCESSIVE FORCE IN VIOLATION OF
THE FOURTH AND FOURTEENTH AMENDMENTS**
(All Defendants)

94.

Ms. Tisdale incorporates and restates the allegations in paragraphs 1 through 93 as if fully set forth herein.

95.

Capt. Wooten dragged Ms. Tisdale to her feet, pinned her arm behind her back, frogmarched her from the Event with such force that he broke her shoes in multiple places, and bent her over a countertop with such force that she reasonably felt it necessary to have an x-ray to confirm whether or not her pelvis was fractured.

96.

The force Capt. Wooten used was so severe that Ms. Tisdale was in pain for many days afterwards. She had difficulty walking, standing, sleeping, eating, and drinking for several weeks after her assault and still cries when recalling the Event.

97.

Cpl. Smith handcuffed Ms. Tisdale with such force that her wrists were bruised and scratched.

98.

Because no arguable probable cause existed to arrest Ms. Tisdale, no amount of force was constitutionally permissible in effecting her arrest.

99.

In the alternative, even if arguable probable cause existed to arrest Ms. Tisdale, the force used by both Capt. Wooten and Cpl. Smith far exceeded the amount reasonably necessary to effect her arrest.

100.

The excessive force utilized by Capt. Wooten and Cpl. Smith in detaining and ultimately arresting Ms. Tisdale violated her rights under the Fourth and Fourteenth Amendment to the United States Constitution.

101.

Cpl. Bishop observed both Capt. Wooten's and Cpl. Smith's violation of Ms. Tisdale's right to be free from excessive force but did not intervene. When confronted with the excessive force those officers utilized in arresting Ms. Tisdale, Cpl. Bishop had the power to intervene and prevent that use of excessive force but chose not to act.

102.

The violence of her arrest caused Ms. Tisdale physical injury, significant

pain, emotional and psychological distress, and public embarrassment, as well as economic loss.

103.

Pursuant to 42 U.S.C. § 1983, Ms. Tisdale is entitled to nominal, actual, and punitive damages resulting from this violation of her rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from excessive force.

**COUNT V: MALICIOUS PROSECUTION IN VIOLATION OF
THE FOURTH AND FOURTEENTH AMENDMENTS
(Capt. Wooten)**

104.

Ms. Tisdale incorporates and restates the allegations in paragraphs 1 through 103 as if fully set forth herein.

105.

Although he lacked arguable probable cause to do so, Capt. Wooten formally charged Ms. Tisdale on the day of the Event with criminal trespass and felony obstruction.

106.

Because those charges are unfounded, neither Capt. Wooten nor any other member of the Dawson County Sheriff's Office took any action to seek

adjudication of those charges for over a year.

107.

When Ms. Tisdale gave notice that she intended to vindicate her constitutional rights, however, Capt. Wooten (along with other members of the Dawson County Sheriff's Office) took actions to cause Ms. Tisdale's prosecution to proceed.

108.

Capt. Wooten instituted and has pursued Ms. Tisdale's prosecution without arguable probable cause.

109.

Capt. Wooten took these actions under color of state law.

110.

That prosecution has caused Ms. Tisdale emotional distress, economic loss, and public embarrassment, as well as caused her to incur expenses and fees associated with defending against it.

111.

That prosecution will also terminate in Ms. Tisdale's favor.

112.

Pursuant to 42 U.S.C. § 1983, Ms. Tisdale is entitled to nominal, actual, and

punitive damages resulting from Capt. Wooten's violation of Ms. Tisdale's rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from malicious prosecution as described in this Count V.

COUNT VI: VIOLATION OF 42 U.S.C. § 2000aa-6
(All Defendants)

113.

Ms. Tisdale incorporates and restates the allegations in paragraphs 1 through 112 as if fully set forth herein.

114.

Capt. Wooten, Cpl. Bishop, and Cpl. Smith searched and seized work product (namely, a camera containing video documentation of a public event) possessed by a member of the press that they knew to be intended for public communication without securing a warrant and without arguable probable cause to believe that the video of a public campaign event related to the commission of any criminal offense.

115.

The Defendants acted within the scope of or under color of their offices, but lacked any good faith belief that their actions in seizing Ms. Tisdale's camera, accessing its contents, and deleting those contents were lawful.

116.

The Defendants are liable under 42 U.S.C. § 2000aa-6⁹ for Ms. Tisdale's damages of not less than \$1,000 plus attorneys' fees and costs.

⁹ 42 U.S.C. § 2000aa states that "it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce" unless there is "probable cause to believe that "the person possessing such materials has committed or is committing the criminal offense to which the materials relate" or that "immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being." Under 42 U.S.C. § 2000aa-6(a):

A person aggrieved by a search for or seizure of materials in violation of this chapter shall have a civil cause of action for damages for such search or seizure –

- (1) against the United States, against a State which has waived its sovereign immunity under the Constitution to a claim for damages resulting from a violation of this chapter, or against any other governmental unit, all of which shall be liable for violations of this chapter by their officers or employees while acting within the scope or under color of their office or employment; and
- (2) against an officer or employee of a State who has violated this chapter while acting within the scope or under color of his office or employment, if such State has not waived its sovereign immunity as provided in paragraph (1).

42 U.S.C. § 2000aa-6.

PRAYER FOR RELIEF

WHEREFORE, Ms. Tisdale respectfully requests a judgment:

- (a) against all Defendants for actual, nominal, and punitive damages;
- (b) for actual damages of not less than \$1,000 for the Defendants' violation of 42 U.S.C. § 2000aa;
- (c) against all Defendants for attorneys' fees pursuant to 42 U.S.C. § 1988¹⁰;
- (d) against all Defendants for attorneys' fees pursuant to 42 U.S.C. § 2000aa-6(f)¹¹;
- (e) for the costs of this action;
- (f) and for all further relief that this Court deems just and appropriate.

This 9th day of May, 2016.

[signatures on the following page]

¹⁰ Under 42 U.S.C. § 1988(b), “[i]n any action or proceeding to enforce a provision of section[] . . . 1983 . . . of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs” 42 U.S.C.A. § 1988(b).

¹¹ “A person having a cause of action under this section shall be entitled to recover actual damages but not less than liquidated damages of \$1,000, and such reasonable attorneys' fees and other litigation costs reasonably incurred as the court, in its discretion, may award” 42 U.S.C.A. § 2000aa-6(f).

/s/ Michael A. Caplan

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More Employees Entitled to Overtime Beginning December 1, 2106

Kelly J. Long Pridgen, ACCG Interim General Counsel

The Fair Labor Standards Act (FLSA) is a federal law that sets minimum wage, overtime pay, compensatory time (comp time), record keeping and child labor standards. It is enforced by the U. S. Department of Labor (DOL). A change by DOL that will give overtime (and comp time) protection to many more employees goes into effect on December 1, 2106.

Effective December 1, 2016, the minimum salary for employees not entitled to overtime or comp time is increasing to \$913 per week. Employees earning less than \$913 per week will be entitled to overtime or comp time for every hour worked over 40 each week (or 212 hours per 28 days for firefighters and 171 hours per 28 days for law enforcement). Effective December 1, 2016, the minimum salary for a "highly compensated individual" to be exempt from overtime or comp time will be \$134,004 per year. Beginning in January 1, 2020, these minimum salaries will be updated every three years.

Overtime Requirements Background. In general, the FLSA requires that employees be paid overtime pay (i.e., 1.5 times their regular pay) for each hour worked over 40 in a workweek. Unlike the private sector, county employees can agree to accept comp time (i.e., 1.5 hours of paid leave for each hour worked over 40 in a workweek) instead of receiving overtime pay. Except as explained below for firefighters and law enforcement, county employees may only keep a balance of 240 hours of comp time. If an employee reaches the 240-hour cap, then anytime they work more than 40 in a workweek, they must be paid at the overtime rate. When an employee resigns, retires or is fired, they must be paid for their unused comp time.

Certain public safety employees have special rules regarding overtime and comp time. Firefighters (in departments with at least five employees) must be paid overtime for each hour worked over 212 hours in a 28 day work period and law enforcement officers (in departments with at least five employees) must be paid overtime for each hour worked over 171 hours in a 28 day work period. Work periods for these public safety officials may be anywhere from seven to 28 days, as long as the ratio of hours to days remains the same for purposes of calculating overtime. Unlike regular employees, firefighters and law enforcement officers are allowed to keep a balance of 480 hours of comp time before having to be paid overtime.

FLSA rights to overtime and comp time may not be contracted away by employees. In other words, an employee cannot agree to waive their overtime or comp time. Supervisors may not tell the employees not to record overtime or comp time hours. If the employee actually works more than 40 hours in a workweek (or 171/212 per 28 day period), then they must receive overtime or comp time.

There are certain employees who are "exempt" from the FLSA overtime/comp time requirements (i.e., they do not have to be paid overtime or receive comp time when they work extra hours). The most common exemption in county government is for "white collar" employees. "White collar" exempt employees (i.e., certain executive, administrative, professional and computer employees) do not have to

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be paid overtime/comp time, even if they work more than 40 hours per week – or 171/212 hours per 28 days for law enforcement and firefighters.

In order to establish whether the county may avoid paying overtime/comp time to an employee, the salary and duties of the employee must be in line with being a “white collar” employee. First, the employee must be paid a salary, not an hourly wage (except in certain cases with computer employees). Until December 1, 2016, the salary must be at least \$455 per week. After December 1, 2016, the minimum salary must be at least \$913 per week. Computer related employees do not have to be paid a salary if they are paid at least \$27.63 per hour.

Second, the regular duties performed by the employee must pass one of the following duties tests:

Executive Employee Duties Test. The primary duty of an executive employee must be to manage the county or a department or subdivision of the county. The executive employee must regularly manage at least two or more full time employees (or the equivalent of two full time employees). The executive must have the authority to hire or fire employees or his or her recommendation must carry weight in hiring and firing decisions.

Administrative Employee Duties Test. The primary duty of an administrator is office or non-manual work directly related to the management or general operations of the county. Administrators must use discretion and independent judgment in matters of significance to the county.

Professional Employee Duties Test. There are two types of professional employees: the learned professional and the creative professional. The primary duty of a learned professional employee is the performance of work that is predominantly intellectual in nature. Learned professionals must have advanced learning through a prolonged course of specialized intellectual instruction (e.g., law, medicine, accounting, actuarial computation, engineering, architecture, science, teaching, pharmacy, etc.). Learned professionals must consistently exercise discretion and judgment.

The primary duty of the creative professional is doing work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor (e.g., music, writing, acting and the graphic arts). The work of a creative professional cannot only be the type of work that depends on intelligence, diligence and accuracy.

Computer Employee Duties Test. The white collar exemption applies to computer systems analysts, computer programmers, software engineers and other similarly skilled workers in the computer field. The computer employee’s primary duty consists of the application of systems analysis techniques and procedures (including consulting with users to determine hardware, software or system functional specifications); the design, development documentation, analysis, creation, testing or modification of computer systems or programs (including prototypes based on and related to user or system design specifications); and/or the design, documentation, testing, creation or modification of computer programs related to machine operating systems.

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Highly Compensated Individuals. Until December 1, 2016, employees who earn at least \$100,000 per year and perform at least one of the duties of the white collar exemption are not subject to the overtime requirements of the FLSA. After December 1, 2016, employees must earn at least \$134,004 per year and perform at least one of the duties of the white collar exemption to be qualified as a highly compensated individual.

Penalties. Failure to pay overtime or provide comp time can result in significant penalties. An employer can be required to pay twice the overtime or comp time owed to the employee. Willful violators may be prosecuted criminally and fined up to \$10,000.

What County Officials Should Do. County employers have three options: (1) pay overtime or provide comp time for hours worked over 40 in a workweek to employees earning less than \$913 per week; (2) increase salaries to at least \$913 per week; or (3) arrange job duties to limit the workweek to 40 hours (171/212 hours per 28 days for law enforcement and firefighters). In preparing for the implementation on the increase to the white collar salary minimum, county officials can take the following steps:

- Prepare the county's budget for the impact of the new minimum salaries. Make sure that overtime and comp time is budgeted for all employees who are subject to the FLSA. Be prepared that a significant portion of the county's workforce who is currently not subject to overtime and comp time will be in the not too distant future.
- If the county has not recently evaluated which county positions earn overtime/comp time (i.e., "non exempt" positions) and which positions do not earn overtime/comp time (i.e., "exempt" positions), it should do so now. All exempt positions should meet the requirements of one of the white collar tests.
- Job descriptions should be compared to the actual job duties performed by employees, especially the job descriptions/duties of exempt employees, to make sure that they align. If an employee is currently categorized as exempt from overtime, but their duties do not meet the white collar test, then the position needs to be reclassified as nonexempt – and the employee paid overtime/given comp time when they work more than 40 hours per week or 171/212 hours per 28 days.
- Educate managers and supervisors on the proper procedures for overtime and comp time. For instance, managers cannot allow employees to work extra hours but instruct them not to report the overtime hours.
- Require managers and supervisors to carefully monitor overtime and comp time accrual and usage.
- Determine if any employees have accrued comp time that exceeds the cap (i.e., 240 hours for regular employees and 480 hours for law enforcement and firefighters). Pay out any comp time accrued that exceeds the cap.
- Look carefully at the duties and work hours of the salaried employees who earn less than \$913 per week. Determine whether they should be reclassified to an hourly employee, remain salaried but subject to overtime/comp time, or have their salary increased by December 1, 2016.
- Be realistic before simply adopting a No Overtime Policy. If an employee works over time, then he or she is required to be paid overtime or receive comp time. If the duties given to the employee

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cannot be completed within 40 hours and the employee is allowed or required to work extra to complete the duties, then the county must pay the overtime or award the comp time.

- Be sensitive to departments that have 24-hour operations. Oftentimes, particularly in public safety, the county must make the difficult choice between hiring enough employees to adequately cover all shifts and paying overtime/comp time to a smaller staff.

The DOL's Wage and Hour Division Website (www.wagehour.dol.gov) has many excellent resources for employees and employers. Take advantage of their fact sheets and eLaws Advisor or call their helpline at 866-4USWAGE (866.487.9243). If your county does not have human resource professionals on staff, then contact your regional commission to see if they can provide human resource assistance.