



**MAYOR AND COUNCIL MEETING
MONDAY, MAY 20, 2024
6:00 PM
DALTON CITY HALL - COUNCIL CHAMBERS**

A G E N D A

Call to Order

Pledge of Allegiance

Approval of Agenda

Public Commentary: *(Please Complete Public Commentary Contact Card Prior to Speaking - Limit of 3 Minutes/Person)*

Minutes:

- [1.](#) Mayor & Council Minutes of May 6, 2024

New Business:

- [2.](#) FY-2024 Budget Amendment #2.
- [3.](#) Guaranteed Maximum Price Amendment with Felker Construction for Renovations and Additions to the John Davis Recreation Center
- [4.](#) Geo-Hydro Engineers Professional Services Agreement for Construction Testing Services at John Davis Recreation Center
- [5.](#) Contract with Sports Fields, Inc., for Baseball and Softball Turf In-Fields for Heritage Point Regional Park
- [6.](#) Contract with Dalton Convention Center for Human Trafficking Training
- [7.](#) First Reading - Ordinance 24-14 To Amend Chapter 2 Of The 2001 Revised Code of The City of Dalton, Georgia Captioned "Administration"; To Provide for An Effective Date; To Provide for The Repeal of Conflicting Ordinances; To Provide for Severability; And for Other Purposes.
8. Executive Session - Potential Litigation, Real Estate and Personnel Matters

Supplemental Business

Announcements

Adjournment

THE CITY OF DALTON
MAYOR AND COUNCIL MINUTES
MAY 6, 2024

The Mayor and Council held a meeting this evening at 6:00 p.m. at City Hall. Present were Mayor Annalee Sams, Council members Dennis Mock, Nicky Lama, Tyree Goodlett and Steve Farrow, City Administrator Andrew Parker and City Attorney Jonathan Bledsoe.

CALL TO ORDER

Mayor Sams called the meeting of the Mayor and Council to order.

PLEDGE OF ALLEGIANCE

Councilmember Lama led the audience in the Pledge of Allegiance.

APPROVAL OF AGENDA

On the motion of Councilmember Farrow, second Council member Mock, the Mayor and Council approved the agenda. The vote was unanimous in favor.

DEPARTMENT HEAD REPORTS

There were no Department Head Reports.

PUBLIC COMMENTARY

Matthew Thomas expressed his sincere gratitude and thanks to the Mayor and Council for dedicating a portion of Meeting Street from Underwood Street to Martin Luther King, Jr. Boulevard in memory of his father Bishop Stephen A. Thomas.

PROCLAMATION- GENERAL AVIATION

Mayor Sams presented a Proclamation to Airport Director Andrew Wiersma whereas the City of Dalton proclaimed general aviation a vital, strategic asset and declared May 2024 as General Aviation Appreciation Month to promote future economic growth and our next generation of aviation professionals and pilots.

MINUTES

The Mayor and Council reviewed the Regular meeting minutes of April 15, 2024. On the motion of Council member Goodlett, second Council member Farrow, the minutes were approved. The vote was unanimous in favor.

RESOLUTION 24-12 - BISHOP STEPHEN A. THOMAS

The Mayor and Council reviewed Resolution 24-12 to honor the life and contributions of Bishop Stephen A. Thomas to the City of Dalton and to dedicate the portion of Meeting Street from Underwood Street to Martin Luther King, Jr. Boulevard in memory of Bishop Dr. Stephen A. Thomas. On the motion of Council member Lama, second Council member Goodlett, the Resolution was adopted. The vote was unanimous in favor.

RESOLUTION 24-13 - OPIOID SETTLEMENT FUNDS

City Administrator Andrew Parker presented Resolution 24-13 to authorize the use of Opioid Settlement Funds. Parker stated the City of Dalton is a participant in the “National Opioids Settlement” and has received approximately \$130,000 to date. Parker stated the Resolution authorizes the City Administrator to use current settlement funds for identified certain approved uses as follows:

1. A Human Trafficking Prevention Conference which will include training of health care personnel on the identification and treatment of opioid use disorder and trauma resulting therefrom;
2. Operational Funds for Narcotics Anonymous; and
3. A partnership with Whitfield County’s Conasauga Community Addiction Recovery Center;

On the motion of Council member Mock, second Council member Lama, the Resolution was adopted. The vote was unanimous in favor. A copy of the uses for the settlement funds are a part of these minutes.

MEMORANDUM OF UNDERSTANDING - HAMILTON MEDICAL CENTER FOR DRUG PRICING PROGRAM

City Administrator Andrew Parker presented a Memorandum of Understanding with Hamilton Medical Center for 340B Drug Pricing Program. Parker stated the Memorandum of Understanding outlines the City accepts the commitment of Hamilton Medical Center to continue to provide healthcare services to those on Medicare and Medicaid in addition to programs that benefit the indigent, uninsured, or underinsured population in the Community. On the motion of Council member Mock, second Council member Farrow, the MOU was adopted. The vote was unanimous in favor.

GEORGIA CLASSIC MAIN STREETS MEMORANDUM OF UNDERSTANDING

City Administrator Andrew Parker presented the Georgia Classic Main Streets Memorandum of Understanding to provide for services for the 2023-2024 Program Year. Parker stated the MOU is an agreement with Georgia Department of community Affairs for the local Main Street Program whereby DCA provides services in return for active participation in the program which is valid through June 30, 2025. On the motion of Council member Farrow, second Council member Goodlett, the MOU was adopted. The vote was unanimous in favor.

LOCAL GOVERNMENT APPROVAL FORM FOR CERTIFICATION OF CONSISTENCY FOR NORTHWEST GEORGIA FAMILY CRISIS CENTER

City Administrator Andrew Parker presented the Local Government Approval Form for Certification of Consistency for Northwest Georgia Family Crisis Center. Parker stated the Certification by the local government is required by DCA for Emergency Solutions Grant Application. On the motion of Council member Mock, second Council member Lama, the Certification was approved. The vote was unanimous in favor.

CONTRACT WITH RW SMITH COMPANY – DALTON POLICE DEPARTMENT

City Administrator Andrew Parker presented Contract with RW Smith Company for construction of New Property and Evidence Building at the Police Services Center. Parker stated as part of the 2020 SPLOST referendum, voters approved the construction of a new Property and Evidence building. Parker stated the RW Smith Company was selected of the (5) proposals at a cost of \$3,765,291.00 with a final completion in June 2025. On the motion of Council member Mock, second Council member Goodlett, the Contract was approved. The vote was unanimous in favor.

PROFESSIONAL SERVICES AGREEMENT - GEO-HYDRO ENGINEERS, INC.

City Administrator Andrew Parker presented the Professional Services Agreement with Geo-Hydro Engineers, Inc. for Geotechnical Services at New P&E Building at Police Department in the amount of \$19,968.00 with the funding source coming from the 2020 SPLOST. On the motion of Council member Mock, second Council member Lama, the Agreement was approved. The vote was unanimous in favor.

AGREEMENT WITH KRH ARCHITECTS, INC. - AL ROLLINS PARK SYNTHETIC TURF

Recreation Director Caitlin Sharpe presented an Agreement with KRH Architects, Inc. for Al Rollins Park Synthetic Turf for Infields Project. Sharpe stated KRH Architecture will assist by providing design of the turf systems and required stormwater drainage structures and prepare for bid specifications. Sharpe stated the cost is 6% of the owner's budget for the cost of the work (1.2 million). Sharpe further stated that the anticipated construction commencement date is September 2024. On the motion of Council member Mock, second Council member Goodlett, the Agreement was approved. The vote was unanimous in favor.

GENERAL CONSTRUCTION AGREEMENT - SOUTHERN FLOORING, INC.

Recreation Director Caitlin Sharpe presented a General Construction Agreement with Southern Flooring, Inc. for Mack Gaston Community Center Gym Floor Replacement in the amount of \$135,770. Sharpe stated Southern Flooring Inc. was the highest scoring proposal to replace the floor. Sharpe additionally stated the estimated completion date is September 1, 2024. On the motion of Council member Mock, second Council member Lama, the Agreement was approved. The vote was unanimous in favor.

PROFESSIONAL SERVICES AGREEMENT WITH PRIME ENGINEERING, INC. FOR PICKLEBALL COMPLEX PROJECT

Recreation Director Caitlin Sharpe presented the Professional Services Agreement with Prime Engineering, Inc. for a Pickleball Complex Project. Sharpe stated Prime will design plans and construction documents for the 15 courts, a concession/restroom building, shade structures, lighting, stormwater infrastructure and landscaping in the amount of \$168,000 with the 2020 Bond Proceeds as the funding source. On the motion of Council member Mock, second Council member Farrow, the Agreement was approved. The vote was unanimous in favor.

CONSTRUCTION CONTRACT - WILSON CONSTRUCTION MANAGEMENT

Public Works Director Chad Townsend presented a construction contract with Wilson Construction Management for Pentz & Cuyler Streetscape at a cost of \$8,196,318 with a substantial completion date of 365 days from the issuance of Notice to Proceed. Townsend further stated Pentz and Cuyler were the last remaining streets from the original streetscape Master Plan developed circa 2000 that have not been completed. On the motion of Council member Mock, second Council member Goodlett, the Contract was approved. The vote was unanimous in favor.

PRATER ALLEY STORMWATER DETENTION FACILITY CONSTRUCTION CONTRACT WITH SUMMERS-TAYLOR, INC.

Public Works Director Chad Townsend presented a construction contract with Summers-Taylor, Inc. for the Prater Alley Stormwater Detention Facility in the amount of \$1,134,188. Townsend stated this project is a 1-acre above ground detention pond that will alleviate stormwater runoff and property damage concerns. On the motion of Council member Mock, second Council member Goodlett, the Contract was approved. The vote was unanimous in favor.

GDOT TENTATIVE ALLOCATION OF GRANT FUNDS FOR RUNWAY REHABILITATION AT AIRPORT

Airport Director Andrew Wiersma presented a letter of intent to proceed with and fund the Runway Rehabilitation at Dalton Airport. Wiersma stated GDOT tentatively allocated federal assistance in the amount of \$2,400,000 and state funding assistance in the amount of \$2,633,333 to rehabilitate runway 14-32 at the Dalton Municipal Airport. Wiersma further stated the estimated matching funds from the City of Dalton is estimated at \$966,666. On the motion of Council member Mock, second Council member Lama, the letter of intent was approved. The vote was unanimous in favor.

PUBLIC SAFETY THREAT ALLIANCE MEMBERSHIP AGREEMENT

IT Director Jorge Paez presented the Public Safety Threat Alliance Membership Agreement. Paez stated the agreement will benefit the City of Dalton in the aspect of cybersecurity intelligence to increase cyber maturity of the entire public safety landscape. Paez further stated the membership agreement is no cost to the City and the Agreement can be terminated with a 30-day notice. On the motion of Council member Mock, second Council member Lama, the membership agreement was approved. The vote was unanimous in favor.

HOUSING AUTHORITY APPOINTMENTS

The Mayor and Council reviewed the following Housing Authority Appointments:

Bethel, Lynsey	5 year	05/06/2029
Acosta, Roy	5 year	05/06/2029
Hill, Richard Dr.	5 year	05/06/2029
Manay, Pallavi		10/14/2026 Serving remainder of Courtney Brocks term

On the motion of Council member Farrow, second Council member Mock, the appointments were approved. The vote was unanimous in favor.

*Note: Housing Authority Board expanded to 9 members

ORDINANCE 24-07 - JUAN FIQUEROA REZONING REQUEST

Dalton Whitfield Zoning Administrator Jean Garland presented Ordinance 24-07 the request of Juan Figueroa to rezone from Heavy Manufacturing (M-2) to Rural Residential (R-5) a tract of land totaling 0.25 acres located at 911 Riverbend Road, Dalton, Georgia. Parcel (12-255-03-029). Garland stated that since the petitioner failed to be present at two consecutive public hearings, the Planning Commissions recommendation is a denial based on the Unified Zoning Ordinance Procedure and Standards. On the motion of Council member Mock, second Council member Goodlett, the request was denied. The vote was unanimous in favor.

ORDINANCE 24-08 - ADRIANNA CUEVAS REZONING REQUEST

Dalton Whitfield Zoning Administrator Jean Garland presented Ordinance 24-08 the request of Adrianna Cuevas to rezone from Low-Density Single Family Residential (R-2) to General Agricultural (GA) a tract of land totaling 10.49 acres with 9.41 acres in the unincorporated county at Tax Parcel 12-127-02-005 and 1.08 acres in the City of Dalton at Tax Parcel 12-127-02-014 located at 402 Brooker Drive, Dalton, Georgia. County Parcel (12-127-02-005) City Parcel (12-127-02-014). On the motion of Council member Mock, second Council member Farrow, the request was approved. The vote was unanimous in favor.

ORDINANCE 24-09 - TCW DALTON LLC DE-ANNEXATION REQUEST

Dalton Whitfield Zoning Administrator Jean Garland presented Ordinance 24-09, the request of TCW Dalton LLC to de-annex 19.84 acres located at 3035 Parquet Drive, Dalton, Georgia at Tax Parcel 12-352-10-000 from the City of Dalton as Heavy Manufacturing (M-2). Parcel (12-352-10-000). On the motion of Council member Mock, second Council member Lama, the request was approved. The vote was unanimous in favor.

ORDINANCE 24-10 ANNEXATION REQUEST FOR THE CITY OF DALTON

Dalton Whitfield Zoning Administrator Jean Garland presented Ordinance 24-10 The request of the City of Dalton to annex 50.06 acres located at 1022 Enterprise Drive, Dalton, Georgia at Tax Parcel 13-048-01-000 into the City of Dalton as Heavy Manufacturing (M-2). Parcel (13-048-01-000). Garland noted the property contains an electrical substation. On the motion of Council member Mock, second Council member Farrow, the request was approved. The vote was unanimous in favor.

ORDINANCE 24-11 ANNEXATION REQUEST - CHRISTIAN HERITAGE SCHOOLS, INC.

Dalton Whitfield Zoning Administrator Jean Garland presented Ordinance 24-11 The request of Christian Heritage Schools, Inc. to annex 28.55 acres located at 1600 Martin Luther King Jr. Blvd., Dalton, Georgia at Tax Parcel 12-216-03-000 into the City of Dalton as Low-Density Single Family Residential (R-2). Parcel (12-216-03-000). On the motion of Council member Mock, second Council member Farrow, the request was approved. The vote was unanimous in favor.

ORDINANCE 24-12 – ANNEXATION REQUEST THE CITY OF DALTON (HAIGMILL)

Dalton Whitfield Zoning Administrator Jean Garland presented Ordinance 24-12 The request of the City of Dalton to annex 15.26 acres located on Old Haigmill Lake Road, Dalton, Georgia at Tax Parcels 12-122-17-000, 12-122-05-000 and 12-122-16-000 into the City of Dalton as Low-Density Single Family Residential (R-2) Parcels (12-122-17-000, 12-122-05-000, 12-122-16-000). On the motion of Council member Farrow, second Council member Mock, the request was approved. The vote was unanimous in favor.

ORDINANCE 24-13 - REQUEST OF THE CITY OF VARNELL MAYOR AND COUNCIL, AND CITY OF DALTON MAYOR AND COUNCIL TO AMEND THE UNIFIED ZONING ORDINANCE TEXT

Dalton Whitfield Zoning Administrator Jean Garland presented Ordinance 24-13 - Request of the City of Varnell Mayor and Council, and City of Dalton Mayor and Council to amend the Unified Zoning Ordinance text as follows:

- Section 4-5-1 Preliminary Site Plan required for rezoning or annexation of R-6, R-7, C-1 A, MU, PUD, and U-PUD sites
- Section 4-6-5 Cemetery Amendments
- Section 12-1-3 – A member of the Board of Zoning Appeals may be appointed to any number of consecutive or non-consecutive terms by the applicable Governing Authority
- Amend Appendix A – Related to Stormwater Plan Review Fees; now refers to schedule published by Stormwater office
- Amend the Permitted Use Table to show “Bank or Financial Institution, Full Service” and “Church” and “Event Center” to be allowed outright in the M-1 and M-2 zoning districts.

On the motion of Council member Mock, second Council member Farrow, the amendment was approved. The vote was unanimous in favor.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 6:57 p.m.

Bernadette Chattam
City Clerk

Annalee Sams, Mayor

Recorded
Approved: _____
Post: _____



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 5-20-24

Agenda Item: Budget Amendment #2 FY24

Department: Finance

Requested By: Cindy Jackson

Reviewed/Approved by City Attorney? NA

Cost: \$4,992,300

Funding Source if Not in Budget Utilization of prior year fund balance

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

Budget amendment #2 for year 2024.

2024 Budget Amendment

Budget Amendment #2

GENERAL FUND

	Increase (Decrease)	
Revenues & Other Financing Sources		
Revenues - other taxes	\$ 100,000	(1)
Interest income	200,000	(2)
Transfer from WLSF	365,000	(3)
	<u>\$ 665,000</u>	
Expenditures & Transfers-out		
Commercial insurance	\$ 140,000	(4)
Economic Development - Housing Authority	1,000,000	(5)
Economic Development - JDA	622,300	(6)
Other Agency Funding Emery Center	5,500	(7)
Other Agency Funding - Administration	34,000	(8)
No departmental - Legal Fees	200,500	(9)
Departmental - Legal Fees	(200,500)	(9)
Transfer to Grant Fund - ARPA	4,691,500	(10)
Transfer to Grant Fund - Airport	967,000	(11)
Transfer to 2020 SPLOST	(948,000)	(12)
Transfer to 2020 SPLOST	(805,000)	(13)
Contingency	(50,000)	
	<u>\$ 5,657,300</u>	
Net Increase (Decrease) Budgeted Fund Balance	<u>\$ (4,992,300)</u>	

(1)	To adjust for TAVT and sales tax over budget
(2)	To adjust for interest income in excess of budget
(3)	To adjust to amounts provided by Dalton Utilities
(4)	To cover increase in commercial insurance
(5)	Transfer to Dalton Housing Authority for support of low income development
(6)	To budget for infrastructure at South Hamilton Development
(7)	To purchase ADA equipment for Emery Center
(8)	For discretionary spending
(9)	To move all legal fees into a non-departmental budget
(10)	To fund Pentz - Cuyler streetscape project (25% grant funded) and turf infields at HP Complex (67% grant funded) Improving Neighborhood Outcomes Grant
(11)	Local match of 16% for resurfacing of airport runway with state and federal funding of \$5,033,000 and total project cost of \$6m
(4)	Reclaim transfer due to paving bids coming in under budget
(5)	Reclaim transfer due to receipt of SPLOST funds not moved to sinking fund

2021 BONDED CAPITAL PROJECT FUND

	Increase (Decrease)	
Expenditures & Transfers-out		
Heritage Point Park Improvements	\$ (1,000,000)	(1)
Transfer to Grant Fund	<u>1,000,000</u>	(1)
	<u>\$ -</u>	
Net Increase (Decrease) Budgeted Fund Balance	<u><u>\$ -</u></u>	

(1)	Reallocation of funds transferred from general fund in 2023 for bonded projects to the grant fund for HP Park fields and streetscape
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GRANT FUND - ARPA

	Increase (Decrease)	
Revenues & Transfers-In		
Transfer from general fund	\$ 4,691,500	(1)
Transfer from bonded debt fund	<u>1,000,000</u>	(1)
	<u>\$ 5,691,500</u>	
Expenditures & Transfers-out		
Project - Streetscape	\$ 4,974,000	(1)
Project - Heritage Point Park	<u>717,500</u>	(1)
	<u>\$ 5,691,500</u>	
Net Increase (Decrease) Budgeted Fund Balance	<u><u>\$ -</u></u>	

(1)	Additional funding needed to cover actual cost as opposed to estimated cost Street scape total cost = \$8.5m Heritage Point Park total cost = \$3.3m
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GRANT FUND - AIRPORT

	Increase (Decrease)	
Revenues & Transfers-In		
Federal and State grant funds	\$ 5,033,000	(1)
Transfer from general fund	<u>967,000</u>	(1)
	<u>\$ 6,000,000</u>	
Expenditures & Transfers-out		
Project - resurface runway	\$ 6,000,000	(1)
	<u>\$ 6,000,000</u>	
Net Increase (Decrease) Budgeted Fund Balance	<u><u>\$ -</u></u>	

(1)	Local match of 16% for resurfacing of airport runway with state and federal funding of \$5,033,000 and total project cost of \$6m
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CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 05-20-24

Agenda Item: Felker Construction Contract Amendment for John Davis Recreation Center Renovations

Department: Administration

Requested By: Andrew Parker

Reviewed/Approved by City Attorney? Yes

Cost: \$11,643,333.00 (subject to additions and deductions by Change Order as provided in the contract documents)

Funding Source if Not in Budget

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

Guaranteed Maximum Price Amendment with Felker Construction for Renovations and Additions to the John Davis Recreation Center

 **AIA** Document A133™ – 2019 Exhibit A
Guaranteed Maximum Price Amendment

This Amendment dated the **20th** day of **May** in the year **Two Thousand Twenty-Four**, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the **19th** day of **September** in the year **Two Thousand Twenty-Two** (the “Agreement”)
(In words, indicate day, month, and year.)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

for the following **PROJECT**:
(Name and location or address)

Renovations & Additions to the John Davis Recreation Center
Civic Drive, Dalton, GA 30720

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

THE OWNER:

(Name, legal status, and address)

City of Dalton

P.O. Box 1205

Dalton, GA 30722-1205

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Felker Construction Co., Inc.

P.O. Box 1647

Dalton, GA 30722-1647

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE**
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

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§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed **Eleven Million, Six Hundred Forty-Three Thousand, Three Hundred Thirty-Three Dollars (\$11,643,333.00)**, subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager’s contingency; alternates; the Construction Manager’s Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

See attached **Schedule of Values.**
 See attached **Construction Manager's Guaranteed Maximum Price (GMP) letter signed and dated 05/15/2024.**
 See attached **Warranty Statement.**

§ A.1.1.3 The Construction Manager’s Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager’s Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
NA	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
NA		

§ A.1.1.6 **Unit prices, if any:**

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
NA		

Init.

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

The date of execution of this Amendment.

Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

Upon issuance of Notice to Proceed.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

Not later than _____ () calendar days from the date of commencement of the Work.

By the following date: **August 31, 2025**

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages of \$500.00 per calendar day will be assessed. If the Construction Manager fails to achieve Final Completion of the Work as provided in this Section A.2.3, liquidated damages of \$200.00 per calendar day will be assessed.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
City of Dalton RFP	For Trade Contractors	March 15, 2024	35

§ A.3.1.2 The following Specifications:

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(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

See attached Index of Specifications.

Section	Title	Date	Pages
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§ A.3.1.3 The following Drawings:

(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

See attached Index of Drawings.

Number	Title	Date
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§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
NA		

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
NA	

In it.

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

NA

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

Addendum No. 1 dated March 27, 2024

Addendum No. 2 dated April 5, 2024

Addendum No. 3 dated April 11, 2024

Addendum No. 4 dated April 15, 2024

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

See attached Construction Manager's Consultants, Contractors, Design Professionals, and Suppliers list.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER (Signature)

Annalee Harlan Sams, Mayor

(Printed name and title)



CONSTRUCTION MANAGER (Signature)

Nathan Felker, Vice President

(Printed name and title)

Init.



AIA[®]

Document A133TM – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 19th day of **September** in the year Two Thousand Twenty-Two

(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

Renovations & Additions to the John Davis Recreation Center
Civic Drive, Dalton, GA 30720

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201TM-2017, General Conditions of the Contract for Construction. Article 11 of A201TM-2017 contains additional insurance provisions.

THE OWNER:
(Name, legal status, and address)

City of Dalton
P.O. Box 1205
Dalton, GA 30722-1205

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Felker Construction Co., Inc.
P.O. Box 1647
Dalton, GA 30722-1647

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ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201TM-2017, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

Init.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit
All causes of loss outlined above covered by Construction Manager's Builder's Risk policy	100% of the Guaranteed Maximum Price award

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
Construction Manager's Builder's Risk policy to cover items in Section B.2.3.1.2	

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the **Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.**

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

§ B.2.4.2 Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

§ B.2.4.3 Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

§ B.2.4.4 Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

§ B.2.4.5 Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

§ B.2.4.6 Ingress/Egress Insurance, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

§ B.2.4.7 Soft Costs Insurance, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

§ B.2.5.1 Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

§ B.2.5.2 Other Insurance
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager is **responsible for deductibles or self-insured retentions.**

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than **One Million Dollars** (\$ 1,000,000.00) each occurrence, **Two Million Dollars** (\$ 2,000,000.00) general aggregate, and **Two Million Dollars** (\$ 2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse, and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than **One Million Dollars** (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than **One Hundred Thousand** (\$ 100,000.00) each accident, **One Hundred Thousand** (\$ 100,000.00) each employee, and **Five Hundred Thousand** (\$ 500,000.00) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The

Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

In it.

- § B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

Construction Manager is responsible for Course of Construction (Builder's Risk) for 100% of the Guaranteed Maximum Price award.

- § B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

- § B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- § B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

- § B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

- § B.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
Course of Construction (Builder's Risk)	100% of the Value of the Work

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	100% of the Value of the Work plus change orders
Performance Bond	100% of the Value of the Work plus change orders

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

In it.

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CONTINUATION PAGE

PROJECT: JOHN DAVIS REC APPLICATION #: 1
 RENOVAIONS & ADDITIONS TO JOHN DATE OF APPLICATION: 05/15/2024
 DAVIS REC CENTER PERIOD THRU: 05/15/2024
 PROJECT #s:

Payment Application containing Contractor's signature is attached.

A ITEM #	B WORK DESCRIPTION	C SCHEDULED AMOUNT	D COMPLETED WORK		F STORED MATERIALS (NOT IN D OR E)	G TOTAL COMPLETED AND STORED (D + E + F)		H BALANCE TO COMPLETION (C-G)	I RETAINAGE (If Variable)
			AMOUNT PREVIOUS PERIODS	AMOUNT THIS PERIOD		% COMP. (G / C)			
1	TESTING (NIC)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	
2	SELECTIVE DEMOLITION	\$59,400.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$59,400.00	
3	CONCRETE	\$588,600.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$588,600.00	
4	MASONRY	\$1,549,800.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$1,549,800.00	
5	STRUCTURAL STEEL AND STEEL ERECTION	\$1,079,040.20	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$1,079,040.20	
6	METAL STUDS, DRYWALL, CELINGS	\$1,072,926.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$1,072,926.00	
7	CABINETS	\$343,122.48	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$343,122.48	
8	CLOSED-CELL INSULATION	\$18,304.82	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$18,304.82	
9	ROOFING	\$769,885.56	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$769,885.56	
10	EXTERIOR SIDING	\$139,104.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$139,104.00	
11	DOORS, HARDWARE, TOILET PARTITIONS	\$411,696.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$411,696.00	
12	ENTERANCES AND STOREFRONTS, GLASS	\$403,380.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$403,380.00	
13	COILING DOORS	\$68,517.36	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$68,517.36	
14	FLOORING	\$199,211.62	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$199,211.62	
15	WOOD ATHLETIC FLOORING	\$151,829.64	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$151,829.64	
16	SOUND CONTROL	\$104,851.80	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$104,851.80	
	SUB-TOTALS	\$6,959,669.48	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$6,959,669.48	

CONTINUATION PAGE

PROJECT: JOHN DAVIS REC APPLICATION #: 1
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 DAVIS REC CENTER PERIOD THRU: 05/15/2024
 PROJECT #s:

Payment Application containing Contractor's signature is attached.

A ITEM #	B WORK DESCRIPTION	C SCHEDULED AMOUNT	D COMPLETED WORK		F STORED MATERIALS (NOT IN D OR E)	G TOTAL COMPLETED AND STORED (D + E + F)		H BALANCE TO COMPLETION (C-G)	I RETAINAGE (If Variable)
			AMOUNT PREVIOUS PERIODS	AMOUNT THIS PERIOD		% COMP. (G / C)			
17	PAINTING	\$274,314.60	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$274,314.60	
18	OPERABLE WALL PARTITIONS	\$64,575.36	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$64,575.36	
19	SIGNAGE	\$28,949.40	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$28,949.40	
20	ALUMINUM CANOPIES	\$28,231.20	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$28,231.20	
21	INTERIOR ATHLETIC EQUIPMENT	\$153,344.88	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$153,344.88	
22	CLIMBING WALL	\$115,905.37	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$115,905.37	
23	SHADES	\$21,613.61	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$21,613.61	
24	ELEVATOR	\$124,200.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$124,200.00	
25	FIRE PROTECTION	\$137,462.50	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$137,462.50	
26	PLUMBING	\$442,260.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$442,260.00	
27	HVAC	\$1,080,102.60	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$1,080,102.60	
28	ELECTRICAL AND COMMUNICATIONS	\$1,110,693.60	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$1,110,693.60	
29	EARTHWORK & SITE UTILITIES	\$705,044.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$705,044.00	
30	TERMITE CONTROL	\$5,940.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$5,940.00	
31	PAVING (NIC)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	
32	SYNTHETIC RESILIENT SURFACING	\$12,960.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$12,960.00	
	SUB-TOTALS	\$11,265,266.60	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$11,265,266.60	

CONTINUATION PAGE

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			AMOUNT PREVIOUS PERIODS	AMOUNT THIS PERIOD		% COMP. (G / C)			
33	FENCES AND GATES	\$37,346.40	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$37,346.40	
34	KNOX BOXES	\$3,780.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$3,780.00	
35	FIXED WALL LADDERS	\$24,840.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$24,840.00	
36	WALK UP DEPOSITORIES	\$16,200.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$16,200.00	
37	WALL PROTECTION	\$16,200.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$16,200.00	
38	FLAG POLE	\$16,200.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$16,200.00	
39	ROUGH CARPENTRY	\$13,500.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$13,500.00	
40	CONTINGENCY	\$250,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$250,000.00	
TOTALS		\$11,643,333.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$11,643,333.00	

Felker Construction Co., Inc.

P.O. Box 1647 • Dalton, GA 30722

Bus: 706-226-6922 • Fax: 706-279-0705

GMP for John Davis Rec Center and Pool Access Building

Andrew Parker- City Administrator
300 W. Waugh Street
Dalton, Ga 30721

Dear Mr. Parker the GMP for the above project is **\$11,643,333.00**. This price is based on the drawings and specifications provided by Gregg Sims, Architect, and Addendums 1, 2, 3, and 4. The above price also includes a \$250,000.00 contingency allowance which will have its own line item on the Schedule of Values. Schedule of Values is attached with this letter that has the GMP broken out by the bidding categories set out in the RFP.

In the event that the contingency is not used or a partial amount is used the reaming balance will be credited back to the City of Dalton.

Items that will be taken care of by the City of Dalton will be testing, remaining site demolition, Asphalt Paving, landscaping, purchasing of all appliances.

GMP acceptance date 5/20/2024



Nathan Felker
Vice President
Felker Construction Co., Inc.

Date:5/15/2024

Warranty Statement

The Construction Manager represents and warrants to the Owner that for a period of two (2) years after Final Completion of the Work: (i) all labor furnished to progress the Work will be competent to perform the tasks undertaken; (ii) that the product of such labor will yield only first-class results; (iii) that materials and equipment furnished will be of good quality and new unless otherwise permitted by the Contract Documents; (iv) and that the Work will be of good quality, free from faults and defects, and in strict conformance with the Contract Documents. All Work not conforming to such requirements shall be considered defective.

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DAVIS RECREATION CENTER FOR THE CITY OF DALTON

DIVISION 1: GENERAL REQUIREMENTS	010100 SUMMARY OF WORK
	010500 FIELD ENGINEERING
	010700 OFFICE STANDARDS
	010900 REFERENCE STANDARDS
	011000 CONSTRUCTION SCHEDULE
	012000 PROJECT CONFERENCES
	013000 CONTRACTOR SUBMITTAL REQUIREMENTS
	013300 DELEGATED DESIGN PROCEDURES
	014000 QUALITY ASSURANCE
	014600 INCIDENTAL REPAIR
	015000 TEMPORARY CONSTRUCTION SITE CONTROLS
	015600 CONSTRUCTION SAFETY
	017000 CONTRACT COMPLETION REQUIREMENTS
	018000 CLEANING
	019100 PROFESSIONAL CONSULTANTS
DIVISION 2: EXISTING CONDITIONS	020630 SUBSURFACE INVESTIGATIONS GEOHYDRO REPORT ATTACHED
	024120 SELECTIVE BUILDING DEMOLITION
DIVISION 3: CONCRETE	033000 CAST-IN-PLACE CONCRETE
	033051 CONCRETE CURING AND FINISHING
	033100 CONCRETE ACCESSORIES
	035410 UNDERLAYMENT
	036000 GROUT
DIVISION 4: MASONRY	041000 MORTAR
	041500 MASONRY REINFORCING & ACCESSORIES
	042100 BRICK MASONRY UNITS
	042200 CONCRETE MASONRY UNITS

DIVISION 5: METALS	051200 STRUCTURAL STEEL FRAMING 052100 STEEL JOIST FRAMING 053100 STEEL DECKING 054000 COLD FORMED METAL FRAMING 055100 METAL STAIRS 055140 FIXED WALL LADDERS 055800 MISCELLANEOUS METAL 057310 DRY GLAZED GLASS RAILING SYSTEM
DIVISION 6: WOOD, PLASTICS AND COMPOSITES	061000 ROUGH CARPENTRY 061213 STRUCTURAL PANEL CONCRETE SUBFLOOR 061530 SHEATHING 064100 CABINETS 066116 SOLID SURFACE FABRICATIONS 066123 ULTRACOMPACT SURFACING COUNTERTOPS
DIVISION 7: THERMAL AND MOISTURE	071900 UNDERSLAB VAPOR BARRIER 072000 INSULATION (THERMAL & SOUND ATTENUATION) 072720 FLUID APPLIED WEATHER BARRIER 074113 METAL ROOF, GUTTERS & DOWNSPOUTS 074400 CEMENTITIOUS PANELS AND TRIM 075300 THERMOPLASTIC POLYOLEFIN ROOFING MEMBRANE (TPO) 076000 FLASHING AND VENTING 077113 METAL COPING 077233 ROOF HATCHES 079000 CAULKING AND SEALANTS 079500 EXPANSION CONTROL
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ORIGINAL FEBRUARY 1, 1985 DRAWINGS INCLUDED FOR REFERENCE

Construction Manager's Consultants, Contractors, Design Professionals, and Suppliers

RFP Bid Package	Contractor(s)
1 Testing	City of Dalton
2 Selective Demolition	Felker Construction Co., Inc. City of Dalton (existing structures and concrete)
3 Concrete	Felker Construction Co., Inc.
4 Masonry	JMA Masonry
5 Steel	Thorough Built, LLC
6 Walls and Ceilings	LANCO
7 Cabinetry	Architectural Surfaces
8 Closed Cell Insulation	Tailored Foam
9 Roofing	JDH
10 Exterior Siding	Fugate Construction
11 Metal Doors/Frames, Wood Doors FRP Doors/Frames, Finish Hardware Toilet Partitions, Lockers, Fire Protection Specialties & Accessories	Architectural Hardware
12 Entrances & Storefronts, Glass Rail System	Hamilton Glass
13 Coiling Doors	King Door Company
14 Flooring	Certified Flooring
15 Wood Athletic Flooring	Covington Flooring Co., Inc.
16 Sound Control	Air Space Acoustics
17 Painting	Barnett's Painting
18 Operable Wall Partitions	JM Specialties Inc.
19 Signage	Miller EG Design
20 Hanger Supported Aluminum Canopies	Carolina Canopy
21 Interior Athletic Equipment	Georgia Institutional Furnishings
22 Recreational Climbing Wall	EP Climbing
23 Shades	Window Covering Products
24 Elevator	Schindler
25 Fire Protection	Carpet Capital Fire Protection
26 Plumbing	Dalton Service, Inc.
27 HVAC	Cherokee Mechanical
28 Electrical and Communications	Industrial Control Systems
29 Earthwork and Site Utilities	Lock's Dozing, Inc.
30 Termite Control	Felker Construction Co., Inc.
31 Paving	City of Dalton
32 Synthetic Resilient Surfacing	City Turf
33 Fences and Gates	Mauldin & Cook Fence Co.
Landscaping Knox Boxes, Wall Ladders, Depositories, Wall Protection, Flag Pole, Rough Carpentry	City of Dalton Felker Construction Co., Inc.
Architect MEP, Civil & Structural Engineers	Gregg Sims, Architect March Adams & Associates, Inc.



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 05-20-24

Agenda Item: Geo-Hydro Engineers PSA for Construction Testing Services at John Davis Recreation Center

Department: Administration

Requested By: Andrew Parker

Reviewed/Approved by City Attorney? Yes

Cost: \$56,661.20

Funding Source if Not in Budget

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

Geo-Hydro Engineers PSA for Construction Testing Services at John Davis Recreation Center

**CITY OF DALTON
ADMINISTRATION**

GENERAL PROFESSIONAL SERVICES AGREEMENT

THIS GENERAL PROFESSIONAL SERVICES AGREEMENT is made and entered into on this 20th day of May, 2024 by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and Geo-Hydro Engineers, Inc., hereinafter referred to as "CONSULTANT".

WHEREAS, the CITY desires to engage the CONSULTANT to provide professional services; and,

WHEREAS, the CITY finds that the proposed Scope of Services and terms of this Contract are acceptable; and,

WHEREAS, the CONSULTANT desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth,

WITNESSETH: That the parties hereto for the considerations hereinafter provided covenant and agree as follows:

1. EMPLOYMENT OF CONSULTANT: The CITY hereby engages the CONSULTANT and the CONSULTANT hereby agrees to perform the professional services hereinafter set forth.

2. PROJECT/SCOPE OF SERVICES: The CONSULTANT shall complete the project and perform the scope of services specified in the specifications provided in the CONSULTANT's proposal attached hereto as Exhibit "A".

3. ADDITIONAL SERVICES: The CONSULTANT shall provide additional services, not specifically provided for in Exhibit "A", upon written request and authorization by the CITY.

4. DATE OF COMMENCEMENT: The CONSULTANT shall commence work on the project on May 21, 2024. If no date is provided, then the date of commencement shall be five days from execution of this Agreement.

5. DATE OF COMPLETION: The CONSULTANT shall complete the project on or before October 31, 2025.

6. CONTRACT SUM: The CITY shall pay to CONSULTANT the total sum of \$56,661.20 (fifty-six thousand six-hundred sixty one dollars and twenty cents) for the complete performance of the project and terms of this Agreement. In addition, CITY shall pay to CONSULTANT for any authorized additional services performed at the rate or amount provided in the Compensation Schedule attached hereto as Exhibit “B”.

7. PAYMENT: The CITY shall pay the contract sum to CONSULTANT upon complete performance of the project and terms of this Agreement. CONSULTANT shall provide to CITY an Affidavit from the CONSULTANT stating the CONSULTANT has fully performed all terms of the Agreement. Final payment shall be made no later than 30 days after receipt of said Affidavit. Upon completion of any additional services, said additional services shall be paid within 30 days of receipt of invoice from CONSULTANT. Payment(s) shall be made via electronic funds transfer (EFT).

8. CITY COVENANTS: CITY covenants and agrees:

(a) to provide all available information, data, reports, records and maps to which CITY has possession or control which are necessary for CONSULTANT to perform the scope of services provided for herein;

(b) to provide reasonable assistance and cooperation to CONSULTANT in obtaining any information or documentation which are necessary for CONSULTANT to perform the scope of services provided for herein;

(c) to designate a representative authorized to act on the CITY’s behalf with respect to the project. Unless otherwise provided, said CITY representative shall be the Director of Parks and Recreation;

(d) to permit access to the subject public property and obtain permission to access necessary private property for CONSULTANT to complete the scope of services;

(e) to provide reasonable assistance to CONSULTANT in applying for and obtaining any necessary Federal, State or local government permits for the scope of services;

9. CONSULTANT COVENANTS: CONSULTANT covenants and agrees:

(a) to perform the scope of services in a professional manner, using that degree of care and skill ordinarily exercised by consultants practicing in the same or similar field;

- (b) to use only employees and subcontractors qualified to complete the work with sufficient experience in same or substantially similar projects;
- (c) to use only properly licensed employees or subcontractors for any work requiring a specialty or professional license issued by the State of Georgia;
- (d) to designate a representative authorized to act on the CONSULTANT's behalf with respect to the project.
- (e) to use the subject property in a safe, careful and lawful manner;
- (f) to promptly report within (3) days in writing to CITY any unsafe or defective condition of the subject property and any adverse site condition, which shall include but not be limited to limited access, extremely dense vegetation, subsurface conditions, damaged property, or existing utilities, that may adversely affect CONSULTANT's ability to complete the scope of services or other terms of this Agreement;
- (g) to promptly report within (3) days in writing to CITY any damage to or injuries sustained on the subject property and to promptly repair any damage to the subject property which is made necessary by any act of CONSULTANT, its employees, agents, subcontractors, or invitees;
- (h) to keep the subject property in a clean and orderly condition and to remove any personal property of CONSULTANT upon completion of the project;
- (i) to perform all work on the project in a good and workmanlike manner, free from faults and defects, and in conformance with the terms of this Agreement;
- (j) to determine the appropriate method, details and means of performing the scope of services provided by this Agreement;
- (k) to exercise the ordinary standard of care in complying with the laws, codes, and regulations applicable to the CONSULTANT's services;
- (l) to exercise diligence and to complete delivery of the scope of services in a timely manner consistent with the exercise of due care;
- (m) to attend meetings to make presentations or to otherwise review the progress of the work as set out in the scope of services at the reasonable request of the CITY;
- (n) to prepare and submit to the CITY reports required by the scope of services or upon the written request of the CITY.

10. INDEMNITY: CONSULTANT shall indemnify CITY from and hold CITY

harmless against all damage or loss resulting from CONSULTANT'S use and occupancy of the subject property or from negligence, including errors or omissions with respect to the performance of the professional services of CONSULTANT, its employees, agents, subcontractors, or invitees. This indemnity shall not be applicable when such damage or loss is caused by the sole fault or negligence of CITY or any of CITY's employees, agents or representatives acting on behalf of the CITY.

Additionally, CONSULTANT agrees that all personal property that may be at any time at the subject property shall be at CONSULTANT's sole risk or at the risk of those claiming through CONSULTANT and that CITY shall not be liable for any damage to or loss of such personal property except if arising from or caused by the sole fault or negligence of CITY.

11. INSURANCE: CONSULTANT agrees to carry at its own expense through the term of this Agreement the types and amounts of insurance required to maintain status as a Vendor of the City of Dalton or as provided herein below, whichever is greater. CONSULTANT shall provide CITY with copies or evidence of such insurance coverage on or before the commencement date of the Agreement. Such insurance policies in subsections (a), (b), and (c) below shall name CITY as an additional insured and shall be issued by such insurance companies and on such forms as may be approved by CITY. Said insurance shall include the following:

- (a) General Liability Coverage - General Liability policy with a minimum limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (b) Workers' Compensation Coverage – Workers' Compensation policy with the following minimum limits:
 - (1) Workers' Compensation statutory limits;
 - (2) Employer's Liability:
 - a. Bodily Injury by Accident - \$100,000.00
 - b. Bodily Injury by Disease - \$500,000.00 policy limit
 - c. Bodily Injury by Disease - \$100,000.00 each employee.

CONSULTANT shall complete the Workers' Compensation Insurance Affidavit of the City of Dalton to determine if any exemption to Workers' Compensation Insurance is applicable.

- (c) Auto Liability Coverage – Auto Liability policy with a minimum of \$1,000,000.00 limit per occurrence for bodily injury and property damage, if motor vehicle is used in performance of scope of services. Comprehensive form covering all owned, non-owned, and hired vehicles.
- (d) Professional Services Errors & Omissions Coverage – Professional Services E&O

policy with a minimum of \$1,000,000.00 per claim.

14. ASSIGNMENT: CONSULTANT may not assign all or any portion of the Agreement without the prior written permission of CITY.

15. SUBCONTRACTOR: The CONSULTANT shall provide written notice to CITY of CONSULTANT'S intent to use a subcontractor for any portion of the project. CITY shall be entitled to reject any subcontractor it deems not qualified to complete the project in the CITY's sole discretion. Any subcontractor approved for work on the project shall abide by any and all terms of this Agreement.

16. NON-WAIVER OF DEFAULT: The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall not be construed to be a waiver thereof, nor affect the validity of any part of this Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

17. NOTICES: Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced in writing and delivered in person or mailed by certified mail, return receipt requested, postage prepaid to the party who is to receive such notice.

Such notice to CITY shall be mailed to: City of Dalton
ATTN: City Administrator
P.O. Box 1205
Dalton, GA 30722-1205

Such notice to CONSULTANT shall be mailed to: Geo Hydro Engineers, Inc.
400 Chastain Center Boulevard
Suite 430
Kennesaw, GA 30144

When so mailed, the notice shall be deemed to have been given as of third (3rd) day after the date it was mailed. The addresses may be changed by giving written notice thereof to the other party.

18. CONTRACT DOCUMENTS: The Agreement shall include the advertisement for Request for Proposal or invitation to bid, Instructions to Bidders, sample forms, the Addenda relating to bidding and proposal requirements, and any other written information provided by the CITY in anticipation of receiving bids or proposals, if any, except as specifically excluded herein, and the CONSULTANT'S bid or proposal. The terms of this Agreement shall supersede

any terms in the above-referenced documents in direct conflict with the terms of this Agreement.

Additionally, the Contract Documents and all drawings, plans, specifications and other related construction or service related documents shall be the sole property of the CITY. The CONSULTANT shall be permitted to retain copies thereof for its records and for its future professional services.

Additionally, CITY shall be authorized to rely upon all documents, whether in hard copy or electronic format, provided by CONSULTANT. Any changes to the material terms of any document shall be clearly identified and noted to CITY.

19. VENDOR: CONSULTANT shall register and remain active as a Vendor of the CITY by completing the City of Dalton Vendor Packet and fully comply with any and all requirements of said Vendor during the term of this Agreement.

20. TERMINATION OF CONTRACT: In the event that CONSULTANT defaults or neglects to perform work on the project in accordance with the terms of this Agreement, CITY may provide written notice of such default or deficiency to CONTRACTOR and CONTRACTOR shall have ten (10) days to correct said default or deficiency. In the event such default or deficiency is not corrected in ten (10) days, CITY may terminate this Agreement immediately upon written notice to CONTRACTOR.

21. MISCELLANEOUS PROVISIONS:

(a) Governing Law; Venue. This Agreement is being executed and delivered in the State of Georgia and shall be construed and enforced in accordance with the laws of that state. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive any and all objections or defenses thereto.

(b) Successors and Assigns. This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. CONSULTANT shall not assign its rights or obligations under this Agreement without the prior written consent of the CITY.

(c) Severability of Invalid Provisions. If any provision of this Agreement shall be deemed invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

(d) Complete Agreement; Amendments. This Agreement constitutes the entire agreement between the parties hereto; it supersedes all previous understandings and agreements between the parties, if any, and no oral or implied representation or understanding shall vary its terms, and it may not be amended except by written instrument executed by both parties hereto.

(e) Remedies Cumulative. All rights, powers, and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restrictive to those given by law.

(f) Time is of the Essence. Time is of the essence of this Agreement in each and all of

its provisions. However, nothing in this clause shall constitute a warranty by Consultant.

- (g) Attorney Fees. In the event the CITY must enforce the terms of this Agreement by filing a civil action against CONSULTANT, then CONSULTANT shall pay an amount equal to fifteen percent (15%) of the contract sum as attorney fees in the event the CITY is the prevailing party.
- (h) Confidentiality. All information and documentation regarding the project and the CONSULTANT's services shall be maintained in confidence and shall not be disclosed to any third party by CONSULTANT, without CITY's written authorization, except as may be required by the Georgia Open Records Act. CONSULTANT shall promptly notify CITY of any third party request for said information or documentation prior to any disclosure. CITY agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by CONSULTANT pertaining to this Agreement shall be considered confidential and proprietary, and shall not be disclosed to any third party, except as may be required by the Georgia Open Records Act.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

CONSULTANT:

CONSULTANT:
Geo-Hydro Engineers, Inc.

By: _____

Title: _____

CITY:

CITY OF DALTON, GEORGIA

By: _____
MAYOR

Attest: _____
CITY CLERK

Ms. Cathy Snyder
c/o City of Dalton Finance
300 West Waugh Street
Dalton, Georgia 30721

April 18, 2024

**Fee Proposal to Provide
Construction Materials Testing and Special Inspections Services
John Davis Recreation Center Redevelopment
Dalton, Georgia
Geo-Hydro Proposal Number 241596.P0**

Dear Ms. Snyder:

Geo-Hydro Engineers is very pleased to provide a proposal for special inspections and construction materials testing services for the above referenced project. We have received the building construction plans for the Pool House and Recreation Building dated February 14, 2024, for review. We have based our proposal on our review of these documents and on our experience with similar projects.

We understand the project consists of demolishing most of the existing recreation center, renovating the remaining building, and constructing a new two-story recreation building and a single-story pool house. All new construction will be supported on shallow foundations.

SCOPE OF WORK

Soils Density & Subgrade Evaluations

At-grade areas and areas to receive structural fill should be evaluated by proofrolling with a loaded dump truck, scraper, or other similar rubber-tired equipment. We will observe the proofrolling operations and provide recommendations for dealing with unstable soils if encountered. We will obtain bulk samples of proposed fill or backfill soils and conduct laboratory testing to determine the standard or modified Proctor maximum dry density.

We will observe fill soils placement and perform specified field density testing of fill or backfill soils. The frequency of our testing will be dictated by the requirements of the project specifications. We will coordinate our services with the project superintendent.

Foundation Bearing Surface Evaluations

Our representative will be on site to perform hand auger borings with dynamic cone penetrometer (DCP) testing as select locations within open shallow foundation excavations in general conformance with the guidelines established in ASTM STP-399 in order to evaluate the near-surface soil conditions and evaluate the bearing surface for an allowable bearing pressure and consistency with the soils report, if available. If the required bearing capacity is not available based on our evaluations, remedial recommendations for removal and replacement of the unsuitable foundation bearing soils will be provided or will be provided in a timely manner.

Concrete Testing

Our representative will be present to sample and test structurally significant concrete. Typically, for each sampling event we will perform physical tests to determine the slump, air content, and temperature, and we will mold test cylinders at the project-specified frequency for subsequent compressive strength testing. We will transport the test cylinders to our laboratory for moist-curing and compressive strength testing which will be performed at the specified test interval. Please note that continuous observation of concrete placement is required to be in compliance with the IBC Chapter 17 Special Inspections requirements.

Observation of Reinforcing Steel

Our representative will be present to observe that the placement of the concrete reinforcing steel is in compliance with the project documents for quantity, size, and location. Typically, our site representative will compare the as-built condition of the reinforcing steel to the approved structural and shop drawings. If any discrepancies are observed, they will be brought to the attention of the field personnel so that appropriate corrections can be implemented.

Reinforced Unit Masonry Testing

We will sample and test the masonry grout in general accordance with the project specifications and applicable ASTM standards. We will transport grout test specimens to our Kennesaw laboratory for curing and compressive strength testing. We understand periodic visual inspections of reinforcing steel and grout cavities will be performed by others.

Structural Steel Testing

We plan to check the material identifications and submittals of manufacturer's certificates of compliance for high-strength bolt assemblies and cold-formed steel deck. We will also check the welded and bolted connections for conformance with the project plans, the project manual, and applicable codes. The steel frame, including the bracing and stiffening member configurations, member location, and joint details will be checked for compliance with the project documents.

Parking Lot and Drive Subgrade

We will perform proofroll evaluations on both the soils subgrade and base stone prior to asphalt placement. Recommendations will be made for remediation of unstable conditions at the time of evaluation.

Project Administration and Miscellaneous Consultation

We will provide our professional staff as necessary for project administration, data review and transmittal, preparation of letters, attending meetings, etc.

Limitations of Services

- Our presence at the job site and our performance of construction materials testing must not be construed as relieving the contractor of its responsibility to comply with the plans and specifications.

- Construction materials testing consists of a representative sampling of the construction materials. One must not interpret the test results as a guarantee that the entire work product is represented by the results.
- Our services and any observations or recommendations we make must not be construed in any way as relieving the contractor from his responsibilities relating to job site safety.
- Our representatives do not have the authority to supervise the work nor to direct the contractor's personnel.

FEE

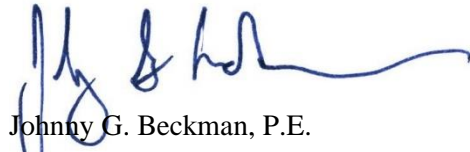
We have included budgetary estimate for construction materials testing and special inspections compliance services based on the assumed durations within our cost estimate. We will bill for all of our services on a unit-rate basis in accordance with the attached Schedule of Fees.

* * * * *

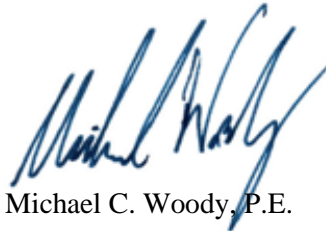
If this proposal is acceptable, please authorize our services by signing and returning the attached agreement. We look forward to working with you on this project. Please contact us if you have any questions.

Respectfully,

Geo-Hydro Engineers, Inc.



Johnny G. Beckman, P.E.
Project Manager
jbeckman@geohydro.com



Michael C. Woody, P.E.
Kennesaw CMT Manager
mwoody@geohydro.com

JGB\MCW\241596.P0 John Davis Rec Center Proposal

Construction Materials Testing and Special Inspections Services
John Davis Recreation Center Redevelopment
Dalton, Georgia
Geo-Hydro Proposal Number 241596.P0

CONSTRUCTION MATERIALS TESTING/SPECIAL INSPECTIONS COST BREAKDOWN

Soils Density & Subgrade Evaluations

Subgrade Evaluations and Density Testing (Based on 10 trips at 68 hours per trip)					
60 hours	Senior Engineering Technician	at	\$70.00	per hour	\$4,200.00
Project Management					
6 hours	Senior Project Manager	at	\$160.00	per hour	\$960.00
Travel					
10 trips	160 Miles per Trip	at	\$0.655	per mile	\$1,048.00
Subtotal					\$6,208.00

SHALLOW FOUNDATION EVALUATION

(Based on 10 trips at 6 hrs. average per trip)					
60 hours	Senior Engineering Technician	at	\$70.00	per hour	\$4,200.00
Project Management					
10 hours	Senior Registered Engineer	at	\$160.00	per hour	\$1,600.00
Travel					
10 trips	160 Miles per Trip	at	\$0.655	per mile	\$1,048.00
Subtotal					\$6,848.00

CAST-IN-PLACE CONCRETE TESTING & REINFORCING STEEL INSPECTION

Concrete Testing (Based on 20 trips at 6 hrs. average per trip)					
120 hours	Senior Engineering Technician	at	\$70.00	per hour	\$8,400.00
Sample Pickups (Based on 20 trips at 2.5 hrs. average per trip)					
50 hours	Senior Engineering Technician	at	\$70.00	per hour	\$3,500.00
Laboratory Testing					
150 specimens	Concrete Cylinders	at	\$25.00	per specimen	\$3,750.00
Project Management					
20 hours	Senior Registered Engineer	at	\$160.00	per hour	\$3,200.00
Travel					
40 trips	160 Miles per Trip	at	\$0.655	per mile	\$4,192.00
Subtotal					\$23,042.00

REINFORCED UNIT MASONRY INSPECTIONS

Masonry Grout Testing (Based on 20 trips at 4 hrs. average per trip)					
80 hours	Senior Engineering Technician	at	\$70.00	per hour	\$5,600.00
Sample Pickups (Based on 8 trips at 2.5 hrs. average per trip)					
20 hours	Senior Engineering Technician	at	\$70.00	per hour	\$1,400.00
Laboratory Testing					
24 specimens	Grout Specimens	at	\$25.00	per specimen	\$600.00
Project Management					
20 hours	Senior Registered Engineer	at	\$160.00	per hour	\$3,200.00
Travel					
28 trips	160 Miles per Trip	at	\$0.655	per mile	\$2,934.40
Subtotal					\$13,734.40

**Construction Materials Testing and Special Inspections Services
John Davis Recreation Center Redevelopment
Dalton, Georgia
Geo-Hydro Proposal Number 241596.P0**

STRUCTURAL STEEL INSPECTIONS

Inspection of Structural Steel Bolted and Welded Connections (Based on 6 trips @ 6 hours each)					
36 hours	Structural Steel Inspector	at	\$150.00 per hour		\$5,400.00
Project Management					
5 hour	Senior Project Manager	at	\$160.00 per hour		\$800.00
Travel					
6 trips	160 Miles per Trip	at	\$0.655 per mile		\$628.80
			Subtotal		\$6,828.80

ESTIMATED COST FOR CMT SERVICES	\$56,661.20
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Geotechnical Engineering Construction Materials Testing, Special Inspections, and NPDES Compliance Services Schedule of Fees

John Davis Recreation Center Redevelopment
Dalton, Georgia
Geo-Hydro Proposal Number 241596.P0

FIELD TESTING SERVICES

Soil, Concrete, and Miscellaneous Testing

Engineering Technician, per hour.....	\$ 60.00
Senior Engineering Technician, per hour.....	\$ 70.00
Special Inspection Technician, per hour.....	\$ 75.00

Steel Testing

Structural Steel Inspector, per hour.....	\$ 110.00
Skidmore-Wilhelm Bolt Tension Calibrator., per day.....	\$ 75.00
Ultrasonic Flaw Detector, per day.....	\$ 120.00

Coring - Pavement or Concrete

Equipment Rental (generator & coring machine), per day.....	\$ 100.00
Diamond Bit Usage, per inch diameter, per lineal inch.....	\$ 1.50
Coring Technician, per hour.....	\$ 65.00

Special Field Test Equipment

Floor Flatness Test Equipment, per day.....	\$250.00
“Profometer 4” rebar locator, per day.....	\$150.00
Windsor Probe, per shot.....	\$ 35.00
Nuclear Density Gauge, per day.....	\$ 40.00
Pavement Quality Indicator (PQI) Non-Nuclear Density Gauge, per day.....	\$ 40.00
StructureScan Mini all-in-one high-resolution GPR, per day.....	\$300.00
Thermal Imaging Camera, per day.....	\$250.00

NOTE: Above special field test equipment requires an operator billed at the appropriate hourly rate.

StructureScan Mini all-in-one high-resolution GPR, half day.....	\$800.00
<i>(Includes travel, operator, and report)</i>	
StructureScan Mini all-in-one high-resolution GPR, full day.....	\$1,500.00
<i>(Includes travel, operator, and report)</i>	

NPDES SERVICES

NPDES Inspection, per trip.....	\$ 150.00
Monthly Monitoring Report, each.....	\$ 115.00
Automatic Storm Water Sampler, per month.....	\$ 150.00
Turbidity Analysis, each.....	\$ 20.00

PROFESSIONAL CONSULTING SERVICES

Principal Engineer/Geologist, per hour.....	\$ 185.00
Senior Project Manager/Senior Registered Engineer, per hour.....	\$ 160.00
Project Manager/Registered Engineer, per hour.....	\$ 125.00
Special Inspection Professional, per hour.....	\$ 105.00
Staff Professional, per hour.....	\$ 105.00
Engineering Aide, per hour.....	\$ 65.00
Administrative Assistant, per hour.....	\$ 40.00

Geotechnical Engineering Construction Materials Testing, Special Inspections, and NPDES Compliance Services Schedule of Fees

John Davis Recreation Center Redevelopment
Dalton, Georgia
Geo-Hydro Proposal Number 241596.P0

LABORATORY TESTING SERVICES

Soil-Cement/Cement Treated Base Mix Design Testing

Mix Design with up to Three Cement Amendment rates, each.....	\$ 1,500.00
Proctor Compaction Tests (ASTM D558), each.....	\$ 150.00
Soil-Cement Specimens, Compressive Strength, per specimen	\$ 15.00

Soil & Graded Aggregate Base Material

Proctor Compaction Tests	
Standard (ASTM D-698), each	\$ 150.00
Modified (ASTM D-1557), each	\$ 200.00
Atterberg Limits (ASTM D-4318), each	\$ 95.00
Soil Particle Size Analysis with Hydrometer (ASTM D-422), each	\$ 150.00
Particle Size Analysis of Coarse Aggregate (ASTM C-136), each	\$ 125.00

Concrete, Grout, Mortar, and Masonry

Cylinders, Compressive Strength (ASTM C-39), per cylinder	\$ 25.00
Beams, Flexural Strength (ASTM C-78), each.....	\$ 25.00
Concrete Cores, Lab Preparation and Compressive Strength	
Testing, (ASTM C-42), each	\$ 60.00
Cube Specimens (2" x 2"), Lab Preparation and Compressive	
Strength Testing (ASTM C-109), each.....	\$ 15.00
Masonry Grout Compressive Strength, Lab Preparation	
and Compressive Strength Testing, (ASTM C-1019), each	\$ 25.00
Masonry Prisms, Lab Preparation and Compressive Strength	
Testing, (ASTM C 1314), each.....	\$ 150.00
Concrete Masonry Unit (CMU) Lab Preparation and	
Compressive Strength Testing, (ASTM C 140), each	\$ 140.00

Bituminous Materials

Bitumen Content & Gradation (ASTM D-2172; GDT-83), each.....	\$ 300.00
Core Density and Thickness Determination, each.....	\$ 35.00
For cores which require splitting add, each	\$ 10.00
Theoretical Voidless Density Determination (AASHTO T-209), each.....	\$ 200.00

MISCELLANEOUS

Mileage, per mile.....	\$ 0.655
Authorized Ancillary Expenses.....	Cost + 15%

- Hourly rates are portal to portal. -All prices are quoted for services performed during a normal 8:00 a.m. to 5:00 p.m. work day (Monday through Friday). For services required outside of these hours (or on Saturday, Sundays and holidays), multiply unit rates by 1.5. A minimum charge of 4 hours will apply to all necessary weekend or holiday work
- Expert witness testimony will be billed at a multiplier of 2.0 times the appropriate unit rate for all time spent in preparation, depositions, court appearances, etc.
- Prices are valid for 90 days from date of schedule.



CITY COUNCIL AGENDA REQUEST

Meeting Type:	Mayor & Council Meeting
Meeting Date:	May 20, 2024
Agenda Item:	Contract award for Baseball and Softball Turf In-Fields for Heritage Point Regional Park
Department:	Recreation
Requested By:	Caitlin Sharpe
Reviewed/Approved by City Attorney?	Yes
Cost:	\$3,068,890.00
Funding Source if Not in Budget	Grant - Improving Neighborhood Outcomes in Disproportionally Impacted Communities

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

The Recreation Department was awarded funding through the Improving Neighborhood Outcomes in Disproportionally Impacted Communities Grant offered through the Governor's Office of Planning and Budget. The approved project includes installing synthetic turf on all ten infields of the softball and baseball fields.

Request for Proposals for Baseball and Softball Turf In-Fields for Heritage Point Regional Park was advertised in April 2024. We received responses on Friday, May 10, 2024. Of the received responses, the department recommends approving the contract with Sports Field Inc. The recommendation includes the basis of design system along with Alternates 1, 2, 5, 6 as shown in Article 4 of the contract.

**SECTION 00090
THE CONTRACT FOR CONSTRUCTION
AND INCORPORATED GENERAL CONDITIONS**

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**THE CONTRACT FOR CONSTRUCTION
AND INCORPORATED GENERAL CONDITIONS**

This Contract is made by and between the City of Dalton, GA (the “Owner”) and Sports Fields Inc. (the “Contractor”) under seal for construction of “Baseball & Softball Turf In-fields for: Heritage Point Regional Park”, located at 1275 Cross Plains Trail Dalton GA 30721 (the “Project”). The Owner and the Contractor hereby agree as follows:

**ARTICLE 1.
THE CONTRACT AND THE CONTRACT DOCUMENTS**

1.1 The Contract

1.1.1 The Contract between the Owner and the Contractor, of which this Contract is a part, consists of the Contract Documents. It shall be effective on the date this Contract is executed by the last party to execute it.

1.2 The Contract Documents

1.2.1 The Contract Documents consist of this Contract, the Specifications, the Drawings, Supplemental Conditions, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

1.2.2 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data, and shall give written notice to the Owner and the Architect of any inconsistency, ambiguity, error, or omission that the Contractor discovers regarding these documents before proceeding with the affected Work. The issuance or the express or implied approval by the Owner or the Architect of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor’s compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the Drawings and Specifications, which are accurate, adequate, consistent, coordinated and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed, and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.

1.2.3 The Contractor herein acknowledges and represents that prior to the submission of its bid, and prior to its execution of this Contract, it visited and carefully examined the Project site and any and all structures located thereon, and it thoroughly correlated the results of such visit and examination with the requirements of the Contract Documents. The Contractor further acknowledges that it has become familiar with the local conditions

under which the Work is to be performed, and the cost of properly addressing such conditions during performance of the Work is included in the Contract Price.

1.2.4 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, or other categories nor the organization or arrangement of the Design shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors. Unless otherwise provided herein, a reference to "Article" or "Section" shall include all sections, subsections, and other subdivisions of such Section or Article.

1.3 Ownership of Contract Documents

1.3.1 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. However, 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.

1.4 Hierarchy of Contract Documents

1.4.1 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following hierarchy shall control: (a) as between figures given on Drawings and the scaled measurements, the figures shall govern; (b) as between large scale drawings and small scale drawings, the large scale shall govern; (c) as between Drawings and Specifications, the requirements of the Specifications shall govern; (d) as between the Contract for Construction and Incorporated General Conditions and the Specifications, the requirements of the Contract for Construction and Incorporated General Conditions shall govern; (e) as between any Supplemental Conditions and the Contract for Construction and Incorporated General Conditions, the requirements of the Supplemental Conditions shall govern. As set forth hereinabove, any and all conflicts, discrepancies, or inconsistencies shall be immediately reported to the Owner and the Architect in writing by the Contractor.

ARTICLE 2. THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

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: (i) construction of the whole or a designated part of the Project; (ii) furnishing of any required surety bonds and insurance; and (iii) the 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 shall also be deemed part of the Work. The Work to be performed by the Contractor is generally described as follows:

ARTICLE 3. CONTRACT TIME

3.1 Time and Damages for Delay

3.1.1 The Contractor shall commence the Work on 5/21/2024 and shall achieve Substantial Completion of the Work no later than 2/28/2025. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time."

3.1.2 The Contractor shall pay the Owner the sum of **\$500** per day for each and every calendar day of delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable under this Section 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 Substantial Completion will be 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 cover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, 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. Notwithstanding any other provision of this Section, the Owner and the Contractor expressly agree that the liquidated damages set forth herein do not contemplate, nor do they cover, any Funding Delay Damages as identified in Section 5.6.1.2. Any such Funding Delay Damages shall be in addition to the liquidated damages allowed pursuant to this Section.

3.2 Substantial Completion

3.2.1 "Substantial Completion" shall mean that stage in the completion of the Work when the Work is sufficiently complete in accordance with this Contract such that the Owner can enjoy beneficial use and occupancy of the Work, can utilize the Work for its intended purpose, and a Certificate of Occupancy has been issued allowing full and complete occupancy of the entire Project. Additionally, the Work shall not be deemed to be Substantially Complete until all nonconforming Work specifically rejected by the Architect has been properly completed as required by the Contract and until all operational manuals, "marked-up" drawings, and similar required documents are delivered to the Architect for transmission to the Owner. However, the mere issuance of a Certificate of Occupancy will not, by itself, constitute Substantial Completion. Ordinary and customary punchlist items shall be completed after Substantial Completion as provided by Section 5.5. Partial use or occupancy of the Project shall not result in the Project being deemed

Substantially Complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

3.2.2 In addition to the requirements for Substantial Completion as set forth in Section 3.2.1, as an express condition for Substantial Completion, the Contractor shall furnish to the Owner and the Architect, in writing, a detailed list of all incomplete and deficient Work which must be completed and corrected prior to Final Completion of the Project. THIS LIST SHALL BE IN ADDITION TO ALL PUNCHLISTS REQUIRED ELSEWHERE BY THIS CONTRACT. Furthermore, notwithstanding any other provision of this Contract, an express condition for Substantial Completion is the submission by the Contractor to Owner and Architect of any warranties, manuals, drawings, forms, or other documents or things, of any kind or nature, as may be required for Substantial Completion by any of the Contract Documents. In the event the Contract Documents require the submission of any such documents or things in order for the Project to be considered Substantially Complete, receipt of same by Owner and Architect is an express condition precedent to any duty by Owner to make any payment otherwise due Contractor upon Substantial Completion.

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 4. 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, the fixed sum of \$3,068,890. The sum set forth in this Section shall constitute the Contract Price and shall not be modified except by Change Order as provided in this Contract. The fixed sum includes the following:

- a. Lump Sum Proposal: \$2,988,984 - This includes an Owner's Construction Contingency of \$150,000
- b. Alternate No.1: for \$19,626 - Annual Maintenance as described in the contractor's proposal and in the contractor's Best and Final Offer and associated email (see f. below).
- c. Alternate No.2: for \$36,580 - Additional drainage as shown on Sheets C1 & C1.1.

- d. Alternate No.5: for \$14,800 - 20 Velcro Catchers and Batters Boxes and 40 Pitchers Lanes.
- e. Alternate No.6: for \$8,900 - 20 Velcro Inserts at First, Second and Third Bases.
- f. From 5/16/2024 email:

Included in routine maintenance

Includes initial supply of 20,000 lbs total of extra rubber

Brushing

Seam repair

Inspection

Debris collection

Visual appearance

Staff training

10-Year turf warranty is included with our proposal. This is an \$80,000 value. For no additional charge, Act Global will also perform comprehensive maintenance in years 4 and 7 to extend the useful life of the turf. This includes:

Infill decompaction

Grooming with metal attachment

Weed treatment

Detailed field inspection

Field testing to include force reduction/running impact, g-max, vertical deformation/foot stability, HIC, energy restitution, rotational traction and infill depth checks

Full report issued to field owner

Updated training to current maintenance personnel (helpful for staff turnover!)

ARTICLE 5.
PAYMENT OF THE CONTRACT PRICE

5.1 Schedule of Values

5.1.1 Within ten (10) calendar days after the effective date hereof, the Contractor shall submit to the Owner and to the Architect a Schedule of Values allocating the Contract Price among the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Architect or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance the Schedule of Values or artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Architect and the Owner. Receipt of the Schedule of Values as required herein is a condition precedent to payment of any sums due the Contractor.

5.1.2 In the event any Work is to be performed under a unit-price agreement, the Contractor acknowledges and represents that it has not imbalanced or artificially inflated the unit prices, and if requested by the Owner or the Architect, the Contractor shall provide such data and supporting documentation as may be requested to support the reasonableness and accuracy of such unit prices. Unit prices establish the complete and total sum to be paid for the unit price work, and such unit prices include any and all applicable overhead, profit, and mark-up of every kind and nature.

5.2 Payment Procedure

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided in Section 5.2.

5.2.2 **Progress Payments.** Based upon the Contractor's Applications for Payment submitted to the Architect and upon Certificates for Payment subsequently issued to the Owner by the Architect, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.2.1 On or before the 5th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 30th day of the preceding month to the Architect in such form and manner, and with such supporting data and content, as the Owner or the Architect may require.

5.2.2.2 Each Application for Payment may request payment for ninety-five percent (95%) of that portion of the Contract Price properly allocable in the Schedule of Values to Contract requirements properly performed and labor, materials, and equipment properly incorporated in the Work plus ninety-five percent (95%) of that portion of the Contract Price properly allocable in the Schedule of Values to materials or equipment properly stored on-site for subsequent incorporation in the Work, less the total amount of previous payments. Payment for stored materials and equipment shall be conditioned upon the

Contractor's proof satisfactory to the Owner, that the Owner has title to such materials and equipment, and shall include proof of required insurance.

5.2.2.3 Each Application for Payment shall be signed by the Contractor, which shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested.

5.2.2.4 The Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. Based on the Architect's evaluations of the Contractor's Application for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment for such amounts.

5.2.2.5 The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's certification of an Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Section 5.3, and the Architect shall have the right to amend or withdraw any previously executed Certification of Payment if it determines that such amendment or withdrawal is necessary to protect the interest of the Owner under this Contract.

5.2.2.6 The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Architect's certification of the amount due thereunder.

5.2.2.7 When the Contractor reaches Substantial Completion, the Contractor may submit in writing to the Owner a request for release of retainage, and the Owner shall, within 30 days after submission of Contractor's pay application and other appropriate documentation as may be required by the Contract Documents are provided, pay the retainage to the Contractor. If at that time there are any remaining incomplete items of Work, an amount equal to 200 percent (200%) of the value of each item, as determined by the Architect, shall be withheld until such item or items are completed. The retainage shall be shared by the Contractor and Subcontractors as their interests may appear. At the discretion of the Owner, and with the approval of the Contractor, the retainage of any Subcontractor may be released separately as the Subcontractor completes its work. The rights of the Owner set forth herein to retainage are in addition to all the other rights and remedies of the Owner set forth in this Contract. Notwithstanding any other provisions herein, the Contractor shall not request, nor shall it be entitled to receive, any reduction in retainage, or any cessation in the withholding of retainage, so long as any Work has been rejected by the Architect and such Work has not been corrected or otherwise performed in accordance with all requirements of the Contract Documents.

5.2.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further 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.

5.2.4 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 and shall furnish proof of such payment to the Owner and Architect. The Contractor shall also procure and furnish to the Owner and Architect such affidavits of payment, proofs of payment, and lien waivers from Subcontractors, suppliers, laborers and materialmen as the Owner or Architect may require.

5.2.5 The submission of any Application for Payment by the Contractor to the Architect shall constitute a representation by the Contractor to both the Architect and the Owner that such Application includes any and all sums due the Contractor as of the date of such Application. Payment by the Owner to the Contractor of any sums certified by the Architect pursuant to an Application for Payment shall constitute full and complete payment to the Contractor, save and except for any unpaid retainage, of all sums due the Contractor from the Owner as of the date of such Application.

5.2.6 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 strict accordance with this Contract.

5.3 Withheld Payment

5.3.1 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) Work rejected by the Architect or other defective Work not remedied by the Contractor or, in the opinion of the Owner, not likely to be remedied by the Contractor;
- (b) Work which requires further testing or inspection to verify that it has been installed in accordance with the requirements of the Contract Documents;
- (c) Claims of third parties against the Owner or the Owner's property;
- (d) Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (e) Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (f) Evidence that the Work will not be completed within the time required for Substantial Completion or Final Completion;

(g) Persistent failure to carry out the Work in accordance with the Contract;

(h) Damage to the Owner or a third party to whom the Owner is, or may be, liable.

5.3.2 If the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Section 5.3, the Contractor shall promptly comply with such demand within 10 days.

5.4 Unexcused Failure to Pay

5.4.1 If the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor within forty-five (45) days after the date established for payment, then the Contractor may after seven (7) additional days' written notice to the Owner and the Architect, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Any payment not made within forty-five (45) days after the date due shall bear interest at the rate of four percent (4%) per annum. No other interest shall be due Contractor.

5.5 Process For Substantial Completion

5.5.1 When the Contractor believes that the Work is Substantially Complete, the Contractor shall submit in writing to the Architect a list of items to be completed or corrected. When the Architect, on the basis of an inspection, determines that the Work is in fact Substantially Complete, the Architect will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion and shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance. The Contractor shall have **30 Days** after the date of Substantial Completion to complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

5.5.2 Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, and upon submission to the Owner of a complete set of record drawings illustrating the as-built condition of the Work (including the location of all utilities) along with all maintenance manuals and warranties required by the Contract Documents, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less two hundred percent (200%) of the reasonable cost as determined by the Owner and the Architect for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims. No further payments shall be made until Final Completion is achieved.

5.5.3 In the event the Contractor fails or refuses to complete the incomplete Work, or correct and bring into conformance the defective Work, or resolve any unsettled claims, the Owner, without limitation on any of its other rights or remedies, may complete the Work, remedy any defects in the Work, and resolve any unsettled claims relating to the

Work, and the Contractor shall be liable to the Owner's damages including the cost of same. If the Work is completed or corrected by employees of the Owner, the Contractor shall be liable for the reasonable value of the completion or correction based upon the reasonable commercial cost of such Work as if performed by an independent contractor. To the extent the amount due the Owner hereunder exceeds the retainage held by the Owner, the balance due shall be paid by the Contractor within ten (10) days after receipt of an invoice or demand for payment from the Owner.

5.5.4 With respect to any and all Work performed by the Contractor after Substantial Completion of the Project or after any occupancy of the Project, in whole or in part, by the Owner, absent prior written consent of the Owner, such Work shall not be performed (a) during normal operating hours of the Owner's activities at the Project; (b) during the installation of any fixtures, furniture, or equipment by the Owner, or (c) during any cleaning, waxing, or other work by the Owner. Furthermore, any such Work shall only be performed in accordance with a detailed schedule indicating the proposed nature and area where the Work will be performed, the specific date and time of the Work, and, the identity of each Subcontractor who will be performing any of the Work. SUCH WORK SHALL NOT COMMENCE UNLESS THE OWNER FIRST APPROVES THE PROPOSED SCHEDULE. All such Work shall be under the supervision of the Contractor, and the Contractor shall be, and shall remain, on the Project site during the performance of the Work. If any such Work requires or necessitates the presence of the Owner or the Architect, the Contractor shall be responsible for the cost thus incurred by the Owner or Architect. Each day the area where such Work is located, and any adjacent area impacted by the Work, shall be carefully cleaned by the Contractor and any construction debris shall be properly removed. All such areas shall be left by the Contractor in full operating condition.

5.5.5 Notwithstanding any other provision of this Contract, a condition precedent for Substantial Completion of the Project is the successful performance of an operational test on each of the following Project systems: the electrical system; the mechanical system; the fire alarm system; the lighting control system; the sound system; and the energy management system. Each such test shall be conducted in strict accordance with all requirements of the Specifications, and each such system must operate in full conformity with all requirements of said Specifications for not less than fifteen (15) consecutive calendar days prior to the date of Substantial Completion. Before the initiation of the operational test for each such system, and before the commencement of such operational testing period, Contractor shall first give the Owner and the Architect not less than three (3) days' prior written notice.

5.6 Final Completion and Final Payment

5.6.1 When the Contractor believes that all of the Work has reached Finally Completion and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect will promptly declare the Work to have reached "Final Completion" and will issue a final Certificate 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. All warranties and guarantees required by the Contract shall commence on the date of Final Completion of the Work. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of repeat final inspections, which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve Final Completion within the time fixed therefor by the Architect in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum of \$200.00 per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final 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 Final 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 cover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Final Completion, or any part thereof, 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. Notwithstanding any other provision of this Section, the Owner and the Contractor expressly agree that the liquidated damages set forth herein do not contemplate, nor do they cover, any Funding Delay Damages as identified in Section 5.6.1.2. Any such Funding Delay Damages shall be in addition to the liquidated damages allowed pursuant to this Section.

5.6.1.2 The Contractor recognizes and acknowledges that delay in achieving Substantial Completion, Final Completion, or final close-out of the Project could jeopardize the Owner's state or federal funding or other financial support for the Project. Among other things, any such delay could cause the forfeiture of unspent funds; the cost and expense of premature bond redemption; or other cost, expense, liability, loss, or damage arising out of or relating to the impairment of Project funding (any and all such potential losses and damages are referred to as "Funding Delay Damages"). The Contractor and the Owner furthermore expressly recognize, acknowledge, and agree that the liquidated damages established in Sections 3.1.2 and 5.6.1.1 do not contemplate or cover Funding Delay Damages, and that in the event any such Funding Delay Damages are suffered or sustained by the Owner as the result of any Project delays caused by the Contractor, or for which the Contractor is otherwise responsible under this Contract, the Owner shall be entitled to recover such Funding Delay Damages from the Contractor, and the Contractor shall be liable to the Owner for same. Nothing contained herein shall preclude the recovery by the Owner of the liquidated damages set forth elsewhere in this Contract.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect and Owner all documents required by the Contract, including but not limited

to its 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 Architect or the Owner; if Owner so elects in its sole discretion, consent of Surety, if any, to final payment; and all required warranties, maintenance and operation manuals, record and as-built drawings. 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. FULL AND COMPLETE COMPLIANCE WITH ALL TERMS AND CONDITIONS OF THIS SECTION IS A CONDITION PRECEDENT TO FINAL PAYMENT.

5.6.3 Subjection to the conditions precedent in Section 5.6.2, the Owner shall make final payment of all sums due the Contractor within thirty (30) days of the Architect's execution of a final Certificate for Payment.

5.6.4 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.

5.6.5 The Owner and the Contractor expressly agree that the terms of payment, payment periods, and rates of interest herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1 *et seq.*, and the provisions of said Act are herein waived.

ARTICLE 6. THE OWNER

6.1 Information, Services and Things Required from Owner

6.1.1 If the Contractor requests in writing, the Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible documentation in its possession concerning conditions below ground at the site of the Project. Such documentation is furnished to the Contractor only to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy in whole or in part, implicitly or explicitly, or at all, and shall have no liability therefor. The Owner shall also furnish surveys, legal limitations, utility locations (if known), and a legal description of the Project site. To the extent the Owner furnishes any information concerning utility locations, the Owner makes no representations or warranties concerning same and shall have no liability to Contractor in the event such information contains discrepancies or is otherwise inaccurate. Nothing contained herein shall limit the Contractor's duties and representations as set forth in Section 1.2.3 hereinabove.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor and those set forth in Section 7.2.2, the Owner shall obtain all approvals, easements, and the like

required for construction and shall pay for necessary assessments and charges required for construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

6.2 Right to Stop Work

6.2.1 In the event of an emergency threatening injury to person or property, 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 comply with such order.

6.3 Owner's Right to Perform Work

6.3.1 If the Contractor has installed defective or deficient Work which is not in conformity with the requirements of the Contract Documents, or if the Contractor fails or refuses to perform any portion of the Work, 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, the Contract Price shall be reduced by the cost of performing the subject Work, plus compensation for the Architect's additional services and expenses necessitated thereby, if any. If such Work is performed by employees of the Owner, the Contract Price reduction shall reflect the reasonable value of such Work based upon the reasonable commercial cost of such Work as if performed by an independent contractor. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner within ten (10) days of receipt of demand from the Owner.

ARTICLE 7. THE CONTRACTOR

7.1 Contractor's General Duties.

7.1.1 The Contractor shall comply with the requirements of Sections 1.2.2 and 1.2.3. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data, or Samples for such portion of the Work. If the Contractor performs any of the Work for which it knows or should have known the Contract Documents contain an error, inconsistency, or omission without notice to the Architect, then the Contractor shall be responsible for such performance and shall pay the cost of correction.

7.1.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.1.3 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, its Subcontractors, and others engaged in the Work on behalf of the Contractor.

7.2 Warranty

7.2.1 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 for a period of one (1) year after Final Completion of the Work. All Work not conforming to these requirements may be considered defective.

7.2.2 The Contractor shall obtain and pay for all permits, inspections, 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 notices required by applicable law, ordinance, or regulation pertaining to the Work. The duties and obligations of the Contractor arising hereunder include but are not limited to the full and strict compliance of the Contractor with all rules, regulations and legal mandates of the United States Department of Labor; the United States Immigration and Naturalization Service; the Georgia Department of Labor; the United States Department of Environmental Protection; and the Georgia Environmental Protection Division of the Department of Natural Resources. The Contractor shall furthermore comply with any and all applicable federal, state and local tax laws, unemployment compensation acts, and workers' compensation acts, and upon request of the Owner to the Contractor shall furnish written proof of such compliance. The Contractor shall defend, indemnify and hold the Owner harmless from any and all fines or citations issued against Owner, or any other damages, arising out of, or relating to, any violations by the Contractor of any law, rule, regulation or ordinance of any governmental authority. This duty of indemnification specifically includes, but is not limited to, the duty to indemnify and hold the Owner harmless from any and all attorneys' fees, court costs, expert witness fees, and other expenses arising out of any such fine or citation or otherwise resulting from any such violation by the Contractor.

7.3 Supervision

7.3.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Any supervisory or other personnel reasonably objectionable to the Owner shall be removed from the Project. 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 or the Architect. The Contractor shall attend any job site or other Project meetings as may be requested by the Owner or the Architect and shall have available in person such management personnel at any such meetings as the Owner or the Architect may require.

7.3.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

Name	Function
Project Manager	Andrew Doster
Superintendent	Luke Mackenzie

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All supervisory personnel are subject to approval by the Owner. So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Section as though such individuals had been listed above. Within ten (10) days after commencement of the Work, the Contractor shall furnish the Owner and the Architect with the current home and office address of each of the individuals listed above along with their home, office, mobile, pager, and facsimile telephone numbers and with their respective email addresses. Any change in such information shall be immediately furnished in writing to the Owner and the Architect.

7.4 Schedules

7.4.1 The Contractor, within ten (10) days of commencing the Work, shall submit to the Owner and the Architect for their information the Contractor's schedule for completing the Work. Said schedule shall be based on the required dates for Substantial Completion and Final Completion and shall include any milestone dates set forth in the Contract Documents. Additionally, within ten (10) days of commencing the Work, the Contractor shall submit to the Owner and the Architect a separate shop drawing and submittal schedule detailing the schedule for the submission to the Architect of all shop drawings, submittals, product data and other similar documents. Each of the schedules required herein shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time-to-time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Architect. The schedules and all revisions shall be in such form, and shall contain such detail, as the Owner or the Architect may require. THE PARTIES SPECIFICALLY AGREE THAT ANY FLOAT CONTAINED IN THE SCHEDULES SHALL BELONG TO THE PROJECT AND IN NO EVENT SHALL THE CONTRACTOR MAKE CLAIM FOR ANY ALLEGED DELAY, ACCELERATION, OR EARLY COMPLETION SO LONG AS THE PROJECT IS COMPLETED WITHIN THE CONTRACT TIME. Strict compliance with the requirements of this Section is a condition precedent for payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

7.4.2 In addition to the schedules and revisions required in Section 7.4.1, with the submission of each Application for Payment, the Contractor shall submit a 30-day look-ahead schedule setting forth in detail the Work to be performed during the next 30 days and shall also submit a 30-day look-back schedule setting forth in detail the Work actually performed during the preceding 30 days, as compared to the Work scheduled during such period. The look-ahead and look-back schedules shall be in such form as the Owner may require, and the timely receipt of such schedules shall be a condition precedent to the Owner's duty to make payment to the Contractor.

7.4.3 Without limitation on any other rights or remedies of the Owner in the event Contractor fails or refuses to progress the Work, or any portion thereof, in accordance with the requirements of the Project schedule, the Owner or Architect may order or direct the Contractor to take one or more of the following actions:

- (a) Increase the labor force of Contractor and its Subcontractors;
- (b) Implement overtime operations;
- (c) Increase the number or duration of shifts;
- (d) Supplement its Project management;
- (e) Furnish additional equipment to its forces;
- (f) Accelerate delivery of material and supplies; or
- (g) Take such other action as the Owner reasonably believes necessary to increase the rate of progress.

7.4.4 The Contractor shall proceed with any action ordered or directed by Owner or Architect under Section 7.4.3 within forty-eight (48) hours of receipt of such order or direction. UNDER NO CIRCUMSTANCES SHALL CONTRACTOR MAKE CLAIM FOR, OR BE ENTITLED TO RECOVER, ANY COST, EXPENSE, LOSS OR DAMAGE ARISING OUT OF, OR RELATING TO, ANY SUCH ORDER OR DIRECTION OF OWNER OR ARCHITECT OR ANY ACTION TAKEN IN RESPONSE THERETO.

7.5 Shop Drawings, Product Data and Samples

7.5.1 Shop Drawings, Product Data, Samples, and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.5.2 In no event shall the Contractor submit any Shop Drawings, Product Data, or Sample which is not in conformity with the requirements of the Contract Documents, and the Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data, or Samples unless and until same shall have been approved by the Architect. Approval by the Architect, however, shall not be evidence that the Shop Drawings, Product Data, or Sample, or Work installed pursuant thereto, conforms to the requirements of this Contract.

7.5.3 The Contractor shall continuously maintain at the site, for the benefit of the Owner and the Architect, one record copy of this Contract marked to record on a current basis changes, selections, and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and Architect the approved Shop Drawings, Product Data, Samples, and other similar required submittals. Upon Final Completion of the Work, all of these record documents shall be delivered to the Owner.

7.6 Cleaning the Site and the Project

7.6.1 The Contractor shall keep the site reasonably clean to the satisfaction of the Owner and Architect 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 therefrom.

7.7 Access to Work

7.7.1 The Owner and the Architect 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 The Contractor shall be responsible from the time of signing the Contract, or from the time of commencement of the Work, whichever shall first occur, for all injury or damage of any kind resulting from the Work to persons or property, including employees and property of the Owner. The Contractor shall indemnify, defend and hold harmless the Owner from and against all claims or actions, whether actual or threatened, and all attorney fees and cost of defense thereof, arising out of or relating to damage or injury (including death) to persons or property caused by or sustained in connection with the performance of this Contract or by conditions created thereby, arising out of or any way connected with the Work performed under this Contract or any act or omission of the Contractor, any Subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them. At the option of the Owner, the Contractor expressly agrees to defend against any claims or actions indemnified by this Section, whether such claims or actions are rightfully or wrongfully brought or filed. In such event, legal counsel provided by the Contractor shall be subject to the Owner's approval.

7.8.2 To the extent the Owner suffers or sustains any fines, penalties, or assessments as the result of any act or omission of the Contractor, the Contractor shall indemnify and hold harmless the Owner from same and the Contractor shall reimburse the Owner for any and all legal cost and expense, including attorneys' fees, incurred in connection with any such fines, penalties or assessments.

7.8.3 In claims against any person or entity indemnified under this Section 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 Section 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.

7.8.4 Nothing in this Section 7.8 shall require the Contractor to indemnify the Owner in the circumstances described in O.C.G.A. §§ 13-8-2(b) or (c).

7.9 Means, Methods, Techniques, Sequences, Procedures and Safety

7.9.1 The Contractor is fully responsible for, and shall have control over, all construction means, methods, techniques, sequences, procedures and safety, and shall coordinate all portions of the work required by the Contract Documents. Nothing contained herein, however, shall in any manner whatsoever relieve, release or discharge the Architect from any of its duties, responsibilities, obligations, or liabilities as set forth in its contract with the Owner, or as provided by law.

7.10 Separate Contracts

7.10.1 The Owner reserves the right to perform work on the premises with its own forces or by the use of other contractors. In such event, the Contractor shall fully cooperate with the Owner and such other contractors and shall coordinate, schedule and manage its work so as not to hinder, delay or otherwise interfere with the separate work of the Owner or other contractors.

7.11 Notice of Commencement

7.11.1 The Contractor shall file a NOTICE OF COMMENCEMENT with the Clerk of the Superior Court of Whitfield County, Georgia no later than fifteen (15) days after the Contractor physically commences work on the site. The Contractor shall furnish a copy of the NOTICE OF COMMENCEMENT to the Architect and to anyone else making a written request.

The NOTICE OF COMMENCEMENT shall contain the following information:

- (a) The name, address, and telephone number of the Contractor.
- (b) The name and location of the project being constructed and the legal description of the property upon which the improvements are being made.
- (c) The name and address of the true owner.
- (d) The name and address of the surety for the performance and payment bonds.
- (e) Any other requirements called for in the Official Code of Georgia Annotated - Sections 36-91-72 and 44-14-361.5.

7.12 Compliance with Federal and State Immigration Laws

7.12.1 The Contractor shall register and participate in the electronic verification (“E-Verify”) of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security.

7.12.2 The Contractor shall verify that all new employees of the Contractor are in compliance with the Immigration Reform and Control Act of 1986, as required by state law, as codified at O.C.G.A. § 13-10-91, *et seq.* The Contractor shall provide the Owner

with all required affidavits verifying compliance with such applicable state and federal laws, including affidavits from Subcontractors and other performing the Work.

7.12.3 The Contractor agrees that, should it employ or contract with any Subcontractor(s) in connection with the physical performance of services pursuant to this Contract with the Owner, the Contractor will secure from such Subcontractor(s) an executed affidavit verifying the Subcontractor(s)'s compliance with O.C.G.A. § 13-10-91. The Contractor further agrees to maintain records of compliance by said Subcontractor(s) and their Tiers and provide a copy of each such verification to the Owner at the time the Subcontractor(s) is retained to perform such service.

7.12.4 The Contractor agrees to provide records, in a Excel Format, to the Owner providing the following information:

(a) Contractor Legal Name

(b) Contractor Address

(c) Contractor Federal work authorization program user number (E-Verify Number)

(d) Date of Contract between contractor and public employer.

7.12.5 The contractor also agrees to provide records for Subcontractors and Tiers in the same format and requiring the same information. This information is to be provided which requested by Owner.

ARTICLE 8. CONTRACT ADMINISTRATION

8.1 The Architect

8.1.1 The Architect for this project is KRH Architects Inc. In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement Architect and the status of the replacement Architect shall be that of the former Architect.

8.2 Architect's Administration

8.2.1 The Architect shall be authorized to act on behalf of the Owner only to the extent provided in this Contract.

8.2.2 The Owner and the Contractor shall communicate with each other in the first instance through the Architect.

8.2.3 The Architect shall be the initial interpreter of the requirements of the Drawings and Specifications and the judge of the performance thereunder by the Contractor. The Owner shall cause the Architect to render written or graphic interpretations necessary for

the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Owner shall cause the Architect to review the Contractor's Applications for Payment and certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Architect shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Architect deems it necessary or advisable, the Architect shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Owner shall cause the Architect to review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents. The Owner shall cause the Architect's action to be taken with such reasonable promptness as to cause no delay in the work or in the activities of the Owner, Contractor, or separate Contractor while allowing sufficient time in the Architect's professional judgment to permit adequate review.

8.2.7 The Owner shall cause the Architect to prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Owner shall cause the Architect, upon written request from the Contractor, to conduct inspections to determine the date of Substantial Completion and the date of Final Completion, to receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and to issue a final Certificate for Payment upon compliance with the requirements of this Contract. Written requests for interpretation (RFIs) required of the Architect received after noon on the last working day of the Architect's work week shall be acknowledged as received on the Architect's following normal working day.

8.2.9 The Architect's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.2.10 The Architect shall have the discretion and authority to specify the time within which the Contractor must correct or cure any defect or deficiency, or nonconformance with this Contract.

8.2.11 The Contractor shall make no claim for an extension of the Contract Time or for additional compensation arising out of or relating to any alleged failure by the Architect to timely take any action or render any decision unless and until the Contractor has first provided ten (10) days prior written notice to the Architect identifying therein the specific action or decision which the Contractor contends is necessary to avoid delay, or further delay, to the Project. In the event the Architect takes the requested action, or renders the requested decision, within ten (10) days of the receipt of such notice, no claim for an extension of the Contract Time or for additional compensation arising out of, or relating

to, such action or decision shall be made by the Contractor and any such claim is expressly waived.

8.2.12 THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS CONTRACT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION, OR RESPONSIBILITY OF THE ARCHITECT. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BY AND BETWEEN THE OWNER AND THE ARCHITECT. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE ARCHITECT TO THE OWNER.

8.3 Claims by the Contractor

8.3.1 All claims by Contractor shall be initiated by written notice and claim to the Owner and the Architect. The notice and claim shall be in such form as required by the Owner and same shall be signed by an officer of the Contractor under oath and under penalty of perjury. At a minimum, such notice and claim shall identify and describe the nature, scope, and location of the circumstance or condition giving rise to the claim; all items of Work impacted by the claim and an explanation of how the claim impacts such items of Work; applicable provisions of the Contract Documents; an estimate of any costs incurred and to be incurred as a result of the claim; and an estimate of any delays to the critical path of the Work resulting from the claim. 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. THE FAILURE BY THE CONTRACTOR TO PROVIDE THE WRITTEN NOTICE AND CLAIM AS PROVIDED IN THIS SECTION SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY SUCH CLAIM AGAINST THE OWNER.

8.3.2 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 Section 8.3 shall be reflected by a Change Order executed by the Owner, the Architect, and the Contractor.

8.3.3 Claims for Concealed and Unknown Conditions. If Contractor encounters (i) concealed and unknown conditions in the performance of the Work below the surface of the ground or in an existing structure at variance with the conditions indicated by this Contract, or (ii) unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, then the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) 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 and the Architect written notice of, and an opportunity to observe, the condition prior to disturbing it. THE FAILURE BY THE CONTRACTOR TO PROVIDE THE WRITTEN NOTICE AND CLAIM AS PROVIDED IN THIS SECTION SHALL

CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY CLAIM ARISING OUT OF OR RELATING TO SUCH CONCEALED OR UNKNOWN CONDITION.

8.3.4 Claims for Additional Costs. If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefor, the Contractor shall give the Architect written notice of such claim within seven (7) 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 PROVIDE SUCH NOTICE AND TO GIVE SUCH NOTICE PRIOR TO EXECUTING THE WORK SHALL CONSTITUTE A WAIVER OF ANY CLAIM FOR ADDITIONAL COMPENSATION.

8.3.4.1 Limitations on Liability. In connection with any claim by the Contractor against the Owner, any liability of the Owner 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. Furthermore, in no event shall the Owner be liable to the Contractor for any claim for home-office overhead, loss of efficiency or productivity, loss of use of capital, loss of bonding capacity, or loss of business opportunity. Furthermore, the Owner shall have no liability for any claim for acceleration or compression of the schedule. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors. The Contractor shall not serve as a conduit for the claims of Subcontractors against the Owner, and any provision in any contract between the Contractor and any Subcontractor pursuant to which the Contractor is obligated to present to the Owner any claim of any Subcontractor shall be invalid.

8.3.5 Claims for Additional Time. If the Contractor is delayed in progressing any task which at the time of the 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 in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Architect for such reasonable time as the Architect may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) 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. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary, provided such notice expressly states the Contractor expects the delay to be continuing and states the basis for such expectation. IF THE CONTRACTOR FAILS TO MAKE SUCH CLAIM AS REQUIRED IN THIS SECTION, ANY CLAIM FOR AN EXTENSION OF TIME SHALL BE WAIVED.

8.3.6 Extension of Contract Time for Unusually Adverse Weather Conditions Not Reasonably Anticipated

8.3.6.1 Pursuant to the provisions of Section 8.3.5, the Contract Time may be extended upon written notice and claim of the Contractor to the Owner and the Architect as set forth in such Section and as further set forth herein. It is, however, expressly agreed that the time for completion as stated in the Contract Documents includes due allowance for calendar days on which work cannot be performed out-of-doors. For purposes of this Contract, and for purposes of extensions of Contract Time, the Contractor agrees that it anticipates adverse weather sufficient to prevent work in accordance with the schedule set forth below, and the Contractor further agrees that unless it encounters actual adverse weather in excess of those days set forth below, it shall not make, nor shall it be entitled to, any extension of the Contract Time:

<u>Month</u>	<u>Days</u>	<u>Month</u>	<u>Days</u>	<u>Month</u>	<u>Days</u>
January	12	May	8	September	7
February	10	June	8	October	9
March	9	July	11	November	9
April	8	August	9	December	10

8.3.6.1 Furthermore, in addition to the notice requirements set forth in the aforesaid Section 8.3.5, the Contractor agrees that it shall provide written notice to the Owner and the Architect on the day of any adverse weather not anticipated and for which a request for a time extension has been, or will be, made. Said notice shall state with particularity a description of the adverse weather as well as a description of the nature and extent of any delay caused by such weather. Receipt of this notice by the Owner and the Architect is a condition precedent to the submission of any claim for an extension of time as provided by Section 8.3.5. Furthermore, as required by Section 8.3.5, the Contractor shall submit a written claim for extension of time within seven (7) days after the occurrence of the adverse weather and such claim shall be supported by such documentation including, but not limited to, official weather reports, as the Owner or the Architect may require. To the extent that any of the terms and conditions set forth in Section 8.3.6 are in conflict with any of the terms and conditions of Section 8.3.5, the terms and conditions of Section 8.3.6 shall govern and control. THE FAILURE BY THE CONTRACTOR TO COMPLY WITH ALL REQUIREMENTS OF SECTION 8.3.6 SHALL PRECLUDE ANY EXTENSION OF THE CONTRACT TIME FOR ADVERSE WEATHER.

8.3.6.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, THE PARTIES SPECIFICALLY AGREE THAT ANY AND ALL WEATHER DELAYS SHALL BE NONCOMPENSABLE AND THE SOLE AND EXCLUSIVE REMEDY OF THE CONTRACTOR IN THE EVENT OF ANY SUCH DELAY IS AN EXTENSION OF THE CONTRACT TIME AS PROVIDED IN THIS SECTION 8.3.6.

8.3.7 Legal Action by the Contractor: As a condition precedent to the filing of any legal action by the Contractor against the Owner arising out of or relating to this Contract, the Contractor shall first provide the Owner thirty (30) days prior written notice of its intent to file such action. Such notice shall include an identification of the anticipated parties to said action and a description of all anticipated claims and causes of action to be asserted

in said action. Any legal action under this Contract filed by either the Contractor or the Owner shall be filed in the Superior Court of Whitfield County, Georgia, and said Court shall be the exclusive venue for any such action. The Contractor expressly agrees that it shall be subject to the jurisdiction and venue of said Court for any such action.

**ARTICLE 9.
SUBCONTRACTORS**

9.1 Definition

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work.

9.2 Award of Subcontracts

9.2.1 The Contractor shall employ and utilize the following designated Subcontractors for the elements of the work identified. In no event may the Contractor substitute Subcontractors identified herein after the execution hereof for convenience. Any substitution of Subcontractors must be for cause reasonably demonstrated to the Owner’s satisfaction:

Subcontractor	Work
ACT Global	Turf Supplier / Installer
Southern States Grading	Grading and sitework

9.2.2 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as Subcontractors on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to any of the proposed Subcontractors. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

9.2.3 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Section 12.2.1 below.

9.3 Verification of Subcontractor Payments

9.3.1 The Owner may in its discretion verify with any Subcontractor the status of payments received or due from the Contractor. Nothing contained herein shall in any manner limit or restrict any other right of the Owner to communicate with a Subcontractor.

ARTICLE 10. CHANGES IN THE WORK

10.1 Changes Permitted

10.1.1 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 or by Field Order.

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

10.2 Change Order Defined

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Architect, 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, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.

10.3 Changes in the Contract Price

10.3.1 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 Section 10.3.2.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Section 10.3.1, the change in the Contract Price, if any, shall then be determined by the Architect on the basis of the reasonable expenditures or savings of those 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 or the Architect requires an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In the event the Contractor performs the Work required by Change Order with its own forces, and not the forces of a Subcontractor, the overhead and profit due the

Contractor for such work shall be twenty (20) percent. In the event the Change Order Work is performed by one or more Subcontractors, the Contractor's overhead and profit shall be seven and one-half (7- ½) percent. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Architect's Certificate for Payment.

10.3.3 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, the applicable unit prices shall be equitably adjusted.

10.4 Effect of Executed Change Order

10.4.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.5 Notice to Surety; Consent

10.5.1 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 or 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 11. UNCOVERING AND CORRECTING WORK

11.1 Uncovering Work

11.1.1 If any of the Work is covered contrary to the Architect's request or to any provisions of this Contract, it shall, if required by the Architect or the Owner, be uncovered for the Architect's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered not in contradiction to the Architect's request or to any provisions of this Contract, nonetheless, it shall, if required by the Architect or Owner, be uncovered for the Architect's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 Correcting Work

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Architect as defective or failing to conform to this Contract. All such rejected Work shall be corrected in sufficient time so as not to delay either Substantial Completion or Final Completion of the Project, and in any event such rejected Work shall be corrected within thirty (30) days after issuance of any written rejection notice by the Architect. In the event the Work is not fully corrected within three (3) days from the date of said rejection notice, the Contractor shall submit to the Owner and the Architect, within seven (7) days of said notice, a detailed written plan of remediation in such form, and in such detail, as the Owner may require. At a minimum, such plan of remediation shall include an identification and location of the Work to be remediated; a detailed description of the process and procedure proposed for the remediation; the name of each Subcontractor involved in performing any of the remediation Work; the proposed schedule for the remediation including start date, hours of operation, and finish date; and, the name of each individual responsible for the management of such Work. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Architect's services and expenses made necessary thereby.

11.2.2 If within one (1) year after Final Completion of the Work, any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one-year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Section shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one-year time period in Section 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 Owner May Accept Defective or Nonconforming Work

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so, but only if such acceptance is in writing and executed by Owner. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE 12.

CONTRACT TERMINATION

12.1 Termination by the Contractor

12.1.1 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 (other than Owner), 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 and the Architect, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Section 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 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, the Contractor may terminate performance under this Contract by written notice to the Architect and 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 Section 12.2.1 hereunder.

12.2 Termination by the Owner

12.2.1 For Convenience

12.2.1.1 The Owner may for any reason whatsoever, or for no reason, 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.

12.2.1.2 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.

12.2.1.3 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.

12.2.1.4 Within sixty (60) days after its termination for convenience, the Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect. The claim shall be signed by an officer of the Contractor under oath and under penalty of perjury. **IF THE CONTRACTOR FAILS TO FILE A COMPLETE AND PROPER TERMINATION CLAIM WITHIN THE TIME REQUIRED HEREIN ANY**

CLAIM FOR TERMINATION SHALL BE DEEMED WAIVED AND NO FURTHER SUMS SHALL BE DUE THE CONTRACTOR.

12.2.1.5 The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

12.2.1.6 Absent agreement to the amount due to the Contractor, and provided Contractor has submitted its claim in accordance with the requirements set forth hereinabove, the Owner shall pay the Contractor the following amounts:

- (a) Contract prices for labor, materials, equipment and other services accepted under this Contract;
- (b) 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;
- (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Section 12.2.1.2. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Section 12.2.1 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.

12.2.2 For Cause

12.2.2.1 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 if 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.

12.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, including compensation for the Architect's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the

unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Section 12.2.2 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 Section 12.2.1 and the provisions of Section 12.2.1 shall apply.

ARTICLE 13. OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

13.1 The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to sixty (60) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same.

13.2 In the event the Owner directs a suspension of performance under this ARTICLE 13, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- (a) demobilization and remobilization, including such costs paid to Subcontractors;
- (b) preserving and protecting work in place;
- (c) storage of materials or equipment purchased for the Project, including insurance thereon;
- (d) performing in a later, or during a longer, time frame than that contemplated by this Contract.

ARTICLE 14. INSURANCE

The Contractor shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Owner.

14.1 Policies and Coverage

14.1.1 The Contractor shall obtain and maintain for the term of the Contract the following policies and coverage:

- (a) Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury,

property damage, and contractual liability. The aggregate limit shall apply separately to the Project.

- (b) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
- (c) Worker's Compensation including Employers Liability Insurance
- (d) Except as otherwise provided in Section 14.1.2, Course of Construction Insurance covering all risk of loss, maintained at one hundred percent of the completed value based on the insurable portion of the work, including materials at the project site, stored off the project site, and in transit.
- (e) Any other insurance as required by law.

14.1.2 Within ten (10) calendar days after the effective date hereof, the Contractor shall provide the Owner a quote for Course of Construction Insurance required hereunder. Thereafter, Owner shall have the right, but not the obligation, to procure its own insurance covering the same or similar risks. If Owner so elects, it will notify the Contractor in writing of its decision, the Contractor shall not be required to procure such insurance hereunder, and the parties will execute a deductive Change Order for the amount of Contractor's quote for such insurance.

14.1.3 The Contractor shall obtain the following policies and coverage should the work involve hazardous materials: Environmental Impairment Liability Insurance

14.2 Verification of Coverage

14.2.1 The Contractor shall submit certificates of insurance and separate letters of endorsements to the policies of insurance required by the Contract to the Owner as evidence of the insurance coverage, naming the Owner's officers, directors, employees, agents, volunteers and assigns as additional insured.

14.2.1.1 The scope of coverage and deductible shall be shown on the certificate of insurance. The certificates of insurance and endorsements shall provide for no cancellation or modification of coverage without thirty days written notice to the Owner. Renewal certifications and endorsements shall be timely filed by the Contractor for all coverage until the work is accepted as complete. The Owner's review of any certificate of insurance shall not relieve the Contractor of its obligation to procure the insurance required hereunder. The Owner reserves the right to require the Contractor to furnish complete, certified copies of all required insurance policies.

14.3 Waiver of Subrogation

14.3.1 The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors, Sub-Subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors provided by the Owner, if any, and any of their Subcontractors, Sub-Subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Article, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors provided herein, if any, and the Subcontractors, Sub-Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policy shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

14.4 Insurance Provisions

14.4.1 The insurance policies shall contain, or be endorsed to contain, the following provisions:

- (a) For the general and automobile liability policies, the Owner, its officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.
- (b) For any claims related to the Work, the Contractor's insurance coverage shall be primary insurance as respects to the Owner, its officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the Owner, its officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.
- (c) Each insurance policy required by this Article shall state that coverage shall not be canceled by either the Contractor or the insurance carrier, except after thirty days prior written notice by certified mail, return receipt requested, has been given to the Owner.
- (d) The Owner, its officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- (e) Course of construction coverage shall contain the following provisions:

- 1 The Owner shall be named as loss payee;

- 2 The insurer shall waive all rights of subrogation against the Owner; and
- 3 If required in writing by a party in interest, the Contactor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

14.4.2 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

14.5 Amount of Insurance

14.5.1 For all projects, other than those involving hazardous materials, the insurance furnished by the Contractor under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions.

- (a) Comprehensive or Commercial form General Liability Insurance - Limits of Liability
 - (i) \$2,000,000.00 General Aggregate
 - (ii) \$1,000,000.00 Each Occurrence - combined single limit for bodily injury and property damage.
- (b) Business Automobile Liability Insurance - Limits of Liability
 - (i) \$1,000,000.00 Each Accident- combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.
- (c) Workers' Compensation limits as required by law with Employers Liability limits of \$1,000,000.00.
- (d) Course of Construction Insurance - 100% of the completed value of the work

14.5.2 For projects involving hazardous materials, only the Contractor and its hazardous materials Subcontractors shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:

(a) Comprehensive or Commercial form General Liability Insurance - Limits of Liability

(i) \$10,000,000.00 General Aggregate

(ii) \$5,000,000.00 Each Occurrence - combined single limit for bodily injury and property damage.

(b) Business Automobile Liability Insurance - Limits of Liability

(i) \$1,000,000.00 Each Accident- combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.

(c) Hazardous material transporter services must also have:

(i) MCS-90 endorsement

(ii) Sudden & Accidental Pollution endorsement-Limits of Liability*

1 \$2,000,000.00 Each Occurrence

2 \$2,000,000.00 General Aggregate

*A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

(d) Workers' Compensation limits as required by law with employers Liability limits of \$1,000,000.00.

(e) Course of Construction Insurance-100% of the completed value of the work

(f) Environmental Impairment (pollution) Liability Insurance - Limits of Liability:

(i) \$10,000,000.00 General Aggregate

(ii) \$5,000,000.00 Each Occurrence-combined single limit for bodily injury and property damage, including clean-up costs.

14.6 Acceptability of Insurers

14.6.1 Insurers shall be licensed by the State of Georgia to transact insurance and shall hold a current A.M. Best's rating of A:VII; or shall be a carrier otherwise acceptable to the Owner.

14.7 Subcontractor's Insurance

14.7.1 The Contractor shall ensure that its Subcontractors are covered by insurance of the type and the amounts required by this Article. Contractor shall not allow any Subcontractor to commence work on its subcontract until the insurance has been obtained.

14.8 Miscellaneous

14.8.1 Any deductible under any policy of insurance required in this Article shall be Contractor's liability.

14.8.2 Acceptance of certificates of insurance by the Owner shall not limit the Contractor's liability under the Contract.

14.8.3 In the event the Contractor does not comply with these insurance requirements, the Owner may, at its option, provide insurance coverage to protect the Owner. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Contractor.

14.8.4 If the Owner is damaged by the failure of the Contractor to provide or maintain the required insurance, the Contractor shall pay the Owner for all such damages.

14.8.5 The Contractor's obligations to obtain and maintain all required insurance are not delegable duties under this Contract.

ARTICLE 15. MISCELLANEOUS

15.1 Special Stipulations

15.1.1 Governing Law; Venue. The Contract shall be governed by the law of the State of Georgia. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive any and all objections or defenses thereto.

15.1.2 Independent Contractor. Each of the Contractor and Architect shall perform the services under this Contract as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall be interpreted or construed to constitute Contractor or Architect or any of their respective agents or employees to be the agent, employee, or representative of Owner.

15.2 Conflicts of Interest

15.2.1 The Contractor certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest in performing the services required by this Contract, that no employee of Owner, nor any member thereof, nor any public agency or official

affected by this Contract, has any pecuniary interest in the business of the Contractor or its Subcontractors and that no person associated with the Contractor or its Subcontractors has any interest that would conflict in any manner or degree with the performance of this Contract.

15.2.2 Should Contractor become aware of any circumstances which may cause a conflict of interest during the term of this Contract, Contractor shall immediately notify Owner. If Owner determines that a conflict of interest exists, Owner may require that Contractor take action to remedy the conflict of interest or terminate the Contract without liability. Owner shall have the right to recover any fees paid for services rendered by Contractor which were performed while a conflict of interest existed if Contractor had knowledge of the conflict of interest and did not notify Owner within one week of becoming aware of the existence of the conflict of interest.

15.2.3 Contractor warrants that Contractor and Contractor's Subcontractors have not employed or retained any company or person other than a bona fide employee, working solely for Contractor or its Subcontractor(s) to solicit or secure this Contract and that Contractor and Contractor's Subcontractor(s) have not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for Contractor or its Subcontractor(s) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of this Contract. For any breach or violation of this provision, Owner shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the price, or otherwise recover, the full amount of such fee, commission, percentage, gift, payment or consideration.

15.2.4 Contractor shall include the terms and conditions of Section 15.2 in all Subcontractor agreements for work to be performed under this Contract.

15.2.5 Equal Employment Opportunity. During the performance of this Contract, Contractor agrees as follows: (i) Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin; (ii) Contractor will, in all solicitations or advertisements for employees placed by qualified applicants, receive consideration for employment without regard to race, creed, color, sex or national origin; (iii) Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Contract so that such provision will be binding upon each Subcontractor, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies of raw materials.

15.3 Successors and Assigns

15.3.1 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.

15.4 Surety Bonds

15.4.1 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. At the delivery of such bonds to the Owner, the Contractor shall also furnish in writing to the Owner the name, address, telephone number, email address, and facsimile number of the person employed by the surety to whom any claims, notices, requests, or other communications from the Owner are to be submitted. If requested by the Owner or the Architect, the Contractor shall procure and furnish to the Owner and Architect the written consent of surety to any proposed Change Order, contract payment or other contemplated action under this Contract. The Contractor shall provide a contact name, phone number and address at signing of this contract.

15.5 Entire Agreement

15.5.1 This Contract, together with the Contractor's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and the Contractor. No representations either oral or written not incorporated herein shall be binding on the parties. No amendment or modification of this Contract shall be enforceable unless same is in writing duly executed by the parties. In the event any term, condition, clause or provision of this Contract is held or determined to be invalid by any Court of competent jurisdiction, any and all remaining terms, conditions, clauses and provisions of the Contract shall remain in full force and effect.

15.6 No Privity with Others

15.6.1 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.

15.7 Intent and Interpretation

15.7.1 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.

15.7.2 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.

15.7.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

15.7.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

15.7.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

15.7.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

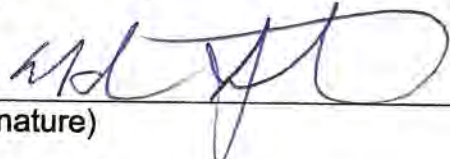
This Contract is executed under seal on the date set forth hereinbelow.

OWNER:
City of Dalton, GA

CONTRACTOR:
Sports Fields Inc.

(Typed Name)

By: _____
(Signature)

By: 
(Signature)

Annalee Sams – Mayor
300 W. Waugh Street
Dalton, GA 30720

Mark Stalnaker – President
3760 Sixes Road Suite 126-331
Canton, GA 30114

(Printed Name, Title and Address)

(Printed Name, Title and Address)

(Date of Execution)

APRIL 16, 2024

(Date of Execution)



SECTION 00060 - REQUESTS FOR BEST AND FINAL OFFERS

Date : 5/14/2024

Re: Baseball & Softball Turf In-fields for: Heritage Point Regional Park

Dear Sir/Madam:

In conformity with the Request for Proposals issued by the City of Dalton, Georgia, (“the City”) in connection with the above-referenced Project, you are invited to submit in writing your best and final offer for construction of the Project. Any such best and final offer must provide for construction of the Project in accordance with all requirements of the Contract Documents. Any such offer must be **received by the City via email until: 8:00 a.m. on the 16th day of May 2024. Please address your responses to the following email addresses:**

csharpe@daltonga.gov
rsissom@daltonga.gov
kharless@krharchitects.com

Any best and final offer submitted should set forth your proposed lump sum contract price as well as any applicable prices for unit price work and alternates as provided in the Contract Documents. In the event you propose any substitution of subcontractors from those previously identified in your Proposal, please identify such subcontractors.

In the event the Board receives no further response from your firm, it will consider your Proposal as previously submitted to be your best and final offer. The Board continues to reserve the right to reject any and all Proposals and to waive any technicalities or informalities. All Proposals, and any response to this request for a best and final offer, are subject to all requirements of the Request for Proposals, the Instruction to Proposers, and all other requirements of the Contract Documents, and the Board expressly reserves any and all rights relating thereto.

Should you have any questions concerning this matter, please contact csharpe@daltonga.gov and kharless@krharchitects.com.

Instructions:

Please complete the attached Proposal Form – Best and Final Offers and submit it to the City by the date and time shown above. The Contractor may adjust any proposed Lump Sum Cost, Alternate costs or included any additional Alternates or information at this time.

SECTION: 00080 PROPOSAL FORM

EXHIBIT / TAB “I”

NAME OF PROJECT: BASEBALL & SOFTBALL TURF INFIELDS FOR: HERITAGE POINT REGIONAL PARK

NAME OF CITY: THE CITY OF DALTON, GA

NAME OF PROPOSED CONTRACTOR: Sports Fields Inc
(The “Contractor”)

THE CITY OF DALTON (the “City”), pursuant to the provisions of O.C.G.A. § 36-91-1, *et. seq.*, herein seeks competitive Proposals from contractors for the construction of: “Baseball & Softball Turf Infields for: Heritage Point Regional Park”, located at 1275 Cross Plains Trail Dalton GA 30721 (the “Project”).

This Proposal is submitted in response to the City’s Request for Proposals dated 4/12/2024.

This Proposal is for the full and complete construction of the Project in conformity with all requirements of the Contract Documents. The submission of this Proposal constitutes a representation by the Contractor that it has carefully studied and examined all of the Contract Documents furnished by KRH Architects Inc. (the “Architect”) and such other information as may have been furnished by the City or the Architect including Addendum/Addenda No. 1, 2. Contractor further represents that it has no knowledge of any ambiguities, errors, omissions or other inaccuracies in any of the Contract Documents or other material furnished by the City or Architect in connection with the Project.

The Contractor submits herewith its duly executed affidavit in accordance with the applicable Federal work authorization program. Contractor acknowledges that upon execution of any contract with the City, said affidavit shall be deemed a public record to the extent provided by Georgia law.

The Contractor acknowledges that the Contract Documents specifically provide for the assessment of liquidated damages against Contractor in the event of unexcused delay in achieving Substantial Completion or Final Completion of any phase of the work. The liquidated damages to be assessed in the event of unexcused delay in achieving Substantial Completion are \$ 500.00 per calendar day. The liquidated damages to assessed in the event of unexecuted delay in achieving Final Completion of the Work are \$ 200.00 per calendar day. The terms and conditions of liquidated

damages provisions set for in the Contract Documents are herein incorporated by reference. The Contractor further acknowledges that the Contract Documents provide no incentive provisions for early Completion of the Work.

Attached hereto, and incorporated herein as part of this Proposal, the Contractor submits its qualifications and proposed Synthetic Turf System. The contractor acknowledges that the City may rely upon the truthfulness and accuracy of the responses set forth therein. In addition, Contractor has submitted herewith as part of this Proposal such documentation and information as Contractor deems appropriate to establish that it is a responsible and responsive Contractor and that its Proposal is the most advantageous to the City, taking into consideration the specific evaluation factors, listed in their order of relative importance, as set forth in the above-referenced Request for Proposals. Contractor acknowledges that the City may rely upon the truthfulness and accuracy of such documentation and information.

The Contractor proposes and agrees to commence actual construction (i.e, physical work) on site with adequate management, labor, materials and equipment within ten (10) days after receipt of Notice to Proceed and prosecute the Work diligently and faithfully to completion within the required Contract Time. Prior to commencing such Work, and prior to the issuance of the Notice to Proceed, Contractor shall furnish to the City duly executed Payment and Performance Bonds complying with all requirements of the Contract Documents along with Certificates of Insurance demonstrating that all required coverages are in place.

Contractor submits herewith its executed Bid Bond in accordance with the requirements of the City as set forth in the Instruction to Proposers.

Contractor herein acknowledges that this Proposal shall constitute an offer by Contractor to contract with the City for construction of the Project in conformity with all requirements of the Contract Documents for the lump sum contract price as set forth hereinabove. Said offer by Contractor is irrevocable and subject to acceptance by the City until the expiration of sixty (60) days following the date set forth in the Request for Proposals for receipt of Proposals by the City.

Continued

A. Lump Sum Proposal

The Contractor proposes to fully and completely construct the Project in conformity with all requirements of the Contract Documents and furnish all necessary labor, material and equipment for such construction, and, furthermore, to fully, completely, and strictly perform all obligations of the Contractor as set forth in the Contract Documents, for the following lump sum price.

Two Million Nine Hundred Eighty-Eight Thousand Nine Hundred and Eighty-Four dollars.
(\$ 2,988,984.00). (1% Bond is included in total price)

Included in the lump sum above is an Owner's Contingency of \$150,000 for additional work as directed by the Owner and Architect.

B. Subcontractors

1. List any major subcontractors for work not performed by the prime contractor.
 - a. Site Work and Grading Southern States Grading
 - b. Other (please specify) Turf Installer- ActGlobal
 - c. Other (please specify)

C. Alternates

1. Description: Include an alternate price to provide an annual deep cleaning maintenance program for each field as described in section 00020.
Add / Deduct (circle one) \$ 19,626.00
2. Description: Include an alternate price to install additional storm drainage as shown as ALT2 on sheets C1 & C1.1
Add \$36,580.00

Optional Contractor's Alternates - (attached a separate sheet if necessary)

3. Description:
Non-Thatch 1.5" 50oz DXF Turf w/ 60/40 Sand/Rubber Infill
Add / Deduct (circle one) \$ (22,224)

Request for Best and Final Offer

4. Description:

Non-Thatch 2" 50oz DXF Turf w/ 60/40 Sand/Rubber Infill

Add / **Deduct** (circle one) \$ (10,080)

5. Description:

20 Velcro Catcher and Batters Boxes, and 40 Pitchers Lanes

Add / Deduct (circle one) \$ 14,800

6. Description: 20 Velcro Inserts @ First,
Second and Third Base
Add: \$8,900

If there are any questions concerning this proposal, please contact:

Name Mark Stalnaker

Email mstalnaker@fields-inc.com

Phone 678-472-1323

CONTRACTOR: Sports Fields Inc

By: Mark Stalnaker

Title: President

Sworn and subscribed to before me this
 day of , 2024.

NOTARY PUBLIC

Commission Expiration:



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting
Meeting Date: 05-20-24
Agenda Item: Contract with DCC for Human Trafficking Training
Department: Administration
Requested By: Andrew Parker
Reviewed/Approved by City Attorney? Yes
Cost: \$22,356.54

Funding Source if Not in Budget

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

Dalton Convention Center Contract for Human Trafficking Training



Contract #: 16734

Salesperson: Ragan, Kelly

**LICENSE AGREEMENT
DALTON CONVENTION CENTER
FULL CONTRACT**

THIS LICENSE AGREEMENT (the "Agreement") made May 17, 2024, by and between the Dalton Convention Center, located in Dalton, Georgia ("Licensor"), having an office at 2211 Tony Ingle Parkway Dalton, GA 30720, and **City of Dalton** ("Licensee") having an address at **300 West Waugh Street, Dalton, Georgia, 30720**

WHEREAS, the Northwest Georgia Trade & Convention Center Authority ("Owner") owns the Center.

INTENDING TO BE LEGALLY BOUND, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

I. Specific Terms of License.

A. DESCRIPTION OF LICENSED SPACE AND PERIOD OF USE:

Date	In Time	Out Time	Function	Room	Setup
(Tuesday) 07/30/24	07:30 AM	05:00 PM	Move-In/Seminar	Banquet Hall I	Rounds of 10, Stage
(Wednesday) 07/31/24	07:30 AM	05:00 PM	Seminar	Banquet Hall I	Rounds of 10, Stage
(Thursday) 08/01/24	07:30 AM	06:00 PM	Seminar/Move-Out	Banquet Hall I	Rounds of 10, Stage

B. PURPOSE OF LICENSE: For the sole purpose of holding the **Human Trafficking Training**

C. EXPECTED ATTENDANCE: **180/day**

D. DEPOSIT: **Deposit Waived *see Section H***

E. LICENSE FEE: **\$2,343.30** See Section H plus reimbursement of Event expenses, per Section 5 of the General Terms and Conditions. Per Section 5, any food and beverage shall be provided at an additional cost, and is not included within the license fee.

F. FOOD MINIMUM: **\$15,000.00** (such amount is to be paid in addition to the License Fee and other fees set forth herein; does not include 20% service charge or sales tax.)

G. PAYMENT TERMS: The deposit shall be due according to the following schedule:

Payment Type	Payment Order	Due Date	Amount Due
Initial Deposit	1	Deposit Waived	N/A
Final Payment	2	Net 30 Days after Receipt of Final Invoice	\$22,356.54 + additional equipment and services ordered, service charge and sales tax.

The balance of the license fee, reimbursable expenses and food and beverage fees shall be paid prior to the Event, no later than ten (10) days prior to event move in.

H. SPECIAL CONDITIONS:

- Licensee will provide final floorplan by 07/20/24. Any modification requests to the floorplan by Licensee the day of Move-In and/or Event Day will incur additional labor charges. Any audio-visual equipment rentals added the day-of Move-In and/or Event Day will incur a 25% increase on the rental rate. Licensor does not guarantee the provision of audio-visual equipment requested during the days of Move-In and/or Event Day as it will depend on availability of the product based on other events in house.

Licensee Initial: _____

- Licensee's final menu selection is due three weeks prior to the event date and final numbers are due 10 days prior to the event date, 14 days for any specialty/customized menu options – *there will be a 25% surcharge/meal for each meal added after the 10-day due date.*
- Licensor is waiving the standard deposit (50% of the room rental) in lieu of a signed contract received by 05/27/24 – to coordinate with Licensee's city council meeting on 05/26/24.
- Licensee is a government organization; therefore, Licensee is tax-exempt and receiving the government discount on room rental. Licensor is also modifying the standard final balance due date (10 days prior to the move-in date) to "net 30 business days after receipt of final contract" for Licensee's event.
- No outside food or beverage is permitted. Any specialty items must be approved by Licensor's F&B Director. *If Licensee is found in violation of this policy, there will be an additional fee applied to the final balance due.*
- Any modifications to the "In Time" and "Out Time" listed in Section A of this agreement must be approved by Licensor no later than two-weeks prior to the move-in/event-start date – any overage may incur an additional charge of a minimum \$100/hour.
- Licensor has an "all or nothing" Audio Visual Equipment policy. If Licensee is utilizing an outside equipment company for their event, said company will not have access to Licensor's equipment, sound system, or A/V sound techs. Licensee will also ensure their production company adheres to the move-in and move-out times in the contract. Any overage by the production company will result in a \$100/hour charge to Licensee.
- Licensor will strike Section 11 of this agreement with Licensor providing insurance.
- Hamilton Health Care Systems (HHCS) will be assisting Licensee with finalizing the details of this event. HHCS is not authorized to make any modifications to the contract or additions to the estimate with out Licensee's approval.

Equipment included in License Fee:

- One-time room set.
- One podium with wired microphone (House PA System).
- One 8' skirted table and two chairs for registration.
- First ten pieces of 3' x 8' staging.
- Tables with standard white linens and chairs.
- First two standard electrical drops.
- Wi-Fi.
- Licensor shall provide daily cleaning of premises throughout tenancy, including lobbies and restrooms.

*Additional equipment or services will incur additional charges; Rate sheet for equipment and services available upon request.

*All food and beverage purchases are subject to 20% service charge and applicable sales tax, or tax-exempt certificate.

THE ABOVE TERMS ARE SUBJECT IN ALL RESPECTS TO THE GENERAL TERMS AND CONDITIONS ATTACHED HERETO, WHICH ARE INCORPORATED HEREIN AND MADE AN INTEGRAL PART OF THIS AGREEMENT.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement by their authorized representatives on the date set forth below.

Licensor:

**Dalton Convention Center
As Agent**

Sign: _____

Name: Doug Phipps

Title: General Manager, Dalton
Convention Center

Date: _____

Licensee:

City of Dalton

Sign: _____

Print: _____

Title: _____

Date: _____

Licensee Initial: _____

II. GENERAL TERMS AND CONDITIONS

1. **Grant of License; Premises.** Subject to the terms and conditions herein set forth, Licensor hereby grants to Licensee the right and license to use the rooms/space described in Section I.A, located within the Center (the "Premises") for the limited purpose of holding the event described in Section I.B (the "Event"), and not for any other purpose. Licensee shall not have access rights or privileges in or to any other part of the Center besides the Premises, except for the privilege of ingress and egress through the public corridors in the Center, on a non-exclusive basis, as necessary to utilize the Premises. ~~Unless agreed otherwise in writing by Licensor, the Event is by "invitation only" and will not be open to the public.~~ [Intentionally Omitted by Licensor].
2. **Dates of Use.** Unless this License Agreement (the "Agreement") is earlier terminated pursuant to the provisions hereof, Licensor grants to Licensee the right to use the Premises for the Event on the date(s) and time(s) set forth in Section I.A (the "Term"). The Term may not be extended by Licensee without obtaining Licensor's prior written permission (which permission may be withheld in Licensor's sole discretion). In the event the Term is extended pursuant to the preceding sentence, Licensee shall be responsible for any additional fees and costs required by Licensor in connection therewith.
3. **Duties of Licensor.** Except as may be otherwise specified in Section I.H, Licensor shall, at the sole cost and expense of Licensee, provide (or cause to be provided), any and all personnel as may be required by Licensor (in its sole discretion) to properly staff the Center for the Event and for the proper and safe presentation of the Event, including without limitation personnel to set up and take down the event (including all riggers), security personnel, ushers, crowd control, first aid (EMT), fire personnel, badge checkers, supervisors, electricians, janitorial staff, audio visual technicians, telecommunications staff, internet technology staff, box office staff, ticket takers, concession and catering staff and other necessary support services customarily provided by Licensor for a like event, as applicable, and additional items, equipment, personnel and services (such as telephone, internet and other services and utilities) which Licensee requests to be provided in connection with the Event and which Licensor is reasonably able to provide, all of which shall be subject to the approval of Licensor. It is understood by Licensee that services, labor and equipment will be provided only to the extent of existing available inventory and in consideration of other Center events and activities.
4. ~~**Non-Refundable Deposit.** A non-refundable deposit in the amount set forth in Section I.D is due and payable to Licensor according to the payment schedule set forth in Section I.G. Such deposit shall be credited to the License Fee and reimbursable expenses described below. Licensee shall not be entitled to the payment of any interest whatsoever on the deposit paid to Licensor. This deposit is non-refundable without regard to whether Licensee makes use of the Premises. If the deposit (or any portion thereof) is not paid on or before the due date(s) specified in I.G, Licensor may terminate this Agreement, in its sole discretion, by providing written notice of termination to Licensee. Any such termination shall be in addition to any other right or remedy available to Licensor at law or in equity arising out such breach by Licensee, including Licensor's right to recover damages.~~ [Intentionally Omitted by Licensor].
5. **License Fee.** In consideration of the license granted hereunder, Licensee agrees to pay to Licensor (i) a license fee in the amount set forth in Section I.E, plus (ii) the "Food and Beverage Fee" as described in Section 6 below, plus (iii) reimbursement for any and all costs incurred by Licensor in connection with Licensee's use of the Premises, including, without limitation, costs incurred for the provision of the items, services and personnel described in Section 3 above. Unless otherwise set forth in Section I.G or I.H, all such fees shall be paid by Licensee prior to the Event, according to the schedule set forth in Section I.G. Any additional costs relating to changes in the event requirements shall, unless otherwise agreed by Licensor, be paid by Licensee by credit card on the day of the Event. In the event Licensee fails to remit payment when due of any amounts due, interest shall accrue on such overdue amounts at the rate of 1 ½ % per month (18% per annum), or the maximum rate permitted by law, whichever is less. Unless otherwise agreed by Licensor, payments shall be made by credit card, cash, money order, or certified check. A \$30.00 charge will be added payment should a check be submitted to the Licensor and return NSF (Not Sufficient Funds).
6. **Food and Beverage.**
 - A. Licensor shall have the exclusive right to provide food and beverage services in connection with the Event. No other individual or organization is permitted to bring food or beverage products into the Center without the express written consent of Licensor.
 - B. Licensee shall pay Licensor for all food and beverage products and services provided at the Event (the "Food and Beverage Fee"), in accordance with the payment schedule set forth in Section I.G. Licensee acknowledges that the License Fee has been established based on Licensee's representation that the Food and Beverage Fee to be paid by Licensee hereunder shall be no less than the amount of the Food and Beverage Minimum set forth in Section I.F. In the event the actual Food and Beverage Fee is less than the Food and Beverage Minimum, Licensor shall have the right to increase the License Fee by an amount necessary to compensate the Center for the deficiency, as described in Section I.F and/or I.H.
 - C. No later than 10 business days prior to the Event, the work order containing the estimate of the Food and Beverage Fee shall be revised to reflect any changes in the "guaranteed" number of people attending the Event. Once such work order is entered into, Licensee shall be required to pay, at a minimum, the Food and Beverage Fee specified therein, regardless of any subsequent changes requested to the menu or attendance number. Unless otherwise set forth in Section I.G or I.H, any remaining balance of the Food and Beverage fee not previously paid to Licensor shall be paid to Licensor by credit card on the day of the Event.
7. **Event Requirements.** Licensee shall provide to Licensor all necessary set-up instructions (personnel, equipment, utilities, layout, etc.) for the Event no later than ten (10) days prior to the commencement of the Term (or, if this Agreement is executed and delivered less than 10 days from the commencement of the Term, then immediately upon execution hereof). Such

instructions shall include a copy of a full and complete floor plan for any exhibit at the Event. If such instructions are not provided to Licensor by such date, or if changes are made to such instructions after they have been provided to Licensor and Licensor incurs additional costs or expenses as a result of such changes, Licensee shall be responsible for such additional costs and expenses at Licensor's prevailing rates. No set-up of any exhibits may begin without proof of approval of such floor plan by the Fire Marshal of the City or County in which the Center is located, as applicable, and by the Licensor.

8. Advertising and Promotion. Licensee shall not publicize, or permit to be publicized, the Event prior to execution of this Agreement by Licensor. Licensee warrants that all advertising of the Event will be accurate and truthful, and will include accurate information of event times and ticket prices (if applicable). All advertising of the Event shall be subject to the prior written approval of Licensor (which shall not be unreasonably withheld). All print and broadcast materials associated with the Event shall use the official facility name. Licensor reserves the right to display or sell, without limitation, advertising and promotions within and about the Center, and to retain all income from such display or sale. Licensee shall not interfere with, block, remove or otherwise disturb advertising or promotions within or about the Center without the prior written consent of Licensor. Signs containing commercial or sponsored advertising messages must be approved in advance in writing by Licensee. Licensee agrees to open the Event to the public in accordance with advertised times and in compliance with Center policies.

9. Licenses; Permits. Licensee shall secure prior to commencement of the Term, all licenses, permits and approvals that may be required in connection with the use of the Premises for the Event, including without limitation those required by ordinances, rules and/or regulations of governmental authorities, and all licenses required by any performing arts societies such as ASCAP or BMI or SESAC for music or other copyrighted works to be utilized or displayed at the Event; provided, however, Licensee shall not be required to secure any permits for the general occupancy of the Center. ~~Licensee shall defend, indemnify and hold harmless Licensor and the Owner from any and all claims, fees, expenses, costs or damages, including reasonable attorneys' fees and court costs, suffered or incurred by such parties in connection with any breach of this paragraph. [Intentionally Omitted by Licensor].~~

10. Insurance.

A. Coverage. Licensee shall obtain, at its own cost and expense, with insurance companies currently rated A VIII or better by Best's Key Rating Guide, commercial general liability insurance that insures all operations of Licensee contemplated by this Agreement. Such insurance shall name the Northwest Georgia Trade & Convention Center Authority as additional insureds. Such insurance shall be written with a limit of at least One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury, property damage and personal injury. Licensee shall also maintain, at its own cost and expense, with insurance companies currently rated A VIII or better by Best's Key Rating Guide, commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles, in the minimum amount of One Million Dollars (\$1,000,000) per accident (PI and PD combined single limit). Such commercial general liability insurance shall be primary to and not contributory with any insurance coverage or self-insured program of Licensor. Licensee shall also maintain, at its own cost and expense, workers' compensation insurance in respect of all employees and any borrowed, leased or other person to whom such compensation may be payable by Licensee.

B. Certificates. Certificates evidencing insurance required pursuant to this Section 10 shall be provided to Licensor not less than thirty (30) days prior to commencement of the Term, provided that if this Agreement is executed and delivered less than thirty (30) days prior to the Term, the certificates shall be provided immediately upon execution of this Agreement. The policies shall also provide, and the certificate shall so note, that the coverages may not be canceled or that a major change in coverage may not be implemented without at least thirty (30) days' prior written notice given to Licensor.

11. ~~Indemnity; Limitation on Liability.~~

A. ~~Indemnification. Licensee hereby agrees to indemnify, defend, and hold harmless Licensor, the Owner and the "Center", and the Northwest Georgia Trade & Convention Center Authority, and their respective officials, officers, directors, agents, employees, successors and assigns from and against any and all claims, damages, expenses, costs (including, without limitation, reasonable attorneys' fees) and liabilities (collectively, "Claims") arising or alleged to arise from (i) any breach of this Agreement by Licensee, (ii) any alleged or actual violation or infringement by Licensee or its employees, agents or contractors of any copyright or other intellectual property right of a third party in connection with the Event or activities occurring at the Event, (iii) the use of occupancy of the Center by Licensee, its employees, agents, contractors, exhibitors, invitees, guests or patrons, and (iv) the acts or omissions, or violation of any applicable law, rule, regulation or order, of or by Licensee or any of its employees, agents, contractors, exhibitors, invitees, guests or patrons. Notwithstanding the foregoing, the obligations of Licensee in this paragraph shall not apply to the extent the Claims or Costs arise out of the gross negligence or intentional misconduct of Licensor or its employees or agents.~~

B. ~~Condition of Premises. Licensor makes no warranty or representation to Licensee of any kind (express or implied) regarding the suitability of or compliance with applicable laws by the Premises, or any portion thereof, as built, for any aspect of the use Licensee expects or intends to make of the Premises. Licensee further agrees that the Premises shall be delivered by Licensor to Licensee "AS IS," "WHERE IS" and "WITH ANY AND ALL FAULTS" and without warranty, express or implied, as to the merchantability or fitness for the use thereof for any particular purpose.~~

C. ~~Limitation on Liability. Licensor shall not be liable under any circumstances to Licensee or to any third party for any indirect, special, punitive or consequential damages, or loss of revenue or profits, arising in connection with this Agreement, even if Licensor has been advised of the possibility of such damages. Furthermore, Licensor shall not be responsible or liable for any injury or death to person or loss or damage to property sustained by Licensee, its employees, agents, exhibitors, contractors, or any other person claiming through Licensee resulting from any condition, accident or occurrence in or upon~~

~~the Premises, unless such injury, loss or damage is due to the gross negligence or intentional misconduct of Licensor or its employees or agents.~~

~~D. Survival. The provisions of this Section 11 shall survive any expiration or termination of this Agreement. [Intentionally Omitted by Licensor].~~

12. **Compliance With Laws and Rules of the Premises; Taxes.** Licensee shall fully abide by, conform to and comply with, and shall cause every person under its direction or control who is connected with the performance of any aspect of this Agreement to fully abide by, conform to and comply with all applicable laws, rules, regulations and ordinances of the United States of America, the State of Georgia, the City of Dalton and their respective agencies, as well as all rules, regulations and policies of Licensor for the use, occupancy and operation of the Premises. Licensee agrees to pay promptly all taxes assessed on its activities at the Center hereunder, including any sales tax on the payment of Licensee's fees hereunder (which shall be in addition to the amounts due hereunder).

13. **Use of the Premises.**

- A. **Duty of Care; Return of Premises.** Licensee shall use the Premises in a safe and careful manner. Licensee agrees not to do or allow to be done any act which shall mar, deface or injure any part of the Premises, nor shall Licensee change or rearrange any equipment or other property on the Premises without Licensor's prior written approval. Upon expiration of the Term, Licensee shall deliver up to Licensor the Premises in as good condition and repair and in the condition received at the beginning of the Term, excepting usual wear and tear. Upon expiration of the Term, Licensee shall immediately remove from the Center any and all property, goods, or other effects belonging to, or brought into the Center by, Licensee, its employees, agents, contractors, representatives, guests or invitees. If Licensee fails to do so, Licensor may store or cause to be stored any such property at Licensee's expense. Alternatively, Licensor may deem such property to be abandoned and sell such property in such a manner and to such an extent as is permitted by applicable law, and apply the proceeds of such sale(s) in a manner determined by Licensor in its sole discretion.
- B. **Licensor Access and Control.** Licensee shall, and shall cause its employees, agents and exhibitors and contractors to, follow any and all rules, regulations and policies of the Center, including any instructions of Licensor's representatives regarding Licensee's use and occupancy of the Center. In licensing the use of the Premises to Licensee, it is understood that Licensor does not relinquish the right to control the management thereof and to enforce all necessary rules and regulations. Licensor shall at all times have the right to limit the number of people attending the Event, for the purpose of ensuring the safety of people and property at the Premises.
- C. **Disorderly Conduct.** Licensor reserves the right at all times to refuse admission to or to cause to be removed from the Event, the Premises and/or the Center any disorderly person, including Licensee's employees, agents, contractors, exhibitors, guests and invitees, as determined by Licensor in its sole discretion, and in the event of the exercise of such authority, Licensee hereby waives any and all claims for damages against Licensor and the Owner on account thereof.
- D. **Other Events.** Licensee acknowledges that other events or activities may be scheduled within the Center during the Term in areas other than the Premises. Licensee acknowledges that the public parking areas surrounding the Center are not exclusive to or for the Event contemplated by this Agreement. Licensee agrees to adhere to a "good neighbor" policy and will not permit or allow to be permitted, any activity in the Premises that will disturb use of other areas of the Center by any other individual, entity, organization or event.
- E. **Broadcasting.** Licensee shall not televise or broadcast the Event or any part thereof without the prior written approval of Licensor (which may be withheld in Licensor's sole discretion, and may be conditioned on Licensee paying an additional fee for the privilege to broadcast the Event, or Licensee procuring additional insurance to cover such broadcasting activities).

14. ~~**Tickets/Box Office.**~~

- ~~A. Generally. Unless otherwise agreed to in writing, Licensor shall provide all ticket and/or box office services for Licensee in connection with the Event. As consideration for the performance of such duties by Licensor, Licensee shall pay Licensor any additional fees described in Section 1.G. Licensor shall have complete control over the ordering, sale and distribution of tickets for the Event, as well as complete control over the box office, which will sell tickets to the Event only on the day of the Event, unless prior arrangements have been agreed to in writing by the parties hereto.~~
- ~~B. Ticket Proceeds. Licensor shall have complete and sole custody and control of any and all monies received from the sale of tickets. All such funds shall be the rightful property of Licensor for the purposes of applying same toward payment of any balance for license fees and other fees due or to become due to Licensor, in accordance with the terms and conditions of this Agreement. The balance shall be remitted to Licensee immediately following the Event.~~
- ~~C. Sale of Tickets. Licensee agrees that all tickets to the Event shall be sold at the prices as advertised by Licensee and approved by Licensor, and that any changes in ticket prices shall require the prior approval of Licensor. Licensee shall be responsible for all check and credit card service charges and other similar fees, charges and expenses incurred in connection with the sale of tickets for the Event. Licensee shall be responsible for the credit worthiness of its guests and patrons, and shall cover and be responsible for any invalid or fraudulent checks, checks returned due to insufficient funds or for any other reason, credit card penalties and similar or related penalties, fees, charges and/or expenses incurred by~~

Licensor Initial: _____

~~Licensor in connection herewith. Licensee will not permit tickets or passes to be sold or distributed in excess of the maximum capacity of the Premises, as determined by Licensor in its sole discretion.~~

- ~~D. Taxes. Licensee shall be responsible for filing of federal, state and local tax returns and the payment of all sales, admission, excise and other taxes due, if any, in connection with the Event or admissions thereto. Licensor shall have the right (but not the obligation) to collect and/or withhold any such taxes or business license fees due in connection with ticket sales, and to remit such taxes directly to the proper authority or agency.~~
- ~~E. Complimentary Tickets. Licensor reserves the right to limit the number of complimentary tickets to be issued for the Event. Unless otherwise specified in Section I above, Licensee shall provide to Licensor, free of charge, at least forty (40) complimentary tickets or admission credentials for each day of the Event. [Intentionally Omitted by Licensor].~~
15. **Programs, Novelties and Merchandise.** Unless otherwise agreed by Licensor in writing, Licensor reserves the exclusive right to operate, or contract for the operation of, a coat checkroom and program, novelty and/or merchandise sales at the Event (including without limitation programs, t-shirts, CD's, books, cassette tapes, DVD's, VHS tapes, lapel pins, photographs and souvenirs), and to receive all income therefrom. [Intentionally Omitted by Licensor].
16. **Termination.** Either party may terminate this Agreement in the event the other party fails to perform any of its material obligations under this Agreement, and such failure has not been cured within fifteen (15) days (or 5 days in the event of a payment default) after the date on which the breaching party receives written notice describing such breach in reasonable detail. Notwithstanding the foregoing, in the event Licensee fails to provide the insurance certificate required herein by the date due hereunder, or if Licensor may suffer irreparable harm as a result of the breach by Licensee, Licensor shall not be required to wait any period of time before terminating this Agreement or pursuing any remedies hereunder or under applicable law. Any termination of this Agreement shall not prejudice any other right or remedy available to the non-breaching party at law or in equity. In the event Licensor terminates this Agreement due to a breach or default by Licensee, Licensor may retain as damages any fees paid by Licensee under this Agreement (including the deposit), without prejudice to any other legal rights or remedies Licensor may have.
17. **Cancellation of Event by Licensee.** In the event of a cancellation by Licensee of the Event (except as may be authorized by Section 16 above), no deposit refund shall be made. Additionally, and unless indicated otherwise in Section I.H above, Licensee shall be obligated to pay the full amount of fees contemplated to be due hereunder had the Event actually occurred, including without limitation the Food and Beverage Minimum. The parties agree that Licensor will be damaged by any such cancellation, and that the exact amount of such damages would be either impossible or inconvenient to prove, and that the amounts set forth in the preceding sentence are a reasonable estimate of the amount of such damages. The parties further agree that such amount shall constitute liquidated damages, and not a penalty of any kind. The remedies set forth in this section are in addition to, and not in lieu of, any other rights or remedies Licensor may have, at law or in equity, in the event of a breach or cancellation of this Agreement by Licensee.
18. **Force Majeure.** Should Licensee be unable to take possession of the Premises or present the Event due to an Event of Force Majeure, neither Licensor nor Licensee shall have any liability under the Agreement and Licensee, as its sole remedy and relief, shall receive a refund of any uncommitted or cancelable advance payments less any expenses incurred by Licensor in preparing for the Event. The term "Event of Force Majeure" shall mean any and all acts of God, strikes, lock-outs, other industrial disturbances, acts of the public enemy, laws, rules and regulations of governmental or quasi-governmental entities, wars or warlike action, arrest or other restraint of government (civil or military), blockades, insurrections, riots, vandalism, terrorism or terrorist threats, epidemics, lightning, earthquakes, hurricanes, storms, floods, washouts, fire or other casualty, civil disturbances, explosions, breakage or accidents to equipment or machinery, threats of bombs or similar interruptions, confiscation or seizure by any government or public authority, nuclear reaction, radioactive contamination, accidents, or any other causes, whether of the kind herein enumerated or otherwise that are not reasonably within the control or caused by the party claiming the right to delay the performance on account of such occurrence; provided, however, in no circumstances shall the monetary inability of a party to perform any obligation contained in this Agreement be construed to be an Event of Force Majeure. Upon removal or cessation of the Event of Force Majeure, the parties' respective rights and obligations hereunder shall be reinstated for any and all subsequent sessions of the Event remaining in the Term (if any). However, Licensor and Licensee stipulate and agree that Force Majeure shall not include the novel coronavirus Covid-19 pandemic, which is ongoing as of the date of the execution of this Agreement.
19. **Non-Discrimination / Americans With Disability Act.** Licensee agrees not to discriminate against any employee or applicant for employment to be employed in the performance of or in relation to this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to such employment, whether on account of race, marital status, color, religion, national origin, ancestry, age, sex, or handicap except where based on a bona-fide occupational qualification. With respect to the Event, Licensee recognizes that it is subject to the provisions of Title III of the Americans With Disabilities Act, as amended ("ADA"). To the extent that Licensee reconfigures, modifies, alters, rearranges, or otherwise prepares or "sets up" the Premises or any other portion of the Center in order to accommodate the Event, Licensee shall be responsible for ensuring that such areas comply (and continue to comply throughout the Term) in all respects with the ADA, including without limitation with regard to accessibility, usability, and configuration. Licensee shall be solely responsible for providing auxiliary aids or any modification of the Premises or other portions of the Center that may be required in order to accommodate the Event, and for ensuring that the policies, practices, and procedures it applies in connection with the Event are in full compliance with the ADA.

20. **Miscellaneous.**

- A. Entire Agreement; Amendments; Governing Law. This Agreement represents the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior understandings, written or oral, among the parties hereto. This Agreement may only be modified or amended by a subsequent written agreement signed by an authorized representative of Licensor and by Licensee. This Agreement shall be governed by the laws of the State of Georgia applicable to contracts made and to be performed in such state, without regard to conflicts of laws principles.
- B. Notices. Notices by Licensor and Licensee to each other shall be deemed duly given if (i) delivered personally with a signed receipt evidencing such delivery, (ii) transmitted by telecopier with confirmation of transmission, (iii) mailed by certified mail, return receipt requested, postage prepaid, or (iii) delivered by duly recognized air courier service to the addresses indicated in the opening paragraph hereof. All notices sent to Licensor shall be sent to the attention of General Manager.
- C. Assignment. This Agreement shall not be assigned nor shall Licensee's right to use the Premises be sublicensed by Licensee without the prior written consent of Licensor in each instance, which may be withheld in Licensor's sole discretion. Licensor may assign this Agreement at any time to any party including, without limitation, any successor owner or operator of the Premises.
- D. No Agency. The relationship between Licensor and Licensee is that of independent contractors and not agents or employees. Under no circumstances shall this license be considered a contract of partnership or joint venture. Neither party shall be liable for any of the debts, accounts, obligations or other liabilities of the other party, its agents or employees, and neither party shall have any authority to obligate or bind the other party in any manner except as may be expressly provided herein.
- E. Waivers. No waiver shall be effective unless in writing and executed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver in respect of any subsequent breach or default, whether of similar or dissimilar nature, unless expressly so stated in writing.
- F. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- G. Effectiveness of Agreement. This Agreement will not be effective or binding upon Licensor until it has been executed and delivered by Licensor.

[END OF AGREEMENT]

Licensee Initial: _____



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting
Meeting Date: 05-20-24
Agenda Item: First Reading - Ordinance 24-14 Chapter 2
Department: Administration
Requested By: Andrew Parker
Reviewed/Approved by City Attorney? Yes

Cost:

Funding Source if Not in Budget

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

First Reading - Ordinance 24-14 To Amend Chapter 2 Of The 2001 Revised Code Of The City Of Dalton, Georgia Captioned "Administration"; To Provide For An Effective Date; To Provide For The Repeal Of Conflicting Ordinances; To Provide For Severability; And For Other Purposes.

ORDINANCE 24-14

To Amend Chapter 2 Of The 2001 Revised Code Of The City Of Dalton, Georgia Captioned "Administration"; To Provide For An Effective Date; To Provide For The Repeal Of Conflicting Ordinances; To Provide For Severability; And For Other Purposes.

BE IT ORDAINED by the Mayor and Council of the City of Dalton and by the authority of the same, **IT IS HEREBY ORDAINED** as follows:

Section 1.

Chapter 2 of the 2001 Revised Code of the City of Dalton, Georgia, captioned "Administration" his hereby amended by striking the by striking, repealing and deleting Chapter 2 in its entirety and substituting in lieu thereof a new Chapter 2 which shall read as follows:

Chapter 2 ADMINISTRATION

Secs. 2-1—2-25. Reserved.

ARTICLE II. MAYOR AND COUNCIL

DIVISION 1. GENERALLY

Sec. 2-26. Annual appointment of officers and agents.

At the beginning of each year, the mayor and council shall appoint such officers and agents as, in its judgment, shall be necessary and expedient for the proper carrying on of the city's business.

Sec. 2-27. Salaries of appointed officers, employees or agents.

The salaries of all appointed city officers, employees or agents shall be affixed by the city administrator or his or her designee, subject to approval of mayor and council, which shall review the same on at least a yearly basis.

Sec. 2-28. Contempt toward mayor and council.

Contemptuous or disorderly conduct toward the mayor and council or any committee thereof or in their presence is prohibited.

Sec. 2-29. Agenda protocol and procedure.

- (a) For each regular meeting of the mayor and council, the city administrator shall prepare an agenda as provided in this section of all matters which he or she knows may be considered at the meeting and

described in sufficient detail to explain the nature of the item and the name of the person placing it on the agenda. A copy of this final agenda shall be delivered to each member of the mayor and council not later than 5:00 p.m. on the Friday preceding the particular meeting in compliance with open meetings law (O.C.G.A. § 15-14-1 et seq.).

- (b) No matter shall be placed on the agenda unless the following procedure has been followed:
 - (1) Only the mayor, councilmembers, the heads of city departments and other agencies, boards and commissions of the city may place items on the agenda.
 - (2) Any request for an item to be placed on the agenda must be received in writing by the city administrator prior to 12:00 noon on Thursday preceding the next regular meeting of the mayor and council. Such request shall include a brief affirmative statement of the subject matter of the item, together with a statement of what action the mayor and council is being requested to take, and may refer only to one item.

Sec. 2-30. Meetings.

The mayor and council shall hold regularly scheduled meetings on the first and third Mondays of each month at a time set annually by the mayor and council. The mayor and council shall have the authority to set a different meeting date or call a special meeting in its discretion and upon due notice as required by law. The mayor and council shall have the authority to cancel a regularly scheduled meeting if there is no business to conduct.

Sec. 2-31. Liaisons.

At the beginning of each calendar year, the mayor shall appoint members of the council or employees of the city to serve as liaisons between the mayor and council and the various departments, boards and commissions of the city. A liaison shall serve for balance of the calendar year, but may be reappointed for additional one-year terms at the discretion of the mayor. If a liaison position becomes vacant during a calendar year, the mayor shall appoint a new liaison to serve for the balance of that year. Liaisons shall keep the mayor and council current on matters concerning their respective departments, boards and commissions. Liaisons shall communicate concerns of the mayor and council to the departments, boards and commissions. Liaisons shall be invited to attend, and to participate in, all regular, special and executive meetings of the department, board or commission with which they liaise, but shall not have a vote on matters coming before the meeting of such department, board or commission except for liaisons to the Building Authority, Pension Board, Public Safety Commission, Public Works Committee, Downtown Dalton Development Authority, and Northwest Georgia Trade & Convention Center Authority, which shall be entitled to vote. In the event a liaison is unable to attend a meeting, the mayor is authorized to appoint another member of the council as a substitute liaison to attend such meeting.

Secs. 2-32—2-58. Reserved.

DIVISION 2. COMMITTEES, BOARDS, AND COMMISSIONS

Sec. 2-59. Finance and administration committee.

- (a) The finance and administration committee shall have supervision over the finances and budgeting of the city, ordinance review and recommendation, insurance policies, community development, building codes enforcement, purchasing, personnel administration and public input and involvement.
- (b) The finance and administration committee shall be comprised of all members of the mayor and council.

Sec. 2-60. Public works and facilities committee.

- (a) The public works and facilities committee shall have general supervision over city cemeteries, , railroads, streets, public works projects and all other public property and facilities within the city. The public works committee shall provide direction to, and have oversight of, infrastructure projects and the public works department of the City of Dalton.
- (b) The public works committee shall be comprised of the city administrator and two (2) members of the mayor and council appointed by the mayor and serving at the pleasure of the mayor.

Sec. 2-61. Oaths.

Upon their appointment and prior to taking office, all commission members, board members, authority members, police officers, and firefighters, shall take the following oath:

“I do solemnly (swear)(affirm) that I will faithfully perform the duties of (title of office) of this city and that I will support and defend the charter thereof as well as the constitution and laws of the State of Georgia and of the United States of America. I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof. I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I by the laws of the State of Georgia am prohibited from holding. I am otherwise qualified to hold said office according to the Constitution and laws of Georgia. I will perform the duties of my office in the best interest of the City of Dalton to the best of my ability without fear, favor, affection, reward, or expectation thereof.” The oath shall be administered by the city attorney or any judicial officer authorized to administer oaths.

Sec. 2-62. Chairpersons.

Each board, commission, or authority of the city shall elect one of its members to serve as chair, for a term of one (1) year. Said election shall occur at the first meeting in the calendar year of the board, commission, or authority. A chair may serve an indefinite number of terms.

Sec. 2-63 Public Safety Commission.

Appointment, Term, Compensation of Public Safety Commission.

A public safety commission, which shall be an advisory commission consisting of five (5) members to be appointed by the mayor and council of said city as is hereinafter provided, may from time to time make such rules and regulations as they may think proper for the proper conduct of the affairs of such commission. The Public Safety Commission’s purpose is to be an advisory authority to the public safety departments. The public safety commission shall consist of five commissioners appointed by the mayor and council and each such member shall serve a five-year term. At least one such member shall be a councilmember and at least one such member shall have had experience as a public safety employee. The terms of the commissioners shall be staggered. Any vacancy in a term of a member shall be filled for the expiration of that term by appointment of the mayor and council. Upon the expiration of the term of service of any member so appointed, the mayor and council shall appoint a member for a full term.

Sec. 2-64

Services of City Attorney to Public Safety Commission.

The city attorney of the City of Dalton shall render such services as are required by said public safety commission.

Sec. 2-65 Recreation Commission.

The recreation commission of the City of Dalton was established by resolution of the mayor and council in 1956 and is hereby reaffirmed. Said commission provides direction to, and advises, the City of Dalton parks and recreation department.

Secs. 2-66—2-86. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES

DIVISION 1. GENERALLY

Sec. 2-87. Liability protection.

- (a) This section shall be known as the municipal liability protection ordinance and may be referred to as such in any document or pleading.
- (b) The mayor and council find as follows:
 - (1) The city's elected and appointed officers, supervisors, administrators and employees have increasingly been the target of liability lawsuits for actions arising out of the performance of their duties or in any way connected therewith;
 - (2) The general assembly has empowered municipalities to purchase liability insurance or contracts of indemnity insuring or indemnifying the members of governing bodies and supervisors, administrators, employees or other elected or appointed officers of municipalities against personal liability for damages arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights or violation of civil, constitutional, common law or other statutory rights, whether state, federal or local;
 - (3) The city has purchased liability insurance covering certain acts of the mayor and council, supervisors, administrators, employees and other elected or appointed public officers on a continuous basis since 1982;
 - (4) Liability insurance is not always available to cover all necessary areas of potential liability of the mayor and council, supervisors, administrators, employees and other elected or appointed public officers of the city;
 - (5) The city needs to retain the services of capable and experienced supervisors, administrators, employees and other public officers as well as to encourage capable and experienced members of the general public to seek and hold elective office of the city, and the prospect of personal liability unmet by available insurance is a deterring factor to the city's meeting such goal;
 - (6) The state general assembly has provided that a municipality may adopt a policy establishing the terms and conditions under which it will pay part or all of any claim or civil judgment rendered against the mayor or any councilmember, supervisor, administrator, employee or other elected or appointed official of the city whom it is authorized to defend pursuant to a written public policy;

- (7) It is in the best interest of the city and the good order and administration of the government of the city and its people that the city establish, in addition to any liability insurance or contract of indemnity and secondary thereto, only a policy under which the city will undertake to defend all or specified civil, criminal or quasicriminal actions brought or maintained against the mayor and any councilmember or against any supervisors, administrators, employees or other elected or appointed city officers arising out of the performance of their duties or in any way connected therewith, based upon negligence, violation of contract rights or violation of civil, constitutional, common law or statutory rights and to pay part or all of any claim or civil judgment rendered against any person whose defense the city so undertakes; and
- (8) These should be limitations on such duty to provide a legal defense and obligation to pay part or all of any claim or civil judgment rendered against the mayor or any councilmember, supervisor, administrator, employee or other elected or appointed officer of the city such that the city is not defending or paying claims or judgments with respect to criminal offenses involving theft, embezzlement or other like crimes with respect to the property or money of or in which the city has an interest.
- (c) In addition to any contract to defend provided under any liability insurance or contract of indemnity insuring or indemnifying the mayor or councilmembers, supervisors, administrators, employees or other elected or appointed officers of the city against personal liability for damages arising out of the performance of their duties or in any way connected therewith and secondary thereto only, it shall be the city's policy to provide as a part of the compensation in terms of employment of the mayor and councilmembers, all supervisors, administrators, employees and other elected or appointed officers of the city a defense for all civil, criminal or quasicriminal actions brought or maintained against such mayor, councilmembers, supervisors, administrators, employees and other elected or appointed officials, arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights or violation of civil, constitutional, common law or statutory rights. However, the city shall not be authorized to furnish a defense to any person charged with a criminal offense involving theft, embezzlement or other like crime with respect to the property or money of or in which the city has an interest.
- (1) The city may expend public funds for such purposes, including, but not limited to attorney's fees, court costs, deposition costs, witness fees and compensation and all other like costs, expenses and fees.
- (2) The city shall designate in its sole discretion appropriate legal counsel to fulfill its policy of providing legal defense under subsection (c)(1) of this section. As a condition of receipt of such legal defense, the mayor, councilmembers, supervisors, administrators, employees and other elected or appointed officials of the city shall have the duty to cooperate with such legal counsel designated by the city in the defense of the claim or suit.
- (d) In addition to any liability insurance or contract of indemnity covering the mayor, councilmembers, supervisors, administrators, employees or other elected or appointed officials of the city, and secondary thereto only, the city shall pay part or all of any claim or civil judgment rendered against any person as provided in this section whose defense the city is authorized to undertake under subsection (c) of this section. As a condition to such payment of any part or all of any claim or civil judgment, such person shall be obligated to cooperate with the attorneys appointed or designated by the city to defend such person in the action. Failure of such employee to cooperate in the defense of the action shall void any obligation of the city to pay part or all of any claim or civil judgment rendered against such person.
- (e) This section is intended to set forth a written policy for the city as authorized and provided in O.C.G.A. §§ 45-9-21 and 45-9-22. Nothing in this section shall be construed as waiving any immunity or privilege of any kind enjoyed by the city or other public body, department, board, commission or agency of the city or by the mayor and any councilmember or by any supervisor, administrator, employee or other elected or appointed officer of the city or any public body, board, department, agency or political subdivision of the city.

Secs. 2-88—2-113. Reserved.

DIVISION 2. CITY CLERK

Sec. 2-114. General duties.

The City Clerk shall issue licenses, summons, processes, subpoenas and executions; shall have the custody of all records, papers and books and seals belonging to the council; and shall pay all moneys received by him or her to the city depository at least once a week.

Sec. 2-115. Books to be kept.

The city clerk shall keep a book of neat and accurate minutes, cards for recording all licenses, a book for ordinances and a book of the annual tax digest.

Sec. 2-116. Appointment as superintendent of elections.

Pursuant to the power vested in the mayor and council pursuant to O.C.G.A. § 21-2-45(c)(2), the county is appointed to perform, until further act of the mayor and council, all duties as superintendent of elections as specified in O.C.G.A. § 21-2-1 et seq., with the exception of the qualification of candidates for municipal office, which duty shall be performed by the city clerk.

Secs. 2-117—2-141. Reserved.

DIVISION 3. OPEN RECORDS OFFICER

Sec. 2-142. Open records officer.

There is hereby created the office of open records officer. The city administrator is hereby designated as the city's open records officer; the open records officer may designate, in writing, assistant open records officer(s) as required to perform the duties of his or her office. The open records officer shall serve at the pleasure of the mayor and council.

Sec. 2-143. Duties.

It shall be the duty of the open records officer and his or her duly designated assistant open records officer(s) to accept written requests to inspect and copy public records, pursuant to O.C.G.A. § 50-18-70, et seq., and to produce to the requester all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request, unless the time for response is extended in accordance with law. No request shall be deemed filed until served upon the open records officer, either by hand delivery or statutory overnight delivery to the open records officer at City Hall, 300 W. Waugh Street, Dalton, Georgia, 30720; by certified United States mail, return receipt requested to the open records officer at P.O. Box 1205, Dalton, Georgia,

30722; by email to openrecords@cityofdaltonga.gov; or by facsimile transmission to open records officer at 706-529-2491. Requests, whether oral or in writing, served upon any other officer or employee of the city shall not be deemed filed, until the requester has filed his or her request, in writing, with the open records officer. In the absence or unavailability of the open records officer, an assistant open records officer shall perform the duties of the open records officer. The absence or unavailability of a designated open records officer shall not delay the city's response to a properly served request.

Sec. 2-144. Request response.

Upon receipt of a request, it shall be the duty of the open records officer to promptly ascertain the availability of all public records responsive to the request and to produce to the requester those records that can be located and produced within a reasonable time, not to exceed three business days of receipt of a request. For purposes of computing the time within which a response must be made, the open records officer shall not count the business day on which a request is received, nor any intervening Saturday, Sunday, or designated holiday on which city offices are closed for general business. Upon intake of a request, the open records officer shall stamp the request with the date and time of receipt, and initial the request. In any instance where records are unavailable within three business days of the request, it shall be the duty of the open records officer to provide the requester with a written description of such records and a timeline for when the records will be available for inspection or copying and to provide the responsive records to the requester as soon thereafter as practicable. Such response shall also contain a good faith estimate of the cost to the requester for the search, retrieval, redaction, and production and copying of records. The open records officer shall confer with every officer or department head of the city, as necessary, to ascertain the existence of public records responsive to a request (including electronically-stored information), and it shall be the duty of every city officer and department head to confer with and provide records, or true and correct copies of the originals thereof, to the open records officer promptly, time being of the essence. Upon receipt of a public record responsive to a request, the open records officer shall determine, in consultation with the city attorney, if the record is exempt from disclosure by order of a court of this state or by law; if the record is exempt from disclosure, the written response by the open records officer shall set forth the specific legal authority under which withholding of inspection of the record is claimed. The open records officer shall maintain a log or other documentation of his or her due diligence to comply with a proper request.

Sec. 2-145. Fees.

The open records officer shall further have the duty to collect from a requester a reasonable charge for the search, retrieval, redaction, and production/copying of records, utilizing the most economical means available to identify and produce nonexcluded records. The charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the open records officer, has the necessary skill and training to perform the request; provided, however, no charge shall be made for the first quarter hour. In addition thereto, where certified copies of specific records are sought, the fees for certified copies prescribed by law shall apply; otherwise, a fee for the copying of records shall not exceed ten cents per page for letter or legal size documents or, in the case of other documents and electronic records, the actual cost of reproducing the document or media on which the records or media are produced. It shall be the right of the requester, at the time of inspection, to make photographic copies or other electronic reproductions of records, at his or her own expense, using suitable portable devices brought to the place of inspection. Whenever any person has requested to inspect and copy public records and received a written response estimating the cost of the search, retrieval, redaction, and production/copying of the records responsive to the request, and the city has actually incurred such costs but the requester fails to inspect or accept copies of the records, the open records officer shall be authorized to collect such charges in any manner authorized by law. In any instance in which the open records officer has estimated costs in excess of \$25.00 for responding to a request, the open records officer may defer the search, retrieval, redaction, and production/copying of the records until the requester has stated, in writing, his or her willingness to pay an amount equal to the estimate of costs. In any instance in which the estimated costs exceed \$500.00, the open records officer shall insist, in writing, upon

prepayment of the estimated costs prior to beginning search, retrieval, redaction, production or copying of the records. In any instance in which a requester has outstanding costs owing to the city for a previous records request, the open records officer shall insist upon prepayment of the outstanding costs and estimated costs prior to beginning search and retrieval.

Sec. 2-146. Litigation.

Requests by civil litigants, or their counsel of record, in any ongoing civil action or administrative proceeding shall be made in writing and shall include the style of the action or proceeding, the names and addresses of all parties and, if a party is represented by counsel, the name, address, and telephone number of the party's attorney; a copy of the request shall be served by the requester upon all parties or their counsel of record in the action or proceeding contemporaneous to filing the written request with the open records officer. The open records officer shall make duplicate set(s) of records provided in response to the request available to all parties or their counsel for the cost of copies only, unless a party or its counsel elects not to receive the records and pay the copying charge. If the city is a party to the action or proceeding, a set of responses shall be provided to counsel for the city at no charge.

Secs. 2-147—2-172. Reserved.

ARTICLE V. FINANCE

Sec. 2-173. Designation of tax commissioner to prepare tax digest, assess and collect taxes.

Pursuant to applicable state law, the mayor and council may by contract, designate the county tax commissioner to prepare the tax digest for the city; to assess and to collect municipal taxes in the same manner as county taxes; and, for the purpose of collecting such municipal taxes, to invoke any remedy permitted for collection of municipal taxes.

Secs. 2-174—2-199. Reserved.

ARTICLE VI. RESERVED

Secs. 2-200—2-231. Reserved.

ARTICLE VII. RECORDS RETENTION

Sec. 2-232. Retention schedules for local government records.

"Retention Schedules for Local Government Paper and Electronic Records", as promulgated by the Archives, Records and Information Management Section, Georgia Secretary of State, revised May 2007, as from time to time amended, are hereby adopted and incorporated by reference as the minimum retention schedules for public records of the city. For purposes of this section, the definition of "records" found at O.C.G.A. § 50-18-91(5) is hereby incorporated by reference. Municipal court records shall be maintained in accordance with those standards

promulgated, from time to time, by the Georgia Administrative Office of Courts. Records pertaining to investigations of the police or fire departments shall be maintained in accordance with the policies of those departments.

Notwithstanding an applicable records retention schedule to the contrary, records relevant to an actual or potential investigation not initiated by the city police or fire departments, administrative proceeding, or lawsuit, shall be preserved until the city attorney or other legal representative of the city determines the records are no longer needed. This exception supersedes any previously or subsequently established retention schedule for those records.

Sec. 2-233. Compliance.

The city administrator and each department head under the city administrator will be responsible for overseeing implementation, maintenance, security and compliance with record retention requirements. The responsibility imposed by this section includes training and education of employees in the creation, storage, indexing or archiving of public records, records management and retention, compliance with open records laws, and the production and disclosure of records in litigation.

Sec. 2-234. Records management officer.

The city clerk is hereby appointed and designated as the records management officer for the city. It shall be the duty of the records management officer to promulgate policies and procedures governing public records management. Such policies and procedures shall include electronically stored information in addition to records created or maintained in tangible format. The records management officer may designate, in writing, such assistant or deputy officers as required to perform the duties of the office.

Sec. 2-235. Title vested in city.

Title to any public record created or required to be filed or recorded with the city or any department or agency thereof shall be vested in the city and no individual officer or employee shall acquire any property rights therein. Any records designated as "confidential" or "privileged" by law shall be so treated in their creation, maintenance, storage, dissemination, and disposal. Access to such records shall be restricted in the manner provided by law and disclosure thereof shall be made available only to authorized individuals.

Sec. 2-236. Destruction of records.

The destruction of public records shall occur only through the application of the appropriate retention schedule and after satisfying any administrative approvals necessary to authorize destruction. Alienation, alteration, theft or unauthorized destruction of public records of the city by any person or persons in a manner not authorized by an applicable records management program or retention schedule is prohibited, and may result in such person's criminal prosecution and/or removal from public office or dismissal from public employment.

Secs. 2-237—2-262. Reserved.

ARTICLE VIII. ETHICS

Sec. 2-263. Findings of fact.

The mayor and council make the following findings of fact:

- (a) It necessary to the proper operation of democratic government that public officials be, and appear to be, independent, impartial, and responsible to the people; that governmental decisions and policies be made in the proper manner and structure; and that public office not be used for personal gain; and
- (b) Affirmative measures to this end are necessary to provide the public with confidence in the integrity of its government,
- (c) It is the policy of the city that its officials, employees, appointees, and volunteers conducting official city business be governed by the principles set forth in Resolution 09-07, and be further governed by the specific provisions of this article.

Sec. 2-264. Purpose.

The purpose of this code of ethics is to:

- (a) Encourage high ethical standards in official conduct by city officials;
- (b) Establish guidelines for ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the interest of the city;
- (c) Require disclosure by such officials of private financial or other interest in matters affecting the city; and
- (d) Serve as a basis for disciplining those who refuse to abide by its terms.

Sec. 2-265. Scope.

The provisions of this code of ethics shall be applicable to all elected or appointed city officials. Notwithstanding anything herein to the contrary, state law and the charter of the city shall be controlling in the event of an actual conflict with the provisions of this code of ethics. This article shall be interpreted to supplement, and not replace, said provisions of state law and the charter.

Sec. 2-266. Definitions.

Solely for the purpose of this code of ethics:

City official or official, unless otherwise expressly defined does not include city employees but does mean the mayor, members of the city council, municipal court judges (including substitute judges), city manager, city clerk, city attorney, and all other persons holding positions designated by the city charter, as amended as well as all head of all departments of the government of the city. The term "city official" also includes all individuals, including city employees, appointed by the mayor and/or city council as appropriate to city authorities, commissions, committees, boards, task forces, or other bodies which can or may vote or take formal action or make official recommendations to the mayor and/or city council.

Decision means any ordinance, resolution, contract, franchise, formal action or other matter voted on by the city council or other city board or commission, as well as the discussions or deliberations of the council, board, or commission which can or may lead to a vote or formal action by that body.

Employee means any person who is a full-time or parttime employee of the city.

Immediate family means the spouse, mother, father, grandparent, brother, sister, son or daughter related by blood, adoption or marriage and shall include in-laws, steps, and halves of the relationships listed.

Incidental interest means an interest in a person, entity or property which is not a substantial interest as defined herein and which has insignificant value.

Remote interest means an interest of a person or entity, including a city official, which would be affected in the same way as the general public. For example, the interest of an official in the property tax rate, general city fees, city utility charges or a comprehensive zoning ordinance or similar matters is deemed remote to the extent that the official would be affected in common with the general public.

Substantial interest means an interest, either directly or through a member of the immediate family, in another person or entity, where:

- (1) The interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000.00 or more of the equity or market value of the entity; or
- (2) The funds received by the person from the other person or entity during the previous 12 months either equal or exceed:
 - a. \$5,000.00 in salary, bonuses, commissions or professional fees, or \$5,000.00 in payment for goods, products or services; or
 - b. Ten percent of the recipient's gross income during that period, whichever is less;
- (3) The person serves as a corporate officer or member of the board of directors or other governing board of a for-profit entity other than a corporate entity owned or created by the city council; or
- (4) The person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000.00 or more.

Sec. 2-267. Prohibitions.

- (a) No city official shall use such position to secure special privileges or exemptions for himself or herself or others, or to secure confidential information for any purpose other than official duties on behalf of the city.
- (b) No city official, in any matter before the council or other city body, relating to a person or entity in which the official has a substantial interest, shall fail to disclose for the record such interest prior to any discussion or vote or fail to recuse himself/herself from such discussion or vote as applicable.
- (c) No city official shall act as an agent or attorney for another in any matter before the city council or other city body.
- (d) No city official shall directly or indirectly receive, or agree to receive, any compensation, gift, reward, or gratuity in any matter or proceeding connected with, or related to, the duties of his office except as may be provided by law.
- (e) No city official shall enter into any contract with, or have any interest in, either directly or indirectly, the city, except as authorized by state law.
 - (1) This prohibition shall not be applicable to the professional activities of the city attorney in his or her work as an independent contractor and legal advisor on behalf of the city.
 - (2) This prohibition shall not be applicable to an otherwise valid employment contract between the city and a city official who is not elected (such as, by way of example, a city manager, city administrator or chief of police).
 - (3) Any official who has a proprietary interest in an agency doing business with the city shall make that interest known in writing to the city council and the city clerk.
- (f) All public funds shall be used for the general welfare of the people and not for personal economic gain.
- (g) Public property shall be disposed of in accordance with state law.

- (h) No city official shall solicit or accept other employment to be performed, or compensation to be received, while still a city official if the employment or compensation could reasonably be expected to impair such official's judgment or performance of city duties.
- (i) If a city official accepts or is soliciting a promise of future employment from any person or entity who has a substantial interest in a person, entity or property which would be affected by any decision upon which the official might reasonably be expected to act, investigate, advise, or make a recommendation, the official shall disclose the fact to the city council and shall recuse himself/herself and take no further action on matters regarding the potential future employer.
- (j) No city official shall use city facilities, personnel, equipment or supplies for private purposes, except to the extent such are lawfully available to the public.
- (k) No city official shall grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or make available to the public at large.
- (l) A city official shall not directly or indirectly make use of, or permit others to make use of, official information not made available to the general public for the purpose of furthering a private interest.
- (m) A city official shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to such official or persons within the official's immediate family, or those with whom the official has business or financial ties amounting to a substantial interest.
- (n) A city official shall not order any goods and services for the city without prior official authorization for such an expenditure. No city official shall attempt to obligate the city or give the impression of obligating the city without proper prior authorization.
- (o) No city official shall draw travel funds or per diem from the city for attendance at meetings, seminars, training or other educational events and fail to attend such events without promptly reimbursing the city therefor.
- (p) No city official shall attempt to unduly influence the outcome of a case before the municipal court nor shall any city official other than the municipal court clerk engage in ex parte communication with a municipal court judge on any matter pending before the municipal court.

Sec. 2-268. Conflict of interest.

- (a) A city official may not participate in a vote or decision on a matter affecting an immediate family member or any person, entity, or property in which the official has a substantial interest.
- (b) A city official who serves as a corporate officer or member of the board of directors of a nonprofit entity must disclose their interest in said entity to the mayor and council prior to participating in a vote or decision regarding funding of the entity by or through the city.
- (c) Where the interest of a city official in the subject matter of a vote or decision is remote or incidental, the city official may participate in the vote or decision and need not disclose the interest.

Sec. 2-269. Board of ethics.

- (a) A board of ethics is hereby established to act as provided below with respect to complaints that allege a violation of this article by city official.
- (b) The board of ethics shall consist of three residents of the city, one appointed by the mayor, one appointed by the council, and the third appointed by the two named board members and approved by a majority of the city council. The third member of the board of ethics shall be a member in good standing of the State Bar of Georgia.

- (c) All members of the board of ethics shall be residents of the city for at least one year immediately preceding the date of taking office and shall remain a resident while serving on the board.
- (d) All members of the board of ethics shall serve a five-year term.
- (e) No person shall serve as a member of the board of ethics if the person has, or has had within the preceding one-year period, any interest in any contract or contracting opportunity with the city or has been employed by the city.
- (f) Members of the board of ethics with any permit or rezoning application pending before the city, or any pending or potential litigation against the city or any city official charged in the complaint shall be disqualified from serving on the board of ethics for that complaint. An alternate member of the board of ethics shall be selected in the same manner as the disqualified individual.
- (g) The members of the board of ethics shall serve without compensation. The city council shall provide meeting space for the board of ethics and, subject to budgetary procedures and requirements of the city, such supplies and equipment as may be reasonably necessary for the board to perform its duties and responsibilities.
- (h) No person shall serve on the board of ethics who has been convicted of a felony involving moral turpitude in this state or any other state, unless such person's civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude.
- (i) No person shall serve on the board of ethics who is less than 18 years of age, who holds a public elective office, who is physically or mentally unable to discharge the duties of a member of the board of ethics, or who is not qualified to be a registered voter in the city.
- (j) Upon appointment, members of the board of ethics shall sign an affidavit attesting to their qualification to serve as a member of the board of ethics.
- (k) Members of the board of ethics may be removed by majority vote of the mayor and council.

Sec. 2-270. Receipt of complaints.

- (a) All complaints against city officials shall be filed with the board of ethics, who may require that oral complaints and complaints illegibly or informally drawn, be reduced to a memorandum of complaint in such form, as may be prescribed, by the city council or the board of ethics. Upon receipt of a complaint in proper form, the chair of the board of ethics shall forward a copy of the complaint to the city official or officials charged in the complaint within and no more than seven calendar days.
- (b) All complaints shall be submitted and signed under oath, shall be legibly drawn and shall clearly address matters within the scope of this article.
- (c) Upon receipt of a complaint in proper form, the board shall review it to determine whether the complaint is unjustified, frivolous, patently unfounded or fails to state facts sufficient to invoke the disciplinary jurisdiction of the mayor and council. The board of ethics is empowered to dismiss in writing complaints that it determines are unjustified, frivolous, patently unfounded or fail to state facts sufficient to invoke the disciplinary jurisdiction of the mayor and council; provided, however, that a rejection of such complaint by the board of ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official. For complaints that are not dismissed, the board of ethics is empowered to collect evidence and information concerning any complaint and add the findings and results of its investigation to the file containing such complaint.
- (d) Upon completion of its investigation of a complaint, the board of ethics is empowered to dismiss in writing those complaints which it determines are unjustified, frivolous, patently unfounded or which fail to

state facts sufficient to invoke the disciplinary jurisdiction of the mayor and council; provided, however, that a rejection of such complaint by the board of ethics shall not deprive the complaining party of any action such party might otherwise have at law or in equity against the city official.

- (e) The board of ethics is empowered to conduct investigations, to take evidence, and to hold hearings to address the subject matter of a complaint.
- (f) The board of ethics is empowered to adopt forms for formal complaints, notices, and any other necessary or desirable documents within its jurisdiction where the city council has not prescribed such forms.
- (g) Findings of the board of ethics shall be submitted to the mayor and council for action.
- (h) To discourage the filing of ethics complaints solely for political purposes, complaints will not be accepted against a person seeking election as a city official, whether currently serving as a city official or not, from the date qualifying opens for the elected office at issue through the date the election results for that office are certified. The time for filing complaints will not run during this period. Properly filed complaints will be accepted and processed after the election results have been certified.

Sec. 2-271. Service of complaint.

The city clerk, on behalf of the board of ethics, shall cause the complaint to be served on the city official charged as soon as practicable but in no event no later than seven calendar days after receipt of a proper, verified complaint. Service may be by personal service, by certified mail, return receipt requested, or by statutory overnight delivery. A hearing shall be held within 60 calendar days after filing of the complaint. The board of ethics shall conduct hearings in accordance with the procedures and regulations it establishes, but, in all circumstances, at least one hearing shall include the taking of testimony and the cross-examination of available witnesses. The decision of the board of ethics shall be rendered to mayor and council within seven calendar days after completion of the final hearing. At any hearing held by the board of ethics, the city official, who is the subject of inquiry, shall have the right to written notice of the hearing and the allegations at least seven calendar days before the first hearing, to be represented by counsel, to hear and examine the evidence and witnesses and, to oppose or try to mitigate the allegations. The city official, subject to the inquiry, shall have also have the right, but not the obligation, of submitting evidence and calling witnesses. Failure to comply with any of the time deadlines in this section shall not invalidate any otherwise valid complaint, or in any way affect the power or jurisdiction of the board of ethics or the city council to act upon any complaint.

Sec. 2-272. Right to appeal.

- (a) Any city official or complainant adversely affected by the findings or recommendations of the board of ethics may obtain judicial review of such decision as provided in this article.
- (b) An action for judicial review may be commenced by filing an application for a petition for review, in the county superior court within 30 days after the decision of the board of ethics. The filing of such application shall act as supersedeas.

Sec. 2-273. Penalty.

Any person violating any provision of this article is subject to:

- (1) Public reprimand, censure, or removal if permitted by law by the mayor and council; or
- (2) Request for resignation by the mayor and council.

Section 2.

This Ordinance shall be effective upon the posting of this Ordinance in two (2) public places in the City of Dalton for five (5) consecutive days following its enactment by the Mayor and Council, the public health, safety, and welfare requiring it.

Section 3.

All ordinances and parts of ordinances in conflict with this ordinance are repealed.

Section 4.

It is hereby declared to be the intention of the Mayor and Council of the City of Dalton that the section, paragraphs, sentences, clauses and phrases of this Ordinance are severable and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or otherwise invalid by a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance.

SO ORDAINED this ____ day of _____, 2024.

The foregoing Ordinance received its first reading on _____ and a second reading on _____. Upon second reading a motion for passage of the ordinance was made by Councilmember _____, second by Councilmember _____ and upon the question the vote is ____ ayes, ____ nays and the Ordinance is adopted.

MAYOR/MAYOR PRO TEM

ATTEST:

CITY CLERK