



**MAYOR AND COUNCIL MEETING  
MONDAY, SEPTEMBER 19, 2022  
6:00 PM  
DALTON CITY HALL**

**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)*

**Proclamation:**

- [1.](#) "National Long-Term Care Residents' Rights Month" - October 2022 - Ms. Beth Bennett, North Georgia Programs & Services Long-Term Care Ombudsman

**Minutes:**

- [2.](#) Mayor & Council Minutes of September 6, 2022

**Unfinished Business:**

- [3.](#) Second Reading Of Ordinance No. 22-21 - An Ordinance Amending The Code Of Ordinances, City Of Dalton, Georgia, At Chapter 98, Article V To Provide For The Addition Of Section 98-50 Entitled "Naming Buildings, Streets, Parks, Bridges, And Other Property" In Order To Facilitate Requests To Name Or Rename City Owned Streets, Sidewalks, Buildings, Facilities, And Other Public Places; To Provide For Definitions, Criteria, Application Procedure And Requirements For Naming Or Renaming City Owned Streets, Sidewalks, Buildings, Facilities, Parks, Bridges, And Other Public Places And For Other Purposes.

**New Business:**

- [4.](#) The request of Melvin Terry to rezone from Medium Density Single Family Residential (R-3) to Neighborhood Commercial (C-1) a tract of land totaling 0.06 acres located at 06A Waugh Street (Martin Luther King Jr. Blvd.), Dalton, Georgia. Parcel (12-218-28-016).
- [5.](#) The request of Maria E. Gonzales & Edgar Hurtado to annex 0.17 acres located at 1517 Hale Bowen Drive, Dalton, GA into the City of Dalton as Medium Density Single Family Residential (R-3). Parcel (12-179-02-048).
- [6.](#) Gregg Sims Architect Amendment No. 1 to AIA Document B101-2017 for the Project Renovations and Additions to the Existing John Davis Recreation Center
- [7.](#) Felker Construction Contract For Renovations & Additions to John Davis Recreation Center

- [8.](#) Renewal of Contract with Spectra Contract Flooring - Carpet Cleaning at Public Works
- [9.](#) Renewal of Contract with Spectra Contract Flooring - Tile Cleaning at Public Works
- [10.](#) First Reading Ordinance 22-25 An Ordinance To Repeal Article Viii "Donation Bins" In Chapter 26 "Businesses" Of The 2001 Revised Code Of Ordinances Of The City Of Dalton; To Establish An Effective Date; To Set Penalties For Failure To Remove A Donation Bin Presently Permitted After The Effective Date Of This Ordinance; And For Other Purposes.

**Supplemental Business**

**Announcements**

**Adjournment**

# PROCLAMATION



## **“NATIONAL LONG-TERM CARE RESIDENTS’ RIGHTS MONTH” OCTOBER 2022**

**WHEREAS**, there are 1.3 million individuals living in 15,600 nursing homes; and over 800,000 individuals living in 28,900 assisted living/residential care facilities in the U.S.; and

**WHEREAS**, the Federal Nursing Home Reform Act of 1987 guarantees residents their individual rights in order to promote and maintain their dignity and autonomy; and

**WHEREAS**, all residents should be aware of their rights so they may be empowered to live with dignity and self-determination; and

**WHEREAS**, we wish to honor and celebrate these citizens, to recognize their rich individuality, and to reaffirm their right to vote and participate politically, including the right to have a say in their care; and

**WHEREAS**, individuals and group across the country will be celebrating Residents’ Rights Month with the theme - **“Inspiring Unity Within Our Community”** - emphasizing the importance of fostering meaningful community within the facility and encouraging residents’ connection to their local community.

**NOW, THEREFORE, BE IT RESOLVED**, I, David Pennington, Mayor of the City of Dalton, Georgia hereby proclaim October 2022 as **“National Long-Term Care Residents’ Rights Month”** in the City of Dalton, and encourage all citizens to join me in these important observances.

*In witness whereof, I have hereunto set my hand  
and caused the seal of this city to be affixed.*

Mayor \_\_\_\_\_

Date \_\_\_\_\_ October 3, 2022

THE CITY OF DALTON  
MAYOR AND COUNCIL MINUTES  
SEPTEMBER 6, 2022

The Mayor and Council held a meeting this evening at 6:00 p.m. in the Council Chambers of City Hall. Present were Mayor David Pennington, Council members Annalee Sams and Steve Farrow, City Attorney Terry Miller and City Administrator Andrew Parker. Councilmembers Dennis Mock and Tyree Goodlett were absent.

CALL TO ORDER

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

APPROVAL OF AGENDA

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

PUBLIC COMMENTARY

Linton Johnson Attorney for Jim & Joe Howell property owners of 312 West Waugh Street introduced himself to the Mayor and Council in reference to Agenda Item #8 regarding Eminent Domain. Johnson stated his clients do not want to lose their prime location but understands eminent domain. Johnson asked what is the public use for this project and what is the just and adequate compensation.

SPECIAL RECOGNITIONS:

Police Department Life Saving Award – Officer Chase Jenkins

Mayor David Pennington presented Officer Chase Jenkins with the “Live Saving Award” for his actions at the Trade Center during the accident at the car show.

Presentation of 2022 APWA Presidential Leadership Award - Mr. Stan Brown

President of the APWA Stan Brown presented City Administrator Andrew Parker with the American Public Works Associations (APWA) 2022 Presidential Leadership Award.

MINUTES

The Mayor and Council reviewed the Regular Meeting Minutes of August 15, 2022. On the motion of Council member Sams, second Council member Farrow, the minutes were approved. The vote was unanimous in favor.

NEW 2022 ALCOHOL BEVERAGE APPLICATION

On the motion of Councilmember Sams, second Council member Farrow, the following 2022 Alcohol Beverage Application was approved:

Business Owner:	Jeeana Discount, LLC
d/b/a:	Smoking Bunny
Applicant:	Kenil Kumar Patel
Business Address:	320 W. Walnut Ave.
License Type:	Package Beer, Package Wine (Convenience Store)
Disposition:	<b>New</b>

The vote was unanimous in favor.



ARCADIS PROFESSIONAL SERVICES AGREEMENT TASK ORDER 005A

T. Jackson Sheppard, E.I.T., Public Works Project Manager presented the Arcadis Professional Services Agreement Task Order 005A for 631 N Glenwood Avenue Design Services as part of the North Glenwood Drainage Improvements Project in the amount of \$59,835.00. On the motion of Councilmember Sams, second Councilmember Farrow, the Agreement was approved. The vote was unanimous in favor. Note: Funding from Bonded Capital Projects

ARCADIS PROFESSIONAL SERVICES AGREEMENT TASK ORDER 004B

T. Jackson Sheppard, E.I.T., Public Works Project Manager presented Arcadis Professional Services Agreement Task Order 004B for Ridge Street Phases 2 and 3 Design Services as Part of the Walnut North Drainage Improvements Project in the amount of \$178,685.00. On the motion of Councilmember Farrow, second Councilmember Sams, the Agreement was approved. The vote was unanimous in favor. Note: Funding from Bonded Capital Projects

2022 LMIG MILLING AND RESURFACING VARIOUS CITY STREETS

T. Jackson Sheppard, E.I.T., Public Works Project Manager presented the 2022 LMIG Milling and Resurfacing Various City Streets Contract Bid Award Recommendation as Bartow Paving Company Inc. Sheppard stated Bartow Paving was the lowest bidder. On the motion of Councilmember Sams, second Councilmember Farrow, the Agreement was approved. The vote was unanimous in favor. Note: Funding SP 256 Paving 2022

RESOLUTION 22-11 - EMINENT DOMAIN - 312 WEST WAUGH STREET

City Administrator Andrew Parker presented Resolution 22-11 Of the Mayor and Council of The City of Dalton Pursuant to Chapter 1 Of Title 22 And Article 2 Of Chapter 2 Of Title 22 Of the Official Code of Georgia Annotated for The Exercise of The Power of Eminent Domain for That Property Known As 312 West Waugh Street for the construction of the City's Prater Alley Stormwater Improvements and Flood Mitigation Project for the Prater Alley drainage basin. On the motion of Councilmember Farrow, second Councilmember Sams, the Resolution was approved. The vote was unanimous in favor.

FY-2022 BUDGET AMENDMENT #4

CFO Cindy Jackson presented the FY-2022 Budget Amendment #4 for line item adjustments requested by various departments pertaining to the General Fund, 2020 SPLOST Fund, and the Airport Grant Fund. On the motion of Councilmember Sams, second Councilmember Farrow, the Amendment was approved. The vote was unanimous in favor.

2022 MILLAGE RATE ADOPTION

On the motion of Councilmember Sams, second Councilmember Farrow, Item #10 entitled 2022 Millage Rate Adoption was tabled. The vote was unanimous in favor.

FIRST READING OF ORDINANCE NO. 22-20 – MOBILE FOOD VEHICLES

The Mayor and Council held a first reading for Ordinance No. 22-20 – Mobile Food Vehicles An Ordinance of The City of Dalton Providing for The Sale of Food and Beverages from Mobile Food Vehicles in Designated Areas of The City of Dalton And During Designated Hours; To Provide for Permitting, Inspection, And Enforcement; To Provide Penalties for Violation; To Provide for An Effective Date; To Provide for Severability; And for Other Purposes.

FIRST READING OF ORDINANCE NO. 22-21 – NAMING BUILDINGS, STREETS, PARKS, BRIDGES

The Mayor and Council held a first reading for Ordinance No. 22-21 An Ordinance Amending The Code Of Ordinances, City Of Dalton, Georgia, At Chapter 98, Article V To Provide For The Addition Of Section 98-50 Entitled “Naming Buildings, Streets, Parks, Bridges, And Other Property” In Order To Facilitate Requests To Name Or Rename City Owned Streets, Sidewalks, Buildings, Facilities, And Other Public Places; To Provide For Definitions, Criteria, Application Procedure And Requirements For Naming Or Renaming City Owned Streets, Sidewalks, Buildings, Facilities, Parks, Bridges, And Other Public Places And For Other Purposes.

REAPPOINTMENT TO THE LIBRARY BOARD FOR A 3-YEAR TERM

On the motion of Councilmember Farrow, second Councilmember Sams, the Mayor and Council reappointed Judy Jolly to the Library Board for a 3-year term to expire June 30, 2025. The vote was unanimous in favor.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 6:34 p.m.

\_\_\_\_\_  
Bernadette Chattam  
City Clerk

\_\_\_\_\_  
David Pennington, Mayor

Recorded  
Approved: \_\_\_\_\_  
Post: \_\_\_\_\_



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 09/19/2022

**Agenda Item:** Ordinance No. 22-21

**Department:** City Clerk

**Requested By:** Bernadette Chattam

**Reviewed/Approved  
by City Attorney?** Yes

**Cost:** N/A

**Funding Source if Not  
in Budget** N/A

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

SECOND READING OF ORDINANCE NO. 22-21 -

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF DALTON, GEORGIA, AT CHAPTER 98, ARTICLE V TO PROVIDE FOR THE ADDITION OF SECTION 98-50 ENTITLED "NAMING BUILDINGS, STREETS, PARKS, BRIDGES, AND OTHER PROPERTY" IN ORDER TO FACILITATE REQUESTS TO NAME OR RENAME CITY OWNED STREETS, SIDEWALKS, BUILDINGS, FACILITIES, AND OTHER PUBLIC PLACES; TO PROVIDE FOR DEFINITIONS, CRITERIA, APPLICATION PROCEDURE AND REQUIREMENTS FOR NAMING OR RENAMING CITY OWNED STREETS, SIDEWALKS, BUILDINGS, FACILITIES, PARKS, BRIDGES, AND OTHER PUBLIC PLACES AND FOR OTHER PURPOSES

**CITY OF DALTON**  
**ORDINANCE**  
**ORDINANCE No. 22-21**

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF DALTON, GEORGIA, AT CHAPTER 98, ARTICLE V TO PROVIDE FOR THE ADDITION OF SECTION 98-50 ENTITLED “NAMING BUILDINGS, STREETS, PARKS, BRIDGES, AND OTHER PROPERTY” IN ORDER TO FACILITATE REQUESTS TO NAME OR RENAME CITY OWNED STREETS, SIDEWALKS, BUILDINGS, FACILITIES, AND OTHER PUBLIC PLACES; TO PROVIDE FOR DEFINITIONS, CRITERIA, APPLICATION PROCEDURE AND REQUIREMENTS FOR NAMING OR RENAMING CITY OWNED STREETS, SIDEWALKS, BUILDINGS, FACILITIES, PARKS, BRIDGES, AND OTHER PUBLIC PLACES AND FOR OTHER PURPOSES

**WHEREAS**, the Mayor and Council of the City of Dalton desire to establish guidelines for naming or renaming City owned streets, sidewalks, buildings, facilities, parks, bridges and other public spaces; and

**WHEREAS**, the Mayor and Council of the City of Dalton desire to amend the Code of Ordinances of the City of Dalton, Georgia by adding a Section 98-50 entitled “Naming Buildings, Streets, Parks, Bridges, and Other Public Property” Chapter 98, Article II.

**NOW THEREFORE BE IT ORDAINED** by the Mayor and Council of the City of Dalton, meeting in formal session, that the Code of Ordinances, City of Dalton, Georgia is hereby amended by adding Section 98-50 to Chapter 98 Article II as follows:

“

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Chapter98 -STREETS, SIDEWALKS AND OTHER PUBLIC PLACES  
Article II -Street Addressing

Sec. 98-50, Street and/or City facilities name changes

- a) Recognition of public interest: The City recognizes that, from time to time a certain individual or organization may make historical, cultural or other important contributions to the City, the State of Georgia or the United States that merit recognition by renaming a City street and/or other City facilities, in their honor, The City also recognizes that certain streets and/or City facilities have already been named in honor of other important contributions to the City, the State of Georgia or the United States. This section prescribes the procedure by which existing City streets and/or City facilities may be named in honor of individuals and organizations, while preserving the integrity of those streets and City facilities that have already been historically connected or dedicated with the name of an individual or organization.
- b) Purpose: To establish a systemic and consistent approach for the official renaming of City streets and/or City facilities.
- c) Definition: City facilities – all property assets under municipal ownership and/or control or to be deeded to the municipality, including but not limited to streets, bridges, buildings, structures, open spaces, public parks, trails, natural areas, wetlands, environmental habitat, and land.

- d) Criteria: The City will rename streets and/or City facilities through an adopted process utilizing criteria emphasizing community value and character, local history, geography, environmental, as well as civics and service to the community. Names proposed should fall within one of the following categories: Local History/ Context Name, Historic/Natural Resource, or Commemorative Name. The following criteria shall be used in determining the appropriateness of the naming designation:

1. Local History/Context Name: Use historic references, with submittal of a one-page documentation of local history or contextual references taken from print and/or other factual documentation.
2. Natural/Historic Resource:
  - i. Use geographic location of the facility
  - ii. Use outstanding natural features in immediate proximity of the facility (i.e. hill, stream, lake, notable tree, street, community or neighborhood)
  - iii. Use site, structure, and/or place of historic or cultural significance on or in immediate proximity of the facility
  - iv. Avoid use of names having intended spelling errors, creating a false sense of history (e.g. Towne, Olde), or reflecting natural features not extant (e.g. Mountain Peak Road)
3. Commemorative Name:
  - i. An individual\*, family, and/or group of historical or cultural significance, with submittal of a one-page biographical sketch providing documentation of direct civic contributions to the facility, or the City overall.

\* Individual of Historic or Cultural significance – minimum qualifications: a) native to or clearly identified with the City of Dalton, Georgia, b) made exceptional service contribution to the community in his/her field of endeavor, and c) an inspiration to others to make use of their talents, d) Must be deceased.

- ii. An individual, family, and/or group (or designated honoree) having made a substantial financial contribution of land and/or donation to the City facility or City, itself, with submittal of a one-page biographical sketch providing documentation of the direct contribution toward the acquisition or development of the specific facility or street (does not have to be deceased).

- e) Application procedure:

1. A request for renaming of a City Street and/or City facility shall be submitted in writing to the City Clerk.
2. Those submitting a naming request should show how the proposed name is consistent with the criteria stated in this Ordinance.
3. The application must contain a detailed cost estimate for the implantation of any street renaming, including all costs associated with producing and installing appropriate signage to effectuate City street and/or City facility renaming.  
A \$300.00 non-refundable administrative fee to cover other associated costs concerning the City's consideration of the application for the street and/or City Facility renaming, including advertising the proposed street and/or City facility renaming, must also accompany the application.

4. Because street renaming often imposes a significant hardship on residences and businesses located on the street due to the fact that maps, banking information, driver's license information, billing information, websites, advertising information, letterheads and other stationary or residential/business materials, and other information relative to the affected residences or businesses will need to be changed as a result of a street renaming, the application must be accompanied by a list of the names and addresses and signatures of 100 percent of the residents residing or businesses located on the street to which the street renaming applies in favor of the street renaming and whose address will change as a result of the street renaming.
- f) Consideration of application; effectuating the street and/or City facility renaming:
  1. The City staff will review the proposal for adherence to the stated criteria and authentication of the statements relative to contributions in the case of an individual before forwarding to the Mayor and Council. If the request is incomplete, staff will contact the applicant, in writing, and provide them with the opportunity to resubmit a revised request.
  2. The Mayor and Council will offer the opportunity for public input on the proposed renaming.
  3. Each application must meet the criteria in this Ordinance but meeting all criteria does not ensure renaming.
  4. The Mayor and Council shall make the final decision by enactment of a Resolution.
  5. If the street and/or City facility renaming is accepted by the City and adopted by the Mayor and Council of the City of Dalton, in accordance with the City's Code of Ordinances, then the applicant will be further required to submit payment to the City in the amount of the cost of installation of signage and/or other amenities associated with the street and/or City facility renaming. Funds received will be deposited into the general fund of the City.
  6. Costs to implement a street and/or City facility renaming must be paid to the City within thirty (30) days of the applicant's receipt of notice from the City that the application has been accepted by the City and further setting forth the cost of the street renaming or dedication to be remitted to the City.
  7. Upon the adoption of the renaming and the payments of said costs, renaming of the street and/or City facility is to be completed within a six (6) month time period.
  8. Notice of the renaming must be provided to all property owners located on the street, U.S. Postal Service, and other entities as appropriate.

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The Mayor and Council intend that Code Sections 98-41 through 98-49 remain in full force and effect. City "staff" shall mean the Chief of the Fire Department or his designee.

**BE IT FURTHER ORDAINED** that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Dalton, Georgia and the sections of this ordinance may be renumbered to accomplish such intention.

**BE IT FURTHER ORDAINED** that this Ordinance shall become effective upon the passage and adoption by the Mayor and Council Members of the City of Dalton.

The foregoing Ordinance received its first reading on \_\_\_\_\_. A motion for passage of the Ordinance was made by Council person \_\_\_\_\_, second by Council person \_\_\_\_\_ and upon the question the vote is \_\_\_\_\_ ayes, \_\_\_\_\_ nays and the Ordinance is adopted.

Attest:

CITY OF DALTON, GEORGIA

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 9/19/2022

**Agenda Item:** The request of Melvin Terry to rezone from Medium Density Single Family Residential (R-3) to Neighborhood Commercial (C-1) a tract of land totaling 0.06 acres located at 06A Waugh Street (Martin Luther King Jr. Blvd.), Dalton, Georgia. Parcel (12-218-28-016)

**Department:** Planning and Zoning

**Requested By:** Ethan Calhoun

**Reviewed/Approved by City Attorney?** Sent for Review

**Cost:** N/A

**Funding Source if Not in Budget** N/A

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

See the attached staff analysis.



CITY OF DALTON  
ORDINANCE  
Ordinance No. 22-23

An Ordinance Of The City Of Dalton To Rezone Certain Property Within The City Of Dalton From Medium Density Single Family Residential (R-3) To Neighborhood Commercial (C-1) Being A Tract of Land Totaling .06 Acre Located At 06A Waugh Street (Parcel Nos. 12-218-28-016); To Provide An Effective Date; And For Other Purposes.

WHEREAS, Melvin Terry (Owner) has filed an application with the City to rezone property located at 06A Waugh Street (Parcel No. 12-218-28 816);

WHEREAS, the Property is currently zoned Medium Density Single Family Residential (R-3);

WHEREAS, the Owner is requesting the Property be rezoned to Neighborhood Commercial (C-1);

WHEREAS, the application for rezoning appears to be in proper form and made by all owners of the Property sought to be rezoned;

WHEREAS, the rezoning is in conformity with the City of Dalton Joint Comprehensive Plan;

WHEREAS, the Dalton-Whitfield Planning Commission considered the proposed rezoning of the Property at a duly noticed public hearing held on August 22, 2022 and subsequently forwarded its favorable recommendation to the Mayor and Council for rezoning the property to C-1;

BE IT ORDAINED by the Mayor and Council of the City of Dalton in regular meeting assembled and by authority of the same it is hereby ordained as follows:

-1-

The recitals contained herein above are incorporated herein by reference and are adopted as findings and determinations of the Mayor and Council.

-2-

The Property located at 06A Waugh Street identified as Parcel No. 12-218-28-016 is hereby rezoned from Medium Density Single Family Residential (R-3) to Neighborhood Commercial (C-1).

-3-

The Unified Zoning Map of the City of Dalton shall be amended to conform to and reflect the rezoning of the Property as approved herein. City Staff is authorized and directed to take all actions necessary to effectuate the rezoning of the Property as approved herein.

-4-

Should any section or provision of this Ordinance be declared by a Court of competent jurisdiction to be unconstitutional, invalid or unlawful, such declaration shall not affect the validity of the remaining portions of the ordinance not so declared to be unconstitutional, invalid, or unlawful.

-5-

All resolutions and ordinances of the City of Dalton or parts thereof in conflict herewith are hereby repealed.

-6-

This Ordinance shall take effect and be in force from and after its adoption and publication in two public places within the City of Dalton for five (5) consecutive days, the public welfare of the City of Dalton requiring it.

ADOPTED AND APPROVED on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at the regular meeting of the Mayor and Council of the City of Dalton.

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 Council member \_\_\_\_\_, second by Council Member \_\_\_\_\_ and upon the question the vote is \_\_\_\_\_ ayes, \_\_\_\_\_ nays and the Ordinance is adopted.

CITY OF DALTON, GEORGIA

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
CITY CLERK

A true copy of the foregoing Ordinance has been published in two public places within the City of Dalton for five (5) consecutive days following passage of the above-referenced Ordinance as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
CITY CLERK  
CITY OF DALTON

**DALTON-VARNELL-WHITFIELD COUNTY PLANNING COMMISSION**  
**503 WEST WAUGH STREET**  
**DALTON, GA 30720**

**MEMORANDUM**

**TO:** City of Dalton Mayor and Council  
Andrew Parker  
Terry Miller  
Jean Garland

**FROM:** Jim Lidderdale  
Chairman

**DATE:** August 26, 2022

**SUBJECT: The request of Melvin Terry to rezone from Medium Density Single Family Residential (R-3) to Neighborhood Commercial (C-1) a tract of land totaling 0.06 acres located at 06A Waugh Street (Martin Luther King Jr. Blvd.), Dalton, Georgia. Parcel (12-218-28-016)**

The most recent meeting of the Dalton-Varnell-Whitfield County Planning Commission was held on August 22, 2022 at 6:00 p.m. at the Whitfield County Courthouse meeting room. A portion of the agenda included a public hearing concerning the above matter. A quorum of five members of the Planning Commission was present. All legal requirements for advertising and posting the public hearing were met. The petition was represented by Trey Terry with power of attorney.

**Public Hearing Summary:**

Mr. Calhoun summarized the staff analysis which recommended a denial of the C-1 rezoning. There were no further questions for Calhoun.

Trey Terry stated that he was representing his father, Melvin. Terry went on to note their family's long-time local roofing business and their desire to use the subject property for signage for their business. Terry stated that they plan to construct a small sign on the subject property as well as potentially parking one of their trucks on the property with the business logo and information. Terry noted that his family obtained the subject property at a low price as compared to the higher lease fees associated with other available highway signage in and around the city.

Rose Cooper, an adjacent neighbor, strongly opposed the C-1 rezoning based on her concerns with the content of the staff analysis in terms of lighting and as an eye sore for the residential community.

Deborah Macon, a neighbor, also stated her opposition to the proposed C-1 rezoning and sign as well as noting issues with the placement of a truck on the subject property.

Teresa Copeland, an adjacent neighbor, opposed the C-1 rezoning and proposed sign based on her opinion that the commercial encroachment and signage would undermine the revitalization efforts for the historic African American neighborhood.

Terry rebutted by stating a willingness to limit sign height and size to minimize impact to the neighborhood.

With no other comments heard for or against, this hearing closed at approximately 6:50pm.

**Recommendation:**

Chairman Lidderdale sought a motion on the requested C-1 rezoning. Octavio Perez affirmed the concerns of the neighbors' opposition to the proposed signage on the subject property. **Jody McClurg then made a motion to deny the C-1 rezoning based on her agreement with the content of the staff analysis. David Pennington then seconded the motion and a unanimous recommendation to deny the C-1 rezoning followed, 4-0.**

**STAFF ANALYSIS  
REZONING REQUEST  
*Unified Zoning Ordinance***

**ZONING CASE: Melvin Terry is seeking to rezone parcel 12-218-28-016 from Medium-Density Single-Family Residential (R-3) to Neighborhood Commercial (C-1). The parcel totals 0.06-acres and is located along ML King BLVD.**

The tract is currently undeveloped and wooded. The petitioner's request was made in order to develop up to three duplexes on the subject property.

The surrounding uses and zoning are as follows: 1) To the north, are two tracts of land across MLK BLVD zoned R-3 that each contain a single-family detached dwelling; 2) To the east, is a 0.46-acre tract of land zoned R-3 that contains a single-family detached dwelling; 3) To the south, is a 5.8-acre tract of land zoned R-3 that contains the Dalton Community Center; and 4) To the west, is an undeveloped 0.15-acre tract of land across MLK BLVD zoned R-3. All in all, a review of the zoning map shows a large R-3 district.

The subject property is in the jurisdiction of the City of Dalton Mayor and Council.

**CONSIDERING FACTORS FOR A REZONING/ANNEXATION ANALYSIS**

**(A) Whether the proposed amendment would allow a use that is generally suitable for the site compared to other possible uses and whether the proposed change is consistent with the established land use pattern and zoning of adjacent and nearby property.**

The subject property is entirely surrounded by the R-3 zone district and conventional medium-density residential development. The one non-residential adjacent property contains a public community center that serves the surrounding neighborhood. The limited size and shape of the subject property prevent the possibility of any residential or commercial development aside from a potential sign. The proposed rezoning would be out of character with the surrounding zoning and development established in this area.

**(B) Whether the proposed C-1 amendment would adversely affect the economic value of adjacent and nearby property.**

The intent of the C-1 zone district is to provide opportunity for neighborhood scale commercial development aimed at serving the immediate needs of residential neighborhoods. The proposed rezoning and sign would provide no benefit to the surrounding neighborhood or community center. The proposed sign could become an eye sore for the adjacent residences across MLK BLVD based on the direct visibility. The City's sign ordinance allows for a 40' tall sign with up to 100sqft of display area and lighting in the C-1 zone district based on the size of the subject property.

**(C) Whether the subject property has a reasonable economic use as currently zoned, considering the suitability of the subject property of the proposed zoned uses.**

**(D) Whether there is relative gain to the health, safety, morals, or general welfare to the public as compared to any hardship imposed upon the individual owner under the existing zoning.**

N/A

**(E) Whether the proposed (C-1) amendment, if adopted or approved, would result in a use which would or could cause an excessive or burdensome use of existing streets, schools, sewers, water resources, police and fire protection, or other utilities, as contrasted with the impact under the existing zoning.**

The limited size of the subject property does not create concern for a burden on any public infrastructure at this location. The only feasible use of the subject property if rezoned C-1 would be for the placement of a commercial sign.

**(F) Whether the property sought to be rezoned (or annexed) is in conformity with the policy and intent of the adopted joint comprehensive plan or equivalent. If not, has the plan already been amended, officially or unofficially, by the development of uses which are contrary to the plan recommendation, and if the plan has been amended, does this reasoning or annexation request allow uses which are compatible to the existing uses in the vicinity.**

The Comprehensive Plan lists this area as within the Neighborhood Revitalization character area. This character area is intended to promote reinvestment in areas where housing stock is aging and where there are pockets of blight. While appropriate neighborhood commercial uses can be a viable land use within this character area, the proposed use of the subject property would not create a commercial use that would benefit any of the adjacent or surrounding neighborhoods.

**(G) Whether there are any other conditions or transitional patterns affecting the use and development of the property to be rezoned or annexed, which give grounds for approval or disapproval of the proposed zoning proposal. Whether the proposed zoning change constitutes an “entering wedge” and is a deterrent to the use, improvement, or development of adjacent property within the surrounding zone districts or would create an isolated, unrelated district (spot zoning) as interpreted by current Georgia law.**

The proposed rezoning would create an island of C-1 surrounded by the R-2 zone district. There are circumstances where the C-1 zone district is appropriate within a residential area if the proposed development would be beneficial to the surrounding neighborhoods. This rezoning would, however, create a commercial spot zone with no observed benefit to the adjacent and surrounding residential properties.

**(H) Whether the subject property, as currently zoned, is vacant and undeveloped for a long period of time, considered in the context of land development in the vicinity or whether there are environmental or cultural factors, like steep slopes, flood plain, stormwater, or historical issues that influence the development of the subject property under any zoning designation.**

The subject property isn't affected by historical or environmental conditions that would limit its development potential, but the size and shape of the subject property create a situation where no conventional residential or commercial structures could meet setbacks or parking requirements.

**Conclusion:**

The staff cannot recommend the C-1 rezoning of the subject property based on the following factors and condition:

1. The C-1 zone district would permit the petitioner to construct a sign on the subject property;
2. The C-1 rezoning would create a spot zone with no benefit to the surrounding residential neighborhood;
3. The proposed sign's location could be both an eye sore for adjacent residential properties across MLK BLVD as well as a distraction to drivers at this location based on adjacent and nearby unsignalized intersections;
4. This rezoning would be in conflict with the intent of the Neighborhood Revitalization character area at this location.

**Terry Rezoning Request**  
**R-3, Medium Density Residential**  
**to**  
**C-1, Neighborhood Commercial**  
**City of Dalton Jurisdiction**



**Unified Zoning**

	Medium Density Single Family Residential (R-3)
	Heavy Manufacturing (M-2)
	Rural Residential (R-5)
	Transitional Residential (R-6)
	High Density Residential (R-7)
	General Commercial (C-2)

**FEET**  
**200**







**Terry Rezoning Request  
R-3, Medium Density Residential  
to  
C-1, Neighborhood Commercial  
City of Dalton Jurisdiction**

**FEET  
200**

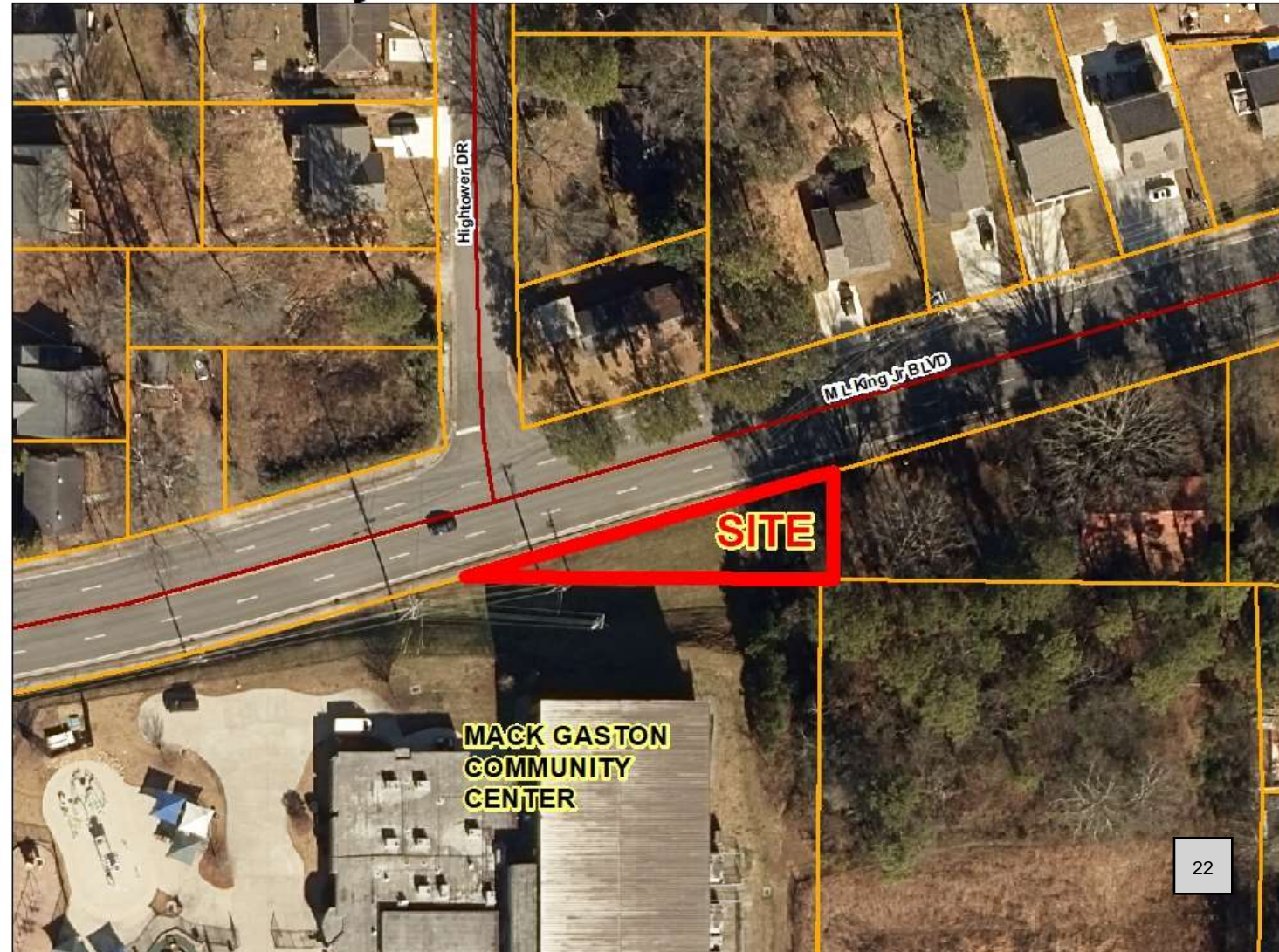




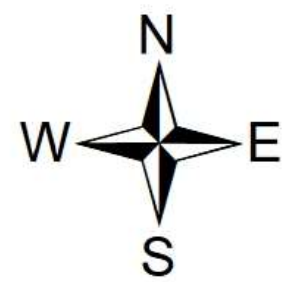


**Terry Rezoning Request  
R-3, Medium Density Residential  
to  
C-1, Neighborhood Commercial  
City of Dalton Jurisdiction**

**FEET  
100**



**Terry Rezoning Request**  
**R-3, Medium Density Residential**  
**to**  
**C-1, Neighborhood Commercial**  
**City of Dalton Jurisdiction**



**FUTURE DEVELOPMENT MAP**

 **Preserve**

 **Town Neighborhood Revitalization**

**FEET**  
**200**







## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 9/19/2022

**Agenda Item:** The request of Maria E. Gonzales & Edgar Hurtado to annex 0.17 acres located at 1517 Hale Bowen Drive, Dalton, GA into the City of Dalton as Medium Density Single Family Residential (R-3). Parcel (12-179-02-048)

**Department:** Planning and Zoning

**Requested By:** Ethan Calhoun

**Reviewed/Approved by City Attorney?** Sent for Review

**Cost:** N/A

**Funding Source if Not in Budget** N/A

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

See the attached staff analysis.

CITY OF DALTON  
ORDINANCE  
Ordinance No. 22-24

An Ordinance Of The City Of Dalton To Annex Property Into The City Of Dalton Pursuant To Chapter 36, Title 36 Of The Official Code Of Georgia Annotated; To Zone Said Property As R-3 Zoning Classification; To Provide An Effective Date; And For Other Purposes

WHEREAS, Maria E. Gonzales and Edgar Hurtado, have made written application to the City of Dalton for annexation of unincorporated lands contiguous to the existing corporate limits of the City of Dalton located at 1517 Hale Bowen Drive and identified as Parcel No. 12-179-02-048; and

WHEREAS, the written application for annexation appears to be in proper form and to be made by all of the owners of all of the lands sought to be annexed;

WHEREAS, the Property is currently zoned Low-Density Single-Family (R-2);

WHEREAS, the Owner is requesting the Property retain its current zoning under the Unified Zoning Ordinance;

WHEREAS, the rezoning is in conformity with the City of Dalton Joint Comprehensive Plan;

WHEREAS, the Dalton-Whitfield Planning Commission considered the proposed rezoning of the Property at a duly noticed public hearing held on August 22, 2022 and subsequently forwarded its favorable recommendation to the Mayor and Council;

BE IT ORDAINED by the Mayor and Board of Alderman of the City of Dalton and by authority of the same it is hereby ORDAINED as follows:

**Section 1.**

The recitals contained herein above are incorporated herein by reference and are adopted as findings and determinations of the Mayor and Council.

## **Section 2.**

Based upon all of the considerations applicable to annexation and zoning decisions of the City of Dalton and upon review of the recommendation of the Dalton-Whitfield County Planning Commission and its professional land-use staff's analysis, the Mayor and Council find the requested zoning classification to be proper and the land is hereby annexed and zoned as requested subject to all the provisions and requirements of that zoning classification.

## **Section 3.**

The lands hereinafter described are hereby annexed into the corporate limits of the City of Dalton:

All that tract or parcel of land lying and being in Land Lot No. 179 in the 12<sup>th</sup> District and 3<sup>rd</sup> Section of Whitfield County, Georgia and being Lot 15 per plat of survey for Brian Spence, Spence Subdivision, Phase 1, by Mitchell Lowery, Georgia Registered Land Surveyor No. 3109, dated April 6, 2017 and recorded June 22, 2017, in Plat Cabinet E, Side 936, in the office of the Clerk of the Superior Court of Whitfield County, Georgia which plat is incorporated herein by reference for a complete description, TOGETHER WITH an easement fifty feet in width for access, ingress and egress between said property and Frazier Avenue as shown on plat recorded May 7, 2018, in Plat Book E, page 1096, of said records, which plat is incorporated herein by reference for a complete description

Parcel ID: 12-179-02-048

## **Section 4.**

The Property is to remain zoned as R-3 zoning classification subject to all the provisions and requirements of that zoning classification.

## **Section 5.**

The acreage of the Property is approximately 0.17 acre. No streets or roads are affected by this annexation.

#### **Section 6.**

The City Clerk of the City of Dalton, Georgia is instructed to send an annexation report that includes certified copies of this Ordinance, the name of the county in which the property being annexed is located and a letter from the City stating the intent to add the annexed area to Census maps during the next survey and stating that the survey map will be completed and returned to the United States Census Bureau, to the Georgia Department of Community Affairs, and to the governing authority of Whitfield County, Georgia, within thirty (30) days after the effective date of the annexation as set forth herein above.

#### **Section 7.**

Should any section or provision of this Ordinance be declared by a Court of competent jurisdiction to be unconstitutional, invalid or unlawful, such declaration shall not affect the validity of the remaining portions of the ordinance not so declared to be unconstitutional, invalid, or unlawful.

#### **Section 8.**

All resolutions and ordinances of the City of Dalton or parts thereof in conflict herewith are hereby repealed.

#### **Section 9.**

This Ordinance shall become effective for ad valorem tax purposes on December 31 of the year during which such annexation occurred and for all other purposes shall become effective on the first day of the month following the month during which the requirements of Article 2, 3, or 4 of Chapter 36, Title 36 of the Official Code of Georgia Annotated, whichever is applicable, have been met.

ADOPTED AND APPROVED on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the regular meeting of the Mayor and Council of the City of Dalton.

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 Council member \_\_\_\_\_, second by Council member \_\_\_\_\_ and upon the question the vote is \_\_\_\_\_ ayes, \_\_\_\_\_ nays and the Ordinance is adopted.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
CITY CLERK

A true copy of the foregoing Ordinance has been published in two public places within the City of Dalton for five (5) consecutive days following passage of the above-referenced Ordinance as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
CITY CLERK  
CITY OF DALTON



**DALTON-VARNELL-WHITFIELD COUNTY PLANNING COMMISSION  
503 WEST WAUGH STREET  
DALTON, GA 30720**

**MEMORANDUM**

**TO:** City of Dalton Mayor and Council  
Andrew Parker  
Terry Miller  
Jean Garland

**FROM:** Jim Lidderdale  
Chairman

**DATE:** August 26, 2022

**SUBJECT: The request of Maria E. Gonzales & Edgar Hurtado to annex 0.17 acres located at 1517 Hale Bowen Drive, Dalton, GA into the City of Dalton as Medium Density Single Family Residential (R-3). Parcel (12-179-02-048)**

The most recent meeting of the Dalton-Varnell-Whitfield County Planning Commission was held on August 22, 2022 at 6:00 p.m. at the Whitfield County Courthouse meeting room. A portion of the agenda included a public hearing concerning the above matter. A quorum of five members of the Planning Commission was present. All legal requirements for advertising and posting the public hearing were met. The petition was represented by Ethan Calhoun.

**Public Hearing Summary:**

Mr. Calhoun summarized the staff analysis which recommended the requested annexation after citing the content of the staff analysis. Calhoun went on to clarify that certain City services such as trash pickup and school bus routing may be a challenge for the subject property due to its access being on a private drive rather than a City street. There were no further questions for Calhoun.

The petition was represented by Ethan Calhoun since the petitioner filed for annexation by the 100% method and was, therefore, not required to be present for the public hearing.

With no other comments heard for or against, this hearing closed at approximately 7:36pm.

**Recommendation:**

Chairman Lidderdale sought a motion on the requested City of Dalton annexation. **Chris Shiflet then made a motion to recommend the annexation based on his agreement with the content of the staff analysis. David Pennington then seconded the motion and a unanimous recommendation to approve the annexation followed, 4-0.**

**STAFF ANALYSIS  
REZONING REQUEST  
*Unified Zoning Ordinance***

**ZONING CASE:** Maria E. Gonzales & Edgar Hurtado of 1517 Hale Bowen Dr. is petitioning the City of Dalton for the annexation of Parcel 12-179-02-048, a 0.17-acre *Medium Density Single Family Residential (R-3)* Parcel.

The surrounding uses and zoning are as follows: 1) To the north, the petitioners' parcel abuts the City of Dalton Road of Hale Bowen Drive. North of Hale Bowen Drive is the City of Dalton Park Creek Elementary School, which is zoned as *Low Density Single Family Residential (R-2)*. Other surrounding properties to the north have a variety of different zoned properties (R-3, R-6, C-2, M-2) within the Municipal Boundaries of Dalton. 2) To the east, abutting parcels that are adjacent to J and J Drive, are within the Whitfield jurisdiction and are zoned as *Heavy Manufacturing (M-2)*. Parcels to the East of J and J Drive are also zoned as *M-2* but are in the City of Dalton's jurisdiction. 3) To the south, abutting and nearby property is zoned as either *R-3* or *M-2* and is within the jurisdiction of Whitfield County. 4) To the west, abutting property bounded by the City of Dalton Frazier Drive, is zoned as the petitioner's property (*R-2*) and is within the jurisdiction of Whitfield County. Parcels to the west of Frazier Drive are within the City of Dalton and are zoned as either *R-3* or *Transitional Residential (R-6)*.

**CONSIDERING FACTORS FOR ANNEXATION ANALYSIS**

**(A) Whether the proposed amendment would allow a use that is generally suitable for the site compared to other possible uses and whether the proposed change is consistent with the established land use pattern and zoning of adjacent and nearby property.**

The proposed annexation would be suitable considering that the parcel is bounded by the City of Dalton along Hale Bowen Drive and other parcels within the Jurisdiction of Dalton. As a change in zoning is not required in this case, there will be no need to consider any impact on the established land use pattern.

**(B) Whether the proposed annexation would adversely affect the economic value of adjacent and nearby property.**

There is no expected impact on the economics of adjacent and nearby property.

**(C) Whether the subject property has a reasonable economic use as currently zoned, considering the suitability of the subject property of the proposed zoned uses.**

The annexation will not negatively impact the economics of the subject property, nor will it influence the character of the area. Annexation of the parcel is more likely to increase its value, as city services will be made available.

**(D) Whether there is relative gain to the health, safety, morals, or general welfare to the public as compared to any hardship imposed upon the individual owner under the existing zoning.**

No impact. Under the Unified Zoning Ordinance, there will not be any change in zoning designation, but the jurisdiction will change. Ms. Gonzales & Mr. Hurtado is applying to annex all of the 0.17-acre parcel into the City of Dalton, so it is their choice to be included in the jurisdiction of the City of Dalton

**(E) Whether the proposed amendment, if adopted or approved, would result in a use which would or could cause excessive or burdensome use of existing streets, schools, sewers, water resources, police and fire protection, or other utilities, as contrasted with the impact under the existing zoning.**

As there is only the 0.17-acre parcel under consideration, no impact is expected on services are expected. Sewer, water, police, and fire services are already available at the site. There would be no increased burden on trash services, as trash pick-up is currently nearby.

**(F) Whether the property sought to be rezoned (or annexed) is in conformity with the policy and intent of the adopted joint comprehensive plan or equivalent. If not, has the plan already been amended, officially or unofficially, by the development of uses which are contrary to the plan recommendation, and if the plan has been amended, does this reasoning or annexation request allow uses which are compatible to the existing uses in the vicinity.**

This property's annexation would not conflict with the Comprehensive Plan, or its Future Development Map, based on the existing development of the subject property. The subject property is within the *Town Neighborhood Revitalization* character area, which is a shared character area for both Whitfield County and the City of Dalton. The purpose of this character area is to accommodate a mix of housing including single family residential, keeping with a building's existing architectural style and scale of the neighborhood. There will be no changes in zoning, so the character will not be impacted.

**(G) Whether there are any other conditions or transitional patterns affecting the use and development of the property to be rezoned or annexed, which give grounds for approval or disapproval of the proposed zoning proposal. Whether the proposed zoning change constitutes an “entering wedge” and is a deterrent to the use, improvement, or development of adjacent property within the surrounding zone districts or would create an isolated, unrelated district (spot zoning) as interpreted by current Georgia law.**

An additional consideration of annexation is that the approval will shrink a “County Island”. There are many serval parcels bounded by Hale Bowen Drive, J and J Drive, and Frazier Drive, while also having other parcels south that are within the City of Dalton.

**(H) Whether the subject property, as currently zoned, is vacant and undeveloped for a long period of time, considered in the context of land development in the vicinity or whether there are environmental or cultural factors, like steep slopes, flood plain, stormwater, or historical issues that influence the development of the subject property under any zoning designation.**

N/A

**Conclusion:**

The staff recommends approval for the annexation of parcel 12-179-02-048.

Reasons for approval:

- 1) The subject property is adjoined by the incorporated City of Dalton to the north.
- 2) Annexation will reduce a “County Island”
- 3) There will be no additional burdens to city services.
- 4) There is no proposed change in current use, including zoning for the parcel.

Gonzales-Hurtado Annexation Request  
City of Dalton

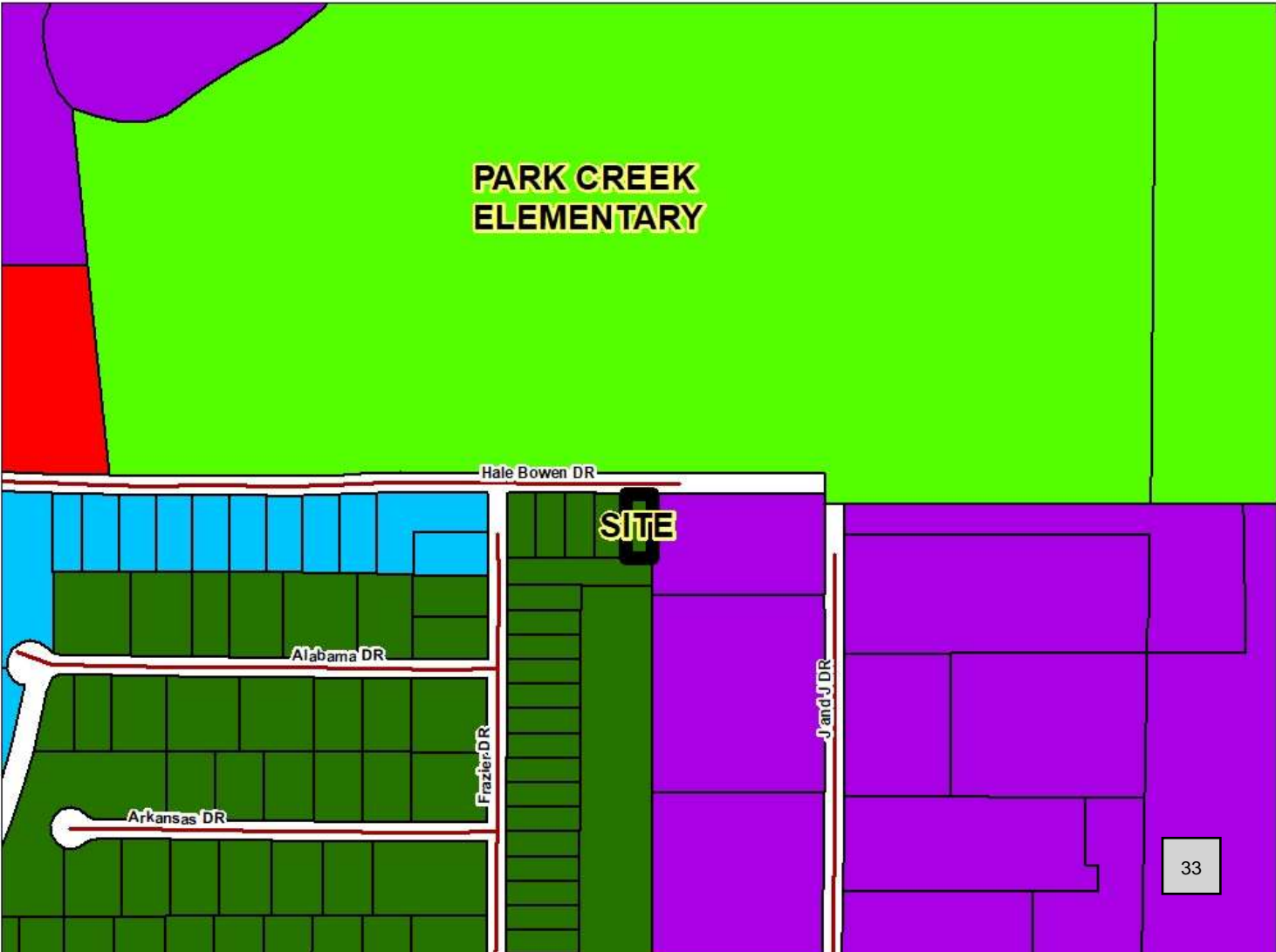
Zoning to Remain R-3, Medium Density Single Family Residential



**Unified Zoning**

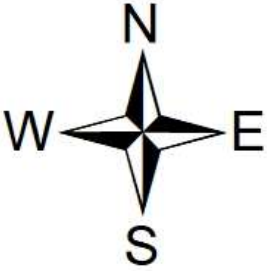
	Low Density Single Family Residential (R-2)
	Medium Density Single Family Residential (R-3)
	Transitional Residential (R-6)
	General Commercial (C-2)
	Heavy Manufacturing (M-2)

**FEET**  
**300**



**Gonzales-Hurtado Annexation Request**  
**City of Dalton**

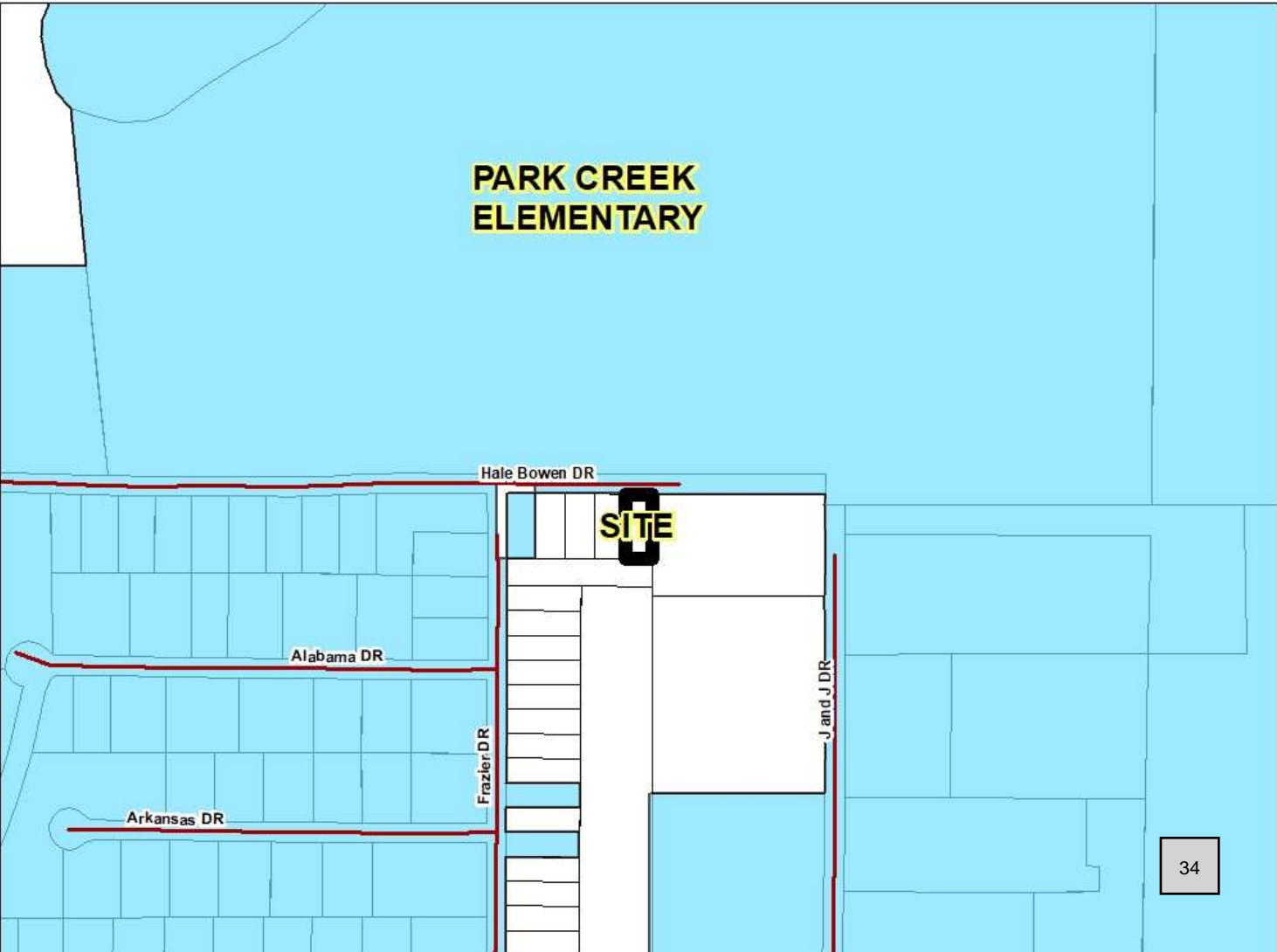
**Zoning to Remain R-3, Medium Density Single Family Residential**



**DALTON CITY LIMITS**

Town\_Boundaries

**FEET**  
**300**







# Gonzales-Hurtado Annexation Request

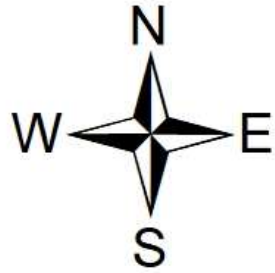
## City of Dalton

### Zoning to Remain R-3, Medium Density Single Family Residential

**FEET**  
**300**







# Gonzales-Hurtado Annexation Request

## City of Dalton

### Zoning to Remain R-3, Medium Density Single Family Residential

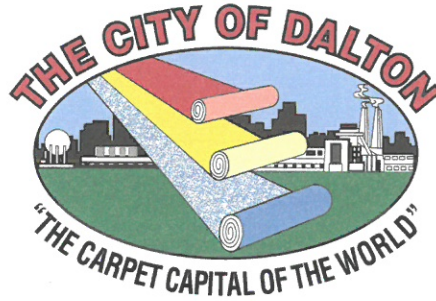
**FEET**  
**100**





DAVID PENNINGTON III  
MAYOR

BERNADETTE CHATTAM, CMC  
CITY CLERK



DENNIS MOCK  
ANNALEE SAMS  
TYREE GOODLETT  
STEVE FARROW

Council Members

June 28, 2022

TO: Todd Pangle, Fire Department  
Cliff Cason, Police Department  
Terry Miller, Mitchell & Mitchell  
Chad Townsend, Public Works Department  
Tom Bundros, Dalton Utilities  
Ethan Calhoun, NWGRC

FROM: David Pennington, III  
Mayor, City of Dalton

Please review this **Annexation** request and submit your comments within seven days to the City of Dalton City Clerk's Office.

NAME: Maria E. Gonzales & Edgar Hurtado

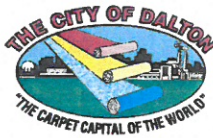
STREET ADDRESS: 1517 Hale Bowen Dr.

AMOUNT OF ACREAGE: .17

PARCEL NUMBERS: 12-179-02-048

PLAT ATTACHED: YES X NO       

ZONING CLASSIFICATION: R-3



## ANNEXATION APPLICATION

I HEREBY REQUEST THE MAYOR AND COUNCIL OF THE CITY OF DALTON ANNEX THE PROPERTY DESCRIBED BELOW IN THIS APPLICATION.

**PLEASE LIST THE APPLICANT NAME REQUESTING ANNEXATION**

APPLICANT NAME:

Maria Elizabeth Gonzalez

APPLICANT ADDRESS:

1517 Hale Bowen Dr

CITY, STATE & ZIP:

Dalton G.A. 30721

TELEPHONE NUMBER:

(706) 264 7986

**PROPOSED PROPERTY TO BE ANNEXED**

(1) STREET ADDRESS OF PROPERTY TO BE ANNEXED:

1517 Hale Bowen Dr Dalton G.A. 30721

(2) SUBDIVISION OF THE PROPERTY TO BE ANNEXED:

NO

(3) LOT(S) NUMBER OF THE PROPERTY TO BE ANNEXED:

#15

(4) FUTURE INTENDED USE OF THE PROPERTY TO BE ANNEXED:

Residential

• PROPOSED ZONING CLASSIFICATION

Residential R-3

• PROPOSED AMOUNT OF ACREAGE TO BE ANNEXED

0.17

• TAX MAP NUMBER/PARCEL NUMBER

12-179-02-048

• HOUSING UNITS

1

(1) IF RESIDENTIAL PROPERTY AT THE TIME OF THIS CONTRACT,  
LIST THE NUMBER OF REGISTERED VOTERS

0

(2) IF RESIDENTIAL PROPERTY AT THE TIME OF THIS CONTRACT,  
LIST THE NUMBER OF ADULTS OF VOTING AGE, IF DIFFERENT  
NUMBER THAN SHOWN IN NUMBER (1)

1

(3) IF RESIDENTIAL PROPERTY AT THE TIME OF THIS CONTRACT,  
LIST THE NUMBER OF ADULTS IN THE HOUSEHOLD.

2

(4) IF RESIDENTIAL PROPERTY AT THE TIME OF THIS CONTRACT,  
LIST THE NUMBER OF CHILDREN IN THE HOUSEHOLD.

2

(5) IF RESIDENTIAL PROPERTY AT THE TIME OF THIS CONTRACT,  
LIST THE NUMBER OF HOUSING UNITS.

1

(6) IF RESIDENTIAL PROPERTY AT THE TIME OF THIS CONTRACT,  
PLACE NUMBER OF RESIDENTS IN APPLICABLE BOX.

☐

CAUCASIAN

☒

LATINO

☐

AFRICAN  
AMERICAN

☐

OTHER

(7) IF RESIDENTIAL PROPERTY AT THE TIME OF THIS CONTRACT,  
LIST THE NUMBER OF PERSONS WHOSE PRIMARY LANGUAGE IS  
OTHER THAN ENGLISH.

2

Maria E. Gonzalez, Edgar Portillo  
SIGNATURE OF APPLICANT(S)

6-16-22

DATE

## OWNERSHIP VERIFICATION

The undersigned is the / an owner of an interest in the lands described in the attached Annexation Contract, which proposes to amend the Official Zoning Map of Dalton, Georgia, and concurs in the application. The undersigned's interest in the lands described in the application is as follows:

12-179-02-048 100 %

*Describe parcel or parcels and nature of interest  
and percentage of interest*

I hereby appoint N/A  
my attorney in fact with full authority, my name, place, and stead, to apply for the  
zoning amendment as set forth in the attached annexation contract.

Marica E. Gonzalez  
(Owner's Name)

Sworn to and subscribed  
Before me, this 16 day  
of June, 2022

[Signature]  
Notary Public



(Seal)





## NOTICE TO ALL LANDOWNERS REGARDING ANNEXATION


If your request to annex your property into the City of Dalton is approved by Whitfield County, you will be charged a city property tax for the City of Dalton as well as a Public School tax. This will appear on your property tax bill that you receive from Whitfield County. The millage rate is 2.537 mils per at 100% of assessed property value.

Example: If your property is valued at \$100,000 – your assed value is 100% or  $\$100,000 \times 2.237$  mils, your Dalton City tax would be \$223.7 per year.

Should you have any questions, please contact the Whitfield County Tax Commissioners office at (706) 275-7510.

---

I have read the above statement and understand that if my property is annexed, I will be charged Dalton City tax.

Maria E. Gonzalez   
SIGNED

6-16-22  
DATE

Deed Doc: WD  
**Recorded 05/29/2018 03:20PM**  
Georgia Transfer Tax Paid : \$124.90  
MELICA KENDRICK  
Clerk Superior Court, WHITFIELD County, Ga.  
Bk 06653 Pg 0525-0526

Pre1001422

**AFTER RECORDING, RETURN TO:**

Susan W. Bisson  
SPONCLER & THARPE, LLC  
P. O. BOX 398  
DALTON, GA 30722-0398  
File No. 2018040350

**STATE OF GEORGIA,  
WHITFIELD COUNTY.**

**LIMITED WARRANTY DEED WITH RIGHT OF SURVIVORSHIP**

**THIS INDENTURE**, made the 23rd day of May, 2018, between **RONALD J. JOHNS, LLC**, a Georgia Limited Liability Company (hereinafter, whether singly or more than one, the "Grantor"), and **MARIA ELIZABETH GONZALEZ SOLIS** and **EDGAR HURTADO** (hereinafter "Grantees").

**WITNESSETH:** That the Grantor for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency whereof being hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does hereby grant, bargain, sell, alien, convey and confirm unto the said Grantees as joint tenants with the right of survivorship, and not as tenants in common, for and during their joint lives, and upon the death of either of them, then to the survivor of them, in fee simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor, the following described property, to-wit:

All that tract or parcel of land lying and being in Land Lot No. 179 in the 12th District and 3rd Section of Whitfield County, Georgia and being Lot 15 per plat of survey for Brian Spence, Spence Subdivision, Phase 1, by Mitchell Lowery, Georgia Registered Land Surveyor No. 3109, dated April 6, 2017 and recorded June 22, 2017, in Plat Cabinet E, Slide 936, in the office of the Clerk of the Superior Court of Whitfield County, Georgia, which plat is incorporated herein by reference for a complete description, TOGETHER WITH an easement fifty feet in width for access, ingress and egress between said property and Frazier Avenue as shown on plat recorded May 7, 2018, in Plat Book E, page 1096, of said records, which plat is incorporated herein by reference for a complete description.

**TOGETHER WITH** all and singular the hereinabove described premises together with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantees, as joint tenants with the right of survivorship, and not as tenants in common, for and during their joint lives, and upon the death of either of them, then to the survivor of them in fee simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor.

**AND THE SAID GRANTOR**, and the legal representatives, successors and assigns of the Grantor will **WARRANT** and **DEFEND** all right, title and interest in and to the said premises and the quiet and peaceable possession thereof, unto the said Grantees, as hereinabove provided, against all acts and deeds of the said Grantor.

**SUBJECT, HOWEVER**, to all easements, rights-of-way, covenants and restrictions which may lawfully affect the above-described property.

**IN WITNESS WHEREOF**, the Grantor has signed, sealed and delivered this Deed on the day and year first above written.

RONALD J. JOHNS, LLC

BY:

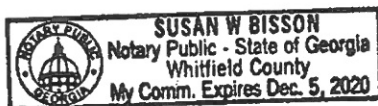
RONALD J. JOHNS, MANAGER

Signed, sealed and delivered  
in the presence of:

Witness

Jenny Ramirez

Notary Public



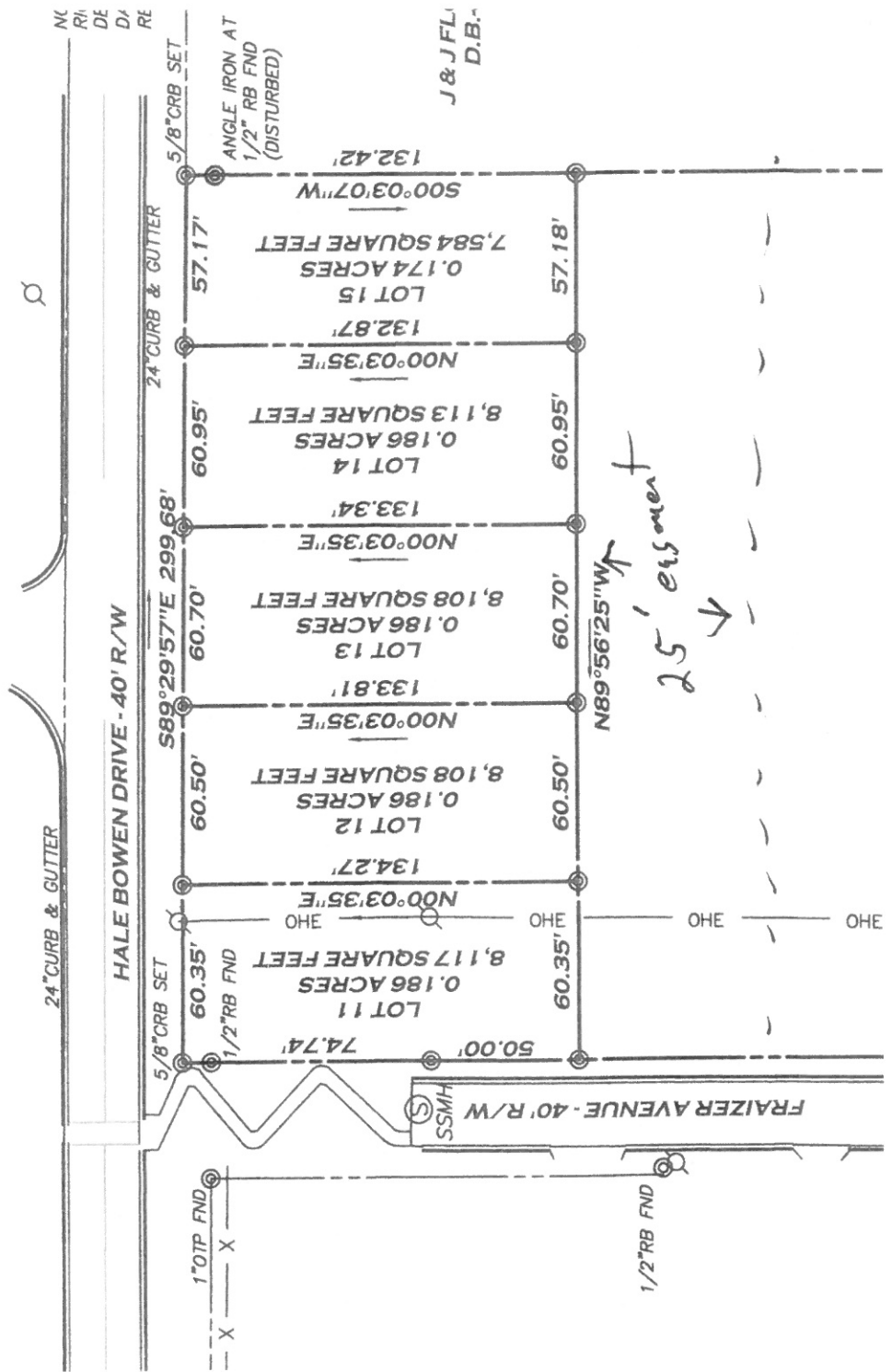
## EXHIBIT “B”

4-1-5

**Medium density single family residential (R-3.)** This district is established to protect single-family detached dwellings, typically within a more urban atmosphere, including residential subdivisions, on smaller lots of not less than 7,500 square feet and which are served by public sewer or an approved central on-site sewage management system. All dwellings in this district shall contain not less than 1,000 square feet of heated floor area. There shall be no manufactured or mobile homes within this district, in order to maintain the traditional residential character of such districts. Only one dwelling unit per lot shall be allowed in this district.

44





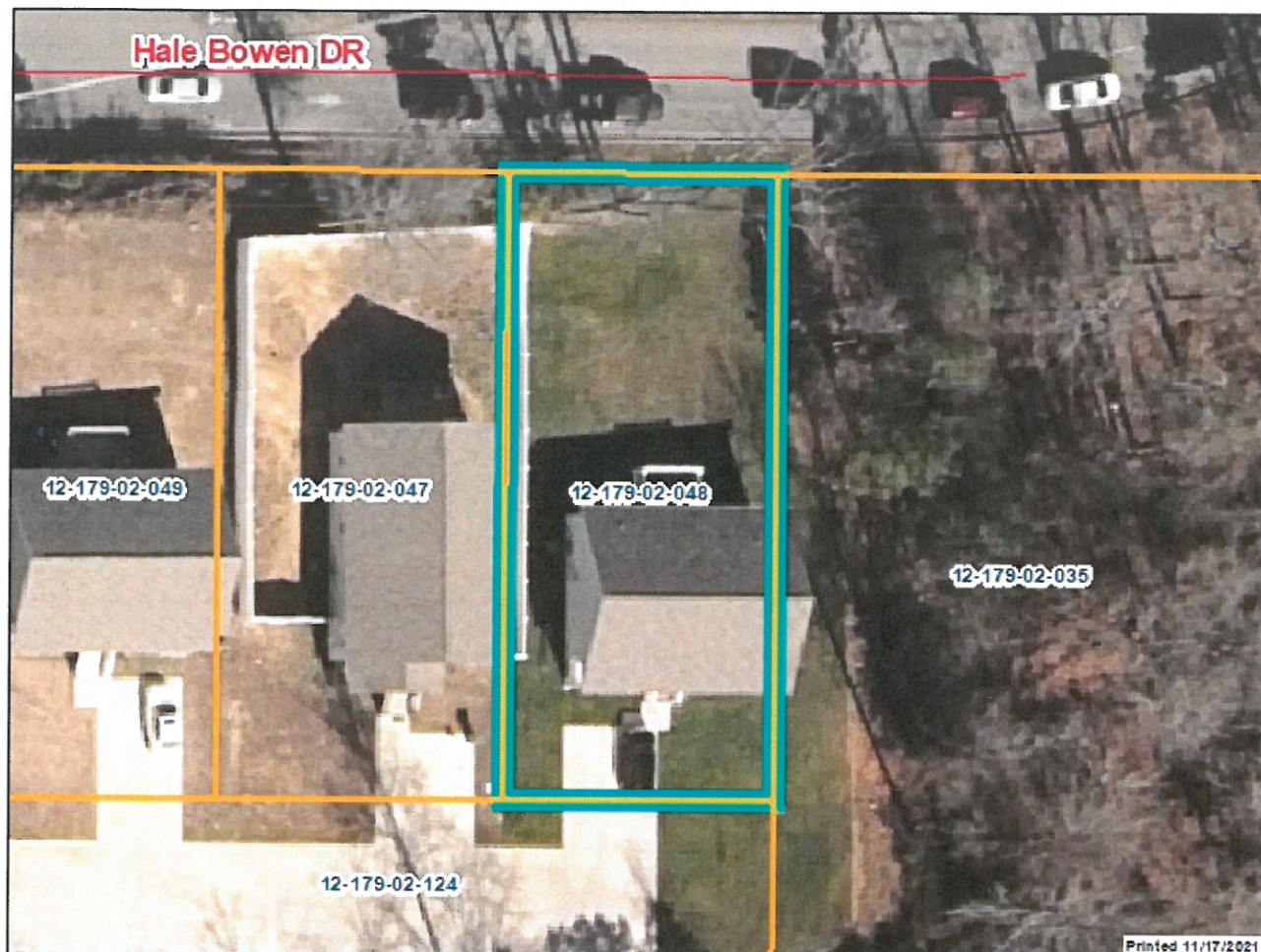
## PUBLIC WATER SYSTEM

THE PUBLIC ROADS ON THIS FINAL PLAT  
 (N PROVIDED TO INSTALL) IN ACCORDANCE

4/7/17

## FIRE PROTECTION

AINS SERVING THE LOTS ON THIS FINAL  
FOR THE FIRE HYDRANTS HAVE BEEN MET  
ON TON BUILDING CODE FOR FIRE



For the current GIS map of this parcel, click on the Quickmap to launch the interactive map viewer

## Tax Commissioner Information

Before making payment verify the amount due with the Tax Commissioner's office at 706-275-7510

Tax Bill Recipient	SOLIS MARIA ELIZABETH GONZALEZ & HURTADO	Legal Description	0.17A LL179-12 (LOT 15 E-936)
Year	2021	Sale Date	
Parcel Number	12-179-02-048	Taxes Due	1279.35
Bill	234513	Taxes Due Date	12/20/2021
Exemption Type	S1	Taxes Paid	1279.35
Account No.	7085044	Taxes Paid Date	12/13/2021 12:26:57 PM
Millage Rate	0	Current Due	0
Fair Market Value	129793	Back Taxes	0
Assessed Value	51917	Total Due	0
Prior Years Tax Data	Tax		

## Commercial Structure Information

This parcel does not have any commercial structures to display

## Residential Structure Information

### General

Value	99793
Class	Residential
Strata	Improvement
Occupancy	Single Family Residence
Year Built	2018

### Construction Information

Foundation	Piers
Exterior Walls	Vinyl
Roofing	Asphalt Shingle
Roof Shape	Gable/Hip
Floor Construction	Piers



**PUBLIC WORKS DEPARTMENT**

**CHAD TOWNSEND, DIRECTOR**

[ctownsend@daltonga.gov](mailto:ctownsend@daltonga.gov)

535 N. Elm Street  
P.O. Box 1205  
Dalton, GA 30722-1205  
Office: (706) 278-7077  
FAX: (706) 278-1847



**DAVID PENNINGTON, MAYOR**

**CITY COUNCIL MEMBERS:**

DENNIS MOCK  
ANNALEE HARLAN  
TYREE GOODLETT  
STEVE FARROW

**MEMORANDUM**

**TO: DAVID PENNINGTON III, MAYOR**  
**ATTN: BERNADETTE CHATTAM, CITY CLERK**

**FROM: CHAD TOWNSEND, PUBLIC WORKS DIRECTOR**

**RE: ANNEXATION REQUEST**  
**MARIA E. GONZALES & EDGAR HURTADO**  
**1517 HALE BOWEN DRIVE**  
**0.17 ACRES**  
**PARCEL NUMBER: (12-179-02-048)**

**DATE: JULY 5, 2022**

---

Please be advised that the Public Works Department has no objections to the annexation of the above reference tract but states the following items need to be taken into consideration as part of the annexation request:

- **Adjacent single-family residences within the development are currently located within unincorporated Whitfield County.** Subject tract is located within a larger development containing approximately 32 tracts. The larger development is near what is considered the Frazier Acres subdivision. Annexation will likely bring on additional annexation request.
- **Delivery of Public Works Services** – Upon approval of annexation, Public Works will begin providing regular sanitation services. The cost to provide these services is approximately \$300 per household. At this time, no additional resources would be required from the Department to administer these services.

If the subject tract is to be annexed, it should be noted that this property is accessed off a common drive that services five other homes. The private drive is not built to city standards and is not constructed in a way to handle the equipment used to provide our sanitation services, emergency vehicle traffic or school buses. In order to provide sanitation services, garbage cans & recycling bins must be brought to the curb along Frazier Drive in order to receive proper service.

**William C Cason III**  
Chief of Police  
CCason@daltonga.gov  
www.daltonga.gov



**Public Safety Commission**  
Terry Mathis  
Bill Weaver  
Anthony Walker  
Truman Whitfield  
Alex Brown

**DALTON POLICE DEPARTMENT**

301 Jones Street, Dalton, Georgia 30720

Phone: 706-278-9085

Date: July 1, 2022

To: Chief Cliff Cason

From: Lieutenant Matthew Locke

RE: 1517 Hale Bowen Drive

Chief Cason,

I have reviewed the Annexation request for the property located at 1517 Hale Bowen Drive with the Parcel Number 12-179-02-048. This change will have no bearing on the Dalton Police Department's law enforcement services in this area.

Sincerely,

A handwritten signature in cursive script that reads "Matthew Locke".

Lieutenant Matthew Locke

# DALTON FIRE DEPARTMENT

TODD PANGLE  
Fire Chief  
Telephone 706-278-7363  
Fax 706-272-7107  
tpangle@daltonga.gov

404 School Street  
Dalton, GA 30720



## PUBLIC SAFETY COMMISSION

Terry Mathis  
Bill Weaver  
Anthony Walker  
Truman Whitfield  
Alex Brown

June 30, 2022

David Pennington, III  
Mayor, City of Dalton

**Re: Annexation proposal for parcel #12-179-02-048 1517 Hale Bowen Dr.**

Greetings,

A review of the proposed listed annexation request has been completed and Dalton Fire Department has no objections to the annexation but notes one major obstacle for this annexation as noted below.

The original development of this parcel was part of a larger development in the immediate area. During the original development, Dalton Fire Department was provided the opportunity for input and the developer agreed to provide access via a private drive for this parcel as well as four adjacent parcels. He agreed to install a private drive that would support fire apparatus to include a cul-de-sac wide enough to accommodate the turning radius our apparatus. An agreement was signed by both the developer and Dalton Fire Department. The agreement was shared with Whitfield County, as well was copied with the original plat. The private drive was never installed as specified, which will negatively impact our ability to access the structure in the event of a fire. To further complicate matters, the structures are addressed off Hale Bowen, but the front of the houses face the unnamed private drive and due to very large vegetation growth, are inaccessible from Hale Bowen Dr. Given these factors, our initial operations will be greatly impacted, presenting a danger to life and health. This is the second annexation request submitted of the five houses built along this private drive.

With this fact taken into consideration and the fact that all other fire suppression factors meet Dalton Fire Department requirements, Dalton Fire Department would not oppose annexation of the listed property.

Thank you,

A handwritten signature in black ink, appearing to read "Todd Pangle", is written over a large, stylized circular flourish.

Todd Pangle  
Fire Chief  
Dalton Fire Department



**Fire Chief**  
Todd Pangle



**DALTON FIRE DEPARTMENT**  
**PREVENTION DIVISION**

**Fire Marshal**  
Matt Daniel  
404 School Street  
Dalton, GA 30720  
(706) 529-7486  
[mdaniel@daltonga.gov](mailto:mdaniel@daltonga.gov)

**Fire Inspectors**  
Donnie Blankenship  
(706) 278-7363 x227  
[dblankenship@daltonga.gov](mailto:dblankenship@daltonga.gov)  
Scott Hearn  
(706) 278-7363 x247  
[shearn@daltonga.gov](mailto:shearn@daltonga.gov)  
Dale Stratton  
(706) 278-7363 x248  
[dstratton@daltonga.gov](mailto:dstratton@daltonga.gov)

June 30, 2022

Re: Annexation Analysis

**Property Address/Parcel:** 12-179-02-048, 1517 Hale Bowen Drive

**Access:** Access to the structure is an issue. The structure is addressed off of Hale Bowen, if emergency services are dispatched topography and fencing will impede/stop access. At the time the structure was being constructed it was to face Hale Bowen. The structure now faces a private drive. There are three other structures this will affect Parcels: 12-179-02-051, 12-179-02-049, and 12-179-02-047. All of these structures face a private drive approximately 270' long that does not meet City addressing requirements, City road standards or NFPA and ICC access requirements for fire department apparatus access. All five parcels would required readdressing and the private drive would be required to be brought up to code to include a turnaround. It is highly recommended if this parcel is annexed the unnamed access road be given a private drive name and all the parcels be readdressed.

**Water Supply:** Hydrant H5522 located at the end of Frazier Drive provides adequate water supply.

**Property Use:** Existing single-family dwelling.

**Setbacks:** Setback requirements appear to be met and not an issue.

Respectfully,

Matt Daniel  
Division Chief  
Prevention Division



July 5, 2022

Mr. David Pennington, III  
Mayor, City of Dalton  
Post Office Box 1205  
Dalton, Georgia 30722-1205

**RE: Annexation Request for Maria E. Gonzales & Edgar Hurtado – 1517 Hale Bowen Drive (.17 acres)**

Dear Mayor Pennington:

As requested in your June 28, 2022, memorandum, Dalton Utilities has reviewed the annexation request of Maria E. Gonzales and Edgar Hurtado for 0.17 acres +/- located at 1517 Hale Bowen Drive. This property is further described as parcel number 12-179-02-048 by the Whitfield County Tax Assessor's Office.

Dalton Utilities can provide water, wastewater, natural gas, telecommunications and electricity to this site from nearby existing utility infrastructure.

Please do not hesitate to contact me at (706) 529-1011 or [mbuckner@dutil.com](mailto:mbuckner@dutil.com) should any questions arise or if we may be of assistance.

Sincerely,

A handwritten signature in blue ink that reads "Mark Buckner". The signature is fluid and cursive, with the first name "Mark" and last name "Buckner" clearly distinguishable.

Mark Buckner, P.E.



# Whitfield County

Board of Commissioners

Board Members  
Jevin Jensen, Chairman  
Barry W. Robbins  
Robby Staten  
John Thomas  
Greg Jones

August 10, 2022

Honorable David Pennington  
Mayor, City of Dalton  
P.O. Box 1205  
Dalton, GA 30722

RE: Tax Parcel No. 12-179-02-048

Dear Mayor Pennington:

At the August 8, 2022 Regular Business Meeting of the Whitfield County Board of Commissioners, the Board voted 4-0 to have no land use classification objection to the annexation of Tax Parcel No. 12-179-02-048.

Regards,

*Blanca Cardona*

Blanca Cardona  
County Clerk

cc: Ashley O'Donald, Chief Appraiser  
Ethan Calhoun, Northwest Georgia Regional Commission  
Jess Hansen, GIS Coordinator  
David Metcalf, Emergency Services Director  
File





## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 09-19-22

**Agenda Item:** Gregg Sims Architect Amendment No. 1 to AIA Document B101-2017 for the Project Renovations and Additions to the Existing John Davis Recreation Center

**Department:** Dalton Parks and Recreation

**Requested By:** Andrew Parker

**Reviewed/Approved by City Attorney?** Yes

**Cost:** \$5,000,000 including Architectural/Engineering fees and construction. FFE for project pending budget availability.

**Funding Source if Not in Budget**

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

An Amendment to AIA Document B101-2017 between the City of Dalton and Gregg Sims, Architect. The revisions include modified budget, milestones and procurement and delivery method for the Project. These modifications coordinate with the CM @ Risk contract approved by the City.



FROM THE OFFICE OF GREGG SIMS, ARCHITECT

**Amendment No. 1 to AIA Document B101-2017**

Original Document Dated the Eighteenth day of April in the year Two Thousand Twenty-Two

Between:

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

and

Gregg Sims, Architect  
P.O. Box 219  
Dalton, GA 30722-0219

**For the Project: Renovations and additions to the existing John Davis Recreation Center**

Please make the following changes to the Standard Form of Agreement Between the Owner and Architect dated April 18, 2022:

The Owner and Architect agree as follows:

**1. Revise Paragraph 1.1.3 to read:**

The Owner's budget for the Cost of the Work: \$5,000,000 including Architectural/Engineering fees and construction. FFE for project pending budget availability.

**2. Revise Paragraph 1.1.4 to read:**

- .1** Design phase milestone dates, if any:  
Contract documents are to be complete by January 1, 2023.
- .2** Construction commencement date:  
Construction to commencement February – March 2023.
- .3** Substantial Completion date or dates:  
Project to be complete by January 1, 2024.

**3. Revise Paragraph 1.1.5 to read:**

Construction Manager at Risk

**Owner: City of Dalton, GA**

\_\_\_\_\_  
(Signature)

David Pennington, Mayor

**Architect: Gregg Sims, Architect**

\_\_\_\_\_  
(Signature)

Gregg Sims, Architect (GA #2700)



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 09/19/22

**Agenda Item:** Felker Construction Contract For Renovations & Additions to the John Davis Recreation Center

**Department:** Parks and Recreation

**Requested By:** Andrew Parker

**Reviewed/Approved by City Attorney?** Yes

**Cost:** \$5,000,000.00

**Funding Source if Not in Budget**

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

Felker Construction Contract for Renovations & Additions to the John Davis Recreation Center for \$5,000,000.00 which includes all Contractor's overhead/profit/fees, design fees, project furnishings, contingencies, sitework and building construction.



# 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

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the  
year Two Thousand Twenty-Two (2022)  
(In words, indicate day, month, and year.)

**BETWEEN** the Owner:  
(Name, legal status, address, and other information)

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

and the Construction Manager:  
(Name, legal status, address, and other information)

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

for the following Project:  
(Name, location, and detailed description)

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

The Architect:  
(Name, legal status, address, and other information)

Gregg Sims, Architect  
P.O. Box 219  
Dalton, GA 30722-0219

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

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 and Construction Manager agree as follows.

Init.

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### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### EXHIBIT B INSURANCE AND BONDS

## ARTICLE 1 INITIAL INFORMATION

**§ 1.1** This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

**§ 1.1.1** The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

Owner's program attached.

**§ 1.1.2** The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

Project location to be within the boundaries of the existing John Davis Recreation Center property east of Civic Drive and west of existing stormwater channel.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:  
(Provide total and, if known, a line item breakdown.)

\$5,000,000.00 which includes all Contractor's overhead/profit/fees, design fees, project furnishings, contingencies, site work and building construction.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:  
Design to be complete by January 1, 2023
- .2 Construction commencement date:  
Construction to commence February-March 2023
- .3 Substantial Completion date or dates:  
Project to be substantially complete by January 1, 2024
- .4 Other milestone dates:  
N/A

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:  
(Identify any requirements for fast-track scheduling or phased construction.)

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:  
(Identify special characteristics or needs of the Project not provided elsewhere.)

N/A



**§ 1.1.8** The Owner identifies the following representative in accordance with Section 4.2:  
*(List name, address, and other contact information.)*

Mayor David Pennington, III  
City of Dalton  
300 West Waugh Street  
Dalton, GA 30720  
706-278-9500

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
*(List name, address and other contact information.)*

Andrew Parker, City Administrator  
City of Dalton

Caitlin Sharpe, Director  
Dalton Parks and Recreation Department

**§ 1.1.10** The Owner shall retain the following consultants and contractors:  
*(List name, legal status, address, and other contact information.)*

**.1** Geotechnical Engineer:

Geotechnical services to be provided by Owner if required during design development or construction.

**.2** Civil Engineer:

Included in Architect's basic services.

**.3** Other, if any:

*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*

**§ 1.1.11** The Architect's representative:  
*(List name, address, and other contact information.)*

Cathy Snyder, Project Manager  
Gregg Sims, Architect  
P.O. Box 219  
Dalton, GA 30722-0219  
Office: 706-226-5776, Mobile: 706-260-5423  
Email: cs@greggsims.com

**§ 1.1.12** The Construction Manager identifies the following representative in accordance with Article 3:  
(List name, address, and other contact information.)

Nathan Felker, Project Manager  
Felker Construction Co., Inc.  
P.O. Box 1647  
Dalton, GA 30722-1647  
Office: 706-226-6922, Mobile: 706-270-4076  
Email: nathanfelker@optilink.us

**§ 1.1.13** The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:  
(List any Owner-specific requirements to be included in the staffing plan.)

Allan Felker, President  
Nathan Felker, Vice President and Project Manager  
Ronnie Alexander, Superintendent

**§ 1.1.14** The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

When procuring subcontractors, the Contractor shall endeavor to use local subcontractors and materials. A minimum of three (3) bids shall be obtained for each trade.

**§ 1.1.15** Other Initial Information on which this Agreement is based:

Request for Proposals issued July 8, 2022 and Addendum One issued August 3, 2022 (attached)  
Felker Construction Co., Inc. Proposal submitted August 9, 2022 (attached)

**§ 1.2** The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

**§ 1.3** Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## **ARTICLE 2 GENERAL PROVISIONS**

### **§ 2.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### **§ 2.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and

supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

**§ 2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

## **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the

Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

### **§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### **§ 3.1.6 Cost Estimates**

**§ 3.1.6.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 3.1.6.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

**§ 3.1.6.3** If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

**§ 3.1.7** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

**§ 3.1.8** The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

**§ 3.1.9** The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

**§ 3.1.10** If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

### **§ 3.1.11 Subcontractors and Suppliers**

**§ 3.1.11.1** If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

**§ 3.1.11.2** The Construction Manager shall develop bidders' interest in the Project.

**§ 3.1.11.3** The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

### **§ 3.1.12 Procurement**

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and

coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### **§ 3.1.13 Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

### **§ 3.1.14 Other Preconstruction Services**

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

N/A

## **§ 3.2 Guaranteed Maximum Price Proposal**

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

**§ 3.2.2** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 3.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5** A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 3.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following



acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 3.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

**§ 3.2.8** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

**§ 3.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 3.3.1.2** The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

#### **§ 3.3.2 Administration**

**§ 3.3.2.1** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### **§ 3.3.2.3 Monthly Report**

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

#### **§ 3.3.2.4 Daily Logs**

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### **§ 3.3.2.5 Cost Control**

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.



## ARTICLE 4 OWNER'S RESPONSIBILITIES

### § 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

### § 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 4.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

#### **§ 4.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

### **ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

#### **§ 5.1 Compensation**

**§ 5.1.1** For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Ten Thousand Dollars (\$10,000)

**§ 5.1.2** The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

N/A

**Individual or Position**

N/A

**Rate**

N/A

**§ 5.1.2.1** Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

**§ 5.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within Six ( 6 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

#### **§ 5.2 Payments**

**§ 5.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

**§ 5.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid forty-five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

*(Insert rate of monthly or annual interest agreed upon.)*

2 % per annum

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

8% of the Cost of the Work

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

8% of the Cost of the Work

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

20% of the Cost of the Work

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed

eight percent                      percent (        8 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

To be determined once Guaranteed Maximum Price Amendment is executed.

§ 6.1.7 Other:

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

N/A

### § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

### § 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

### **§ 7.2 Labor Costs**

**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

**§ 7.2.2** Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site and performing Work, with the Owner’s prior approval.

**§ 7.2.2.1** Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

N/A - All personnel cost are included in the Contractor's fee.

**§ 7.2.3** Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,

provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

### **§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

### **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

**§ 7.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 7.5.4** Costs of the Construction Manager's site office, including general office equipment and supplies.

**§ 7.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.



**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

**§ 7.6.6** Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

**§ 7.6.7** Costs of document reproductions and delivery charges.

**§ 7.6.8** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

~~**§ 7.6.9** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

**§ 7.6.11** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

## **§ 7.7 Other Costs and Emergencies**

**§ 7.7.1** Other costs incurred in the performance of the Work, with the Owner's prior approval.

**§ 7.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

**§ 7.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

**§ 7.7.4** The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

## **§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including



the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

## **§ 7.9 Costs Not To Be Reimbursed**

**§ 7.9.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

**§ 8.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 8.2** Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

**§ 9.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

N/A

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the twenty-fifth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

**§ 11.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 11.1.7** In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 11.1.7.1** The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 11.1.7.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

#### **§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five (5%) percent of each progress payment shall be withheld as retainage for the life of the project, including change orders and other authorized additions provided in the Contract.

**§ 11.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

N/A

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

N/A

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

See attached amendment to paragraph 11.1.8.3.

**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 11.1.10** Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

**§ 11.1.12** In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## **§ 11.2 Final Payment**

**§ 11.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

**§ 11.2.2** Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

**§ 11.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article

9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

**§ 11.2.2.3** If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

**§ 11.2.3** The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

**§ 11.2.4** If, subsequent to final payment, and at the Owner’s request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager’s Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

### **§ 11.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

%

## **ARTICLE 12 DISPUTE RESOLUTION**

### **§ 12.1 Initial Decision Maker**

**§ 12.1.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

**§ 12.1.2** The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

### **§ 12.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

☐ Arbitration pursuant to Article 15 of AIA Document A201–2017



☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that



would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

### **§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment**

#### **§ 13.2.1 Termination**

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

#### **§ 13.2.2 Termination by the Owner for Cause**

**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1** Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2** Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3** Subtract the aggregate of previous payments made by the Owner; and
- .4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 13.2.2.2** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

#### **§ 13.2.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

N/A

### **§ 13.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

**§ 14.1** Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### **§ 14.2 Successors and Assigns**

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

### § 14.3 Insurance and Bonds

#### § 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000.00 ) for each occurrence and Two Million Dollars (\$ 2,000,000.00 ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 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.

§ 14.3.1.3 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 that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, 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.

§ 14.3.1.4 Workers' Compensation at statutory limits and 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.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than N/A (\$ ) per claim and (\$ ) in the aggregate

#### § 14.3.1.6 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

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

#### § 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in 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, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

N/A

§ 14.5 Other provisions:

N/A

## ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 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
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

N/A

- .6 Other Exhibits:  
*(Check all boxes that apply.)*

☐ AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
*(Insert the date of the E234-2019 incorporated into this Agreement.)*

☐ Supplementary and other Conditions of the Contract:

Document

Title

Date

Pages

- .7 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

Owner's Program

Request for Proposals issued July 8, 2022 and Addendum One issued August 3, 2022

Felker Construction Co., Inc. Proposal submitted August 9, 2022

Amendment to paragraph 11.1.8.3

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

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**OWNER** *(Signature)*

Mayor David Pennington, III

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*(Printed name and title)*

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**CONSTRUCTION MANAGER** *(Signature)*

Nathan Felker, Vice President

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*(Printed name and title)*

Init.

**1986 Building – 1<sup>st</sup> Floor (3,900 SF)**

- 12 Offices **(2,000 SF)**
  - o 1 Directors Office – Approx. 400 SF (Total - 400 SF)
  - o 2 Medium Offices – Approx. 200 SF each (Total - 400 SF)
    - 2 Superintendents
  - o 7 Small Offices – Approx. 100 SF each (Total – 700 SF)
    - 3 Athletics
    - 1 Office Manager
    - 2 Program Managers
    - 1 Maintenance Manager
  - o 1 Janitor Office/ Storage – Approx. 250 SF (Total – 250 SF)
  - o 1 Reception Space – Approx. 150 SF (Total – 250 SF)
- 2 Restrooms – Approx. 75 SF each **(150 SF)**
- 1 Breakroom – Approx. 250 SF **(250 SF)**
- 1 Workroom (Copy, Mail, etc) – Approx. 400 SF **(400 SF)**
- Storage
- New Vertical Circulation – Stairs (Elevator if Required)

**1986 Building – 2<sup>nd</sup> Floor (3,900 SF)**

- Open Conference Space
- Roof Access
- Storage
- Desired but not required:
  - o 2 Restrooms – Approx. 100 SF each
  - o Small Kitchenette / Catering Space

**New Gymnasium Space**

- 1 Court Minimum with JR. High court dimensions (would prefer 2 courts in the same space if possible with overall dimensions of minimum 134'-0" x 100'-0")
- Storage
- Janitorial Storage

**Pool Equipment Areas (Existing)**

- Rework of surrounding structure – keep existing equipment

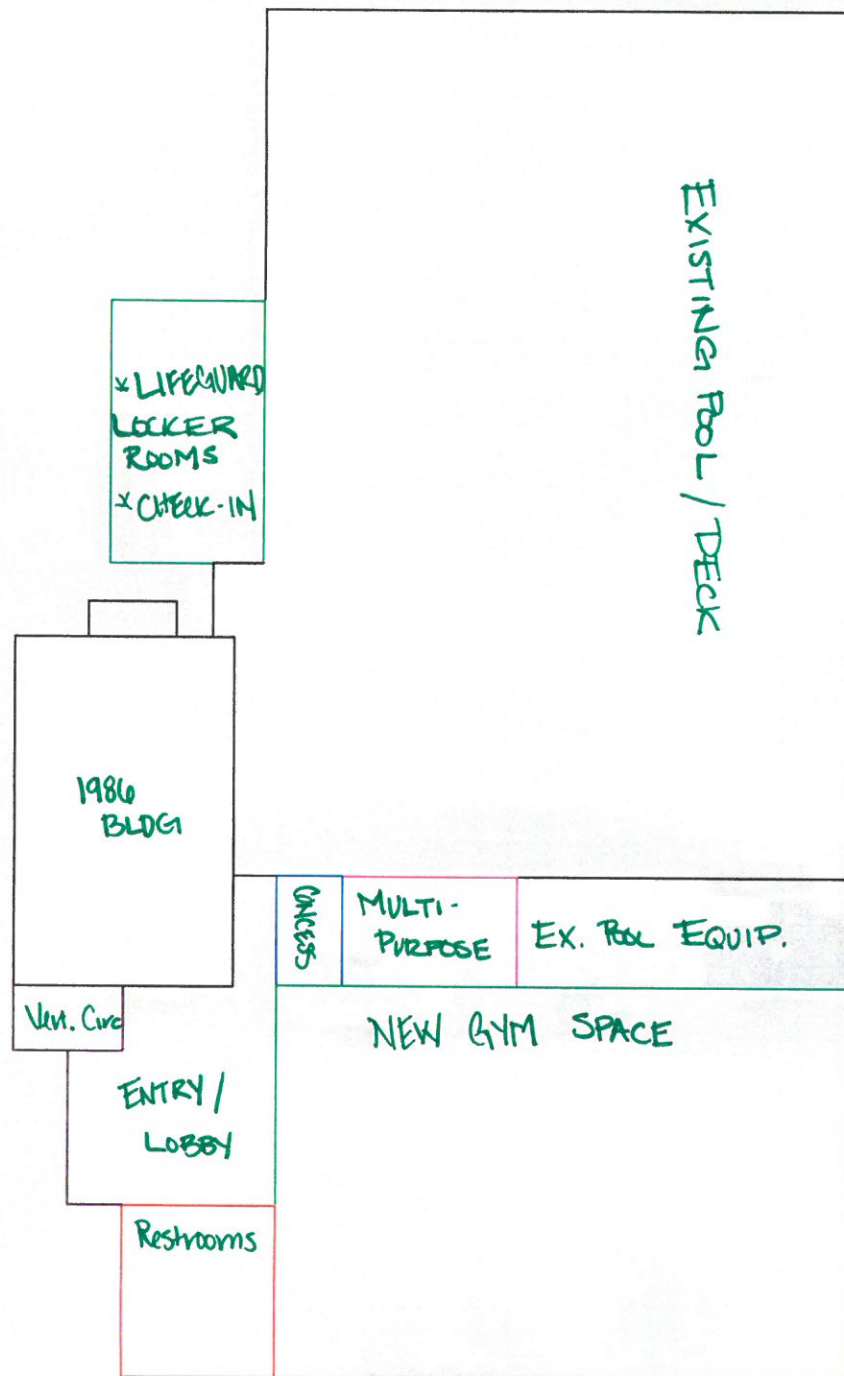
**New Entry/ Lobby with Shared Functions**

- Clearly Defined Entry & Lobby
- Public Restrooms with Plumbing Chase
- Concessions – For use on pool side and gym side
- Multipurpose room

**New Lifeguard/ Locker Room Building**

- Locker Rooms/ Restrooms with Plumbing Chase
- Lifeguard Room/ Storage
- Check-In Desk (can be open air)
- Small lockable storage space for safe





**CITY OF DALTON  
JOHN DAVIS RECREATION CENTER  
RENOVATIONS AND ADDITIONS  
COMPETITIVE SEALED PROPOSALS FOR:  
CONSTRUCTION MANAGEMENT AT RISK SERVICES**

Prepared for the:  
CITY OF DALTON  
07/08/2022



By:  
Gregg Sims, Architect  
P.O. Box 219  
Dalton, GA 30722-0219



## **REQUEST FOR PROPOSALS/INSTRUCTIONS**

### **RENOVATIONS TO THE JOHN DAVIS RECREATION CENTER COMPETITIVE SEALED PROPOSALS FOR: CONSTRUCTION MANAGEMENT AT RISK SERVICES**

THE CITY OF DALTON, GEORGIA (the "Owner") herein seeks Competitive Proposals from Construction Management Firms / General Contractors (the "Contractor") for Construction Management at Risk services for the renovations and additions to the "John Davis Recreation Center" (the "Project").

The successful Contractor will be required to provide all services as described in AIA A133-2019. Once a GMP is agreed upon between the Owner and Contractor, it is the Owner's intent to proceed with the construction of the project with the successful Contractor. In general, the project includes renovations to the existing 1988 2-story building and demolition and new construction of a new entrance lobby, offices, public restrooms, concessions, pool equipment enclosure, lifeguard/locker room building, a new gymnasium with storage and associated site work. When procuring subcontractors, the Contractor shall endeavor to use local subcontractors and materials. A minimum of three bids shall be obtained for each trade. The Owner's construction budget for the project is limited to \$5,000,000.00 which includes all Contractor's overhead/profit/fees, design fees, project furnishings, contingencies, site work, and building construction. It is the Owner's desire to begin sitework in February-March 2023 and achieve substantial completion of the entire project by January 1, 2024. The successful Contractor shall not be eligible to bid or enter into contractor or subcontract for any of the construction or other services of any nature on the project without specific approval of the Owner. The successful Contractor will be required to work closely with the City's Architect, Gregg Sims, P.O. Box 219, Dalton, GA 30722-0219, 706-226-5776.

The successful Contractor shall provide a (two) 2-year warranty on the entire project starting on the date of Final Acceptance.

Prior to the award of a GMP Contract, the Contractor shall provide the Owner with a 100% Performance and Payment Bond for its faithful performance. Bonding for subcontractors will not be allowed without written acceptance from the Architect and the Owner.

To protect the interests of the Owner, provide and maintain in effect during the life of the agreement, the following insurance coverings:

- 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. Worker's Compensation:
  - i. Worker's Compensation Statutory Limits
  - ii. Employer's Liability
    - 1. Bodily Injury by Accident - \$100,000 each accident
    - 2. Bodily Injury by Disease - \$500,000 policy limit
    - 3. Bodily Injury by Disease - \$100,000 each employee
- d. Course of Construction Insurance - 100% of the completed value of the work.
- e. Professional Service Insurance-Errors & Omissions - Including consultants, counselors, engineers, attorney, accountants, etc.
  - i. Minimum \$1,000,000 per claim.

Any Proposal submitted in response to this Request should comply strictly with all requirements set forth in the Request for Proposals. Any such Proposal must contain the completed Qualification Statement and Proposal Form setting forth the Contractor's proposed lump sum price for Pre-Construction Services and the Contractor's Fee for Construction Phase Services. Any Proposal must also demonstrate the Contractor's experience with similar projects.

In evaluating Proposals, the Owner may seek additional information from any Contractor concerning such Contractor's Proposal. The Owner may elect to short-list firms and conduct interviews prior to making a selection.

The Owner intends to award the construction contract to the responsible and responsive Contractor whose Proposal is determined in writing to be the most advantageous to the Owner, taking into consideration the following evaluation factors which are listed in their order of relative importance:

- A. The Contractor's proposed lump sum for Preconstruction Services and Contractor's proposed fee for Construction Phase Services. (50 points)
- B. The Contractor's prior experience and references in constructing and completing similar projects on schedule and within budget. For purposes of this factor, the Project should not be more than 50 percent lesser in scope, or cost, than similar projects identified by Contractor. (50 points)

**All proposals must be properly signed, submitted in a SEALED package that contains duplicate bound notebooks and received by the City of Dalton Finance Department located at 300 West Waugh Street, Dalton, Georgia 30720 no later than 2:00 p.m. on the 9th day of August, 2022. A total of 3 proposals in three ring binders is required. Sealed proposals must be clearly marked: "Sealed Proposal for CMAR Services on the John Davis Recreation Center Project".**

The Owner will receive such Proposals at such time and place. Proposals received after said time will not be accepted. At the Owner's discretion, Contractors may be afforded an opportunity for subsequent discussion, negotiation, and revision of Proposals. The Owner reserves the right to reject any or all Proposals and to waive any technicalities or formalities. Incomplete proposals will not be considered by the Owner.

Any Contractor that intends to submit a Proposal must complete the City of Dalton Vendor Packet and be an approved Active Vendor with the City. Applications can be obtained from the Finance Department or online at <https://daltonga.gov/finance/page/vendor-packets>

Any Proposal submitted in response to this Request shall remain open for acceptance by the Owner, and same shall be honored by the Contractor, for a period of ninety (90) days from the date set forth hereinabove for the receipt of Proposals. The Owner assumes no responsibility or obligation to the respondents for any costs associated with the preparation or submission of proposals.

Any questions or comments concerning this Request for Proposals should be addressed in writing to the Architect at [cs@greggsims.com](mailto:cs@greggsims.com). Any questions should be submitted at least five (5) business days prior to the time set to receive Proposals. Any addenda and answers to questions will be posted on the City's website. It is the responsibility of the contractor to obtain this information and acknowledge receipt of all addenda on the contractor's proposal form.

SIGNED - THE CITY OF DALTON, GEORGIA



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RFP ADDENDUM

ADDENDUM NO.: 001

DATE ISSUED: August 3, 2022

BID DATE: Tuesday, August 9, 2022

BID TIME: 2:00 PM ET

BID LOCATION: City of Dalton Finance Department

INTERPRETATIONS:

Responses by Gregg Sims, Architect follow the questions in red font.

1. How many copies of the proposal are to be submitted? Reference page 2 of the RFP, the bolded paragraph: 1<sup>st</sup> sentence states duplicate bound notebooks are to be submitted. However, the next sentence states a total of 3 proposal in three ring binders is required. Please clarify how many copies of the proposal are to be submitted. **Provide a total of 3 proposals in 3 separate 3-ring binders.**
2. Please provide additional definition of services expected to be included in the Preconstruction Services provided by the Construction Manager selected. We understand Preconstruction Services should include budgeting, scheduling, recommendations on building materials, development of Subcontractor/Supplier qualifications and solicitation of bidders, developing bid packages and conduct bidding process for bid packages for the project, development of a Guaranteed Maximum Price (GMP) for review by the Owner/Design Team, etc. Examples of additional definition of services expected by the Owner/Design Team may include:
  - Meetings with Owner and Design Team. Are meetings expected to be weekly, bi-weekly, etc.? **Meetings will be scheduled on an as needed basis.**
  - Is CM expected to chair, administer and facilitate such meetings? **The Architect will chair the meetings.**
  - Prepare and maintain schedules for project to include Project Pre-Construction Phase Schedule and Preliminary Project Construction Schedule? **Yes**
  - Expected time duration for pre-construction services? **Contract documents are to be complete by October 18, 2022. Construction is to commence by January 18, 2023.**

**As required by the Request for Proposals issued July 8, 2022 for the Renovations to the John Davis Recreation Center, the successful Contractor will be required to provide all services as described in AIA A133-2019.**

**PROPOSAL FORM: COST-PLUS-FEE (SINGLE-PRIME CONTRACT)**

**RENOVATIONS AND ADDITIONS TO THE CITY OF DALTON  
JOHN DAVIS RECREATION CENTER**

**1.1 PROPOSAL INFORMATION**

- A. Proposer: Felker Construction Co., Inc.
- B. Project Name: Renovations and Additions to the John Davis Recreation Center
- C. Project Location: Civic Drive, Dalton, GA 30720
- D. Owner: The City of Dalton, GA
- E. Architect: Gregg Sims, Architect
- F. Architect Project Number: CD/JDRC

**1.2 CERTIFICATIONS AND CONTRACTOR'S FEE**

- A. Cost-Plus-Fee Contract: The undersigned Bidder, having carefully examined the Procurement and Contracting Requirements, Conditions of the Contract, and all subsequent Addenda, as prepared by Gregg Sims, Architect, hereby agrees to furnish all services necessary to complete the requirements of the above-named project, according to the Request for Proposals and Form of Agreement, proposes the following fees:

- 1. Contractor's Lump Sum Fee for all **Pre-Construction Services** as described in AIA 133-2019: sixteen thousand Dollars (\$ 16,000.00).
- 2. Contractor's Fee for **Construction Phase Services**: Eight percent (8 %) of the Cost of the Work.

The Contractor's fee includes gross profit and all cost and expenses (Overhead & General Conditions) that are not identified as Cost of the Work. This definition supersedes Article 7 of the AIA 133 – 2019. Overhead & General Conditions, included in the contractor's fee, includes any and all costs required to perform the work as described in AIA 133-2019 including, but not limited to: Field & Home Offices, Equipment, Furnishings, Supplies, toilet facilities, all utilities (until the issuance of a Final Certificate of Occupancy), any and all costs for associated field and office personnel, also including any misc. costs such as cell phones, vehicles, insurance, benefits, bonuses, salaries, payroll taxes, temp housing, travel, postage or shipping, printing (including plans), meetings, internet, software, record-keeping (including as-builts), safety equipment, scheduling and budgeting expenses, NPDES monitoring & maintenance (including any fines), coordination of testing (testing services provided by owner), construction layout/engineering/surveying, temporary storage, temp heat, costs associated with obtaining permits, insurance requirements, taxes, GC payment and performance bonds, any fines incurred due to the negligence of the Contractor, Contractor's legal or licensing fees,

continuous site and building cleanup (including all dump fees), final cleaning, preparation of closeout documents and management of warranty issues.

Cost of the Work includes Trade Contract Cost and Materials incorporated into the work.

- B. The undersigned Bidder acknowledges receipt of and use of the following Addenda in the preparation of this Bid:

1. Addendum No. 1, dated August 3, 2022
2. Addendum No. 2, dated \_\_\_\_\_
3. Addendum No. 3, dated \_\_\_\_\_

### 1.3 CONTRACTOR'S LICENSE

- A. The undersigned further states that it is a duly licensed General Contractor, for the type of work proposed, in the State of Georgia, and that all fees, permits, licenses, etc., pursuant to performing this work and submitting this proposal have been paid in full.

### 1.4 SUBMISSION OF PROPOSAL

- A. Respectfully submitted this 9th day of August, 2022.
- B. Submitted By: Nathan Felker
- C. Authorized Handwritten Signature: *Nathan Felker*
- D. Signed By (typed): Nathan Felker
- E. Title (Owner/Partner/President/Vice President): Vice President
- F. Street Address: 300 Fernwood Avenue
- G. City, State, Zip: Dalton, GA 30721
- H. Phone: 706-226-6922
- I. License No.: GCQA000117

- 1.5 Attach Contractor's Qualification Statement.

END OF DOCUMENT - PROPOSAL FORM

# **Felker Construction Co., Inc.**

P.O. Box 1647 • Dalton, GA 30722

Bus: 706-226-6922 • Fax: 706-279-0705

## **PRE-CONSTRUCTION COST CLARIFICATION**

A \$6,000.00 credit will be applied to our \$16,000.00 pre-construction cost if Professional Service Insurance is not required.



STATE OF GEORGIA  
BRAD RAFFENSPERGER, Secretary of State  
State Licensing Board for Residential and General Contractors  
LICENSE NO. GCQA000117

George Allan Felker  
PO Box 1647  
Dalton GA 30722-1647

Company Name: Felker Construction Co Inc  
Company License NO: GCCO000814  
**General Contractor Qualifying Agent**

EXP DATE - 06/30/2024 Status: Active  
Issue Date: 04/25/2008

A pocket-sized license card is below. Above is an enlarged copy of your pocket card.

Please make note of the expiration date on your license. It is your responsibility to renew your license before it expires. Please notify the Board if you have a change of address.

Wall certificates suitable for framing are available at cost, see board fee schedule. To order a wall certificate, please order from the web site – [www.sos.ga.gov/plb](http://www.sos.ga.gov/plb).

Please refer to Board Rules for any continuing education requirements your profession may require.

Georgia State Board of Professional Licensing  
237 Coliseum Drive  
Macon GA 31217  
Phone: (404) 424-9966  
[www.sos.ga.gov/plb](http://www.sos.ga.gov/plb)

George Allan Felker  
2720 Osprey Drive  
Dalton GA 30721

STATE OF GEORGIA  
BRAD RAFFENSPERGER, Secretary of State  
Georgia State Licensing Board for Residential and General Contractors  
License No. GCQA000117

George Allan Felker

PO Box 1647  
Dalton GA 30722-1647

Company Name: Felker Construction Co Inc  
Company License NO: GCCO000814  
**General Contractor Qualifying Agent**

EXP DATE - 06/30/2024 Status: Active  
Issue Date: 04/25/2008





FROM THE OFFICE OF GREGG SIMS, ARCHITECT

**Amendment to AIA Document A133-2019**

**Paragraph 11.1.8.3**

**.1** When the Work is substantially complete (operational or beneficial occupancy) and City determines the Work to be reasonably acceptable, the Contractor shall submit an invoice or other documents as may be required and receive payment thereof within thirty (30) days. If there are any remaining incomplete minor items, an amount equal to two hundred (200%) percent of the value of each item, as determined by City, shall be withheld until such items are completed.

**.2** This Contract is governed by O.C.G.A. § 13-10-2-80, which requires that the Contractor, within ten (10) days of receipt of retainage from City, pass through payments to Subcontractors and reduce each Subcontractor's retainage accordingly. The Code provision also requires Subcontractors to pass through payments to Lower Tier Subcontractors and reduce each lower tier contractor's retainage. Therefore, City, in its discretion, may require the Contractor to submit satisfactory evidence that all payrolls, material bills, or other indebtedness connected with the Work have been paid before making any payment.

**.3** Within sixty (60) days after the Work is fully completed and accepted by City, the balance due hereunder shall be paid; provided, however, that final payment shall not be made until said Contractor shall have completed all work necessary and reasonably incidental to the Contract, including final cleanup and restoration. All claims by the Contractor for breach of contract, violation of state or federal law or for compensation such claims shall be forever barred. In such event no further payment to the Contractor shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to City.



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 9/19/2022

**Agenda Item:** Contract with Spectra Contract Flooring

**Department:** Public Works

**Requested By:** Chad Townsend

**Reviewed/Approved  
by City Attorney?** -----

**Cost:** \$4,113.22

**Funding Source if Not  
in Budget** General Budget

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

Annual carpet cleaning contract for the Public Works facilities.

<b>Proposal Submitted To</b> City of Dalton		<b>Attention</b> Chad Townsend		<b>Phone</b> (706) 278-7077	<b>Fax</b> (706) 278-1847	<b>Date</b> 08/26/22
				<b>Job Name</b> PCDM/Public Works Carpet Cleaning		<b>Job #</b> 193455
<b>Street</b> P. O. Box 1205				<b>Job Street</b> P. O. Box 1205		<b>Proposal ID</b> 353408
<b>City, State and Zip</b> Dalton, GA 30722	<b>Architect</b>	<b>Date of Plans</b>	<b>Add #</b>	<b>Job City, State and Zip</b> DALTON, GA 30722	<b>Customer Job #</b> None	<b>Customer PO</b> None

We hereby submit specifications and estimates for:

Item Description	Price
Clean Carpet:	\$4,113.22
6x year for (Red Area's - Halls)	
4x year for (Blue Area's - Conference Rooms)	
2x year for (Green Area's - Offices)	
Public works - September 1 - 2022 - August 31 - 2023 - Carpet Cleaning Maintenance Contract...	\$0.00
<b>Base Bid Total:</b>	<b>\$4,113.22</b>

We PROPOSE to perform the work complete in accordance with the specifications and as described above for the SUM of:

Signature: Tony Gladson Tony Gladson Cell: (706) 463-3958 \$4,113.22  
Email: tony.gladson@spectracf.com

**Conditions of Proposal:**

- This Proposal may be withdrawn, if not accepted, within 30 days of its issuance. Spectra will consider reasonable requests to engage in negotiations for revisions to this Proposal, including signing a subcontract that includes the terms of this Proposal. A proposal not accepted within 30 days will be subject to price escalation of materials, labor, freight and fuel costs.
- This proposal is subject to credit review and approval. Payment terms are net 30 days. A convenience fee of 2% will be added if paying via credit card. Past due invoices are subject to service charges of 1.5% per month (18% per annum). In the case of any default, ~~Customer shall pay Spectra's reasonable attorney fees and costs, including those on any appeal, even if no suit or action is filed.~~
- All work shall be performed in a workmanlike manner according to industry standards. Areas to receive flooring shall be free and clear of debris. Any changes to the work shall be performed only after execution of a written change order.
- Prior to commencement of Spectra's work: (a) Customer shall test all concrete sub floors receiving flooring for vapor emission levels and alkalinity per manufacturers' recommendations utilizing ASTM F2170 and provide written results to Spectra, including a list of any sealers applied to the concrete sub floor; (b) If Customer does not provide such reports at least 10 days prior to commencement of Spectra's work, then Customer shall provide Spectra with access to all concrete sub floors for appropriate testing and Customer shall be responsible for the costs of such testing; and (c) Any concrete sub floors not meeting manufacturers' requirements for installation will require correction or the execution of a separate waiver agreement.
- All work is contingent upon strikes, accidents or delays beyond Spectra's control. Customer shall carry insurance for all hazards, including fire. Spectra's workers are fully covered by Worker's Compensation and Liability Insurance.
- Customer represents and warrants that: (a) the project site contains no hazardous or other dangerous substances, either exposed or concealed; or (b) Customer has given written notice to Spectra of all such substances and their location(s). ~~To the fullest extent permitted by law, Customer shall indemnify, defend and hold Spectra harmless from any damage, claim, loss, expense and attorney fees related to Spectra's liability, if any, including any federal or state statute related to hazardous or other dangerous substances.~~
- Spectra is fully licensed, bonded, and insured. This proposal does not include participation in any OCIP/CCIP or related programs. Requests for Spectra to participate in such programs may result in additional costs.
- ~~Notwithstanding anything herein to the contrary, all prices are subject to immediate increase without limitation in the event of material change to applicable duties, taxes, tariffs, similar charges, or other government action.~~

**ACCEPTANCE OF PROPOSAL:** The above prices, specifications, and conditions are satisfactory and are hereby ACCEPTED.  
You are authorized to do the work as specified.

Customer: City of Dalton Signed: [Signature] Date: 9/8/22



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting  
**Meeting Date:** 9/19/2022  
**Agenda Item:** Contract with Spectra Contract Flooring  
**Department:** Public Works  
**Requested By:** Chad Townsend

**Reviewed/Approved  
by City Attorney?** -----

**Cost:** \$1,449.03

**Funding Source if Not  
in Budget** General Budget

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

Annual ceramic tile cleaning contract for the Public Works facilities.

<b>Proposal Submitted To</b> City of Dalton		<b>Attention</b> Chad Townsend		<b>Phone</b> (706) 278-7077	<b>Fax</b> (706) 278-1847	<b>Date</b> 08/26/22
				<b>Job Name</b> PCDM/Public Works Ceramic Tile Cleaning		<b>Job #</b> 193457
<b>Street</b> P. O. Box 1205				<b>Job Street</b> P. O. Box 1205		<b>Proposal ID</b> 353410
<b>City, State and Zip</b> Dalton, GA 30722	<b>Architect</b>	<b>Date of Plans</b>	<b>Add #</b>	<b>Job City, State and Zip</b> DALTON, GA 30722	<b>Customer Job #</b> None	<b>Customer PO</b> None




We hereby submit specifications and estimates for:

Item Description	Price
1x Ceramic Tile Cleaning (Halls, Restrooms, Break Area).	\$1,449.03
Public Works - September 1 - 2022 - August 31 - 2023 Ceramic Tile Maintenance Contract	
<b>Base Bid Total:</b>	<b>\$1,449.03</b>

We PROPOSE to perform the work complete in accordance with the specifications and as described above for the SUM of:

Signature: Tony Gladson Tony Gladson Cell: (706) 463-3958 \$1,449.03  
Email: tony.gladson@spectracf.com

**Conditions of Proposal:**

1. This Proposal may be withdrawn, if not accepted, within 30 days of its issuance. Spectra will consider reasonable requests to engage in negotiations for revisions to this Proposal, including signing a subcontract that includes the terms of this Proposal. A proposal not accepted within 30 days will be subject to price escalation of materials, labor, freight and fuel costs.
2. This proposal is subject to credit review and approval. Payment terms are net 30 days. A convenience fee of 2% will be added if paying via credit card. Past due invoices are subject to service charges of 1.5% per month (18% per annum). ~~In the case of any default, Customer shall pay Spectra's reasonable attorney fees and costs, including those on any appeal, even if no suit or action is filed.~~ 
3. All work shall be performed in a workmanlike manner according to industry standards. Areas to receive flooring shall be free and clear of debris. Any changes to the work shall be performed only after execution of a written change order.
4. Prior to commencement of Spectra's work: (a) Customer shall test all concrete sub floors receiving flooring for vapor emission levels and alkalinity per manufacturers' recommendations utilizing ASTM F2170 and provide written results to Spectra, including a list of any sealers applied to the concrete sub floor; (b) If Customer does not provide such reports at least 10 days prior to commencement of Spectra's work, then Customer shall provide Spectra with access to all concrete sub floors for appropriate testing and Customer shall be responsible for the costs of such testing; and (c) Any concrete sub floors not meeting manufacturers' requirements for installation will require correction or the execution of a separate waiver agreement.
5. All work is contingent upon strikes, accidents or delays beyond Spectra's control. Customer shall carry insurance for all hazards, including fire. Spectra's workers are fully covered by Worker's Compensation and Liability Insurance.
6. Customer represents and warrants that: (a) the project site contains no hazardous or other dangerous substances, either exposed or concealed; or (b) Customer has given written notice to Spectra of all such substances and their location(s). ~~To the fullest extent permitted by law, Customer shall indemnify, defend and hold Spectra harmless from any damage, claim, loss, expense and attorney fees related to Spectra's liability, if any, including any federal or state statute related to hazardous or other dangerous substances.~~ 
7. Spectra is fully licensed, bonded, and insured. This proposal does not include participation in any OCIP/CCIP or related programs. Requests for Spectra to participate in such programs may result in additional costs.
8. ~~Notwithstanding anything herein to the contrary, all prices are subject to immediate increase without limitation in the event of material change to applicable duties, taxes, tariffs, similar charges, or other government action.~~ 

**ACCEPTANCE OF PROPOSAL:** The above prices, specifications, and conditions are satisfactory and are hereby ACCEPTED.

You are authorized to do the work as specified.

Customer: City of Dalton

Signed: 

Date: 9/8/22





## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 09/19/22

**Agenda Item:** First Reading Ordinance 22-25 Donation Bins

**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:**

AN ORDINANCE TO REPEAL ARTICLE VIII "DONATION BINS" IN CHAPTER 26 "BUSINESSES" OF THE 2001 REVISED CODE OF ORDINANCES OF THE CITY OF DALTON; TO ESTABLISH AN EFFECTIVE DATE; TO SET PENALTIES FOR FALIURE TO REMOVE A DONATION BIN PRESENTLY PERMITTED AFTER THE EFFECTIVE DATE OF THIS ORDINANCE; AND FOR OTHER PURPOSES.

**CITY OF DALTON  
ORDINANCE**

**ORDINANCE NO.22-25**

AN ORDINANCE TO REPEAL ARTICLE VIII “DONATION BINS” IN CHAPTER 26 “BUSINESSES” OF THE 2001 REVISED CODE OF ORDINANCES OF THE CITY OF DALTON; TO ESTABLISH AN EFFECTIVE DATE; TO SET PENALTIES FOR FALIURE TO REMOVE A DONATION BIN PRESENTLY PERMITTED AFTER THE EFFECTIVE DATE OF THIS ORDINANCE; AND FOR OTHER PURPOSES

WHEREAS, the Mayor and Council find the City’s effort to permit donation bins at locations throughout the City of Dalton pursuant to the regulatory scheme in Sections 26-306 through 26-311 of the 2001 Revised Code of Ordinances of the City of Dalton (“the Code”) is no longer desirable inasmuch as the sites for such donation bins create unsightly and unhealthy conditions and permittees do not always maintain the donation bin sites as contemplated by those Ordinances; and

WHEREAS, the health, safety and welfare of the citizens of Dalton is better served by repeal of Article VIII “Donation Bins” of Chapter 26 “Businesses” of the Code;

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

**-1-**

**REPEALER**

Effective upon adoption of this Ordinance by the Mayor and Council and as stated below and certified by the City Clerk, Article VIII “Donation Bins” of Chapter 26 “Businesses” being 2001 Revised Code Sections 26-306, 26-307, 26-308, 26-309, 26-310, and 26-311 are hereby repealed such that no new or renewal permit(s) shall be issued by the City to any person. However, these Code Sections shall remain effective temporarily as to existing permits not yet expired as provided in Section 2 hereof.

-2-

### UNEXPIRED EXISTING PERMITS

Bin owners and property owners who hold an unexpired permit at the effective date of the Ordinance shall be entitled to maintain the permitted donation bin until the expiration of the existing permit. Such donation bin must be kept and maintained strictly in accordance with the rules of Article VIII “Donation Bins” of Chapter 26 “Businesses” under which the donation bin was permitted.

At the expiration of the term of any such permit the donation bin shall be removed and the property location shall be left free of litter, garbage, and other junk, debris, or materials surrounding the donation bin.

Failure to comply with this removal provision shall be subject to citation to the Municipal Court, and upon a determination by the Court that a violation has occurred, a fine that shall not exceed \$1,000.00 may be assessed against the violator.

-3-

All laws or ordinances of the City of Dalton in conflict herewith are hereby repealed.

-4-

This Ordinance shall be effective after adoption by the Mayor and Council of the City of Dalton and it being published in two (2) public places for five (5) consecutive days thereafter.

SO ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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 DOES/DOES NOT pass.

CITY OF DALTON

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

ATTEST:

\_\_\_\_\_  
City Clerk

A true copy of the foregoing Ordinance has been published in two public places within the City of Dalton for five (5) consecutive days following passage of the above-referenced Ordinance as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
City Clerk