



**MAYOR AND COUNCIL MEETING
MONDAY, FEBRUARY 07, 2022
6:00 PM
DALTON CITY HALL**

A G E N D A

EXECUTIVE SESSION - 5:30 P.M. - 2ND FLOOR CONFERENCE ROOM

1. Personnel Matters
2. Potential Litigation

REGULAR MEETING - 6:00 P.M. - COUNCIL CHAMBERS

Call to Order

Pledge of Allegiance

Approval of Agenda

Public Commentary: *(Please Complete Public Commentary Contact Card Prior to Speaking)*

Special Presentations:

- [1.](#) Resolution of Hamilton Medical Center Recognizing the City of Dalton - Jeff Myers, President & CEO, and HMC Staff
- [2.](#) DACVB PowerPoint - Looking Back at 2021 and Forward to 2022

Minutes:

- [3.](#) Mayor & Council Meeting Minutes of January 18, 2022

Unfinished Business:

- [4.](#) Second Reading - Ordinance 22-01 An Ordinance To Amend Article Ii-Hotel-Motel Tax Of The Revised Code Of 2001 Of The City Of Dalton For Purpose Of Incorporating Provisions Of H. B. 317 Of The 2021 Session Of The Georgia General Assembly Into The City's Regulatory Provisions; To Make Certain Technical Corrections To Section 106-33 To Conform To The Tax Rate Specified In Section 106- 32; To Provide For Information Reporting Of Properties Within The City That Are Listed For Lodging Or Accommodations By A Marketplace Facilitator Or Marketplace Innkeeper As The Case May Be For Purposes Of Administration And Enforcement; To Provide Effective Date; To Provide For Severability; And For Other Purposes.

New Business:

- [5.](#) Traffic Control Change - Speed Limit Reduction - East Morris Street from Glenwood Avenue to Henderson Street
- [6.](#) Riverbend Road Stormwater Project - Corrective Action Plan, Temporary & Permanent Easements, and Memorandum of Understanding
- [7.](#) KRH Architects Design Services Amendment No. 1 for the New Aquatic Center
- [8.](#) Professional Services Agreement with Geo-Hydro Engineers, Inc. for Geotechnical Services at James Brown Park for New Aquatic Center
- [9.](#) MBA Consulting Engineers - HVAC Evaluation for City Hall
- [10.](#) Professional Services Agreement - BION Security
11. Appointment of Chad Townsend to Position of Public Works Director

Supplemental Business

Announcements

Adjournment

**RESOLUTIONS OF
HAMILTON MEDICAL CENTER, INC.
RECOGNIZING THE CITY OF DALTON**

WHEREAS, the COVID-19 pandemic caused, and continues to cause, widespread illness throughout our community that has tested the limits of our nation's healthcare delivery system; and

WHEREAS, throughout the COVID-19 pandemic THE CITY OF DALTON prioritized our community's safety and health by responding with compassion, understanding, and action to the needs of Hamilton Medical Center and its staff by issuing a state of emergency; and

WHEREAS, THE CITY OF DALTON, the Mayor, and its City Council members partnered with Hamilton Medical Center to inform the community about, and advocate for, reducing the spread of the COVID-19 virus; and


WHEREAS, THE CITY OF DALTON supplemented the services offered by Hamilton Medical Center to prevent overloading the hospital by setting up drive-through testing, drive-through vaccinations, and drive-through anti-viral treatments; and

WHEREAS, during staffing shortages at Hamilton Medical Center, THE CITY OF DALTON volunteered its medically-trained employees to temporarily staff the hospital to ensure that Hamilton Medical Center could continue operating at maximum capacity to fulfill its mission of compassionate care for all patients even during the highest peaks of the COVID-19 pandemic; and

WHEREAS, it is fitting and proper that THE CITY OF DALTON, the Mayor, and the City Council members be honored for their outstanding service and prompt actions in the face of the worst health crisis in more than a generation;

NOW, THEREFORE, BE IT RESOLVED, that Hamilton Medical Center, by unanimous vote, this the 18th day of November, 2021 does hereby recognize THE CITY OF DALTON for its support of Hamilton Medical Center and its patients, and does hereby extend to THE CITY OF DALTON and its City Council members its deepest gratitude and appreciation for the acts of service and support they have offered to Hamilton Medical Center during the COVID-19 pandemic;

BE IT FURTHER RESOLVED, that a copy of this Resolution be delivered to Mayor David Pennington and set forth in the minutes of Hamilton Medical Center so that THE CITY OF DALTON and all who now and hereafter serve as Trustees of Hamilton Medical Center may know of this Board's deep appreciation for THE CITY OF DALTON and the high esteem in which it is held as a consequence thereof.


Robert Chandler, Chairman



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: Monday, March 7, 2022

Agenda Item: DCC looking back at 2021 and forward to 2022

Department: Dalton Convention Center

Requested By: Margaret Thigpen

Reviewed/Approved by City Attorney? N/A

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:

Brief power point presentation in regard to 2021 and 2022. The information has been presented to the DCC Board and now I would like to share it with the Mayor and Council.



right!
Dalton!
VisitDaltonGA.com

Dalton Area Convention & Visitors Bureau

Primary marketing arm for the City of Dalton and Whitfield County, specializing in soliciting and promoting tourism, conventions, meetings, conferences, trade shows and any and all other group business designed to bring overnight visitors to Dalton-Whitfield County therefore enhancing the economic fabric of the community.

A Taste of the DACVB!

- ✓ Advertise/Market Dalton-Whitfield
- ✓ Book Group Business!
- ✓ Visitor Information Center/Gift Shop/Bandy Heritage Museum
Downtown Dalton - Freight Depot
- ✓ Visitor Information Center/Gift Shop/W & A Railroad Tunnel, Museum and Clisby Austin Home
Tunnel Hill
- ✓ Trolley - *private rentals/route from hotels to Downtown Dalton*
- ✓ Product Development

Advertising & Marketing

2021 Looking Back

- (8) I-75 Billboards
- (2) Electronic Billboards
- GA Parks Print + Website Banner Ads
- GA Great Places
- HHCTA Travel Guide/Maps
- Southern Living
- Floor Focus
- USA Today
- GA Map
- Southeast Region of the National Model Railroad Assn.



I-75



USA Today - Midwest & SE
GA Parks



Electronic Billboards



GA Parks Banner Ad



Southern Living



Floor Focus



Advertising & Marketing

2021 Looking Back Cont..

- Visitor Guide (annual)
- Dining Guide (qtrly)/QR Cling
- Textile Heritage Driving Tour
- Off The Rails Series
- GA Logo signs along I-75
- Tunnel Hill Guide by Cell
- VisitDaltonGA.com
- DaltonEvents.com
- CivilWarRailroadTunnel.com
- DaltonCivilWar.com
- RVIC (Ringgold & Valdosta) - Explore Boards
- VG Distribution - Hotels
- Social Media - Instagram, FB, Twitter



Advertising & Marketing

2022 Going Forward

- (8) I-75 Billboards
- (2) Electronic Billboards
- GA Parks Print + Website Banner Ads
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- Southeast Region of the National Model Railroad Assn.



Electronic Billboards



Floor Focus



USA Today



Southern Living

Advertising & Marketing

2022 Looking Forward Cont..

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- VG Distribution - Hotels
- Social Media - Instagram, FB, Twitter



Advertising & Marketing

COVID-19 2021 - Our Industry

Governors Executive Order/CDC Guideline Timeline:

- January-April 2021 - Executive Order in full effect - Reservation only at the Tunnel Hill Campus, sporting events could continue, meetings/banquets - gathering limitations including food and beverage.
- May 2021 - 50+ page Executive Order paired down to 30+ pages then to 25+ pages.
- June 2021 - All provisions restricting the hospitality industry removed.
- July 2021 - Executive Order paired down to 1 page.

Group Business!

Meetings/Sporting Events/Concerts

2021 Looking Back

Partners

Hotels

Dalton Convention Center

Dalton Parks/Recs

Whitfield County Parks/Rec

Attractions/Community at large

Memberships

GSAE (GA Society of Association Executives)

GACVB (GA Convention & Visitors Bureau)

HHCTA (Historic High County Travel Assn)

GA Sports

Tradeshows

GSAE ~ SportsETA ~ Small Market Meeting Symposium

~ Destination SE

2022 - Looking Forward

Partners

Hotels

Dalton Convention Center

Dalton Parks/Recs

Whitfield County Parks/Rec

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GA Sports

Tradeshows

GSAE ~ Small Market Meeting Symposium

SportsETA ~ Destination SE

Group Business!

Meetings/Sporting Events/Concerts

2021 - Looking Back

- 83 Leads = \$16,964,488
(Sports - 55; Meetings - 12; DCC - 16)
- 64 Definite = \$12,868,423
(Sports - 43; Meetings - 9; DCC - 12)
- 25 Events Lost/Cxl'd = \$5,642,197
(12) Lost - Dates not given; TD Changed organizations
(13) Cxl'd - (3) due to COVID; lack of teams; rain out; Tournament Director changed organizations
- 2021 Estimated Actual EI = \$5,001,217
- New Events Booked in 2021 = \$1,071,795
(11) for 2021 (Sports - 5; Meetings - 2; DCC - 4)

2022 - Looking Forward - New Groups

- (2) Young Game Changers - DCC
- USSSA Youth FastPitch - Westside Park
- Antique Bottle Show - DCC
- (3) Hometown Productions - DCC
- ISA May Worlds - Heritage Point
- Connect Sports-Scenic City - Edwards, Westside, Heritage
- 2D Sports Baseball - Riverbend Park
- Owl City Showcase - Summer - Edwards, Westside, Heritage
- (4) Perfect Game Baseball - Riverbend Park
- YBOA Boys National Championship - City/County Community Gyms
- GA Mtn Moonshine Cruizin - DCC
- SSUSA Southern Championships - Riverbend Park
- NAWCC (Watch Makers) - DCC
- Grand Prince Hall of GA - DCC
- GACAA (Ag Comm) - DCC

The BIGger Picture!

Dalton!
Convention & Visitors Bureau

Event Name: Top Flight Showcase
Event Date: 11/20-11/21/2021
Actual Economic Impact # 's

Event Days	# of Attendees	Hotel/Facility CP & WS	# of Rooms Picked Up	Hotel Rate	Rate + 14% Tax	Total Room Revenue	2% Lodging Tax picked up	2% Sales Tax picked up	Sum of Felt. Shopping & Gas (\$55.00/mi)	Facility Rental Cost	Total Economic Impact	State Hotel Fee \$5.00
2	509								\$ 50,000.00	\$ 4,950.00		
		Baymont			\$ -	\$ -	\$ -	\$ -				\$ -
		Super 8(College)	5	\$ 74.99	\$ 85.49	\$ 427.44	\$ 26.25	\$ 26.25				\$ 25.00
		Comfort Inn			\$ -	\$ -	\$ -	\$ -				\$ -
		Courtyard	34	\$ 119.00	\$ 135.66	\$ 4,632.44	\$ 283.22	\$ 283.22				\$ 170.00
		Courtyard Inn	30	\$ 119.00	\$ 135.66	\$ 4,069.80	\$ 249.90	\$ 249.90				\$ 150.00
		Days Inn	0	\$ 73.99	\$ 84.35	\$ -	\$ -	\$ -				\$ -
		Econo Lodge			\$ -	\$ -	\$ -	\$ -				\$ -
		Hampton	6	\$ 119.00	\$ 135.66	\$ 813.96	\$ 49.98	\$ 49.98				\$ 30.00
		Hilton Garden Inn	20	\$ 129.00	\$ 147.66	\$ 2,943.20	\$ 180.60	\$ 180.60				\$ 100.00
		Holiday Inn	19	\$ 149.00	\$ 169.86	\$ 3,228.30	\$ 199.80	\$ 199.80				\$ 50.00
		Howard Johnson			\$ -	\$ -	\$ -	\$ -				\$ -
		La Quinta	2	\$ 119.00	\$ 135.66	\$ 271.32	\$ 16.66	\$ 16.66				\$ 10.00
		Quality Inn	5	\$ 79.99	\$ 91.19	\$ 455.94	\$ 28.60	\$ 28.60				\$ 25.00
		Red Roof Inn	4	\$ 79.99	\$ 91.19	\$ 364.76	\$ 22.40	\$ 22.40				\$ 20.00
		Super 8(Market)			\$ -	\$ -	\$ -	\$ -				\$ -
			116			\$ 12,455.40	\$ 941.30	\$ 941.30	\$ 50,000.00	\$ 4,950.00	\$ 75,605.46	\$ 365.00

Tourism Gauge of Success

Lodging Tax Collection History (City/County)

- 2010 - \$1,035,690
- 2011 - \$1,278,622
- 2012 - \$1,315,000
- 2013 - \$1,401,540
- 2014 - \$1,492,026
- 2015 - \$1,623,115
- 2016 - \$1,658,139
- 2017 - \$1,771,559
- 2018 - \$1,816,011
- 2019 - \$1,765,247
- 2020 - \$1,249,930
- ❖ 2021 - \$1,689,581



VIC/Gift Shop/Bandy Heritage Museum

2021 - Looking Back

Visitors = 2,816 (*up from 2020*)

Executive Order Ended - *June 2021*

Expansion of Gift Shop

Begin to “Level Up” the Gift Shop

Made in Dalton Concept

Made in GA Concept

2022 - Looking Forward

Continue Gift Shop/VIC “Level Up”
featuring local artist

Kids “Entrepreneur”

Tufting Station

Train Day

Puzzle Bedspread

VIC/Gift Shop/W & A Tunnel, Museum & Clisby Austin Home

2021 - Looking Back

- **Visitors** = 3,254 (*up from 2020*)
- **Executive Order Ended** - *June 2021*
- **Started guided tours back**
- **Exhibited at Home School Show**
- **Created “Tidbit Tuesday”** - *Weekly Blogs*
- **Created Living History Friday/Saturday** - *March & June 2021*
- **New Exhibit - Clisby Austin** - *July 23, 2021*
- **Battle Reenactment** - *cxl'd September 2021*
- **Moonlight & Moonshine Event** - *October 23, 2021*

2022 - Looking Forward

- **Work with the Natl Medal of Honor Museum** - *to cross sale & to celebrate the anniversary of Andrew's Raiders*
- **Increase Admission Pricing**
- **GA Civil War Commission Grant = \$1000+**
 - *Self Guided Tour “Level Up” - Plexi-Glass*
 - *Mary Walker Voice Box to enhance exhibit*
 - *(4) signs for throughout the Tunnel*
- **Mural Change in the Museum**
- **Continue Living History Weekends** - *qtrly*
- **Battle Reenactment** - ?
- **Moonlight & Moonshine** - *October 22, 2022*
- **Christmas w/ the Austin's** - *12/2022*

Trolley

2021 - Looking Back

- Regular Hotel Route Suspended until April 3, 2021
- 24 Private Rentals
- Mechanical Issues due to old fleet
- Total Riders = 1,079

2022 - Looking Forward

- Hotel Route Suspended unless there are large groups in town
- Modified distance for private rentals due to aged fleet - Keeping to Whitfield County or JUST over the line
- Research on replacing fleet with either new or gently used



Product Development

2021 Looking Back...

Off the Rails Series - Partnership; CVB, DDDA, Community Foundation, Creative Arts Guild - CVB pays \$10,000 in financial support + \$5-8,000 in kind. ****September Concert for GA Jewel & SPA.**

DaltonCivilWar.com - Partnership
Whitfield County paid for the change in website platforms - CVB oversaw the conversion and developed QR Codes that contain additional information for each board. Once developed the digital information was uploaded to match the QR code and display board. CVB will maintain.

Textile Heritage Driving Tour

Clisby Austin Exhibit- THHC Campus

Living History Day - THHC Campus

Moonlight & Moonshine

Gift Shop Expansion - Freight Depot

2022 Looking Forward....

Textile Heritage Driving Tour “Level Up”

Gift Shop “Level Up”

THHC Campus -
Plexi-glass of outdoor building
Additional signage in the Tunnel
Enhance exhibits w/ Voice Box
Living History Days

Off the Rails Series -
\$10,000 Financial + \$5-8,000 In kind

***July Car Show**

****September Concert for GA Jewel & SPA**

Moonlight & Moonshine



right!
Dalton!
VisitDaltonGA.com

THE CITY OF DALTON
MAYOR AND COUNCIL MINUTES
JANUARY 18, 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 Dennis Mock, Annalee Harlan, Tyree Goodlett and Steve Farrow, City Administrator Andrew Parker and City Attorney Terry Miller.

CALL TO ORDER

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

APPROVAL OF AGENDA

On the motion of Council member Mock, second Council member Goodlett, the Agenda dated January 18, 2022 was approved. The vote was unanimous in favor.

PUBLIC COMMENTARY

There were no public comments.

MINUTES

The Mayor and Council reviewed the Regular Meeting Minutes of January 4, 2022. On the motion of Council member Mock, second Council member Farrow, the minutes were approved. The vote was unanimous in favor.

RENEWAL OF OTIS ELEVATOR SERVICE CONTRACT

Human Resources Director Greg Batts presented the Renewal Contract with Otis Elevator for elevator maintenance at the current City Hall and the old City Hall in the amount of \$6837.00 per year. On the motion of Council member Mock, second Council member Harlan, the Mayor and Council approved the contract. The vote was unanimous in favor.

RENEWAL OF EMCOR HVAC MAINTENANCE AGREEMENT FOR CITY HALL

The Mayor and Council reviewed the Renewal of EMCOR HVAC Maintenance Agreement for City Hall in the amount of \$6708.00. On the motion of Council member Mock, second Council member Harlan, the Agreement was approved. The vote was unanimous in favor.

CONTRACT CHANGE ORDER REQUEST 001 - DALTON SOCCER COMPLEX
(SYNTHETIC TURF FIELD CONSTRUCTION ONLY)

Public Works Director Benny Dunn presented the Contract Change Order request 001 for the Dalton soccer complex (synthetic turf field construction only) in the amount of \$21,500.00 for additional field markings. On the motion of Council member Mock, second Council member Farrow, the Mayor and Council approved the Change Order. The vote was unanimous in favor.

CORRECTIVE ACTION PLAN & PERMANENT EASEMENT - WALNUT NORTH DRAINAGE BASIN STORMWATER IMPROVEMENTS

Public Works Project Engineer, T. Jackson Sheppard, E.I.T., presented the Corrective Action Plan and proposed Drainage Easements required for completion of the Stormwater improvements within the Walnut North Drainage Basin. After the presentation of the engineering study and a corrective action plan as required by Section 96-1 (d) of the 2001 Revised Code of the City of Dalton by Public Works and Arcadis; on the motion of Council member Mock, second Council member Harlan, the request was approved for Public Works to proceed with public presentation of the Walnut North Drainage Basin Stormwater Improvements Plan, particularly to property owners/occupants within the study area and was authorized to request private stormwater easements per the study for identified tracts of real estate in the event one or more of the program options are later authorized and funded by the Mayor and Council. Upon acceptance of the easements, the City will thereby list the corrective action plan in the City's list of capital improvement and maintenance projects.

APPROVAL OF THE 2022 EQUITABLE SHARING AGREEMENT WITH THE DEPARTMENT OF JUSTICE FOR THE DALTON POLICE DEPARTMENT

Police Chief Cliff Cason presented the 2022 Equitable Sharing Agreement between the Dalton Police Department and the Department of Justice. Cason stated the agreement renews the departments participation in the Federal Asset Forfeiture Program. On the motion of Council member Harlan, second Council member Goodlett, the Mayor and Council approved the agreement. The vote was unanimous in favor.

RESOLUTION 22-01 – CHARTER AMENDMENT – LEASING REAL ESTATE

City Administrator Andrew Parker presented Resolution 22-01 regarding an amendment to the City of Dalton Charter. Parker stated that the Resolution is To Make Findings of Fact Concerning the Need for Amendment to The City's Charter to Empower the City to Lease Specific Real Properties of The City for Initial Terms Exceeding Five (5) Years and For A Renewal Term Exceeding Five (5) Years at Fair Rental Value and Subject to Conditions and To Request the Local Delegation To the 2022 General Assembly to Introduce Appropriate Local Legislation to Amend the City's Charter and Provide Same. On the motion of Council member Farrow, second Council member Mock, the Resolution was approved. The vote was unanimous in favor.

FIRST READING - ORDINANCE 22-01 – AMEND HOTEL-MOTEL ORDINANCE

The Mayor and Council held the first reading of an Ordinance To Amend Article II-Hotel-Motel Tax Of The Revised Code Of 2001 Of The City Of Dalton For Purpose Of Incorporating Provisions Of H. B. 317 Of The 2021 Session Of The Georgia General Assembly Into The City's Regulatory Provisions; To Make Certain Technical Corrections To Section To 106-33 To Conform To The Tax Rate Specified In Section 106- 32; To Provide For Information Reporting Of Properties Within The City That Are Listed For Lodging Or Accommodation By A Marketplace Facilitator Or Marketplace Innkeeper As The Case May Be For Purposes Of Administration And Enforcement; To Provide Effective Date; To Provide For Severability; And For Other Purposes

2022 AUTHORITY RE-APPOINTMENT – HOUSING AUTHORITY

On the motion of Council member Harlan, second Council member Goodlett, the Mayor and Council re-appointed Courtney Brock to the Housing Authority for a (6) year term to expire 12/31/2026. The vote was unanimous in favor.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 6:46 p.m.

Bernadette Chattam
City Clerk

David Pennington, Mayor

Recorded
Approved: _____
Post



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 02/18/2022

Agenda Item: Ordinance 22-01

Department: City Clerk

Requested By: Gesse Cabrera

**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:

Ordinance 22-01. An Ordinance To Amend Article II-Hotel-Motel Tax Of The Revised Code Of 2001 Of The City Of Dalton For Purpose Of Incorporating Provisions Of H. B. 317 Of The 2021 Session Of The Georgia General Assembly Into The City's Regulatory Provisions; To Make Certain Technical Corrections To Section To 106-33 To Conform To The Tax Rate Specified In Section 106-32; To Provide For Information Reporting Of Properties Within The City That Are Listed For Lodging Or Accommodation By A Marketplace Facilitator Or Marketplace Innkeeper As The Case May Be For Purposes Of Administration And Enforcement; To Provide Effective Date; To Provide For Severability; And For Other Purposes

**ORDINANCE
NO. 22-01**

AN ORDINANCE TO AMEND ARTICLE II-HOTEL-MOTEL TAX OF THE REVISED CODE OF 2001 OF THE CITY OF DALTON FOR PURPOSE OF INCORPORATING PROVISIONS OF H. B. 317 OF THE 2021 SESSION OF THE GEORGIA GENERAL ASSEMBLY INTO THE CITY'S REGULATORY PROVISIONS; TO MAKE CERTAIN TECHNICAL CORRECTIONS TO SECTION TO 106-33 TO CONFORM TO THE TAX RATE SPECIFIED IN SECTION 106-32; TO PROVIDE FOR INFORMATION REPORTING OF PROPERTIES WITHIN THE CITY THAT ARE LISTED FOR LODGING OR ACCOMODATION BY A MARKETPLACE FACILITATOR OR MARKETPLACE INNKEEPER AS THE CASE MAY BE FOR PURPOSES OF ADMINISTRATION AND ENFORCEMENT; TO PROVIDE EFFECTIVE DATE; TO PROVIDE FOR SEVERABILITY; AND FOR OTHER PURPOSES

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-

FINDINGS OF FACT

WHEREAS, the State of Georgia at Regular Session of the 2021 General Assembly of Georgia enacted H. B. 317 effective July 1, 2021, making substantive changes to the authority of Georgia municipalities to levy and collect excise taxes upon innkeepers upon the furnishing for value to the public of any room or rooms, lodging, or accommodations facilitated or furnished by an "innkeeper;" and

WHEREAS, the State of Georgia by enactment of such law has expanded the definition of "Innkeeper" to include a dealer defined in subparagraph (M. 3) of paragraph (8) of O.C.G.A. § 48-8-2 that is required to collect and remit the tax imposed by Article I of Chapter 8 of Title 48 to include a marketplace facilitator as such term is defined in paragraph (18.1) of O.C.G.A. § 48-8-2; and

WHEREAS, the City deems it in the public interest to amend the City's HOTEL-MOTEL TAX to incorporate such changes of State law and to make a specific technical correction in

Sections 106-32 and 106-33 of the Revised Code of 2001 as to the excise tax rate and for other purposes;

The Mayor and Council adopt the foregoing statements as findings of fact supporting the reason and purpose of this Ordinance.

-2-

SPECIFIC AMENDMENTS TO ARTICLE II. HOTEL-MOTEL TAX

A. Section 106-31-Definitions is amended as follows:

1. Strike the term “Lodging provider” as well as the written definition of such term and in lieu thereof substitute the term “Innkeeper” to be defined as follows:

“(A) Any person that furnishes for value to the public any room or rooms, lodgings, or accommodations in the City and that is licensed by, or required to pay business or occupation taxes to the City for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which room or rooms, lodging, or accommodations are regularly furnished for value; or

(B) A dealer as defined in subparagraph (M.3) of paragraph (8) of Code Section 48-8-2 that is required to collect and remit the tax imposed by Article 1 of Chapter 8 of Title 48 for acting as a marketplace facilitator as such term is defined in paragraph (18.1) of Code Section 48-8-2 for facilitating the furnishing for value to the public any room or rooms, lodging, or accommodations on behalf of another person. Such person is also termed a “Marketplace innkeeper.” ”

2. Each place within Article II-Hotel-Motel Tax where the term “lodging provider” appears strike that term and insert in lieu thereof the term “Innkeeper.”

B. Section 106-33 captioned “Collection of tax by lodging provider” is amended by striking the first sentence thereof in its entirety and inserting in lieu thereof the following:

“Every Innkeeper shall collect a tax of seven (7%) percent on the amount of rent from the occupant unless an exception is provided under section 106.34.

The remaining provisions of Section 106-33 shall remain in full force and effect except as otherwise amended by this Ordinance.

C. Section 106-40.1 Information as to property of owner contracted to a marketplace facilitator or “Marketplace innkeeper”

1. Any person holding title to any real estate (“Property”) within the City of Dalton where a contract exists with a marketplace facilitator or marketplace innkeeper to furnish for value to the public any room or rooms, lodgings, or accommodations at or within such Property shall within ten (10) days of such contract file an information report with the City Clerk upon form provided by the City Clerk identifying the Property and the identity of the marketplace facilitator or Marketplace innkeeper.
2. Any such information filed with and collected by the City Clerk shall be and remain confidential within the records of the City and shall not be published or kept as a rental property registry in violation of any law.
3. Such information filed with and collected by the City Clerk shall be utilized solely for administration and enforcement of Article II-Hotel-Motel Tax of the Revised Code of 2001 of the City of Dalton.

-3-

REPEALER

All Ordinances or resolutions of the City of Dalton in conflict herewith are hereby repealed.

-4-

SEVERABILITY

If any section or provision of this Ordinance is declared invalid or unenforceable by a court of competent jurisdiction, in that event the City intends that remaining parts hereof not so invalid or unenforceable shall remain in full force and effect.

-5-

EFFECTIVE DATE

This Ordinance shall be effective after it has been published in two (2) public places in the City of Dalton for five (5) consecutive days following passage. The Clerk shall record the effective date in her minutes hereof. The excise tax withholdings due from Innkeepers shall be due effective July 1, 2021 as provided in Section 5 of H. B. 317.

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 Alderman _____, second by Alderman _____ 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-reference Ordinance as of _____.

City Clerk



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 02/07/2022

Agenda Item: Traffic Control Change Speed Limit Reduction on Portion of East Morris Street

Department: Public Works

Requested By: Jackson Sheppard

Reviewed/Approved by City Attorney? No

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 attached Traffic Control Change and Location Map.

PUBLIC WORKS DEPARTMENT

BENNY DUNN, DIRECTOR

bdunn@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

TRAFFIC CONTROL CHANGE

Type: Speed Limit Revision – Reduce existing 35 miles per hour speed limit to 25 miles per hour

Location: E Morris Street From Glenwood Avenue to Henderson Street.

Comments: The purpose of this Traffic Control Change is to revise the posted speed limit of E. Morris Street from Glenwood Avenue to Henderson Street. Due to the addition of parking and increased pedestrian traffic in this area, the Public Works Traffic Division recommends reducing the posted speed limit of 35 miles per hour to 25 miles per hour to serve as a traffic calming measure which should improve safety. If the Traffic Control Change is approved, the Public Works Department will revise the existing posted speed limit signage.

Date of Approval: _____

Mayor's Signature: _____

Traffic Control Change Speed Limit Reduction on Portion of East Morris Street





CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 02/07/2022

Agenda Item: Riverbend Road Stormwater Project – Corrective Action Plan, Temporary & Permanent Easements, and Memorandum of Understanding

Department: Administration on behalf of Public Works

Requested By: Megan Elliott

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:

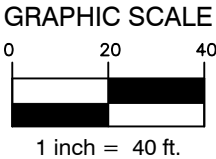
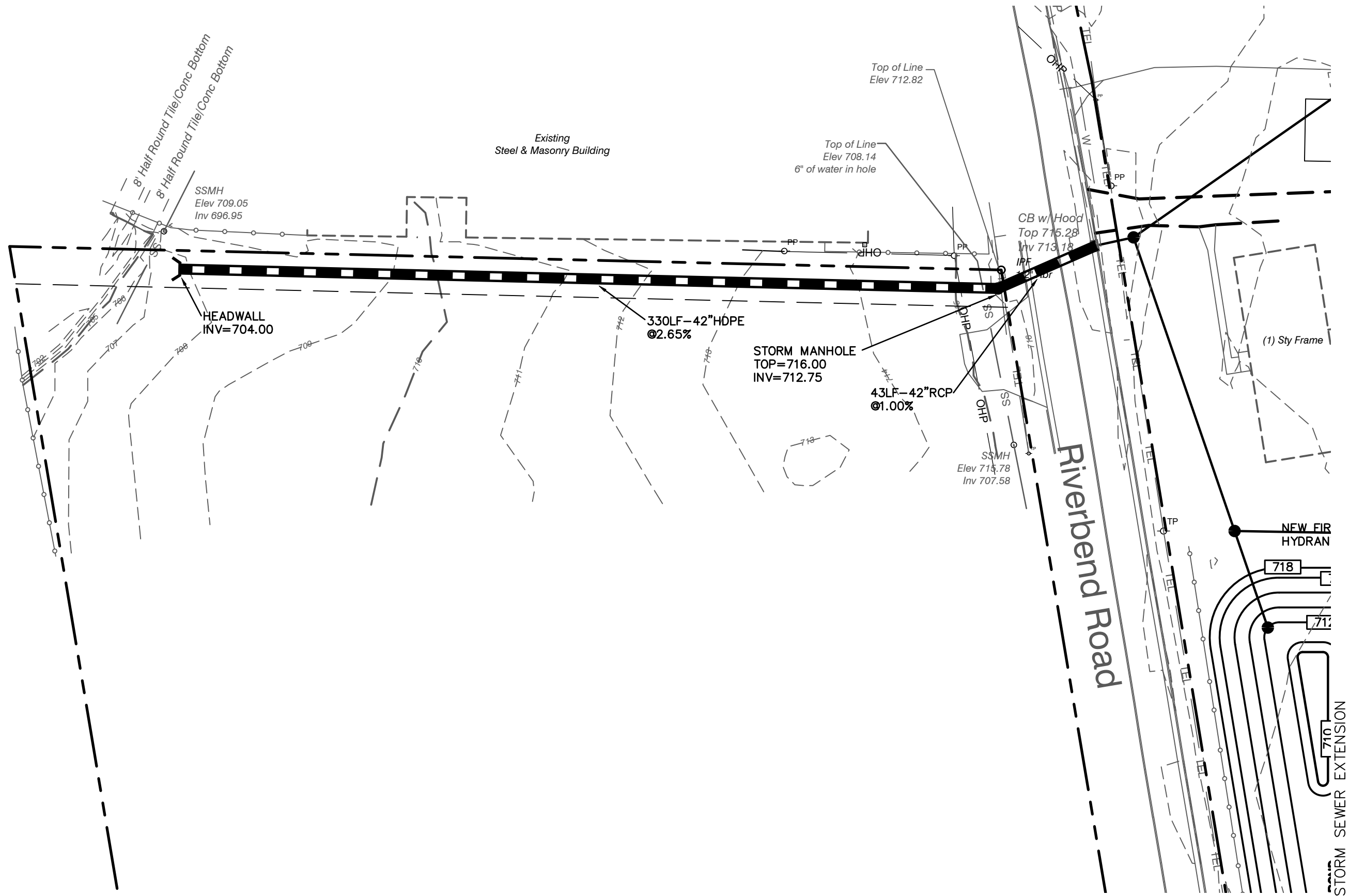
The approval of this request will initiate a collaborative effort between the City of Dalton Public Works Department, Staten Enterprises Inc. and North Georgia Radio Group, L.P. to address existing stormwater capacity issue within the Public Right of Way. The Corrective Action Plan, attached, shows the scope and the limits the work. Supporting documentation required to pursue the execution of the Correction Action Plan included in this request include the following items:

- Partially Executed Temporary Construction Easement – North Georgia Radio Group
- Partially Executed Permanent Drainage Easement – North Georgia Radio Group
- Memorandum of Understanding – Staten Enterprises

See attached Corrective Action Plan and Supporting Documentation for addition information about the scope and details of the project.

Corrective Action Plan For Riverbend Road Stormwater Project

© RICHARDS & ASSOC. ENGINEERING, INC.
PRELIMINARY—NOT FOR RECORDING—NOT FOR
CONSTRUCTION



RAE

RICHARDS & ASSOCIATES ENGINEERING, INC.

(706) 695-0661

TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This Temporary Construction Easement (sometimes the "Agreement") is made this ____ day of _____, 20__ (the "Effective Date"), by and between **North Georgia Radio Group, L.P.**, a Georgia limited partnership (hereinafter "Grantor"), and the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, party of the second part (hereinafter "Grantee"), their respective heirs, administrators, successors and assigns:

WHEREAS, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Grantee is a municipal corporation owning or controlling certain real property adjacent to the Property being used as a city street or right-of-way and more particularly described as **Riverbend Road** (the "City Property"); and

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the Property to perform certain construction activities for the public good and welfare and Grantor is willing to grant the requested access and use and subject to the terms hereof; and

WHEREAS, upon completion of the construction identified therein said construction easement shall cease; and

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) from each to the other in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Temporary Construction Easement.** Grantor, for itself and on behalf of its and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across, and through that Property shown on Exhibit "A" (the "Construction Easement"). The rights, benefits, privileges, and easement granted herein are for the purpose of that construction identified in Exhibit B and as provided in Section 3 herein below (the "Construction Project"). Said Easement is temporary and shall expire upon completion of the construction therein.

2. **Term of Temporary Construction Easement.** The parties contemplate that the construction project can be completed in forty-five (45) days or less. However, the parties acknowledge that said construction start date may be delayed and the time frame for completion may be delayed due to weather conditions. Except as may be amended by Grantee upon written notice to Grantor, said Temporary Construction Easement shall be for a period of forty-five (45) days beginning after the approval of the Corrective Action Plan. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather related delays as

soon as reasonably possible. The parties shall reasonably cooperate to complete the project in a timely manner.

3. **Construction and Additional Rights.** The Temporary Construction Easement granted herein shall include:

- (a) the right of entry into and upon the Property for the purpose of access and ingress to and egress from the Property in order to effect the rights, privileges and easements set forth herein;
- (b) the right to cut away, remove and dispose of all trees, undergrowth or other obstructions which exist on the Temporary Construction Easement, which removal is necessary for stormwater and erosion control within the easement area;
- (c) the right to install stone rip rap, fabric or other materials for stormwater and erosion control within the easement area; and
- (d) the right, when required by law, governmental regulation or necessity to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Property.

4. **Reservation of Rights.** Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Property.

5. **Conditions and Obligations of Construction Easement Use.**

- (a) The use of the Property by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Property. Any such use of this Temporary Construction Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the Property to the greatest extent practicable.
- (b) Any construction or activities performed under this Temporary Construction Easement by Grantee shall be done in a good workmanlike manner and the Property shall be left in a clean and orderly condition, with all debris removed therefrom, and any areas which may have been disturbed by such work shall be restored to their former condition as nearly as practicable.

6 **Covenants of Grantor.**

- (a) Grantor waives all right to any compensation for the use and enjoyment of the rights and privileges granted to the Grantee herein and further acknowledges that the use granted herein does not constitute an action of eminent domain or condemnation by the Grantee. Grantor does not waive any claim for damages that may result from the

negligent acts or omissions of the Grantee or its contractors in its use of the Temporary Construction Easement.

- (b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Property above described, that Grantor has a good and lawful right to convey said easement, rights and privileges granted herein.

7. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift of dedication to the general public or for any general public use.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and understanding between Grantor and Grantee relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

9. **Severability.** The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.

10. **Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and upon execution by the Grantor and Grantee.

11. **Time of Essence.** Time is of the essence with respect to this Agreement.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

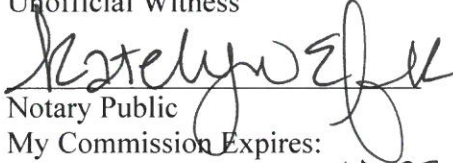
[Signatures on next page]

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Signed, sealed and delivered
in the presence of:



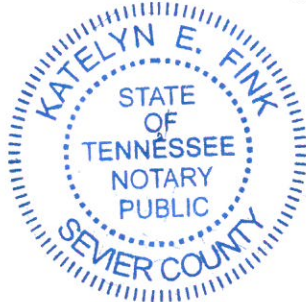
Unofficial Witness



Notary Public

My Commission Expires:

10.25.2013



Grantor:

North Georgia Radio Group, L.P.

By: 

Acceptance of Grantee:

CITY OF DALTON

Authorized Officer

EXHIBIT "A"

A tract or parcel of land lying and being in Land Lot 255 of the 12th District and 3rd Section of Whitfield County, Georgia and being more particularly described as follows:

To find the POINT OF BEGINNING proceed northerly along the westerly right-of-way of Riverbend Road (50-foot right-of-way) a distance of 157.28 feet from its intersection with the center line of Lavert Drive to an iron pin of 5/8-inch rebar which is the POINT OF BEGINNING; thence north 88 degrees 38 minutes 31 seconds west a distance of 400.00 feet to a point where an iron pin of ½ inch rebar is found; thence North 09 degrees 30 minutes 31 seconds west a distance of 400.00 feet to a point; thence south 88 degrees 38 minutes 31 seconds east a distance of 400.00 feet to a point on the west right-of-way of Riverbend Road (50-foot right-of-way) where an iron pin of ½-inch rebar is found; and thence south 09 degrees 30 seconds 31 minutes east along the westerly right-of-way of Riverbend Road (50-foot right-of-way) a distance of 400.00 to a point which is the POINT OF BEGINNING.

Said tract or parcel of land is shown on Plat of Survey for Clear Channel Broadcasting The City of Dalton dated November 23, 2021 by Christopher Lee Lewis, GRLS No. 3063. For vesting deed see Deed Book 3542, Page 260 of the Whitfield County, Georgia Deed Records and being Tax Parcel No. 12-255-07-000.

EXHIBIT "B"

CLEAR CHANNEL BROADCASTING INC. MUNICIPAL STORM SEWER EASEMENT

A tract or parcel of land lying and being in Land Lot 255 of the 12th District and 3rd Section of Whitfield County, Georgia and being more particularly described as follows:

To find the POINT OF BEGINNING for the Clear Channel Broadcasting Inc. Municipal Storm Sewer Easement proceed northerly along the westerly right-of-way of Riverbend Road (50-foot right-of-way) a distance of 157.28 feet from its intersection with the centerline of Lavert Drive to an iron pin of 5/8 inch rebar and then continue north 09 degrees 30 minutes 31 seconds west along the west right-of-way of Riverbend Road (50-foot right-of-way) a distance of 384.73 feet to a point which is the POINT OF BEGINNING for this Easement; thence north 88 degrees 38 minutes 31 seconds west a distance of 400.00 feet to a point; thence north 09 degrees 30 minutes 31 seconds west a distance of 15.27 feet to a point; thence south 88 degrees 38 minutes 31 seconds east a distance of 400.00 feet to a point on the west right-of-way of Riverbend Road (50-foot right-of-way) where an iron pin of 1/2 inch rebar is found; and thence south 09 degrees 30 minutes 31 seconds east a distance of 15.27 feet to a point which is the POINT OF BEGINNING.

Said Easement is shown and described as "Proposed 15' Easement" on that Plat of Survey for Clear Channel Broadcasting The City of Dalton dated November 23, 2021 by Christopher Lee Lewis, GRLS No. 3063.

[Space above this line for recording data.]

Please Record and Return To:

Terry L. Miller
Mitchell & Mitchell, P.C.
108 S. Thornton Ave.
P. O. Box 668
Dalton, GA 30722-668

STORM DRAINAGE EASEMENT AGREEMENT

Georgia, Whitfield County

This Storm Drainage Easement Agreement (this “Agreement”) is made this ____ day of _____, 20__ (the “Effective Date”), by and between the North Georgia Radio Group, L.P., a Georgia limited partnership (hereinafter called “Grantor”), and the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, party of the second part (hereinafter called “Grantee”), their respective heirs, administrators, successors and assigns:

W I T N E S S E T H:

WHEREAS, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as described in Exhibit “A” attached hereto and incorporated herein by reference (the “North Georgia Radio Group, L.P. Property”); and

WHEREAS, Grantee is the owner of certain real property adjacent to the North Georgia Radio Group, L.P. Property and more particularly described as Riverbend Road (the “City Property”); and

WHEREAS, Grantee has constructed, or will construct, a storm sewer pipe and storm water structures on the North Georgia Radio Group, L.P. Property (collectively the “North Georgia Radio Group, L.P. Municipal Storm Sewer”); and

WHEREAS, Grantor acknowledges that the work to be performed in this Agreement may not alleviate all issues relating to the collection and drainage of stormwater on and from

the North Georgia Radio Group, L.P. Property; and

WHEREAS, Grantee requires non-exclusive access to and use of a portion of the North Georgia Radio Group, L.P. Property to discharge storm water originating from the City Property into the North Georgia Radio Group, L.P. Municipal Storm Sewer; and Grantor is willing to grant the requested access and use on and subject to the terms hereof; and

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the North Georgia Radio Group, L.P. Property to construct the North Georgia Radio Group, L.P. Municipal Storm Sewer and Grantor is willing to grant the requested access and use on and subject to the terms hereof; and

WHEREAS, upon completion of the installation and construction of the North Georgia Radio Group, L.P. Municipal Storm Sewer, Grantee intends to be responsible for all costs associated with the use, maintenance, repair, replacement, inspection, and reconstruction of the North Georgia Radio Group, L.P. Municipal Storm Sewer, as it relates to maintaining reasonable drainage flow from the Riverbend Road right of way to the discharge point; and

WHEREAS, in order to evidence the understanding between Grantor and Grantee with respect to the North Georgia Radio Group, L.P. Municipal Storm Sewer, Grantor intends to declare, establish, create, grant, and/or convey certain easement rights to Grantee for and with respect to the installation, utilization, maintenance, repair and re-construction of the installations and utilization of the Storm Drainage Easement (as defined herein below), all as more particularly set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Storm Drainage Easement.** Grantor, for itself and on behalf of its successors and assigns, and for and on behalf of anyone claiming by, through or under Grantor, does hereby grant, bargain, sell and convey unto Grantee and its successors and assigns, a perpetual, non-exclusive easement in, on, over, under, across and through that certain portion of the North Georgia Radio Group, L.P. Property shown as the "Proposed 15' Easement" on the Plat attached hereto as Exhibit "B" and incorporated herein by this reference (also the "Storm Drainage Easement"). The rights, benefits, privileges, and easement granted herein is for the purpose of the non-exclusive use and enjoyment of the Storm Drainage Easement to channel, distribute and transport storm water originating from and across the City's Property through the North Georgia Radio Group, L.P. Municipal Storm Sewer. Notwithstanding the foregoing, Grantor hereby agrees to accept such storm water discharge through the North Georgia Radio Group, L.P. Municipal Storm Sewer in its current intensity, rate, volume and location.

2. **Temporary Construction Easement.** Grantor, for itself and on behalf of its successors and assigns, and for and on behalf of anyone claiming by, through or under Grantor,

does hereby grant, bargain, sell and convey unto Grantee and its successors and assigns, a temporary, non-exclusive easement in, on, over, under, across and through the North Georgia Radio Group, L.P. Property described by the legal description attached hereto as Exhibit "A" and incorporated herein by this reference (the "Construction Easement"). The rights, benefits, privileges, and easement granted herein is for the purpose of construction of the North Georgia Radio Group, L.P. Municipal Storm Sewer. Said Construction Easement is temporary and shall expire upon completion of the North Georgia Radio Group, L.P. Municipal Storm Sewer.

3. **Additional Rights.** The Storm Drainage Easement granted herein shall include:

(a) all rights, benefits, privileges, and easements necessary or convenient for the full enjoyment and use of the Storm Drainage Easement for the purposes described herein;

(b) the right of entry into and upon the North Georgia Radio Group, L.P. Property for the purpose of access and ingress to and egress from the Storm Drainage Easement in order to effect the rights, privileges and easements set forth herein;

(c) the right to cut away and keep clear, remove and dispose of all trees, undergrowth or other obstructions now or as may exist on the Storm Drainage Easement, which removal is necessary for Grantee's use and enjoyment of easements, rights and privileges granted herein; and

(d) the right, when required by law, governmental regulation or necessity to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Storm Drainage Easement.

4. **Reservation of Rights.** Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Storm Drainage Easement appurtenant to its fee simple estate and for any and all purposes not inconsistent with Grantee's easement as expressly permitted herein.

5. **Conditions and Obligations of Easement Use.**

(a) The use of the Storm Drainage Easement by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Storm Drainage Easement. Any such use of the Storm Drainage Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the North Georgia Radio Group, L.P. Property to the greatest extent practicable.

(b) Grantee shall operate, repair, replace and maintain continuously the North Georgia Radio Group, L.P. Municipal Storm Sewer on or within the Storm Drainage Easement.

(c) Grantee shall be solely responsible to maintain reasonable drainage flow

from the Riverbend Road right of way to the discharge point, which shall be at Grantee's absolute discretion. The North Georgia Radio Group, L.P. Municipal Storm Sewer and Storm Drainage Easement shall remain free and clear of all liens and other encumbrances arising out of the exercise by the Grantee of its rights hereunder.

(d) Any construction, maintenance, repair or other work or activities performed on the North Georgia Radio Group, L.P. Municipal Storm Sewer or within the Storm Drainage Easement by Grantee shall be done in a good, workmanlike manner and the Storm Drainage Easement shall be left in a clean and good condition, with all debris removed therefrom and with trenches and cuts properly filled so that all grades, paved areas, and permitted landscaped and grassed areas and other permitted improvements which may have been disturbed by such work are restored to their former condition as nearly as practicable; provided that if the affected area within the Storm Drainage Easement is natural and has not been improved, such areas shall be smoothed to commercial lawn grade and seeded with grass following such activity.

(e) Except in the event of an emergency, Grantee shall use commercially reasonable efforts to provide Grantor with at least ten (10) days prior written notice of any construction, maintenance, repair or other work or activities to be performed on the North Georgia Radio Group, L.P. Municipal Storm Sewer or within the Storm Drainage Easement by Grantee.

(f) In the event that the Grantee, its employees, agents, or assigns, shall damage the North Georgia Radio Group, L.P. Municipal Storm Sewer, the area within the Storm Drainage Easement or the North Georgia Radio Group, L.P. Property, then, at its sole cost and expense and within thirty (30) days after receipt of written notice from Grantor that Grantee has caused such damage, Grantee shall repair, or cause to be repaired, such damage in a good, clean, and workmanlike manner, and to their former condition as nearly as practicable.

6. **Covenants of Grantor.**

(a) Grantor waives all right to any further compensation for the use and enjoyment of the rights and privileges granted herein.

(b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the North Georgia Radio Group, L.P. Property above described, that it has a good and lawful right to convey said easement, rights and privileges granted herein.

(c) Grantor irrevocably binds itself to refrain from making any claim or demand, or to commence, cause, or permit to be prosecuted any action in law or equity against Grantee, or any other person, firm or entity claiming by or through Grantee on account of any damage by way of a "taking" or inverse condemnation from the installation or the operation of the Storm Drainage Easement.

7. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift of dedication to the general public or for any general public use.

8. **Successors and Assigns.** The Storm Drainage Easement shall run with title to and burden the North Georgia Radio Group, L.P. Property and shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors and assigns of Grantor and Grantee. All obligations of Grantor and Grantee hereunder shall be binding upon their respective heirs, administrators, successors-in-title and assigns.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

10. **Severability.** The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.

11. **Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and upon execution by the Grantor and Grantee, this Agreement shall be promptly recorded in the Deed Records of Whitfield County, Georgia.

12. **Time of Essence.** Time is of the essence with respect to this Agreement.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

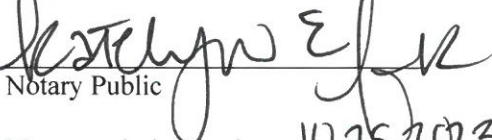
IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Signed, sealed and delivered

In the presence of:



Unofficial Witness



Notary Public

My commission expires:

10.25.2023


[Notarial Seal]



Grantor:

North Georgia Radio Group, L.P., a Georgia limited partnership

By Whitfield Communications, Inc., a Tennessee corporation, its general partner

 (Seal)
Paul G. Fink, President

Grantee:

City of Dalton

By: _____

Its: _____

Attest: _____
City Clerk

Unofficial Witness

Notary Public
My Commission Expires:

EXHIBIT “A”

A tract or parcel of land lying and being in Land Lot 255 of the 12th District and 3rd Section of Whitfield County, Georgia and being more particularly described as follows:

To find the POINT OF BEGINNING proceed northerly along the westerly right-of-way of Riverbend Road (50-foot right-of-way) a distance of 157.28 feet from its intersection with the center line of Lavert Drive to an iron pin of 5/8-inch rebar which is the POINT OF BEGINNING; thence north 88 degrees 38 minutes 31 seconds west a distance of 400.00 feet to a point where an iron pin of ½ inch rebar is found; thence North 09 degrees 30 minutes 31 seconds west a distance of 400.00 feet to a point; thence south 88 degrees 38 minutes 31 seconds east a distance of 400.00 feet to a point on the west right-of-way of Riverbend Road (50-foot right-of-way) where an iron pin of ½-inch rebar is found; and thence south 09 degrees 30 seconds 31 minutes east along the westerly right-of-way of Riverbend Road (50-foot right-of-way) a distance of 400.00 to a point which is the POINT OF BEGINNING.

Said tract or parcel of land is shown on Plat of Survey for Clear Channel Broadcasting The City of Dalton dated November 23, 2021 by Christopher Lee Lewis, GRLS No. 3063. For vesting deed see Deed Book 3542, Page 260 of the Whitfield County, Georgia Deed Records and being Tax Parcel No. 12-255-07-000.

EXHIBIT "B"

CLEAR CHANNEL BROADCASTING INC. MUNICIPAL STORM SEWER EASEMENT

A tract or parcel of land lying and being in Land Lot 255 of the 12th District and 3rd Section of Whitfield County, Georgia and being more particularly described as follows:

To find the POINT OF BEGINNING for the Clear Channel Broadcasting Inc. Municipal Storm Sewer Easement proceed northerly along the westerly right-of-way of Riverbend Road (50-foot right-of-way) a distance of 157.28 feet from its intersection with the centerline of Lavert Drive to an iron pin of 5/8 inch rebar and then continue north 09 degrees 30 minutes 31 seconds west along the west right-of-way of Riverbend Road (50-foot right-of-way) a distance of 384.73 feet to a point which is the POINT OF BEGINNING for this Easement; thence north 88 degrees 38 minutes 31 seconds west a distance of 400.00 feet to a point; thence north 09 degrees 30 minutes 31 seconds west a distance of 15.27 feet to a point; thence south 88 degrees 38 minutes 31 seconds east a distance of 400.00 feet to a point on the west right-of-way of Riverbend Road (50-foot right-of-way) where an iron pin of 1/2 inch rebar is found; and thence south 09 degrees 30 minutes 31 seconds east a distance of 15.27 feet to a point which is the POINT OF BEGINNING.

Said Easement is shown and described as "Proposed 15' Easement" on that Plat of Survey for Clear Channel Broadcasting The City of Dalton dated November 23, 2021 by Christopher Lee Lewis, GRLS No. 3063.

RESERVED FOR THE CLERK OF SUPERIOR COURT

PLAT NOTES

CLOSURE STATEMENT

THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE PRECISION OF 1":39,424' AND AN ANGULAR ERROR OF 02" PER ANGLE POINT.

THE FIELD DATA WAS ADJUSTED USING LEAST SQUARES.

THIS PLAT HAS A CLOSURE PRECISION OF 1":153,150.

EQUIPMENT

ALL FIELD MEASUREMENTS WERE MADE USING A SOKKIA iX1003 ROBOTIC TOTAL STATION AND SOKKIA SHC5000 FIELD CONTROLLER.

FLOOD STATEMENT

THE SUBJECT PROPERTY DOES NOT LIE WITHIN A 1% ANNUAL CHANCE SPECIAL FLOOD HAZARD AREA (ZONE X) AS SHOWN ON F.I.R.M. MAP NO. 13313C01390, EFFECTIVE DATE 09/19/2007.

BASIS OF BEARINGS

BEARINGS ROTATED TO MONUMENTS FOUND AND SURVEY CONTROL POINTS LOCATED BY GPS OBSERVATION USING A SOKKIA GRX3 BASE ROVER SYSTEM WITH A SOKKIA SHC5000 FIELD CONTROLLER. ONSITE COORDINATES ESTABLISHED USING SAID SYSTEM OPERATING ON THE TRIMBLE REAL TIME GNSS NETWORK OPERATED BY eGPS SOLUTIONS, INC.

SOURCE OF TITLE

TITLE TO THE SUBJECT PARCEL IS CURRENTLY VESTED IN CLEAR CHANNEL BROADCASTING, INC PER DEED BOOK 3542, PAGE 260.

ZONING INFORMATION

THE SUBJECT PROPERTY IS CURRENTLY ZONED M-2

BUILDING SETBACKS:
FRONT (MAJOR): 25'
FRONT (MINOR): 20'
SIDES: 15'
REAR: 25'

GENERAL NOTES

- THIS PLAT WAS PREPARED BY THE SURVEYOR OR UNDER HIS DIRECT SUPERVISION BASED ON AN ACTUAL ON THE GROUND SURVEY.
- THE BOUNDARY CONDITIONS AND IMPROVEMENTS ARE CERTIFIED ONLY AS OF THE DATE OF PLAT PREPARATION AS LISTED IN THE TITLE BLOCK.
- NO TITLE REPORT WAS PROVIDED TO LEWIS & ASSOCIATES LAND SURVEYING, LLC, NOR WAS AN INDEPENDENT TITLE SEARCH PERFORMED BY LEWIS & ASSOCIATES LAND SURVEYING, LLC. ALL MATTERS PERTAINING TO TITLE ARE EXCEPTED.
- ALL DIMENSIONS SHOWN ARE HORIZONTAL GROUND DISTANCES.
- LEWIS & ASSOCIATES LAND SURVEYING, LLC DOES NOT CERTIFY AS TO THE EXISTENCE OR NON-EXISTENCE OF ANY WETLANDS OR HAZARDOUS WASTE IN THE SURVEY AREA. NO UNDERGROUND INVESTIGATIONS HAVE BEEN PERFORMED.
- CERTIFICATION IS MADE ONLY TO THE PARTY(IES) NAMED ON THIS PLAT. CERTIFICATION DOES NOT EXTEND TO ANY UNNAMED PARTY(IES) WITHOUT AN EXPRESS RE-CERTIFICATION BY THE SURVEYOR.
- THIS SURVEY PLAT MAY NOT BE REPRODUCED, SCANNED OR ALTERED IN ANY WAY WITHOUT THE WRITTEN CONSENT OF LEWIS & ASSOCIATES LAND SURVEYING, LLC.
- COPIES OF THIS SURVEY ARE NOT VALID WITHOUT AN ORIGINAL SEAL AND SIGNATURE. COPIES WITHOUT AN ORIGINAL SIGNATURE SHOULD BE CONSIDERED PRELIMINARY AND ARE NOT VALID FOR RECORDING OR CONDUCTING LAND TRANSACTIONS.
- ALL IRON PINS SET TO BE 5/8" REBAR WITH YELLOW CAP BEARING THE REGISTRATION NUMBER OF THE SURVEYOR UNLESS NOTED OTHERWISE.
- THE TERM "CERTIFICATION" AS USED IN RULE "180-6-092(2) AND (3)" AND RELATING TO PROFESSIONAL ENGINEERING OR LAND SURVEYING SERVICES, AS DEFINED IN O.C.G.A. 43-15-2(6) AND (11), SHALL MEAN A SIGNED STATEMENT BASED UPON FACTS AND KNOWLEDGE KNOWN TO THE REGISTRANT AND IS NOT A GUARANTEE OR WARRANTY, EITHER EXPRESSED OR IMPLIED.
- THIS SURVEY COMPLIES WITH BOTH THE RULES OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND THE OFFICIAL CODE OF GEORGIA ANNOTATED (OCCA) 15-6-67, IN THAT WHERE A CONFLICT EXISTS, THE REQUIREMENTS OF LAW PREVAIL.

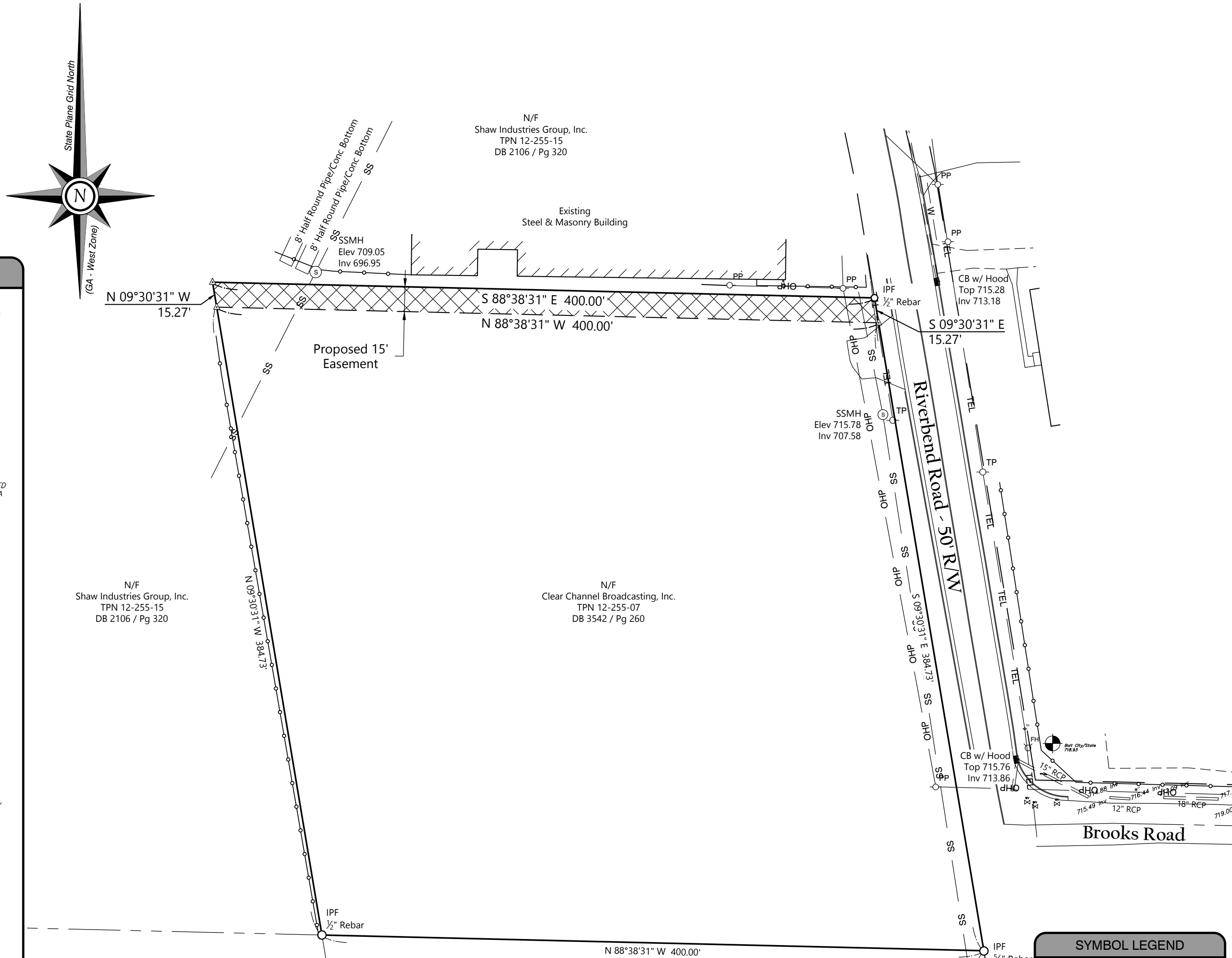
SURVEYOR'S CERTIFICATION

AS REQUIRED BY SUBSECTION (d) OF O.C.G.A. SECTION 15-6-67, THIS PLAT HAS BEEN PREPARED BY A LAND SURVEYOR AND APPROVED BY ALL APPLICABLE LOCAL JURISDICTIONS FOR RECORDING AS EVIDENCED BY APPROVAL CERTIFICATES, SIGNATURES, STAMPS, OR STATEMENTS HEREON. SUCH APPROVALS OR AFFIRMATIONS SHOULD BE CONFIRMED WITH THE APPROPRIATE GOVERNMENTAL BODIES BY ANY PURCHASER OR USER OF THIS PLAT AS TO INTENDED USE OF ANY PARCEL. FURTHERMORE, THE UNDERSIGNED LAND SURVEYOR CERTIFIES THAT THIS PLAT COMPLIES WITH THE MINIMUM TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN THE RULES AND REGULATIONS OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN O.C.G.A. SECTION 15-6-67.



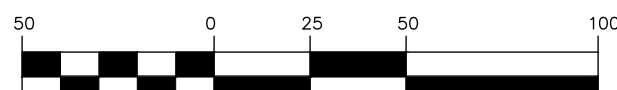
CHRISTOPHER LEWIS
GEORGIA PLS #11169 / GEORGIA LAND SURVEYING FIRM #1169
TENNESSEE RLS #2824 / NORTH CAROLINA PLS #L-5329

11/3/2021
DATE



Know what's below.
Call before you dig.

GRAPHIC SCALE



(IN FEET)
1 inch = 50 ft.

SYMBOL LEGEND

⊙	STORM MANHOLE (STMH)
⊙	SANITARY SEWER MANHOLE
⊠	WATER METER
⊕	FIRE HYDRANT
⊕	WATER VALVE
⊕	UTILITY POLE
⊕	TELEPHONE PEDESTAL
⊕	LIGHT POLE
⊕	IRON PIN FOUND (IPF)
●	IRON PIN SET (IPS)
⊕	BUILDING SETBACK LINE
⊕	CENTERLINE
⊕	OVERHEAD POWER LINE
⊕	CHAIN LINK FENCE
⊕	OPEN TOP PIPE
⊕	CRIMPED TOP PIPE
⊕	POINT OF BEGINNING
⊕	DEED BOOK/PAGE
⊕	PLAT BOOK/PAGE
⊕	TAX PARCEL NUMBER

BOUNDARY SURVEY (EASEMENT PLAT)

CLEAR CHANNEL BROADCASTING, INC. THE CITY OF DALTON

BEING TAX PARCEL NO. 12-255-07
LOCATED IN LAND LOT 255, 12th DISTRICT, 3rd SECTION
WHITFIELD COUNTY, GEORGIA

© 2021, LEWIS & ASSOCIATES SURVEYING, LLC

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GEORGIA PLS #3063
TENNESSEE RLS #2824
NORTH CAROLINA PLS #L-5329
GEORGIA LSF #1169
NORTH CAROLINA LSF #P-2042
GSWCC LEVEL 2 #3115

SURVEY DATE	7/10/2021, 10/9/2021
SURVEY CREW	DSM, CLL
COMPUTED BY	CLL
DATE DRAWN	11/1/2021
DRAWN BY	CLL, DSM
CHECKED BY	CLL
REVISIONS	REVISION DATE

DRAWING FILE: 21-035 Staten-Riverbend Rd	
DWG SCALE	1"=50'
PROJ. NO.	21-035
SHEET NO. 1/1	

Lewis & Associates
Land Surveying, LLC.

P.O. Box 2046 | Dalton, GA 30722-2046 | 706.278.7518

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU"), is made and entered into as of **February 7th, 2022**,

BETWEEN: **Staten Enterprises Inc.**, a corporation organized and existing under the laws of the State of Georgia.

AND: **The City of Dalton, Georgia**, a municipal corporation of the State of Georgia.

1. PURPOSE AND SCOPE

The purpose of this MOU is to clearly identify the roles and responsibilities of each party as they relate to the Riverbend Road Stormwater Project. In particular, this MOU is intended to define the scope of responsibility in the collaborative effort between the **Staten Enterprises Inc.** and the **City of Dalton**.

2. BACKGROUND

A stormwater capacity issue was identified as a new project was in the due diligence phase of design. As a result, the City of Dalton Public Works Department reviewed the location with the Property Owner and their Engineer, Richards & Associates Engineering, Inc (RAE). Steve Richards of RAE developed the Corrective Action Plan, included here as Exhibit 'A', and made a determination that the stormwater pipe infrastructure at this location is undersized.. The Corrective Action Plan will also address redirecting the flow of water from the low point along the Public Right of Way and into a new pipe network to help alleviate flooding and capacity issues.

3. STATEN ENTERPRISES INC. RESPONSIBILITIES UNDER THIS MOU

Staten Enterprises Inc. shall be responsible for securing and providing the materials for the collaborative effort for the work shown in Exhibit 'A'. Materials to be supplied are as follows:

- 1- A minimum of 43 Linear Feet (LF) of 42" Reinforced Concrete Pipe (RCP)
- 2- A minimum of 330 Linear Feet (LF) of 42" High Density Polyethylene (HDPE) Pipe
- 3- A Precast Concrete Headwall

4. CITY OF DALTON RESPONSIBILITIES UNDER THIS MOU

The **City of Dalton** shall undertake the following activities:

- 1- Perform the labor for the installation of the new stormwater pipe network which shall include: open cutting and repairing the existing roadway (Riverbend Road), install the

new pipe and headwall structure (supplied by Staten Enterprises Inc.), construction of the new storm manhole, and the supply and placement of miscellaneous backfill materials.

5. INDEMNIFICATIONS AS TO MATERIALMEN'S LIEN

Staten Enterprises Inc. shall indemnify and hold harmless the **City of Dalton** from and on account of any materialmen's liens in this project.

6. UNDERSTANDINGS

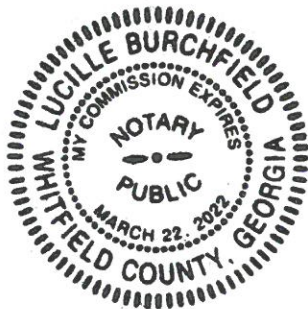
It is mutually understood and agreed by and between the parties that the materials are to be supplied and the work is to be done as stated above.

SIGNATURES:

Signed, sealed and delivered
in the presence of:

Olivia Montalto
Unofficial Witness

Lucille Burchfield
Notary Public
My Commission Expires: 3/22/22



Staten Enterprise Inc:

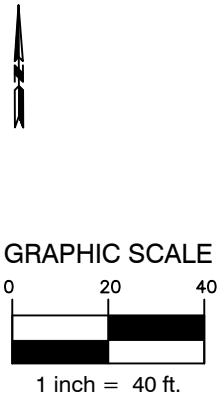
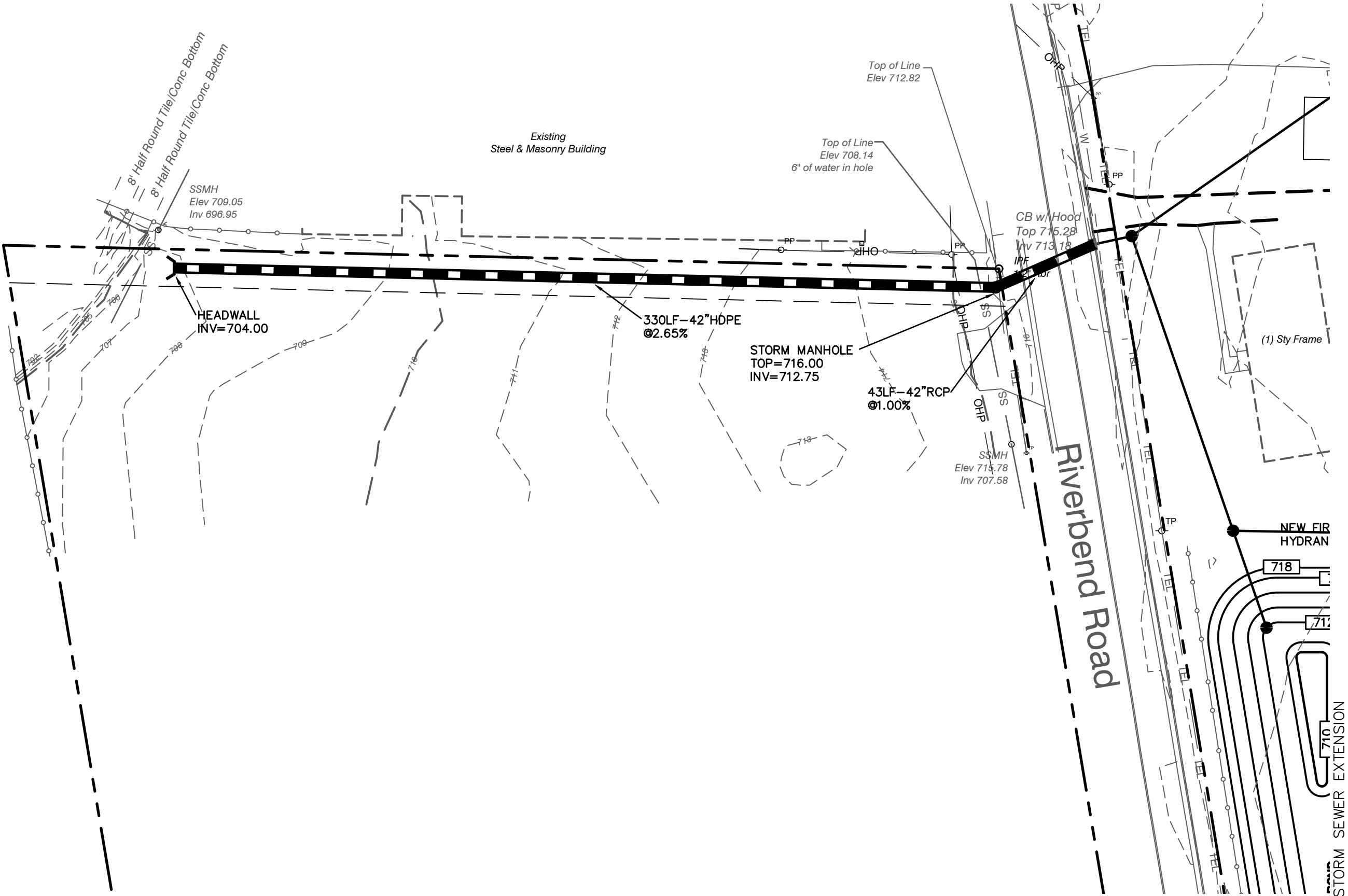
By: Ed Staten

City of Dalton:

Authorized Officer

ADBAC
RIVERBEND ROAD
DALTON, GEORGIA

© RICHARDS & ASSOC. ENGINEERING, INC.
PRELIMINARY—NOT FOR RECORDING—NOT FOR
CONSTRUCTION





RICHARDS & ASSOCIATES ENGINEERING, INC.
(706) 695-0661



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 02/07/2022

Agenda Item: Amendment No. 1 under the Design Services KRH Architects for the New Aquatic Center for the City of Dalton

Department: Administration

Requested By: Megan Elliott

Reviewed/Approved by City Attorney? Yes

Cost: See Summary and Amendment for Details

Funding Source if Not in Budget 2021 Bond Series

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

This will authorize Amendment No. 1 under the Design Services Contract with KRH Architects for the New Aquatic Center to address the following items:

- Building and site improvements will be constructed at James E. Brown Park
- Owner's Budget increase from \$20,000,000.00 to \$23,000,000.00
- Project Delivery Method will be Construction Manager at Risk
- Cost percentage adjustment from 6% to 7% for the cost of the work related to Construction of the pool, timing system, and scoreboard (ONLY)

See attached Amendment for additional information and full details.

(Original Contract for Design Services, approved on 06/21/2021, is also attached for reference, as needed.)

Amendment No.1 to AIA Document B101 -2007

Original Document Dated the Twenty-first day of June in the year Two Thousand Twenty One.

Between:

City of Dalton
300 West Waugh Street
Dalton, GA 30722

and

KRH Architects Inc.
855 Abutment Road Suite 4
Dalton, GA 30721

For the Project: A New Aquatic Center for the City of Dalton

The Architect has retained the services of Counsilman – Hunsaker to perform the services described in Section 3 pertaining to the pools, timing system and scoreboard. The construction budget and location have been updated and the construction delivery method has been changed. Please make the following changes to the Standard Form of Agreement Between the Owner and Architect dated 6/21/2021.

The Owner and Architect agree as follows:

1. Revise Article 1.1.2 to read:

§ 1.1.2 The building and site improvements will be constructed on City-Owned property at the James E. Brown Park

2. Revise Article 1.1.3 to read:

§ 1.1.3 The Owner’s budget for the Cost of the Work, as defined in Section 6.1:

\$23,000,000.00.

3. Revise Article 1.1.5 to read:

§ Construction Manager at Risk

4. Revise Article 1.1.7 to read:

§ Andrew Parker, City Administrator, City of Dalton
Megan Elliot, Project Manager, City of Dalton

5. Revise Article 1.1.11.2 to read:

- § Civil Engineering – PWH Engineering
 Aquatic Consultant – Bob McCallister
 Swimming Pool Design Consultant - Counsilman – Hunsaker

6. Revise Article 11.1.2 to read:

§ 11.1.2 Six (6.00) % of the Owner’s budget for the cost of the Work, as calculated in accordance with Section 11.6 with the exception of the pool construction, timing system and scoreboard. Seven (7.00) % of the Owner’s budget for the cost of the work for the pool construction, timing system and scoreboard.

7. Add the following to Article 11.3:

§ Additional Services for the Swimming Pool Design Consultant

Principal	\$230.00/hour
Director	\$210.00/hour
Project Manager	\$185.00/hour
Project Engineer	\$155.00/hour
Design Associate	\$130.00/hour
Administrative	\$75.00/hour

Site Visit \$1,500.00 /day *

* Excluding travel expenses

8. Revise Article 11.5 to read:

§ Schematic Design Phase	Fifteen percent	(15%)
Design Development Phase	Twenty percent	(22.5%)
Construction Documents	Forty percent	(40%)
Procurement Phase	Five percent	(2.5%)
Construction Phase	Twenty percent	(20%)

9. Add the following to Article 11.8.1:

§ Travel expenses for the Swimming Pool Design Consultant shall not exceed \$7,500.

OWNER: City of Dalton, GA

ARCHITECT: KRH Architects Inc.

 (Signature)

David Pennington, Mayor

 (Printed name and title)



 (Signature)

Kenneth R. Harless, President

 (Printed name and title)



AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty-first day of June in the year Two Thousand Twenty-One

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

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Dalton
300 West Waugh Street, Dalton, GA 30720

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

KRH Architects Inc.
855 Abutment Road Suite 4
Dalton, Ga. 30721

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

New Aquatic Center for the City of Dalton

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Init.

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User Notes: (3B9ADA3E)

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- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
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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:

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

A new 50,000 +/- square foot aquatic center consisting of site work, a main 50 meter x 25 yard pool with a diving well, 25 yard x 25 yard instructional pool, seating for 750, locker rooms, lobby, concessions and other support spaces.

§ 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.)

The new building will be placed on the south side of the Walnut Square Mall property.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Approximately \$20,000,000

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

Init.

.1 Design phase milestone dates, if any:

Completion of Contract Documents 9/30/2021

.2 Construction commencement date:

November 15, 2021

.3 Substantial Completion date or dates:

Spring 2023

.4 Other milestone dates:

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Request for Proposals

§ 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.)

NA

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

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

David Pennington - Mayor - City of Dalton
300 West Waugh Street, Dalton, GA 30720

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

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

Jason Parker, City Administrator, City of Dalton
Andrew Parker, Director of Public Works, City of Dalton

§ 1.1.9 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

Geohydro

.2 Civil Engineer:

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

Kenneth R. Harles - KRH Architects Inc.
855 Abutment Road Suite 4
Dalton, GA 30720

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

William J. Peltier and Associates
Bill Peltier

.2 Mechanical Engineer:

Matheson - Ball and Associates Inc
Michael Kicher

.3 Electrical Engineer:

Tankersley Jackson & Associates Inc
Paul Tankersley

Init.

/

§ 1.1.11.2 Consultants retained under Supplemental Services:

Civil Engineering - PWH Engineering
Aquatic Consultant -Bob McCallister
Pool Designer - Aquatics H2O llc

§ 1.1.12 Other Initial Information on which the Agreement is based:

NA

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use 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.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars and Zero Cents (\$ 1000000.00) for each occurrence and Two Million Dollars and Zero Cents (\$ 2000000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars and Zero Cents (\$ 1000000.00) 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.

Init.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, 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.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than Five Hundred Thousand Dollars and Zero Cents (\$ 500000.00) each accident, Five Hundred Thousand Dollars and Zero Cents (\$ 500000.00) each employee, and Five Hundred Thousand Dollars and Zero Cents (\$ 500000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars and Zero Cents (\$ 2000000.00) per claim and Three Million Dollars and Zero Cents (\$ 3000000.00) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect 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 Architect'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.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The 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 Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

Init.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

Init.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,

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- 4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

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§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

1. conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
2. issue Certificates of Substantial Completion;
3. forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
4. issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect / Owner
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	

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§ 4.1.1.4	Existing facilities surveys	
§ 4.1.1.5	Site evaluation and planning	Architect
§ 4.1.1.6	Building Information Model management responsibilities	
§ 4.1.1.7	Development of Building Information Models for post construction use	
§ 4.1.1.8	Civil engineering	Architect
§ 4.1.1.9	Landscape design	Architect
§ 4.1.1.10	Architectural interior design	Architect
§ 4.1.1.11	Value analysis	
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13	On-site project representation	
§ 4.1.1.14	Conformed documents for construction	
§ 4.1.1.15	As-designed record drawings	
§ 4.1.1.16	As-constructed record drawings	
§ 4.1.1.17	Post-occupancy evaluation	
§ 4.1.1.18	Facility support services	
§ 4.1.1.19	Tenant-related services	
§ 4.1.1.20	Architect's coordination of the Owner's consultants	
§ 4.1.1.21	Telecommunications/data design	
§ 4.1.1.22	Security evaluation and planning	
§ 4.1.1.23	Commissioning	
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25	Fast-track design services	
§ 4.1.1.26	Multiple bid packages	
§ 4.1.1.27	Historic preservation	
§ 4.1.1.28	Furniture, furnishings, and equipment design	
§ 4.1.1.29	Other services provided by specialty Consultants	
§ 4.1.1.30	Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

4.1.1.30 - Aquatic Consultant as needed

Aquatic Consultant - Design Phase

- Aquatic Consultant will work with the architect and pool designers to develop the final concept rendering with footprint and features of the Aquatic Center for the City's approval and prior to the development of construction drawings.

- Aquatic Consultant will provide direction to the designers on behalf of the City's best interest for all pool equipment specifications and pool heating and air handling equipment specifications

- Aquatic Consultant will work with the Architect/Pool Design Team and City's Purchasing Department to develop a RFP for qualified General Contractors and Pool Builders Services

Aquatic Consultant - Construction Phase

- The Aquatic Consultant will continue to work with the Design Team through the construction documents and permitting of the project to assure consistency and direction of the project.
- The Aquatic Consultant will represent the City on a monthly basis for Owner/Contractor meetings and construction inspections during the construction phase through completion of the project to assure the quality and timely completion of the project.

Pool Designer - included in basic services

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

Geotechnical Studies, Surveys, Testing

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

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§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 (Weekly) visits to the site by the Architect during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty-six (26) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe 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;

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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.

§ 5.5 The Owner 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.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 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.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

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§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

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§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and

Init.

filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration,

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provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

\$0

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

\$0

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

Init.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

Init.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
(Insert amount)

.2 Percentage Basis
(Insert percentage value)

Six (6.00) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Aquatic Consultant \$95/hr not to exceed \$12,000 for design phase and \$12,000 for construction phase.
Civil engineering is included in basic services
Pool Designer is included in basic services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Architect \$100/hr
Project Manager \$85/hr

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10.00%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Ten	percent (10	%)
Design Development Phase	Fifteen	percent (15	%)
Construction Documents Phase	Forty	percent (40	%)
Procurement Phase	Five	percent (5	%)
Construction Phase	Thirty	percent (30	%)
Total Basic Compensation	one hundred	percent (100	%)

Init.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate (\$0.00)
Architect	\$100
Project Manager	\$85
Engineer	\$100

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0.00 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

Init.

§ 11.10.1.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) 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 Architect.

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

1 % monthly

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

Sections of this contract shall be modified as described in the Final Change letter from the City Attorney to KRH Architects Inc. Dated June 7, 2021

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 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.)

NA

- .3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

[NA] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

[Exhibit A attached] Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

.4 Other documents:

(List other documents, if any, forming part of the Agreement.)

NA

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


OWNER (Signature)

David Pennington, Mayor
(Printed name and title)


ARCHITECT (Signature)

Kenneth R. Harless, President
(Printed name, title, and license number, if required)

Init.



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 02/07/2022

Agenda Item: Professional Services Agreement with Geo-Hydro Engineers, Inc. for Geotechnical Services at James Brown Park for Aquatic Center

Department: Administration

Requested By: Megan Elliott

Reviewed/Approved by City Attorney? Yes

Cost: \$10,000 (Not to Exceed Price)

Funding Source if Not in Budget 2021 Bond Series

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

This request is to approve the Professional Services Agreement with Geo-Hydro Engineers, Inc. to complete the geotechnical engineering services needed to determine the specific ground water levels. A detailed report of the subsurface conditions will be required to facilitate the design.

The work is to be completed within 5 weeks of the Notice to Proceed.

See attached proposal for additional information about the scope of work.

**CITY OF DALTON
PUBLIC WORKS DEPARTMENT**

GENERAL PROFESSIONAL SERVICES AGREEMENT

THIS GENERAL PROFESSIONAL SERVICES AGREEMENT is made and entered into on this 7th day of February, 2022 by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and Geo-Hydro Engineers, Inc., hereinafter referred to as "CONSULTANT".

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

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

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

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

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

2. PROJECT/SCOPE OF SERVICES: The CONSULTANT shall complete the project and perform the scope of services specified in the CITY's Request for Proposal which is included herein by reference and the specifications provided in the CONSULTANT's proposal attached hereto as Exhibit "A".

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

4. DATE OF COMMENCEMENT: The CONSULTANT shall commence work on the project on February 14th, 2022. If no date is provided, then the date of commencement shall be five days from execution of this Agreement.

5. DATE OF COMPLETION: The CONSULTANT shall complete the project on or before March 21st, 2022.

6. CONTRACT SUM: The CITY shall pay to CONSULTANT the total price not to exceed \$10,000.00 Dollars for the complete performance of the project and terms of this Agreement. In addition, CITY shall pay to CONSULTANT for any authorized additional services performed at the rate or amount provided in the Compensation Schedule attached hereto as Exhibit "B".

7. CONTRACT PENALTY: The CONSULTANT shall pay to the CITY the amount of \$ 100.00 Dollars per calendar day for unexcused delay in completion of the project past the date of completion.

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

9. CITY COVENANTS: CITY covenants and agrees:

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

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

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

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

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

10. CONSULTANT COVENANTS: CONSULTANT covenants and agrees:

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

field;

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

11. INDEMNITY: CONSULTANT shall indemnify CITY from and hold CITY harmless against all claims, demands and judgments for loss, damage or injury to person or property, resulting from or incurring by reason of CONSULTANT'S use and occupancy of the subject property or by the negligence, willful acts, or errors or omissions with respect to the performance of the professional services of CONSULTANT, its employees, agents, subcontractors, or invitees and from all expenses incurred by CITY as a result thereof including, without limitation, reasonable attorneys' fees and expenses and court costs, except if arising from or caused by the sole fault or negligence of CITY or any of CITY's employees, agents or representatives acting on behalf of the CITY.

Additionally, pursuant to State law, CITY shall not indemnify or hold harmless CONSULTANT for any claims arising from the actions or omissions of CONSULTANT or any third party.

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

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

(a) General Liability Coverage - General Liability policy with a minimum limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

(b) Workers' Compensation Coverage – Workers' Compensation policy with the following minimum limits:

(1) Workers' Compensation statutory limits;

(2) Employer's Liability:

a. Bodily Injury by Accident - \$100,000.00

b. Bodily Injury by Disease - \$500,000.00 policy limit

c. Bodily Injury by Disease - \$100,000.00 each employee.

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

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

owned, and hired vehicles.

- (d) Professional Services Errors & Omissions Coverage – Professional Services E&O policy with a minimum of \$1,000,000.00 per claim.

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

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

16. NON-WAIVER OF DEFAULT: The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall not be construed to be a waiver thereof, not affect the validity of any part of this Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

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

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

Such notice to CONSULTANT shall be mailed to: Geo-Hydro Engineering Inc.
1000 Cobb Place Blvd, Suite 290
Kennesaw, Georgia 30144

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

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

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

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

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

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

20. TERMINATION OF CONTRACT: In the event that CONSULTANT defaults or neglects to perform work on the project in accordance with the terms of this Agreement, CITY may terminate this Agreement by providing written notice of termination. Prior to termination of this Agreement for default, CITY shall provide written notice to CONSULTANT of any default and provide CONSULTANT ten (10) days to correct said default or deficiency,

21. MISCELLANEOUS PROVISIONS:

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

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

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

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

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

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

(g) Attorney Fees. In the event the CITY must enforce the terms of this Agreement by filing a civil action against CONSULTANT, then CONSULTANT shall pay an amount equal to fifteen percent (15%) of the contract sum as attorney fees.

(h) Confidentiality. All information and documentation regarding the project and the CONSULTANT's services shall be maintained in confidence and shall not be disclosed to any third party by CONSULTANT, without CITY's written authorization, except as may be required by the Georgia Open Records Act. CONSULTANT shall promptly notify CITY of any third party request for said information or documentation prior to any disclosure. CITY agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by CONSULTANT pertaining to this Agreement shall be considered confidential and proprietary, and shall not be disclosed to any third party, except as may be required by the Georgia Open Records Act.

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

CONSULTANT:

CONSULTANT:

Geo-Hydro Engineering, Inc.

By: _____

Title: _____

CITY:

CITY OF DALTON, GEORGIA

By: _____
MAYOR

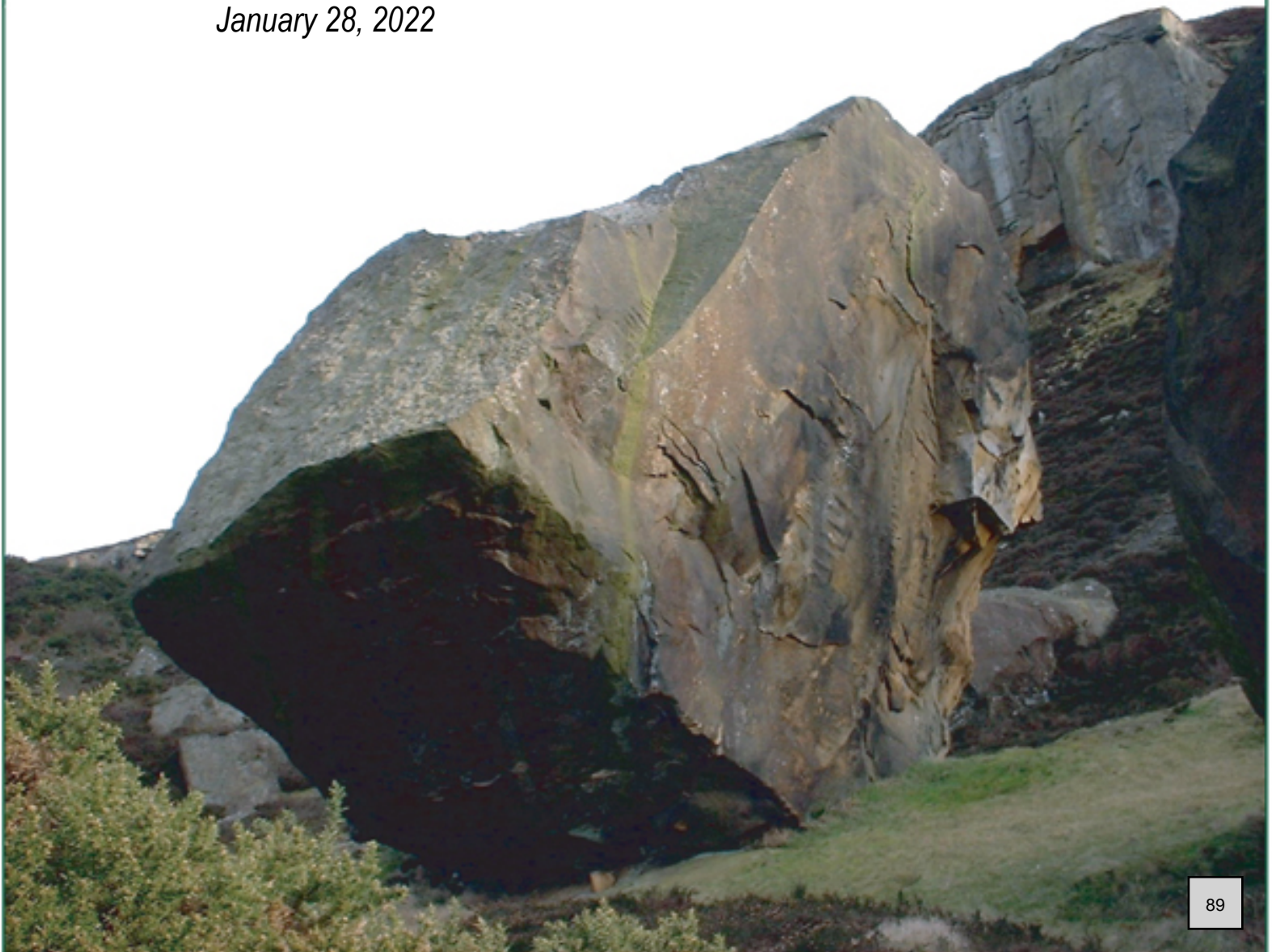
Attest: _____
CITY CLERK



Proposal to Perform Supplemental Piezometer Installation

**New Aquatic Center
John Davis Recreation Center
Dalton, Georgia
Geo-Hydro Proposal Number 211941.P1**

*Prepared for City of Dalton
January 28, 2022*



Ms. Megan Elliott
City of Dalton
300 West Waugh Street
Dalton, Georgia 30722

January 28, 2022

**Proposal to Perform Supplemental Piezometer Installation
New Aquatic Center
John Davis Recreation Center
Dalton, Georgia
Geo-Hydro Proposal Number 211941.P1**

Dear Ms. Elliott:

Geo-Hydro Engineers, Inc. appreciates the opportunity to present this proposal to provide supplemental geotechnical engineering services for the above referenced project. Geo-Hydro is currently engaged to perform a subsurface exploration and geotechnical engineering evaluation for the project.

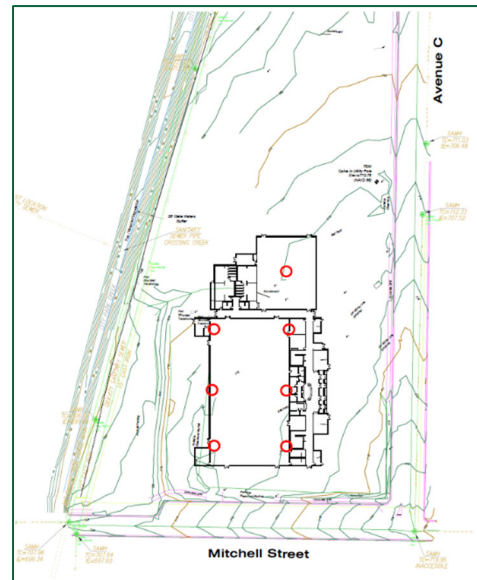
Our ongoing exploration included seven soil test borings performed in the area of the new aquatic center. All of the borings encountered groundwater at depths ranging from 9 to 19 feet. In order to better understand the potential impacts of groundwater conditions on the construction and design of the planned aquatic center, the project team has requested the installation of six temporary piezometers at the approximate location shown on the annotated site plan below.

An outline of the exploration is provided in the following sections.

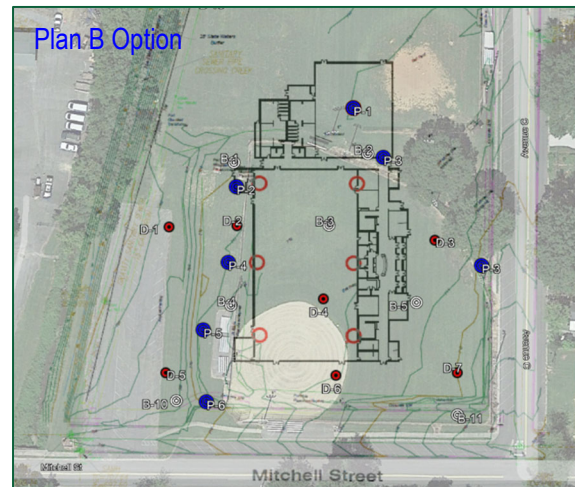
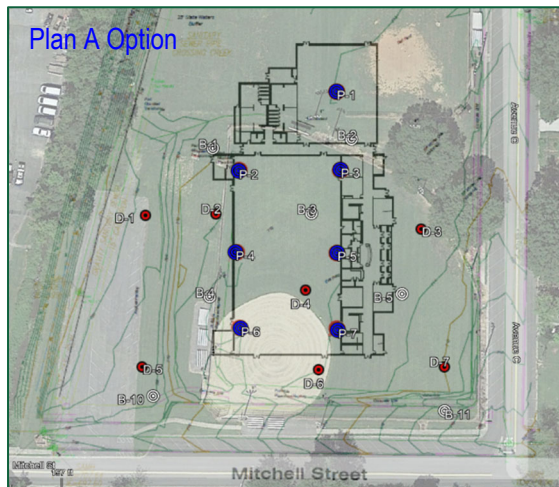
SCOPE OF SERVICES

Field and Laboratory Services

1. We will contact Georgia 811 for location of underground utilities. This is required by law. Also, we ask that the current property owner(s) provide any available information regarding the location of all underground utilities in the work areas. Geo-Hydro will not be responsible for damage to unmarked underground utilities. Please see the attached *Underground Utilities Fact Sheet* for more information.
2. We will perform six machine-drilled borings at select locations within the project area. The following page includes two aerial photographs with potential test boring locations shown in blue. Plan A includes the requested piezometer locations, which includes six locations within the existing baseball field. Plan B includes adjusted piezometer locations to avoid installing temporary piezometers within the baseball field. Each soil test boring will include standard penetration testing at select depth intervals in accordance with ASTM D1586. The borings will be extended to a target depth of 25 feet or to the depth of auger refusal, whichever occurs first. the borings will be converted to piezometers to measure the stabilized groundwater level more reliably. Temporary piezometers will be constructed by



installing 5 feet of 2-inch diameter, 0.010-inch slot well screen at the bottom of the borehole and installing a compatible sand pack around the screen extending approximately 2 feet above the screen. The remaining annular space will be backfilled with soil cuttings to the ground surface. Our lump sum fee allows for a total of **150** feet of soil test boring only.



3. After installation of the piezometers, we will return to the site the next day to purge and develop the wells. We will record additional groundwater level measurements one and two weeks after developing the wells. Additional measurements can be recorded upon request.
4. Test boring records will be prepared which provide standard penetration resistances, detailed soil descriptions, and groundwater conditions. Significant soil strata will be delineated, and partially weathered rock or auger refusal will be identified where encountered.
5. We will prepare a brief engineering report including the results of the supplemental test borings, the recorded groundwater levels, and recommendations for managing groundwater on a temporary and permanent basis, if necessary.
6. If requested after final groundwater check, we can abandon the piezometers. We will remove the PVC screen and riser. Then backfill the borings with any remaining soil cuttings and gravel to the ground surface. Alternatively, the wells can be left in place to allow for future groundwater measurements if needed. The cost for removing the wells has been included as an optional service in the *Cost Information* section of this proposal.

SCHEDULE

After receiving notice-to-proceed (NTP), Geo-Hydro will begin work immediately. Field drilling services will commence within 3 to 4 weeks of NTP and should be completed in 1 to 2 days, barring inclement weather. Preliminary information will be provided as it becomes available. A complete report will be provided within 3 weeks of completing the field work.

COST INFORMATION

Based on the Scope of Services outlined above, we will charge the following fees:

Base Scope Tasks	Lump Sum Fee
Piezometer Installation and Initial Stabilized Groundwater Check	\$8,400
Additional Groundwater Check (Each)	\$600
Piezometer Abandonment After Final Groundwater Check	\$1,000

In the event that additional work is required beyond the outlined scope of services, we will notify you prior to commencing with any additional work. A fee for additional work will be negotiated.


Our work may result in some rutting of the ground surface or damage to vegetation. If landscape repairs are necessary, we will hire a landscaping subcontractor. Landscape repair work will be charged at our cost plus 15 percent. No landscape repair or stabilization work will be performed without prior authorization from the City of Dalton. Alternatively, the city may use its own resources to perform landscaping repairs.


* * * * *

We are pleased to submit this proposal and look forward to the opportunity of working on this project. If this proposal is acceptable, we ask that you execute the attached agreement and return the original to us. If you have any questions concerning this proposal or any of our services, please call us.

Sincerely,

GEO-HYDRO ENGINEERS, INC.


Kaylin D. James, P.G.
Senior Project Geologist
kjames@geohydro.com


A. Marty Peninger, P.E.
Georgia Geotechnical Manager
mpeninger@geohydro.com

KDJ/AMP/211941.P1 - Piezometers - Dalton Aquatic Center - Alternate Site - Geotechnical Proposal

AGREEMENT

Project Name: Supplemental Piezometer Installation - New Aquatic Center

Project Location: John Davis Recreation Center - Dalton, Georgia

Proposal Number: 211941.P1 Date: January 28, 2022

The Client, as identified and defined below, engages Geo-Hydro Engineers, Inc. to provide the services on the Project as detailed in the proposal previously provided to the Client, the terms of which are incorporated herein and made a part of this Agreement. The general terms and conditions on the following pages are likewise incorporated herein and are explicitly made part of this Agreement.

This Agreement is entered into this _____ day of _____, _____ between

Geo-Hydro Engineers, Inc. ("Consultant") and _____
("Client").

GEO-HYDRO ENGINEERS, INC.

Client Firm Name

Signature of Authorized Agent

Signature of Authorized Agent

Print Name

Print Name

Title

Title

Please complete information in box

Billing Entity Name _____

Individual to Receive Invoices _____

Email address _____ Phone No. _____

Street Address _____

City and State: _____

TERMS AND CONDITIONS OF SERVICE

A. STANDARD OF CARE.

Services under this contract will be performed by Consultant in accordance with that degree of care and skill ordinarily exercised under similar conditions by members of Consultant's profession practicing in the same locality.

B. CERTIFICATION.

Consultant may employ sampling procedures during the course of the work. Client acknowledges that such procedures indicate actual conditions only at the precise locations and elevations from which samples were taken. Client further acknowledges that, in accordance with the generally accepted construction practice, Consultant shall make certain inferences based on the results of sampling and any related testing to form a professional opinion of conditions in areas beyond those from which samples were taken. Client acknowledges that despite proper implementation of sampling and testing procedures, and despite proper interpretation of their results, Consultant cannot guarantee the existence or absence of conditions which it may infer to exist. Client further acknowledges and agrees that Client shall not cause any resolution of a dispute, including, but not limited to, payment or settlement, contingent upon Consultant's certification of certain conditions, without first receiving Consultant's written certification regarding those conditions.

C. WARRANTIES.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, CONSULTANT MAKES NO WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO CONSULTANT'S WRITTEN REPORTS, FINDINGS, OPINIONS, OR SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

D. EXISTING CONDITIONS.

Client agrees that subsurface explorations and geotechnical or environmental engineering evaluations are subject to naturally occurring and/or man-made soil and other conditions which cannot always be discovered or anticipated and that a potential exists for such phenomena to impact the Project in ways for which Consultant cannot be responsible. Client shall disclose, at least 7 days before any scheduled inspections by Consultant, the presence and location of all known man-made or naturally occurring objects which could be affected by or affect field tests or borings to be performed by Consultant.

Client acknowledges and agrees that Consultant has neither created nor contributed to the creation or existence of any irritant, pollutant, or hazardous, radioactive, toxic, otherwise dangerous or harmful substance that may exist at the site, or dangerous conditions resulting therefrom. Client further acknowledges that Consultant's sole role is to provide a service intended to benefit Client and that Consultant is performing no function at or association with the site that would classify Consultant as a generator, disposer, treater, storer, coordinator, handler, or transporter of hazardous materials.

(i) SAMPLING OR TEST LOCATION.

Unless otherwise stated, the fees in this proposal do not include costs associated with surveying of the site for the accurate horizontal and vertical locations of tests. Field tests described in a report or shown on sketches are based upon information furnished by others or estimates made in the field by Consultant's representatives. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated.

(ii) HAZARDOUS SUBSTANCES.

Client agrees to advise Consultant, in writing, of any hazardous substances on or near the site within 24 hours after Client learns about the presence of such hazardous substances. In the event that test samples obtained contain substances hazardous to health, safety, or the environment, these samples shall remain the property of the Client. Likewise, any equipment which becomes contaminated and cannot be reasonably decontaminated shall become the property and responsibility of Client. Such samples or equipment will be delivered to Client. Client agrees to pay transportation costs for samples and equipment and the fair market value of such contaminated equipment upon request. Exploratory activities may expose soil and/or ground water considered to be hazardous by local and/or state and/or federal agencies. Consultant agrees to contain such materials in a manner approved by Consultant both during and at the completion of Consultant's field activities. Client understands and agrees that Client, and not Consultant, is responsible for the storage or disposal of hazardous materials or suspected hazardous materials brought to the surface during Consultant's exploratory activities.

(iii) DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. Client also agrees that the discovery of unanticipated hazardous materials could make it necessary for Consultant to take immediate measures to protect human health, safety, or the environment. Consultant agrees to notify Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. Client encourages Consultant to take any and all measures that in Consultant's professional opinion are justified to preserve and protect the health and safety of Consultant's personnel, and Client agrees to compensate Consultant for the additional cost of such work. In addition, Client waives any claim against Consultant, and agrees to indemnify, defend, and hold Consultant harmless from any claim or liability for injury, loss or perceived loss arising from Consultant's encountering of unanticipated hazardous materials or suspected hazardous materials. Client acknowledges that discovery of hazardous materials or suspected hazardous materials may lead to a temporary or permanent diminution of property value, and/or may cause delays in or otherwise affect completion of the real estate transaction Client now contemplates.

E. AQUIFER CONTAMINATION.

Subsurface sampling may result in unavoidable contamination of certain subsurface areas, as when a probe or boring device moves through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and capable of spreading hazardous materials off-site. Because nothing can be done to eliminate the risk of such an occurrence, and when subsurface sampling is a part of the work which Consultant will perform on Client's behalf, Client hereby waives any claim against Company, and agrees to defend, indemnify and hold Consultant harmless from any claim or liability for injury or loss which may arise as a result of alleged cross-contamination caused by sampling. Client further agrees to compensate Consultant for any time spent or expenses incurred by Consultant in defense of such claim, including, but not limited to, any attorneys' fees and expenses incurred by Consultant, in accordance with Consultant's prevailing fee schedule and expense reimbursement policy.

F. SAMPLES, DATA AND RECORDS.

Consultant shall be the sole owner of any and all data gathered by Consultants or reports prepared by Consultant. No entity or individual, other than Consultant, its representatives, or Client, may use or rely upon any data collected by Consultant or reports prepared by Consultant. Except as expressly set forth in this Agreement, Consultant and Client do not intend the benefits of this Agreement, including, but not limited to, the samples, data, and records created by Consultant, to inure to any third party, and nothing contained herein shall be construed as creating any right, claim or

cause of action in favor of any such third party, against either Consultant or Client.

Routine test specimens will be discarded immediately upon completion of tests. Consultant shall retain drilling samples of soil or rock for a period of ninety (90) days following submission of Consultant's report to Client. If Client requests a longer period of storage, Consultant will retain test specimens or drilling samples for an agreed upon time period and fee. Records relating to services hereunder shall be maintained by Consultant for at least three (3) years following completion of Consultant's services.

G. ENTRY.

Client shall provide Consultant, its representatives, and equipment with right of entry on to the Project site. Consultant will endeavor to minimize damage to the land upon which the project is located, however Consultant shall not be under any duty or responsibility whatsoever to restore the Project site to its condition prior to performance of any tests or borings unless a separate agreement to do so is acknowledged in writing with Client. Unless otherwise indicated, Consultant's scope of service contains no provision for backfilling boreholes, test pits, or other exploration holes created to facilitate testing. Client hereby acknowledges that, unless some other arrangement is made in writing between Client and Consultant, Consultant cannot be held liable for any injuries or damages that may occur for Consultant's failure to perform services not included in the Proposal or this Agreement. Client further acknowledges that testing operations may result in damage to certain landscaping or improvements, due to the tests themselves, disposal of cuttings or ground water, movement of equipment, or due to other cause(s) that can commonly occur and are outside Consultant's control. Consultant will attempt to avoid causing damage, but Client understands and acknowledges that Consultant cannot guarantee damage will not occur and, accordingly, Client agrees to waive any claim against Consultant and to hold harmless, indemnify, and defend Consultant for any claim alleging injury or damage as a consequence of unfilled exploration holes on the site or any other disturbance to natural conditions of or any improvements on the site. Any costs of such restoration shall be added to our compensation pursuant to an agreed-upon price and terms set forth in a separate written agreement entered into between Consultant and Client.

H. FIELD MONITORING AND TESTING.

Whenever Consultant's personnel make on-site observations of materials and/or services provided by a contractor engaged by Client (the "Contractor"), Client agrees that Consultant is not responsible for the Contractor's means, methods, techniques, sequences or procedures of construction. Client acknowledges and agrees that the field services provided by Consultant shall not relieve the Contractor of his responsibilities for performing the work in accordance with the plans and specifications. The words "monitoring," "supervision," "inspection," or "control" mean the periodic observation of the work and the conducting of tests by Consultant to verify substantial compliance with the plans, specifications, and design concepts for the Project. Continuous or full-time monitoring does not mean that our personnel are observing placement of all materials or that we assume any responsibility or liability for placing or directing placement of materials.

I. SAFETY.

During the provision of observations or monitoring services at the job site during construction, Client agrees that in accordance with the generally accepted construction practice, the contractor will be solely and completely responsible for working conditions on the job site, including safety of all persons and property during the performance of the work and compliance with OSHA regulations. These requirements will apply continuously and are not limited to normal working hours. Any monitoring of the contractor's procedures conducted by

Consultant does not include review of the adequacy of the contractor's safety measures in, on, adjacent to, or near the construction site.

J. FREEDOM TO REPORT.

It is contemplated that, during the course of this engagement, Consultant may be required to report on the past or current performance of others engaged or being considered for engagement directly or indirectly by Client and to render opinions and advice in that regard. Those about whom reports and opinions are rendered may, as a consequence, initiate claims of libel or slander against Consultant and its present or former principals, officers, shareholders, directors, agents, representatives, consultants, successors, insurers, and attorneys (the "Consultant Representatives"). To help create an atmosphere in which Consultant's personnel feel free to express themselves candidly, Client agrees (1) to waive any claim against the Consultant Representatives and (2) to defend, indemnify, and hold harmless the Consultant Representatives from any claim or liability for injury or loss allegedly arising from professional opinions rendered by Consultant to Client or Client's agents, including, but not limited to, claims for slander or libel. Client further agrees to compensate the Consultant Representatives for any time spent or expenses incurred by the Consultant Representatives in defense of any such claim, in accordance with Consultant prevailing fee schedule and expense reimbursement policy. Client acknowledges that Client and/or Consultant may be required by local, state, and/or federal statute and/or regulations to report the discovery of hazardous materials to a government agency, and that Consultant, when practical, will do so only after notifying Client. Client waives any cause of action, claim, suit, or demand associated with Consultant's compliance with its duties to report as required by local, state, and/or federal laws and regulations.

K. PAYMENT.

Client agrees to pay Consultant in full for all services provided by Consultant to Client. Time is of the essence regarding payment of Consultant's invoices. Client's obligation to pay Consultant is not dependent upon Client's ability to obtain financing, approval of any governmental or regulatory agency, or upon Client's successful completion of the Project. Consultant reserves the right to submit progress invoices to Client on a monthly basis and a final invoice upon completion of Consultant's work. Each invoice is due and payable to Consultant, by Client, immediately upon presentation. All amounts due to Consultant and not paid within thirty (30) days of the presentation of the invoice shall bear interest at the rate of eighteen percent (18%) per annum (or the maximum permissible rate allowed by law) until paid in full.

If any obligation of Client hereunder is collected by legal proceeding, including, but not limited to, a demand letter, lawsuit, arbitration, and/or mediation, Client shall pay to Consultant, in addition to the amount due, all Costs of Collection (as defined below), including, but not limited to, fifteen percent (15%) of the total amount due by Client to Consultant as reasonable attorney's fees as well as all costs incurred by Consultant if the legal proceeding does not result in a lawsuit or arbitration proceeding, and thirty percent (30%) of the total amount due by Client to Consultant as reasonable attorneys' fees as well as all court costs incurred by Consultant if the legal proceeding results in a lawsuit or arbitration proceeding. "Costs of collection" shall include, but are not limited to, the hourly cost to Consultant for employee's time expended in collection efforts.

L. TERMINATION.

In the event that Client requests termination of the work prior to completion, Consultant reserves the right to complete such analysis and records as are necessary to place Consultant's files in order and to complete a report on the work performed to date. Client acknowledges and agrees that the amount of damages that Consultant will sustain in the event Client terminates this Agreement prior to Consultant's completion of its work required by the proposal and this Agreement will be uncertain or difficult to ascertain. As such, Client agrees that in the event Client terminates this Agreement prior to Consultant's completion of the work required by the proposal and this Agreement, Client shall be liable to Consultant for liquidated damages in the amount equal to thirty percent (30%) of all charges incurred as of the date of Client's termination of the Agreement (the "Liquidated Damages")

acknowledges and agrees that the foregoing Liquidated Damages do not represent a penalty, but rather, represent a good faith pre-estimation by the parties of the damages that would be incurred by Consultant.

M. PROFESSIONAL LIABILITY.

Client agrees that the liability of Consultant and its principals, officers, shareholders, directors, agents, representatives, consultants, successors, insurers, and attorneys, to Client due to any negligent professional acts, errors or omissions, or breach of contract will be limited to an aggregate of \$50,000.00 or Consultant's total fee, whichever is greater. If Client prefers to have higher limits of professional liability, Consultant agrees to increase the limit up to a maximum of the available professional liability insurance proceeds at the time of judgment or settlement upon Client's written request at the time of accepting Consultant's proposal, providing that Client agrees to pay an additional consideration of ten percent of Consultant's total fee, or \$500.00, whichever is greater. The additional charge for the higher liability limit is because of the greater risk assumed by Consultant and is not a charge for additional professional liability insurance.

Consultant does not assume any responsibilities, duties, or obligations of Client or any other entity or individual. Consultant's performance shall not be considered to reduce, eliminate, abridge, or abrogate, any responsibilities, duties, or obligations of any other party. Consultant is not responsible for the design or construction of the project or the failure of any party to perform in accordance with the plans and specifications for the Projects or any of Consultant's recommendations or instructions.

N. INDEMNIFICATION.

Client shall indemnify and hold harmless Consultant and its officers, directors, agents, and employees from any loss, damage, or liability, including, but not limited to, Consultants' attorneys' fees and costs, resulting from, relating to, or arising out of the following: (i) subsurface conditions, damage to subsurface structures, whether owned by Client or any third party, the presence or location of which were not revealed to Consultant by Client in writing at least 7 days prior to the commencement of Consultant's performance; (ii) any alleged cross-contamination caused by Consultant's sampling; (iii) unanticipated hazardous materials discovered during the course of Consultant's work; (iv) any damage to Consultant's equipment or personnel as a result of actions engaged in by the Contractor; or (v) any alleged aquifer cross-contamination caused by Consultant's sampling.

O. CONFIDENTIALITY.

Consultant agrees to keep confidential and not to disclose to any person or entity, other than Consultant's principals and employees, any data or information not previously known to and generated by Consultant or furnished to Consultant and marked CONFIDENTIAL by Client ("Confidential Information"). These provisions shall not apply to information in whatever form that is in the public domain, nor shall it restrict Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency, arbitrator, or other legitimate authority, or if disclosure is reasonably necessary for Consultant to defend itself from any legal action or claim.

P. NON-CIRCUMVENTION.

Each party agrees that the information disclosed pursuant to this Agreement, including, but not limited to, any Confidential Information, will be used solely and exclusively for the purpose of Consultant providing the services on the Project as detailed in the proposal. Each party agrees that it shall not seek to circumvent the other or make use of the other's Confidential Information or trade secrets, including, but not limited to, its relationships with any third-party service providers to enhance their own business in any way. Any

Confidential Information disclosed pursuant to this Agreement will not be used by the receiving party to generate revenues nor to create other commercial arrangements without the prior written consent of the disclosing party.

Q. GOVERNING LAW; VENUE.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed and construed by the laws of the State of Georgia, and Venue shall lie in the State of Georgia, Cobb County, for all causes of action under this Agreement.

R. SEVERANCE; SURVIVAL.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance here from and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible.

S. EXECUTION.

This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall together constitute one document. In the event one or more of the parties intends to sign and deliver this Agreement by facsimile transmission, ".pdf", or "jpeg," each party agrees that the delivery of the Agreement by facsimile, ".pdf", or "jpeg" shall have the same force and effect as delivery of original signatures, and each party may use such facsimile, ".pdf", or "jpeg" signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent that an original signature could be used.

T. REPRESENTATIONS.

Client represents and warrants that it has full authority to enter into this Agreement and to consummate the transactions contemplated herein, and that this Agreement is not in conflict with any other Agreement to which Client is a party or by which it may be bound.

U. MISCELLANEOUS.

This instrument constitutes the entire agreement of the parties. There are no terms or conditions except those set forth herein. This Agreement may not be modified, altered, or amended except in a subsequent written instrument executed by each of the parties which refers to this Agreement and specifies the amendment made. No waiver of any breach of this Agreement shall be deemed or considered a waiver of any other or subsequent breach. Paragraph headings are used to facilitate reference to the various provisions and do not affect the meaning or construction of any provision. This Agreement is governed by the laws of the State of Georgia.

Fact Sheet

Underground Utilities

Geo-Hydro's work often includes drilling below the ground surface to evaluate subsurface materials. One of our biggest concerns is that we may accidentally encounter underground utilities which may create a safety hazard for our personnel and others or result in a loss of service. Location of underground utilities prior to our work is important to all parties. Unfortunately, location of underground utilities is a difficult task, and accurate location of underground utilities is often not possible.

Geo-Hydro is required by Georgia law to contact the Utilities Protection Center (UPC) prior to drilling. The UPC requires at least 72 hours prior notification. The UPC contacts member utilities, and the member utilities dispatch utility locators. Normally the utility locators will not locate underground utilities on private property, and will only locate utilities from the main service line to the property owner's meter. It is not uncommon for utility locators to improperly locate underground utilities for a variety of reasons.

Geo-Hydro requires that the property owner provide clearly marked locations on the ground of any underground utilities in the work area. If necessary, Geo-Hydro can refer the owner to companies that provide underground utility location services. Alternatively, Geo-Hydro can hire the utility location company and pass this cost through to our client.

Private underground utility location companies do not guarantee that they have located all underground utilities or that underground utilities have been accurately located. In fact, some underground utilities (e.g., irrigation lines, non-metallic lines, etc.) simply cannot be located using non-destructive techniques.

Geo-Hydro will make reasonable efforts to avoid damaging underground utilities that are clearly marked in the field. Due to the uncertainties of locating underground utilities, Geo-Hydro cannot be responsible for damage to unmarked underground utilities. Since Geo-Hydro's work is being performed for the benefit of its client, the client must accept the risk that Geo-Hydro's work could result in damage to underground utilities. As such, it is ordinarily the responsibility of Geo-Hydro's client to accept the responsibility for repairing damage to unmarked underground utilities unless that responsibility has clearly been transferred to another party.



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: February 7, 2022

Agenda Item: HVAC Evaluation for City Hall

Department: HR

Requested By: Greg Batts

Reviewed/Approved by City Attorney? Yes

Cost: \$3,750.00

Funding Source if Not in Budget From building maintenance fund

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

Objective assessment and recommendation concerning the HVAC system for Dalton City Hall. Performed by MBA Consulting Engineers.



PROPOSAL

PROJECT: Dalton City Hall Building Study

LOCATION: 300 West Waugh Street
Dalton, Georgia 30720

CLIENT: City of Dalton

DATE: January 31, 2022

This Proposal outlines the scope of services to be performed by **MBA Consulting Engineers** on the above-named project. In accordance with our understanding, we are to provide the following services.

Provide an engineering building assessment for the HVAC system at 300 W. Waugh Street, Dalton, Georgia. The steps to be taken include the following:

1. Review of the existing system design documents
2. A site visit to assess the condition of the mechanical system components
3. Compile information to be used to evaluate the systems and create system descriptions
4. Create report of existing conditions and provide system replacement recommendations

\$3,750.00

The scope of services does not include evaluation of site utilities nor other building systems.

This engagement does not include any services not specifically included in this proposal. Additional services, which you may request, will be subject to arrangements made at the time of the request. A copy of our “General Contract Conditions” is attached to this proposal and hereby made a part of this Contract.

If the terms expressed in this proposal are in accordance with your understanding and requirements, please sign one copy of this proposal and return it for our files.

Request to commence design by Client without prior execution of this agreement shall constitute acceptance of agreement and all terms and conditions shall be in full force and effect.

Best Regards,

Gregg Cox, P.E. - President

The foregoing proposal fully describes the services required and is in accordance with our understanding. This proposal is accepted by:

Client:_____.

SIGNATURE:_____.

DATE:_____.

GENERAL CONTRACT CONDITIONS
MBA CONSULTING ENGINEERS
(Hereinafter referred to as "Engineer")

Fee is based on a contract between Client and Engineer and is not binding on Engineer under any other conditions, such as if work is subcontracted out or if contract is passed on to a third party.

It shall be the responsibility of the Client to provide the Engineer with the required associated building data necessary for the completion of the work outlined in the "Scope of Services." Required associated design data shall include, but not be limited to, known corresponding architectural and engineering plans and available mechanical equipment data. Engineer will assist Client in obtaining the required information that exists by defining the final extent of data necessary for completion of work.

This proposal includes general construction cost estimates to provide an order of magnitude to the Owner for their use.

The Engineer will not be responsible for the acts or omissions of the Client, any of their agents, or employees, or any other persons performing any of the work.

Additional Services:

Services outside of this scope of work will be rendered on an hourly basis at:

Principal	\$180.00 per hour
Senior Engineer	140.00 per hour
Junior Engineer	115.00 per hour
Designer	95.00 per hour
CADD Operator	85.00 per hour
Clerical	75.00 per hour

Reimbursable Expenses

Electronic documents for coordination and presentation with the Client will be provided as part of this contract. Multiple copies and/or presentation binding of the report required from Engineer for distribution will be considered reimbursable expenses. All reimbursable expenses will be billed in addition to the fee quoted, at 125% of cost.

Terms of Payment

Engineer will invoice at completion of the study.

Payments will be due within 30 days of receipt of the invoice. Interest shall be charged at a rate of 6% per annum on invoices outstanding for a period of 60 days or more.

Limits of Liability

To the maximum extent permitted by law, the Client agrees to limit the Design Professional's liability for the Client's damages to the sum of \$250,000.00. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: February 7, 2021

Agenda Item: Professional Services – BION Security

Department: Information Technology

Requested By: Jorge Paez

Reviewed/Approved by City Attorney? Yes

Cost: Not To Exceed \$25,000

Funding Source if Not in Budget IT Department Operating 2022 Budget

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

The city is seeking approval for professional services from BION security to help and guide the city's I.T. Department in deploying networking equipment to best practices in security. The professional service agreement is set to NOT exceed the amount of \$25,000 dollars for the overall project. Funds will be coming from the I.T. Operating budget of 2022.

BION Security is a registered vendor with the City of Dalton and their team consists of a couple of highly qualified security engineers. The City has engaged with BION Security in 2021 for a proof of concept site to evaluate the quality of work and amount of effort required on their behalf to complete the project in, all in which was completed in a very reasonable amount of time.

CITY OF DALTON
FORTINET NETWORKING EQUIPMENT DEPLOYMENT
PROFESSIONAL SERVICE AGREEMENT

THIS PROFESSIONAL SERVICE AGREEMENT is made and entered into on this 7th day of February, 2022 by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and **BION Security LLC**, hereinafter referred to as "CONTRACTOR".

WHEREAS, CITY owns **28 building sites** that need to be configured onto the city's network; and

WHEREAS, CITY owns networking equipment that needs to be **configured** and deployed throughout the city; and

WHEREAS, CONTRACTOR desires to **configure the network equipment utilizing modern security best practices**; and

WHEREAS, CITY CONTRACTOR has provided a written proposal with scope of services which is also attached hereto as a part of the contract documents; and

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

1. WORK SITE: CONTRACTOR shall work remotely from a secure environment with access to the city's networking lab, located at 300 W. Waugh St Dalton, Georgia 30720.

2. USE OF PROPERTY: CONTRACTOR shall have use and possession of the subject property being the CITY'S networking lab extending to all 28 of CITY'S equipment sites. A total of 327 days from February 7, 2022 through December 31, 2022 to perform the work:

Days: **327 Days**

Time of day: **6:00 AM to 11:59 PM**

In the event that CONTRACTOR should desire to use the subject property on additional dates or times, CONTRACTOR shall obtain written authorization from the Dalton City Information Technology Director. CONTRACTOR shall restrict the public use of or

access to the subject property except as may be authorized by the Dalton City Information Technology Director. The subject property shall be used in conformity with all laws, statutes, ordinances, rules, restrictions and orders of any federal, state or municipal governments or agencies thereof having jurisdiction over the use of the subject property. The subject property shall be used and virtually accessed for the subject project and related functions only and not for any other commercial operations. The use and access of the networking equipment for any other usages other than specified by the Dalton City I.T. Department Director is prohibited. All access shall be approved by the CITY and such use shall always be in accordance with applicable federal, state, and local statutes, ordinances, rules, and regulations in force during the term of this Agreement.

3. PROJECT: The CONTRACTOR shall complete the project and perform the professional services in the scope of work, which is included herein by reference and the specifications provided in the CONTRACTOR's proposal attached hereto as Exhibit "A".

4. DATE OF COMMENCEMENT: The CONTRACTOR shall commence work on the project within **3** days of receiving **Notice to Proceed** by the CITY.

5. DATE OF COMPLETION: The CONTRACTOR shall complete the project on or before December 31, 2022

6. CONTRACT SUM AND CONTINGENCY: The CITY shall pay to CONTRACTOR an hourly rate of **\$110** Dollars for the complete performance of the project and terms of this Agreement. In no event will the total contract sum payable to CONTRACTOR for the work program for this project exceed the sum of **\$25,000.00**. All change orders shall be in writing signed by both parties. CONTRACTOR shall notify the Dalton City Information Technology Director prior to commencing work pursuant to a change order.

7. CONTRACT PENALTY: The CONTRACTOR shall pay to the CITY the amount of **\$100.00** Dollars per calendar day for unexcused delay in completion of the project past the date of completion.

8. PAYMENT: The CITY shall pay the hourly rate to CONTRACTOR upon complete performance of the project and terms of this Agreement. Final payment shall be made no later than 30 days after receipt of invoice. Upon completion of any additional services, said additional services shall be paid within 30 days of receipt of invoice from CONTRACTOR. Payment shall be made via electronic funds transfer (EFT).

9. SURRENDER OF subject property: CONTRACTOR shall, no later than **1** day after completion of the project, surrender possession of the subject property and shall not virtually access the subject property. All login credentials to the subject property will be changed upon completion of project. All configurations and implementation techniques

shall become the intellectual property of the CITY for said project.

10. CITY COVENANTS: CITY covenants and agrees:

- (a) to provide all available information, data, reports, records and diagrams to which CITY has possession or control which are necessary for CONTRACTOR to perform the scope of services provided for herein;
- (b) to provide reasonable assistance and cooperation to CONTRACTOR in obtaining any information or documentation which are necessary for CONTRACTOR to perform the scope of services provided for herein;
- (c) to designate a representative authorized to act on the CITY's behalf with respect to the project. Unless otherwise provided, said CITY representative shall be the Dalton City Information Technology Director;
- (d) to permit access to the subject property virtually and obtain permission to extend temporary access necessary for CONTRACTOR to complete the scope of services;
- (e) to provide reasonable assistance to CONTRACTOR in registering subject equipment to the manufacturer for the scope of services;

11. CONTRACTOR COVENANTS: CONTRACTOR covenants and agrees:

- (a) to perform the scope of services in a professional manner, using that degree of care and skill ordinarily exercised by contractors practicing in the same or similar field;
- (b) to use only employees qualified to complete the work with sufficient experience in same or substantially similar projects;
- (c) to use only properly licensed employees for any work requiring a specialty or professional network certifications;
- (d) to designate a representative authorized to act on the CONTRACTOR's behalf with respect to the project;
- (e) That its employees are qualified and or certified to configure networking equipment, and utilize best modern security practices, as described in the SCOPE OF WORK
- (f) to use the subject property in a safe, careful and lawful manner;

- (g) to promptly report in writing to CITY any unsafe or defective condition of the subject property and any adverse condition, which shall include but not be limited to, D.O.A. (Dead on Arrival) equipment, faulty firmware, faulty datacom connections, or damaged property that may adversely affect CONTRACTOR's ability to complete the scope of services or other terms of this Agreement;
- (h) to promptly report in writing to CITY any damage to or injuries sustained on the subject property and to promptly repair any damage to the subject property which is made necessary by any act of CONTRACTOR, its employees, agents;
- (i) to perform all work on the project in a good and workmanlike manner, free from faults and defects, and in conformance with the terms of this Agreement;
- (j) to determine the appropriate method, details and means of performing the scope of services provided by this Agreement;
- (k) to exercise the ordinary standard of care in complying with the laws, codes, and regulations applicable to the CONTRACTOR's services;
- (l) to exercise diligence and to complete delivery of the scope of services in a timely manner consistent with the exercise of due care;
- (m) to attend meetings to make presentations or to otherwise review the progress of the work as set out in the scope of services at the reasonable request of the CITY;
- (n) to prepare and submit to the CITY reports required by the scope of services or upon the written request of the CITY.
- (o) to keep the subject property in a safe and orderly condition and to protect from unwanted logins, damage, or theft any intellectual property necessary for completion of the project;

12. INDEMNITY: CONTRACTOR shall indemnify CITY from and hold CITY harmless against all claims, demands and judgments for loss, damage or injury to person or subject property, resulting from or incurring by reason of CONTRACTOR'S use and occupancy or non-occupancy of the subject property or by the negligence or willful acts of CONTRACTOR, its agents, officers, employees, invitees or licensees and from all expenses incurred by CITY as a result thereof including, without limitation, reasonable attorneys' fees and expenses and court costs, except if arising from or caused by the sole fault or negligence of CITY or any of CITY's employees, agents or representatives acting on behalf of the CITY.

Additionally, pursuant to State law, CITY shall not indemnify or hold harmless CONTRACTOR for any claims arising from the actions or omissions of CONTRACTOR or any third party.

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

13. INSURANCE: CONTRACTOR agrees to carry at its own expense through the term of this Agreement the types and amounts of insurance required to maintain status as a Vendor of the City of Dalton. CONTRACTOR shall provide CITY with copies or evidence of such insurance coverage prior to the commencement date of the Agreement. Such insurance policies shall name CITY as an additional insured and shall be issued by such insurance companies and on such forms as may be approved by CITY. Said insurance shall include the following:

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

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

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

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

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

16. NON-WAIVER OF DEFAULT: The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall not be construed to be a waiver thereof, nor affect the validity of any part of this

Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

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

Such notice to CITY shall be mailed to: City of Dalton
ATTN: Information Technology Director
300 W. Waugh ST
Dalton, GA 30720

Such notice to CONTRACTOR shall be mailed to: BION Security LLC.,
710 Dacula RD. Suite 4A
Dacula, GA 30019

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

18. CONTRACT DOCUMENTS: The Agreement shall include the CONTRACTOR'S bid or proposal, WORK ORDER SIGNATURE DOCUMENT, detailed SCOPE OF WORK, and other documents supplied by the CONTRACTOR. The terms of this Agreement shall supersede any terms in the above-referenced documents in direct conflict with the terms of this Agreement.

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

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

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

20. TERMINATION OF CONTRACT: In the event that CONTRACTOR defaults or neglects to perform work on the project in accordance with the terms of this Agreement, CITY may terminate this Agreement by providing written notice of termination. Prior to termination of

this Agreement, CITY shall provide written notice to CONTRACTOR of any default and provide CONTRACTOR ten (10) days to correct said default or deficiency.

21. **WARRANTY:** CONTRACTOR shall provide to CITY a general warranty for labor and materials and guarantees that the work on the project it performs shall be free from any defects in workmanship and materials for a period for a period of two (2) years from the date of completion in addition to any additional warranty provided in Section 4 –CONTRACTOR’S SCOPE OF WORK. Within ten days of completion of the terms of the Agreement, CONTRACTOR shall provide to CITY all original warranty documents from any third party.

22. **MISCELLANEOUS PROVISIONS:**

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

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

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

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

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

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

(g) **Confidentiality.** All information and documentation regarding the project and the CONSULTANT’s services shall be maintained in confidence and shall not be disclosed to any third party by CONSULTANT, without CITY’s written authorization, except as may be required by the Georgia Open Records Act. CONSULTANT shall promptly notify CITY of any third-party request for said information or documentation prior to any disclosure. CITY agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by CONSULTANT pertaining to this Agreement shall be considered confidential and

proprietary, and shall not be disclosed to any third party, except as may be required by the Georgia Open Records Act.

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

CONTRACTOR:

CONTRACTOR:

By: _____

Title: _____

Date: _____

CITY:

CITY OF DALTON, GEORGIA

By: _____
MAYOR

Date: _____

Attest: _____
CITY CLERK

BION Security
 710 Dacula Road Suite 4A
 Dacula, GA 30019
 +1 4707450990
 info@bionsecurity.com
 www.BIONSecurity.com

Estimate



ADDRESS
Bill Lloyd City of Dalton 300 W Waugh St Dalton, GA 30720

SHIP TO
Bill Lloyd City of Dalton 300 W Waugh St Dalton, GA 30720

ESTIMATE #	DATE	EXPIRATION DATE
	02/7/2022	03/7/2022

REFERENCE
 BION-PROSERV

DATE	ACTIVITY	QTY	RATE	AMOUNT
	Hours BION Engineer billing hours	40	110.00	4,400.00

BION Engineering Hours - 40 Hours

TOTAL

\$4,400.00

Accepted By

Accepted Date

Terms & Conditions

****Purchase orders can be emailed to info@bionsecurity.com.****

Net 30 days unless otherwise approved by "BION Security LLC."

BION Security accepts Mastercard, Visa, and American Express Credit Cards on all transactions under \$75,000.00.