



**MAYOR AND COUNCIL MEETING  
MONDAY, AUGUST 07, 2023  
6:00 PM  
DALTON CITY HALL**

**A G E N D A**

**Call to Order**

**Pledge of Allegiance**

**Approval of Agenda**

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

**Minutes:**

- [1.](#) Mayor & Council Minutes of July 17, 2023

**New Business:**

- [2.](#) Resolution 23-16 A Resolution of The Mayor and Council of The City of Dalton, Georgia Urging the United States Food & Drug Administration to Prioritize and Increase Enforcement Actions Against Manufacturers and Retailers of Illegal Disposable Nicotine Vapor Products in Kid Friendly Flavors, And for Other Purposes
- [3.](#) Resolution 23-17 Property Donation from the Humane Society of Northwest Georgia
- [4.](#) Demolition Agreement and Easement for 911 Market Street
- [5.](#) Demolition Agreement and Easement for 937 Market Street
- [6.](#) Georgia Power Distribution Tree Trim / Clearing Easement Request at Nob North Golf Course
- [7.](#) Mill Line - Change Order #1
- [8.](#) Mill Line - Change Order #2
- [9.](#) Agreement with KRH Architects, Inc. for Heritage Point Park Synthetic Turf Infield Project
- [10.](#) Corrective Action Plan & Permanent Drainage Easement for 1000 E. Lakeshore Drive

**Supplemental Business**

**Announcements**

**Adjournment**

THE CITY OF DALTON  
MAYOR AND COUNCIL MINUTES  
JULY 17, 2023

The Mayor and Council held a meeting this evening at 6:00 p.m. at City Hall. Present were Mayor David Pennington, Council members Dennis Mock, 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 Goodlett, second Council member Mock, the Mayor and Council approved the agenda with the following changes:

Appoint Steve Farrow to the Historic Preservation Commission

Appoint Dennis Mock to the Downtown Development Authority

The vote was unanimous in favor.

PUBLIC COMMENTARY

Alex Vital spoke in opposition of a time change to Alcohol Beverage establishments.

John Wilson spoke in opposition of a time change to Alcohol Beverage establishments.

Darla Chamblis thanked the city council for allowing the library to be removed from the jointly funded services special tax district which provides more annual revenue to the library through tax collections.

PRESENTATION - DACVB TOURISM PRESENTATION - MARGARET THIGPEN

Margaret Thigpen presented the Dalton Convention & Visitors Bureau Travel & Tourism presentation to the Mayor and Council outlining the 2022 Successes and the Economic Impact that travel and tourism brings to Dalton. A copy of this report is a part of these minutes.

City Administrator Andrew Parker stated the City will be partnering with CVB to replace the trolley.

MINUTES

The Mayor and Council reviewed the Mayor & Council Regular Meeting Minutes of June 19, 2023. On the motion of Council member Mock, second Council member Farrow, the minutes were approved. The vote was unanimous in favor.

RESOLUTION 23-14 - ACCEPT THE RESIGNATION OF ANNALEE HARLAN SAMS FROM THE SEAT OF CITY COUNCIL WARD 2

On the motion of Council member Goodlett, second Council member Farrow, the Mayor and Council adopted Resolution 23-14 A Resolution of The Mayor and Council to Accept the Resignation of Annalee Harlan Sams From the Seat of City Council Ward 2 Effective July 17, 2023 at 12:00 o'clock Noon; To Declare A Vacancy; And to Call for A Special Election to Fill the Vacancy. The vote was unanimous in favor.

RESOLUTION 23-15 - TO CALL FOR A SPECIAL ELECTION TO PRESENT QUESTIONS TO THE VOTERS

On the motion of Council member Mock, second Council member Goodlett, the Mayor and Council adopted Resolution 23-15 To Call for a Special Election to Present Questions to The Voters as Provided by H.B. 756, H.B. 758, H.B. 762, and H.B. 786 Of The 2023 General Assembly of Georgia Concerning Homestead Exemptions to Be Conducted by The Election Superintendent in Conjunction with The General Municipal Election of The City of Dalton On November 7, 2023 And for Other Purposes. The vote was unanimous in favor.

(4) 2023 ALCOHOL BEVERAGE APPLICATIONS

Council member Dennis Mock submitted the following 2023 Alcohol Beverage Applications:

On the motion of Council member Mock, second Council member Goodlett, the following New applications were approved:

1. Business Owner: Olive Garden Holdings, LLC  
d/b/a: The Olive Garden Italian Restaurant #6491  
Applicant: Colleen H. Lyons  
Business Address: 1430 West Walnut Ave.  
License Type: Pouring Beer, Wine, and Liquor (Restaurant)  
Disposition: **New**
2. Business Owner: Birdies on Morris Inc.  
d/b/a: Birdies on Morris Inc.  
Applicant: Claribel Cisneros Ochoa  
Business Address: 307 East Morris St.  
License Type: Pouring Beer, Wine (Golf Amusement / Recreation)  
Disposition: **New**
3. Business Owner: Seafood Dalton Inc.  
d/b/a: The Juicy Seafood Kitchen & Bar  
Applicant: Jiaji Zhao  
Business Address: 819 Walnut Square Blvd.  
License Type: Pouring Beer, Wine, and Liquor (Restaurant)  
Disposition: **New**

The vote was unanimous in favor.

On the motion of Council member Mock, second Council member Goodlett, the following address change was approved:

- Business Owner: LRR Investment, LLC  
d/b/a: El Rey De Oro  
Applicant: Luciano Rodriguez  
Business Address: 1103 New Doris St. (Previously at 1523 East Morris St.)  
License Type: Pouring Beer (Tavern / Bar)  
Disposition: **Address Change**

The vote was unanimous in favor.

ORDINANCE 23-13 - BENJAMIN CORDOVA AND MARY MENDOZA

North Georgia Planning Commission Assistant Planning Director Ethan Calhoun presented Ordinance 23-13 The request of Benjamin Cordova and Mary Mendoza to rezone from Transitional Residential (R-6) to High Density Residential (R-7) a tract of land totaling 0.59 acres located at 1905 Abutment Road, Dalton, Georgia. Parcel (12-315-01-004). On the motion of Council member Mock, second Council member Goodlett, the rezoning request was approved. The vote was unanimous in favor.

APPOINTMENT - DALTON-WHITFIELD-VARNELL UNIFIED PLANNING COMMISSION

On the motion of Council member Mock, second Council member Goodlett, the Mayor and Council reappointed Octavio Perez to the Dalton-Whitfield-Varnell Unified Planning Commission to serve a four-year term to expire July 2027. The vote was unanimous in favor.

DALTON MUNICIPAL AIRPORT – ACKNOWLEDGEMENT AND INTENT

Airport Director Andrew Wiersma presented the Acknowledgement and Intent to Receive Tentative Allocation of Federal Funding in the Amount of \$150,000 for Obstruction Removal in the Approach Path of Runway 32 at Dalton Municipal Airport. On the motion of Council member Mock, second Council member Farrow, the Acknowledge and Intent was approved. The vote was unanimous in favor.

AGREEMENT BETWEEN THE CITY OF DALTON AND CROY ENGINEERING

Airport Director Andrew Wiersma presented an Agreement between the City of Dalton and Croy Engineering for Task Order #10 for Obstruction Removal Design in the Runway Protection Zone (RPZ) of Runway 32 at Dalton Municipal Airport. On the motion of Council member Mock, second Council member Goodlett, the Agreement was approved. The vote was unanimous in favor.

RIGHT OF WAY ENCROACHMENT PERMIT – 301 E MORRIS STREET

Public Works Director Chad Townsend presented a Right of Way Encroachment Permit – 301 E Morris Street for the installation of a handrail or pedestrian barrier to allow for overflow dining and an outdoor seating option. On the motion of Council member Goodlett, second Council member Mock, the permit was approved. The vote was unanimous in favor.

INDEMNITY & HOLD HARMLESS AGREEMENT – 420 SHERIDAN AVENUE

Public Works Director Chad Townsend presented an Indemnity & Hold Harmless Agreement – 420 Sheridan Avenue. Townsend stated the area of encroachment is on an un-opened portion of May Street and extends into the right of way by approximately five feet. Townsend further stated that given the topography of the un-open portion of May Street it would not be feasible to construct a future road there and Public Works has no issue with the encroachment. On the motion of Council member Mock, second Council member Farrow, the Agreement was approved. The vote was unanimous in favor.



ADDENDUM #1 TO ALTERNATIVE PROBATION SERVICES CONTRACT

Court Administrator Jason James presented an Addendum #1 to Alternative Probation Services Contract. James stated that after the Department of Community Supervision reviewed all misdemeanor probation contracts statewide, Community Supervision requested several minor clarifications on the Service Agreement. On the motion of Council member Farrow, second Council member Mock, the Addendum was approved. A copy of this Addendum is a part of these minutes. The vote was unanimous in favor.

COURTWARE SOLUTIONS LICENSE AGREEMENT

Court Administrator Jason James presented Courtware Solutions License Agreement to the Mayor and Council stating that there is a slight increase to \$7.00 per citation with a \$2000.00 minimum per month. On the motion of Council member Farrow, second Council member Mock, the Agreement was approved. The vote was unanimous in favor.

FY-2023 BUDGET AMENDMENT #4

CFO Cindy Jackson presented FY-2023 Budget Amendment #4 to adjust various funds for revenue received, adjust for local grant matches, adjust for capital funding and transfer between funds to combine projects funded by multiple revenue sources. On the motion of Council member Farrow, second Council member Mock, the Amendment was approved. The vote was unanimous in favor. A copy of the complete amendment is a part of these minutes.

AGREEMENT WITH KRH ARCHITECTS, INC., - DALTON POLICE DEPARTMENT

City Administrator Andrew Parker presented an Agreement with KRH Architects, Inc., for Property and Evidence Addition at the Dalton Police Department. On the motion of Council member Mock, second Council member Goodlett, the Agreement was approved. The vote was unanimous in favor.

RENEWAL OF LEASE AGREEMENT WITH ROBERT E. SHAW FOR 114 N. PENTZ STREET

City Administrator Andrew Parker presented Renewal of Lease Agreement with Robert E. Shaw for 114 N. Pentz Street for a 20-year period to expire October 31, 2044. On the motion of Council member Farrow, second Council member Goodlett, the Agreement was approved. The vote was unanimous in favor.

RENEWAL OF EMERY CENTER LEASE AGREEMENT

City Administrator Andrew Parker presented Renewal of Emery Center Lease Agreement for a two year period terminating on 07-07-2025. Parker stated the Lessee shall pay \$1.00 per year with the Lessor providing \$600.00 per month in utility assistance. On the motion of Council member Farrow, second Council member Goodlett, the Agreement was approved. The vote was unanimous in favor.

APPOINTMENT - 2024 SPLOST COMMITTEE

On the motion of Council member Farrow, second Council member Goodlett, the following were appointed the 2024 SPLOST Committee

Denise Wood  
Zab Mendez  
Jim Waskin

The vote was unanimous in favor.

APPOINTMENT – HISTORIC PRESERVATION COMMISSION/ DOWNTOWN  
DEVELOPMENT AUTHORITY

Mayor Pennington appointed Steve Farrow to the Historic Preservation Commission and appointed Dennis Mock to the Downtown Development Authority. Each of these appointments are Mayoral Appointments.

MISCELLANEOUS

Mayor Pennington stated that as it relates to a possible time change for Alcohol Beverage Establishments, further review will take place between the City Staff and then will be submitted to the Public Safety Commission.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 6:42 p.m.

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

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

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



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 8/7/23

**Agenda Item:** Resolution 23-16

**Department:** Administration

**Requested By:** Andrew Parker

**Reviewed/Approved  
by City Attorney?** No

**Cost:**

**Funding Source if Not  
in Budget**

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

RESOLUTION 23-16 A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF DALTON, GEORGIA URGING THE UNITED STATES FOOD & DRUG ADMINISTRATION TO PRIORITIZE AND INCREASE ENFORCEMENT ACTIONS AGAINST MANUFACTURERS AND RETAILERS OF ILLEGAL DISPOSABLE NICTOINE VAPOR PRODUCTS IN KID FRIENDLY FLAVORS, AND FOR OTHER PURPOSES.

## **RESOLUTION 23-16**

### **A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF DALTON, GEORGIA URGING THE UNITED STATES FOOD & DRUG ADMINISTRATION TO PRIORITIZE AND INCREASE ENFORCEMENT ACTIONS AGAINST MANUFACTURERS AND RETAILERS OF ILLEGAL DISPOSABLE NICOTINE VAPOR PRODUCTS IN KID FRIENDLY FLAVORS, AND FOR OTHER PURPOSES**

**WHEREAS**, in January 2020 the Food & Drug Administration “FDA” issued industry guidance that detailed the agency’s enforcement priorities relating to e-cigarettes, vapes and other electronic nicotine delivery systems “ENDS” products, that prioritized enforcement against “any flavored, cartridge-based ENDS products; and

**WHEREAS**, the January 2020 guidance created a loophole, whereby all disposable vaping products were insulated from any enforcement for going on three years; and

**WHEREAS**, since January 2020, millions of illegal, disposable vaping products, primarily manufactured in China and produced in kid friendly flavors have poured into the United States; and

**WHEREAS**, since 2019, the CDC’s National Youth Tobacco Survey shows that youth usage of disposable vaping products is up 2188%.

**WHEREAS**, the FDA’s Center for Tobacco Products Dr. Brian King recently stated “the science clearly shows that a majority of youth who use e-cigarettes report that the products they are using are disposable and flavored.”

**WHEREAS**, an overwhelming majority of disposable vaping products have been introduced after the FDA regulatory submission threshold date of August 8, 2016 and/or have not complied with FDA’s regulatory pathways for the marketing of new tobacco products that ensures products on store shelves are appropriate for the protection of public health.

**NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF DALTON, GEORGIA**, that we urge the FDA to provide clear enforcement guidance to retailers and distributors in the United States.

**BE IT FURTHER RESOLVED**, that the FDA publish a directory of disposable vapor products that can be sold subject to FDA enforcement discretion so retailers can remove all illegal disposable vapor products from shelves.

**BE IT FURTHER RESOLVED**, that the federal government allocate resources for federal authorities to enforce these actions across all jurisdictions, at all ports and border control points of entry.

**BE IT FINALLY RESOLVED**, that upon adoption of this resolution the City Clerk shall immediately transmit an electronic copy to every member of the Georgia Congressional Delegation, the White House Office of Intergovernmental Affairs and the Commissioner of the Food & Drug Administration.

SO RESOLVED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

The foregoing Resolution was read on \_\_\_\_\_. A motion for passage of the Resolution was made by Council member\_\_\_\_\_, second by Council member \_\_\_\_\_ and upon the question the vote is \_\_\_\_\_ ayes, \_\_\_\_\_ nays and the Resolution is adopted.

Attest:

CITY OF DALTON, GEORGIA

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

\_\_\_\_\_  
Mayor



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 8/7/23

**Agenda Item:** Resolution 23-17

**Department:** Administration

**Requested By:** Andrew Parker

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

**Cost:**

**Funding Source if Not  
in Budget**

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

Resolution 23-17 the Humane Society of Northwest Georgia, Inc., a non-profit Corporation of the State of Georgia, is willing to donate to the City of Dalton for public uses that tract or parcel of real estate being Parcel 12-179-02-124.

**CITY OF DALTON  
RESOLUTION**

**RESOLUTION NO. 23-17**

WHEREAS, the Humane Society of Northwest Georgia, Inc., a non-profit Corporation of the State of Georgia, is willing to donate to the City of Dalton for public uses that tract or parcel of real estate shown in Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, the City of Dalton is desirous and agreeable to accept the transfer of title and donation of such tract or parcel of realty from the Humane Society of Northwest Georgia, Inc.;

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

The City of Dalton does hereby accept donation and transfer of title to that tract or parcel of real estate shown and described in Exhibit "A" for use of the property for public purposes.

SO RESOLVED, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

City of Dalton

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

Attest:

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

The foregoing Resolution was read at regular meeting of the Mayor and Council on \_\_\_\_\_, 2023. Upon Motion by Council member \_\_\_\_\_ and second by Council member \_\_\_\_\_ the question was called and the vote was \_\_\_\_\_ AYES, \_\_\_\_\_ NAYS and the Motion DOES pass.

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

## **EXHIBIT "A"**

All that tract or parcel of land lying and being in Land Lot 179 in the 12<sup>th</sup> District and 3<sup>rd</sup> Section of Whitfield County, Georgia, being depicted as "DONATION TRACT," being designated as a tract of 4.901 acres as shown on that certain plat of survey prepared by Lowery & Associates, Mitchell Lowery, GRLS No. 3109, dated 3-26-2018 filed and recorded in Plat Book E, Page 1096, Whitfield County, Georgia Land Records, reference to which plat is hereby made and incorporated herein by reference for a more particular description of said property.

GRANTOR HEREBY RESERVES AND MAKES THIS CONVEYANCE subject to a 50 feet in width non-exclusive perpetual easement for ingress, egress and the installation, maintenance and operation of utilities, said easement being shown on the plat referred to above and the north line of said 50 feet in width easement being more particularly described as follows:

BEGINNING at a rebar set located on the east right of way line of Frazier Avenue at the northwest corner of the said Donation Tract; thence running south 89 degrees 56 minutes 30 seconds east a distance of 299.68 feet as measured along the north line of said Donation Tract (said line being the south line of existing Phase 1 lots) and the north line of said 50 feet in width easement to a rebar set at the northwest corner of property now or formerly owned by J & J Flooring Group.



---

STATE OF GEORGIA	§	TITLE NOT EXAMINED
	§	QUITCLAIM DEED
COUNTY OF WHITFIELD	§	

**THIS INDENTURE**, made this \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Twenty Three, between **HUMANE SOCIETY OF NORTHWEST GEORGIA, INC.**, as Party of the First Part, and **CITY OF DALTON, GEORGIA**, a municipal corporation of the State of Georgia, as Party of the Second Part:

**WITNESSETH:** That the said Party of the First Part, for and in consideration of DEED OF GIFT AND OTHER GOOD AND VALUABLE CONSIDERATION, has bargained, sold, and by these presents does remise, release and forever quit claim to the said Parties of the Second Part, their successors and/or assigns, all the right, title, interest, claim or demand the said Party of the First Part, have or may have had in and to the following described land:

**SEE EXHIBIT "A" ATTACHED HERETO**

The purpose of this Quitclaim Deed is to relinquish any interest Grantor may have in the above-described property.

With all the rights, members and appurtenances to the said Parties of the Second Part, in any wise appertaining or belonging.

To have and to hold the said above-described property to the said Parties of the Second Part so that neither the said Party of the First Part, nor his heirs, executors and/or assigns, nor any other person or persons claiming under them, shall at any time, by any means, have, claim or demand any right or title to the aforesaid.

**IN WITNESS WHEREOF**, the said Party of the First Part has hereunto set his hand and affixed his seal, on the day and year first above-written.

**HUMANE SOCIETY OF NORTHWEST  
GEORGIA, INC.**

Signed, sealed and delivered  
this \_\_\_\_ day of \_\_\_\_\_,  
2023, in the presence of:

BY: \_\_\_\_\_ (SEAL)  
TITLE: \_\_\_\_\_

\_\_\_\_\_  
**WITNESS**

ATTEST: \_\_\_\_\_ (SEAL)  
TITLE: \_\_\_\_\_

\_\_\_\_\_  
**NOTARY PUBLIC**

EXP. DATE: \_\_\_\_\_

[SEAL]

The law firm of Gregory H. Kinnamon, P.C. has not examined title to the above described property and disclaims any liability as a result of anything that might be disclosed thereby.

\_\_\_\_\_  
G:\mdocs\DEEDS\cityofdalton.humaneociety.wpd

EXHIBIT "A"

ALL that tract or parcel of land lying and being in Land Lot 179 in the 12th District and 3rd Section of Whitfield County, Georgia, being depicted as "DONATION TRACT", being designated as a tract of 4.901 acres as shown on that certain plat of survey prepared by Lowery & Associates, Mitchell Lowery, GRLS No. 3109, dated 3-26-2018 filed and recorded in Plat Book E Page 1096, Whitfield County, Georgia Land Records, reference to which plat is hereby made and incorporated herein by reference for a more particular description of said property.

GRANTOR HEREBY RESERVES AND MAKES THIS CONVEYANCE subject to a 50 feet in width non-exclusive perpetual easement for ingress, egress and the installation, maintenance and operation of utilities, said easement being shown on the plat referred to above and the north line of said 50 feet in width easement being more particularly described as follows:

BEGINNING at a rebar set located on the east right of way line of Frazier Avenue at the northwest corner of the said Donation Tract; thence running south 89 degrees 56 minutes 30 seconds east a distance of 299.68 feet as measured along the north line of said Donation Tract (said line being the south line of existing Phase 1 lots) and the north line of said 50 feet in width easement to a rebar set at the northwest corner of property now or formerly owned by J&J Flooring Group.



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 8/7/23

**Agenda Item:** Demolition Agreement and Easement for 911 Market Street

**Department:** Administration

**Requested By:** Andrew Parker

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

**Cost:**

**Funding Source if Not in Budget**

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

Demolition Agreement and Easement for abandoned and dilapidated signage located at 911 Market Street

Return To:  
Terry L. Miller  
Mitchell & Mitchell, P. C.  
108 S. Thornton Ave.  
P. O. Box 668  
Dalton, GA 30722-0668

Cross Index: Deed Book 6649, Page 548

---

Georgia, Whitfield County

## **DEMOLITION AGREEMENT AND EASEMENT**

THIS AGREEMENT, made and entered, by and between the City of Dalton ("City"), a Georgia municipal corporation, and 4Partners, LLC ("Owner"), witness the following:

### **RECITALS**

The City claims that the Sign structure (shown by photo in Exhibit "B"), referred to herein as "the Sign" located at 911 Market Street Dalton, Georgia, with the legal description as shown in Exhibit "A" attached hereto and made a part hereof:

Tax Parcel I. D. # 12-261-01-006

is abandoned and/or dilapidated which amounts to a violation of the City's ordinances. The City contacted Owner of the Sign and has demanded that the Owner pay for the removal of the Sign because it is in violation of City Ordinances. The City claims that removal of the Sign is for the betterment of the public's health, safety, and welfare. The Owner is unable to demolish the Sign expediently. As a result, the parties entered into negotiations to resolve their dispute.

Now, therefore, the parties hereto agree as follows:

1. Offer & Acceptance. The City offers the consideration listed in item 2. below, in exchange for the consideration listed in items 3. and 4. below from Owner, to settle the above-cited claims. Owner accepts said offer.

2. Consideration by City. The City, its agents and representatives agree to do the following:

(a) To remove the Sign by crane from the Property and to dispose of the salvage remains without requirement of Owner to take further action to dispose of the salvage. Such removal shall occur as soon as possible, but no later than ninety (90) days following the execution of this Agreement.

(b) To leave the Real Property without the Sign after the removal has occurred in as good condition as it existed on the date of the Agreement and to perform its demolition work in a workmanlike manner for which Owner shall have no liability to any third person.

(c) To remove any trees or shrubs that the City determines must be removed to complete the demolition, in the sole discretion of City staff.

(d) Within sixty (60) days after the work contemplated by this Agreement is completed, to provide the Owner with an invoice identifying the costs for: i) title search (\$300.00) if any, and ii) cost for crane equipment and operator to remove the Sign. Invoice will be sent to Owner at this address: 613 S. 3<sup>rd</sup> Avenue, Chatsworth, GA 30705.

3. Consideration by Owner. Owner, his agents and representatives agree to the following:

(a) Owner shall remove all personal property from the Property at least twenty four (24) hours prior to when the Sign removal is scheduled to occur as the City may reasonably require to perform the work safely. Owner agrees that the Sign

or its salvage remains shall be considered abandoned and thereby transferred to the City which shall have the right and sole discretion to dispose of it as it sees fit.

(b) Owner specifically agrees that it will not interfere with the removal of the sign or debris in any manner.

(c) Owner shall permit all trees and shrubs located on the Property that may impede removal of the Sign to be removed at the City's discretion without any interference.

(d) Owner shall receive the City's invoice referenced in paragraph 2( d) of this Agreement and shall pay same upon receipt but not later than thirty (30) days thereafter.

(e) Owner waives all objections to any special assessment upon the Real Property of the amount identified in the invoice, and if Owner fails to pay same, any lien filed against the Property in conjunction therewith.

(f) By his signature on this Agreement, Owner hereby grants the City authority to act on his behalf to disconnect all utilities to the Sign at the point of origin or mains.

(g) Owner represents to the City that any and all insurance policies covering the Sign have been cancelled and are, therefore, no longer in force and effect.

(h) The Owner, his agents and representatives release the City, its agents and assigns from all claims, demands, suits, judgments, and/or causes of action of any kind arising out of the City's actions taken pursuant to this Agreement. The Owner shall indemnify and hold the City harmless of and from any and all claims, suits, actions or judgments, including all expenses, attorneys' fees, witnesses fees, cost of defending any such action or claim, or appeals, arising out of the City's actions taken pursuant to this Agreement.

4. Easement. The Owner hereby grants the City and its contractors full easement and right of entry to accomplish the purposes set forth in Section 2 (a) hereof but limited temporarily to such time as necessary for completion of such work set forth in paragraph 2 of this Agreement.

5. Additional Promises. The parties agree that no promise or inducement has been offered except as herein set forth. The parties voluntarily enter into this Agreement.

6. Integration. The parties agree that this Agreement contains the entire understandings between and among the parties, both written and oral, and supersedes any prior understandings and agreements among them, both written and oral, respecting the subject matter of this Agreement.

7. Modification. This Agreement shall not be modified, amended or supplemented without an authorized, written agreement between the parties.

8. Successors & Assigns. This Agreement shall be binding upon the heirs, executors, administrators, successors, representatives, and assigns of the parties.

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

10. Severability. If any portion of this Agreement is found to be unenforceable for any reason, then the remainder shall remain in full force and effect.

11. Counterparts; Headings. This Agreement may be executed in two or more counterparts, each of which when executed shall be deemed to be an original and when taken together shall constitute one and the same agreement. The headings contained in this Agreement are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.



In Witness Whereof, the parties have executed the above and foregoing document.

Dated \_\_\_\_\_, 20\_\_\_\_.

**4 Partners LLC**

Dated \_\_\_\_\_, 20\_\_\_\_.

**City of Dalton**

\_\_\_\_\_  
By: Its Member/Manager

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

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public  
My commission expires:

**EXHIBIT "A"**

All that tract or parcel of land lying and being in Land Lot No. 261 in the 12th District and 3rd Section of Whitfield County, Georgia, and being more particularly described as per plat of survey prepared by Marcus Eugene Cook, Georgia Registered Land Surveyor No. 1935, dated January 11, 1990, and being more particularly described according to said survey as follows:

**BEGINNING** at an iron pin located on the east line of Land Lot No. 261, said iron pin being located south 02 degrees 07 minutes 37 seconds west a distance of 200 feet from an iron pin marking the intersection of said east line of said Land Lot No. 261 with the south right of way line of Walnut Avenue; thence from said point of beginning south 02 degrees 07 minutes 37 seconds west a distance of 306.98 feet to an iron pin; thence north 81 degrees 05 minutes 00 seconds west a distance of 318.10 feet to an iron pin; thence north 20 degrees 46 minutes 00 seconds east a distance of 285.10 feet to an iron pin; thence north 86 degrees 59 minutes 50 seconds west a distance of 165.47 feet to an iron pin located on the east right of way line of Market Street; thence north 03 degrees 06 minutes 00 seconds east, along the east right of way line of Market Street, a distance of 40 feet to an iron pin; thence south 82 degrees 28 minutes 00 seconds east a distance of 200 feet to an iron pin; thence south 80 degrees 33 minutes 18 seconds east a distance of 191.98 feet to an iron pin located on the east line of Land Lot No. 261 and the **POINT OF BEGINNING**.

ALSO conveyed herein is a perpetual non-exclusive easement for ingress and egress to the above described property, said easement being in Land Lot No. 261 in the 12th District and 3rd Section of Whitfield County, Georgia, and running in a southerly direction from Walnut Avenue to the north line of the above described property and said easement being more particularly described as follows:

**BEGINNING** at a point located on the south right of way line of Walnut Avenue, said point being located north 80 degrees 26 minutes west a distance of 153.60 feet from the intersection of the said south right of way line of Walnut Avenue with the east line of said Land Lot No. 261; thence south 27 degrees 58 minutes 57 seconds east a distance of 52.51 feet; thence south 09 degrees 34 minutes west a distance of 157 feet; thence north 80 degrees 33 minutes 18 seconds west a distance of 24 feet; thence north 09 degrees 34 minutes east a distance of 148.89 feet; thence north 27 degrees 58 minutes 57 seconds west a distance of 62.80 feet to a point located on the south right of way line of Walnut Avenue; thence south 80 degrees 26 minutes east, along the south right of way line of Walnut Avenue, a distance of 30.27 feet to a point and the **POINT OF BEGINNING**.

For prior title, see Deed Book 5972 Page 45, Whitfield County, Georgia Land Records.

**CITY OF DALTON**

P.O. BOX 1205  
DALTON, GEORGIA 30722  
PHONE: 706-278-9500  
[code@daltonga.gov](mailto:code@daltonga.gov)  
[www.daltonga.gov](http://www.daltonga.gov)

**CODE COMPLIANCE**

Date: 06/08/2023

4 PARTNERS LLC  
613 S 3Rd Ave  
CHATSWORTH, GA 30705

Reference Address: 911 Market St, Dalton, GA, 30720  
Parcel #: 12-261-01-006

**NOTICE OF VIOLATION**

Owner and/or Occupant,

On or about 06/08/2023, 2022 at approximately 08:46:26 the property located at 911 Market St, Dalton, GA, 30720 was inspected due to visible violations observed by a Code Compliance Inspector from the public roadway. Upon inspection of the above referenced property it was determined the property is not within compliance of the International Property Maintenance Code (City of Dalton Code of Ordinances Code Section 22-3 and 22-96).

The following issues are in non-compliance and should be addressed immediately. The owner and/or occupant has 30 working days from the date of this letter to come within, or have scheduled to come within, compliance.

**Municipal Code:** Signs; Abandoned Article VI 6.3

**Description:** Nonconforming signs which have been abandoned, shall be removed in their entirety by the record owner of the building or the person who obtained the sign license, whichever owns the sign or portion thereof, within 90 days after the business using the sign closes or ceases to operate on the premises where the sign is located.

**Resolution:** Remove sign within 90 days of business closure or ceasing operations on premises or 30 days after notice.

Additional Notes:

**This notice is Not a Court Summons and No Civil fines are applicable at this time. By signing below you are Only acknowledging receipt of this letter.**

Received By: \_\_\_\_\_ Date: 06/08/2023 Time: 08:46:26

Code Compliance Inspector: Dan Lewallen

Your immediate attention to the above matter is greatly appreciated. Failure to correct the stated violations could result in a court summons and civil penalties.

Please direct all inquiries regarding this matter to the below listed Inspector.

Dan Lewallen

City Of Dalton  
Code Compliance Inspector  
300 W Waugh Street  
PO Box 1205  
Dalton, Georgia 30722  
(706)529-8769

Photo	Details
	<p><b>Title:</b> Sign facing northeast.</p> <p><b>Date:</b> May 15, 2023 12:35</p> <p><b>Uploaded by:</b> Dan Lewallen</p>



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 8/7/23

**Agenda Item:** Demolition Agreement and Easement for 937 Market Street

**Department:** Administration

**Requested By:** Andrew Parker

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

**Cost:**

**Funding Source if Not in Budget**

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

Demolition Agreement and Easement for abandoned and dilapidated signage located at 937 Market Street

Return To:  
Terry L. Miller  
Mitchell & Mitchell, P. C.  
108 S. Thornton Ave.  
P. O. Box 668  
Dalton, GA 30722-0668

Cross Index: Deed Book 6673, Page 179

---

Georgia, Whitfield County

### **DEMOLITION AGREEMENT AND EASEMENT**

THIS AGREEMENT, made and entered, by and between the City of Dalton ("City"), a Georgia municipal corporation, and Venture Partners of Dalton, LLC ("Owner"), witness the following:

#### **RECITALS**

The City claims that the sign structure (shown by photo in Exhibit "B"), referred to herein as "the Sign" located at 937 Market Street Dalton, Georgia, with the following legal description:

[SEE EXHIBIT "A" ATTACHED ]

Tax Parcel I. D. # 12-261-33-000

is abandoned and/or dilapidated (hereafter "the Property"), which amounts to a violation of the City's ordinances. The City contacted Owner of the Sign and has demanded that the Owner pay for the removal of the Sign because it is in violation of City Ordinances. The City claims that removal of the Sign is for the betterment of the

public's health, safety, and welfare. The Owner is unable to remove Sign expediently. As a result, the parties entered into negotiations to resolve their dispute.

Now, therefore, the parties hereto agree as follows:

1. Offer & Acceptance. The City offers the consideration listed in item 2. below, in exchange for the consideration listed in items 3. and 4. below from Owner, to settle the above-cited claims. Owner accepts said offer.

2. Consideration by City. The City, its agents and representatives agree to do the following:

(a) To remove the Sign by crane from the Property and to dispose of the salvage remains without requirement of Owner to take further action to dispose of the salvage. Such removal shall occur as soon as possible, but no later than ninety (90) days following the execution of this Agreement.

(b) To leave the Property without the Sign after the removal has occurred in as good condition as it existed on the date of the Agreement and to perform its removal work in a workmanlike manner for which Owner shall have no liability to any third person.

(c) To remove any trees or shrubs that the City determines must be removed to complete the demolition, in the sole discretion of City staff.

(d) Within sixty (60) days after the work contemplated by this Agreement is completed, to provide the Owner with an invoice identifying the costs for: i) title search (\$300.00) if any and ii) cost for crane equipment and operator to remove the Sign. Invoice will be sent to Owner at this address: 130 Misty Meadows Lane, Ringgold, GA 30736.

3. Consideration by Owner. Owner, his agents and representatives agree to the following:

(a) Owner shall remove all personal property from the Property at least twenty four (24) hours prior to when the Sign removal is scheduled to occur as the

City may reasonably require to perform the work safely. Owner agrees that the Sign or its salvage remains shall be considered abandoned and thereby transferred to the City which shall have the right and sole discretion to dispose of it as it sees fit.

(b) Owner specifically agrees that it will not interfere with the removal of the Sign or debris in any manner.

(c) Owner shall permit all trees and shrubs located on the Property that may impede removal of the Sign to be removed at the City's discretion without any interference.

(d) Owner shall receive the City's invoice referenced in paragraph 2( d) of this Agreement and shall pay same upon receipt but not later than thirty (30) days thereafter.

(e) Owner waives all objections to any special assessment upon the Property of the amount identified in the invoice, and if Owner fails to pay same, any lien filed against the Property in conjunction therewith.

(f) By his signature on this Agreement, Owner hereby grants the City authority to act on its behalf to disconnect all utilities to the Sign at the point of origin or mains.

(g) Owner represents to the City that any and all insurance policies covering the Sign have been cancelled and are, therefore, no longer in force and effect.

(h) The Owner, his agents and representatives release the City, its agents and assigns from all claims, demands, suits, judgments, and/or causes of action of any kind arising out of the City's actions taken pursuant to this Agreement. The Owner shall indemnify and hold the City harmless of and from any and all claims, suits, actions or judgments, including all expenses, attorneys' fees, witnesses fees, cost of defending any such action or claim, or appeals, arising out of the City's actions taken pursuant to this Agreement.



4. Easement. The Owner hereby grants the City and its contractors full easement and right of entry to accomplish the purposes set forth in Section 2 (a) hereof but limited temporarily to such time as necessary for completion of such work set forth in paragraph 2 of this Agreement.

5. Additional Promises. The parties agree that no promise or inducement has been offered except as herein set forth. The parties voluntarily enter into this Agreement.

6. Integration. The parties agree that this Agreement contains the entire understandings between and among the parties, both written and oral, and supersedes any prior understandings and agreements among them, both written and oral, respecting the subject matter of this Agreement.

7. Modification. This Agreement shall not be modified, amended or supplemented without an authorized, written agreement between the parties.

8. Successors & Assigns. This Agreement shall be binding upon the heirs, executors, administrators, successors, representatives, and assigns of the parties.

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

10. Severability. If any portion of this Agreement is found to be unenforceable for any reason, then the remainder shall remain in full force and effect.

11. Counterparts; Headings. This Agreement may be executed in two or more counterparts, each of which when executed shall be deemed to be an original and when taken together shall constitute one and the same agreement. The headings contained in this Agreement are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

In Witness Whereof, the parties have executed the above and foregoing document.

Dated \_\_\_\_\_, 20\_\_\_\_.

Venture Partners of Dalton, LLC

Dated \_\_\_\_\_, 20\_\_\_\_.

City of Dalton

\_\_\_\_\_  
By: Its Member/Manager

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

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public  
My commission expires:

**EXHIBIT "A"**

All that tract or parcel of land lying and being in Land Lot No. 261 of the 12th District and 3rd Section of Whitfield County, Georgia, and being more particularly described by plat of survey by Whitfield Engineering Company dated September 28, 1989, and being more particularly described as follows:

**TO FIND THE TRUE POINT OF BEGINNING** of the tract of land herein described, commence at point located at the intersection of the east right of way line of Market Street and the south right of way line of Walnut Avenue; thence south 03 degrees 06 minutes 00 seconds west, along the east right of way line of Market Street a distance of 217.75 feet to a point; thence south 20 degrees 03 minutes 00 seconds west, along the east right of way line of Market Street a distance of 679.52 feet to the southeast terminus of the existing right of way of Market Street; thence south 20 degrees 03 minutes west, along the proposed east right of way line of Market Street a distance of 3.96 feet; thence along an arc with a radius of 65 feet a distance of 15.03 feet along the proposed east right of way of Market Street; thence south 02 degrees 53 minutes 45 seconds west, along the proposed east right of way line of Market Street a distance of 37.88 feet to a point which is the **TRUE POINT OF BEGINNING** of the tract of land herein described; from the **TRUE POINT OF BEGINNING** thus established, thence south 87 degrees 06 minutes 15 seconds east a distance of 165 feet to an iron pin; thence south 02 degrees 53 minutes 45 seconds west a distance of 140 feet to an iron pin; thence north 87 degrees 06 minutes 15 seconds west a distance of 165 feet to an iron pin on the proposed east right of way line of Market Street; thence north 02 degrees 53 minutes 45 seconds east a distance of 140 feet to an iron pin which is **THE POINT OF BEGINNING**.

**TOGETHER WITH** and subject to a non-exclusive perpetual easement 50 feet in width for the purpose of ingress and egress as well as for the placement of utility services above, upon and/or below the following described real estate, to-wit:

**BEGINNING** at the southeast terminus of Market Street, said point being located in a southerly direction, as measured along said right of way line, a distance of 897.27 feet from the point of intersection of said right of way line and the south right of way line of Walnut Avenue; thence south 20 degrees 03 minutes west a distance of 3.96 feet to a point; thence along an arc with a radius of 65 feet a distance of 15.03 feet to a point; thence south 02 degrees 53 minutes 45 seconds west a distance of 177.88 feet to an iron pin; thence north 87 degrees 06 minutes 15 seconds west a distance of 50 feet, more or less, to the property now or formerly owned by Cracker Barrel Old Country Store, Inc.; thence in a northerly direction along the eastern boundary of property now or formerly owned by Cracker Barrel Old Country Store, Inc. to the southwesterly terminus of the public right of way designated as Market Street; thence in an easterly direction along the southern terminus of the public right of way designated as Market Street to its southeasterly terminus and **THE POINT OF BEGINNING**.

For prior title, see Deed Book 6649 Page 672, Whitfield County, Georgia Land Records.

**CITY OF DALTON**

P.O. BOX 1205  
DALTON, GEORGIA 30722  
PHONE: 706-278-9500  
[code@daltonga.gov](mailto:code@daltonga.gov)  
[www.daltonga.gov](http://www.daltonga.gov)

**CODE COMPLIANCE**

Date: 06/07/2023

SMART CHOICE DALTON LLC  
130 Misty Meadows Lane  
RINGGOLD, GA 30736

Reference Address: 937 Market St, Dalton, GA, 30720  
Parcel #: 12-261-33-000

**NOTICE OF VIOLATION**

Owner and/or Occupant,

On or about 06/07/2023, 2022 at approximately 12:32:54 the property located at 937 Market St, Dalton, GA, 30720 was inspected due to visible violations observed by a Code Compliance Inspector from the public roadway. Upon inspection of the above referenced property it was determined the property is not within compliance of the International Property Maintenance Code (City of Dalton Code of Ordinances Code Section 22-3 and 22-96).

The following issues are in non-compliance and should be addressed immediately. The owner and/or occupant has 30 working days from the date of this letter to come within, or have scheduled to come within, compliance.

**Municipal Code:** Signs; Abandoned Article VI 6.3

**Description:** Nonconforming signs which have been abandoned, shall be removed in their entirety by the record owner of the building or the person who obtained the sign license, whichever owns the sign or portion thereof, within 90 days after the business using the sign closes or ceases to operate on the premises where the sign is located.

**Resolution:** Remove sign within 90 days of business closure or ceasing operations on premises or 30 days after notice.

Additional Notes:

**This notice is Not a Court Summons and No Civil fines are applicable at this time. By signing below you are Only acknowledging receipt of this letter.**

Received By: \_\_\_\_\_ Date: 06/07/2023 Time: 12:32:54

Code Compliance Inspector: Dan Lewallen

Your immediate attention to the above matter is greatly appreciated. Failure to correct the stated violations could result in a court summons and civil penalties.

Please direct all inquiries regarding this matter to the below listed Inspector.

Dan Lewallen  
  
City Of Dalton  
Code Compliance Inspector  
300 W Waugh Street  
PO Box 1205  
Dalton, Georgia 30722  
(706)529-8769

Photo	Details
 A street-level photograph of an Outback restaurant. A tall, rusted metal signpost stands in the foreground, with a black rectangular sign attached. The Outback logo is visible on a building in the background. A red timestamp '2023/05/15 10:33' is in the bottom right corner.	<p><b>Title:</b> Street view</p> <p><b>Date:</b> May 15, 2023 12:26</p> <p><b>Uploaded by:</b> Dan Lewallen</p>
 A close-up photograph of a rusted metal signpost. A black rectangular sign is attached to the post. A red timestamp '2023/05/15 10:33' is in the bottom right corner.	<p><b>Title:</b> Rust and inoperable sign.</p> <p><b>Date:</b> May 15, 2023 12:26</p> <p><b>Uploaded by:</b> Dan Lewallen</p>

Photo	Details
 <p>A photograph of a street intersection with a large, overgrown bush in the foreground. A signpost is visible behind the bush, and a red timestamp '2023/06/07 10:52' is in the bottom right corner.</p>	<p><b>Title:</b> Abandoned Sign/overgrowth</p> <p><b>Date:</b> Jun 07, 2023 12:30</p> <p><b>Uploaded by:</b> Dan Lewallen</p>
 <p>A photograph of a street intersection with a large, overgrown bush in the foreground. A signpost with the word 'Enter' is visible. A red timestamp '2023/06/07 10:54' is in the bottom right corner.</p>	<p><b>Title:</b> Abandoned Sign</p> <p><b>Date:</b> Jun 07, 2023 12:30</p> <p><b>Uploaded by:</b> Dan Lewallen</p>



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** August 7, 2023

**Agenda Item:** Georgia Power – Distribution Tree Trim / Clearing Easement Request at Nob North Golf Course

**Department:** Recreation

**Requested By:** Caitlin Sharpe

**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:**

Through this easement, Georgia Power will complete tree trimming of existing trees that impede within 20 feet of the power lines located at Nob North Golf Course. The objective of this effort is to increase the reliability of power in this area. This is a permanent easement.



08-03-2022

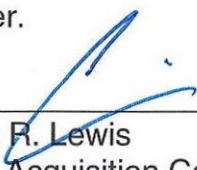
City of Dalton  
300 W. Waugh Street  
Dalton, GA 30720

**RE: LIMS#: 2022040181 Parcel#: 037  
Project Name: VARNELL-TREE TRIM-Q0252-CVT SECTION 1 (2023 BIL)  
(WHITFIELD COUNTY) DL**

**Parcel Address: 298 Nob North Dr., Cohutta, GA 30710  
Tax Parcel ID : 11-170-02-000**

Georgia Power Company ("Georgia Power") wants to acquire a tree trimming easement impacting the above referenced property.

Georgia Power is offering \$ 14,931 upon receipt of the Easement that has been signed by you (please note that the Easement must also be signed by a witness and a notary public). Georgia Power agrees and acknowledges that this offer letter constitutes an agreement enforceable against Georgia Power. The below signatory is a duly authorized agent of Georgia Power.

  
Chris R. Lewis  
Land Acquisition Coordinator, Georgia Power Company

I/We, City of Dalton, accept the above referenced offer and understand that a compensation check will be federal expressed within 15 business days.

\_\_\_\_\_  
City of Dalton

\_\_\_\_\_  
N/A

**OR**

I/We, City of Dalton, understand that any offer amount over \$600 requires a W-9 which must include a social security number. I/We do not wish to provide such information and would like to receive **\$599** in lieu of the offer amount above. I/we understand that a compensation check will be federal expressed within 15 business days.

\_\_\_\_\_  
City of Dalton

\_\_\_\_\_  
N/A



After recording, return to:  
Georgia Power Company  
Attn: Land Acquisition (Recording)  
241 Ralph McGill Blvd NE  
Bin 10151  
Atlanta, GA 30308-3374

-----  
PROJECT 2022040181      LETTER FILE      DEED FILE      MAP FILE  
ACCOUNT NUMBER    10585407-GPC9596-0-12.02.01  
NAME OF LINE/PROJECT: VARNELL - TREE TRIM - Q0252-CVT SECTION 1 (2023 BIL) (WHITFIELD COUNTY) DL  
PARCEL NUMBER 037  
-----

STATE OF GA  
WHITFIELD COUNTY

**DISTRIBUTION TREE TRIM / CLEARING EASEMENT**

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid by GEORGIA POWER COMPANY, a Georgia corporation (the "Company"), the receipt and sufficiency of which are hereby acknowledged, **CITY OF DALTON** (the "Undersigned", which term shall include heirs, successors and/or assigns), whose mailing Address is **300 W Waugh St, Dalton, GA 30720-3143**, does hereby grant and convey to the Company, its successors and assigns, the right, privilege and easement to cut, trim, remove, clear and keep clear any and all trees and other obstructions located on the Easement Area (as defined below), as well as the right, privilege and easement to cut, trim and/or remove any trees which now or may hereafter endanger the electric transmission and/or distribution lines and/or communication lines of the Company, its successors and assigns now constructed or which may hereafter be constructed on or adjacent to the Property (as defined below) and the right of ingress and egress over the Property to and from the Easement Area in connection therewith.

The "Property" is defined as that certain tract of land owned by the Undersigned at 298 NOB NORTH DR, COHUTTA, GA 30710 (Tax Parcel ID No. 11-170-02-000) in Land Lot 169, 170, 191, 192 of the 11 District of Whitfield County, Georgia.

The "Easement Area" is defined as the portion of the Property located within twenty (20) feet of the centerline of the existing overhead of the existing electric transmission, distribution and/or communication lines of the Company, such Easement area being more particularly shown on "Exhibit A" attached hereto and made a part hereof.

[Signature(s) on Following Page(s)]

-----  
PARCEL 037

NAME OF  
LINE/PROJECT:

VARNELL - TREE TRIM - Q0252-CVT SECTION 1 (2023  
BIL) (WHITFIELD COUNTY) DL  
-----

IN WITNESS WHEREOF, the Undersigned has/have hereunto set his/her/their  
hand(s) and seal(s), this \_\_\_\_\_ day of \_\_\_\_\_,

Signed, sealed and delivered in the CITY OF DALTON  
presence of:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ (SEAL)  
Name:  
Title:

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

Attest: \_\_\_\_\_ (SEAL)  
Name:  
Title:

[CORPORATE SEAL]



GSS - Land GIS  
Prepare Date: 5/27/2022

Legend

Existing Distribution

20 Ft. Tree Trim / Clearing Easement

Subject Tract

Tax Parcel

037  
CITY OF DALTON  
298 Nob North Dr  
Tax Parcel Id #11-170-02-000

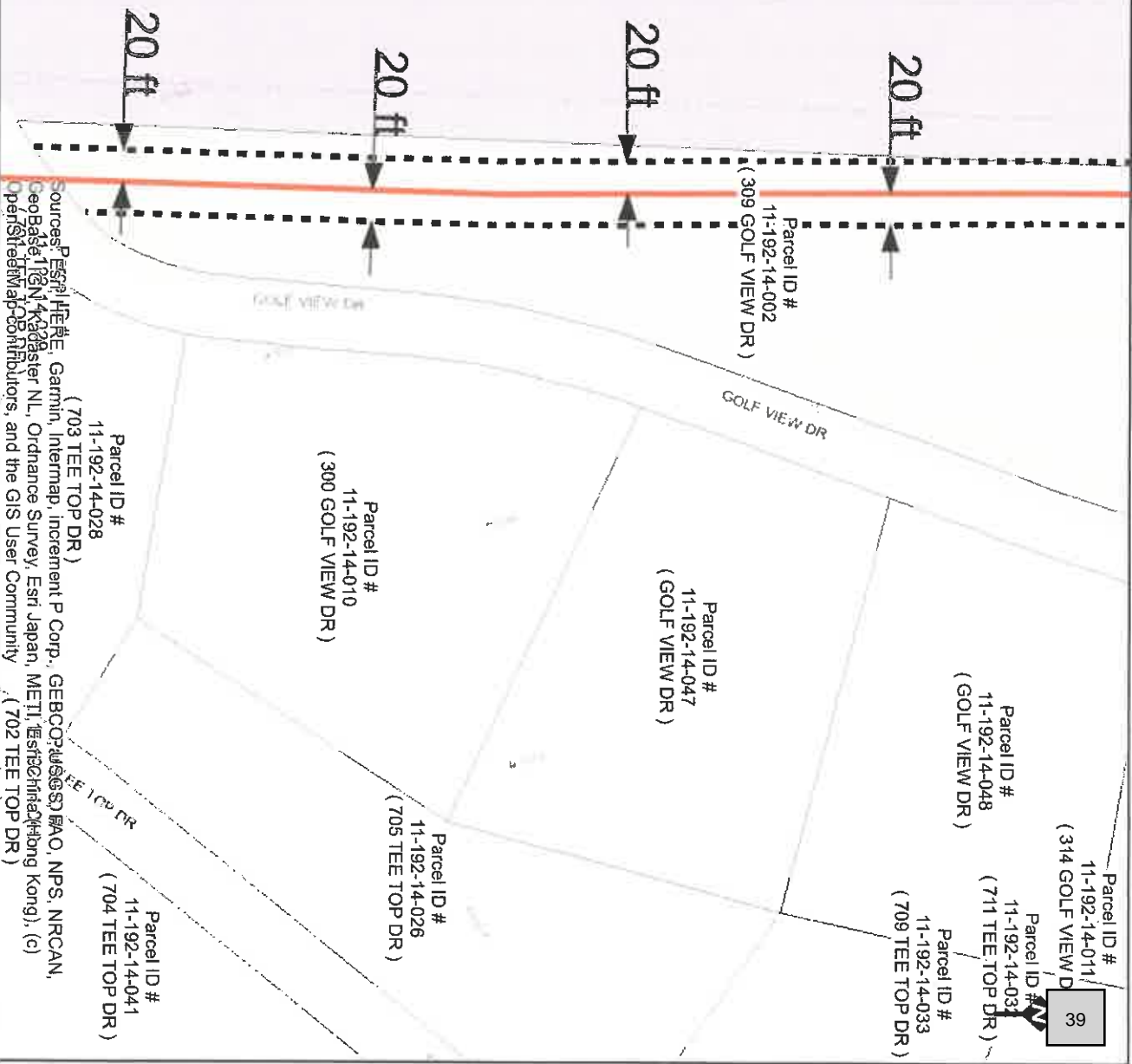


Exhibit A

PARCEL 037 (1 OF 4)

MAP NOT BASED ON SURVEY DATA  
Structure and line locations based on Pre-Engineering data and subject to change.



VARNELL - TREE TRIM -  
Q0252-CVT SECTION 1 (2023 BIL)  
(WHITEFIELD COUNTY)  
DISTRIBUTION LINE  
LIMS: 2022040181



## GSS - Land GIS

Prepare Date: 5/27/2022

037  
CITY OF DALTON  
298 Nob North Dr  
Tax Parcel Id #11-170-02-000

Parcel ID #  
11-192-14-045  
( 326 GOLF VIEW DR )

0

Parcel ID #  
11-192-14-007  
(321 GOLF VIEW DR)

Parcel ID #  
11-192-14-009  
( 322 GOLF VIEW DR )

Parcel ID #  
11-192-14-004  
(317 GOLF VIEW DR)

Parcel ID #  
11-192-14-052  
( 318 GOLF VIEW DR )

Parcel ID #  
11-192-14-006  
( 313 GOLF VIEW DR )

Parcel ID #  
11-192-14-011  
(314 GOLF VIEW DR)

Parcel ID #  
11-192-14-002

Sources: Esri, Natural Earth, OpenStreetMap, incremental, @esri, #EBCO, USGS, FAO, NPS, NREA, ID # GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri, BNP, METI, Esri China (Hong Kong), (c) 2012-14/032 OpenStreetMap contributors, and the GIS User Community DR (711 TEE TOP DR)

## Exhibit A

PARCEL 037 (2 OF 4)

**VARNELL - TREE TRIM -  
Q0252-CVT SECTION 1 (2023 BIL)**

MAP NOT BASED ON SURVEY DATA

Structure and line locations based on Pre-Engineering data and subject to change.

0 50 100 200  
Feet

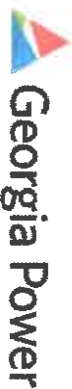
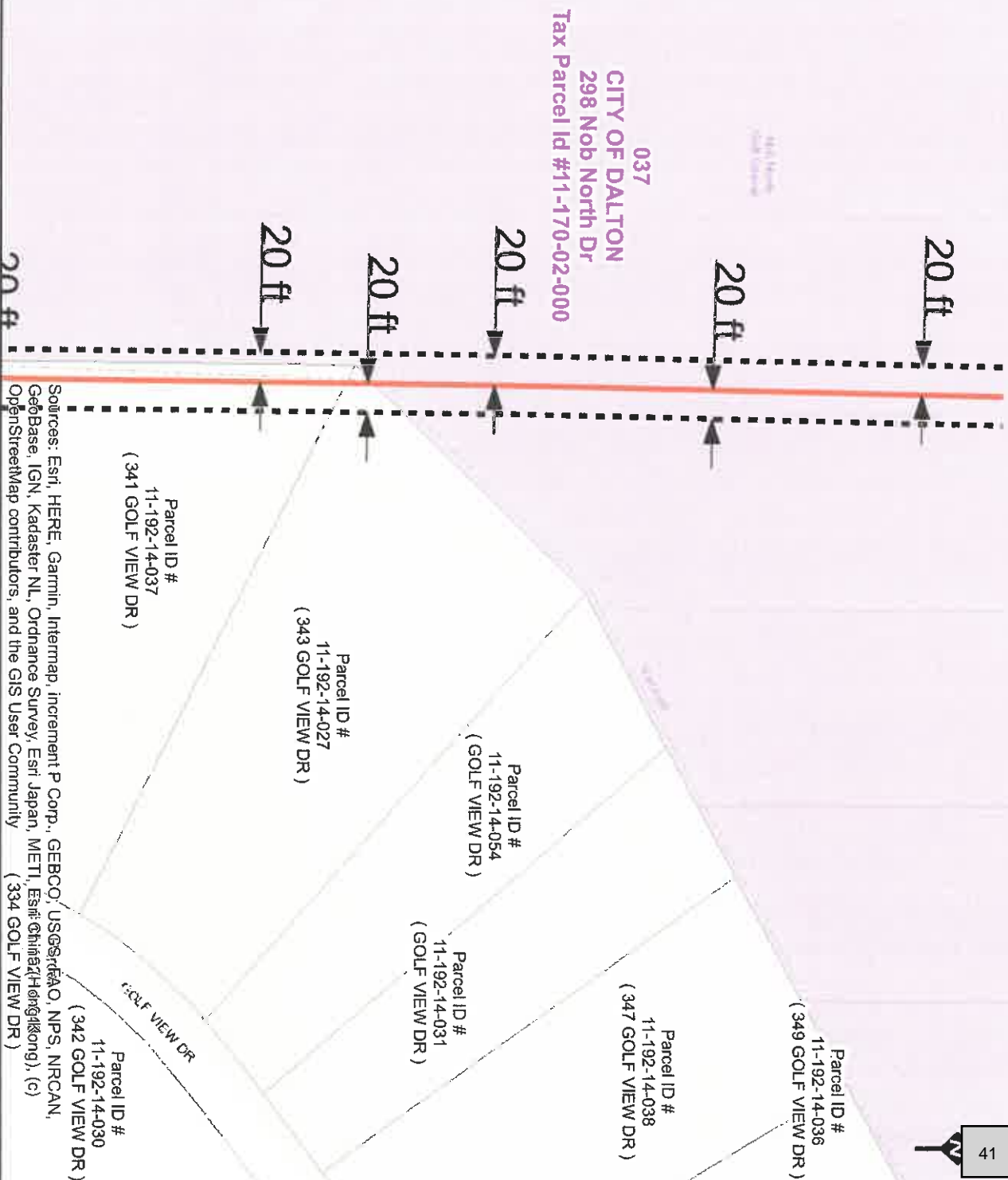
Feet

### Legend

### Existing Distribution

Subject Tract

Tax Parcel



GSS - Land GIS

Prepare Date: 5/27/2022

## Exhibit A

PARCEL 037 (4 OF 4)

MAP NOT BASED ON SURVEY DATA  
Structure and line locations based on Pre-Engineering  
data and subject to change.



**VARNELL - TREE TRIM -**  
**Q0252-CVT SECTION 1 (2023 BIL)**  
**(WHITFIELD COUNTY)**  
**DISTRIBUTION LINE**  
**LIMS: 2022040181**



GSS - Land GIs

Prepare Date: 5/27/2022

037  
CITY OF DALTON  
298 Nob North Dr  
Tax Parcel Id #11-170-02-000

## Exhibit A

PARCEL 037 (3 OF 4)

**MAP NOT BASED ON SURVEY DATA**  
Structure and line locations based on Pre-Engineering data and subject to change.

Parcel ID #  
11-192-14-037  
(341 GOLF VIEW DR)

Parcel ID #  
11-192-14-0

2

Parcel ID #  
11-192-14-024  
(337 GOLF VIEW DR)

Parcel ID #  
11-192-14-043  
( 334 GOLF VIEW DR )

Parcel ID #  
11-192-14-008  
(333 GOLF VIEW DR)

Parcel ID #  
11-192-14-005  
( 330 GOLF VIEW DR )

Parcel ID #  
11-192-14-003  
(327 GOLF VIEW DR)

**Parcel ID #**

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, NOAA, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

ROCK SALT PILE

GOULD SYSTEMS, INC.

# TRAFFIC LIGHT

**Q0252-CVT SECTION 1 (2023 BIL)**

**(WHITEFIELD COUNTY)  
DISTRIBUTION LINE**

**LIMS: 2022040181**



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** August 7, 2023

**Agenda Item:** Mill Line - Change Order #1

**Department:** Recreation

**Requested By:** Caitlin Sharpe

**Reviewed/Approved by City Attorney?** N/A

**Cost:** \$12, 987.12

**Funding Source if Not in Budget** 2020 Bond Proceeds

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

An existing pipe along the Mill Line path needs a manhole inlet. A manhole inlet is crucial along a pedestrian path to ensure proper drainage and prevent potential hazards caused by water accumulation. The manhole inlet serves as an access point to the underground drainage system, allowing maintenance and inspection while also facilitating the swift removal of excess water, thus guaranteeing the safety, functionality, and longevity of the path.

Northwest Georgia Paving, Inc.  
P.O. Box 578 Calhoun,  
GA 30703  
Office: (706) 629-8255  
Fax: (770)-773-9692  
Cell: (706)- 263-8360  
Email: bstuddard@nwgpinc.com



Job Name: Mill Creek River Walk  
Job Location: Dalton, Ga  
Proposal Dated: 7-7-2023  
Company: City of Dalton Parks & Rec  
Contact: Mr. Michael Hendricks  
Cell: 706-463-5732  
Office: 706-278-5404  
Email: mhendricks@daltonga.gov

## Proposal

Description

Subtotal Description

### Request for Additional Work

#### Additional Inlet and Pipe

668-2100	Pedestal Top Inlet	\$5092.20 EA	1 EA	\$5,092.20
550-1180	18" RCP	\$173.66/ LF	32 LF	\$5,557.12
550-4118	18" FES	\$2,337.80/EA	1 EA	\$2,337.80

Total Cost \$12,987.12

### Proposal Certification

NOTES: This Additional Work, Based on Acquisition of Materials, Very Well Cause a Delay in the Completion Date of this Project

Submitted By: Blake Studdard  
Project Manager

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. I will be responsible for all attorney's fees incurred during collection. You are authorized to do the work as specified. Payment will be made as outlined above. This proposal may be withdrawn by us if not accepted within 15 days.

Authorized Signature: \_\_\_\_\_

Date of Acceptance \_\_\_\_\_





## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** August 7, 2023

**Agenda Item:** Mill Line - Change Order #2

**Department:** Recreation

**Requested By:** Caitlin Sharpe

**Reviewed/Approved  
by City Attorney?** N/A

**Cost:** \$327,723.55

**Funding Source if Not  
in Budget** 2020 Bond Proceeds

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

Proof rolling test was conducted on July 24<sup>th</sup>. This proof rolling test of the area failed, indicating potential weaknesses and inadequacies in the subgrades or base materials. By adding soil cement to a pedestrian path is important as it significantly enhances the path's durability, stability, and longevity. Soil cement will create a compacted and solid surface that can withstand heavy foot traffic and adverse weather conditions. By incorporating soil cement, the pedestrian path gains increased resistance to erosion, cracking, and settling, minimizing the need for frequent repairs and maintenance. Additionally, the improved strength and load-bearing capacity of the path ensures a safe and smooth surface for pedestrians, promoting accessibility and reducing potential accidents or injuries. Soil cement is a practical and sustainable choice to extend the life and functionality of pedestrian paths.



Northwest Georgia Paving, Inc.  
P.O. Box 578 Calhoun,  
GA 30703  
Office: (706) 629-8255  
Fax: (770)-773-9692  
Cell: (706)- 263-8360  
Email: bstuddard@nwgpinc.com



Job Name: Mill Creek River Walk  
Job Location: Dalton, Ga  
Proposal Dated: 8-1-2023  
Company: City of Dalton Parks & Rec  
Contact: Mr. Michael Hendricks  
Cell: 706-463-5732  
Office: 706-278-5404  
Email: mhendricks@daltonga.gov

## Proposal

Description

Subtotal Description

### Request for Additional Work

#### Soil Cement

Soil Cement Sta. 9+93.60 – 79+61.79 by 10' Wide @ 80 lbs./SY 12" Deep (Main Trail) 7,077 SY  
Soil Cement Sta 90+00-106+00 by 10' Wide @ 80 lbs./SY 12" Deep (West Side) 1,778 SY Total Cost \$327,723.55

Soil Cement Minimum Area of at least 450' x 10' Wide @ 80 lbs./SY 12" Deep Wide Which is a Total of 500 SY Per Mobilization  
\$83.65 per SY

### Proposal Certification

#### NOTES:

- This additional work, based on the acquisition of materials, will cause a delay in the overall completion date of this project. NWGP reserves the right to request additional time if this CO is approved.
- Additional cement over a spread rate of ( 80 lbs. per sy 12" Deep) for soft areas will be at an additional charge of \$300.00 per ton.
- The area to be soil cemented must sufficiently support the construction equipment to be able to perform the soil cement operation.

Submitted By: **Blake Studdard**  
Project Manager

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. I will be responsible for all attorney's fees incurred during collection. You are authorized to do the work as specified. Payment will be made as outlined above. This proposal may be withdrawn by us if not accepted within 15 days.

Authorized Signature: \_\_\_\_\_

Date of Acceptance \_\_\_\_\_



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** August 7, 2023

**Agenda Item:** Agreement with KRH Architects, Inc.

**Department:** Recreation

**Requested By:** Caitlin Sharpe

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

**Cost:** 6% of the Owners Budget for the Cost of the Work, as Calculated in accordance with Section 11.6

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

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

Dalton Parks and Recreation Department has engaged KRH Architects, Inc. to assist with the design of the project and aid the department through the procurement process to ensure the project is well executed. See attached AIA Agreement with KRH Architects, Inc., for Heritage Point Park Synthetic Turf Infield Project.



# AIA® Document B101® – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Eighth day of August in the year Two Thousand Twenty-Three

*(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 Artificial Turf Infields for Heritage Point Baseball / Softball Fields  
1275 Cross Plains Trail, Dalton, GA 30721

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.

## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

### 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.)*

New Artificial Turf In-Fields for the Baseball / Softball fields at Heritage Point

§ 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 turf In-fields will be installed in the existing fields and tied to the existing storm structures.

§ 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 \$2,200,000

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

.1 Design phase milestone dates, if any:

Completion of Contract Documents 10/15/2023

**.2** Construction commencement date:

December 15, 2023

**.3** Substantial Completion date or dates:

Summer 2024

**.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.)*

Andrew Parker, City Administrator, 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:

To be determined

**.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:**

**.2 Mechanical Engineer:**

To be determined

**.3 Electrical Engineer:**

To be determined

**§ 1.1.11.2** Consultants retained under Supplemental Services:

Civil Engineering - PWH Engineering

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 16:10:00 ET on 08/03/2023 under Order No.2114371628 which expires on 10/05/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

**User Notes:**

(3B9ADA33)



**§ 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.

**§ 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

Init.

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.

**§ 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.

### **§ 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,
- .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.

§ 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.

**§ 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 <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Architect / Owner
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 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.)*

§ 4.1.2.2 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.

Init.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 16:10:00 ET on 08/03/2023 under Order No.2114371628 which expires on 10/05/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(3B9ADA33)



#### § 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.

§ 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 Forty ( 40 ) 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-four ( 24 ) 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; 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.

§ 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.

§ 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 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, 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.

§ 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.

## **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.)*

**§ 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 \$125/hr Project Manager \$100/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	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

**§ 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	\$125
Project Manager	\$100
Engineer	\$125

#### **§ 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**

**§ 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.

Init.

## 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 August 1, 2023

## 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.

AIA Document B101 – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 16:10:00 ET on 08/03/2023 under Order No.2114371628 which expires on 10/05/2023, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(3B9ADA33)

23

71

# **Additions and Deletions Report for**

## **AIA® Document B101® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:10:00 ET on 08/03/2023.

### **PAGE 1**

**AGREEMENT** made as of the Eighth day of August in the year Two Thousand Twenty-Three

...

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

...

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

...

New Artificial Turf Infields for Heritage Point Baseball / Softball Fields  
1275 Cross Plains Trail, Dalton, GA 30721

### **PAGE 2**

New Artificial Turf In-Fields for the Baseball / Softball fields at Heritage Point

...

The new turf In-fields will be installed in the existing fields and tied to the existing storm structures.

...

Approximately \$2,200,000

### **PAGE 3**

Completion of Contract Documents 10/15/2023

...

December 15, 2023

...

Summer 2024

...

Request for Proposals

...

NA

...

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

...

Andrew Parker, City Administrator, City of Dalton

...

To be determined

#### **PAGE 4**

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

...

To be determined

...

To be determined

...

Civil Engineering - PWH Engineering

#### **PAGE 5**

NA

...

§ 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.

## PAGE 6

§ 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.

## PAGE 12

<u>Supplemental Services</u>	<u>Responsibility</u> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 <u>Programming</u>	<u>Architect / Owner</u>
§ 4.1.1.2 <u>Multiple preliminary designs</u>	
§ 4.1.1.3 <u>Measured drawings</u>	
§ 4.1.1.4 <u>Existing facilities surveys</u>	
§ 4.1.1.5 <u>Site evaluation and planning</u>	<u>Architect</u>
§ 4.1.1.6 <u>Building Information Model management responsibilities</u>	
§ 4.1.1.7 <u>Development of Building Information Models for post construction use</u>	
§ 4.1.1.8 <u>Civil engineering</u>	<u>Architect</u>
§ 4.1.1.9 <u>Landscape design</u>	<u>Architect</u>
§ 4.1.1.10 <u>Architectural interior design</u>	<u>Architect</u>
§ 4.1.1.11 <u>Value analysis</u>	
§ 4.1.1.12 <u>Detailed cost estimating beyond that required in Section 6.3</u>	
§ 4.1.1.13 <u>On-site project representation</u>	
§ 4.1.1.14 <u>Conformed documents for construction</u>	
§ 4.1.1.15 <u>As-designed record drawings</u>	
§ 4.1.1.16 <u>As-constructed record drawings</u>	
§ 4.1.1.17 <u>Post-occupancy evaluation</u>	
§ 4.1.1.18 <u>Facility support services</u>	
§ 4.1.1.19 <u>Tenant-related services</u>	

§ 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	

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 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	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 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	

<del>§ 4.1.1.27</del> Historic preservation	
<del>§ 4.1.1.28</del> Furniture, furnishings, and equipment design	
<del>§ 4.1.1.29</del> Other services provided by specialty Consultants	
<del>§ 4.1.1.30</del> Other Supplemental Services	

...

#### Geotechnical Studies, Surveys, Testing

#### **PAGE 13**

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

...

- .2 Forty ( 40 ) 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

#### **PAGE 14**

- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion.

...

**§ 4.2.5** If the services covered by this Agreement have not been completed within Twenty-four ( 24 ) 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.

#### **PAGE 17**

[ X ] Litigation in a court of competent jurisdiction

#### **PAGE 19**

\$0

...

\$0

#### **PAGE 20**

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

#### **PAGE 21**



Architect \$125/hr Project Manager \$100/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:

...

Schematic Design Phase	<u>Fifteen</u>	percent (	<u>15</u>	%)
Design Development Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>Forty</u>	percent (	<u>40</u>	%)
Procurement Phase	<u>Five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>Twenty</u>	percent (	<u>20</u>	%)

...

<u>Architect</u>	<u>\$125</u>
<u>Project Manager</u>	<u>\$100</u>
<u>Engineer</u>	<u>\$125</u>

PAGE 22

§ 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.

...

§ 11.10.1.1 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.

...

§ 11.10.2.1 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.

...

1 % monthly

PAGE 23

Sections of this contract shall be modified as described in the Final Change letter from the City Attorney to KRH Architects Inc. Dated August 1, 2023

...

NA

...

[ NA ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:

...

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

...

NA

...

David Pennington, Mayor

Kenneth R. Harless, President

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:10:00 ET on 08/03/2023 under Order No. 2114371628 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ - 2017, Standard Form of Agreement Between Owner and Architect, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 8/7/23

**Agenda Item:** Corrective Action Plan & Permanent Drainage Easement for 1000 E. Lakeshore Drive

**Department:** Public Works

**Requested By:** Chad Townsend

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

**Cost:**

**Funding Source if Not in Budget**

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

Corrective Action Plan & Permanent Drainage Easement for 1000 E. Lakeshore Drive

**PUBLIC WORKS DEPARTMENT**

**CHAD TOWNSEND, DIRECTOR**

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

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



**DAVID PENNINGTON, MAYOR**

**CITY COUNCIL MEMBERS:**

DENNIS MOCK  
TYREE GOODLETT  
STEVE FARROW

**M E M O R A N D U M**

**TO:** Mayor and City Councilmembers

**FROM:** Chad Townsend, Public Works Director

**RE:** Corrective Action Plan & Permanent Easement – E.  
Lakeshore Drive Permanent Drainage Easement

**DATE:** May 22<sup>nd</sup>, 2023

---

An area of concern regarding right-of-way flooding is located at a culvert on E. Lakeshore Drive. A catch basin on the East side of the road receives stormwater runoff from the street and surrounding properties, and a 12-inch reinforced concrete culvert conveys the runoff across the road to a junction box on the West side of the road. A 24-inch corrugated metal pipe then conveys the runoff Southwest for approximately 217 feet across a property off right-of-way at 1000 E. Lakeshore Dr.

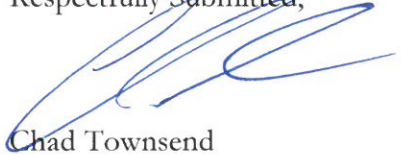
The Public Works Department has received requests to alleviate the flooding that occurs on the road during large rain events. Therefore, the Department has developed the following Corrective Action Plan to address the flooding issue. The 24-inch pipe conveying stormwater through the private property is made of corrugated metal and has reached the end of its useful life, resulting in the formation of sinkholes and allowing sediment to enter the pipe, forming blockages. The pipes in the conveyance system will be replaced to mitigate flooding of the road. Therefore, a temporary construction easement, and permanent drainage easement will be required for 1000 E. Lakeshore Dr. to allow the Department access off right-of-way to upgrade the conveyance network.

Sec. 96-1 of City Code provides for the acceptance of temporary or permanent easements for public dedication of certain drainage systems including those connected directly to the City's existing system and conveying runoff from City right of way. The Public Works Department has developed the enclosed Corrective Action Plan drawings for the subject location and is recommending that City Council adopt this plan to allow city intervention. This plan would provide a long-term solution for a key drainage network within the Tar Creek drainage basin. The Corrective Action Plan requires a temporary construction and permanent drainage easement be provided by the property owner and accepted by the City Council. The property owner must provide written commitment to provide the easement areas described. The Corrective Action Plan

is subject to minor revisions related to the exact alignment of the pipe to accommodate unforeseen field conditions.

Should you have any questions or need additional information regarding this matter, please do not hesitate to contact me.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Chad Townsend", is written over the typed name.

Chad Townsend  
Public Works Director

Cc: City Administrator, Andrew Parker, P.E.  
City Attorney, Terry Miller

Enclosures:

Corrective Action Plan – E. Lakeshore Drive Permanent Drainage Easement  
Storm Drainage Easement Agreement

[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 \_\_\_\_\_, 2023 (the "Effective Date"), by and between **Jerry L. Hennon** and **Elizabeth A. Hennon**, of the first part (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:

### WITNESSETH:

**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 "Hennon Property"); and

**WHEREAS**, Grantee is the owner of certain real property adjacent to the Hennon Property and more particularly described as E. Lakeshore Drive (the "City Property"); and

**WHEREAS**, Grantee has constructed, or will construct, a storm sewer pipe and storm water structures on the Hennon Property (collectively the "Hennon Municipal Storm Sewer"); and

**WHEREAS**, Grantor acknowledges that the work to be performed in this Agreement will not alleviate all issues relating to the flooding of the Hennon Property and that there may be damages that will occur in the future to the Hennon Property; and

**WHEREAS**, Grantee desires non-exclusive access to and use of a portion of the Hennon Property to discharge storm water originating from the City Property into the Hennon 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 Hennon Property to construct and/or maintain the Hennon 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 Hennon Municipal Storm Sewer, Grantee intends to be responsible for all costs associated with the use, maintenance, repair, replacement, inspection, and reconstruction of the Hennon Municipal Storm Sewer, as it relates to maintaining reasonable drainage flow from the right of way to the discharge point; and

**WHEREAS**, in order to evidence the understanding between Grantor and Grantee with respect to the Hennon 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, and for and on behalf of his heirs, administrators, 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 Hennon Property shown as the "Perm. Drainage Esmt" on the aerial drawing 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 flowing to channel, distribute or transport storm water originating from or onto and across the City's Property through the Hennon Municipal Storm Sewer. Notwithstanding the foregoing, Grantor hereby agrees to accept such storm water discharge through the Hennon Municipal Storm Sewer in its current intensity, rate, volume and location.

2. **Temporary Construction Easement.** Grantor, and for and on behalf of his heirs, administrators, 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 Hennon 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 the non-exclusive construction and/or maintenance of the Hennon Municipal Storm Sewer. Said Construction Easement is temporary and shall expire upon completion of the Hennon 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 Hennon 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 his 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 Hennon Property to the greatest extent practicable.

(b) Grantee shall operate, repair, replace and maintain continuously the Hennon Municipal Storm Sewer on or within the Storm Drainage Easement.

(c) Grantee shall be solely responsible to maintain reasonable drainage flow from the right of way to the discharge point, which shall be at Grantee's absolute discretion. The Hennon

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 Hennon 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 Hennon 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 Hennon Municipal Storm Sewer, the area within the Storm Drainage Easement or the Hennon 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.

(g) Grantee shall require that any contractor it engages to perform construction of the Hennon Municipal Storm Sewer, and any subcontractors thereof, waive any tort claims that they may accrue against Grantor during the course of their work on said construction except for those claims which arise from gross negligence or intentional torts.

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 Hennon 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 that may occur or resulting 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 Hennon 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.

[SIGNATURES ON FOLLOWING 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:

Thomas Carby  
Unofficial Witness  
Jake J. Poff  
Notary Public

**Grantor:**

By: Jerry L. Hennon (Seal)  
Jerry L. Hennon  
By: Elizabeth A. Hennon (Seal)  
Elizabeth A. Hennon

My commission expires:



**Grantee:**

**City of Dalton**

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

Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## EXHIBIT "A"

DEED PREPARATION ONLY-NO TITLE EXAM PERFORMED

Deed

Doc: WD

Recorded 05/31/2019 04:50PM

Georgia Transfer Tax Paid : \$0.00

MELICA KENDRICK

Clerk Superior Court, WHITFIELD County, Ga.

Bk 06710 Pg 0538-0540

Pre 100/436

RETURN TO:

L. STEPHEN KELEHEAR  
LITTLE, BATES & KELEHEAR, P.C.  
101 E CRAWFORD STREET  
THE LANDMARK BUILDING-FIFTH FLOOR  
PO BOX 488  
DALTON, GA 30722-0488

STATE OF GEORGIA  
COUNTY OF WHITFIELD

### WARRANTY DEED WITH RIGHT OF SURVIVORSHIP

THIS INDENTURE, made this 23rd day of May, 2019, between **Elizabeth Hennon**, of the State of Georgia and County of Whitfield of the first part, and **Jerry L. Hennon and Elizabeth A. Hennon**, of the State of Georgia and County of Whitfield of the second part.

### WITNESSETH:

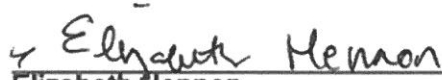
That the said parties of the first part, for and in consideration of the sum of One Dollar (\$1.00), and other good and valuable considerations, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said parties of the second part as tenants in common, for and during their joint natural lives, and, upon the death of either of them, then the survivor of them, in fee simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor, the following described property:

### **SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

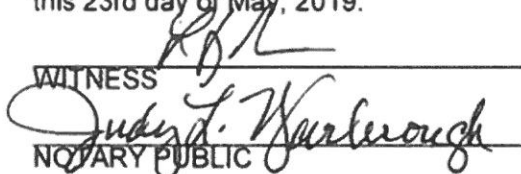
TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise pertaining, to the only proper use, benefit, and behoof of the said parties of the second part, as tenants in common, for and during their joint lives and upon the death of either of them, then to the survivor of them in fee simple, together with every contingent remainder and right of reversion, and to the heirs and assigns of said survivor.

And the said parties of the first part, for their heirs, executors and administrators, will warrant and forever defend the right and title to the above described property, unto the said parties of the second part, as hereinabove provided, against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and affixed their seals, the day and year first above written.

  
Elizabeth Hennon (SEAL)

Sworn to and subscribed before me  
this 23rd day of May, 2019.

  
WITNESS  
NOTARY PUBLIC

Judy L Yarbrough  
Notary Public, Whitfield County, Georgia  
My Comm. Expires 04/07/2021

**EXHIBIT "A"****LEGAL DESCRIPTION**

All that tract or parcel of land situated, lying and being Land Lot 58 of the 12th District and 3rd Section of Whitfield County, Georgia, as shown by a plat of survey prepared by N. S. DeLoach, Surveyor, dated October 3, 1984, and more particularly described as follows:

**BEGINNING** at the intersection of the south right of way of Lakemont Drive with the west right of way of East Lakeshore Drive and running thence in a southeasterly direction along the west right of way of East Lakeshore Drive a distance of 152.24 feet to an iron pin and the **TRUE POINT OF BEGINNING**; thence along and with the westerly right of way of East Lakeshore Drive the following courses and distances, south 47 degrees 35 minutes 50 seconds east a distance of 113.48 feet; thence south 48 degrees 57 minutes 10 seconds east a distance of 91.06 feet; thence south 29 degrees 48 minutes 10 seconds east a distance of 87.77 feet; thence south 22 degrees 17 minutes 00 seconds east a distance of 30.62 feet to an iron pin; thence south 07 degrees 41 minutes 50 seconds east a distance of 67.74 feet; thence south 01 degree 17 minutes 10 seconds west a distance of 400.00 feet to an iron pin located at the northeast corner of Lot 88 of Lakeshore Development; thence north 88 degrees 17 minutes 00 seconds west a distance of 366.13 feet to an iron pin; thence north 88 degrees 17 minutes 00 seconds west a distance of 33.00 feet, more or less, to the east shore line of the lake; thence in a northerly direction along and with the meandering of said lake the following courses and distances: north 63 degrees 38 minutes 30 seconds east a distance of 104.80 feet; thence north 11 degrees 40 minutes 10 seconds east a distance of 44.42 feet; thence north 19 degrees 38 minutes 30 seconds west a distance of 43.69 feet; thence north 77 degrees 12 minutes 00 seconds west a distance of 40.80 feet; thence north 09 degrees 43 minutes 40 seconds west a distance of 43.10 feet; thence north 03 degrees 39 minutes 50 seconds east a distance of 71.69 feet; thence north 41 degrees 40 minutes 30 seconds east a distance of 84.11 feet; thence north 28 degrees 21 minutes 50 seconds east a distance of 40.88 feet; thence north 19 degrees 32 minutes 50 seconds east a distance of 32.47 feet; thence north 34 degrees 29 minutes 25 seconds west a distance of 53.71 feet to an iron pin located at the southwest corner of Lot 147 of Brookwood Subdivision; thence north 15 degrees 37 minutes 30 seconds west a distance of 127.37 feet to an iron pin; thence north 46 degrees 32 minutes 50 seconds east a distance of 169.88 feet to an iron pin and the **TRUE POINT OF BEGINNING**.

Grantors hereby convey any and all interest they may have in the certain corporation known as Lakeshore, Inc., as a result of their ownership of property located in Lakeshore Development.

The above described property is a part of Lot 146 all of Lots 147 and 148 of Brookwood Subdivision and two unnumbered lots in Lakeshore Development the northern most of which is adjacent to the south side of Lot 147 and 148 of Brookwood Subdivision.

This conveyance is made subject to all zoning ordinances, easements, restrictions of record, insofar as the same may affect the above described property.

**LESS AND EXCEPT** all that tract or parcel of land conveyed by Sheila K. McNeese a/k/a Sheila K. McNeese to Kenneth A. King and Elizabeth M. King by deed dated September 26, 2011, recorded in Deed Book 5645, Page 188, Whitfield County Deed Records.



## EXHIBIT "B"

### 1000 E Lakeshore Dr Permanent Drainage Easement

