



**MAYOR AND COUNCIL MEETING
MONDAY, JULY 17, 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)*

Presentation:

1. DACVB Tourism Presentation - Margaret Thigpen

Minutes:

2. Mayor and Council Meeting Minutes of June 19, 2023

New Business:

3. 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
4. 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
5. (4) 2023 Alcohol Beverage Applications
6. 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)
7. Reappointment of Octavio Perez to the Dalton-Whitfield-Varnell Unified Planning Commission to serve a four-year term to expire July 2027.
8. 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
9. 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

MAYOR AND COUNCIL MEETING AGENDA
JULY 17, 2023

- [10.](#) Right of Way Encroachment Permit – 301 E Morris Street
- [11.](#) Indemnity & Hold Harmless Agreement – 420 Sheridan Avenue
- [12.](#) Addendum #1 to Alternative Probation Services Contract
- [13.](#) Courtware Solutions License Agreement
- [14.](#) FY-2023 Budget Amendment #4
- [15.](#) Agreement with KRH Architects, Inc., for Property and Evidence Addition at the Dalton Police Department
- [16.](#) Renewal of Lease Agreement with Robert E. Shaw for 114 N. Pentz Street
- [17.](#) Renewal of Emery Center Lease Agreement
- [18.](#) Appointment of Denise Wood, Zab Mendez and Jim Waskin to the 2024 SPLOST Committee

Supplemental Business

Announcements

Adjournment



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 7/17/2023

Agenda Item: Tourism 2022 Presentation

Department: Dalton Area Convention & Visitors Bureau

Requested By: Margaret Thigpen

Reviewed/Approved by City Attorney? No

Cost: 0

Funding Source if Not in Budget 0

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

Tourism 2022 Snapshot Presentation

Dalton^{right!}on!

Convention & Visitors Bureau

VisitDaltonGA.com

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



2022 SUCCESS!

- ! 15,000 - Visitor Guide Distribution
- ! 950,000 + - Explore Board Views (*Ringgold & Valdosta*)
- ! 4,248 = Visitor Inquiries – Direct Fulfillment (*Southern Living, GA Great Places*)
- ! 88 qualified leads; 69 Definite; 22 New Events (12 actualized)
- ! 8,934 Hotel Room Nights
- ! Grant = \$66,710 EI = \$6,439,111.36
Whitfield County Parks & Rec = \$24,625; DPRD = \$28,855.00
- ! Disc Golf Course Downtown; Additional Exhibits at TH Campus
- ! 2,188 Visitors to VIC Downtown – Freight Depot
- ! 3,107 Visitors to Tunnel Hill “Campus”
- ! 33 Private Trolley Charters = \$12,203

TASTE OF DACVB!

- ! Advertising/Marketing
- ! Groups = Visitors=
Hotel/Motel Tax
(a tax we don't pay)
- ! Product Development
- ! Visitor Information
Downtown – Freight
Depot
- ! Depot Tunnel Hill
- ! Trolley

ECONOMIC ENGINES

- ! Dalton Parks & Recreation (DPRD) (*Bigger Picture Impact = \$1,916,257.50*)
- ! Whitfield County Parks & Recreation (*Bigger Picture Impact = \$1,388,639.06*)
- ! Dalton-Whitfield Schools
- ! Dalton Convention Center

TOURISM GAUGE OF SUCCESS

Hotel/Motel Tax Collections – City/County Combined

- 2010 - \$1,035,690
- 2011 - \$1,278,622
- 2012 - \$1,315,000
- 2013 - \$1,401,540
- 2014 - \$1,492,026
- 2015 - \$1,623,115
- 2016 - \$1,658,139
- 2017 - \$1,771,559
- 2018 - \$1,816,011
- 2019 - \$1,765,247
- 2020 - \$1,222,557
- 2021 - \$1,743,337
- 2022 - \$2,053,899

** This doesn't include the sales tax that is paid in addition

***This doesn't include the state tax of \$5.00 paid for roads

**Groups with
Hotel Rooms
41**

DCC "Bigger Picture"

2022 - \$1,478,688.28

2021 - \$1,008,888.47

**NEW GROUPS
35**

**Attendees for 2022
65,680**

FORMULA =

OF EVENT DAYS X # OF ATTENDEES X \$55 (SHOPPING, DINING MULTIPLIER) +
OF ACTUAL HOTEL ROOMS USED X HOTEL RATE/TAX + FACILITY RENTAL, ETC...

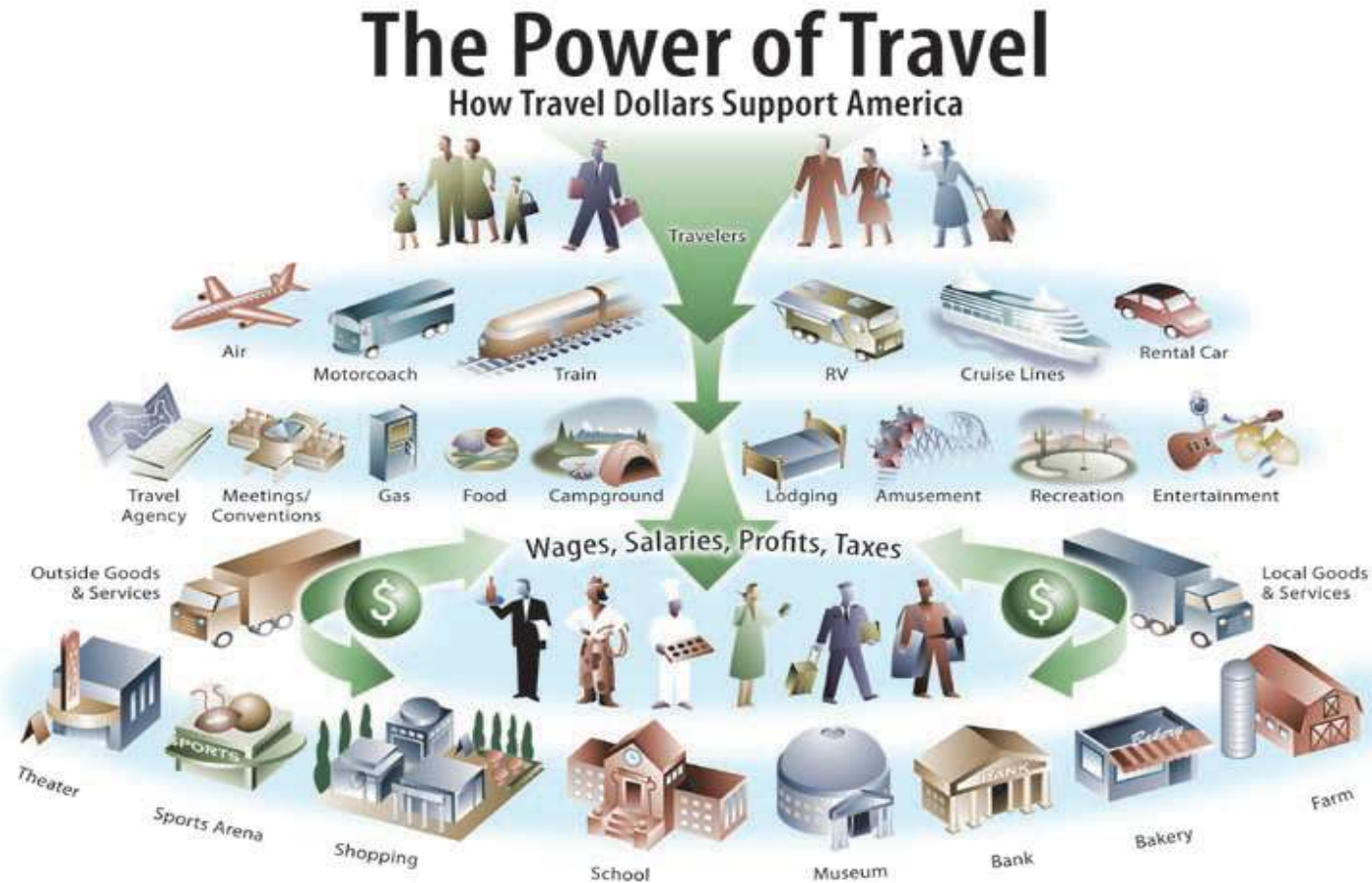
Dalton!		Event Name: GA Mtn Moonshine Cruiz-in Event Date: July 27-30, 22 Actual Economic Impact #'s								1/9/2023		
Event Days	# of Attendees	Hotel/Facility	# of Rooms Picked Up	Hotel Rate	Rate + 14% Tax	Total Room Revenue	7% Lodging Tax picked up	7% Sales Tax picked up	Sum of F&B, Shopping & Gas (\$55.00pp)	Facility Revenue Cost	Total Economic Impact	State Hotel Fee \$5.00
3	2500	DCC							\$ 412,500.00	25,916.75		
		Baymont	10	\$ 89.99	\$ 102.59	\$ 1,025.89	\$ 62.99	\$ 62.99				\$ 50.00
		Super 8(College)	3	\$ 89.99	\$ 102.59	\$ 307.77	\$ 18.90	\$ 18.90				\$ 15.00
		Comfort Inn	12	\$ 109.00	\$ 124.26	\$ 1,491.12	\$ 91.56	\$ 91.56				\$ 60.00
		Courtyard	88	\$ 139.00	\$ 158.46	\$ 13,944.48	\$ 856.24	\$ 856.24				\$ 440.00
		Country Inn	65	\$ 119.00	\$ 135.66	\$ 8,817.90	\$ 541.45	\$ 541.45				\$ 325.00
		Days Inn	24	\$ 85.99	\$ 98.03	\$ 2,352.69	\$ 144.46	\$ 144.46				\$ 120.00
		Econlodge		\$ -	\$ -	\$ -	\$ -	\$ -				\$ -
		Hampton	20	\$ 139.00	\$ 158.46	\$ 3,169.20	\$ 194.60	\$ 194.60				\$ 100.00
		Hilton Garden Inn	18	\$ 179.00	\$ 204.06	\$ 3,673.08	\$ 225.54	\$ 225.54				\$ 90.00
		Holiday Inn	54	\$ 139.00	\$ 158.46	\$ 8,556.84	\$ 525.42	\$ 525.42				\$ 270.00
		Howard Johnson	22	\$ 110.00	\$ 125.40	\$ 2,758.80	\$ 169.40	\$ 169.40				\$ 110.00
		Best Western +	25	\$ 124.00	\$ 141.36	\$ 3,534.00	\$ 217.00	\$ 217.00				\$ 125.00
		Fairfield	80	\$ 139.00	\$ 158.46	\$ 12,676.80	\$ 778.40	\$ 778.40				\$ 400.00
		Quality Inn	3	\$ 69.99	\$ 79.79	\$ 239.37	\$ 14.70	\$ 14.70				\$ 15.00
		Red Roof Inn	15	\$ 69.99	\$ 79.79	\$ 1,196.83	\$ 73.49	\$ 73.49				\$ 75.00
		Super 8(Market)		\$ -	\$ -	\$ -	\$ -	\$ -				\$ -
			439			\$ 63,744.75	\$ 3,914.15	\$ 3,914.15	\$ 412,500.00	\$ 25,916.75	\$ 502,161.50	\$ 1,630.00

2021 - DALTON-WHITFIELD TRAVEL & TOURISM

Tourism Spending	\$161.7 Million
Jobs Created	1,433 Jobs
Worker Paychecks	\$37.1 Million
State & Local Taxes	\$12.5 Million
Federal Taxes	\$8.1 Million

**From ExploreGA.org*

TRAVEL & TOURISM = ECONOMIC IMPACT!



NATIONALLY:

Our Savings

\$1,398
(2019)

DALTON-WHITFIELD:

State & Local Taxes
Jobs Supported

\$12.5 M
1,433

Our Savings

\$342

GEORGIA:

State & Local Taxes
Jobs Supported

\$2.3 B
232,500

Our Savings

\$600

Dalton! right!

Convention & Visitors Bureau

VisitDaltonGA.com



Margaret Thigpen, TMP

Director of Tourism

MThigpen@VisitDaltonGA.com

THE CITY OF DALTON
MAYOR AND COUNCIL MINUTES
JUNE 19, 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 Annalee Sams and Steve Farrow and City Attorney Terry Miller. Council member Dennis Mock attended via Zoom. City Administrator Andrew Parker and Council member Tyree Goodlett were absent.

CALL TO ORDER

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

APPROVAL OF AGENDA

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

PUBLIC HEARING – OCCUPATION TAXES

A Public Hearing was held at 6:01pm regarding proposed Ordinance 23-10 – An Ordinance to Amend Article II Captioned “Occupation Taxes; Administrative Fees; Regulatory Fees” Of Chapter 26 “Businesses” of the 2001 Revised Code of Ordinances for The Purpose of Increasing the Administrative Fee Levied and Assessed on All Occupational Tax Accounts; To Establish an Effective Date; To Repeal Conflicting Ordinances, Laws, And Regulations; And for Other Purposes.

There were no Public Comments.

On the motion of Council member Sams, second Council member Farrow, the Hearing was closed at 6:03pm. The vote was unanimous in favor.

MINUTES

The Mayor and Council reviewed the Mayor & Council Regular Meeting Minutes of June 5, 2023. On the motion of Council member Farrow, second Council member Sams, the minutes were approved. The vote was unanimous in favor.

PUBLIC COMMENTARY

There were no public comments.

SECOND READING - ORDINANCE 23-10

On the motion of Council member Farrow, second Council member Sams, the Mayor and Council adopted Ordinance 23-10 to Amend Article II Captioned “Occupation Taxes; Administrative Fees; Regulatory Fees” Of Chapter 26 “Businesses” of the 2001 Revised Code of Ordinances for The Purpose of Increasing the Administrative Fee Levied and Assessed on All Occupational Tax Accounts; To Establish an Effective Date; To Repeal Conflicting Ordinances, Laws, And Regulations; And for Other Purposes. The vote was unanimous in favor.

SECOND READING ORDINANCE 23-12

The Mayor and Council reviewed ordinance 23-12 regarding the Request of the Whitfield County Board of Commissioners, Mayor and Council of the City of Dalton, and Mayor and Council of the City of Varnell to amend the Dalton-Whitfield-Varnell Unified Zoning Ordinance regarding compliance with GA HB 1405. On the motion of Council member Sams, second Council member Farrow, the Mayor and Council adopted the Ordinance. The vote was unanimous in favor.

GENERAL CONSTRUCTION AGREEMENT - THE SURFACE MASTERS, INC.

Recreation Director Caitlin Sharpe presented the General Construction Agreement with The Surface Masters, Inc. for Resurfacing of the Lakeshore Park Track in the amount of \$212,800.00 to be paid from the 2022 Capital Improvements Project. On the motion of Council member Farrow, second Council member Sams, the Mayor and Council untabled this item. On the motion of Council member Farrow, second Council member Sams, the Mayor and Council approved the Agreement. The vote was unanimous in favor.

TERMS AND CONDITIONS FOR THE AMERICAN RESCUE PLAN ACT- HERITAGE POINT PARK PROJECT

Recreation Director Caitlin Sharpe presented the Terms and Conditions for the American Rescue Plan Act- Improving Neighborhood Outcomes in Disproportionately Impacted Communities Grant Program – Heritage Point Park Project. Sharpe stated the Governors Office of Planning and Budget requires this document be signed by the Mayor. On the motion of Council member Mock, second Council member Sams, the Council authorized the Mayor to execute the Terms and Conditions. The vote was unanimous in favor.

IMPROVING NEIGHBORHOOD OUTCOMES GRANT TERMS AND CONDITIONS FORM FOR THE PENTZ AND CUYLER STREET CORRIDOR IMPROVEMENTS

Public Works Director Chad Townsend presented the Improving Neighborhood Outcomes Grant Terms and Conditions Form for the Pentz and Cuyler Street Corridor Improvements. Townsend stated the Governor's Office of Planning and Budget requires this document be signed by the Mayor. On the motion of Council member Farrow, second Council member Sams, the Council authorized the Mayor to execute the Terms and Conditions. The vote was unanimous in favor.

615 BIRCHFIELD AVENUE STORMWATER IMPROVEMENT CORRECTIVE ACTION PLAN

Public Works Director Chad Townsend presented the Temporary Construction, and Permanent Drainage Easements for 615 Birchfield Avenue Stormwater Improvement Corrective Action Plan. Townsend stated the scope of services includes erosion protection along a drainage swale running alongside of the driveway and improving the drainage connection for the box culvert spanning underneath the driveway where runoff from the road, and the drainage swale meet. On the motion of Council member Sams, second Council member Farrow, the Mayor and Council approved the Corrective Action Plan. The vote was unanimous in favor.

RESOLUTION 23-08 – UNOPENED SECTION OF COOPER STREET

City Attorney Terry Miller presented Resolution 23-08 To Make Findings of Fact Concerning the Public Use and Necessity of a Section of Unopened Cooper Street; To Consider the Vacating and Abandonment of Public Interest in And to The Said Portion of Cooper Street for Public Transportation Use; To Declare the Closing of Such Section of Cooper Street, To Authorize Delivery of a Quitclaim Deed of Any Interest of The City of Dalton Except Utility Easement to Adjacent Property Owners; To Establish an Effective Date; And for Other Purposes. On the motion of Council member Farrow, second Council member Sams, the Mayor and Council approved the Resolution. The vote was unanimous in favor.

RESOLUTION 23-11 AUTHORIZING MUNICIPAL UTILITY PROPERTY EASEMENTS

City Attorney Terry Miller presented Resolution 23-11 Authorizing Municipal Utility Property Easements between Dalton Utilities and Georgia Power. On the motion of Council member Sams, second Council member Farrow, the Mayor and Council approved the Resolution. The vote was unanimous in favor.

RESOLUTION 23-13 - AUTHORIZING CONSERVATION EASEMENTS AND
DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS

City Attorney Terry Miller presented Resolution 23-13 Authorizing Conservation Easements and Declaration of Conservation Covenants and Restrictions for Southern Conservation Trust, Inc. for Dalton Utilities Property for which the US Army Corps of Engineers has approved as a wetland mitigation bank. On the motion of Council member Farrow, second Council member Sams, the Mayor and Council approved the Resolution. The vote was unanimous in favor.

ANNOUNCEMENT

The City Council Meeting scheduled for Monday, July 3, 2023 has been cancelled. City offices will be closed Tuesday, July 4, 2023 for Independence Day. The next City Council Meeting will be held Monday, July 17, 2023.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 6:14 p.m.

Bernadette Chattam
City Clerk

David Pennington, Mayor

Recorded
Approved: _____
Post: _____



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 07/17/2023

Agenda Item: Resolution 23-14

Department: City Clerk

Requested By: Bernadette Chattam

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

Cost: N/A

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

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

Resolution No. 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

RESOLUTION

Resolution No. 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

WHEREAS, Councilmember Annalee Harlan Sams has submitted to the Mayor and Council her written resignation from office for the Seat of Ward 2 on the City Council effective at 12:00 o'clock noon of Monday, July 17, 2023; and

WHEREAS, the Mayor and Council will accept her resignation in accordance with its terms and declare a vacancy for that Seat for Ward 2 on the City Council; and

WHEREAS, the Mayor and Council must call for a special election to fill the vacancy in the Seat for Ward 2 on the City Council;

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

-1-

The written resignation of Annalee Harlan Sams from the Seat for Ward 2 of the City Council is hereby accepted in accordance with its terms and as of her time of resignation at 12:00 o'clock noon of July 17, 2023 the Seat of Ward 2 of the City Council is hereby declared to be vacant.

-2-

Further, RESOLVED that the City shall hold a special election to fill the vacancy for the Ward 2 Seat on the City Council on November 7, 2023 in conjunction with the Municipal General Election to be conducted on that date. The Qualifying fee for such office of the Ward 2 Seat is set at \$360.00. The qualifying period will be Monday, August 21, 2023 through Friday,

August 25, 2023 between the hours of 8:30 a.m. until 4:30 p.m. on the listed days at the office of the City Clerk, Dalton City Hall, 300 West Waugh Street, Dalton, Georgia 30720.

Such special election shall be conducted by the Election Superintendent in accordance with the Georgia Election Code.

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: 07/17/2023

Agenda Item: Resolution 23-15

Department: City Clerk

Requested By: Bernadette Chattam

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

Cost: N/A

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

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

Resolution No. 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

CITY OF DALTON RESOLUTION

Resolution No. 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

WHEREAS, the 2023 Georgia General enacted H.B. 756, H.B. 758, H.B. 762, and H.B. 786 providing for a homestead exemption from City of Dalton ad valorem taxes and from City of Dalton Independent School District ad valorem taxes subject to passage by voter referendum for each provision;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Dalton and by authority of same, IT IS HEREBY RESOLVED that the Election Superintendent issue public notice as required by law and call for a special election to present the ballot questions contained within each of said Acts of the 2023 General Assembly of Georgia and conduct such special election in conjunction with the City's general municipal election to be held on November 7, 2023.

All matters as to conduct of the special elections as well as the general municipal election shall be in compliance with the Georgia Election Code. In regard to the qualifying fees for the office of Mayor, it is set at \$576.00, for City Council at \$360.00 and for a Board of Education seat at \$35.00. Qualifying for such offices shall be held between the dates of Monday, August 21, 2023 through Friday, August 25, 2023 between the hours of 8:30 a.m. through 4:30 p.m. on those dates in the office of the City Clerk, Dalton City Hall, 300 West Waugh Street, Dalton, Georgia 30720.

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: 07/17/2023

Agenda Item: (4) 2023 Alcohol Applications for Review

Department: City Clerk

Requested By: Gesse Cabrera

Reviewed/Approved by City Attorney? Yes

Cost: N/A

Funding Source if Not in Budget N/A

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

(4) Four 2023 Alcohol Applications to be reviewed.

2023 ALCOHOL BEVERAGE APPLICATION APPROVAL

M&C MEETING – MONDAY, JULY 17th

(4) 2023 ALCOHOL APPLICATION(S)

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**

4. 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**



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 7/17/2023

Agenda Item: 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)

Department: Zoning

Requested By: Ethan Calhoun

Reviewed/Approved by City Attorney? Sent for Review

Cost: N/A

Funding Source if Not in Budget N/A

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

See attached staff analysis

CITY OF DALTON
ORDINANCE
Ordinance No. 23-13

An Ordinance Of The City Of Dalton To Rezone Certain Property Within The City Of Dalton From Transitional Residential (R-6) To High Density Residential (R-7) Being A Tract of Land Totaling 0.59 Acres Located at 1905 Abutment Road Dalton, Georgia (Parcel No. 12-315-01-004); To Provide An Effective Date; And For Other Purposes

WHEREAS, Benjamin Cordova and Mary Mendoza (Owners) have filed an application with the City to rezone property located at 1905 Abutment Road (Parcel No. 12-315-01-004);

WHEREAS, the Property is currently zoned Transitional Residential (R-6);

WHEREAS, the Owner is requesting the Property be rezoned to High Density Residential (R-7);

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

WHEREAS, the Planning Commission staff reports that the rezoning proposed is not incompatible with land uses in the neighborhood and thereby recommends approval of the requested R-7 rezoning; and

WHEREAS, the Dalton-Varnell-Whitfield County Planning Commission considered the proposed rezoning of the Property at a duly noticed public hearing held on June 26, 2023 and subsequently forwarded its favorable recommendation to the Mayor and Council for rezoning the property to R-7;

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

-1-

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

-2-

The Property located at 1905 Abutment Road identified as Parcel No. 12-315-01-004 is hereby rezoned from Transitional Residential (R-6) to High Density Residential (R-7) in accordance with the recommendation of the Dalton-Varnell-Whitfield County Planning Commission.

-3-

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

-4-

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

-5-

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

-6-

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

ADOPTED AND APPROVED on the ____ day of _____, 20__, at the regular meeting of the Mayor and Council of the City of Dalton.

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

CITY OF DALTON, GEORGIA

MAYOR

Attest:

CITY CLERK

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

CITY CLERK
CITY OF DALTON

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

MEMORANDUM

TO: City of Dalton Mayor and Council
Andrew Parker
Terry Miller
Jacob Bearden

FROM: Jim Lidderdale
Chairman

DATE: June 26, 2023

SUBJECT: 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) (City)

The most recent meeting of the Dalton-Varnell-Whitfield County Planning Commission was held on June 26, 2023 at 6:00 p.m. at the Whitfield County Courthouse meeting room. A portion of the agenda included a public hearing concerning the above matter. A quorum of six members of the Planning Commission was present. All legal requirements for advertising and posting the public hearing were met. The petition was represented by Benjamin Cordova.

Public Hearing Summary:

Mr. Calhoun summarized the staff analysis which recommended the R-7 rezoning be approved. There were no further questions for Calhoun.

Benjamin Cordova stated that R-7 would allow him to construct two duplexes on the subject property which would be the same density as originally proposed in his plan to construct a quadplex in the R-6 zone district. Cordova then noted that the need for the two duplexes arose from the fact that a quadplex would require a sprinkler system and would exceed his budget.

With no other comments heard for or against, this hearing closed at approximately 6:58pm.

Recommendation:

Chairman Lidderdale sought a motion on the requested R-7 rezoning. **Jody McClurg then made a motion to recommend the requested R-7 rezoning. Octavio Perez then seconded the motion and a unanimous recommendation to approve the requested R-7 rezoning followed, 5-0.**

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

ZONING CASE: Benjamin Cordova is seeking to rezone parcel 12-315-01-004 from Heavy Manufacturing (M-2) to Transitional Residential (R-6). The parcel totals 0.59-acres and is located at 1905 Abutment Rd.

The tract is currently developed as a single-family detached dwelling. The petitioner's request was made in order to redevelop the subject property with two duplex dwellings.

The surrounding uses and zoning are as follows: 1) To the north, are two northern adjacent tracts of land zoned M-2 of which both tracts contain commercial buildings; 2) To the east, is a 0.7-acre tract of land that contains a single-family detached dwelling that is zoned M-2; 3) To the south, is a 1.4-acre tract of land zoned M-2 that contains multiple commercial buildings; and 4) To the west, are two tracts of land across Abutment Rd. zoned M-2 that contain manufacturing developments. A review of the zoning map in this area shows a large M-2 zone district.

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

CONSIDERING FACTORS FOR A REZONING/ANNEXATION ANALYSIS

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

The subject property is in a unique situation in terms of land use development patterns. It is, by principle, a poor practice in land development to allow a modern heavy manufacturing district to be directly adjacent to an unbuffered residential neighborhood. The subject property and neighborhood along Marbut Dr. pose a challenge in terms of ways to remedy the existing issue of the neighborhood surrounded by commercial and manufacturing development. The subject property, along with the other residential tracts along Marbut Dr. is simply too small to be a viable property in terms of manufacturing or industrial land use. The existing dwellings along Marbut Dr. were all constructed at least 60 years ago which predated many of the manufacturing developments now prominent in this area. Until 2015 the commercial and manufacturing zone districts would have permitted all residential uses, but the current UZO only permits industrial and manufacturing uses in the M-2 zone. All other residential properties along Marbut Dr. are now considered non-conforming properties. The subject property would meet the minimum requirements for the R-7 zone district and proposed development of two duplex dwellings in terms of tract size and setbacks.

(B) Whether the proposed R-7 amendment would adversely affect the economic value of adjacent and nearby property.

It is highly unlikely that the subject property would have a negative affect on the values of the adjacent properties if it were rezoned R-7. The amount of heavy manufacturing and

commercial development in the immediate proximity have already had a significant negative impact to the economic values of the single-family detached residential properties along Marbut Dr.

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

As stated previously, the subject property is too limited in size for industrial and manufacturing development. The subject property and other residential properties along Marbut Dr. are burdened due to their being a pocked neighborhood within a large manufacturing district. The proposed rezoning would allow for the subject property to be redeveloped for a higher residential density than it has been historically. This rezoning could set a precedent for the other residential properties along Marbut Dr. by creating a more flexible residential zone district for infill residential development in this area of converging zone districts.

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

N/A

(E) Whether the proposed (R-7) amendment, if adopted or approved, would result in a use which would or could cause an excessive or burdensome use of existing streets, schools, sewers, water resources, police and fire protection, or other utilities, as contrasted with the impact under the existing zoning.

The limited size of the subject property limits the ability to develop to an intensity that would place a burden on public infrastructure. The subject property, although being a corner lot with dual road frontage, would have road access to Marbut Dr. as it has historically been rather than having any access to the arterial Abutment Rd. corridor.

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

The Comprehensive Plan lists this area as within the Industrial character area in the comprehensive plan. The industrial character area is intended strictly for industrial and manufacturing development. This character area was never intended to represent areas with residential development. In this area in the City of Dalton it is not uncommon to see residential and manufacturing land use intermingled due to the nature of the City's former zoning ordinance which permitted residential uses within the manufacturing and commercial zone districts. The pocket neighborhood along Marbut Dr. is one of those areas that are difficult to address in the high-level perspective of a comprehensive plan future development map. The nearby suburban neighborhood along Shephard Ln. shows that the suburban character area exists in near proximity to

the subject property showing that the preservation of residential development is intended in this area of the City. The subject property and the other residential properties along Marbut Dr. are not feasibly suitable for the industrial character area and therefore require unique attention. Based on the hardship associated with the established development pattern of this area, this planner does not feel that the industrial character area provides for a viable use for the subject property and residential neighborhood along Marbut Dr. The proposed R-7 rezoning would create a more flexible residential development opportunity for the subject property than exists as it is currently zoned without disrupting the overall development pattern of the area.

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

The subject property would be an island of R-7 if the proposed rezoning is approved. The residential character of the subject property and other residential properties along Marbut Dr. do not give grounds for concern with the concern for conventional “spot zoning.” In other words, the existing residential character of the subject property would become a conforming use with the added opportunity for a slight increase in unit/acre residential density.

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

N/A

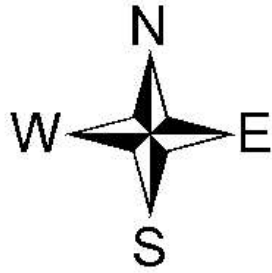
Conclusion:

While this was not an easy analysis given the challenge of this location, the staff can recommend the R-7 rezoning of the subject property based on the following factors:




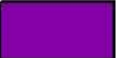
1. The R-7 zone district would allow for a residential use of the subject property that would not be inappropriate at this location;
2. The R-7 rezoning would not burden the values of adjacent properties due to the intensity of manufacturing and commercial land use dominating this area;
3. This rezoning would not be a perfect fit for the future development map at this location given the expectation for industrial development in this area, but the established development pattern and hardship facing the subject property under its current zoning give grounds for special consideration at this location. If

approved, this rezoning would set a precedent for the other residential properties along Marbut Dr. to be considered for similar rezonings in the future.

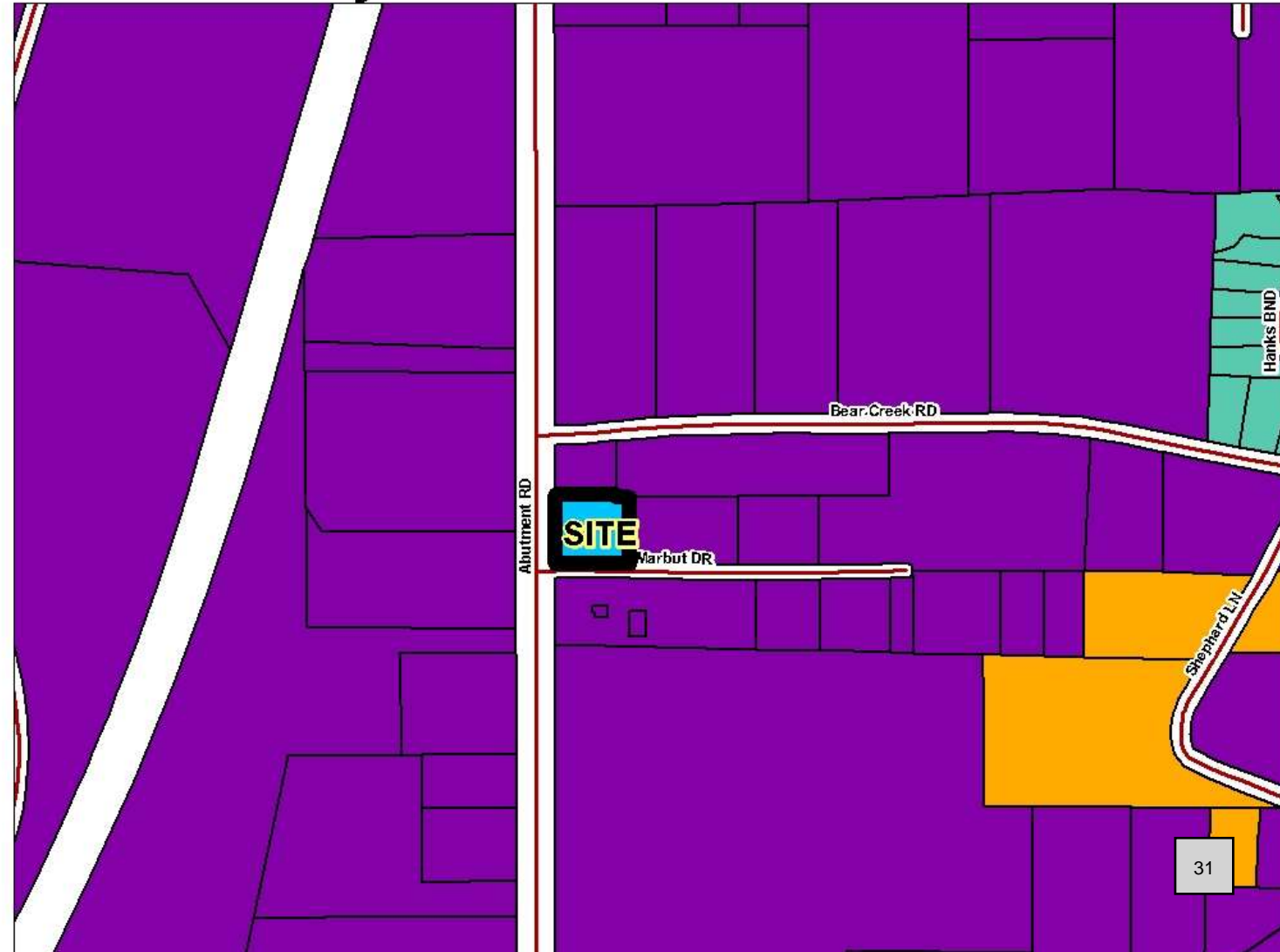
Cordova Rezoning Request R-6, Transitional Residential to R-7, High Density Residential City of Dalton Jurisdiction



ZONING

	Zero Lot Line Residential (R-4)
	Rural Residential (R-5)
	Transitional Residential (R-6)
	Heavy Manufacturing (M-2)

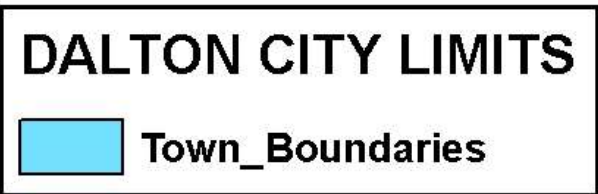
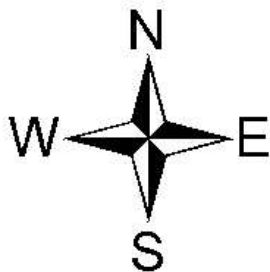
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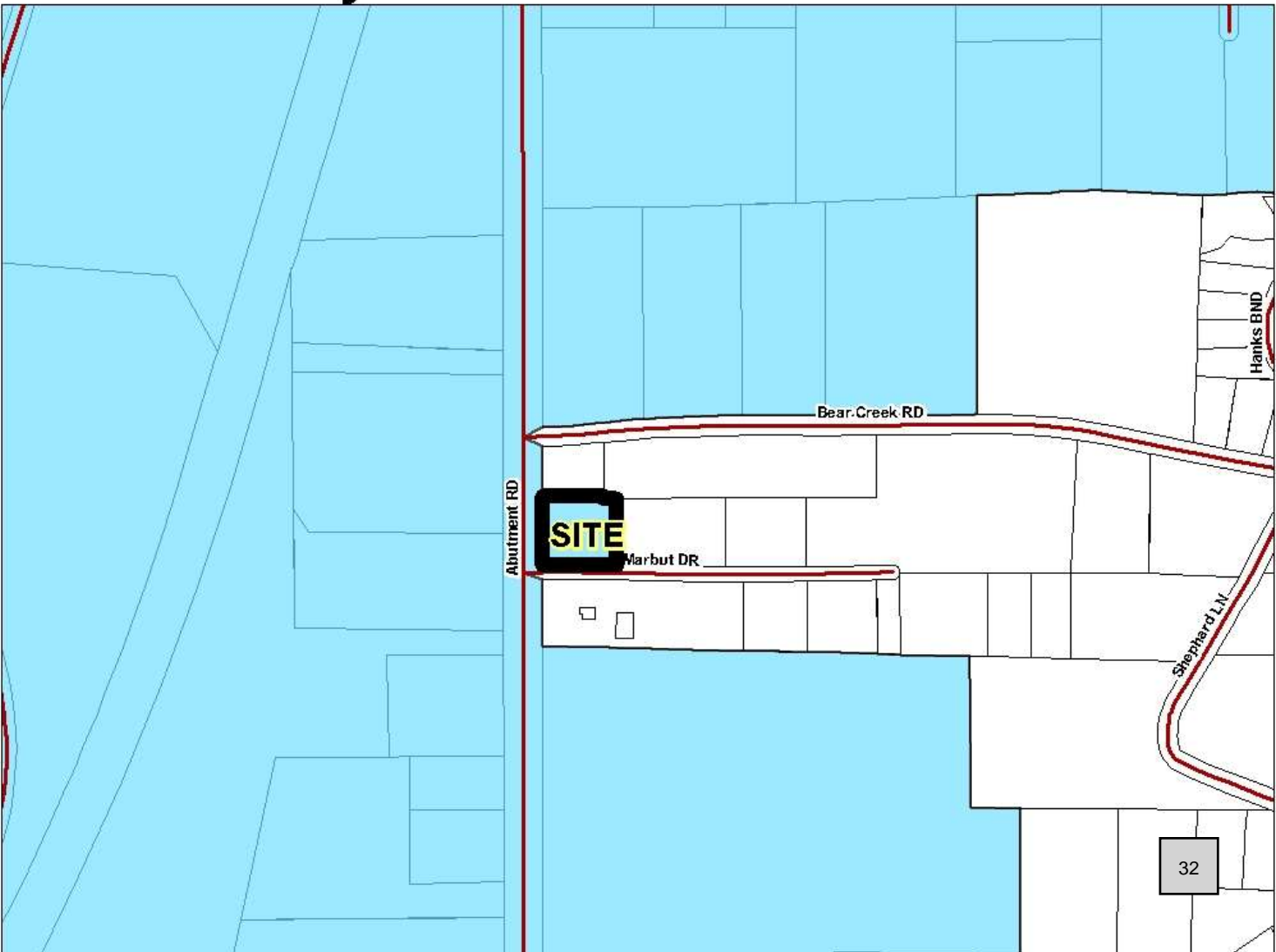
Cordova Rezoning Request R-6, Transitional Residential

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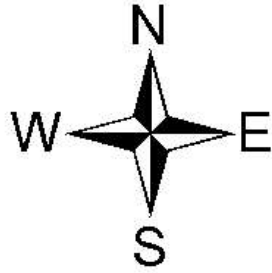
R-7, High Density Residential City of Dalton Jurisdiction



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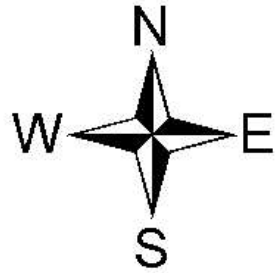


**Cordova Rezoning Request
R-6, Transitional Residential
to
R-7, High Density Residential
City of Dalton Jurisdiction**



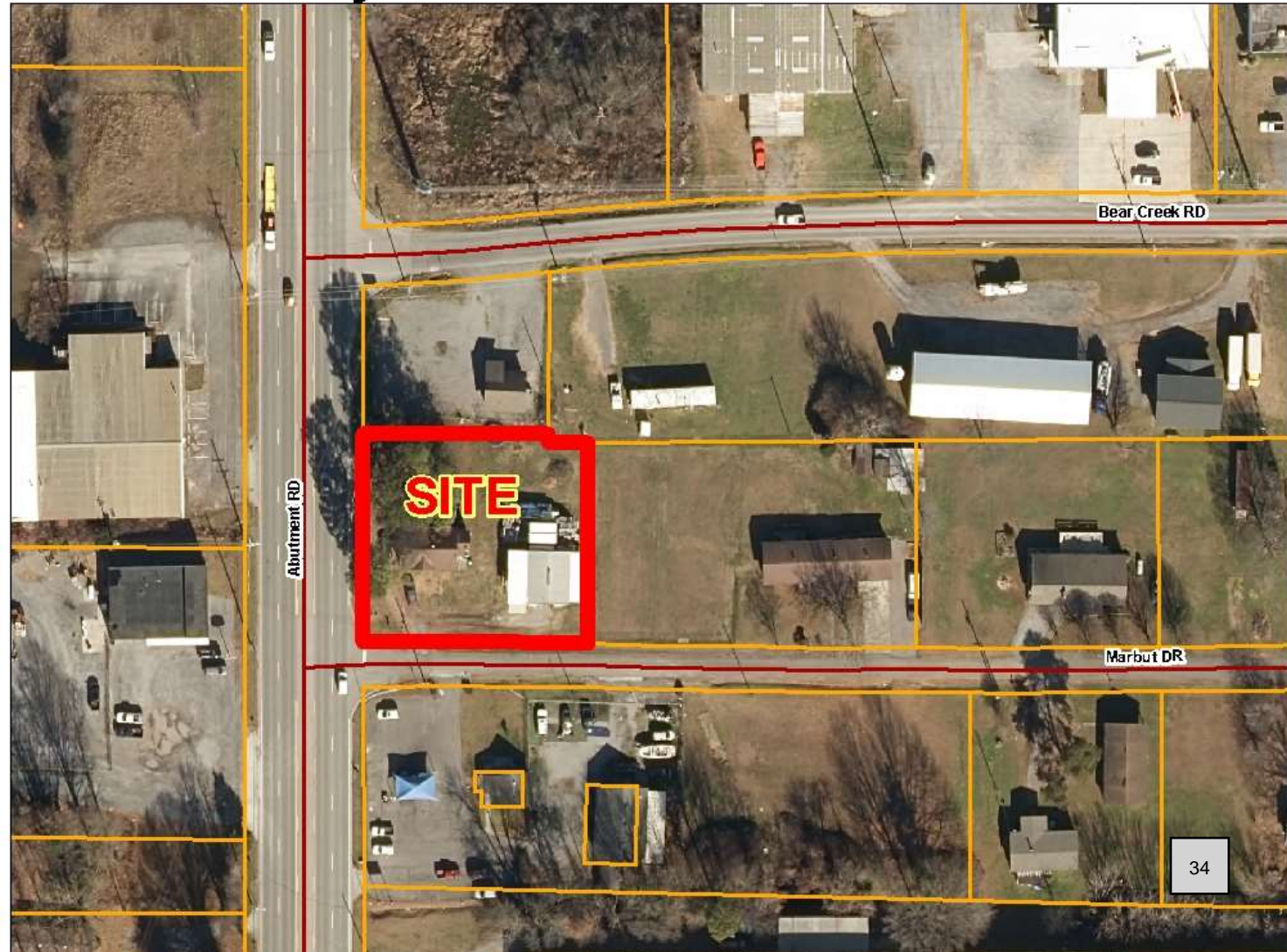
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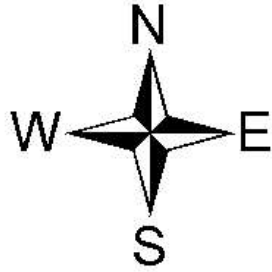


Cordova Rezoning Request R-6, Transitional Residential to R-7, High Density Residential City of Dalton Jurisdiction

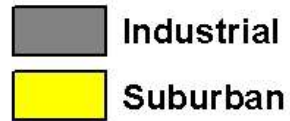
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Cordova Rezoning Request R-6, Transitional Residential to R-7, High Density Residential City of Dalton Jurisdiction



FUTURE DEVELOPMENT MAP



FEET
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CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 7/17/2023

Agenda Item: The request of the Mayor and Council of the City of Dalton to re-appoint Octavio Perez to the Dalton-Whitfield-Varnell Unified Planning Commission to serve a four-year term.

Department: Zoning

Requested By: Ethan Calhoun

Reviewed/Approved by City Attorney? Sent for Review

Cost: N/A

Funding Source if Not in Budget N/A

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

Octavio Perez was appointed on 11/1/21 to serve the remainder of Scott DeLay's unexpired term that will expire 7/23. Perez's next four-year term would be 7/23 through 7/27. Perez has agreed to continue serving.



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 7/17/23

Agenda Item: FY24 Tentative Allocation of Federal Funding for Dalton Municipal Airport

Department: Airport

Requested By: Andrew Wiersma

Reviewed/Approved by City Attorney? Yes

Cost: \$8334

Funding Source if Not in Budget General Fund

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

Trees penetrating the 20:1 approach surface were identified by the FAA for required removal. The design work for this project was covered in GDOT grant contract #44. The construction phase (tree removal) will be covered with this FY24 tentative allocation of \$150,000. Local match funding is required in the amount of \$8334 to accept these funds. If the project costs less than \$150K, local match funding will be reduced accordingly to equal 5% of total project cost.

AIRPORT MANAGER

ANDREW WIERSMA
P.O. BOX 1205
DALTON, GEORGIA 30722
AIRPORT (706) 259-2200
CELL (706) 618-4384
awiersma@daltonga.gov

**AIRPORT AUTHORITY**

DANNY MORGAN, CHAIRMAN
GARY CREWS
EARL BOYD
CHESTER CLARK
BENNY DUNN
www.daltonga.gov

Mr. Russell R. McMurry, P.E., Commissioner
Georgia Department of Transportation
600 W. Peachtree St., NW
Atlanta, GA 30308

Attn: Leigh Ann Trainer, Assistant Director Division of Intermodal

Dear Commissioner McMurry:

By copy of this letter, we acknowledge receipt of the tentative allocation award dated June 30, 2023 in the amount of \$150,000 for obstruction removal at the Dalton Municipal Airport. We also confirm our intent to proceed with this project and fund the estimated matching funds in the amount of \$8,334.

- In accordance with Department policy, we respectfully request state funding assistance in the amount of 50% of the eligible nonfederal share of the federal projects.
- We intend to meet the following project schedule:

Project	Obstruction Removal Construction
Scope/ Fee Submittal	10/31/23
GDOT Scope/Fee Response	11/15/23
Final Scope/Fee Submittal	11/23/23
Bid Advertisement	11/7/23
Bid Opening	12/7/23
Certified Bid Tab Submittal	12/15/23
GDOT Contract	12/31/23

In addition, it is understood if the agreed upon scheduled contract date is not met the Department will consider moving the project to later in FY24 or consider deferring the project to the next fiscal year.

Sincerely,

David Pennington, Mayor
City of Dalton

cc: Damon Carr, Aviation Project Manager
Andrew Wiersma, Airport Manager



Russell R. McMurry, P.E., Commissioner
One Georgia Center
600 West Peachtree NW
Atlanta, GA 30308
(404) 631-1990 Main Office

June 30, 2023

Via Email

The Honorable David Pennington, Mayor
City of Dalton
P.O. Box 1205
Dalton, Georgia 30720

Dear Mayor Pennington:

The Department is pleased to announce a tentative allocation of federal funding assistance in the amount \$150,000 obstruction removal at the Dalton Municipal Airport.

Please confirm, by letter, no later than **July 31, 2023**, your intent to proceed with and fund this project in the state's Fiscal Year 2024, which ends June 30, 2024. State funding for this project if unconfirmed by this date may be reassigned.

State funding assistance must be formally requested by letter to the Department's Commissioner. See attached sample letter. **This project will require matching funds from City of Dalton estimated in the amount of \$8,334.** This is a tentative allocation of funds, the actual contract amount will be based on competitive bids received to accomplish the project. Any projects seeking reimbursement with federal funds must have been reviewed and approved by the Department prior to work commencing in order to be considered eligible.

The Department has scheduled this project to be ready for contract in **December 2023**. Please note if the project does not meet the agreed upon schedule the Department will consider moving the project in order to accommodate other projects or consider deferring the project to the next fiscal year. Damon Carr has been assigned as your Project Manager to assist in this tentative allocation award, including but not limited to, overall project coordination, federal and state guidance, and project review and scheduling. Please communicate with your project manager each month regarding your project's status and schedule.

As acknowledgement to this tentative allocation award, please provide a confirmation letter. See attached example.

Please contact Damon Carr, Aviation Project Manager, at (470) 715-5494 if you have any questions. We look forward to the successful completion of this project.

Sincerely,

Leigh Ann Trainer

Digitally signed by Leigh Ann Trainer
DN: C=US, E=ltrainer@dot.ga.gov,
O=GDOT, OU=Division of Intermodal,
CN=Leigh Ann Trainer
Date: 2023.06.30 11:30:38-04'00'

Leigh Ann Trainer, Assistant Director
Division of Intermodal

cc: Micah Gravley, State Transportation Board
Andrew Weirsma, Airport Manager
Danny Morgan, Authority Chairman

Attachment



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 7/17/23

Agenda Item: Croy Task Order #10 - Design of Obstruction Removal on Runway Approach at Dalton Municipal Airport

Department: Airport

Requested By: Andrew Wiersma

Reviewed/Approved by City Attorney? Yes

Cost: \$63,633.43

Funding Source if Not in Budget Covered under GDOT grant contract #44

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

Trees penetrating the 20:1 approach surface were identified by the FAA for required removal. This project is for the survey work, design plans and environmental discovery to remove the obstructions. Funding for this project was rolled into GDOT contract 44 which was approved by the M&C March 6, 2023. Task order has been held up waiting for a notice to proceed from GDOT based on environmental considerations.

TASK ORDER NUMBER TEN

This Task Order is made as of this ____ day of _____, 2023, under the terms and conditions established in the MASTER AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES (the Agreement), between CITY OF DALTON (OWNER) and CROY ENGINEERING, LLC (ENGINEER). This Task Order is made for the following purpose, consistent with the Project defined in the Agreement:

*Design for Obstruction Removal
RPZ Approach Runway 14/32*

Section A - Scope of Services

Croy Engineering will provide professional services for design and construction of the following project at the Dalton Municipal Airport:

1. Obstruction Removal for Runway 14/32 - Approach

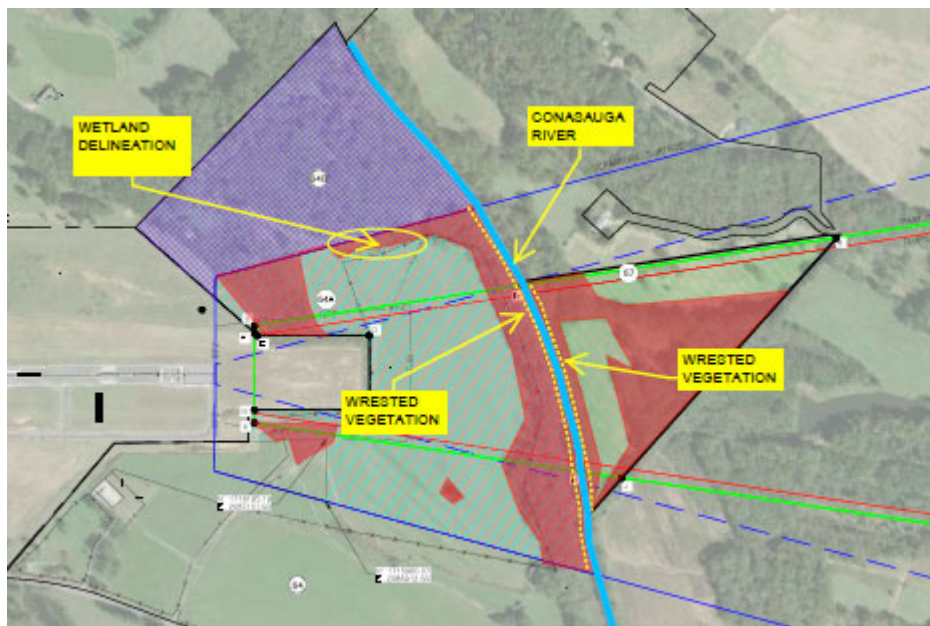
Element 1 – Project Formulation and Coordination shall include the preparation of work scope, fees, pre-design/scoping meeting with GDOT, client meeting, application for funding assistance, preparation of a Construction Safety Phasing Plan (CSPP), submittal of Form 7460 to FAA, and coordination with regulatory agencies, as well as one (1) site visit to observe existing site conditions.

Element 1 shall include environmental services, including all necessary background research and ecological surveys of the project area to identify U.S. Army Corps of Engineers (USACE) jurisdictional waters and/or Waters of the State and to identify the potential presence of protected terrestrial species and/or potential habitat for protected terrestrial species. Environmental surveys shall be conducted by a qualified environmental professional. Wetlands shall be delineated using the three-parameter approach (hydrophytic vegetation, hydric soils, and hydrology) as described in the 1987 USACE *Wetland Delineation Manual* and utilizing the 2012 *Eastern Mountains and Piedmont Regional Supplement* (Version 2.0). Stream classifications shall be performed using the North Carolina Division of Water Quality (NC DWQ) *Methodology for Identification of Intermittent and Perennial Streams and Their Origins*, Version 4.11. State waters shall be delineated using the Georgia Environmental Protection Division (EPD) *2006 Field Guide for Determining the Presence of State Waters that Require a Buffer*. Surveys for protected species or their habitats shall be conducted using approved survey methodologies and/or appropriate resource agency recommendations to assess habitat suitability and species presence as appropriate. Any resources identified during environmental surveys shall be delineated and flagged for the land surveyors so that the delineations can be included in the design plans. Element 1 shall also include coordination of the proposed action with the Local Issuing Authority (LIA) to determine the need for a Stream Buffer Variance and the preparation of a modified

Categorical Exclusion for GDOT review and approval. A separate scope and fee will be prepared if it is determined later in project development that the proposed action would require a Cultural Resources Survey (architectural or archaeological), Aquatic Species Survey, Bat Survey, USACE Jurisdictional Determination, USACE Section 404 permit, GEPA Stream Buffer Variance, or Environmental Assessment/Finding of No Significant Impact (EA/FONSI).

Element 2 – Survey will consist of the field time for a survey crew to locate and conduct a field run topographic survey of to establish the limits of any wetlands and/or buffer areas along the Conasauga River within the areas of where trees are to be cut and the time associated with creating a drawing file for plan preparation purposes. The scope of work shall include the following:

- Begin site reconnaissance to determine survey limits and identify features to be located and take photos of the areas as needed.
- Establish survey control.
- Locate (shoot) flagging placed as markers to identify the edge of wetlands and/or wretched vegetation along the riverbank.
- Upon completion of field work analyze field survey data and notes.
- Draft and prepare final survey drawing for inclusion into a base file for plan preparation purposes.



Element 3 – Construction Plans will consist of:

- Cover Sheet listing the name of the airport, description of the project, vicinity and location maps, project number, index of drawings, summary of quantities, specification numbers, description of the item, unit of measure and estimated quantities.
- Project Layout and Construction Safety Plan
- Existing Conditions and Obstruction Removal Plan(s)
- Erosion Control Plans and Details
- Permitting plans through GA EPD and/or GSWCC
- General Notes

Element 4 – Contract Documents (booklet) including the advertisement for bids (specific dates and times will be “TBD” until further notice), instructions to bidders, bid documents, contract documents, bid bond, performance bond, payment bond, and Federal Aviation Administration (FAA) and/or Georgia Department of Transportation (GDOT) specifications to include Special Provisions to published specifications. This element shall include preparation of an engineering cost estimate for the two separate projects.

Element 5 – Coordination, Review and Comments will be addressed after the 90 percent submittals to GDOT.

Element 6 – Bid Services shall include preparation of advertisement for bids, response to contractor question during the bidding process, receipt of bids at a scheduled bid opening, preparation of the bid tabulation, and recommendation of award to the lowest responsive bidder. Services also includes processing of contract documents.

Plans and specifications shall be in compliance with FAA AC 150/5300-13B, AC 150/5370-10, and other FAA AC's as applicable, and/or the GDOT Standard Specifications Construction of Transportation Systems, 2021 Edition, unless modified by Special Provision. Special Provisions shall be approved by the Department.

Deliverables for each project will consist of one (1) set of electronic Plans and Specifications to GDOT for review and comment prior to the bidding phase. Four (4) sets of the final plans and specifications; and one (1) electronic copy of the final plan set in pdf format and one (1) electronic copy of the plan set in MicroStation or AutoCAD format will be provided to GDOT for each project. Construction contract from GDOT will not be initiated until receipt of all deliverables.

Section B - Schedule

ENGINEER shall perform the Services and deliver the related Documents (if any)

according to the following schedule: Work shall begin within ten (10) days of the notice to proceed. A signed copy of this Task Order will serve as ENGINEER's notice to proceed.

Section C - Compensation

1. In return for the performance of the foregoing obligations, OWNER shall pay to ENGINEER the amount of \$63,633.43, payable according to the following terms:

- a. Invoicing will be submitted monthly for work completed to-date.
- b. A lump sum fee applies for each task as follows and shall be billed based upon percentage of work completed to-date. Expenses for services such as mileage, document reproduction, permit application fees, shipping costs, etc. are not included in the lump sum fee, and shall be billed separately as a reimbursable expense. The lump sum fee and estimated budgets for expenses are as follows:

Element 1 – Project Formulation **\$13,082.28**

Lump Sum Fee: \$12,897.36
Estimated Expenses: \$ 184.92

Element 2 – Survey **\$ 6,562.04**

Lump Sum Fee: \$ 6,320.54
Estimated Expenses: \$ 241.50

Element 3 – Construction Plans **\$28,130.41**

Lump Sum Fee: \$27,980.41
Estimated Expenses: \$ 150.00

Element 4 – Construction Documents **\$ 5,754.32**

Lump Sum Fee: \$ 5,654.32
Estimated Expenses: \$ 100.00

Element 5 – Coordination, Review and Comments **\$ 4,730.63**

Lump Sum Fee: \$ 4,655.63
Estimated Expenses: \$ 75.00

Element 6 – Bid Services **\$ 5,373.76**

Lump Sum Fee: \$ 5,229.92
Estimated Expenses: \$ 143.84

ENGINEERING DESIGN FEE \$63,633.43

2. Compensation for Additional Services (if any) shall be paid by OWNER to ENGINEER according to the following terms: Compensation for additional services shall be paid by the OWNER to the ENGINEER per the Croy Engineering GDOT

Hourly Rate Schedule attached to this Proposal.

Section D - Owner's Responsibilities

OWNER shall perform and/or provide the following in a timely manner so as not to delay the Services of ENGINEER. Unless otherwise provided in this Task Order, OWNER shall bear all costs incident to compliance with the following:

N/A

Section E - Other Provisions

The parties agree to the following provisions with respect to this specific Task Order:

N/A

IN WITNESS WHEREOF the parties hereto have made and executed this Task Order.

OWNER:

CITY OF DALTON

ENGINEER:

CROY ENGINEERING, LLC

DAVID PENNINGTON
Mayor

GREGORY D. TEAGUE, P.E.
CEO

ATTEST:

ATTEST:

PATRICK T. LENTON, P.E.
Aviation Division Manager

Exhibit "B" Hourly Rate Schedule**Croy Engineering, LLC
GDOT HOURLY RATES**

Updated: July 1, 2022			216.47%		10.00%		0.40%
Principal	\$246.61	\$70.76	\$153.17	\$223.93	\$22.39	\$246.33	\$0.28
Project Manager	\$209.46	\$60.10	\$130.10	\$190.20	\$19.02	\$209.22	\$0.24
Engineer 3	\$198.13	\$56.85	\$123.06	\$179.91	\$17.99	\$197.90	\$0.23
Engineer 2	\$174.26	\$50.00	\$108.24	\$158.24	\$15.82	\$174.06	\$0.20
Engineer 1	\$154.22	\$44.25	\$95.79	\$140.04	\$14.00	\$154.04	\$0.18
Designer 2	\$134.04	\$38.46	\$83.25	\$121.71	\$12.17	\$133.89	\$0.15
Designer 1	\$124.32	\$35.67	\$77.21	\$112.88	\$11.29	\$124.17	\$0.14
Tech 2	\$113.93	\$32.69	\$70.76	\$103.45	\$10.35	\$113.80	\$0.13
Tech 1	\$108.60	\$31.16	\$67.45	\$98.61	\$9.86	\$108.47	\$0.12
CADD Operator	\$100.55	\$28.85	\$62.45	\$91.30	\$9.13	\$100.43	\$0.12
Admin	\$93.37	\$26.79	\$57.99	\$84.78	\$8.48	\$93.26	\$0.11
RLS/Survey Manager	\$201.06	\$57.69	\$124.88	\$182.57	\$18.26	\$200.83	\$0.23
Crew (2-Person)	\$186.81	\$53.60	\$116.03	\$169.63	\$16.96	\$186.59	\$0.21
Crew (3-Person)	\$251.63	\$72.20	\$156.29	\$228.49	\$22.85	\$251.34	\$0.29
Field Rep 3 (Regular Time)	\$126.86	\$36.40	\$78.80	\$115.20	\$11.52	\$126.71	\$0.15
Field Rep 3 (Overtime)	\$182.83	\$52.46	\$113.56	\$166.02	\$16.60	\$182.62	\$0.21
Field Rep 2 (Regular Time)	\$108.14	\$31.03	\$67.17	\$98.20	\$9.82	\$108.02	\$0.12
Field Rep 2 (Overtime)	\$155.33	\$44.57	\$96.48	\$141.05	\$14.11	\$155.16	\$0.18
Field Rep 1 (Regular Time)	\$103.54	\$29.71	\$64.31	\$94.02	\$9.40	\$103.43	\$0.12
Field Rep 1 (Overtime)	\$118.46	\$33.99	\$73.58	\$107.57	\$10.76	\$118.32	\$0.14
Land Acq Admin	\$93.37	\$26.79	\$57.99	\$84.78	\$8.48	\$93.26	\$0.11
Land Acq Negot Agent							
Trainee	\$86.78	\$24.90	\$53.90	\$78.80	\$7.88	\$86.68	\$0.10
Land Acq Negot Agent 1	\$89.22	\$25.60	\$55.42	\$81.02	\$8.10	\$89.12	\$0.10
Land Acq Negot Agent 2	\$110.13	\$31.60	\$68.40	\$100.00	\$10.00	\$110.00	\$0.13
Land Acq Negot Agent 3	\$132.40	\$37.99	\$82.24	\$120.23	\$12.02	\$132.25	\$0.15
Land Acq Reloc Agent	\$127.56	\$36.60	\$79.23	\$115.83	\$11.58	\$127.41	\$0.15
Land Acq Relo Benefits Pkg	\$127.56	\$36.60	\$79.23	\$115.83	\$11.58	\$127.41	\$0.15
Land Acq ROW Mngr	\$142.51	\$40.89	\$88.51	\$129.40	\$12.94	\$142.35	\$0.16

Please note that expenses such as mileage, document reproduction, permit application fees, shipping costs, etc. are not included in the fees above, and shall be billed separately as a reimbursable expense.



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 7/17/2023

Agenda Item: Right of Way Encroachment - 301 E Morris Street

Department: Public Works

Requested By: Chad Townsend

Reviewed/Approved by City Attorney? Yes

Cost: N/A

Funding Source if Not in Budget N/A

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

The business owners of D Food Collab are requesting a right of way encroachment for the installation of a handrail or pedestrian barrier to allow for overflow dining and an outdoor seating option. The Public Works Department has verified that there is ample room to accommodate pedestrian and ADA accessibility on the sidewalk where the encroachment is requested.

Application and Permit for Conditional Encroachment on City of Dalton Right-of-Way

Permit No. _____
Applicant: D-Food Collab
Address: 301 East Morris St
Contact Person: Viviana Ramirez
Phone: 706-913-6774
Purpose _____ of _____ Encroachment: _____

A detailed drawing of the project encroachment shall be shown on a separate sheet and attached to this application and shall be made a part of this application/permit.

Permit Conditions

The issuance of a right-of-way encroachment permit does not constitute an easement. This right-of-way encroachment permit is for the use on the right-of-way only. Permittee assumes all legal liability and financial responsibility for the encroachment activity for the duration of the encroachment, and will indemnify, defend, and save harmless City of Dalton (the "City") and any of its officials, employees and agents from and against any and all claims, damages and expenses, including court costs, reasonable attorney's fees arising out of bodily injury or death of any person, or tangible or intangible property damage, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts, or omissions of the Permittee related to the project encroachment or this permit.

The encroachment covered hereby shall be installed in accordance with the attached plan and subject to all applicable ordinances and regulations for the construction and maintenance of streets and right-of-ways of the City. This permit is to be strictly followed and no work other than that specifically described herein is authorized. If the City or its designee undertakes to improve, change or relocate any portion of the right-of-way affected by this permit or encroachment, then the permittee or its successor, at its expense, shall be required to remove any curbing, paving or other alteration within the encroachment area and to stabilize the area for the City's intended use. The privilege of encroachment shall terminate upon notice from the City of its intended use. In the event the permittee fails to remove such curbing, paving or other alteration within the encroachment area after notice from the City, the City shall have the right to take all actions necessary to prepare the encroachment area for its intended use and the permittee shall be liable to the City for the cost thereof.

Permit requested this _____ day of _____, 20____. The signing of this permit application commits the applicant to the Permit Conditions.

Applicant:

By: Viviana Ramirez
(title) owner

Public Works Committee Recommendation: ☐ Approve ☐ Do not Approve

After consideration by the Mayor and Council of the City of Dalton, the foregoing conditional encroachment application is hereby ☐ approved ☐ denied, this _____ day of _____, 20____.

City of Dalton, Georgia

By:

Mayor

Attest:

City Clerk



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 7/17/2023

Agenda Item: Indemnity & Hold Harmless Agreement - 420 Sheridan Avenue

Department: Public Works

Requested By: Chad Townsend

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:

This agreement between the City and 11th Avenue Realty Investments, LLC. is to act as a right of way encroachment agreement for a structure located at 420 Sheridan Avenue. The area of encroachment took place on the un-opened portion of May Street and extends into the right of way by approximately five feet. Given the topography of the up-opened portion of May St., it would not be feasible to construct a future road therefore Public Works has no issue with the encroachment. This has been reviewed and approved by the Public Works Committee as well as the City attorney.

Prepared by and
when recorded return to:

INDEMNITY AND HOLD HARMLESS AGREEMENT

This INDEMNITY AND HOLD HARMLESS AGREEMENT (the “Agreement”) is entered into and effective the ____ day of _____, 2023, by and between **11TH AVENUE REALTY INVESTMENTS, LLC**, a Georgia limited liability company (the “Owner”), and the **CITY OF DALTON** (the “City”).

WHEREAS, the Owner owns certain real property located at 420 Sheridan Avenue, Dalton, Georgia, as described on **Exhibit A**, attached hereto and made a part hereof (the “Property”); and

WHEREAS, prior improvements have been constructed on the Property resulting in the encroachment of a building up to 3.32 feet across the property line into the May Street right of way (the “City Right-of-Way”), as shown on **Exhibit B** (the “Encroachment”); and

WHEREAS, the City is requiring the Owner to indemnify the City for any matters relating to such location and existence of the Encroachments shown on **Exhibit B** over the City Right-of-Way.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable considerations, the parties agree as follows:

1. **Encroachment**. The City hereby acknowledges, agrees and permits Owner, or its assigns, a permanent encroachment over and upon the City Right-of-Way in order to keep and maintain the Encroachment as depicted on **Exhibit B** (the “Permitted Improvements”), subject to the terms and conditions of this Agreement.

2. **Indemnity by the Owner**. The Owner hereby agrees that it shall indemnify, defend, and hold harmless City, its successors and assigns, agents, officers, representatives, employees, contractors, and licensees, from any expense City incurs from the construction or reconstruction of City’s street, sidewalk, and related infrastructures (the “City Right-of-Way Infrastructure”) located within the City Right-of-Way as a result of the Permitted Improvements as depicted on **Exhibit B**, including such costs or expenses related to such damage to the Permitted Improvements

existing within the City Right-of-Way. Owner further agrees that it shall indemnify, defend, and hold harmless City, its successors and assigns, agents, officers, representatives, employees, contractors, and licensees, from any and all liability, claims, damages, expenses, including attorney's fees and litigation costs, resulting from or arising out of the removal or alteration of the Permitted Improvements encroaching within the City Right-of-Way, as deemed necessary by the City.

3. Repair and/or Replacement Obligations. Owner understands and agrees that if the City or any agent, officer, employee, or contractor removes, damages or alters the Permitted Improvements, that Owner is fully responsible for the repair and/or replacement of the Permitted Improvements. Owner further understands and agrees that if Owner damages or causes damages to the City Right-of-Way Infrastructure within the City Right-of-Way that Owner is fully responsible for the immediate repair and/or replacement of the City Right-of-Way Infrastructure as deemed necessary by and to the standards of the City. Owner agrees that it shall indemnify, defend, and hold harmless City, its successors and assigns, agents, officers, representatives, employees, contractors, and licensees, from any and all liability, claims, damages, expenses, including attorney's fees and litigation costs, resulting from or arising out of the removal, damage, or alteration of the Permitted Improvements encroaching within the City Right-of-Way and/or damage to the City Right-of-Way Infrastructure resulting from Owner and/or the Permitted Improvements, as deemed necessary by the City.

4. Relocation after Building is Demolished or Destroyed. If the Permitted Improvements as depicted on **Exhibit B**, or structures on the Property served by the Permitted Improvements, are ever demolished or destroyed, any new construction must be erected entirely on private property and shall not encroach into the City Right-of-Way.

5. No Expansion. Permitted Improvements shall not be expanded upon within the City Right-of-Way.

6. Survival. This Agreement shall run with the Property and be binding upon and insures to the benefit of all future owners, successors, and assigns of the Property. Accordingly, if Owner (or a future owner) transfers fee simple title to the Property, then it no longer is obligated under nor is a beneficiary of this Agreement, and the rights and obligations hereunder shall pass to the new title owner. Notwithstanding the foregoing, Owner (or a future owner) shall be responsible for the indemnity provisions set forth herein from and after the transfer of title if it is later discovered that a claim arose during the time period that the Owner (or a future owner) owned the Property. The right of indemnification pursuant to this Agreement shall survive any applicable statute of limitation, if any. If the City seeks indemnification under this Agreement it shall provide Owner (or the then owner of the Property, as applicable) with written notice which reasonably sets forth, in light of the information then known to the City, a description of the estimate (if then reasonable to make) of the amount involved in such claim.

This Agreement shall be binding on the parties hereto, their heirs, successors, and assigns. The above authorization to allow such encroachment over and upon the City Right-of-Way and the rights granted herein shall constitute covenants running with the land.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, this Agreement has been executed by Owner and the duly authorized representative of Dalton as of the date first written above.

OWNER:

Signed, sealed and delivered in the presence of:

**11TH AVENUE REALTY INVESTMENTS,
LLC**, a Georgia limited liability company

Unofficial Witness

By: _____

Name: _____

Title: _____

Notary Public

My Commission expires: _____

[SEAL]

CITY:

Signed, sealed and delivered in the presence of:

CITY OF DALTON, GEORGIA:

Unofficial Witness

By: _____

Name: _____

Title: _____

Notary Public

My Commission expires: _____

[SEAL]

EXHIBIT A

Legal Description

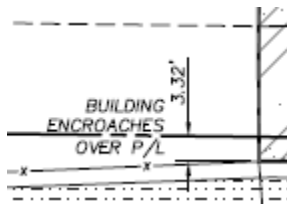
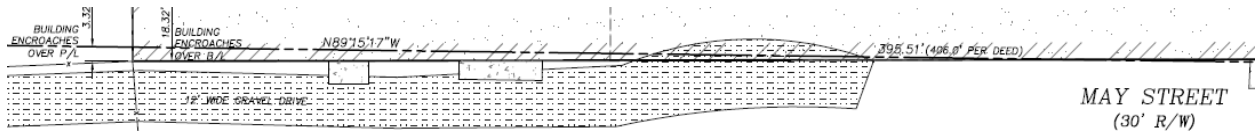
All that tract or parcel of land lying and being in Land Lot No. 240 in the 12th District and 3rd Section of Whitfield County, Georgia, and being all of Lots Nos. 34-51, inclusive and the south five feet of Lot 33, Block B, of the R.A. Williams Subdivision, per plat of said subdivision recorded in Plat Book 1, Page 49 (Plat Cabinet A, Slide 12), Whitfield County, Georgia Land Records, and being more particularly described according to said plat as follows:

BEGINNING at the northwest corner of the intersection of Sheridan Avenue (12th Avenue) and May Street (not opened) and running thence west along the north side of said May Street a distance of 406 feet to the east side of 11th Avenue; thence north 175 feet along the east side of said 11th Avenue; thence east 206 feet; thence north 105 feet; thence east 200 feet to the west side of Sheridan Avenue; thence south along the west side of Sheridan Avenue 280 feet to the POINT OF BEGINNING.

EXHIBIT B

Permitted Improvement/Encroachment

According to the ALTA/NSPS Land Title Survey prepared by Bryan Long, GA. Reg. No. 3107, for and on behalf of Meridian Geomatics, dated April 20, 2023, a portion of the 1-story commercial building located at 420 Sheridan Avenue encroaches by up to 3.32 feet onto May Street as depicted in the below images from such survey.





CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting
Meeting Date: 07/17/23
Agenda Item: Alternative Probation Contract
Department: Municipal Court
Requested By: Jason James
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:

Alternative Probation Services has requested an update to the contract. City attorney Terry Miller and Judge Cowan have both reviewed and approved this change.

Municipal Court of Dalton
535 N. Elm St
Dalton, GA 30721

June 5, 2023

Greetings,

I have been in contact with the Misdemeanor Probation Oversight Unit, which falls under the Department of Community Supervision. They have been in the process of reviewing all misdemeanor probation contracts statewide. As such, it has come to our attention that they would appreciate some minor clarifications of our current Service Agreement.

These clarifications are as follows:

- Specify a standard reporting frequency for probationers
- Ensure that Pay-only cases are supervised according to the statute
- Confirm that all cases are supervised as concurrent unless specifically ordered
- Verify that GCVEF is collected according to the statute.
- Include the specific end/expiration date of the service agreement

Attached is an addendum detailing the above clarifications, for your review. I have also included a copy of the current contract in effect as it currently stands for comparison purposes. There are no material changes to the terms of the contract or to how APS provides services to the Court.

Once the addendum is signed, please notify APS and we will arrange pick up of the addendum, so that we may forward it to the Department of Community Supervision.

As always, if you have any questions, please do not hesitate to call our office (706)270-9220, or you can email me directly at reaton101@gmail.com

Sincerely yours,



Dwight Eaton
President, Alternative Probation

ADDENDUM TO CONTRACT FOR PROBATION SERVICES
OF APRIL 13, 2023

Probation Services Agreement

This Addendum to the Probation Services Agreement is made by and among **Alternative Probation Services, Inc.**, organized under the laws of the State of Georgia, with its principal place of business at 2705 Airport Rd, Suite 105, Dalton, GA 30721, hereinafter referred to as "APS" and the **Municipal Court of Dalton, Georgia** hereinafter called "Court". This Agreement is governed by Article 6 of Chapter 8 of Title 42 of the Official Code of Georgia, Annotated. The parties enter into the Agreement under the specific authority of O.C.G.A. §42-8-100 (h)(1).

The Contract shall be modified as follows :

Section 2, Item R - Officer per Probationer Ratio. Contractor shall manage caseload limits so as not to exceed 300 probationers per one (1) probation officer for supervision. ***Probationers shall meet with their probation officer as directed. Probationers shall be required to report in person no less than once per month, unless otherwise determined by their Probation Officer. The type and frequency of reporting required by the Probation Officer may be subject to change as circumstances may require.***

Section 2, Item I -

~~I. Regarding O.C.G.A. §42-8-103 pay only cases, such cases will be marked as such on the Court's sentence sheet, and if not marked, the number of months sentenced to probation supervision will stand and probation fees may be collected for the entire sentence.~~ ***Regarding O.C.G.A. §42-8-103 pay only cases: Pay only cases will be supervised in accordance with the statute, and as a general rule will be noted as such on the Sentence sheet. Unless otherwise stated, it is the intention of the Presiding Judge that individuals sentenced to probation be supervised for compliance with all terms and conditions of probation in addition to the mere collection of a fine. A monthly fee for the Georgia Crime Victims Emergency Fund ("GCVEF") fees will be collected from Probationers that have this fund listed on the Court's sentence sheet and will be remitted to the VCPSF the 10th of each month.***

Section 2, Item J -

J. APS shall comply with O.C.G.A. §42-8-103.1 and the Court's sentence sheet as to whether the sentence of the Court is intended to be concurrent or consecutive. If not specifically noted, all sentences will be deemed ~~consecutive~~ **concurrent**.

Section 3, Period of Service - The performance of services described in section one of this Agreement shall commence on the 13th day of April, 2023. This Agreement shall automatically renew from year to year (each such year hereinafter referenced as "Renewal Term") under the same terms and conditions as provided for herein for a period of up to five years, ***terminating on the 12th day of April, 2028*** unless otherwise terminated as provided herein. At the end of the last Renewal Term, this Agreement shall automatically terminate.

IN WITNESS WHEREOF, THE PARTIES HERE HAVE APPROVED AND EXECUTED BOTH THE ORIGINAL AGREEMENT AND THIS ADDENDUM, ON THE _____ DAY OF _____, 20____

Dalton Municipal Court

Honorable Judge Rob Cowan

Alternative Probation Services, Inc.

Dwight Eaton

City of Dalton

Mayor David Pennington

Witness: _____

PROBATION SERVICE AGREEMENT

COPY

Probation Services Agreement

This Agreement (hereinafter "Agreement") is made by and among **Alternative Probation Services, Inc.**, organized under the laws of the State of Georgia, with its principal place of business at 2705 Airport Rd, Suite -105, Dalton, GA 30721, hereinafter referred to as "APS" and the **Municipal Court of Dalton, Georgia** hereinafter called "Court," and the City of Dalton, Georgia hereinafter referred to as the "City." This Agreement is governed by Article 6 of Chapter 8 of Title 42 of the Official Code of Georgia, Annotated and Georgia Department of Community Supervision ("DCS"). APS, the City, and the Court may each be referred to independently as "Party" or collectively as the "Parties." The Parties enter into the Agreement under the specific authority of O.C.G.A. §42-8-101 and Ga. Comp. R. & Regs. 105-2-.01 et. seq.

WITNESSETH:

WHEREAS, APS is authorized by O.C.G.A. 342-8-101 to provide general probation supervision, fine collection services, counseling and other probation services for persons convicted of certain misdemeanors and placed on probation by the Court under its jurisdiction (hereinafter "Probationers") and;

WHEREAS, APS represents that it is qualified to provide such comprehensive professional services and is willing to contract with the Court in an effort to comply with the legislative enactment, as well as the guidelines set forth by the Misdemeanor Probation Oversight Unit ("MPOU") of the DCS.

WHEREAS, the Court, by the signature of the undersigned Judge below, expressly consents to this Agreement and requests that the City enter the same as required by O.C.G.A. §42-8-101(a)(1).

NOW, THEREFORE, in consideration of the premises and the mutual benefits and covenants provided under the terms and conditions of this Agreement, the parties hereto agree as follows:

1. Designation by Court

The Court shall designate APS as the entity to coordinate and provide direct probation and rehabilitation program services to Probationers. The Court shall provide to APS an area for conducting of initial interview and orientation with the Probationer on the day of sentencing.

2. Scope of Services

APS shall provide the services and programs for the Probationers, which shall include the following particulars:

A. APS shall comply with Article 6 of Title 42 Chapter 8 (as amended from time to time) of the Official Code of Georgia and all standards, rules, regulations, and guidelines set forth by the MPOU.

B. APS shall provide the Court with a written program of rehabilitation services, which can be offered to Probationers, and thereafter assist the Court regarding such services as to the particular needs of each Probationer.

C. APS shall maintain individual files for each Probationer participating in APS programs, APS shall maintain the confidentiality of all files, records, and documents relative to supervision of Probationers under this Agreement. The files will be maintained in a secured area, in a locked file cabinet or safe and within

probation software used by APS. Files will be made available to the Court's Clerk or Judge upon request.

D. APS shall provide timely and prompt reports as are determined by the Court to be reasonably necessary to determine compliance by APS with the terms of this Agreement and compliance by APS, as delegated by the Court, with all federal, state, and local laws and regulations pertaining to sentencing and probation of Probationers subject to the jurisdiction of the Court as may be delegated to APS pursuant to the terms of this Agreement.

E. APS shall maintain financial records according to generally accepted accounting practices and shall make fiscal and program records available to representatives of the Court or City for review and maintaining financial records reflective of good business practice.

F. APS shall bill the Probationer forty dollars (\$40.00) for supervision fees per month of sentenced probation for program services provided on such forms and in such manner to conform to acceptable business practice. The accuracy of billing is to be confirmed by providing a copy of the services and attending cost to the Probationer. These fees shall be ordered by the Court as a term and condition of probation for each Probationer assigned for supervision to APS unless the Court determines the Probationer to be indigent. If the Probationer is ruled indigent by the Court, APS will abide by the guidelines set forth in O.C.G.A. §42-8-102. The Court shall not be liable for payment of any supervision fee or any program fee of a Probationer.

G. APS Services and Fees to be paid by the Probationer are as follows:

- (1) \$40 per month Supervision Fee to be paid by each Probationer
- (2) \$40 Drug Test Charge per Test
- (3) \$10 Alco-sensor Testing
- (4) \$50 Warrant Fee

H. APS shall recommend revocation of probation whenever the Probationer has failed to substantially comply with the terms and conditions of probation under O.C.G.A. §42-8-102. APS shall prepare probation warrants and orders for submission to the Court. APS is authorized by the Court to sign and send an order (revocation hearing notice) to any Probationer not complying with the Court's sentence, to appear in Court on a specific date for a revocation hearing. APS shall have probation officers available to testify at probation revocation hearings, sentencing hearings, and other hearings that the Court deems necessary.

I. Regarding O.C.G.A. §42-8-103 pay only cases, such cases will be marked as such on the Court's sentence sheet, and if not marked, the number of months sentenced to probation supervision will stand and probation fees may be collected for the entire sentence. Georgia Crime Victims Emergency Fund ("GCVEF") fees will be collected from Probationers that have this fund listed on the Court's sentence sheet and will be remitted to the VCPSF the 10th of each month.

J. APS shall comply with O.C.G.A. §42-8-103.1 and the Court's sentence sheet as to whether the sentence of the Court is intended to be concurrent or consecutive. If not specifically noted, all sentences will be deemed consecutive.

K. APS shall assign any Probationer sentenced to Community Service work to Court approved locations. APS shall have no responsibility regarding the direct supervision of any probationer performing Community Service work, beyond scheduling. However, APS shall instruct Probationers that all community service work is expected to be performed during the first half of any probated sentence.

L. APS shall submit a monthly written report to the Court on the amount of fines, costs and restitution ordered and collected from the Probationer. The report shall include the services provided, the total dollar amount applied to Court ordered fines, restitution, and other conviction related costs. The monthly reports shall be provided to the Court by the 10th of every month. APS will comply with all reports under O.C.G.A. §42-8-103.

M. APS shall tender all Court fines, costs and restitution ordered and collected during the month from the

Probationer to the Court by the 10th day of each month.

N. APS shall comply with all laws regarding confidentiality of Probationer records.

O. APS will not attempt to profit from any fines, restitution or court costs collected from any Probationer. P. APS shall employ competent and able personnel to provide the services to be rendered hereunder and to appropriately administer the caseload. APS employees shall meet all requirements for background checks under Ga. Comp. R. & Regs. 105-2-.10 and O.C.G.A. §42-8-107. All probation officers will be at least twenty-one (21) years of age, have 90 college quarter hours or 60 college semester hours from an accredited institution or 4 years of law enforcement experience as a certified peace officer or jurisdictional equivalent at the time of appointment. All probation officers shall also comply with the orientation and initial 40 hours initial training as well as continuing education training per annum and all other requirements set forth in Ga. Comp. R. & Regs. 105-2-09. No person who has been convicted of a felony will be employed by APS as a probation officer or staff member, and all employees must maintain a clear criminal record. Any administrative employee, agent, intern, or volunteer with APS will be at least 18 years of age, complete a 16 hour orientation program within 6 months of being employed, and meet the required yearly 8 hour continuing education training.

Q. A criminal history records check and verification of citizenship shall be performed on all employees and agents of APS. Employees will only be hired by APS after completing the process required by the Department of Community Supervision and Misdemeanor Probation Oversight Unit guidelines.

R. Officer per Probationer Ratio: APS shall manage caseload limits so as not to exceed 300 Probationers per one (1) probation officer for supervision.

S. APS shall submit a quarterly report to the Department of Community Supervision Board as required by O.C.G.A. §42-8-108. The report shall include all information set forth under the guidelines of O.C.G.A. §42-8-108 and Ga. Comp. R. & Regs. 105-2-13 including all services and fees approved by APS.

3. Period of Service

The performance of services described in section one of this Agreement shall commence on the _____ day of _____, 20____. This Agreement shall automatically renew from year to year (each such year hereinafter referenced as "Renewal Term") under the same terms and conditions as provided for herein for a period of up to five years unless terminated as provided herein. At the end of the last Renewal Term, this Agreement shall automatically terminate.

4. Termination

Termination for Cause: In the event the Court or the City believes APS has materially failed to provide the services enumerated in this Agreement, the Court and the City shall notify APS in writing of the specified allegations. Within (30) thirty business days of receipt of such notice, APS shall take such measures as are reasonable and necessary to correct any deficiencies alleged. If APS fails to correct the matters complained of within (30) thirty business days, the Court and the City may declare APS in default in its duties and obligations under this Agreement. In such event, the Court and the City, at their option and in their sole discretion, may terminate this Agreement by written notice to APS.

Immediate Termination for Cause: The Court and the City may terminate this Agreement immediately if: (a) APS becomes insolvent, (b) APS is adjudicated as bankrupt; (c) state law prohibits private probation in municipal courts, or (d) the Department of Community Supervision permanently revokes its certification of APS.

Termination without cause: Either party may terminate this Agreement without cause at any time for any reason by providing no less than (90) ninety days written notice to the other party.

5. Termination Procedures

In the event that this Agreement is terminated for any reason, all parties shall cooperate and take any and all actions

necessary to facilitate an orderly transition to a new probation service. APS shall provide City and Court with all records and other documents generated by APS in connection with this Agreement and an accounting of all fines, fees, and restitution received by APS from probationers within ten (10) days of a request by the Court or City. Any fines, fees, and restitution received by APS from probationers of this Court after termination of this Agreement shall be forwarded to the Clerk of Court, other than fees earned by APS. The Court shall provide APS a receipt for all property surrendered under this provision.

6. Access to Books and Records

Representatives of the Court and City shall have access, at all reasonable times and upon prior notice to APS, to all APS files, records, receipts, vouchers, or other documents pertaining to work under the Agreement, for the purpose of conducting an independent audit.

7. Insurance

APS shall provide and maintain during the life of this Agreement, workers' compensation insurance and general liability with the following limits of liability.

General Liability - \$1,000,000.00

Workers compensation - Statutory

Bond per employee - \$50,000

8. Indemnification / Hold Harmless

Neither the Court nor the City shall be liable to APS or to any third party for any act or omission of APS, its employees, agents, or participants. In addition, APS, and its successors and assigns, shall indemnify and hold harmless the City and the Court from any and all claims, actions proceedings, expenses, damages, liabilities, or losses (including, but not limited to attorney's fees and court costs) arising out of or in connection with any services performed by APS or any act or omission of APS, its employees, agents, or participants. This obligation survives the expiration or termination of this Agreement, the dissolution of APS, and to the extent allowed by law, the bankruptcy of APS.

9. Assignment

APS may not delegate, assign, or subcontract any of its rights or obligations under this Agreement except as may be provided herein.

10. Validity

This Agreement shall be binding on any successor to the undersigned Official of the Court unless terminated as set forth above.

11. Entire Agreement

This Agreement constitutes the entire understanding and agreement between the parties hereto and supersedes any and all agreements, whether written or oral, that may exist between the parties regarding the same. No representations, inducements, promises, or agreements between the parties not embodied herein shall be of any force and effect. No amendments or modifications to this Agreement or any waiver of any provision hereof shall be effective unless in writing and signed by all parties.

12. Notice

Any Notices made in accordance with this Agreement shall be in writing and shall be made by registered or certified mail, and return receipt requested, to:


Court: Municipal Court of Dalton
535 N Elm St
Dalton, Ga 30720

City: City of Dalton
PO Box 1205 Dalton, Ga 30722-1205
Attn: City Administrator

APS: Alternative Probation Services
2705 Airport Rd, Ste. 105
Dalton, Ga 30720


IN WITNESS WHEREOF, THE PARTIES HERE HAVE EXECUTED THIS AGREEMENT ON THE
13 DAY OF April, 2023

Dalton Municipal Court



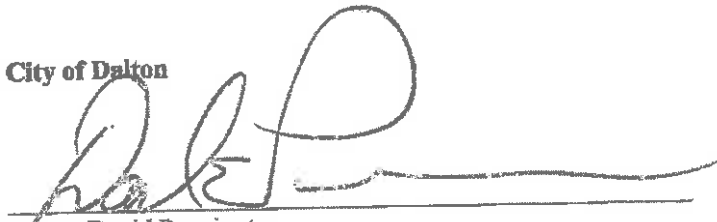
Honorable Judge Rob Cowan

Alternative Probation Services, Inc.



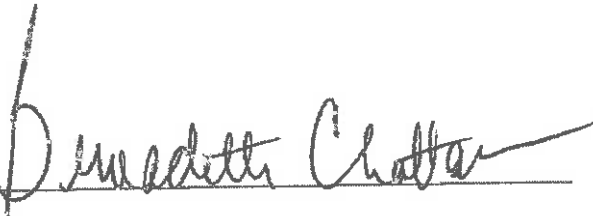
Dwight Eaton

City of Dalton



Mayor David Pennington

Witness:





CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 07/17/23

Agenda Item: Courtware Contract

Department: Municipal Court

Requested By: Jason James

**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:**

New contract with Courtware showing a slight increase to \$7 per citation with a \$2000 minimum per month.
--



NON-EXCLUSIVE LICENSE AGREEMENT

THE STATE OF GEORGIA

COUNTY OF: Whitfield

JusticeONE® (herein "JSO"), 5917 Edenfield Dr. Suite 110, Acworth, Georgia 30101, for good and valuable consideration, hereby grants a nonexclusive license to:
City of Dalton

(END USER)

353 North Elm Street | Dalton, GA 30720

(ADDRESS)

(CITY, STATE, ZIP CODE)

(herein "Licensee") to use certain software programs and related materials (herein "Programs") for the designated processing system, subject to the terms and conditions hereof (herein "License"):

Programs shall include executable modules for each software program identified in this Agreement, user's manual and related documentation, in machine readable or printed form.

LICENSE	QTY	UNIT PRICE
Azure Data Hosting	1	Included
Visual Court Management System	1	Included
Visual Court Management System NCIC – Access (# User Licenses)	1	Included
JusticeONE® Pay	1	Included

\$ 7.00 dollars per violation or \$ 2000.00 minimum monthly billing, whichever is greater. Price includes the following services: Installation, Training, Maintenance, Upgrades and non-customized modifications related to these products.

IN WITNESS WHEREOF, we have executed this agreement on this the 21 day of August 2023 to which witness our hands and seal of office.

Licensee**JusticeONE®**Signature: [Signature]Signature: [Signature]

Print: _____

Print: Kevin Seay

Title: _____

Title: Account ExecutiveDate: [Date]Date: 06/21/2023**Forward Looking Statement**

Presentation(s) or product demonstration(s) shared with you may contain forward-looking statements that involve risks, uncertainties, and assumptions. If any such uncertainties materialize or if any of the assumptions prove incorrect, the results of Courtware Solutions, Inc. (Courtware) could differ materially from the results expressed or implied by the forward-looking statements that we make. Customers who purchase our services should make their purchasing decisions based upon features that are currently available.

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Licensee acknowledges that it shall be deemed a licensee of Courtware Solutions, Inc. and that it obtains hereby only a non-exclusive license to use the Programs. Title and all ownership and intellectual property rights in the Programs licensed under this license Agreement remains with JSO and do not pass to licensee. The Programs are agreed to be valuable proprietary information and to contain trade secrets, which JSO is authorized to license. Licensee is licensed to use the Program solely for the internal purposes of its own business. Licensee agrees that Licensee will not permit the Program to be used either directly or indirectly by licensee's customers or any other person or entity through a timesharing service, service bureau arrangement or otherwise. Licensee may not grant sublicense or other rights in the software to others, nor assign or transfer this license to any third party. JSO shall have the right to terminate this license if licensee violates any of its provisions. Licensee recognizes and agrees that the Program and all portions, reproductions, modifications and improvements thereof provided to licensee hereunder are (i) considered by JSO to be trade secrets; (ii) provided to licensee in confidence; and (iii) the exclusive and proprietary information of JSO. Title and full ownership rights in the Product and modifications and improvements provided by JSO shall not vest in licensee. Licensee agrees not to remove or destroy any Proprietary or confidential legends or makings placed upon or contained within the Program and related materials.

2. TERMS

This license shall be in effect from the date of execution of this Agreement and shall remain in effect during the term of this agreement. Upon termination or expiration of this license, all rights and obligations shall cease, except the licensee's obligation to maintain the confidentiality of JSO's proprietary information.

3. SECURITY

Licensee shall take all reasonable steps necessary to ensure that the Programs, or any portion thereof, on magnetic tape, disk or memory or in any other form are not made available by the licensee or by any of its employees to any organizations, or individuals not licensed by this license Agreement to make use thereof, in particular licensee recognizes the proprietary nature of the Programs and agrees as follows:

- a. To make no copies or duplicate the Programs or any component thereof by any means for any purpose whatsoever except as is required for archival or security storage purposes, without prior written consent of JSO.
- b. To reproduce JSO's copyright notice on all materials related to or part of the Programs on which JSO displays such copyright notice, including any copies made pursuant to this license Agreement.
- c. Licensee shall not copy, reproduce, reverse assemble, reverse compile, compare, modify, merge, transfer or distribute the Program or allow any other person to do so in any way or manner without the prior written authorization of JSO.
- d. Any modifications or enhancements to the Program, or any other Program related material provided by JSO to the Licensee shall be subject to all conditions and restrictions contained in this Agreement.

4. LIMITATION OF LIABILITY

JSO's liability for damages to licensee for any cause whatsoever related to this license, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited. This limitation of liability will not apply to claims for patent and copyright infringement. Notwithstanding anything herein to the contrary in no event shall JSO be liable for any lost profits, lost savings, or other special, incidental or consequential damages, or for punitive or exemplary damages, even if JSO has been made aware of the possibility of such damages, or for any claim against any other party, in connection with the delivery, installation, training, testing, use, performance or nonperformance of the Programs, or the act or failure to act of JSO, or arising out of, related to or in connection with this Agreement.

5. TERMINATION

Upon termination of the license herein granted arising from termination of this license for any reason, licensee shall deliver to JSO all magnetic or otherwise materials, together with all portions, reproductions, and modifications thereof, furnished by JSO and pertaining to the Programs and shall also warrant that all copies thereof have been destroyed or returned to JSO. Within ten (10) days of request by JSO, licensee shall certify in writing to JSO that to the best of licensee's knowledge, the original and all copies, in whole or part, or the Programs have been destroyed or returned to JSO. In addition, all documentation, listings, notes or other written material pertaining to the Program shall be returned to JSO or destroyed. The right of termination under this Section shall be in addition to any other right or remedy either party may have at law or in equity. JSO shall have the right to terminate this Agreement, by giving written notice of such termination to licensee, in the event that the licensee (i) fails to pay JSO any sums due and payable hereunder within ten (10) days after their due date, (ii) fails to observe any of the licensee's obligations hereunder with respect to proprietary information or confidentiality, or (iii) fails to perform or observe any other material term or obligation set forth in this Agreement.

6. NO WARRANTY

JSO PROVIDES THE PROGRAM "AS IS". JSO MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, AND WITHOUT LIMITATION, THE CONDITION OF THE PROGRAMS, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. JSO does not warrant that the function contained in the Program will meet the licensee's requirements or that the operation of the Program will be uninterrupted or error free.

7. SPECIAL SERVICES *

JSO will provide the Client with Such Special services or supplies reasonably requested or approved by the Client including, but not limited to, special data entry services, such as conversion, program and test data keypunching, data entry, computer runs, or industrial or systems engineering services provided that the Client and JSO agree upon the fee therefore, and that the Client approves, in writing, payment for such services as special.

8. EMPLOYMENT

The Client agrees to retain and employ JSO as an independent Contractor, and JSO agrees to Serve the Client upon the terms and conditions hereinafter stated.

9. SERVICE PERIOD

This agreement shall commence August 21, 2023 and shall continue to and including August 20, 2024. Client shall have the right and option to continue to receive the services of JSO as provided Hereunder for additional periods. In the event that the Client elects to continue to receive services from JSO, this Agreement shall automatically renew for an equal term, unless the Client informs JSO in writing ninety (90) days prior to the Agreement Expiration Date. This Agreement applicable thereto shall continue in full force and effect for any additional period licensee determines.

10. AGREEMENT TERMINATION OR EXPIRATION

Not less than three (3) months prior to the Expiration Date, the Client shall notify JSO whether or not it desires after the Expiration Date to use the JSO Programs. Upon termination of this Agreement in part or in full by action of the terms herein or upon action of the parties, JSO will assist in the transferring of the Client's data files retained by JSO pursuant to this Agreement, to another data format that the Client desires and communicates provided however, that such formats do not violate the proprietary rights of JSO. Further, costs involved with any such transfer of data shall be borne by the Client.

11. AUTHORIZATION

The chief executive officer ("Executive") of the Client certifies that all appropriate steps to legally enter into this agreement have been taken on behalf of the client, that the matter has been approved by the appropriate legislative body and that the terms of this agreement are understood. Moreover, the executive certifies that all laws, rules and regulations as well as any local government rules were followed with regard to acceptance of this contract and that this agreement meets all standards for governmental contracts.

12. DUTIES

During the period or periods Of JSO's retainer hereunder, JSO shall provide data processing services to the Client and its various departments. JSO agrees to provide any necessary training to the Client's personnel to the extent at which the personnel are proficient utilizing the JSO software. The Client will retain the right to request additional training throughout the life of the contract at times agreeable by both parties. The Client acknowledges that during the term of this Agreement certain computer programs will be utilized or otherwise made available and that these programs and their use by the Client shall be governed this Agreement.

13. DATA FILES

The Client's data files and the data contained therein shall be and remain the Clients property and all the existing data and data files shall be returned to it by JSO at the Expiration Date or upon earlier termination of this Agreement, The Client's data shall not be utilized by JSO for any purpose other than that of rendering services to the Client under this Agreement, nor shall the Client's data or any part thereof be disclosed, sold, assigned, leased, or otherwise disposed of to third parties by JSO or commercially exploited by or on behalf of JSO, its employees or agents.

14. COMPENSATION AND TERMINATION *

Commencing 21 August 2023, the Client shall pay to JSO monthly at its office in Cobb County, Georgia, as fees for its services, upgrades, and software support a monthly sum of \$ 7.00 per paid violation or a minimum monthly amount of \$ 2000.00, whichever is greater. The per paid violation fee is subject to change to a monthly flat fee amount that is equal to the Client 12 month (or number of months used if less than 12 months) average. The payment rate is subject to change, upon notification. The Client will be responsible for generating an invoice report from the Court Management System each month to be included in with the payment sent to JSO office in Cobb County, Georgia. If the Client shall default in the payments of JSO provided for herein above or shall fail to perform any other material obligation agreed to be performed by client hereunder JSO shall notify the Client in writing of the facts constituting default. If the Client shall not cause such default to be remedied within ten (10) days after receipt of such written notice, JSO shall have the right with no further written notice to terminate aforementioned support.

15. Data Sharing

If used the Client consents and agrees to Courtware's collection and use of all law enforcement and court data provided by Client to Courtware, including but not limited to the Shared Data. Although the Client acknowledges and agrees that Courtware collects data as a part of its ordinary business activity and Courtware may use, distribute, sell and reproduce such data at its sole and absolute discretion, Client also specifically consents and agrees to Courtware's providing the Shared Data to any and all of those persons and entities participating in Courtware's Data Sharing network. Client acknowledges and agrees that Courtware is not responsible for and does not make any warranties with respect to the accuracy of any Shared Data. Client agrees to provide accurate Shared Data to Courtware, and Client acknowledges that other persons and entities may have access to, use, distribute and reproduce any or all of the data collected by Courtware, including but not limited to the Shared Data.

Client agrees that it will not provide Courtware with any data that cannot be lawfully disclosed to other persons or entities by Courtware. Client further warrants that all Shared Data provided by Client to Courtware is publicly available and is not subject to any intellectual property claims or other claims of any other person or entity.

Client agrees to comply with all state, federal, and local privacy, security and otherwise applicable laws, rules and regulations in any way related to the use, transfer or disclosure of any data provided by Client to Courtware, including but not limited to the Shared Data.

Client agrees that Client will only use the Shared Data in a manner consistent with all applicable laws, rules and regulations.

Client agrees not to sell, provide access to or redistribute in any manner to any person or entity who is not at that time employed by Client, whether electronically, in paper format, or otherwise, any of the Shared Data that Client receives from Courtware, unless prior written consent is given by Courtware. Client agrees to require all employees and any other person or entity that may have access to any Shared Data to return all copies, whether electronic, paper or otherwise, of the Shared Data back to Client immediately upon ceasing to be an employee of or under contract with Client.

16. MISCELLANEOUS

This Agreement shall be binding upon the successors and assigns of each party. Other than JSO's granting a Uniform Commercial Code security interest to a third-party lender in the accounts receivable/contract rights to receive money under this Agreement and many equipment furnished by JSO to Client, neither party shall assign its rights or obligations hereunder without the express written consent of the non-assigning party. The Agreement shall embody the entire agreement between the parties but may be amended from time to time by the written consent of both parties. This agreement shall be construed under the laws of the State of Georgia, and the invalidity of any portion shall not invalidate the remainder of the agreement, but such remainder shall be given full force and effect if practicable.

* Definition of a "Paid" Violation; Any violation in which a payment has been received.

* Definition of "Special Services"; Services and or enhancements that are unique to Client, and cannot be used by JSO's existing customer base.



CJA/G-NCJA and Vendor CJIS Network & Data Agreement

This document constitutes an agreement between the

(CJA or G-NCJA)

(ORI)

and

JusticeONE® / Courtware Solutions, Inc.

(Vendor)

hereinafter referred to as the vendor.

The criminal justice agency (CJA) or governmental non-criminal justice agency (G-NCJA) **that is involved in the administration of criminal justice** and the vendor have a written agreement in which the vendor will provide services specific to the administration of criminal justice that involves either direct or indirect access to data through the Georgia Criminal Justice Information System (CJIS) network.

The vendor shall comply with the Federal Bureau of Investigation (FBI) CJIS Security Policy and the Rules of the Georgia Crime Information Center, O.C.G.A. § 35-3-30 et. seq. This agreement incorporates the CJIS Security Policy and the Security Addendum.

If the vendor is performing work on behalf of the CJA or G-NCJA, then a brief statement should be included in the area below identifying the agency's purpose and scope of providing services for the administration of criminal justice (see FBI CSP 5.1.1.5)

The vendor shall maintain a list of personnel with access to criminal justice information (CJI) and provide a copy to the CJA or G-NCJA upon request. Vendors whose services enable access to the CJIS network shall maintain a current network topology diagram that meets the FBI CJIS Security Policy requirements and provide a copy of the diagram to the CJA or G-NCJA upon request.

The CJA or G-NCJA reserves the right to terminate this agreement, with or without notice, upon determining the vendor has violated any applicable law, rule or regulation or has violated the terms of this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date set forth.

CJA or G-NCJA Signature

Print Name

Date

Vendor Address:

David Hamil

Vendor Signature

David Hamil

Print Name

Date



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 7-17-23

Agenda Item: Budget Amendment #4

Department: Finance

Requested By: Cindy Jackson

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

Cost: \$0

**Funding Source if Not in
Budget**

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

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.

2023 Budget Amendment

Budget Amendment #4

GENERAL FUND

	Increase (Decrease)	
Revenues & Transfers-In		
Interest income	\$ 400,000	(1)
TAVT	140,000	(1)
Sales tax	210,000	(1)
Sale of capital assets	7,500	(1)
Transfers in - Utility transfer fee	6,825,000	(1)
Transfers in - Health insurance fund	1,165	(2)
	<u>\$ 7,583,665</u>	
Expenditures & Transfers-out		
Transfer to Airport Grant Fund	\$ 750,000	(3)
Transfer to Grant Fund	1,644,000	(4)
Transfer to CIP	5,181,000	(5)
	<u>\$ 7,575,000</u>	
Net Increase (Decrease) Budgeted Fund Balance	<u><u>\$ 8,665</u></u>	

(1)	To adjust revenue accounts over budget
(2)	To close self-insured health insurance fund
(3)	Local match for Airport grant for Hangar Construction
(4)	Local match for ARPA grant funds (Improving Neighborhood Outcomes) - Rec & PW
(5)	Capital improvements program funding for 2023 as approved by Finance Committee

Health Insurance Fund

	Increase (Decrease)	
Expenditures & Transfers-out		
Transfer to general fund	\$ 1,165	(2)
	<u>\$ 1,165</u>	
Net Increase (Decrease) Budgeted Fund Balance	<u><u>\$ (1,165)</u></u>	

Airport Grant Fund

	Increase (Decrease)	
Revenues & Transfers-In		
Federal revenue	\$ 2,250,000	(3)
Transfer from general fund	750,000	(3)
	<u>\$ 3,000,000</u>	
Expenditures & Transfers-out		
Infrastructure	\$ 3,000,000	(3)
	<u>\$ 3,000,000</u>	
Net Increase (Decrease) Budgeted Fund Balance	<u><u>\$ -</u></u>	

2023 Budget Amendment
Budget Amendment #4

	Increase (Decrease)	
Grant Funds (Improving Neighborhood Outcomes)		
Revenues & Transfers-In		
Federal revenue	\$ 4,399,480	(4)
Transfer from general fund	1,644,000	(4)
	<u>\$ 6,043,480</u>	
Expenditures & Transfers-out		
Infrastructure - Rec	\$ 2,537,485	(4)
Infrastructure - PW	3,505,995	(4)
	<u>\$ 6,043,480</u>	
Net Increase (Decrease) Budgeted Fund Balance	<u>\$ -</u>	

	Increase (Decrease)	
CIP Fund		
Revenues & Transfers-In		
Interest income	\$ 21,095	(1)
Sale of capital assets	11,700	(1)
Transfer from general fund	5,181,000	(5)
Transfer from bonded capital	1,425,000	(6)
	<u>\$ 6,638,795</u>	
Expenditures & Transfers-out		
Site Repairs - Paving 2024	\$ 1,200,000	(6)
Infrastructure (Pentz-Cuyler engineering-design)	225,000	(6)
Land - building purchase	1,500,000	(5)
Vehicles	745,700	(5)
Machinery	961,000	(5)
Facility repairs and maintenance	1,915,000	(5)
Other equipment	92,095	(5)
	<u>\$ 6,638,795</u>	
Net Increase (Decrease) Budgeted Fund Balance	<u>\$ -</u>	

(6)

Funds initially transferred in 2022 from the general fund to the bonded capital fund for aquatic center is being reallocated to 2024 paving & Pentz-Cuyler streetscape

2023 Budget Amendment

Budget Amendment #4

2015 SPLOST Fund

		Increase (Decrease)	
Revenues & Transfers-In			
Transfer from bonded capital projects	\$ 4,523,890	(7)	
	<u>\$ 4,523,890</u>		
Expenditures & Transfers-out			
Infrastructure - Prater Alley Project	\$ 1,395,370	(7)	
Infrastructure - Glenwood Project	1,400,000	(7)	
Infrastructure - Greenway Project	1,728,520	(7)	
	<u>\$ 4,523,890</u>		
Net Increase (Decrease) Budgeted Fund Balance	<u>\$ -</u>		

(7)

Projects are being funded by bonded debt and 2015 SPLOST funds. The DCA chart of accounts mandate that projects being funded with SPLOST funds are to be accounted for in the SPLOST account unless funded with GO debt. The debt is from revenue bonds and not GO bonds. These projects from multiple funding sources were moved to the 2015 SPLOST fund.

2020 SPLOST Fund

		Increase (Decrease)	
Revenues & Transfers-In			
Interest income	\$ 118,485	(8)	
Transfer from bonded capital fund	800,000	(8)	
	<u>\$ 918,485</u>		
Expenditures & Transfers-out			
Site Repairs - 2023 Paving	\$ 819,370	(8)	
Infrastructure - John Davis Center	99,115	(8)	
	<u>\$ 918,485</u>		
Net Increase (Decrease) Budgeted Fund Balance	<u>\$ -</u>		

(8)

Funds initially transferred in 2022 from the general fund to the bonded capital fund for aquatic center is being reallocated to 2023 paving and interest earnings are being allocated between paving and John Davis Center project.

Bonded Capital Fund

		Increase (Decrease)	
Revenues & Transfers-In			
Interest income	\$ 244,240	(9)	
	<u>\$ 244,240</u>		
Expenditures & Transfers-out			
Transfer to CIP	\$ 1,425,000	(6)	
Transfer to 2015 SPLOST	4,523,890	(7)	
Transfer to 2020 SPLOST	800,000	(8)	
Infrastructure - Haig Mill Trail Connectivity	79,000	(9)	
Infrastructure - Temple BETH-EL Project	30,000	(9)	
Infrastructure - Aquatic Center	(2,225,000)	(9)	
Infrastructure - Greenway Project	(1,593,280)	(9)	
Infrastructure - Prater Alley	(1,395,370)	(9)	
Infrastructure - Glenwood Ave	(1,400,000)	(9)	
	<u>\$ 244,240</u>		
Net Increase (Decrease) Budgeted Fund Balance	<u>\$ -</u>		

(9)

Allocate interest earnings to various projects, reduce Aquatic Center funding from the general fund and allocate to various projects, and move remaining budgets for the Greenway, Prater Alley, and Glenwood Ave. projects to 2015 SPLOST fund.



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 7/17/23

Agenda Item: KRH Agreement for DPD Addition

Department: Administration

Requested By: Andrew Parker

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

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

Agreement with KRH Architects, Inc., for Property and Evidence Addition to the Dalton Police Department

AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Seventeenth day of July 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)

An Addition to the Dalton Police Department

An addition to accommodate property and evidence. The project will also include minor modifications to the existing building to re-purpose the existing evidence storage space.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

Init.

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User Notes:

(3B9ADA43)

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ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

A new addition to house Property and Evidence along with a new evidence lab, garage and supporting spaces.

§ 1.1.2 The Project's physical characteristics:

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

The new building will be placed on the North side of the existing facility.

§ 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 \$2,500,000

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

.1 Design phase milestone dates, if any:

Init.

Completion of Contract Documents 9/30/2023

.2 Construction commencement date:

November 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:

William J. Peltier and Associates
Bill Peltier

.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.

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§ 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

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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

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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.

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§ 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 (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect / Owner
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	Architect

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§ 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.

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§ 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

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.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)*

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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

Init.

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

Init.

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.

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 July 11, 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)

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 08:32:56 ET on 07/13/2023.

PAGE 1

AGREEMENT made as of the Seventeenth day of July 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

...

An Addition to the Dalton Police Department

An addition to accommodate property and evidence. The project will also include minor modifications to the existing building to re-purpose the existing evidence storage space.

PAGE 2

A new addition to house Property and Evidence along with a new evidence lab, garage and supporting spaces.

...

The new building will be placed on the North side of the existing facility.

...

Approximately \$2,500,000

PAGE 3

Completion of Contract Documents 9/30/2023

...

November 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

...

William J. Peltier and Associates

...

Bill Peltier

...

To be determined

...

To be determined

...

Civil Engineering - PWH Engineering

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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 Programming	<u>Architect / Owner</u>
§ 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	<u>Architect</u>
§ 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	<u>Architect</u>
§ 4.1.1.9 Landscape design	<u>Architect</u>
§ 4.1.1.10 Architectural interior design	<u>Architect</u>
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	

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User Notes:

§ 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	

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	
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§ 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	
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§ 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	

...

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 July 11, 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 08:32:56 ET on 07/13/2023 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: 7/17/23

Agenda Item: Lease Agreement for Robert E. Shaw

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:

Renewal of Lease Agreement with Robert E. Shaw for the old City Hall building at 114 N. Pentz Street for 20-year period to expire October 31, 2044.

LEASE AGREEMENT

GEORGIA, WHITFIELD COUNTY

This Lease Agreement made and entered into this ____ day of _____, 2023 by and between the City of Dalton, Georgia, a municipal corporation of the State of Georgia, hereinafter referred to as "Lessor" and Robert E. Shaw, hereinafter referred to as "Lessee."

WITNESSETH:

WHEREAS, Lessor is the owner of that certain tract or parcel of land located within the Lessor's corporate limits as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Premises"); and

WHEREAS, the building located on the Premises is the former city hall of the Lessor; and

WHEREAS, the Premises has been held by the Lessor for its corporate purposes, was never dedicated to public use, and has been abandoned by Lessor as a city hall due to its physical condition and other inadequacies; and

WHEREAS, Lessee desires to lease and renovate the Premises to further his charitable and philanthropic endeavors; and

WHEREAS, it is the desire of the Lessor and Lessee to enter into a lease agreement;

THEREFORE, the Lessor, for and in consideration of the rents, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be kept and performed by the parties it is agreed as follows:

-1-

THE PREMISES LEASED

Lessor does hereby lease, rent and grant unto Lessee the Premises subject to the terms and conditions set forth herein.

-2-

PURPOSE

The Premises shall be used for the purpose of facilitating the charitable and philanthropic endeavors of Lessee and for all purposes ancillary thereto. The Premises shall be used for the purposes stated herein on a continuous basis during the term of this Lease.

-3-
TERM

The term of this Lease shall commence at the expiration of the current lease term and terminating at midnight on October 31, 2024, unless sooner terminated or extended as hereinafter specifically provided by this Lease, and extend for twenty (20) years, commencing November 1, 2024 and terminating at midnight on October 31, 2044.

-4-
RENT

The consideration for this Lease shall be Lessee's renovation of the Premises as provided herein to such extent that will result in improvements to the Premises with a value that approximates the fair rental value of the Premises over the term of the Lease discounted to present value as well as continuing maintenance of the facility with repairs as necessary. Additionally, Lessee shall provide the City consultation services regarding economic development issues on an as needed basis.

-5-
UTILITIES

Lessee shall be solely responsible for all charges for gas, electricity, telephone and other utility services used, rendered, supplied or imposed upon the Premises and shall indemnify Lessor and save it harmless against any liability or charges on account thereof.

-6-
RENOVATION

- (a) The Lessee shall renovate the Premises in a manner consistent with the style and history of the building located thereon. Tenant, at his expense, shall cause the preparation of architectural plans, detailed specifications and finish schedules (collectively, the "Plans") for all work to be performed in and on the Premises. Lessee shall submit the Plans to the Lessor and obtain written approval of the same from Lessor prior to the commencement of any work. The Plans shall be prepared in accordance with applicable building codes and rules and regulations of governmental agencies, including but not limited to the rules, regulations and requirements of the City of Dalton Historic Preservation Commission.
- (b) The renovations shall commence no later than 90 days after both parties approve the lease and shall continue uninterrupted and with reasonable progress to completion.
- (c) All renovations to the Premises shall remain on the Premises and shall become the property of the Lessor upon completion.

INDEMNIFICATION AND INSURANCE

Lessee agrees to indemnify and save harmless the Lessor against all liability claims for damages to persons or property by reason of Lessee's use or occupancy of the Premises, and all expenses reasonably incurred by Lessor as a result thereof, including reasonable attorney's fees and court costs.

Lessee shall, at all times during the Lease term, maintain in full force and effect comprehensive public liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) for any occurrence resulting in personal property damage to third persons or bodily or personal injury to or the death of a person and consequential damages arising therefrom, and in the amount of at least Three Million Dollars (\$3,000,000.00) for any occurrence resulting in bodily or personal injury or death to more than one person and consequential damages arising therefrom. Lessee will furnish to Lessor copies of policies or certificates of insurance evidencing coverage required by this Lease. All policies required hereunder shall contain an endorsement naming Lessor as an additional named insured and provide that the insurer will not cancel or amend the policy or policies without first giving at least thirty (30) days' prior written notice thereof to Lessor.

Lessor shall, under its existing policies, insure the Premises for fire and extended coverage. If the Premises, or any portion thereof, shall be damaged during the term by fire or any casualty insurable under the standard fire and extended coverage insurance policies, but are not wholly untenable, the Lessor shall repair and/or rebuild the same as promptly as possible. If the Premises are rendered wholly untenable by fire or other cause, or if the Premises is damaged or destroyed by fire or other casualty, to the extent of 50% or more of the monetary value thereof, or so that 50% or more of the floor space contained shall be rendered untenable, then, and in that event, Lessor may, at its option, terminate this Lease or elect to repair or rebuild the same. In any of the foregoing instances, the Lessor shall notify the Lessee as to its election within sixty (60) days after the casualty in question. If the Lessor elects to terminate this Lease, then the same shall terminate five (5) business days after such notice is given, and Lessee shall immediately vacate the Leased Premises and surrender the same to the Lessor. If the Lessor does not elect to terminate this Lease, the Lessor shall repair and/or rebuild the Premises as promptly as possible, subject to any delay from causes beyond its reasonable control, and the term shall continue in full force and effect, until said Premises are repaired or restored. For the purposes of this section, damage to the Premises to the extent that full repairs cannot be made solely from the proceeds of insurance maintained on the Premises, shall be deemed a total destruction of the Premises. The Lessor shall make the determination as to whether sufficient insurance proceeds are available within sixty (60) days after the casualty in question. The Lessor shall notify the Lessee if insufficient insurance proceeds are available, and the Lease shall terminate five (5) business days after such notice is given.

-8-

AFFIRMATIVE COVENANTS AND RESPONSIBILITIES OF LESSEE

Lessee covenants and agrees that Lessee, will, without demand:

- a. Keep the entire Premises reasonably clean and free from all rubbish, dirt and other matter; and shall maintain and repair the entire structure including, but not limited to, painting, floor covering, maintenance of all fixtures as well as common grounds, landscaping, plumbing, electrical, and heat and air systems.
- b. Comply with any requirements of the constituted public authorities, and with the terms of any state or federal statutes or local ordinances or regulations applicable to Lessee, the Premises or Lessee's use of the Premises.
- c. Give to Lessor prompt written notice of any accident, fire or damage occurring on or to the Premises;
- d. Prevent the attachment of any lien to the Premises.

-9-

NEGATIVE COVENANTS OF LESSEE

Lessee covenants and agrees that he will do none of the following things without consent in writing of Lessor:

- a. Occupy the Premises in any other manner or for any other purpose than as set forth herein;
- b. Do or knowingly allow any person to do anything on the Premises, or any part thereof, or bring or knowingly permit anything to be brought or kept in the Premises, or knowingly permit the use of the Premises for any business or purpose that would cause a violation of any requirements of any of the constituted public authorities, and with the terms of any state or federal statutes or local ordinances or regulations applicable to Lessor, the Premises or Lessee's use of the Premises.
- c. Post signs on the exterior of the building without consent of the Lessor.

-10-

ADDITIONAL COVENANTS

- a. Lessor shall not be liable for any damage, compensation or claim by reason of inconvenience or annoyance arising from the interruption of the use of the Premises.
- b. It is hereby covenanted and agreed by and between the parties that any law,

usage or custom to the contrary notwithstanding, Lessor shall have the right at all times to enforce the covenants and provisions of this Lease in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of the Lessor in refraining from doing so at any time or times, and further, that the failure of the Lessor at any time or times to enforce its right under said covenants and provisions strictly in accordance with the same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions or covenants or this Lease, or as having in any way or manner modified the same;

- c. Lessee agrees to grant to Lessor reasonable access to the Premises during normal business hours.
- d. Lessee shall not discriminate with respect to race, gender, nationality, residence, or religion in allowing access to the Premises, and Lessee will not allow the Premises to be used by any third party without the prior written consent of the Lessor.

-11- REMEDIES

If Lessee shall be in breach of any of the covenants and conditions of this Lease to be kept, observed, and performed by Lessee for more than thirty (30) days after the giving of written notice by the Lessor to the Lessee of such breach, or if Lessee shall vacate or abandon the Premises, or if Lessee shall be adjudged a bankrupt, or if a receiver or trustee shall be appointed and shall not be discharged within thirty (30) days from the date of such appointment, then and in any such events the Lessor may re-enter the Leased Premises by summary proceedings or otherwise, and there upon may expel all persons and remove all property there from, without becoming liable to prosecution therefore, and may terminate this Lease, without prejudice to any other remedy Lessor may have either by law or by this Lease, enter upon the Premises and expel or remove Lessee and Lessee's personal property with or without force and without being liable to Lessee in any manner whatsoever for damages thereof. Lessee shall be liable to Lessor for, and shall indemnify and hold Lessor harmless from and against, all costs or damage which Lessor may suffer by reason of such termination of this Lease, including reasonable attorney's fees.

-12- TERMINATION

This Lease shall automatically terminate upon the occurrence of any one of the following events:

- a. Ninety (90) days after the death of the Lessee unless within that ninety (90) day time period the Robert E. Shaw Charitable Remainder Trust, or its successor, gives Lessor written notice that it is assuming the obligation of the Lessee hereunder. The assumption by said trust or its successor shall

become effective on the date such notice is received by the Lessor.

- b. Any assignment, or attempted assignment of this Lease by Lessee without the prior written consent of the Lessor.

-13-

PARTIES BOUND

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective heirs, successors and permitted assigns of the parties.

-14-

NOTICES

Except for legal process which may also be served as provided by law, all notices required or desired to be given with respect to this Lease shall be in writing and shall be deemed to have been given when hand delivered or 3 days after deposited, postage prepaid, with United State Postal Service, Certified, Return Receipt Requested, and properly addressed as follows:

TO LESSOR: City of Dalton
P. O. Box 1205
Dalton, Georgia 30722-1205
Attn: City Administrator

TO LESSEE: Robert E. Shaw
P.O. Box _____
Dalton, GA

Such addresses may be changed from time to time by either party by notice to the other.

-15-

NO ESTATE IN LAND

This Lease creates the relationship of landlord and tenant between Lessor and Lessee. No estate shall pass out of Lessor, and Lessee has only usufruct which is not subject to levy and sale.

-16-

STATE LAW

The laws of the State of Georgia shall govern the interpretation, validity, performance and enforcement of this Lease.

-17-

TIME IS OF THE ESSENCE

Except as otherwise noted specifically provided herein, time is of the essence of this

Lease.

**-18-
EXECUTION**

This Lease may be executed in any number of counterparts, each of which shall be deemed an original and any of which shall be deemed to be complete in itself and be admissible into evidence or used for any purpose without the production of the other counterparts.

**-19-
PEACEABLE POSSESSION**

So long as Lessee observes and performs the covenants and agreement contained herein, it shall at all times during the Lease term peacefully and quietly enjoy possession of the Premises, but always subject to the terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed these presents the date and year first above written.

LESSOR:
THE CITY OF DALTON

BY: _____
MAYOR

ATTEST: _____
CITY CLERK

LESSEE:

BY: _____
ROBERT E. SHAW

“EXHIBIT “A”

All that tract or parcel of land lying and being in Parcel 5, Block Map 107, City of Dalton Land Lot 219, 12th District, 3rd Section, Whitfield County, Georgia and being more particularly described as follows.

Beginning at a nail placed at the intersection of the east right of way of Pentz Street and the south right of way of King Street; thence north ninety degrees 00 minutes 00 seconds east 53 feet; thence south 00 degrees 00 minutes 00 east 85 feet; thence north ninety degrees 00 minutes 00 seconds west 53 feet; thence north 00 degrees 00 minutes 00 seconds east 85 feet to the POINT of BEGINNING.



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 7/17/23

Agenda Item: Emery Center Lease

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:**

Emery Center Lease Renewal is for 2 years terminating on 7/7/25. Lessee shall pay \$1.00 year with Lessor providing \$600/month in utility assistance.

LEASE AGREEMENT

GEORGIA, WHITFIELD COUNTY

This Lease Agreement made and entered into this _____ day of _____, 2023 by and between the City of Dalton, Georgia a municipal corporation of the State of Georgia, hereinafter referred to as "Lessor" and The Emery Center, Inc. a Georgia Non-Profit Corporation, hereinafter referred to as "Lessee."

WITNESSETH:

WHEREAS, Lessor is the owner of that certain tract or parcel of land more particularly described in Paragraph 1 of this Lease; and

WHEREAS, Lessee desires to lease the Premises; and

THEREFORE, the Lessor, for and in consideration of the rents, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be kept and performed by Lessee, has leased and rented, and by these presents does lease and rent unto said Lessee; and the said Lessee hereby agrees to lease and take up on the terms and conditions which hereinafter appear the following real property.

-1-

THE PREMISES LEASED

Lessor does hereby lease, rent, and grant unto Lessee that portion of the former City Park School property as shown on the plat attached hereto as Exhibit "A" and made a part hereof (the "Premises").

-2-

PURPOSE

The Premises shall be used for the purpose of promoting the African-American cultural history of the City of Dalton and for all purposes ancillary thereto. The Premises shall be used for the purposes stated herein on a continuous basis during the term of this Lease.

-3-

TERM

The term of this Lease shall be for two (2) years commencing on July 8, 2023 and terminating at midnight on July 7, 2025 unless sooner terminated or extended as hereinafter specifically provided by this Lease. Provided Lessee is not in default, Lessor shall provide Lessee written notification of termination at least six (6) months prior to the lease termination date.

-4-
RENT

Lessee shall pay Lessor, rent at \$1.00 per year.

-5-
UTILITIES

Lessee shall be solely responsible for all charges for gas, electricity, telephone and other utility services used, rendered, supplied or imposed upon the Premises and shall indemnify Lessor and save it harmless against any liability or charges on account thereof. Notwithstanding foregoing Lessor shall provide Lessee the sum of \$600.00 per month in utility assistance.

-6-
INSURANCE

Lessee agrees to indemnify and save harmless the Lessor against all liability claims for damages to persons or property by reason of Lessee's use or occupancy of the Premises, and all expenses reasonably incurred by Lessor as a result thereof, including reasonable attorney's fees and court costs.

Lessee shall, at all times during the Lease term, maintain in full force and effect comprehensive public liability insurance in the amount of at least One Million Dollars (\$1,000,000.00) for any occurrence resulting in personal property damage to third persons or bodily or personal injury to or the death of one person and consequential damages arising therefrom, and in the amount of at least One Million Dollars (\$1,000,000.00) for any occurrence resulting in bodily or personal injury or death to more than one person and consequential damages arising therefrom. Lessee will furnish to Lessor copies of policies or certificates of insurance evidencing coverage required by this Lease. All policies required hereunder shall contain an endorsement naming Lessor as an additional named insured and providing that the insurer will not cancel or amend the policy or policies without first giving at least thirty (30) days' prior written notice thereof to Lessor.

Lessor shall maintain comprehensive property damages insurance covering damage to all improvements to the Premises in the amount of at least the fair market value of said property.

-7-
AFFIRMATIVE COVENANTS AND RESPONSIBILITIES OF LESSEE

Lessee covenants and agrees that Lessee, will, without demand:

- a. Keep the entire Premises reasonably clean and free from all rubbish, dirt and other matter; and shall maintain and repair the entire structure including painting, floor covering, maintenance of all fixtures as well as common grounds, landscaping, plumbing, electrical, and heat and air systems.
- b. Comply with any requirements of the constituted public authorities, and with the terms of any state or federal statutes or local ordinances or regulations applicable to Lessee to and for Lessee's use of the Premises.

- c. Give to Lessor prompt notice of any accident, fire or damage occurring on or to the Premises;
- d. Maintain its status as a Georgia Non-Profit Corporation and its tax exempt status under the Internal Revenue Code during the term of the Lease.
- e. Prevent the attachment of any lien to the Premises.

-8-

NEGATIVE COVENANTS OF LESSEE

Lessee covenants and agrees that it will do none of the following things without consent in writing of Lessor which consent shall not be unreasonably withheld:

- a. Occupy the Premises in any other manner or for any other purpose than as set forth herein;
- b. Assign or sublet this Lease without the written consent of the Lessor. Without such consent no such assignment shall be valid.
- c. Do or knowingly allow any person to do anything on the Premises, or any part thereof, or bring or knowingly permit anything to be brought or kept in the Premises, or knowingly permit the use of the Premises for any business or purpose that would cause a violation of any requirements of any of the constituted public authorities, and with the terms of any state or federal statutes or local ordinances or regulations applicable to Lessee to or for Lessee's use of the Premises.

-9-

ADDITIONAL COVENANTS

- a. Lessor shall not be liable for any damage, compensation or claim by reason of inconvenience or annoyance arising from the interruption of the use of the Premises.
- b. It is hereby covenanted and agreed by and between the parties that any law, usage or custom to the contrary notwithstanding, Lessor shall have the right at all times to enforce the covenants and provisions of this Lease in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of the Lessor in refraining from doing so at any time or times, and further, that the failure of the Lessor at any time or times to enforce its right under said covenants and provisions strictly in accordance with the same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions or covenants or this Lease, or as having in any way or manner modified the same;
- c. Lessee agrees to grant to Lessor reasonable access to the Premises during normal business hours.

- d. Lessee shall provide public access to all exhibits, programs and assemblies sponsored by the Lessee upon the Premises, and will not allow the Premises to be subleased to or used by any third party without the prior written consent of the Lessor.

**-10-
IMPROVEMENTS**

No improvements or alterations shall be made on the Premises without prior written approval from Lessor. Lessee agrees that it will not remove any permanent improvements during the term of the Lease nor during any extension thereof, except with prior written permission of Lessor. All improvements located upon the Premises after the termination of this Lease shall remain on and shall not be removed from the Premises. At the expiration of this Lease Agreement, all such improvements shall become the property of Lessor.

**-11-
REMEDIES**

Upon the occurrence of an Event of Default, which shall be defined as any breach by the Lessee of any covenant, term, or obligation contained within the Lease, Lessor may terminate this Lease, in which event Lessee shall immediately surrender the Premises to Lessor. If Lessee fails to do so, Lessor may, without prejudice to any other remedy Lessor may have either by law or by this Lease, enter upon the Premises and expel or move Lessee and Lessee's personal property with or without force and without being liable to Lessee in any manner whatsoever for damages thereof. Lessee shall be liable to Lessor for, and shall indemnify and hold Lessor harmless from and against, all costs, or damage which Lessor may suffer by reason of such termination of this Lease.

**-12-
PARTIES BOUND**

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective successors and assigns of the parties.

**-13-
NOTICES**

Except for legal process which may also be served as provided by law, all notices required or desired to be given with respect to this Lease shall be in writing and shall be deemed to have been given when hand delivered or 3 days after deposited, postage prepaid, with United State Postal Service, Certified, Return Receipt Requested, and property addressed as follows:

TO LESSOR: City of Dalton
 P. O. Box 1205
 Dalton, Georgia 30722-1205
 Attn: City Administrator

TO LESSEE: The Emery Center, Inc.
 3024 Crystal Mark Lane
 Dalton, GA 30721

Such addresses may be changed from time to time by either party by notice to the other.

-14-

NO ESTATE IN LAND

This Lease creates the relationship of Landlord and Tenant between Lessor and Lessee. No estate shall pass out of Lessor, and Lessee has only usufruct which is not subject to levy and sale.

-15-

SUCCESSORS AND ASSIGNS

The provisions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee, their respective permitted successors, heirs, legal representatives and assigns.

-16-

STATE LAW

The laws of the State of Georgia shall govern the interpretation, validity, performance and enforcement of this Lease.

-17-

TIME IS OF THE ESSENCE

Except as otherwise noted specifically provided herein, time is of the essence of this Lease.

-18-

EXECUTION

This Lease may be executed in any number of counterparts, each of which shall be deemed an original and any of which shall be deemed to be complete in itself and be admissible into evidence or used for any purpose without the production of the other counterparts.

-19-

PEACEABLE POSSESSION

So long as Lessee observes and performs the covenants and agreement contained herein, it shall at all times during the Lease term peacefully and quietly enjoy possession of the Premises, but always subject to the terms hereof.

JOINT USE OF EAST PARKING LOT

During the term of this Agreement, the Lessee and its invitees shall have non-exclusive use of the parking area located to the east of the Premises, together with the right of vehicular and pedestrian ingress and egress to the east parking area.

IN WITNESS WHEREOF, the parties hereto have executed these presents the date and year first above written.

LESSOR:
THE CITY OF DALTON

BY: _____
MAYOR

ATTEST: _____
CITY CLERK

LESSEE:
THE EMERY CENTER, INC.

BY: _____
PRESIDENT

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CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting
Meeting Date: 07/17/23
Agenda Item: SPLOST Committee Appointments
Department: Administration
Requested By: Andrew Parker

**Reviewed/Approved
by City Attorney?**

Cost:

**Funding Source if Not
in Budget**

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

Appointment of Denise Wood, Zab Mendez and Jim Waskin to the 2024 SPLOST Committee
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