



**MAYOR AND COUNCIL MEETING
TUESDAY, JANUARY 21, 2020
6:00 PM
DALTON CITY HALL**

A G E N D A

Call to Order

Pledge of Allegiance

Approval of Agenda

Public Commentary: *(Please State Name for the Record)*

Minutes:

- [1.](#) Mayor and Council Regular Meeting Minutes of January 6, 2020
- [2.](#) Special Called Meeting Minutes of January 3, 2020 and January 16, 2020

New Business:

- [3.](#) Renewal of Agreement with EMCOR for City Hall HVAC Service
- [4.](#) CemSites Cemetery Software License Agreement
- [5.](#) Temporary Construction Easement - K2 Holdings, LLC
- [6.](#) **Board Appointments:**
Expired Appointments
Mayoral Appointments
Miscellaneous Appointments
7. Executive Session - Personnel Matters

Supplemental Business:

Adjournment

THE CITY OF DALTON
MAYOR AND COUNCIL MINUTES
JANUARY 6, 2020

The Mayor and Council held a meeting this evening at 6:00 p.m. in the Council Chambers of City Hall. Present were Mayor Dennis Mock, Council members Denise Wood, Annalee Harlan, Tyree Goodlett and Gary Crews, City Administrator Jason Parker, City Attorney Gandhi Vaughn and several department heads.

PLEDGE OF ALLEGIANCE

Mayor Dennis Mock led the audience in the Pledge of Allegiance.

OATH OF OFFICE – DAVID PENNINGTON

City Attorney Gandhi Vaughn administered the Oath of Office to newly elected Mayor David Pennington. Mayor Pennington took his seat on the dais.

OATH OF OFFICE – DEREK WAUGH

City Attorney Gandhi Vaughn administered the Oath of Office to newly elected Ward One Council member Derek Waugh. Council member Waugh took his seat on the dais.

The 2020 Mayor and Council were seated.

Mayor Pennington thanked both former Mayor Dennis Mock and Council member Denise Wood for their service.

APPROVAL OF AGENDA

Mayor Pennington addressed the audience stating that item #4 has been removed for consideration from the agenda.

- (1) On the motion of Council member Harlan, second Council member Goodlett, Ordinance 20-02 was removed from the agenda. The vote was unanimous in favor.

Ordinance 20-02

The request of Anish Govan to rezone from Estate Residential (R-1) to General Commercial (C-2) a tract of land totaling 1.7 acres located at 108 Kinnier Court, Dalton.

- (2) On the motion of Council member Harlan, second Council member Crews, item #5 was tabled from the agenda.

Intergovernmental Agreement with Whitfield County for 2020 SPLOST

The vote was unanimous in favor.

APPROVAL OF AGENDA

The Mayor and Council reviewed the agenda, on the motion of Council member Harlan, second Council member Crews, the agenda was approved with the amendment to remove item #4 and item #5. The vote was unanimous in favor.

PUBLIC COMMENTARY

Several citizens spoke in opposition of the rezoning request of Anish Govan in Dickson Acres to rezone from Estate Residential (R-1) to General Commercial (C-2) a tract of land totaling 1.7 acres located at 108 Kinnier Court, Dalton.

Sanders ?

Mr. Sanders asked for an explanation stating if the rezoning request has been removed from the agenda, what happens next?

Mayor Pennington stated the applicant requested that the request be removed from the agenda at this time. Pennington also stated that the City is in the process of obtaining a Planning and Engineering firm to evaluate all of West Walnut and Market Street and to create a Comprehensive Plan for the entire area. Pennington further stated that it will benefit the City of Dalton and the entire community as a whole and will allow for a lot of opportunities in the future.

Inaudible comments – not on the microphone

City Attorney Gandhi Vaughn stated the land owner filed the application and can withdraw it.

Carol Lumpkin requested the Mayor and Council draw a line to restrict any commercial property around Dixon acres.

Dan Little asked for a show of hands in opposition to the rezoning request from the audience present. Little stated let the record show there are no persons in the audience in favor of the request.

Mike Wilson asked does the requestor have to wait for 12 months?

Katherine Sellers stated to the Mayor and Council that another option for Dickson acres is that they are eligible to be designated as a Historic District.

Jean O’Neal stated she is not in favor of rezoning and feels like they’re are having to defend their rights.

Craig Tidwell stated to the Mayor and Council “they have an opportunity to vote on the agenda today”.

Inaudible comments – not on the microphone

Council member Harlan asked is there a limit on how many times someone can submit a rezoning request?

City Attorney's summarized response

City Attorney Gandhi Vaughn answered several questions stating that the Mayor and Council agenda is a proposed agenda and is not official until it's voted on. Vaughn stated after the petitioner withdrew his application, the Council removed it from the agenda and cannot vote on it.

Vaughn also responded to the question can the petitioner refile, Vaughn stated yes the petitioner can refile because it was removed from the agenda and it was not approved or denied. And that each petitioner is afforded due process to refile. Vaughn stated the current Council can make a policy regarding the amount of time one could file a rezoning application, but it would not bind future Councils.

Vaughn responded to the question is there a limit on how many times someone can submit a rezoning request, Vaughn stated the Council must review each rezoning application.

Brian Spence came before the Mayor and Council asking for clarification of the vote of his previous rezoning application that the Mayor and Council voted on with regard to Lance and Richardson Street. Council member Harlan stated that the motion died for a lack of a second. City Attorney Gandhi Vaughn stated that decision is a denial of the request and he could not apply for rezoning of this location for a period of 12 months.

A copy of this audio is a part of these minutes.

MINUTES

The Mayor and Council reviewed the Mayor and Council Work Session and Regular Meeting Minutes of December 16, 2019. On the motion of Council member Harlan, second Council member Crews, the minutes were approved. The vote was unanimous in favor.

ORDINANCE 20-01 – UNIFIED ZONING

The Mayor and Council reviewed Ordinance 20-01 regarding Unified Zoning this Ordinance Of The City Of Dalton will Repeal The "Unified Zoning Ordinance of Whitfield County, Georgia" As Adopted By The City On July 20, 2015, As Amended, In Its Entirety And To Substitute In lieu Thereof The "Unified Zoning Ordinance Of Whitfield County, Georgia" As Adopted By the County On April 23, 2019; To Provide An Effective Date; To Repeal All Ordinances Conflicting Therewith; To Provide For Severability; And For Other Purposes. City Attorney Gandhi Vaughn stated that the ordinance is to update the Unified Zoning Ordinance and to adopt all changes made. On the motion of Council member Harlan, second Council member Goodlett, the ordinance was adopted. The vote was unanimous in favor.

INTERGOVERNMENTAL SERVICES CONTRACT WITH DOWNTOWN DALTON
DEVELOPMENT AUTHORITY

The Mayor and Council reviewed the intergovernmental agreement between the City of Dalton and the Dalton Development Authority to better set out the parties' responsibilities and to better define the relationship of staff, management of programming, and financial obligations with respect to the City and the DDDA. On the motion of Council member Harlan, second Council member Goodlett, the Mayor and Council approved the Service Contract. The vote was unanimous in favor.

BANKING RESOLUTIONS

The Mayor and Council reviewed the following Resolutions:

Resolution 20-01 Bank of Ozarks

Resolution 20-02 First Bank of Dalton

Resolution 20-03 Office of Treasury & Fiscal Services

Resolution 20-04 FirstBank

Resolution 20-05 BB&T

Chief Operating Officer Cindy Jackson stated the Resolutions are to add newly elected Mayor David Pennington's signature on the bank accounts. On the motion of Council member Crews, second Council member Harlan, the Mayor and Council approved the Resolutions. The vote was unanimous in favor.

RESOLUTION 20-06 REGARDING SUPPORT OF AMENDMENT TO GEORGIA
REVENUE BOND LAW

The Mayor and Council reviewed Resolution 20-06 regarding support of an Amendment to Georgia Bond Law. Council member Gary Crews stated that this Resolution is in support of an amendment that will go before the Georgia House and Senate. Crews stated that if approved Dalton Utilities can then issue revenue bonds.

Council member Waugh asked CEO Tom Bundros for quick review.

Bundros stated City of Dalton/Dalton Utilities is the only municipality that requires a voter referendum to issue revenue bonds if the proceeds are to purchase or used to acquire electric generation, transmission or distribution assets. Bundros stated that if the State Legislation amends the Revenue Bond Law, Dalton Utilities would then be allowed to issue Revenue bonds without a referendum and it would have no encumbrance to tax payers or mortgaging of any property to reimburse the utilities. Bundros stated that if the bond law is changed, and the Mayor and Council approves this resolution, the Utilities would have to make a presentation to the WL&SF commission, a presentation to the Mayor and Council and then a Superior court judge would have to validate it's a bonafied debt issue. On the motion of Council member Crews, second Council member Harlan, the Resolution was approved. The vote was unanimous in favor.

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BOARD APPOINTMENTS

On the motion of Council member Harlan, second Council member Crews, the Mayor and Council tabled the following appointments:

Expired Appointments
Mayoral Appointments
Miscellaneous Appointments

The vote was unanimous in favor.

TOURISM PRESENTATION – MARGARET THIGPEN

CVB Director Margaret Thigpen presented to the Mayor and Council the 2018 Historic High Country Domestic Travel statistics. A copy of this report is a part of these minutes.

ANNOUNCEMENTS

City Government Offices will be closed Monday, January 20, 2020 in observance of the Martin Luther King, Jr. holiday. The next Mayor and Council Meeting will be held on Tuesday, January 21, 2020.

Mayor David Pennington invited the public to attend the Forced Mediation between the City of Dalton and Whitfield County at the Trade Center, January 7th at 9:30 a.m.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 6:39 p.m.

Bernadette Chattam
City Clerk

David Pennington, Mayor

Recorded
Approved: _____
Posted: _____

Note There was no Work Session

THE CITY OF DALTON
MAYOR AND COUNCIL
SPECIAL CALLED MINUTES
JANUARY 03, 2020

The Mayor and Council held A Special Called meeting this afternoon at 11:30 a.m. in the Second Floor Conference Room. Present for the meeting were Mayor Dennis Mock, Councilmembers Gary Crews, Denise Wood, City Administrator Jason Parker, incoming Newly Elected Councilmember Derek Waugh, incoming Newly Elected Mayor David Pennington, Special Legal Counsel Andy Welch, and City Attorney Gandhi Vaughn. Councilmembers Annalee Harlan and Tyree Goodlett were absent.

Executive Session

On the motion of Councilmember Crews, second Councilmember Wood the Mayor and Council adjourned into Executive Session at 11:31 a.m.

On the motion of Councilmember Crews, second Mayor Mock, the Mayor and Council adjourned out of Executive Session at 2:21 p.m.

Adjournment

There being no further business to come before the Mayor and Council in regular session. The Mayor and Council Special called meeting was adjourned at 2:22 p.m.

Gesse Cabrera
Deputy City Clerk

Dennis Mock, Mayor

Approved: _____
NR

THE CITY OF DALTON
MAYOR AND COUNCIL
SPECIAL CALLED MINUTES
JANUARY 16, 2020

The Mayor and Council held A Special Called meeting this afternoon at 4:15 p.m. in the Second Floor Conference Room. Present for the meeting were Mayor David Pennington, Councilmembers Tyree Goodlett, Gary Crews, Annalee Harlan, Derek Waugh, Finance Director Cindy Jackson, City Administrator Jason Parker, Special Legal Counsel Andy Welch and Brandon Palmer, and City Attorney Gandhi Vaughn.

Executive Session

On the motion of Councilmember Harlan, second Councilmember Goodlett, the Mayor and Council adjourned into Executive Session at 4:16 p.m.

On the motion of Councilmember Crews, second Councilmember Goodlett, the Mayor and Council adjourned out of Executive Session at 6:08 p.m.

Adjournment

There being no further business to come before the Mayor and Council in regular session. The Mayor and Council Special called meeting was adjourned at 6:09 p.m.

Gesse Cabrera
Deputy City Clerk

David Pennington, Mayor

Approved: _____
NR



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting
Meeting Date: 1/21/20
Agenda Item: Agreement with EMCOR
Department: HR – Building Maintenance
Requested By: Greg Batts
**Reviewed/Approved
by City Attorney?** Yes/No
Cost: \$6,504.00

**Funding Source if Not
in Budget**

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

HVAC Services for City of Dalton - City Hall is scheduled to renew effective February 1, 2020. The annual cost will remain the same at \$6,504.00 for the next year (payable \$1,626.00 per quarter).



EMCOR Services Aircond
400 Lake Ridge Drive
Smyrna, GA 30082
T: 770.444.3355

January 15, 2020

City of Dalton – City Hall
Attn: Greg Batts
300 West Waugh Street
Dalton, GA 30722

Re: HVAC Service Agreement Renewal / Contract #G1023636

Dear Greg:

Some of the real advantages in having EMCOR Services Aircond maintain your HVAC equipment is fewer breakdowns, better response time when you do have a problem, increased comfort and/or production, longer equipment life and increased operating efficiency.

EMCOR Services Aircond, like most companies, continually strives to keep our own operating costs in line. Normal inflationary increases in labor and materials forces us to periodically evaluate our ability to continue to provide our customers with the quality service they expect and deserve.

We truly value being your HVAC service provider; therefore, at this present time there will **not** be a Cost of Living increase added to your Preventive Maintenance Service Agreement this year. Your contract will remain at \$6,504.00 for the next year (payable \$1,626.00 per quarter) effective February 1, 2020.

We would like to take this opportunity to thank you for your continued partnership with EMCOR Services Aircond. Please feel free to contact me directly if there is anything I can do for you.

Sincerely,

Tanja Suttles
Customer Care Manager
Direct: 770-805-2573
Email: tsuttles@aircond.com

Approved by

Signature: _____

Name/Title: _____

Date: _____



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 01-21-2020

Agenda Item: CemSites Cemetery Software

Department: City Clerk/Public Works

Requested By: Bernadette Chattam

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

Cost: \$56,490.00

**Funding Source if Not
in Budget** CIP

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

Cemetery Software for online mapping, website integration, eCommerce with User-based dashboard with statistics and graphs, Grave and owner management, Work order management, Funeral home management, Document management with printable templates.

End-User License Agreement

Site Industries, LLC. (Revised October 2019)

ATTENTION! THE FOLLOWING TERMS AND CONDITIONS OF THIS AGREEMENT WILL BE LEGALLY BINDING ON CUSTOMER UPON INSTALLING OR OTHERWISE USING THE SOFTWARE OR RECEIVING THE SERVICES OF SITE INDUSTRIES, LLC. CUSTOMER IS STRONGLY ADVISED TO CAREFULLY READ AND UNDERSTAND THE FOLLOWING PARAGRAPHS IN FULL UPON EXECUTING THE AGREEMENT.

1. License Grant. This End-User License Agreement (the “Agreement”) grants you, the user, a non-exclusive, non-transferable license to use the Software, in object code for your internal business purposes (and not for managing Third-Party data unless the product you have licensed expressly permits you to) under the terms and conditions stated herein. The Software is to be installed, used, and deployed in accordance with the specific rights and responsibilities set forth in this Agreement. This Agreement can be updated from time to time, in Site Industries’ sole discretion and you will be notified of that change and given the ability to approve it online.

2. Permitted Use and Reproduction.

2.1.1 *License Term:* The license is effective for the limited time specified in in the Grant Letter. If no term is specified, the licenses will be perpetual.

2.1.2 *Copies:* Company may copy the Software as reasonably necessary for back-up, archival or disaster recovery purposes. The subsequent sale or completion of any action directed toward resale of Site Industries’ software will result in the immediate termination of this Agreement, as well as formal civil and criminal charges filed with the local jurisdiction. Site Industries will NOT indemnify, protect, or otherwise assist any person or company accused of reproducing and distributing unlicensed copies of the Software.

2.1.3 *Affiliates, Managing Parties:* Company may permit use of the Software in accordance with this Agreement:

(a) by an Affiliate;

(b) by a third party with which Company enters into a contract to manage Company’s information technology resources (Managing Party) if:

(i) the Managing Party only uses the Software for Company’s internal operations and not for the benefit of another third party or itself;

(ii) the Managing Party agrees to comply with the terms and conditions of this Agreement; and

(iii) Company provides Site Industries with written notice that a Managing Party will be using the Software on Company’s behalf.

2.1.4. *General restrictions:* Company may not, and may not cause or allow any third party to:

(a) decompile, disassemble or reverse-engineer the Software, or create or recreate the source

code for the Software;

(b) remove, erase, obscure or tamper with any copyright or any other product identification or proprietary rights notices, seal or instructional label printed or stamped on, affixed to, or encoded or recorded in or on any Software or Documentation; or fail to preserve all copyright and other proprietary notices in all copies Company makes of the Software and Documentation;

(c) lease, lend or use the Software for timesharing or service bureau purposes; sell, market, license, sublicense, distribute or otherwise grant to any person or entity any right to use the Software except to the extent expressly permitted in this Agreement; or use the Software to provide, alone or in combination with any other product or service, any product or service to any person or entity, whether on a fee basis or otherwise;

(d) modify, adapt, tamper with, translate or create Derivative Works of the Software or the Documentation; combine or merge any part of the Software or Documentation with or into any other software or documentation; or refer to or otherwise use the Software as part of any effort to develop software (including any routine, script, code, or program) having any functional attributes, visual expressions or other features similar to those of the Software to compete with Site Industries;

(e) except with Site Industries' prior written permission, publish any performance or benchmark tests or analysis relating to the Software;

(f) attempt to do any of activities in Subsections (a) to (e); or

Hardware Requirements. DSL, cable or another high-speed Internet connection is required for proper transmission of the Service. Customer is responsible for procuring and maintaining the network connections that connect the Customer network to the Service, including, but not limited to, "browser" software that supports protocol used by Site Industries, LLC, including Secure Socket Layer (SSL) protocol or other protocols accepted by Site Industries, LLC, and to follow log-on procedures for services that support such protocols. Site Industries, LLC is not responsible for notifying Customer of any upgrades, changes or enhancements to any such software, or for any compromise of data transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned or operated by Site Industries, LLC. Site Industries, LLC assumes no responsibility for the reliability or performance of any connections as described in this Section.

2.2. Accuracy of Customer's Contact Information. Customer shall provide accurate, current and complete information on Customer's legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change.

2.3. Users: Passwords, Access, and Notification. Customer shall authorize access to and assign unique passwords and usernames to the number of Users procured by Customer on the Estimate/Order Form. User logins are for designated Users and cannot be shared or used by more than one User, but any User login may be reassigned to another User as needed, without written

approval. Customer will be responsible for the confidentiality and use of User's passwords and usernames. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. Site Industries, LLC will act as though any Electronic Communications it receives under Customer's passwords, username, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Service and shall promptly notify Site Industries, LLC of any unauthorized access or use of the Service and any loss or theft or unauthorized use of any User's password or name and/or Service account numbers.

2.4. Customer's Lawful Conduct during Use. Customer shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications and anti-spam legislation. The Service allows Customer to send Electronic Communications directly to Site Industries, LLC and to third parties. Customer is responsible for ensuring that its use of the Service to store or process credit card data complies with applicable Payment Card Industry Data Security Standards ("PCI DSS") requirements and shall store credit card and social security data only in the designated fields for such data.

In addition to Customer's other obligations set forth herein, Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Service and obtain any permits, licenses and authorizations required for such compliance.

Without limiting the foregoing, (i) Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) Customer shall not permit Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which its Users are located. Customer will not send any Electronic Communication from the Service that is unlawful, harassing, libelous, defamatory or threatening.

Except as permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the Service by any means other than through the interfaces that are provided by Site Industries, LLC. Customer shall not do any "mirroring" or "framing" of any part of the Service or create Internet links to the Service which include log-in information, usernames, passwords, and/or secure cookies. Customer will not in any way express or imply that any opinions contained in Customer's Electronic Communications are endorsed by Site Industries, LLC.

Customer shall ensure that all access and use of the Service by Users is in accordance with the terms and conditions of this Agreement, including but not limited to: those Users that are contractors and agents, and Customer's Affiliates. Any action or breach by any of such contractors, agents or Affiliates shall be deemed an action or breach by Customer and Customer waives all of those defenses that Customer may have as to why Customer should not be liable for Customer's contractors', agents' or Affiliates' acts, omissions and noncompliance with this Agreement.

2.5. Third-Party Web Sites, Products and Services. Site Industries, LLC may offer certain Third-

Party Applications for sale using Estimate/Order Forms. Any procurement of such Third-Party Applications by Customer shall be subject to the terms specified in such Estimate/Order Forms.

In addition, Site Industries, LLC or third-party providers may offer Third-Party Applications or services, including implementation, customization and other consulting services related to Customers' use of the Service. Except as set forth in the Estimate/Order Form, Site Industries, LLC does not warrant any such Third-Party Applications or services, regardless of whether or not such Third-Party Applications or services are provided by a Third-Party that is a member of a Site Industries, LLC partner program or otherwise designated by Site Industries, LLC as "certified," "approved" or "recommended." Any procurement by Customer of any Third-Party Applications or services is solely between Customer and the applicable Third-Party provider.

Site Industries, LLC is not responsible for any other aspect of such Third-Party Applications or services that Customer may procure or connect to through the Service, or any descriptions, promises or other information related to the foregoing. If Customer installs or enables Third-Party Applications or services for use with the Service, Customer agrees that Site Industries, LLC may allow such Third-Party providers to access Customer Data as required for the interoperation of such Third-Party Applications with the Service, and any exchange of data or other interaction between Customer and a Third-Party provider is solely between Customer and such Third-Party provider.

Site Industries, LLC shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Applications or Third-Party providers via the consent, permission, authorization or are otherwise allowed by the Customer to access Customer Data. No procurement of such Third-Party Applications or services is required to use the Service. If Customer was referred to Site Industries, LLC by a member of one of Site Industries, LLC's partner programs, Customer hereby authorizes Site Industries, LLC to provide such member with access to Site Industries, LLC's business information related to the procurement and use of the Service pursuant to this Agreement, including but not limited to User names and email addresses, support cases, and billing/payment information.

2.6. Transmission of Data. Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of the Service. Customer expressly consents to Site Industries, LLC's collection, extrapolation, storage, distribution or any use, now and/or in the future, of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Site Industries, LLC.

Customer acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. Site Industries, LLC is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks, regardless of whether said networks are owned and/or controlled and operated by Site Industries, LLC, including, but not limited to, the Internet and Customer's local network.

2.7. Service Level. During the Term, the Site Industries, LLC Service offerings will meet the service level specified in the "Service Level Commitment" available from Site Industries LLC, or such other

URL as specified by Site Industries, LLC, which is hereby incorporated by reference. If the applicable Service fails to achieve the service level, then Customer will be entitled, as its sole and exclusive remedy, to a credit for the applicable Service in accordance with the terms set forth in the Service Level Commitment. The respective Service's system logs and other records shall be used for calculating any service level events.

2.8. Site Industries, LLC Support. As part of the Service, Site Industries, LLC will provide Customer with Help Documentation and other online resources to assist Customer in its use of the Service. If you have procured Site Industries, LLC Support Services, the current Site Industries, LLC URL Terms for support services are available from Site Industries, LLC, and are hereby incorporated by reference. Customer acknowledges that Site Industries, LLC has extensive experience helping Customers improve utilization and realization of benefits of the Service, and that not following the advice of Site Industries, LLC and/or not engaging Site Industries, LLC or other Site Industries, LLC authorized implementation partner in the provision of professional services may substantially limit Customer's ability to successfully utilize the Service or to enjoy the power and potential of the Service.

2.9. Customer Payment Data. Site Industries, LLC shall maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Customer Data. During the Term, Site Industries, LLC shall maintain PCI DSS compliance for the portions of the Site Industries, LLC Service that store and process credit card data. Any changes made to the Service by the Customer or at the Customer's direction may affect the Customer's compliance with PCI DSS requirements and Customer shall be solely responsible for ensuring that any such changes are compliant with PCI DSS requirements. Site Industries, LLC shall ensure performance of an SSAE 16 (SOC 1) / ISAE 3402 Type II Report*. No more than once per year, Customer may request a copy of Site Industries, LLC's SSAE 16 (SOC 1) / ISAE 3402 Type II Report*. *or similar third-party audit to an established industry standard selected by Site Industries, LLC.

2.10. Confidentiality. For purposes of this Agreement, "Confidential Information" shall include the terms of this Agreement, Customer Data, trade secrets, customer lists, source code, each party's proprietary technology, business processes and technical product information, designs, issues, all communication between the Parties regarding the Service and any information that is clearly identified in writing at the time of disclosure as confidential.

Notwithstanding the foregoing, Confidential Information shall **not** include information which:

- (1) is known publicly;
- (2) is generally known in the industry before disclosure;
- (3) has become known publicly, without fault of the Receiving Party;
- (4) the Receiving Party becomes aware of from a third-party not bound by non-disclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party;
- or (5) is aggregate data regarding use of Site Industries, LLC's products and services that does not contain any personally identifiable or Customer-specific information.

Each party agrees: (a) to keep confidential all Confidential Information; (b) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by Customer; (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information,

including but not limited to inputting credit card data and social security numbers only in the fields designated for such data in the Service) and to make Confidential Information available to authorized persons only on a “need to know” basis. Either party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is permitted by law or order of a court or other governmental authority or regulation.

2.11. Ownership of Customer Data. As between Site Industries, LLC and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer acknowledges and agrees that in connection with Service, Site Industries, LLC as part of its standard Service offering makes daily backup copies of the Customer Data in Customer’s account and stores and maintains such data for a period of time consistent with Site Industries, LLC standard business processes, which period shall not be less than seven (7) days.

2.12. Site Industries, LLC Intellectual Property Rights. Customer agrees that all rights, title and interest in and to all intellectual property rights in the Service and all modifications, extensions, customizations, scripts or other derivative works of the Service provided or developed by Site Industries, LLC, or are reasonably foreseeable to be developed by Site Industries, LLC, are owned exclusively by Site Industries, LLC. Except as provided in this Agreement, the rights granted to Customer do not convey any ownership rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by Site Industries, LLC. Site Industries, LLC and service marks, logos and product and service names are marks of Site Industries, LLC (the “Site Industries, LLC Marks”). Customer agrees not to display or use the Site Industries, LLC Marks in any manner without Site Industries, LLC’s express prior written permission. The trademarks, logos and service marks of Third-Party Application providers (“Marks”) are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such Third-Party which may own the Mark.

2.13. Federal Government End User Provisions. If User is the US Federal Government, Site Industries, LLC provides the Service, including related software and technology, in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR

227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Site Industries, LLC to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

2.14. Dispute Resolution. The parties agree that any dispute regarding the use of this Service, any underlying agreements/contracts, and/or any dispute relating to the relationship established by the

parties to this agreement, shall be decided via arbitration and brought within the jurisdiction of the Fayette County, Pennsylvania judiciary. Prior to filing a lawsuit pursuant to this Section, the parties agree to make a good-faith effort to resolve any and all disputes, whether manifested, foreseeable or otherwise, outside of the judicial system, within thirty (30) days of filing suit.

3. Warranties

3.1. Warranty of Functionality. Site Industries, LLC warrants that

- (i) the Service will achieve in all material respects the functionality described in the Help Documentation applicable to the Service procured by Customer, and
- (ii) such functionality of the Service will not be materially decreased during the Term.

Upon proper notice and proof of functional deficiency of the service, Site Industries, LLC shall use commercially reasonable efforts to deliver the Service at the level proscribed by Site Industries, LLC, and if Site Industries, LLC is unable to restore such functionality, Customer shall be entitled to terminate the Agreement and receive a pro-rata refund of the subscription fees paid under the Agreement for its use of the Service for the terminated portion of the Term. Site Industries, LLC shall have no obligation with respect to a warranty claim unless notice of such claim within sixty (60) days of the first instance of any material functionality problem, and such notice must be sent to Site Industries, LLC. The warranties set forth in this Section 3.1 are made to and for the benefit of Customer only. Such warranties shall only apply if the applicable Service has been utilized in accordance with the Help Documentation, this Agreement and applicable law.

3.2. No Virus Warranty. Site Industries, LLC warrants that reasonable efforts are made to ensure that the Service will be free of viruses, Trojan horses, worms, spyware, or other malicious code ("Malicious Code"), or conduct engaged in by a malicious actor for the purpose of gaining unauthorized access and exploiting the Service and its Users except for any Malicious Code originating outside of the Service, such as Malicious Code contained in Customer-uploaded attachments, third-party applications/files or content otherwise originating from Customer.

4. Disclaimer of Warranties. EXCEPT AS STATED IN SECTION 3 ABOVE, SITE INDUSTRIES, LLC DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 3 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY SITE INDUSTRIES, LLC. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. EXCEPT AS STATED IN SECTIONS 2.7, 3.1, and 3.2 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS AND IS FOR COMMERCIAL USE ONLY. SITE INDUSTRIES, LLC OTHERWISE EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT CUSTOMER'S USE OF THE SERVICE WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, INCLUDING WITHOUT LIMITATION HIPAA OR THE GRAMM-LEACH-BLILEY ACT OF 1999. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR

DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

5. Limitations of Liability. CUSTOMER AGREES THAT THE CONSIDERATION WHICH SITE INDUSTRIES, LLC IS CHARGING HEREUNDER DOES NOT INCLUDE CONSIDERATION FOR ASSUMPTION BY SITE INDUSTRIES, LLC OF THE RISK OF CUSTOMER'S INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND/OR DAMAGES ARISING FROM ACTIONS COMMITTED BY A THIRD-PARTY, WHETHER OR NOT SAID DAMAGES ARE REASONABLY FORESEEABLE BY THE PARTIES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, UNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES TO THE MAXIMUM EXTENT PERMITTED BY LAW) OR OTHERWISE SHALL IN NO EVENT EXCEED THE DIRECT DAMAGE LIMITATIONS AS SET FORTH IN SECTION 5.

5.1 Maximum Liability amongst the Parties. Except with regard to amounts due under this Agreement, and a party's breach of Section 2.10 (Confidential Information), the maximum liability of either party to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of the Service, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, tort, statutory duty, or otherwise, shall in no case exceed the equivalent of twelve (12) months in subscription fees applicable at the time of the event, and in the event of a breach of Section 2.10 (Confidential Information) of this Terms of Service, such maximum liability of either party shall be an amount equal to three (3) times the equivalent of twelve (12) months of subscription fees applicable at the time of the event. Notwithstanding the previous sentence, neither party shall be liable to the other party to the extent such liability would not have occurred but for the other party's failure to comply with the terms of this Agreement. The essential purpose of this provision is to limit the potential liability of the parties arising from this Agreement.

UNLESS OTHERWISE PROHIBITED BY LOCAL, STATE, AND FEDERAL LAW, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO EITHER PARTY'S INDEMNITY OBLIGATIONS EXCEPT AS SET FORTH IN SECTION 6 BELOW.

6. Indemnification.

6.1. Infringement. Subject to the limitations set forth in this Section, Site Industries, LLC shall, at its own expense defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Service, as used in accordance with this Agreement, infringes Third-Party copyrights, trade secrets or trademarks and shall hold Customer harmless from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon such a Claim.

Excluded from the above indemnification obligations are Claims arising from (a) use of the Service in violation of this Agreement, (b) violates applicable law, (c) use of the Service after Site Industries,

LLC prohibits Customer's use because of an infringement claim, (d) modifications to the Service not made by Site Industries, LLC, or (e) use of the Service in combination with any software, application or service made or provided other than by Site Industries, LLC.

If a Claim is brought or threatened, Site Industries, LLC shall, at its sole option and expense, use commercially reasonable efforts either (b) to modify or replace portions of the Service as needed to avoid infringement, such update or replacement having substantially similar capabilities; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the subscription fees paid for under the Agreement for the terminated portion of the Term. The rights and remedies granted Customer under this Section 6.1 state Site Industries, LLC's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

6.2. Disclosure of Customer Data. Site Industries, LLC shall, at its own expense and subject to the limitations set forth in this Section 6, defend Customer from and against any Claims that arise out of or result directly from Site Industries, LLC's gross negligence or willful misconduct in preventing unauthorized access to confidential Customer Data, as determined by a court of competent jurisdiction in connection with a Claim alleging a breach of confidentiality, and shall hold Customer harmless from and against liability for any Losses to the extent based upon such Claims.

6.3. Indemnification Procedures and Survival. In the event of a potential indemnity obligation under this Section 6, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising thereof. The indemnification obligations under this Section 6 are expressly conditioned upon the indemnified party's compliance with this Section 6.4 except that failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations under this Section 6 but such Claim shall be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this Section 6 shall survive termination of this Agreement for one year.

7. Suspension/Termination.

7.1. Suspension for Delinquent Account. Site Industries, LLC reserves the right to suspend Customer's and any Customer Aliases' access to and/or use of the Service for any accounts (i) for which any payment is due but unpaid but only after Site Industries, LLC has provided Customer two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice, or (ii) for which Customer has not paid for the Renewal Term and has not notified Site Industries, LLC of its desire to renew the Service by the End Date of the then current subscription term. The suspension is for the entire account and Customer understands that such suspension would therefore include Alias sub-accounts. Customer agrees that Site Industries, LLC shall not be liable to Customer or to any Customer Alias or other Third-Party for any suspension of the Service pursuant to this Section 7.1.

7.2. Suspension for Ongoing Harm. Customer agrees that Site Industries, LLC may with reasonably contemporaneous telephonic notice to Customer suspend access to the Service if Site Industries, LLC reasonably concludes that Customer's Service is being used to engage in denial of service attacks, spamming, or illegal activity, and/or use of Customer's Service is causing immediate,

material and ongoing harm to Site Industries, LLC or others. In the extraordinary event that Site Industries, LLC suspends Customer's access to the Service, Site Industries, LLC will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and resolve the issues causing the suspension of Service. Customer further agrees that Site Industries, LLC shall not be liable to Customer nor to any Third-Party for any suspension of the Service under such circumstances as described in this Section 7.2.

7.3. Termination for Cause, Expiration. Either party may immediately terminate this Agreement and all Estimates/Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the nonbreaching party.

Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and shall be sent to the General Counsel of the alleged breaching party at the address listed in the heading of this Agreement (or such other address that may be provided pursuant to this Agreement) ("Notice"). Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service. If this Agreement is terminated by Customer for any reason other than a termination expressly permitted by this Agreement, then Site Industries, LLC shall be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of Site Industries, LLC's breach of this Agreement, then Customer shall be entitled to refund of the pro rata portion of any subscription fees paid by Customer to Site Industries, LLC under this Agreement for the terminated portion of the Term.

7.4. Handling of Customer Data in the Event of Termination. Customer agrees that following termination of Customer's account and/or use of the Service, Site Industries, LLC may immediately deactivate Customer's account and that following a reasonable period of not less than ninety (90) days shall be entitled to delete Customer's account from Site Industries, LLC's "live" site. During this period and upon Customer's request, Site Industries, LLC will grant Customer limited access to the Service for five (5) days for the sole purpose of permitting Customer to retrieve Customer Data, provided that Customer has paid in full all good faith undisputed amounts owed to Site Industries, LLC. Customer further agrees that Site Industries, LLC shall not be liable to Customer nor to any Third-Party for any termination of Customer access to the Service or deletion of Customer Data, provided that Site Industries, LLC is in compliance with the terms of this Section 7.4.

8. Modification; Discontinuation of the Service.

8.1 Modification to the Service. Site Industries, LLC may make modifications to the Service or particular components of the Service from time to time and will use commercially reasonable efforts to notify Customer of any material modifications. Site Industries, LLC reserves the right to discontinue offering the Service at the conclusion of Customer's then current subscription term for such Service. Site Industries, LLC shall not be liable to Customer nor to any Third-Party for any modification of the Service as described in this Section 8.1.

8.2 To Applicable Terms. If Site Industries, LLC makes a material change to any applicable URL Terms,

then Site Industries, LLC will notify Customer by either sending an email to the notification email address or posting a notice in the Administrator's instance of Customer's account. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify Site Industries, LLC within thirty (30) days after receiving notice of the change. If Customer notifies Site Industries, LLC as required, then Customer will remain governed by the URL Terms in effect immediately prior to the change until the end of the then current term for the affected Service. If the affected Service is renewed, it will be renewed under Site Industries, LLC's then current URL Terms.

9. Definitions.

"Affiliates" means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with Customer, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of Customer.

"Customer Data" means all electronic data or information submitted to the Service by Customer or its Affiliates.

"Electronic Communications" means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

"Estimate/Order Form" means a Site Industries, LLC estimate, renewal notification or order form in the name of and executed by Customer or its Affiliates and accepted by Site Industries, LLC which species the Service and implementation services to be provided by Site Industries, LLC subject to the terms of this Agreement.

"Help Documentation" means the online help center documentation describing the Service features, including User Guides which may be updated from time to time.

"Service" collectively, Site Industries, LLC's industry specific websites (the "Site Industries, LLC Service") and modules and/or management software as described in the applicable Help Documentation that is procured by Customer from Site Industries, LLC in the Estimate/Order Form and any subsequent Estimate/Order Form from time to time, including associated online components, but excluding Third-Party Applications and implementation services.

"Third-Party Applications" means online, Web-based applications or services and online software products that are provided by third parties, and interoperate with the Service, including but not limited to those listed on www.siteind.com.

"Users" means individual or organizations [used interchangeably with "Customer(s)"] who are authorized by Customer to use the Service, for whom subscriptions to a Service have been procured, and who have been supplied user identifications and passwords by Customer (or by Site Industries, LLC at Customer's request). Users may include but are not limited to Customer's and Customer's Affiliates' employees, consultants, contractors and agents.

"User Guides" means the online user guides for the Service, accessible via login at the customer's website (under Help), as updated from time to time. Customer acknowledges that it has had the

opportunity to review the User Guide through a trial account or testing period made available by Site Industries, LLC.

“URL Terms” means the terms with which Customer must comply, which are located at a URL and referenced in this Agreement.

LICENSOR

LICENSEE

Authorized Signature

Authorized Signature

Print Name and Title

Print Name and Title



Quote

12/10/19

CEMSITES
 3358 Pittsburgh Road
 Perryopolis, Pennsylvania 15473
 (877) 783-9626

QUOTE #
 013373
BILLED TO BERNADETTE CHATTAM
 West Hill Cemetery

PRODUCT	QUANTITY	PRICE	TOTAL
Secure CRM <i>Completely customizable cloud cemetery records management software powered by our FlexCore framework. It is user-friendly and intuitive while maintaining robust computing and advanced searching options effectively automate your workflow process.</i>	1	\$19,000.00	\$19,000.00
Secure CRM License <i>Annual License. Includes access for 4 user profiles billed at \$480 per month. Additional user profiles billed at \$120 per month.</i>	1	\$5,760.00	\$5,760.00
Data Migration - Custom <i>Cleanse and import existing digital data. Comprehensive data review will commence after scheduled discovery meeting. Up to 30 hours are allocated for this migration, additional time spent will be billable at \$150.00 per hour. (Access -2)</i>	1	\$6,000.00	\$6,000.00
Mapping - Lot Level <i>Allows cemeteries to plot, display and review burial inventory at the lot level. Up to 62 hours allocated, additional time spent billed at \$150.00 per hour.</i>	1	\$12,500.00	\$12,500.00
Visual Lot Viewer <i>Visually connect burial, grave, owner and marker information with its physical location and find available graves right from the lot. Up to 15 hours allocated, additional time spent billed at \$150.00 per hour.</i>	1	\$3,000.00	\$3,000.00
Custom Document <i>Custom Document. Up to 7 hours allocated, additional time spent billed at \$150.00 per hour. (Affidavit/Bill of Sale)</i>	2	\$1,500.00	\$3,000.00

PRODUCT	QUANTITY	PRICE	TOTAL
Website Integration <i>One page integration seamlessly emulating existing website. Includes Walk-To-Site, Records Search, Upcoming Burials & Recent Interments. Up to 6 design hours allocated, additional time spent will be billable at \$150.00 per hour.</i>	1	\$3,750.00	\$3,750.00
Website Hosting <i>Website hosting billed annually.</i>	1	\$480.00	\$480.00
KeepSafe Memorials <i>Preserve heritage by selling online pages to which clients can add information about both living and deceased loved ones. Up to 15 hours allocated, additional time spent billed at \$150.00 per hour.</i>	1	\$3,000.00	\$3,000.00
CemCare - Partner Support <i>Dedicated client advocate assigned to support your cemetery. Emergency hotline 365 days-a-year. Proactive outreach that includes preemptive check-ups, quarterly evaluations, maintenance, software training, and adoption.</i>	1	\$0.00	\$0.00
TOTAL			\$56,490.00

This estimate is valid for 30 days and is based on the data and information we have gathered to date. Actual data quality and map detail will affect price. If during development, the job exceeds the original estimated development/design hours allocated, an estimate for additional work billable at \$150.00 per hour will be provided to the client for approval prior to continuing the client build. Upon completion and software beta release, an itemized final invoice will be provided to the client for payment processing. Does not include any transaction and/or bank fees or any applicable local/state/federal taxes. This is only an estimate. Please request invoice to pay from.



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 01/21/2020

Agenda Item: Temporary Construction Easement – K2 Holdings, LLC

Department: Public Works

Requested By: Megan Elliott

Reviewed/Approved by City Attorney? Yes

Cost: N/A

Funding Source if Not in Budget N/A

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

The attached temporary construction easement is to facilitate replacement and reconstruction of the Crown Mill Pocket Park driveway and associated drainage culverts. Some of the work will take place off City right of way, and therefore the temporary easement with K2 Holdings, LLC was required.

TEMPORARY CONSTRUCTION EASEMENT/AGREEMENT

Georgia, Whitfield County

This Temporary Construction Easement Agreement (the “Agreement”) is made this _____ day of _____, 20__ (the “Effective Date”), by and between **K2 Holdings, LLC** (hereinafter “Grantor”), and the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, party of the second part (hereinafter “Grantee”), their respective successors and assigns:

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

WHEREAS, Grantee is the owner of certain real property adjacent to the Property being a city street, right-of-way, and city park and more particularly described as Chattanooga Avenue and Crown Creek Park (the “City Property”); and

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

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

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

1. **Temporary Construction Easement.** Grantor, and for and on behalf of its successors and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across and through that certain portion of the Property shown on the Easement Exhibit of Entrance To Crown Cotton Mills by Lowery and Associates Land Surveying, LLC dated January 13, 2020 (designated by hash marks) attached hereto as Exhibit “B” and incorporated herein by reference (the “Construction Easement”). The rights, benefits, privileges, and easement granted herein is for the purpose of the non-exclusive construction identified therein. Said Construction Easement is temporary and shall expire upon completion of the construction therein.

2. **Term of Easement.** The parties contemplate that the construction project can be completed in seven days or less and will be completed during Spring Break 2020. However, the parties acknowledge that said construction start date may be delayed and the time frame for completion may be delayed due to weather conditions. Except as may be amended by Grantee upon written notice to Grantor, said Temporary Construction Easement

shall be for a period of seven (7) days beginning March 30, 2020 through April 3, 2020. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather related delays as soon as reasonably possible. The parties shall reasonable cooperate to complete the project in a timely manner.

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

(a) the right of entry into and upon the Property for the purpose of access and ingress to and egress from the Property in order to effect the rights, privileges and easements set forth herein;

(b) the right to cut away, remove and dispose of all trees, undergrowth or other obstructions which exist on the Easement, which removal is necessary for Grantee's construction identified herein;

(c) the right to demolish and reconstruct the driveway and culvert as generally provided in Exhibit "B";

(d) the right to relocate sewer lines by Dalton Utilities as generally provided in Exhibit "C"; and

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

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

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

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

(b) Any construction or activities performed on the Easement by Grantee shall be done in a good workmanlike manner and the Easement shall be left in a clean and orderly condition, with all debris removed therefrom, and any areas which may have been disturbed by such work shall be restored to their former condition as nearly as practicable and as generally provided in the Exhibit "B".

(c) Grantee shall if necessary temporarily brace the Grantor's signage

during the term of this Agreement. If necessary to avoid any damage to the signage, Grantee shall temporarily relocate the signage in such a manner as to reasonably maximize the street view of said signage, in consultation with the Grantor. Upon completion of the project, Grantee shall reinstall the signage in its original location.

(d) Grantee shall temporarily provide access for egress and ingress to the Property as generally provided in the Wayfinding Plan attached hereto as Exhibit "D".

6. **Covenants of Grantor.**

(a) Grantor waives all right to any compensation for the use and enjoyment of the rights and privileges granted herein and further acknowledge that the use granted herein does not constitute an action of eminent domain or condemnation by the Grantee. Grantor does not waive any claim for damages that may result from the negligent acts or omissions of the Grantee or its contractors in its use of the Temporary Constructive Easement.

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

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

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

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

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

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

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

[Signatures on next page.]

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

Signed, sealed and delivered
In the presence of:

Unofficial Witness

Notary Public

My commission expires:

[Notarial Seal]

Grantor:

K2 Holdings, LLC

By: _____ (Seal)

Title: _____

Signed, sealed and delivered
In the presence of:

Unofficial Witness

Notary Public

My commission expires:

[Notarial Seal]

Grantee:

City of Dalton, GA

By: _____ (Seal)

Title: _____

EXHIBIT “A”

ENL

ATT

Please return to: Wright W. Smith
P. O. Box 5007, Rome, GA 30162

Deed Doc: QCD
Recorded 09/21/2017 09:54AM
Georgia Transfer Tax Paid : \$0.00
MELICA KENDRICK
Clerk Superior Court, WHITFIELD County, Ga.
Bk 06574 Pg 0285-0286

PRE1002508

[Space above this line for recording data]

QUIT CLAIM DEED

STATE OF GEORGIA
COUNTY OF WHITFIELD:

THIS INDENTURE, Made this 14 day of September, 2017, between **KSHE Land Investments, Inc.**, a Georgia corporation, ("Grantor") of the first part, and **K2 Holdings, LLC**, a Georgia limited liability company ("Grantee") of the second part. ("Grantor" and "Grantee" to include their respective heirs, successors, executors, administrators, legal representatives and assigns where the context requires or permits. Use of pronouns in any form shall be read as either masculine, feminine or neuter, and either, singular or plural, whenever the context and facts permit such construction).

WITNESSETH: That Grantor, for and in consideration of Love and Affection has transferred and conveyed, and by these presents does transfer and convey unto Grantee the following described property:

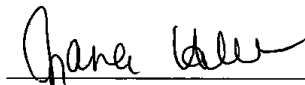
All that tract or parcel of land lying and being in Land Lots 182 and 199 of the 12th District and 3rd Section of Whitfield County, Georgia, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD the said land, together with all appurtenances thereto belonging, to the only use of the said Grantee, in as ample a manner only as said Grantor has and holds the same.


IN WITNESS WHEREOF, The said Grantor has hereunto set his hand and affixed his seal the day and year first above written.

Signed, sealed and delivered
in the presence of:

KSHE Land Investments, Inc.



UNOFFICIAL WITNESS

By: 
Lowell T. Kirkman, President


NOTARY PUBLIC

My Commission Expires: 8.8.20

[CORPORATE SEAL]

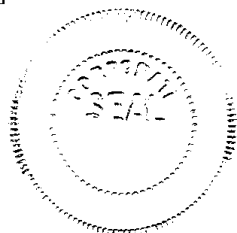


EXHIBIT A

A certain tract or parcel of land lying and being in Land Lots 182 and 199 of the 12th District and 3rd Section of Whitfield County, Georgia, and being more particularly described in a plat by Lowery and Associates Land Surveying, LLC dated March 23, 2016, as follows:

TO FIND THE TRUE POINT OF BEGINNING begin at the intersection of the northwest right of way of Tyler Street and Chattanooga Avenue, thence proceed north 16 degrees 41 minutes 39 seconds west 1,407.46 feet to a 5/8 inch capped rebar set at the easternmost southeast corner of that 0.110 acre tract of land conveyed to KSHE Land Investments, Inc. by Warranty Deed from Crown Mill Development Company, LLC of record in Deed Book 5608, Page 277 and the TRUE POINT OF BEGINNING; thence along southerly, easterly and southerly lines of said property shown by deed at Deed Book 5608, Page 277 the following courses and distances, to wit: south 76 degrees 22 minutes 09 seconds west 56.05 feet to a railroad spike found, south 13 degrees 54 minutes 25 seconds east 19.97 feet to a railroad spike found and south 76 degrees 25 minutes 04 seconds west 90.18 feet to a railroad spike found at the southwest corner of that tract of land shown at Deed Book 5608, Page 277; thence south 13 degrees 41 minutes 49 seconds east 16.40 feet to a 5/8 inch capped rebar set; thence south 76 degrees 51 minutes 45 seconds west 89.25 feet; thence north 13 degrees 41 minutes 49 seconds west 72.09 feet; thence south 76 degrees 39 minutes 37 seconds west 245.71 feet to a 5/8 inch capped rebar set on the east right of way of the CSX Railroad; thence north 22 degrees 39 minutes 51 seconds west along said railroad right of way 178.21 feet to the southwest corner of that tract of land conveyed to Columbia Recycling Corp. by deed of record in Deed Book 4395, Page 74, Whitfield County, Clerk's Records; thence along the southerly lines of said tract of land conveyed at Deed Book 4395, Page 74 the following courses and distances, to wit: north 67 degrees 19 minutes 28 seconds east 83.80 feet, north 19 degrees 24 minutes 06 seconds east 84.98 feet, north 76 degrees 10 minutes 28 seconds east 149.07 feet and north 52 degrees 40 minutes 13 seconds east 158.55 feet to the easternmost corner of that tract of land conveyed at Deed Book 4395 page 74; thence north 66 degrees 57 minutes 43 seconds east 80.00 feet, south 31 degrees 14 minutes 49 seconds east 292.28 feet to the northernmost corner of that tract of land conveyed by KSHE Land Investments, Inc. to City of Dalton, Georgia, at Deed Book 5295, page 322, Whitfield County, Clerk's Records; thence along northerly and westerly lines of said property conveyed to City of Dalton the following courses and distances, to wit: south 68 degrees 05 minutes 04 seconds west 45.61 feet, thence southwesterly following the arc of a curve to the left (said curve (having a radius of 58.00 feet and being subtended by a chord bearing south 17 degrees 55 minutes 29 seconds west a chord distance of 81.44 feet) an arc distance of 90.28 feet and south 30 degrees 03 minutes 59 seconds east 21.89 feet to a 5/8 inch capped rebar set and the TRUE POINT OF BEGINNING.

The above described property is presently designated Tax Parcel No. 12-182-04-000 for the Whitfield County Tax Assessor's Office.

TOGETHER WITH THAT CERTAIN Perpetual Easement as an appurtenance to the property herein described said easement being for purposes of access, maintenance and upkeep of above and below ground utility installation as said perpetual easement is more particularly described in that deed from KSHE Land Investments, Inc. to Columbia Recycling Corp. at Deed Book 4395, page 74, Whitfield County, Clerk's Records, said deed being incorporated herein by reference for a full and complete description of the perpetual easement.

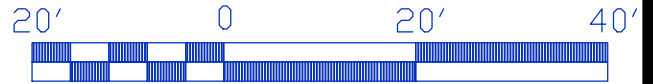
TOGETHER WITH THAT CERTAIN EASEMENT from Columbia Recycling Corporation to KSHE Land Investments, Inc. which said easement is an appurtenance to the properties conveyed herein and is recorded said easement at Deed Book 4395, Page 76. Said easement is incorporated herein by reference for a full and complete description of same.

TOGETHER WITH THAT CERTAIN EASEMENT for ingress and egress from Crown Mill Development Company, LLC to KSHE Land Investments, Inc. of record in Deed Book 5138, Page 193, Whitfield County, Clerk's Records, said easement being incorporated herein by reference for a full and complete description of said perpetual non-exclusive easement.

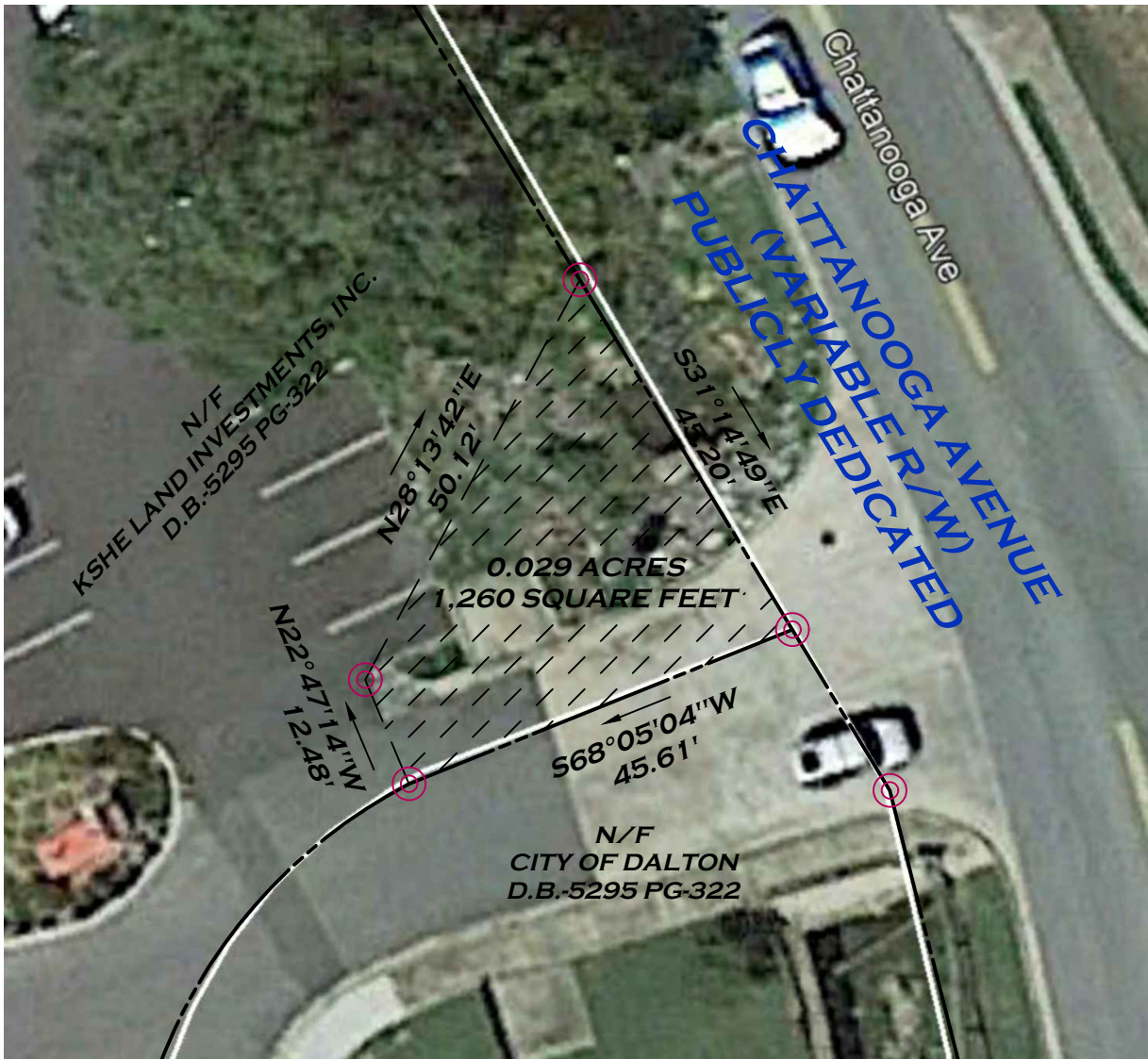
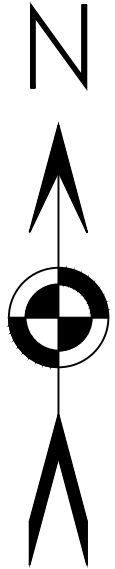
TOGETHER WITH THAT CERTAIN EASEMENT for purposes of ingress, egress and installation of below ground utilities reserved by KSHE Land Investments, Inc. in that deed to City of Dalton at Deed Book 5295, Page 322, said deed being incorporated herein for a full and complete description of said easement.

EXHIBIT “B”

GRAPHIC SCALE



1 Inch = 20 Feet



EASEMENT EXHIBIT OF:
ENTRANCE TO CROWN COTTON MILLS
PREPARED FOR:
THE CITY OF DALTON

FILE NO: 161270	SCALE: 1"=20'	
DATE: JANUARY 13, 2020	DRAWN BY: J.BURNETTE	
STATE: GEORGIA	COUNTY: WHITFIELD	
LAND LOT: 182	DISTRICT: 12TH	SECTION: 3RD

LOWERY AND ASSOCIATES LAND SURVEYING, LLC
 317 GRASSDALE ROAD
 CARTERSVILLE, GA 30121
 770-334-8186

Exhibit “C”

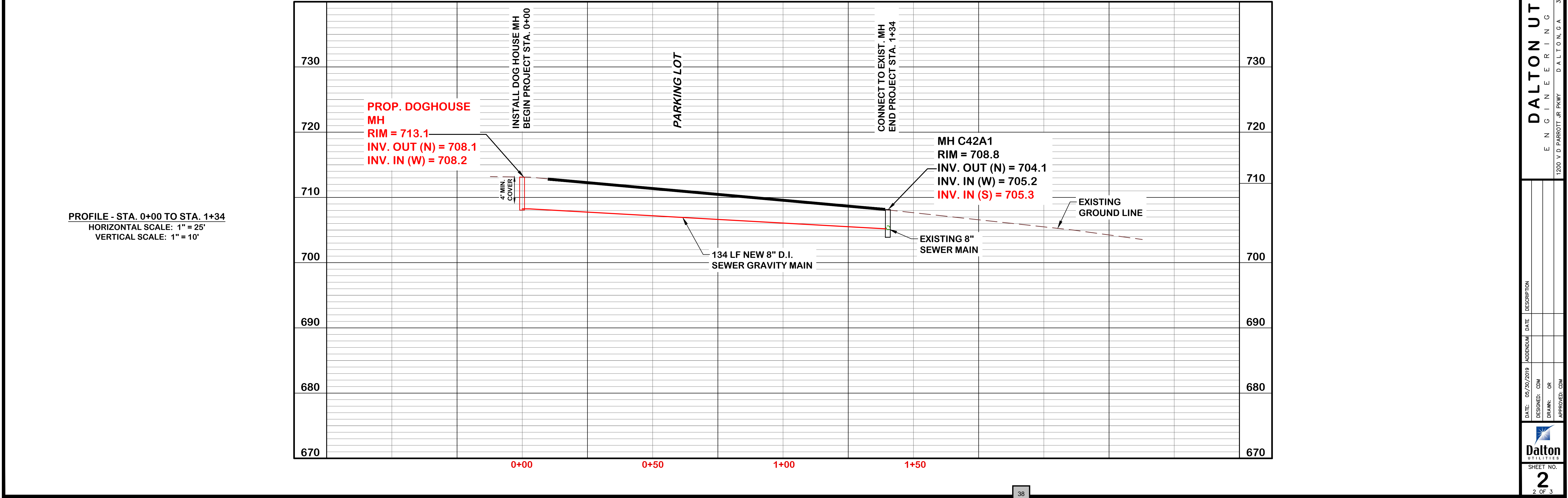
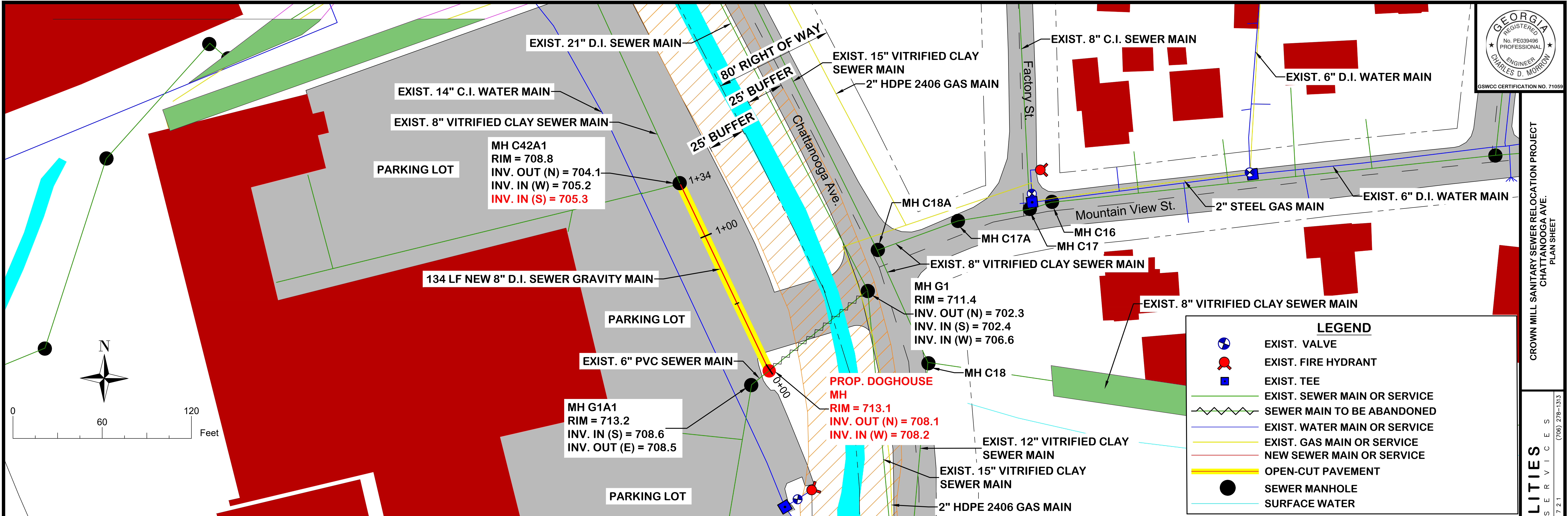


EXHIBIT “D”



N Thompson Ave

Chattanooga Ave

Jones St



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 01/17/2020

Agenda Item: Board Appointments

Department: City Clerk

Requested By: Gesse Cabrera

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

Cost: N/A

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

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

City Board Appointments for:

- Expired Appointments
- Mayoral Appointments
- Miscellaneous Appointments

Expired Appointments					
Type	Current Member	Incoming Member	Term	Expiration	New Expiration
D/W Building Code Appeals	Henderson, Martin		3 Year	3/1/2018	3/1/2021
D/W Building Code Appeals	Sims, Gregg		3 Year	3/1/2018	3/1/2021
Animal Control	Stearns, Chris		4 Year	4/15/2018	4/15/2022
Trade Center	Kensey, Mike		1 Year	1/31/2019	
Development	Puryear, Carl		6 Year	2/1/2019	2/1/2025
Development	Wright, Bryan		6 Year	2/1/2019	2/1/2025
WC EMS Quality Review	Pangle, Todd	Pangle, Todd	2 Year	3/1/2019	3/1/2021
Animal Control	Puryear, Carl		4 Year	4/15/2019	4/15/2023
Animal Control	Brooks, Devon		4 Year	4/15/2019	4/15/2023
Building	Robertson, Frank		4 Year	6/15/2019	6/15/2023
Building	Sellers, Scott		4 Year	6/15/2019	6/15/2023
Building	Lewis, Lane		4 Year	6/15/2019	6/15/2023
Library	Compton, Ann		3 Year	6/30/2019	6/30/2022
Library	McFarland, Frances (Bitsy)		3 Year	6/30/2019	6/30/2022
Grievance	O'Neill, Mike		3 Year	7/31/2019	7/31/2022
Housing	Woodward, George	Woodward, George	5 Year	10/14/2019	10/14/2024
Housing	Watson, Erica	Gruner, America	5 Year	10/14/2019	10/14/2024
Airport	Johnston, Rip		5 Year	12/31/2019	12/31/2024
Housing	Lumpkin, Joanne	Land, Barbara	1 Year	12/31/2019	12/31/2020
Public Safety	Weaver, Bill	Weaver, Bill	5 Year	12/31/2019	12/31/2024
Recreation	Tharpe, Julia M.	Whittle, Allison	5 Year	12/31/2019	12/31/2024
Regional Development	Gowin, Kenny	Gowin, Kenny	1 Year	12/31/2019	12/31/2020
WL&SF	Hair, Bryan	Killings, Jackie	5 Year	12/31/2019	12/31/2024
Service Delivery	Dunn, Benny		1 Year	12/31/2019	12/31/2020
Joint Development	Robertson, Frank	Robertson, Frank	1 Year	1/31/2020	1/31/2021
Joint Development	Davies, Bill	Davies, Bill	3 Year	1/31/2020	1/31/2023
Trade Center	Upton, Jamie		2 Year	1/31/2020	1/31/2022
D/W Building Code Appeals	King, Buddy		3 Year	2/1/2020	2/1/2023
Historic Preservation	Fincher, Reed	Fincher, Reed	3 Year	2/1/2020	2/1/2023
Historic Preservation	Sellers, Kathryn		3 Year	2/1/2020	2/1/2023
Historic Preservation	Granillo, Jeff	Granillo, Jeff	3 Year	2/1/2020	2/1/2023
Ethics	Laughter, Bennie M		5 Year	3/15/2020	3/15/2025
Ethics	Waycaster Jr, Leslie		5 Year	4/5/2020	4/5/2025

Mayoral Appointments					
Type	Current Member	Incoming Member	Term	Expiration	New Expiration
Airport	Wood, Denise		1 Year	12/31/2019	12/31/2020
Building	Harlan, Annalee		1 Year	12/31/2019	12/31/2020
D/W Charter & Consolidation	Crew, Gary		1 Year	12/31/2019	12/31/2020
Downtown Development	Harlan, Annalee		1 Year	12/31/2019	12/31/2020
Finance & Administration	All Council Members		1 Year	12/31/2019	12/31/2020
Finance & Administration	Mock, Dennis		1 Year	12/31/2019	12/31/2020
Joint Development	Mock, Dennis		1 Year	12/31/2019	12/31/2020
MPO Policy	Wood, Denise		1 Year	12/31/2019	12/31/2020
Pension	Mock, Dennis		1 Year	12/31/2019	12/31/2020
Pension	Goodlett, Tyree		1 Year	12/31/2019	12/31/2020
Public Safety	Harlan, Annalee		1 Year	12/31/2019	12/31/2020
Public Works & Facilities	Wood, Denise		1 Year	12/31/2019	12/31/2020
Public Works & Facilities	Goodlett, Tyree		1 Year	12/31/2019	12/31/2020
Recreation	Crews, Gary		1 Year	12/31/2019	12/31/2020
Regional Development	Gowin, Kenny		1 Year	12/31/2019	12/31/2020
Service Delivery	Harlan, Annalee		1 Year	12/31/2019	12/31/2020
Service Delivery	Dunn, Benny		1 Year	12/31/2019	12/31/2020
Solid Waste Mgmt	Goodlett, Tyree		1 Year	12/31/2019	12/31/2020
Solid Waste Mgmt	Mock, Dennis		1 Year	12/31/2019	12/31/2020
TAD Policies	Crews, Gary		1 Year	12/31/2019	12/31/2020
Technology	Wood, Denise		1 Year	12/31/2019	12/31/2020
Trade Center	Crews, Gary Harlan Annalee		1 Year	12/31/2019	12/31/2020
Tree	Goodlett, Tyree		1 Year	12/31/2019	12/31/2020
WL&SF	Crews, Gary		1 Year	12/31/2019	12/31/2020
Library	Need New Liaison		1 Year		12/31/2020
Creative Arts Guild	Need New Liaison		1 Year		12/31/2020

Miscellaneous					
Type	Appointment	Current Member	Incoming Member	Term	Expiration
Miscellaneous	Municipal Court Judge	Cowan, Robert		1 Year	12/31/2019
Miscellaneous	Mayor Pro-Tem	Wood, Denise		1 Year	12/31/2019
Miscellaneous	Fire Marshall	Daniel, Matthew		1 Year	12/31/2019
Miscellaneous	City Attorney	Vaughn, Gandy		1 Year	12/31/2019

New Expiration
12/31/2020
12/31/2020
12/31/2020
12/31/2020