



**MAYOR AND COUNCIL MEETING  
MONDAY, JUNE 21, 2021  
6:00 PM  
DALTON CITY HALL**

**A G E N D A**

**Call to Order**

**Pledge of Allegiance**

**Approval of Agenda**

**Public Commentary:** *(Must Complete Public Commentary Card Prior to Speaking)*

**Minutes:**

- [1.](#) Mayor and Council Minutes of June 7, 2021

**Unfinished Business:**

- [2.](#) Second Reading - Ordinance 21-08 - Amending the List of Authorized Streets for PTV Operation
- [3.](#) Second Reading - Ordinance 21-09 - Belton Avenue Street Closing Request

**New Business:**

- [4.](#) FY-2021 Budget Amendment #2.
- [5.](#) Professional Services Agreement with Geo-Hydro Engineers for the Proposed Underground Stormwater Pond - Dalton City Hall
- [6.](#) Professional Services Agreement with KRH Architects for Design Services for the New Aquatic Center for the City of Dalton
- [7.](#) Professional Services Agreement - BION Security

**Supplemental Business**

**Adjournment**

THE CITY OF DALTON  
MAYOR AND COUNCIL MINUTES  
JUNE 7, 2021

The Mayor and Council held a meeting this evening at 6:00 p.m. in the Council Chambers of City Hall. Present were Mayor David Pennington, Council members Annalee Harlan, Tyree Goodlett, Gary Crews, City Administrator Jason Parker and City Attorney Terry Miller. Council member Derek Waugh attended via zoom.

CALLED TO ORDER

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

PLEDGE OF ALLEGIANCE

The audience was led in the Pledge of Allegiance.

APPROVAL OF AGENDA

On the motion of Council member Goodlett, second Council member Harlan, the Mayor and Council approved the agenda of June 7, 2021. The vote was unanimous in favor.

PUBLIC COMMENTARY

There were no public comments.

PROCLAMATION

"Immigrant Heritage Month" - June 2021 - Jaime Rangel, Georgia Immigration Manager  
The Mayor and Council proclaimed June 2021 as "Immigrant Heritage Month" in the City of Dalton outlining the many contributions generations of immigrants from every corner of the globe helped build the country's economy and created the unique character of the nation.

MINUTES

The Mayor and Council reviewed the Regular Meeting Minutes of May 17, 2021.  
On the motion of Council member Crews, second Council member Harlan, the minutes were approved. The vote was unanimous in favor.

FIRST READING ORDINANCE 21-08 - AMENDING THE LIST OF AUTHORIZED STREETS FOR PTV OPERATION

The Mayor and Council held a First Reading Ordinance 21-08 - Amending the List of Authorized Streets for PTV Operation to include the following:

- Oakmont Drive (in the Oakdale Subdivision)
- Oakmont Place (in the Oakdale Subdivision)
- Fairington Drive (in the Fairington Subdivision)
- Habersham Way (in the Fairington Subdivision)
- Kingston Court (in the Fairington Subdivision)
- Stanford Court (in the Fairington Subdivision)
- Woodvalley Drive (in the Castlewood Subdivision)
- Woodvalley Court (in the Castlewood Subdivision)

FIRST READING ORDINANCE 21-09 - BELTON AVENUE STREET CLOSING REQUEST

The Mayor and Council held a first reading of Ordinance 21-09, a request by Alice Yim to close an unopened portion of Belton Avenue.

(2) NEW 2021 ALCOHOL BEVERAGE APPLICATIONS

On the motion of Council member Harlan, second Council member Crews, the Mayor and Council approved the following 2021 Alcohol Beverage Applications:

Business Owner: Unik Sweet Delights, LLC  
d/b/a: Unik Sweet Delights  
Applicant: Jose Jimenez Lopez  
Business Address: 238 N. Hamilton St Suite 1  
License Type: Pouring Beer (Limited Service Restaurant)  
Disposition: **License Addition**

Business Owner: PMK Business Inc.  
d/b/a: Citgo Food Mart  
Applicant: Tahmina Khatun  
Business Address: 1246 North Thornton Ave  
License Type: Package Beer, Package Wine (Convenience Store | Gas Station)  
Disposition: **New**

The vote was unanimous in favor.

RENEWAL OF SCHOOL RESOURCE OFFICER CONTRACT WITH DALTON PUBLIC SCHOOLS

Chief Cliff Cason presented to the Mayor and Council a Renewal Contract with Dalton Public Schools for School Resource Officers. Chief Cason stated the contract will provide five School Resource Officers to Dalton Public Schools for a term of 12 months. On the motion of Council member Harlan, second Council member Crews, the Mayor and Council approved the contract. The vote was unanimous in favor.

GENERAL CONSTRUCTION AGREEMENT WITH SHAW INTEGRATED SOLUTIONS FOR CARPET REPLACEMENT AT PUBLIC WORKS ADMINISTRATION BUILDING

Public Works Director Andrew Parker presented the General Construction Agreement with Shaw Integrated Solutions for Carpet Replacement at the Public Works Administration Building in the amount of \$38,267.94. On the motion of Council member Harlan, second Council member Goodlett, the Mayor and Council approved the agreement. The vote was unanimous in favor.

PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES WITH AMERICAN CONSULTING PROFESSIONALS, LLC FOR MILL CREEK RIVERWALK - PHASE 2

Public Works Director Andrew Parker presented the Professional Services Agreement for Design Services with American Consulting Professionals, LLC for Mill Creek Riverwalk Phase 2 in the amount of \$203,267.00 paid from the 2015 SPLOST. On the motion of Council member Goodlett, second Council member Crews, the Mayor and Council approved the agreement. The vote was unanimous in favor.

LASERFICHE SOFTWARE UPGRADE

IT Director Jorge Paez presented a quote to upgrade the current software solution Laserfiche that is used by both the Clerk's Office and Police Department. Paez stated this upgrade will consolidate the two department's servers and will be upgraded to the current version of Laserfiche. Paez stated the consolidation will be a \$1227.40 saving per year. On the motion of Council member Goodlett, second Council member Harlan, the Mayor and Council approved the contract. The vote was unanimous in favor.

PROFESSIONAL SERVICES – BION SECURITY

IT Director Jorge Paez presented a Professional Services Agreement with BION Security to aid the City's IT Department in deployment of network equipment. On the motion of Council member Harlan, second Council member Goodlett, the Mayor and Council tabled this item for additional information. The vote was unanimous in favor.

CONSULTING AGREEMENT – EVERGREEN SOLUTIONS

Human Resources Director Greg Batts presented a Consulting Agreement with Evergreen Solutions to conduct a wage survey for the City of Dalton in the amount of \$24,000. On the motion of Council member Crews, second Council member Harlan, the Agreement was approved. The vote was unanimous in favor.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 6:22 p.m.

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Bernadette Chattam  
City Clerk

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David Pennington, Mayor

Recorded  
Approved: \_\_\_\_\_  
Posted: \_\_\_\_\_







## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 6-21-21

**Agenda Item:** Second Reading Ordinance 21-08 Amending the List of Authorized Streets for PTV Operation

**Department:** Administration – Public Works – Police

**Requested By:** Jason Parker

**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:**

Applications were received from residents of Fairington Subdivision, Oakdale Subdivision, and Castlewood Subdivision, requesting authorization to operate PTVs on certain streets. Pursuant to the ordinance, Public Works and Police Department conducted the evaluations and recommended approval as indicated on the attached maps.

If approved, this ordinance adds the following streets to the authorized list for operation of PTVs in the City:

- **Oakmont Drive (in the Oakdale Subdivision)**
- **Oakmont Place (in the Oakdale Subdivision)**
- **Fairington Drive (in the Fairington Subdivision)**
- **Habersham Way (in the Fairington Subdivision)**
- **Kingston Court (in the Fairington Subdivision)**
- **Stanford Court (in the Fairington Subdivision)**
- **Woodvalley Drive (in the Castlewood Subdivision)**
- **Woodvalley Court (in the Castlewood Subdivision)**

## **ORDINANCE 21-08**

To Make Findings Of Fact Concerning the Public Use And Necessity Of A Section Of Belton Avenue, To Consider The Vacating And Abandonment Of The Public Interest In And To The Said Section Of Belton Avenue For Public Transportation Use; To Declare The Closing Of Such Section Of Belton Avenue, To Authorize Delivery Of A Quitclaim Deed Of Any Interest Of The City Of Dalton Except Utility Easements To Adjacent Property Owners; To Establish An Effective Date; And For Other Purposes

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

### **Section 1**

Upon investigation and inquiry, the Mayor and Council find that the below described section of Belton Avenue in the City of Dalton, Whitfield County, Georgia, as shown on the survey by Lewis & Associates Land Surveying, LLC, Georgia Registered Land Surveyor No. \_\_\_\_\_, dated May 4, 2021 and pertaining to property in Land Lots No. 183 and 184 in the 12<sup>th</sup> District and 3<sup>rd</sup> Section, Whitfield County, Georgia, attached hereto as Exhibit "A" and made a part hereof, is no longer needed by the public for street or transportation purposes and to that extent no substantial public purpose is served thereby:

See Exhibit "B" attached hereto and incorporated herein by reference for complete description of said section of Belton Avenue.

### **Section 2**

Notifications to property owners located on the property described above to be closed is not given since the adjoining property owner is the petitioner and the City of Dalton to the extent of any utility easement.

### **Section 3**

The section of Belton Avenue to be closed shall no longer be a part of the municipal street system of the City of Dalton and the rights of the public in and to those sections for public street or road purposes shall cease upon the effective date of this Ordinance except that the City of Dalton reserves any portion thereof where it maintains an easement for natural gas, water, and sewer lines through the operations of Dalton Utilities.

#### **Section 4**

This Ordinance shall become effective after it has been published in two (2) public places within the City of Dalton for five (5) consecutive days following its enactment by the Mayor and Council.

#### **Section 5**

The Mayor and City Clerk are authorized to make and enter in the name and on behalf of the City of Dalton a quitclaim deed of all interest, except for utility easements, of the City of Dalton in and to the section to be closed to the contiguous owner and her heirs, administrators, executors, and legal representatives in title.

#### **Section 6**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

#### **Section 7**

It is hereby declared to be the intention of the Mayor and Council of the City of Dalton that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or otherwise invalid by a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance.

**SO ORDAINED** this \_\_\_\_ day of \_\_\_\_\_, 2021

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

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
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 \_\_\_\_\_.

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CITY CLERK  
CITY OF DALTON

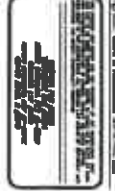
# EXHIBIT "A"



NO.	DESCRIPTION	DATE
1	PRELIMINARY SURVEY	12-18-01
2	FINAL SURVEY	12-18-01
3	REVISION	12-18-01
4	REVISION	12-18-01
5	REVISION	12-18-01
6	REVISION	12-18-01
7	REVISION	12-18-01
8	REVISION	12-18-01
9	REVISION	12-18-01
10	REVISION	12-18-01

1/1

NO.	DESCRIPTION	DATE
1	PRELIMINARY SURVEY	12-18-01
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6	REVISION	12-18-01
7	REVISION	12-18-01
8	REVISION	12-18-01
9	REVISION	12-18-01
10	REVISION	12-18-01



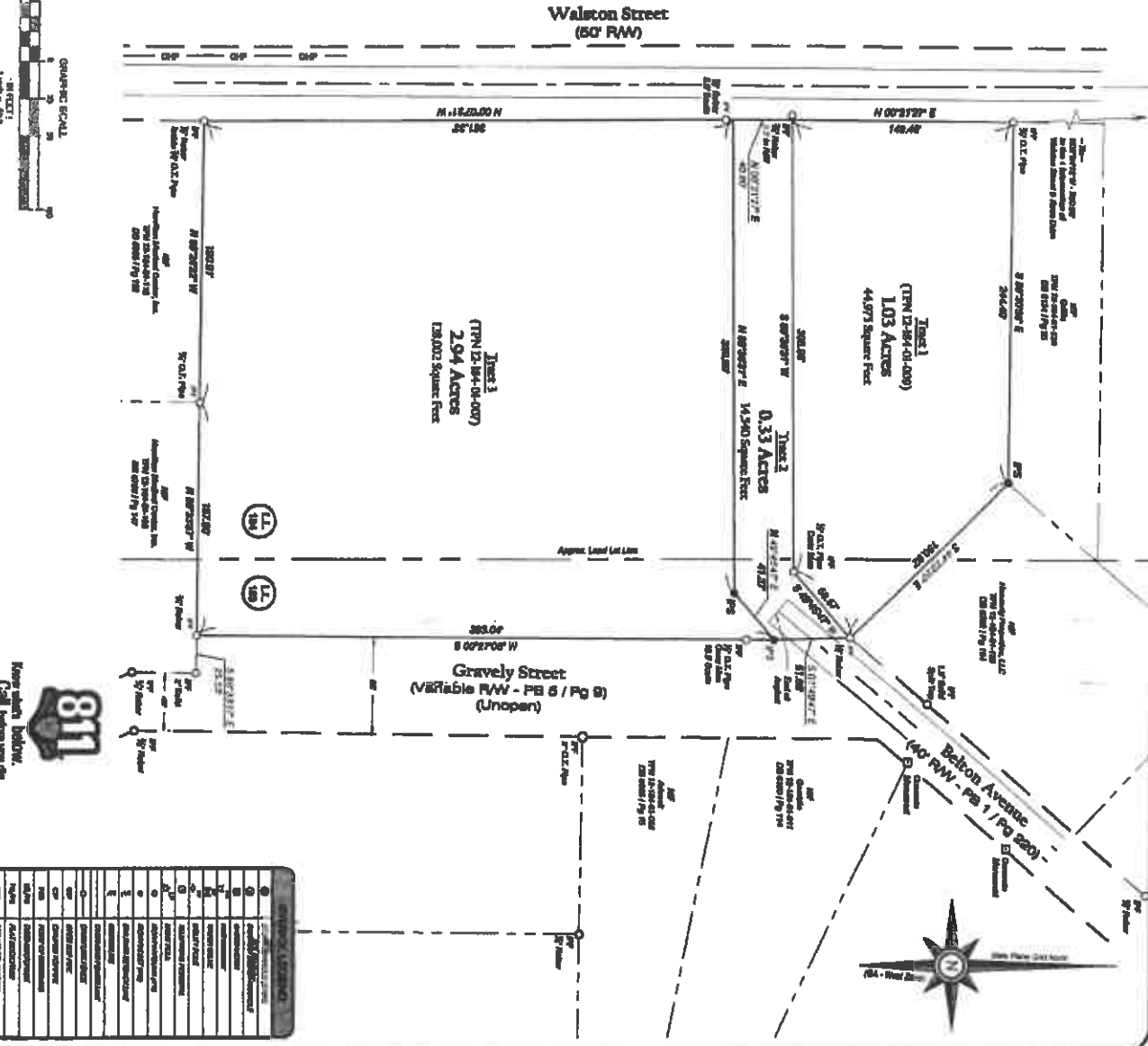
**FINAL PLAT (EXEMPT SUBDIVISION)**

**ALICE YIM**

BEING TAX PARCEL NOS. 12-184-01-007 & 12-184-01-008  
LOCATED IN LAND LOTS 188 & 184, 12th DISTRICT, 3rd SECTION  
CITY OF DALTON, WHITFIELD COUNTY, GEORGIA

**LEWIS & ASSOCIATES**  
**LAND SURVEYING, LLC**

LAND SURVEYING & PLANNING  
P.O. BOX 8048  
DALTON, GA 30722  
(404) 708-2700 • (404) 708-8900-4513  
louis@lewis-survey.com  
www.lewis-survey.com



## **EXHIBIT " B "**

**ALL THAT TRACT or parcel of land lying and being in Land Lot Nos. 183 and 184, in the 12th District and 3<sup>rd</sup> Section, in the City of Dalton, Whitfield County, Georgia, and being more particularly described as follows:**

**BEGINNING at a point on the eastern right of way of Walston Avenue (having a 50-foot right of way); said point being located South 01 degree 34 minutes 24 seconds East a distance of 730.33 feet from the centerline intersection of Walston Avenue and Ross Drive; thence North 89 degrees 38 minutes 31 seconds East along the northern right of way of Belton Avenue a distance of 305.98 feet to a ½-Inch open top pipe in a concrete monument; thence North 49 degrees 45 minutes 47 seconds East along the northern right of way of Belton Avenue a distance of 58.57 feet to a ½-Inch rebar; thence leaving said northern right of way of Belton Avenue running South 01 degrees 49 minutes 47 seconds East a distance of 51.05 feet to a 5/8-Inch capped rebar on the southern right of way of Belton Avenue; thence South 49 degrees 45 minutes 47 seconds West along the southern right of way of Belton Avenue a distance of 41.37 feet to a 5/8-inch capped rebar; thence South 89 degrees 38 minutes 31 seconds West along said southern right of way of Belton Avenue a distance of 320.99 feet to a point on the eastern right of way of Walston Avenue; thence North 00 degrees 21 minutes 27 seconds East along the eastern right of way of Walston Avenue a distance of 40.00 feet to the POINT OF BEGINNING.**

**SAID TRACT or parcel containing 0.33 acres.**



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** June 21, 2021

**Agenda Item:** 2nd Reading Ordinance 21-09 Belton Avenue Street Closing Request

**Department:** Administration

**Requested By:** Kimberley Witherow

**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:**

Petition request by Ms. Alice Yim to close an unopened portion of Belton Avenue. Ms. Yim owns parcels 12-184-01-009 and 12-186-01-007 which are parcels north and south of the unopened portion of Belton Avenue. Ms. Yim is the only parcel owner contiguous to said request.



## **ORDINANCE 21-09**

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**SO ORDAINED** this \_\_\_\_ day of \_\_\_\_\_, 2021

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

ATTEST:

\_\_\_\_\_  
MAYOR

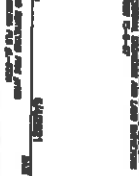
\_\_\_\_\_  
CITY CLERK

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CITY CLERK  
CITY OF DALTON

## A. 22

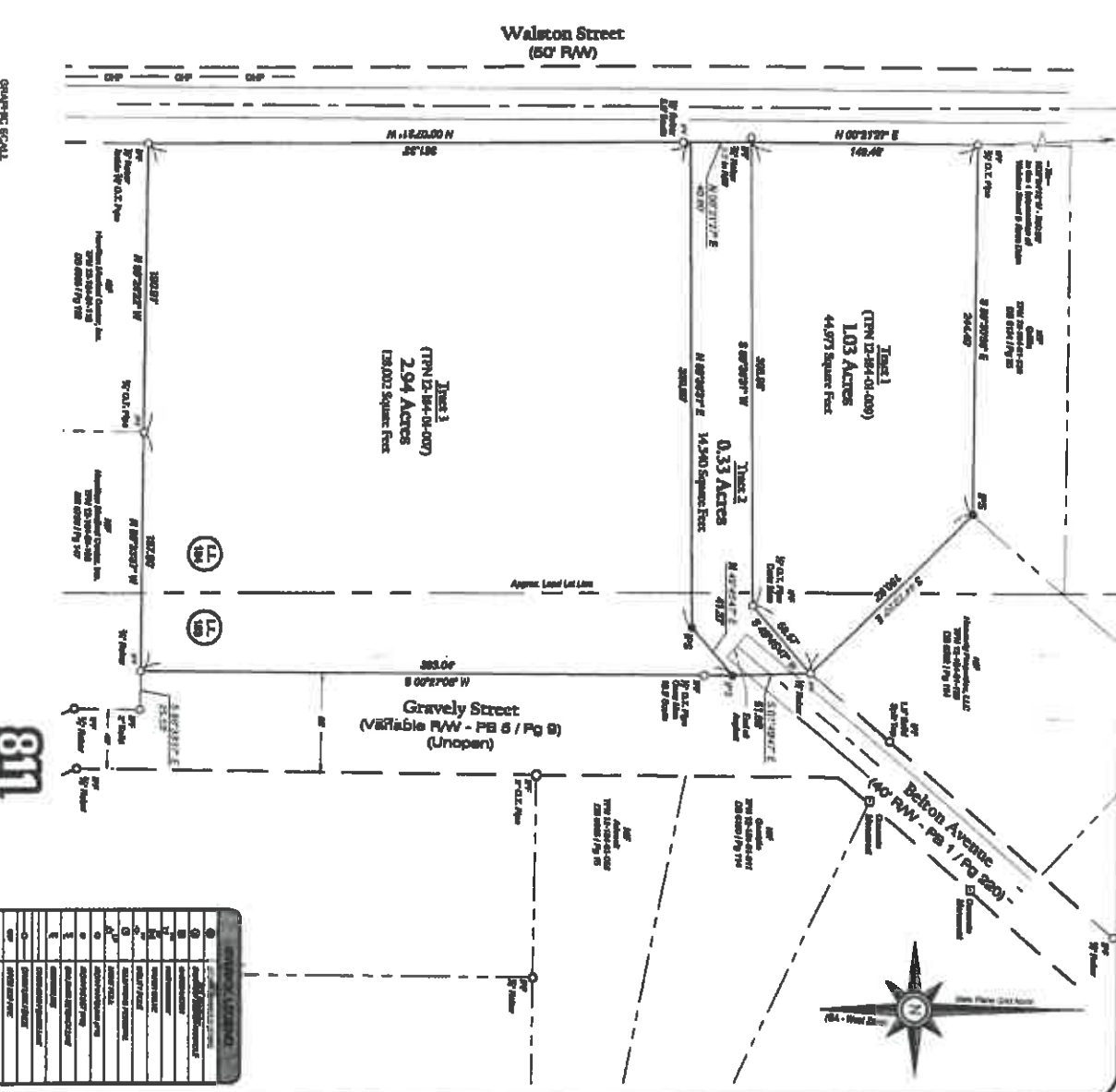
[illegible][illegible][illegible][illegible]

1. PLANT OF THE SUBGENUS *Stachys* FOUND IN THE PLANT TISSUE OF THE CAT. SUBGENUS *Stachys* FOUND IN THE PLANT TISSUE OF THE CAT.

[illegible]

**ALL OUR APPLICATIONS ARE MADE UNDER A SIMPLE NOVEL ECONOMIC MODEL, WHICH WE HAVE PATENTED AND COPYRIGHTED.**

DATE: 11/11/2009 11:41 AM

[illegible]**ALICE YIM**

BEING TAX PARCEL NOS. 12-184-01-007 & 12-184-01-008  
LOCATED IN LAND LOTS 183 & 184, 12th DISTRICT, 3rd SECTION  
CITY OF DALTON, WHITFIELD COUNTY, GEORGIA



**LEWIS & ASSOCIATES**  
**LAND SURVEYING, LLC**  
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P.O. BOX 8048  
DALTON, GA 30702  
(202) 708-2780 7818 - (202) 708-0864 4513  
[info@lewis-survey.com](mailto:info@lewis-survey.com)  
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**SAID TRACT or parcel containing 0.33 acres.**



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 6-21-21

**Agenda Item:** 2021 Budget Amendment #2

**Department:** Finance

**Requested By:** Cindy Jackson

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

**Cost:** \$1,754,240

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

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

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Budget amendment as requested by various departments and funding of the 2021 CIP Fund – refer to attached for details.

**2021 Budget Amendment  
Budget Amendment #2**

**GENERAL FUND**

	Increase (Decrease)	
<b>Revenues &amp; Transfers-In</b>		
Charges for Services	\$ 6,000	(1)
Reimbursement	6,520	(2)
	<u>\$ 12,520</u>	
<b>Expenditures &amp; Transfers-out</b>		
Public Works - overtime	\$ 6,000	(1)
Recreation - vehicle repair	6,520	(2)
HR - contract services	24,000	(3)
Building & grounds	13,060	(4)
Infrastructure - nuisance abatement	25,000	(5)
Transfer to 2015 SPLOST	200,000	(6)
Transfer to Capital Improvements Fund	1,300,000	(7)
Transfer to Golf Course	200,000	(8)
Transfer to 2020 SPLOST Fund	365,980	(9)
Contingency	(373,800)	
	<u>\$ 1,766,760</u>	
<b>Net Increase (Decrease) Budgeted Fund Balance</b>	<u><u>\$ (1,754,240)</u></u>	

- (1) Public Works invoice to DDDA for pressure washing sidewalks downtown
- (2) Insurance check for wrecked recreation vehicle
- (3) Evergreen Solutions contract approved by M&C for compensation study
- (4) Maintenance items for Freight Depot and Train Car
- (5) Anticipated costs associated with enforcement of nuisance ordinance
- (6) Transfer of 2020 Service Delivery funds reserved for 2020 Paving Contract (2015 SPLOST)
- (7) Transfer of fund balance for 2021 CIP items - list attached
- (8) Transfer of 2021 Service Delivery funds to finance cart path repair at Nob North
- (9) Transfer of 2021 LMIG received in 2020 to fund the 2021 paving schedule (2020 SPLOST)

**2015 SPLOST FUND**

	Increase (Decrease)	
<b>Expenditures &amp; Transfers-out</b>		
Transfer from General Fund	\$ 200,000	(6)
	<u>\$ 200,000</u>	
<b>Expenditures &amp; Transfers-out</b>		
2020 Paving Contract	\$ 200,000	(6)
	<u>\$ 200,000</u>	
<b>Net Increase (Decrease) Budgeted Fund Balance</b>	<u><u>\$ -</u></u>	

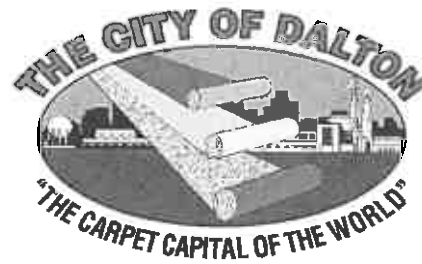
**CAPITAL ACQUISITION FUND**

	Increase (Decrease)	
<b>Revenues &amp; Transfers-In</b>		
Transfer In - General Fund	1,300,000	(7)
	<u>\$ 1,300,000</u>	
<b>Expenditures &amp; Transfers-out</b>		
Capital expenditures	1,300,000	(7)
	<u>\$ 1,300,000</u>	
<b>Net Increase (Decrease) Budgeted Fund Balance</b>	<u><u>\$ -</u></u>	

**2020 SPLOST FUND**

	Increase (Decrease)	
<b>Expenditures &amp; Transfers-out</b>		
Transfer from General Fund	\$ 365,980	(9)
	<u>\$ 365,980</u>	
<b>Expenditures &amp; Transfers-out</b>		
2021 Paving Schedule	\$ 365,980	(9)
	<u>\$ 365,980</u>	
<b>Net Increase (Decrease) Budgeted Fund Balance</b>	<u><u>\$ -</u></u>	

**CITY OF DALTON**  
**BUDGET AMENDMENT REQUEST**



**Department Making Request:** Public Works

**Date of Request:** 6/11/2021

**Reason for budget amendment request:**

Applying reimbursement from DDDA for pressure washing sidewalks downtown to various Public Works Department Overtime Expense lines.

**Has contract, commodity, or service been previously approved by Mayor & Council?**

N/A - Approved by PWC

**If yes, please provide the date the Council approved the contract, commodity, or service:**

N/A

**Is there a revenue budget line to offset the budget increase request?**

Yes

**If so, please provide a description of the revenue source & expected date of receipt of funds:**

Reimbursement from DDDA

Budget Account (Org, Object, Project)	Current Budget	Amendment Amount	Adjusted Budget
142063-000011 - Salaries Overtime	\$ 5,000	\$ 1,000	\$ 6,000
142064-000011 - Salaries Overtime	\$ 18,000	\$ 4,000	\$ 22,000
142065-000011 - Salaries Overtime	\$ 20,000	\$ 1,000	\$ 21,000
<b>Total Budget Amendment</b>	<b>\$ 43,000</b>	<b>\$ 6,000</b>	<b>\$ 49,000</b>



## Cindy Jackson

---

**From:** Greg Walker  
**Sent:** Monday, May 3, 2021 5:38 PM  
**To:** Cindy Jackson  
**Cc:** Greg Batts  
**Subject:** FW: Here's your check from On behalf of Certain Lloyd's Underwriters for \$6,520.00

Hi Cindy,

Attached please find the Insurance settlement check for the truck that was wrecked in March. It is the estimate minus our \$2000.00 deductible. The insurance company said if the repair was anymore than the estimate they would pay the shop the difference.

Please let me know if you have any questions and I will have the truck taken to CarStar for repairs.

Thanks and please let me know if you have any questions.

Respectfully,



Greg Walker, CPRP, CYSA, AFO  
Superintendent of Recreation / Interim Director  
Dalton Parks and Recreation Department  
904 Civic Drive  
Dalton, GA 30721  
Phone 706-278-5404  
Cell 706-463-5837  
Fax 706-278-1057  
[www.mydprd.com](http://www.mydprd.com)  
[Facebook.com/mydprd.com](https://www.facebook.com/mydprd.com)

# 100001 - 383000  
# 162000 - 000400

**From:** On behalf of Certain Lloyd's Underwriters <app@echecks.com>  
**Sent:** Monday, May 3, 2021 3:32 PM  
**To:** Greg Walker <gwalker@daltonga.gov>  
**Subject:** Here's your check from On behalf of Certain Lloyd's Underwriters for \$6,520.00

**deluxe.**  
PAYMENT EXCHANGE

# Vitesse

**From:**

On behalf of Certain Lloyd's  
Underwriters

VITESSE  
244 FIFTH AVENUE  
SUITE 1207  
NEW YORK, NY 10001

**Memo:**

CITY OF DALTON

**CHECK  
ENCLOSED**

**\$6,520.00**  
Check #75758

**Payment to:**  
City of Dalton

[Get Check](#)

 It's free & secure. Link expires after 90 days, on 08/01/2021.

## Message from On behalf of Certain Lloyd's Underwriters

Please find enclosed your Insurance Check Payment. For any queries please contact Deluxe at +1 877 333 6964.

## How to retrieve this check

1. Retrieve the check from our secure online system
  2. Use a Deposit Service to send funds directly into your account for eligible payments
- OR

## Cindy Jackson

---

**From:** Greg Batts  
**Sent:** Wednesday, June 16, 2021 1:58 PM  
**To:** Cindy Jackson  
**Subject:** Budget Amendment

Cindy,

Will you please put a budget amendment on the upcoming City Council agenda for \$24,000.00 for consulting services from Evergreen Solutions? Thank you,

**Greg Batts, SPHR, SHRM-SCP**

Director, Human Resources  
City of Dalton, Georgia  
P.O. Box 1205  
Dalton, GA 30722  
Phone: 706.529.2422  
Fax: 706.281.1264

**PLEASE NOTE:** Our email domain has changed. Please update your contact information to [gbatts@daltonga.gov](mailto:gbatts@daltonga.gov)



***Character is much easier kept than recovered.***

Thomas Paine

**IMPORTANT NOTICE:** This information is intended only for the individual/organization named above. If you received this in error, please call 706-281-1267 to notify the sender, and then delete the email without printing, copying or retransmitting it. **In addition, be advised that Georgia has a very broad open records law and that email communication with this office may be subject to public disclosure.**

## Cindy Jackson

---

**From:** Jason Parker  
**Sent:** Wednesday, June 9, 2021 7:11 PM  
**To:** Kim Witherow; Cindy Jackson  
**Cc:** Greg Batts; Mechelle Champion  
**Subject:** Re: Budget Transfer Request Buildings and Grounds

Contingency would be fine if available

Jason

Sent from my Verizon, Samsung Galaxy smartphone  
Get [Outlook for Android](#)

---

**From:** Cindy Jackson <cjackson@daltonga.gov>  
**Sent:** Wednesday, June 9, 2021 4:59:38 PM  
**To:** Kim Witherow <kwitherow@daltonga.gov>; Jason Parker <jparker@daltonga.gov>  
**Cc:** Greg Batts <gbatts@daltonga.gov>; Mechelle Champion <mchampion@daltonga.gov>  
**Subject:** RE: Budget Transfer Request Buildings and Grounds

Shouldn't this be a budget amendment? I doubt City Hall will come in under budget. We have funds left in contingency.

Greg – thoughts?

**From:** Kim Witherow  
**Sent:** Wednesday, June 9, 2021 4:47 PM  
**To:** Cindy Jackson <cjackson@daltonga.gov>; Mechelle Champion <mchampion@daltonga.gov>  
**Cc:** Jason Parker <jparker@daltonga.gov>  
**Subject:** Budget Transfer Request Buildings and Grounds

Please process the following transfer request to the 2021 Building and Grounds budget to cover invoice expenses. Please let me know if you have any questions.

<u>Line Item</u>	<u>Org. #</u>	<u>Obj. #</u>	<u>Proj. #</u>	<u>Change</u>
<b><i><u>Buildings &amp; Grounds</u></i></b>				
Building Maint. City Hall	144000	000350		-13,060
Building Maint. Freight Depot	144000	000350	NEW	+11,260
Building Maint. Train Car	144000	000350	17018	+1,800

Thanks,

*Kimberley Witherow*

Executive Assistant  
City Administration  
P.O. Box 1205  
Dalton, GA 30722  
Direct: 706.529.2403

## Cindy Jackson

---

**From:** Andrew Parker  
**Sent:** Monday, April 26, 2021 6:08 PM  
**To:** Cliff Cason; Jason Parker  
**Cc:** Chris Crossen; Cindy Jackson; Kim Witherow; Megan Elliott; Jerome Key; Matt Lane  
**Subject:** RE: Nuisance Projects Operations Meeting (Recap)  
**Attachments:** Nuisance On Call.docx

Jason,

After receiving the list of most common nuisance code violations from DPD Code Enforcement, my staff prepared the attached on-call list of contractors for correction of each violation type.

Several of our normal vendor partners and a few others in the community were not interested in being placed on the list based on the type of work or the fact that the work will be somewhat intermittent. With that said, the vendors on the attached list have expressed interest in working on an on-call status as needed by the City. Most of the vendors are active City vendors established with the Finance Department with the exception of the painter. He is supposed to be updating his vendor packet as he was once a City vendor apparently.

I believe a good starting contingency budget would be around \$25,000 per year. For a full year, the amount might need to be more, but I think everyone would like to get a feel for the process and understand how frequently the process will be used to prepare a more comprehensive budget figure in 2022. Contractors were reluctant to provide unit pricing because of the unknowns and preferred to give site specific quotes after putting a set of eyes on the violation.

The landfill tipping fees for the 807 Judd Terrace structure totaled out at approximately \$2,400, so a few of these residential demos throughout the year will exhaust a large portion of the contingency budget figure. With that said, if the funds are put back into the account after receiving the reimbursement payment/restitution from the offender, it should be a mostly self-sustaining fund.

Please review and let us know if you have any questions or need additional information.

**P. Andrew Parker, P.E.**  
**Public Works Director**  
Public Works Department | City of Dalton  
PO Box 1205 | 535 Elm Street  
Dalton, GA 30722  
Email: [aparker@daltonga.gov](mailto:aparker@daltonga.gov)  
Office: (706) 278-7077  
FAX: (706) 278-1847

**From:** Andrew Parker  
**Sent:** Thursday, April 15, 2021 12:45 PM  
**To:** Cliff Cason <[ccason@daltonga.gov](mailto:ccason@daltonga.gov)>; Jason Parker <[jparker@daltonga.gov](mailto:jparker@daltonga.gov)>  
**Cc:** Chris Crossen <[ccrossen@daltonga.gov](mailto:ccrossen@daltonga.gov)>; Cindy Jackson <[cjackson@daltonga.gov](mailto:cjackson@daltonga.gov)>; Kim Witherow <[kwitherow@daltonga.gov](mailto:kwitherow@daltonga.gov)>; Megan Elliott <[melliott@daltonga.gov](mailto:melliott@daltonga.gov)>; Jerome Key <[jkey@daltonga.gov](mailto:jkey@daltonga.gov)>; Todd Pangle <[tpangle@daltonga.gov](mailto:tpangle@daltonga.gov)>; Matt Lane <[mlane@daltonga.gov](mailto:mlane@daltonga.gov)>  
**Subject:** RE: Nuisance Projects Operations Meeting (Recap)

Jason,



**CITY OF DALTON  
BUDGET AMENDMENT REQUEST**

**Department Making Request:** Public Works

**Date of Request:** 5/4/2021

**Reason for budget amendment request:**

Transfer unspent 2020 Service Delivery Funds from Whitfield County of \$200,000 from general fund surplus into the 2015 SPLOST fund to complete the 2020 paving projects.

**Has contract, commodity, or service been previously approved by Mayor & Council?**

NA

**If yes, please provide the date the Council approved the contract, commodity, or service:**

NA

**Is there a revenue budget line to offset the budget increase request?**

No

**If so, please provide a description of the revenue source & expected date of receipt of funds:**

Budget Account (Org, Object, Project)	Current Budget	Amendment Amount	Adjusted Budget	Account Name
100003-000979-SP176 (expenditure)	\$ -	\$ 200,000	\$ 200,000	Transfer to 2015 SPLOST
320110-007133-SP176 (expenditure)	\$ 1,031,350	\$ 200,000	\$ 1,231,350	2020 Paving Contract
320102-347435-SP176 (revenue)	\$ -	\$ (200,000)	\$ (200,000)	Transfer from General Fund
<b>Total Budget Impact</b>		<b>\$ 200,000</b>		

**CAPITAL ACQUISITION FUND #0370 - 2021**

<u>City Clerk</u>	<u>2021</u>	<u>2020 Carryover</u>	<u>Total</u>
Laserfiche Records Mgmt. Software Upgrade	\$ 25,000	\$ -	\$ 25,000
<b>Public Works</b>			
<b>37005-039990-420</b>			
Recycling Truck	\$ 200,000		
Replacement of Carpet in Main Office	\$ 40,000		
	\$ 240,000	\$ -	\$ 240,000
<b>Asset Management - Buildings</b>			
Repairs to Cupolas City Hall	\$ 130,000		
Freight Depot Roof Replacement	\$ 55,000		
Replace Carpet (1 floor only)	\$ 25,000		
	\$ 210,000	\$ -	\$ 210,000
<b>IT Department</b>			
Battery Backups	\$ 33,880		
Disaster Recovery Site	\$ 18,000		
Email Encryption	\$ 25,000		
Fortinet Deployment	\$ 30,000		
Low Voltage Wiring	\$ 118,270		
Server and Network Storage	\$ 69,850		
	\$ 295,000	\$ -	\$ 295,000
<b>Recreation Department</b>			
Civitan Park Restrooms	\$ 85,000		
Lakeshore Tennis Court Refurb	\$ 25,000		
Civitan Park Playground Replacement	\$ 190,000		
	\$ 300,000	\$ 4,620	\$ 304,620
<b>Fire Department</b>			
Station 2 Roof Replacement	\$ 80,000		
Station Parking Lot	\$ 150,000		
	\$ 230,000	\$ 41,180	\$ 271,180
<b>Total Approved</b>	<b>\$ 1,300,000</b>	<b>\$ 45,800</b>	<b>\$ 1,345,800</b>

**CITY OF DALTON**  
**BUDGET AMENDMENT REQUEST**



**Department Making Request:** Public Works

**Date of Request:** 5/4/2021

**Reason for budget amendment request:**

Transfer unspent 2021 LMIG Funds received in 2020 to the 2020 SPLOST fund for the 2021 paving schedule.

**Has contract, commodity, or service been previously approved by Mayor & Council?**

NA

**If yes, please provide the date the Council approved the contract, commodity, or service:**

NA

**Is there a revenue budget line to offset the budget increase request?**

No

**If so, please provide a description of the revenue source & expected date of receipt of funds:**

Budget Account (Org, Object, Project)	Current Budget	Amendment Amount	Adjusted Budget	Account Name
100003-000974-SP180 (expenditure)	\$ -	\$ 365,980	\$ 365,980	Transfer out - 2020 SPLOST
321102-347435-SP180 (revenue)	\$ -	\$ (365,980)	\$ (365,980)	Transfer in - General Fund
321110-007133-SP180 (expenditure)	\$ -	\$ 365,980	\$ 365,980	Paving Contract
<b>Total Budget Impact</b>		<b>\$ 365,980</b>		





## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 6/21/2021

**Agenda Item:** Professional Services Agreement for the Proposed Underground Stormwater Pond - Dalton City Hall with Geo-Hydro Engineers

**Department:** Public Works

**Requested By:** Megan Elliott

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

**Cost:** \$4,550 (lump sum price)

**Funding Source if Not in Budget** 2015 SPLOST

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

This request is to approve the Professional Services Agreement with Geo-Hydro Engineers, Inc. to complete the geotechnical engineering services for the Proposed Underground Stormwater Pond - Dalton City Hall site. A detailed report of the subsurface conditions will be required to facilitate the design.

The work is to be completed within 4 weeks of the Notice To Proceed.

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

**CITY OF DALTON  
PUBLIC WORKS DEPARTMENT**

**GENERAL PROFESSIONAL SERVICES AGREEMENT**

THIS GENERAL PROFESSIONAL SERVICES AGREEMENT is made and entered into on this 21 day of June, 20 21 by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and Geo-Hydro Engineers, Inc., hereinafter referred to as "CONSULTANT".

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

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

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

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

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

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

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

4. DATE OF COMMENCEMENT: The CONSULTANT shall commence work on the project on June 23, 20 21. If no date is provided, then the date of commencement shall be five days from execution of this Agreement.

5. DATE OF COMPLETION: The CONSULTANT shall complete the project on or before July 23, 20 21.

6. CONTRACT SUM: The CITY shall pay to CONSULTANT the total sum of \$ 4,550.00 Dollars for the complete performance of the project and terms of this Agreement. In addition, CITY shall pay to CONSULTANT for any authorized additional services performed at the rate or amount provided in the Compensation Schedule attached hereto as Exhibit "B".

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

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

9. CITY COVENANTS: CITY covenants and agrees:

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

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

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

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

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

10. CONSULTANT COVENANTS: CONSULTANT covenants and agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. MISCELLANEOUS PROVISIONS:

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

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

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

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

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

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

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

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

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

CONSULTANT:

CONSULTANT:

\_\_\_\_\_

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

Title: \_\_\_\_\_

CITY:

CITY OF DALTON, GEORGIA

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

Attest: \_\_\_\_\_  
CITY CLERK

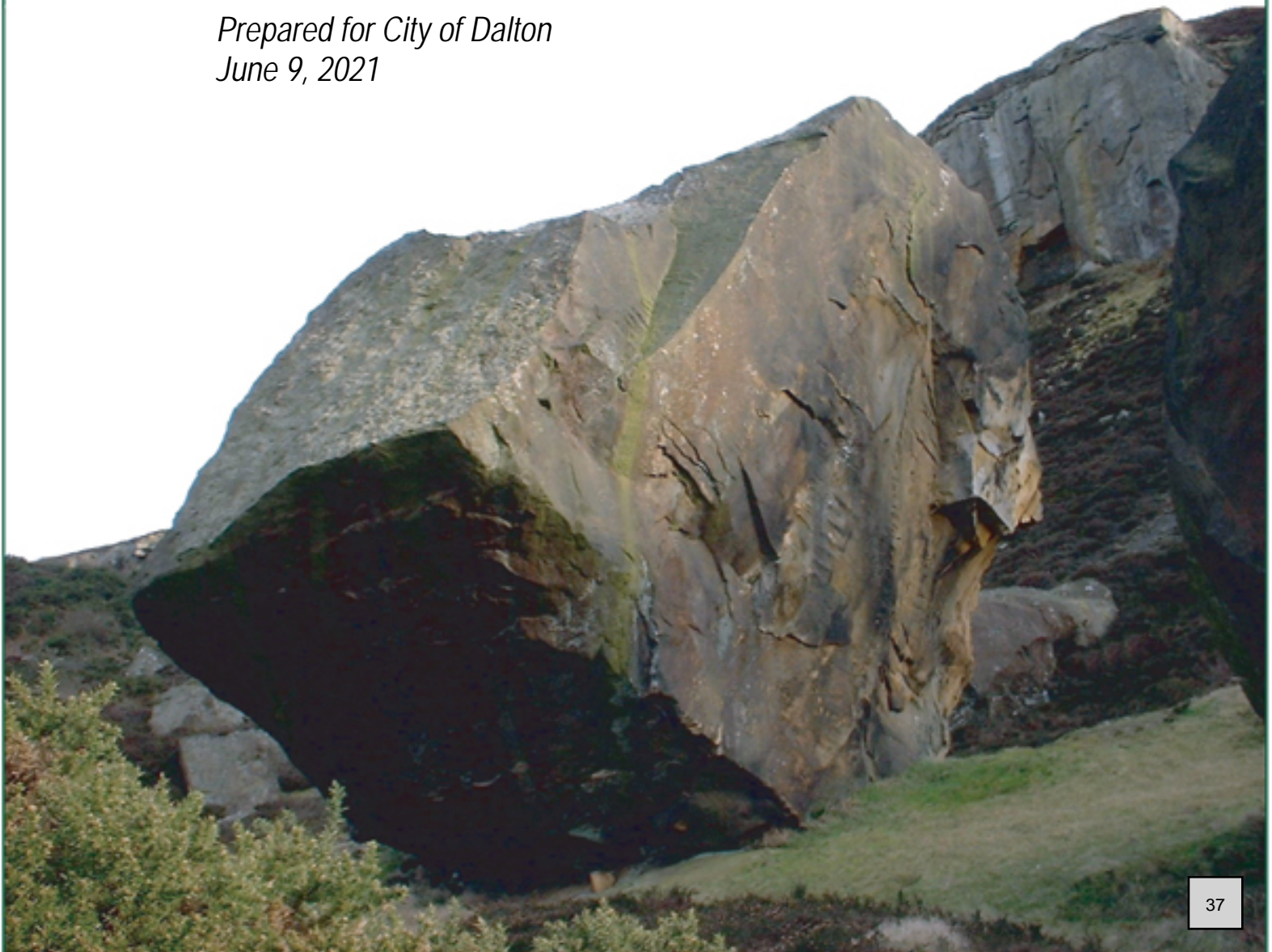




Proposal to Perform  
Subsurface Exploration and Infiltration Testing

Proposed Underground Stormwater Pond  
Dalton City Hall  
Dalton, Georgia  
Geo-Hydro Proposal Number 210622.P0

*Prepared for City of Dalton  
June 9, 2021*



Mr. P. Andrew Parker, P.E.  
City of Dalton  
535 Elm Street  
Dalton, Georgia 30722

June 9, 2021

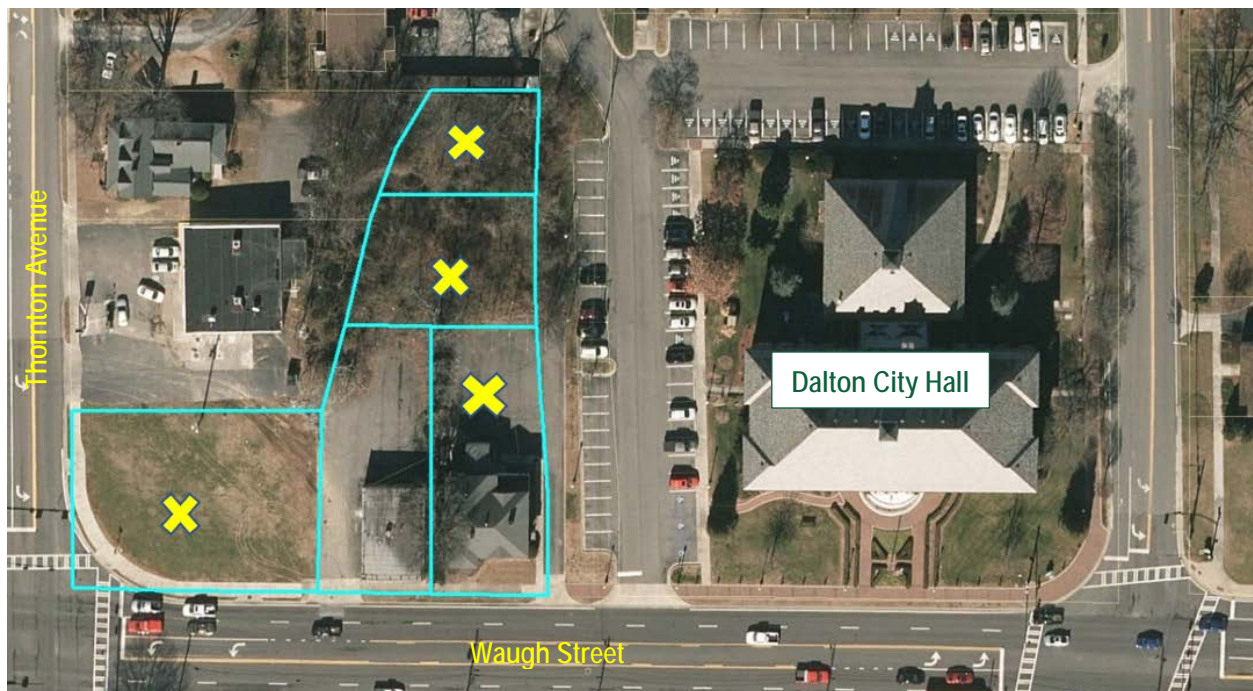
Proposal to Perform  
Subsurface Exploration and Infiltration Testing  
Proposed Underground Stormwater Pond  
Dalton City Hall  
Dalton, Georgia  
Geo-Hydro Proposal Number 210622.P0

Dear Mr. Parker:

Geo-Hydro Engineers, Inc. appreciates the opportunity to present this proposal to perform a subsurface exploration and infiltration testing for the above referenced project. Our understanding of the project is based on our review of the geotechnical scope prepared by Mr. Michael DeVuono, P.E., of Arcadis U.S., and our email correspondence with the project team.

#### PROJECT INFORMATION

We understand that the City of Dalton is evaluating four lots west of City Hall for a possible underground stormwater detention pond. The lots include two buildings, a surface parking lot, and grassed and wooded areas. We understand that the pond will have an infiltration horizon approximately 5 feet below current grades, but the project is in a preliminary phase and a final footprint and elevations have not been determined at this time. The annotated aerial photograph below was provided to us and shows the total parcel property lines and requested test locations.



### SCOPE OF SERVICES

- 1) We will contact Georgia 811 for location of underground utilities. This is required by law. Also, we ask that the current property owner provide any available information regarding the location of any underground utilities in the work areas. Geo-Hydro will not be responsible for damage to unmarked underground utilities. Please see the attached *Underground Utilities Fact Sheet* for more information.
- 2) We will perform infiltration testing at the approximate requested locations shown on the annotated aerial photograph on the previous page. At each test locations, we will perform two percolation tests (eight total tests) in accordance with the procedures prescribed for the Modified Taft Engineering Center Method extending to a depth of 5 feet or the depth of auger refusal, whichever occurs first. The percolation rates will be converted to representative infiltration rates using the Porchet Method. We will report the adjusted infiltration rates in units of inches per hour.
- 3) At each test locations, we will also advance a test boring to a depth of 10 feet or auger refusal, whichever occurs first. In wooded lots, the test borings will be advanced with hand equipment including dynamic cone penetrometer testing (ASTM STP-399) at select depths. In grassed or paved lots, the borings will be performed with a drill rig and will include standard penetration testing in accordance with ASTM D1586.
- 4) Upon completion of the testing, we will backfill the test holes with soil cuttings and patch the boreholes with asphalt patch. We will make efforts to reduce disturbance to the site. However, our work may result in rutting of the ground surface or some staining of the surrounding asphalt pavement. If cosmetic repairs are necessary, we will hire a subcontractor. Cosmetic repair work will be charged at our cost plus 15 percent.
- 5) We will prepare a brief engineering report outlining the results of the infiltration testing. We will also provide evaluations and recommendations concerning groundwater elevations and their effect on the proposed construction, anticipated excavation conditions, and other aspects of the project.

### SCHEDULE

After receiving Notice-to-Proceed (NTP), we will schedule the field work. Infiltration testing should begin within 1 to 2 weeks of NTP and be completed in one day, barring inclement weather. A complete report will be provided within 1 week of completion of the testing.

### COST INFORMATION

Based on the Scope of Services outlined above, we will charge a lump sum fee of **\$4,550**. In the event that additional work is required beyond the outlined scope of services, we will notify you prior to commencing with any additional work. A fee for additional work will be negotiated.

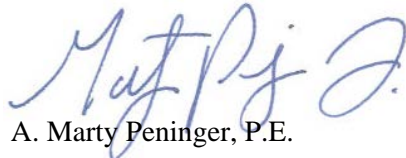
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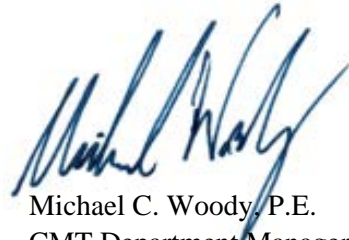
We are pleased to submit this proposal and look forward to working with you on this project. If this proposal is acceptable, we ask that you give us formal Notice-to-Proceed. If you have any questions concerning this proposal or any of our services, please call us.

Sincerely,

GEO-HYDRO ENGINEERS, INC.



A. Marty Peninger, P.E.  
Senior Geotechnical Engineer  
[mpeninger@geohydro.com](mailto:mpeninger@geohydro.com)



Michael C. Woody, P.E.  
CMT Department Manager  
[mwoody@geohydro.com](mailto:mwoody@geohydro.com)

AMP/MCW/210622.P0 - Underground Stormwater Pond - Dalton City Hall - Geotechnical Proposal

Enclosure

## **Fact Sheet**

### **Underground Utilities**

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

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

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

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

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



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 6/21/21

**Agenda Item:** Professional Services Agreement with KRH Architects for Design Services for the New Aquatic Center for the City of Dalton

**Department:** Public Works

**Requested By:** Megan Elliott

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

**Cost:** 6% of the Owner's Budget for the Cost of the Work

**Funding Source if Not in Budget** 2021 Bond Series

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

This request is to approve the Professional Services Agreement with KRH Architect for the Design Services for the New Aquatic Center.

See attached AIA document for additional information.

The Finance Department will create a charge account to fund this project.

# AIA<sup>®</sup> Document B101<sup>™</sup> – 2017

## ***Standard Form of Agreement Between Owner and Architect***

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

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

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

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

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

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

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

New Aquatic Center for the City of Dalton

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

Init.

## TABLE OF ARTICLES

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

### ARTICLE 1 INITIAL INFORMATION

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

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

**§ 1.1.1** The Owner's program for the Project:

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

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

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

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

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

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

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

Approximately \$20,000,000

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

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.1 Design phase milestone dates, if any:

Completion of Contract Documents 9/30/2021

.2 Construction commencement date:

November 15, 2021

.3 Substantial Completion date or dates:

Spring 2023

.4 Other milestone dates:

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

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

Request for Proposals

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:

*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

NA

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

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

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

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

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

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

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

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

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

.1 Geotechnical Engineer:

Geohydro

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**.2 Civil Engineer:**

**.3 Other, if any:**

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

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

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

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

**§ 1.1.11.1** Consultants retained under Basic Services:

**.1 Structural Engineer:**

William J. Peltier and Associates  
Bill Peltier

**.2 Mechanical Engineer:**

Matheson - Ball and Associates Inc  
Michael Kicher

**.3 Electrical Engineer:**

Tankersley Jackson & Associates Inc  
Paul Tankersley

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

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

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

NA

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

**§ 1.3** The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

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

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

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

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

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

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

**§ 2.5.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars and Zero Cents (\$ 1000000.00 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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**§ 2.5.3** The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ 2.5.4** Workers' Compensation at statutory limits.

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

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

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

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

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

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

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

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

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

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

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

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

### **§ 3.2 Schematic Design Phase Services**

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

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

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

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

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

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

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

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

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

### **§ 3.3 Design Development Phase Services**

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

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

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



### **§ 3.4 Construction Documents Phase Services**

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

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

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

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

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

### **§ 3.5 Procurement Phase Services**

#### **§ 3.5.1 General**

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

#### **§ 3.5.2 Competitive Bidding**

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

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

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

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

#### **§ 3.5.3 Negotiated Proposals**

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

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

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

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

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

## **§ 3.6 Construction Phase Services**

### **§ 3.6.1 General**

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

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

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

### **§ 3.6.2 Evaluations of the Work**

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

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

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

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



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

**§ 3.6.3 Certificates for Payment to Contractor**

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

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

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

**§ 3.6.4 Submittals**

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

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

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

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



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

### § 3.6.5 Changes in the Work

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

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

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

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

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

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

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

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

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

### § 4.1 Supplemental Services

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

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

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

Init.

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

#### § 4.1.2 Description of Supplemental Services

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

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

4.1.1.30 - Aquatic Consultant as needed

Aquatic Consultant - Design Phase

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

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

Init.

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

#### Aquatic Consultant - Construction Phase

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

#### Pool Designer - included in basic services

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

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

#### Geotechnical Studies, Surveys, Testing

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

#### **§ 4.2 Architect's Additional Services**

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

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

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



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

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

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

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

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

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

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

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

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

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

**§ 5.4** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands;

adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 6 COST OF THE WORK**

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



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

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

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

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

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

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

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

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

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

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

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

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

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

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

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

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

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

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

### **§ 8.2 Mediation**

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

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



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

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

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

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

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

### **§ 8.3 Arbitration**

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

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

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

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

### **§ 8.3.4 Consolidation or Joinder**

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

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



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

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

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

## **ARTICLE 9 TERMINATION OR SUSPENSION**

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

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

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

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

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

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

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

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

.1 Termination Fee:

\$0

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

\$0

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

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

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

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

## ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum

*(Insert amount)*

.2 Percentage Basis

*(Insert percentage value)*

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

.3 Other

*(Describe the method of compensation)*

**§ 11.2** For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

Aquatic Consultant \$95/hr not to exceed \$12,000 for design phase and \$12,000 for construction phase.

Civil engineering is included in basic services

Pool Designer is included in basic services.

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Architect \$100/hr

Project Manager \$85/hr

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

*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

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

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

Init.



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

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

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

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

**§ 11.8 Compensation for Reimbursable Expenses**

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

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

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

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

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

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

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

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

#### **§ 11.10.2 Progress Payments**

**§ 11.10.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

1 % monthly

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

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

#### **ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:  
*(Include other terms and conditions applicable to this Agreement.)*

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

#### **ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this agreement.)*

NA

- .3 Exhibits:

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

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

[ Exhibit A attached ] Other Exhibits incorporated into this Agreement:  
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

Init.

**4 Other documents:**

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

NA

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

**OWNER** (Signature)

David Pennington, Mayor  
*(Printed name and title)*

**ARCHITECT** (Signature)

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

Init.



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** June 21, 2021

**Agenda Item:** Professional Services – BION Security

**Department:** Information Technology

**Requested By:** Jorge Paez

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

**Cost:** Not To Exceed \$30,000

**Funding Source if Not in Budget** CIP 2021

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

The city is seeking approval for professional services from BION security to help and guide the city's I.T. Department in deploying networking equipment to best practices in security. The professional service agreement is set to NOT exceed the amount of \$30,000 dollars for the overall project. The first order of business will be to move with City Hall that is projected to be \$4,400 dollars. Funds will be coming from the CIP budget of 2021.

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

**CITY OF DALTON**  
**FORTINET NETWORKING EQUIPMENT DEPLOYMENT**  
**PROFESSIONAL SERVICE AGREEMENT**

THIS PROFESSIONAL SERVICE AGREEMENT is made and entered into on this 7th day of June, 2021 by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and **BION Security LLC**, hereinafter referred to as "CONTRACTOR".

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

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

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

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

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

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

2. USE OF PROPERTY: CONTRACTOR shall have use and possession of the subject property being the CITY'S networking lab extending to all 28 of CITY'S equipment sites. A total of 86 days from June 21, 2021 through September 14, 2021 to perform the work:

Days: **86 Days**

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

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



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

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

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

5. DATE OF COMPLETION: The CONTRACTOR shall complete the project on or before August 31, 2021

6. CONTRACT SUM AND CONTINGENCY: The CITY shall pay to CONTRACTOR an hourly rate of **\$110** Dollars for the complete performance of the project and terms of this Agreement. In no event will the total contract sum payable to CONTRACTOR for the work program for this project exceed the sum of **\$30,000.00**. All change orders shall be in writing signed by both parties. CONTRACTOR shall notify the Dalton City Information Technology Director prior to commencing work pursuant to a change order.

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

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

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

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

10. CITY COVENANTS: CITY covenants and agrees:

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

11. CONTRACTOR COVENANTS: CONTRACTOR covenants and agrees:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22.     **MISCELLANEOUS PROVISIONS:**

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

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

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

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

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

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

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

submitted by CONSULTANT pertaining to this Agreement shall be considered confidential and proprietary, and shall not be disclosed to any third party, except as may be required by the Georgia Open Records Act.

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

CONTRACTOR:

CONTRACTOR: Bion Security, LLC

By: Phil Paulk Phil Paulk

Title: Sales

Date: 6/7/2021

CITY:

CITY OF DALTON, GEORGIA

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

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
CITY CLERK

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

## Estimate



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

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

ESTIMATE #	DATE	EXPIRATION DATE
1112	05/19/2021	06/30/2021

**REFERENCE**  
 BION-PROSERV

DATE	ACTIVITY	QTY	RATE	AMOUNT
	<b>Hours</b> BION Engineer billing hours	40	110.00	4,400.00

BION Engineering Hours - 40 Hours

TOTAL

**\$4,400.00**

Accepted By

Accepted Date

### Terms & Conditions

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

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

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