



## TOWN COUNCIL MEETING December 07, 2023 at 7:00 PM

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950 Senoia Road, Tyrone, GA 30290

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**Eric Dial**, Mayor

**Gloria Furr**, Mayor Pro Tem, Post 4

**Linda Howard**, Post 1

**Melissa Hill**, Post 2

**Billy Campbell**, Post 3

**Brandon Perkins**, Town Manager

**Dee Baker**, Town Clerk

**Dennis Davenport**, Town Attorney

### I. CALL TO ORDER

### II. INVOCATION

### III. PLEDGE OF ALLEGIANCE

**IV. PUBLIC COMMENTS:** *Comments are limited to three (3) minutes. Please state your name & address. Comments that require a response may not be answered during this time. The Council or staff may respond at a later date.*

### V. APPROVAL OF AGENDA

**VI. CONSENT AGENDA:** *All matters listed under this item are considered to be routine by the Town Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.*

1. Approval of the November 16, 2023 meeting minutes.

2. Approval of the 2024 Holiday Schedule for office closures.

3. Approval of the re-appointment of McNally, Fox, Grant and Davenport, P.C. as the Town Legal Counsel.

4. Approval of Fayette County News as the Town's Legal Organ.

### VII. PRESENTATIONS

### VIII. PUBLIC HEARINGS

### IX. OLD BUSINESS

5. Approval of a Resolution adopting the local amendment to the Plumbing Code. **Dennis Davenport, Attorney**

**X. NEW BUSINESS**

6. Consideration to appoint Mr. Terry Noble to Post 5 of the Town of Tyrone Planning Commission. **Mayor, Eric Dial**
7. Consideration to approve the FY 2022/2023 Budget Amendment. **Sandy Beach, Finance / HR Manager**
8. Consideration to approve a 2023 Senoia Road Streetscape & Mobility Schematic contract with TSW in an amount not to exceed \$200,000. **Phillip Trocquet, Community Development**
9. Consideration to approve a Downtown Signage Design contract with TSW in an amount not to exceed \$25,500. **Phillip Trocquet, Community Development.**
10. Consideration to approve a contract amendment with SAFEbuilt for Permit Technician and Code Enforcement Services. **Phillip Trocquet, Community Development**

**XI. PUBLIC COMMENTS:** *The second public comment period is for any issue. Comments are limited to three (3) minutes. Please state your name & address. Comments that require a response may not be answered during this time. The Council or staff may respond at a later date.*

**XII. STAFF COMMENTS**

**XIII. COUNCIL COMMENTS**

**XIV. EXECUTIVE SESSION**

**XV. ADJOURNMENT**

**TYRONE TOWN COUNCIL  
MEETING**

**MINUTES**

**November 16, 2023 at 7:00 PM**

**Eric Dial, Mayor**

**Gloria Furr, Mayor Pro Tem, Post 4**

**Brandon Perkins, Town Manager**

**Dee Baker, Town Clerk**

**Dennis Davenport, Town Attorney**

**Linda Howard, Post 1**

**Melissa Hill, Post 2**

**Billy Campbell, Post 3**

Also present:

Randy Mundy, Police Chief

**I. CALL TO ORDER**

**II. INVOCATION**

**III. PLEDGE OF ALLEGIANCE**

**IV. PUBLIC COMMENTS:** *Comments are limited to three (3) minutes. Please state your name & address. Comments that require a response may not be answered during this time. The Council or staff may respond at a later date.*

Mollie Larsen who lives on Kellsworth Way spoke regarding what she had read online concerning the possibility of an extended-stay hotel coming to Tyrone. Through research, she discovered that they were becoming a trend in metro Atlanta due to large corporations choosing to locate here. The developments were buying up properties located in low-income areas which were also indicating an uptick in extended-stay hotels. These were replacing apartments with no required down payments or security deposits, no background checks needed, no high utility costs, no Wi-Fi or cable expenses, or waste expense. There were also discounts if you stayed longer. She shared that in 2019, in Gwinnett County 45% of the stays were booked over 30 days. The number increased to 67% in 2021. This was high-density housing that could affect our police, schools, and medical resources. Her second concern was that in 2022, the Georgia Court of Appeals ruled that people living in extended-stay hotels should be recognized as residents and covered by landlord/tenant laws, making eviction difficult. Her third concern was that after 90 days the hotel could no longer charge the occupancy tax. Her fourth concern was regarding the Hwy 74/Dogwood Trail proposed hotel. The applicant wished to also build a restaurant/convenience, store all on septic. She recalled the septic issues with Tyrone Elementary School. What would the plan be for that hotel's septic system if there were issues? Her fifth concern was the intersection and its safety. There had been fatalities at that intersection, there should not be additional traffic there unless the intersection went through an overhaul. Her sixth and final concern was that there would be four extended-stay hotels within 4.2 miles. She asked Council to please find a better commercial use without negating town resources, amenities, and property values, and to consider the future of the corridor.

Ms. Tallulakie Cosby who lives on Wynfield spoke regarding the extended-stay hotel. She and her husband moved to Tyrone in 2018. The main reason was their quality of life and that Tyrone was a safe community.

She stated that the U.S. Department of Justice deemed the possibility of extended-stay hotels becoming hubs for sex trafficking, prostitution, drug manufacturing, and sales. That was what happened when she lived in Clayton County. She shared that Gwinnett County was also trying to combat the issue and their ordinances were not tapering the crime. She gave statistics, in 2018-2019 Gwinnett had 300 misdemeanor and felony crimes within their five extended-stay hotels. In 2022, Norcross had 84% of their residents consider extended stays their home. She shared that the Southampton covenant stated that the property was not to be used as a residential use. She also stated that statically, hotels made up 10% of the industry, and over 50% of crime came from extended-stay hotels. The crimes consisted of prostitution, drug sales and manufacturing, drug overdoses, child pornography, and rape. That was an issue as she had an eleven-year-old daughter. She shared that there were other kids and the elderly living in Southampton, and building that facility would lead to the demise of Tyrone.

Ms. Troy T. McCain thanked Council for their patience and hard work in reviewing the citizen's concerns. She was thankful and grateful for all she had as a human being, able to accomplish the goals she had in many years. She had a peace of mind that money could not buy. She addressed the developer and builder; we have previously stated that we do not want this development in our community. She stated that she was offended by their comments at the last meeting by saying that the citizens were overreacting. She stated that their comments were that there would be no riff-raff because they would be priced out. Crime, drugs, and prostitution reached across all economic levels. She stated that metro Atlanta had one of the largest percentages of extended stays in the U.S. She declared that due to the change in sex offender laws in Georgia, offenders were not allowed to live near schools, and school bus stops which pushed them out of the subdivisions. That forced them to live in extended-stay hotels where the guests were not vetted. She added that sex offenders come from all walks of life and income. She stated that her brother who had a different type of lifestyle many years ago shared his experience. He stated that people who stay there, state that they were staying for 30 days but often sold their rooms. They sold their rooms to make money for drugs and prostitution, we do not want that here. She added that so much could go wrong, we have children and elderly people living here. The builder did not live here, it was not all about the money. If an extended stay was built and the crime occurred, saying sorry after the fact would not be enough.

Joy Belyeu who lives on Brookfield Cout stated that she had lived in Tyrone for 28 years and had seen a lot of changes. She stated that the previous ladies gave them everything they needed to know including a lot of information from research. She added that common sense says that we do not want to develop this way. We have children and grandchildren, the sex trafficking in Georgia is horrible. The citizens would appreciate Council saying no to the development.

Linda Conley who lives on Brennan Drive shared that she was previously on record, however, she wanted to say more. Through research, she found an article in the New York Times, titled "When No Landlord Will Rent to You, Where Do You Go? How extended-stay hotels and

motels became the last housing option for thousands of low-income Americans”. She stated that it spoke for itself. She added that she visited areas with extended-stay hotels including the Candlewood Suite in Newnan and they were in heavy business and commercial areas. They were not placed next to a \$650,000 subdivision or supermarket.

The hotels could accommodate 4-5 people in a room. The costs were \$77 to \$100 per night. She shared that Tyrone was located near Interstate 85 and the Truckstop in Fairburn. She told a story about a friend. During COVID a lot of businesses were closed, however, there were many cars in the parking lots. It did not make sense. Human Trafficking was very prevalent in Atlanta. She stated that Tyrone was one of the safest cities in Georgia and it needed to stay that way. There would be no benefit to her for an extended-stay as a citizen, nor the Ritz Hotel being built there. She stated that Tyrone was not much bigger than Mayberry and the citizens liked that. Her mother used to tell her children, that if you go to someone’s house and they were leaving or eating, you need to take your cue and come home. She then told the applicant to take his cue and go home we do not want the hotel.

**V. APPROVAL OF AGENDA**

A motion was made to approve the agenda.

Motion made by Council Member Campbell, Seconded by Council Member Howard.  
Voting Yea: Council Member Hill, Council Member Furr.

**VI. CONSENT AGENDA:** *All matters listed under this item are considered to be routine by the Town Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the consent agenda and will be considered separately.*

- 1. Approval of the November 2, 2023, meeting minutes.

A motion was made to approve the consent agenda.

Motion made by Council Member Furr, Seconded by Council Member Campbell.  
Voting Yea: Council Member Howard, Council Member Hill.

**VII. PRESENTATIONS**

**VIII. PUBLIC HEARINGS**

**IX. OLD BUSINESS**

- 2. Review and Consideration to Approve Landscape Plans for the Town's Roadside Enhancement and Beautification Council (REBC) Grant Application. - Brandon Perkins, Town Manager

Mr. Perkins stated that on October 5, 2023, Council approved staff to engage with the engineering firm Keck and Wood to pursue \$50,000 in REBC grant funding for landscape improvement around the Town’s Highway 74 gateway signs. He added that a kickoff

meeting with the team was held on October 11th to discuss the project and design ideas and conceptual plans were delivered to the Town on October 31st.

He stated that the REBC application deadline was December 1st and the last action required by the Town before the application was approval of those plans.

The goal of the project was to enhance the aesthetics of the Town's north and southbound gateways and draw attention to our existing signage. They were difficult to see, and the additional landscaping would draw more attention. He stated that staff believed the plans provided by Keck and Wood would accomplish that goal if the grant was awarded to the Town. He recommended approval and added that a single grant was awarded to include both sites.

He described a mulch island with bushes, and flowers, first for the southbound entrance. He stated that he was asked, what the maintenance cost would be. He shared that it would be approximately \$3,000 to \$5,000 a year but would be part of the ongoing contract with Aabby. He explained that the northbound layout would be more elaborate, having a different layout with the same vegetation.

Council Member Campbell asked about the easement for the northbound space. Mr. Perkins stated that it was in GDOT's right-of-way and it was under their grant. Mr. Perkins added that Aabby and Public Works would partner with the maintenance. A contractor would perform the initial installation. The grant was for \$50,000 and the cost estimate was \$48,717 which included the installation.

A motion was made to approve the landscape plans for the Town's Roadside Enhancement and Beautification Council Grant application.

Motion made by Council Member Campbell, Seconded by Council Member Hill.  
Voting Yea: Council Member Howard, Council Member Furr.

**X. NEW BUSINESS**

- 3. Consideration of a Certificate of Appropriateness and conceptual site plan from applicant Steve Gulas for parcel 0726 051. Phillip Trocquet, Community Development

Mayor Dial stated that Certificate of Appropriateness was a unique term, it was not a rezoning or a variance. He asked Mr. Davenport to explain to Council what they would be considering. He asked him to explain what a Certificate of Appropriateness was and how it related to their consideration for number 3 and 4 on the agenda.

Mr. Davenport informed everyone that the safest place to begin would be the code section itself. He read from Chapter 109, Article III, Division 2, Section 109-84, *Prior to the first submission to the planning commission, for any development located within the 74 Quality Development Corridor the developer must first submit a concept of the proposed development for review and approval by the town council. The developer should provide sufficient information to show how the proposed development relates to the surrounding environment to ensure visual continuity and how the development will if*

*approved be in compliance with the 74 Quality Growth Development District special requirements as contained in the town zoning ordinance.*

Mr. Davenport stated that the section introduced the corridor. He then went to Section 113-191 which was the Quality growth development district requirements.

He read (8) Location *The location of the SR-74 Quality Growth overlay shall apply to buildings and sites within 800 linear feet of SR-74 right-of-way and to buildings and sites that are part of a common development where any part of said common development is within 800 linear feet of SR-74 right-of-way. This area extends from the northern limits of the town to the southern limits.*

Mr. Davenport shared that both parcels on the agenda were in that area. He then referenced Section 109-148, General requirements. If parcels were not located within the overlay corridor, petitioners would be asked to submit a site plan to the Planning Commissioners for review. Being that both properties were in the overlay district, the submission came straight to the Council for review. Along with Council approving the Certificate of Appropriateness, they would also review a conceptual site plan. He shared that those elements could be found in Section 109-116, which included 22 items for Council to review. He reiterated that the Certificate of Appropriateness and the conceptual site plan only went to the Council for review. All items from the site plan had to be met to issue the Certificate of Appropriateness. He stated the location, the site plan, and finally the compliance of the zoning ordinance. He referred to Section 109-84... *development will if approved be in compliance with the 74 Quality Growth Development District special requirements as contained in the town zoning ordinance.*

Mr. Davenport stated that the section of the ordinance contained eight different sub-parts dealing with special requirements for the Quality Growth Overlay, such as walls, landscaping, the size of the building, etc. He stated that the developer was within that overlay. He stated that the next item asked, how was the developer going to provide the concept plan. He directed everyone to Section 109-116 which contained the list of what a concept plan should contain. He shared that the third item was, could the develop show compliance with the special requirements of the overlay zone. He then directed everyone to Section 113-191 which indicated all requirements. He added that all requirements were what Council needed to consider before issuing a Certificate of Appropriateness.

Mayor Dial clarified that the overlay was created to preserve the integrity of the aesthetics and traffic for the Highway 74 Corridor.

Mr. Trocquet added that the background of the Certificate of Appropriateness along with the ordinances were rooted in the Town's Comprehensive Plan. He added that parcel number 0726051 was within the commercial corridor character area of the Comprehensive Plan which encouraged commercial development consistent with the C-2 zoning classifications. It required a high standard of architectural landscaping, and sign controls, and also accommodated pedestrian and traffic circulation among other requirements.

Mr. Trocquet informed Council that staff had noted the following items regarding the submission based on ordinance standards at the time of submission for the application.

The conceptual landscaping areas did not detail how they were to be in conformity with the standards of the SR-74 Quality Growth Overlay District, they were labeled but with no detail. No submission of architectural renderings signed by an architect or other appropriate professional were submitted that clearly indicated the following: exterior elevations are drawn to scale with color rendering, proposed colors, materials, and textures for structures, locations of all exterior utility facilities including any rooftop units, proposed signs, and locations including size, color, and material.

Mr. Trocquet stated that given that no rendering had been submitted for the proposed project, staff did not have enough information to recommend approval of the Certificate of Appropriateness Application.

Applicant Steve Gulas shared that he was at the last public hearing on November 2, 2023. He explained that the public hearings consisted of definitions for extended-stay hotels, changing permitted to conditional uses. He explained that their site plan and Certificate of Appropriateness was submitted on August 31<sup>st</sup> and heard on September 21<sup>st</sup> it was then denied. He then resubmitted for October 19<sup>th</sup>. The original plat had a PUD with no buffer. It was signed by the Mayor, Engineer, and the Clerk. He was told that he needed to indicate a 75' buffer, it was changed to C2 zoning. He added that the property already had a residential buffer. The buffer was up to 450'. He explained that he had made great strides to fit in a 75' buffer. Staff would not take it because there was no time to review it so he reapplied again. He added that at that point tens of thousands of dollars had been spent on the project.

He stated that Candlewood Suites was a nice upscale hotel, it cost \$129 per night to stay, which would be too expensive to live there. Mr. Gulas stated that he and his business partner built the Holiday Inn Express in Fayetteville and he also lived in Fayetteville. He also stated that he was on a Planning and Zoning board for three years. He explained that the proposed hotel had mostly different colors of Exterior Insulation and Finish System (EIFS) with some brick. It would have 70% Class A materials such as brick, glass, stone, and aluminum composite materials. He added that the back facing the forest would be EIFS. He stated that he wanted to respect that Council wanted to see building elevations, however, usually that process would go through the Planning Commission. They were trained to know what to look for. He took the four-story prototype and made modifications to show what a three-story would look like. He brought it with him to show Council, it was a work in progress. He understood that there was not much time to review it and he asked that the item be tabled to the December 7<sup>th</sup> meeting. If tabled, he could still maintain the 750' buffer that he had been relying on and spent money for the development. He asked again if Council wished to see the renderings that he brought with him.

Mr. Davenport clarified that what he stated was all in place before the amendment existed, nothing related to the new language. He added that Section 109-116 and Section



113-191 were guides for Council to determine if the information was sufficient. He stated that it had no relationship at all to the amended language two weeks prior.

Mr. Trocquet added that his report was also based on previous language.

Mayor Dial stated that Mr. Gulas made mention of the timing, which was objective. Requested information always needed to be submitted by a certain time before meetings.

Mr. Gulas stated that during the fourth hearing on November 2<sup>nd</sup>, a bullet list of items was added. The lists may have been in Municode. He shared that he went by the provided list required for the Certificate of Appropriateness. He added that a lot of times they could work with staff to make adjustments to elevations, site plans, and landscape plans. He asked again to table the meeting for December. The additional 100' buffer was very difficult to create.

Council Member Campbell addressed Mr. Gulas and stated that they appreciated that he wished to create another business and that he spent tens of thousands of dollars on the preparation. He added that after three times coming to Council, an architectural rendering still had not been submitted. He stated that Council was still being handed drawings of other locations and given descriptions of what it would be like. After coming three times and spending tens of thousands of dollars, the money could have funded a rendering that would have fit that particular spot. He added that he was disappointed that he had not completed all that was required.

Mr. Gulas stated that the first thing that he accomplished was soil reports for both lots. Then engineering was involved regarding the soil. A cost estimate was needed to ensure the cost of the foundation. Next was a hydrology report. The Town's ordinance was very detailed regarding stormwater and volume. Most of the money went toward those studies. He stated that the elevations became a moving target. In the beginning, there was no buffer, then there was a 75' buffer, which affected parking. He stated that now, there was a potential 100' buffer. Every time they would want to start drawing elevations, it would change. The goalpost kept moving.

Mayor Dial stated that to Council Member Campbell's point, at no meeting had Mr. Gulas offered Council items that were required for a determination. There were no landscape plans, no architectural specifications, or topography. It was not a matter of any changes that Mr. Gulas recognized; it was that none of the items were ever submitted. It was not how much money he had spent; it was what was not received by Council.

A motion was made to deny the Application of Appropriateness for parcel number 0726051.

Motion made by Council Member Campbell, Seconded by Council Member Furr.  
Voting Yea: Council Member Howard, Council Member Hill.

4. Consideration of a Certificate of Appropriateness and conceptual site plan from applicant Steve Gulas for parcel 0736 038 off Dogwood Trail. Phillip Trocquet, Community Development.

Mr. Trocquet stated that given that no rendering had been submitted for the proposed project, staff did not have enough information to recommend approval of the Certificate of Appropriateness Application.

Mayor Dial invited Mr. Gulas to speak if he had anything unique information regarding that particular parcel.

Mr. Gulas stated that he and his wife had owned the property for approximately ten years. The hotel was not an extended-stay, it was a True Hilton product. He added that the closest one would be in McDonough and with no kitchenettes. It was surrounded by C-1, and E-I properties, with no residential. The property was 800 feet long, on 4.7 acres. His plan would be to build a hotel and quick service restaurant. He added that hotels help existing businesses. He added that there were no adjoining residential properties so there would be no need for an additional buffer. Mr. Gulas stated that he did have full elevations and a landscape plan for the 3-story hotel that he brought with him. He stated that he would like for Council to review them and that he could hand them out because he worked very hard on them. He added that the building met the 40' height requirements.

Mayor Dial asked if the renderings were part of the submitted packet. Mr. Gulas stated that they were not included in his submission on October 31<sup>st</sup>. He asked that Council table the item to give them more time to review them. He added that the property did not have a buffer issue. He stated that on November 2<sup>nd</sup> it was passed that a hotel had to be on 3 acres. A typical True Hilton could be on 1.5. Mr. Gulas wished to use 2.5 acres to include the septic system and two additional septic spaces if needed. The restaurant or coffee shop would help the hotel and contrariwise. Mr. Gulas stated that he would like for Council to review his renderings, he spent a lot of time on them. He asked again for the item to be tabled and stated that the hotel was not an extended-stay hotel.

Council Member Furr asked where the septic system would be located. He indicated where all three could go. He also indicated the space for a coffee shop and its septic location. He stated that Fayette County Environmental Health looked at the plans with him. He asked Council to look at the plans because he had worked on them for days.

Mayor Dial stated that he saw an example of a 4-story hotel. Mr. Trocquet stated that a 3-story example was given. Mr. Gulas stated that the only rendering of a True Hilton was that of 4 stories but the length was that of a 3-story. He indicated two versions and added that the building became longer when the top floors were taken off. Mr. Gulas asked Council again if they wished to see the drawings that he brought.

Mr. Perkins stated that Mr. Gulas had a deadline to submit a complete application. He recalled Council Member Furr asking him at the last meeting to be sure to submit a complete packet next time.

Mayor Dial stated that he appreciated that it was not an extended-stay hotel. However, Council did not have everything they needed. Mayor Dial added that applicants must submit everything to staff for Council to make a proper determination. Mr. Gulas asked again to table the item. Mayor Dial stated that procedurally, that determination should have been made early on in the process.

A motion was made to deny the application for a Certificate of Appropriateness for parcel number 0736038.

Motion made by Council Member Campbell, Seconded by Council Member Hill.  
Voting Yea: Council Member Howard, Council Member Furr.

Mayor Dial thanked Mr. Gulas for wanting to invest in the Town.

**XI. PUBLIC COMMENTS:** *The second public comment period is for any issue. Comments are limited to three (3) minutes. Please state your name & address. Comments that require a response may not be answered during this time. The Council or staff may respond at a later date.*

Ms. Christa Kiggungu who lives on Village Green Circle stated that she appreciated that the applicant spent a lot of time and tens of thousands of dollars and understands that his frustration. She shared that the applicant mentioned that the hotel would be upscale, however, his partner stated at another meeting that the Tyrone location would not be as upscale as the Fayetteville location. Secondly, she stated that the price for the hotel stay would be \$129 per night. She added that as the property owner, he could make his own price. Southampton residents had no assurance regarding the price per night. Lastly, she stated that every time he had presented before Council, he was unprepared. It was difficult to trust what he had to say about his plans when he showed up unprepared. Would he be prepared to build the hotel?

**XII. STAFF COMMENTS**

Mr. Perkins reminded everyone about the annual Christmas Tree Lighting program on November 26th at Shamrock Park from 2:00 p.m. to 7:00 p.m.

Mr. Perkins announced that the Library was hosting a Red Cross Blood Drive on November 28<sup>th</sup> from 10:00 a.m. to 2:00 p.m.

He also announced that over the next few weeks, Recreation was a drop-off spot for Toys for Tots and they also had an Angel Tree for the public to participate in.

**XIII. COUNCIL COMMENTS**

Council Member Campbell congratulated Jessica Whelan and Dia Hunter on their wins for Council and looked forward to working with them in January. He also wished everyone a Happy Thanksgiving and a Merry Christmas.

**XIV. EXECUTIVE SESSION**

A motion was made to approve the November 2, 2023 Executive Session minutes.

Motion made by Council Member Campbell, Seconded by Council Member Howard.  
Voting Yea: Council Member Hill, Council Member Furr.

**XV. ADJOURNMENT**

A motion was made to adjourn.

Motion made by Council Member Furr.  
Voting Yea: Council Member Howard, Council Member Hill, Council Member Campbell.

The meeting adjourned at 8:09 pm.

By: \_\_\_\_\_  
Eric Dial, Mayor

Attest: \_\_\_\_\_  
Dee Baker, Town Clerk



**COUNCIL AGENDA ITEM COVER SHEET**  
**Meeting Type:** Council - Regular  
**Meeting Date:** December 7, 2023  
**Agenda Item Type:** Consent Agenda  
**Staff Contact:** Dee Baker

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**STAFF REPORT**

**AGENDA ITEM:**

2024 Holiday Office Closures

**BACKGROUND:**

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**FUNDING:**

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**STAFF RECOMMENDATION:**

Staff recommends to approve the 2024 Holiday Office Closures

**ATTACHMENTS:**

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**PREVIOUS DISCUSSIONS:**

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## 2024 Holiday Office Closures

Monday, January 1 - New Year's Day

Monday, January 15 – Martin Luther King Jr. Day

Friday, March 29 – Good Friday

Monday, May 27 – Memorial Day

Thursday, July 4– Independence Day

Monday, September 2 – Labor Day

Thursday, November 28 – Thanksgiving Day

Friday, November 29 – Day after Thanksgiving

Tuesday, December 24 – Christmas Eve

Wednesday, December 25 – Christmas Day



**COUNCIL AGENDA ITEM COVER SHEET**  
**Meeting Type:** Council - Regular  
**Meeting Date:** December 7, 2023  
**Agenda Item Type:** Consent Agenda  
**Staff Contact:** Mayor Dial

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**STAFF REPORT**

**AGENDA ITEM:**

Annual Reappointment of Attorney

**BACKGROUND:**

The Law Firm of McNally, Fox, Grant & Davenport has been the Town’s legal representation since 2008.

**FUNDING:**

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**STAFF RECOMMENDATION:**

Approaval of the reappointment of McNally, Fox, Grant & Davenport as the Town’s legal representation, January 1, 2024 – December 31, 2024.

**ATTACHMENTS:**

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**PREVIOUS DISCUSSIONS:**

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**COUNCIL AGENDA ITEM COVER SHEET**

**Meeting Type:** Council - Regular

**Meeting Date:** December 7, 2023

**Agenda Item Type:** Consent Agenda

**Staff Contact:** Dee Baker

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**STAFF REPORT**

**AGENDA ITEM:**

The Fayette County News has remained our Legal Organ for many years.

**BACKGROUND:**

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**FUNDING:**

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**STAFF RECOMMENDATION:**

Staff recommends continuing with the Fayette County Newspaper as our Legal Organ.

**ATTACHMENTS:**

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**PREVIOUS DISCUSSIONS:**

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**TOWN OF TYRONE  
COUNTY OF FAYETTE**

**RESOLUTION**

**NO. 2023-\_\_\_**

**A RESOLUTION OF THE TOWN OF TYRONE, GEORGIA; TO PROVIDE A LOCAL AMENDMENT TO THE MINIMUM STANDARD PLUMBING CODE FOR WATER EFFICIENCY; TO PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE; AND FOR OTHER PURPOSES.**

**WHEREAS**, the current minimum water efficiency requirements for buildings in the Town of Tyrone’s jurisdiction is the Georgia State Minimum Standard Plumbing Code (“Georgia Plumbing Code”) as approved and adopted by the Georgia Department of Community Affairs (“DCA”) from time to time; and

**WHEREAS**, the Town of Tyrone, like all local governments in the State of Georgia, is authorized under O.C.G.A. § 8-2-25(c) to adopt local requirements that are more stringent than the Georgia Plumbing Code based on local climatic, geologic, topographic, or public safety factors; and

**WHEREAS**, the Town of Tyrone has followed the required procedures in O.C.G.A. § 8-2-25(c) for local adoption of the Local Amendments to Plumbing Code for water efficiency, and DCA has made no recommendation as to whether they be adopted; and

**WHEREAS**, the long-term availability, reliability, and resiliency of water supplies is a critical need of the Town of Tyrone and water efficiency is essential to meeting this need; and

**WHEREAS**, the Town of Tyrone is adopting the Local Amendments to Plumbing Code to meet this critical need and to comply the requirements of Metropolitan North Georgia Water

Planning District’s 2022 Water Resources Plan in the WSWC-8 Action Item on Metro Water District – Water Efficiency Code Requirements.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The governing body of the Town of Tyrone finds that, based on local climatic, geographic, topographic, and public safety factors, it is justified in adopting the water efficiency requirements in the Local Amendments to Plumbing Code that are more stringent than the Georgia Plumbing Code; and

2. The Town of Tyrone has followed the required procedures in O.C.G.A. § 8-2-25(c); and

3. The Town of Tyrone hereby adopts the Local Amendments to Plumbing Code attached hereto as Exhibit “A”, with such Exhibit “A” incorporated herein by this reference hereto, which will take effect on January 1, 2024.

**SO RESOLVED, THIS** \_\_\_ day of December, 2023.

MAYOR AND COUNCIL FOR  
THE TOWN OF TYRONE

(SEAL)

By: \_\_\_\_\_  
ERIC DIAL, Mayor

ATTEST:

\_\_\_\_\_  
Dee Baker, Town Clerk

Approved as to form:

\_\_\_\_\_  
Town Attorney

**EXHIBIT “A”**

**Local Amendment to Minimum Standard Plumbing Code**

Effective January 1, 2024, the Georgia State Minimum Standard Plumbing Code has been amended by the Town of Tyrone as follows:

**Chapter 2, Section 202 General Definitions.** Add in alphabetical order and revise, as applicable, the following definitions:

**KITCHEN FAUCET OR KITCHEN FAUCET REPLACEMENT AERATOR. A**

kitchen faucet or kitchen faucet replacement aerator that allows a flow of no more than 1.8 gallons of water per minute at a pressure of 60 pounds per square inch and conforms to the applicable requirements in ASME A112.18.1/CSA B125.1.

**LAVATORY FAUCET OR LAVATORY FAUCET REPLACEMENT AERATOR.**

A lavatory faucet or lavatory faucet replacement aerator that allows a flow of no more than 1.2 gallons per minute at a pressure of 60 pounds per square inch and is listed to the WaterSense High Efficiency Lavatory Faucet Specification.

**LANDSCAPE IRRIGATION.**

**Flow sensor.** An inline device in a landscape irrigation system that produces a repeatable signal proportional to flow rate.

**Lawn or Landscape Irrigation system.** An assembly of component parts that is permanently installed for the controlled distribution of water to irrigate landscapes

such as ground cover, trees, shrubs, and other plants. Lawn and Landscape Irrigation System refer to the same system.

**Master shut-off valve.** An automatic valve such as a gate valve, ball valve, or butterfly valve) installed as part of the landscape irrigation system capable of being automatically closed by the WaterSense controller. When this valve is closed water will not be supplied to the landscape irrigation system.

**Pressure regulating device.** A device designed to maintain pressure within the landscape irrigation system at the manufacturer's recommended operating pressure and that protects against sudden spikes or drops from the water source.

**Rain sensor shut-off.** An electric device that detects and measures rainfall amounts and overrides the cycle of a landscape irrigation system so as to turn off such system when a predetermined amount of rain has fallen.

**WaterSense irrigation controller.** Is a weather-based or soil moisture-based irrigation controller labeled under the U.S. Environmental Protection Agency's WaterSense program, which includes standalone controllers, add-on devices, and plug-in devices that use current weather data as a basis for scheduling irrigation.

**WaterSense spray sprinkler bodies.** A sprinkler body with integral pressure regulation, generating optimal water spray and coverage labeled under the U.S. Environmental Protection Agency's WaterSense program.

**SHOWER HEAD.** A shower head that allows a flow of no more than the average of 2.0 gallons of water per minute at 80 pounds per square inch of pressure, is listed in the WaterSense Specification for Showerheads, and meets the US Department Definition of Energy definition of showerhead.

**Chapter 6, Section 604.4 Maximum Flow and Water Consumption.** Revise Section 604.4 to read as follows:

Consistent with the general approach taken in Georgia, these Maximum Flow and Water Consumption requirements and related definitions in Section 604.4 of the plumbing code shall apply to all plumbing systems, including those in one- and two-family dwellings. The maximum water consumption flow rates and quantities for all plumbing fixtures and fixture fittings shall be in accordance with Table 604.4.

**Exceptions:**

1. Blowout design water closets having a water consumption not greater than 3<sup>1</sup>/<sub>2</sub> gallons (13 L) per flushing cycle.
2. Vegetable sprays.
3. Clinical sinks having a water consumption not greater than 4<sup>1</sup>/<sub>2</sub> gallons (17 L) per flushing cycle.
4. Laundry tray sinks and service sinks.
5. Emergency showers and eye wash stations.

TABLE 604.4

MAXIMUM FLOW RATES AND CONSUMPTION FOR PLUMBING FIXTURES AND FIXTURE FITTINGS

PLUMBING FIXTURE OR FIXTURE FITTING	MAXIMUM FLOW RATE OR QUANTITY <sup>b</sup>
Lavatory faucet and replacement aerators, private	WaterSense Labeled & 1.2 gpm at 60 psi <sup>f</sup>
Lavatory faucet, public (metering)	0.25 gallon per metering cycle
Lavatory, public (other than metering)	0.5 gpm at 60 psi
Showerhead <sup>a</sup>	WaterSense Labeled & 2.0 gpm at 80 psi <sup>f</sup>
Kitchen faucet and replacement aerators	1.8 gpm at 60 psi <sup>f, g</sup>
Urinal	0.5 gallon per flushing cycle <sup>f</sup>
Water closet	1.28 gallons per flushing cycle <sup>c, d, e, f</sup>

For SI: 1 gallon = 3.785 L, 1 gallon per minute = 3.785 L/m,

1 pound per square inch = 6.895 kPa.

a. A hand-held shower spray is a shower head. As point of clarification, multiple shower heads may be installed in a single shower enclosure so long as each shower head individually meets the maximum flow rate, the WaterSense requirements, and the US Department of Energy definition of showerhead. However, multiple shower heads are not recommended for water efficiency purposes.

b. Consumption tolerances shall be determined from referenced standards.

- c. For flushometer valves and flushometer tanks, the average flush volume shall not exceed 1.28 gallons.
- d. For single flush water closets, including gravity, pressure assisted and electro-hydraulic tank types, the average flush volume shall not exceed 1.28 gallons.
- e. For dual flush water closets, the average flush volume of two reduced flushes and one full flush shall not exceed 1.28 gallons.
- f. See 2014 GA Amendment to Section 301.1.2 ‘Waiver from requirements of high efficiency plumbing fixtures’.
- g. Kitchen faucets are permitted to temporarily increase the flow above the maximum rate, but not to exceed 2.2 gpm (8.3 L/m) at 60 psi (414 kPa) and must revert to a maximum flow rate of 1.8 gpm (6.8 L/m) at 60 psi (414 kPa) upon valve closure.

**604.4.1 Clothes Washers.** Residential clothes washers shall be in accordance with the Energy Star program requirements.

**604.4.2 Cooling Tower Water Efficiency.**

**604.4.2.1 Once-Through Cooling.** Once-through cooling using potable water is prohibited.

**604.4.2.2 Cooling Towers and Evaporative Coolers.** Cooling towers and evaporative coolers shall be equipped with makeup water and blow down meters, conductivity controllers and overflow alarms. Cooling towers shall be equipped

with efficiency drift eliminators that achieve drift reduction to 0.002 percent of the circulated water volume for counterflow towers and 0.005 percent for crossflow towers.

**604.4.2.3 Cooling Tower Makeup Water.** Water used for air conditioning, cooling towers shall not be discharged where the hardness of the basin water is less than 1500 mg/L. **Exception:** Where any of the following conditions of the basin water are present: total suspended solids exceed 25 ppm, CaCO<sub>3</sub> exceeds 600 ppm, chlorides exceed 250 ppm, sulfates exceed 250 ppm, or silica exceeds 150 ppm.

**604.4.3 Landscape Irrigation System Efficiency Requirements.** The requirements in Section 604.4.3 apply to all new landscape irrigation systems connected to the public water system except those (a) used for agricultural operations as defined in the Official Code of Georgia Section 1-3-3, (b) used for golf courses, and (c) dependent upon a nonpublic water source. Nothing in this Code or this Section 604.4.3 is intended to require that landscape irrigation systems must be installed at all premises. The landscape irrigation efficiency requirements in this Section 604.4.3 apply only when someone voluntarily chooses, or is otherwise required by some requirement beyond this Code, to install a landscape irrigation system on premises.

**604.4.3.1 Avoiding Water Waste Through Design.** All new landscape irrigation systems shall adhere to the following design standards:



1. Pop-up type sprinkler heads shall pop-up to a height above vegetation level of not less than four (4) inches above the soil level when emitting water.
2. Pop-up spray heads or rotary sprinkler heads must direct flow away from any adjacent surfaces and must not be installed closer than four inches from impervious surfaces.
3. Areas less than ten (10) feet in width in any direction shall be irrigated with subsurface irrigation or by other means that produces no overspray or runoff.
4. Narrow or irregular shaped landscaped areas, less than four (4) feet in any direction across opposing boundaries shall not be irrigated by any irrigation emission device except sub-surface or low flow emitters with flow rates not to exceed 6.3 gallons per hour.

**604.4.3.2 Landscape Irrigation System Required Components.** All new landscape irrigation systems shall include the following components:

1. A rain sensor shut-off installed in an area that is unobstructed by trees, roof over hangs, or anything else that might block rain from triggering the rain sensor shutoff.
2. A master shut-off valve for each controller installed as close as possible to the point of connection of the water but downstream of the backflow prevention assembly.

3. Pressure-regulating devices such as valve pressure regulators, sprinkler head pressure regulators, inline pressure regulators, WaterSense spray sprinkler bodies, or other devices shall be installed as needed to achieve the manufacturer's recommended pressure range at the emission devices for optimal performance.

4. Except for landscape irrigation systems serving a single-family home, all other systems must also include:

(a) a WaterSense irrigation controller; and

(b) at least one flow sensor, which must be installed at or near the supply point of the landscape irrigation system and shall interface with the control system, that when connected to the WaterSense controller will detect and report high flow conditions to such controller and automatically shut master valves. The flow sensor serves to aid in detecting leaks or abnormal flow conditions by suspending irrigation. High flow conditions should be consistent with manufacturers' recommendations and specifications.

### **Chapter 13 NONPOTABLE WATER SYSTEMS, Section 1304 Reclaimed Water**

**Systems.** Revise Section 1304.3.2 to read as follows:

**1304.3.2 Connections to water supply.** Reclaimed water provided from a reclaimed wastewater treatment system permitted by the Environmental Protection Division may be used to supply water closets, urinals, trap primers for floor drains and floor sinks, water

features and other uses approved by the Authority Having Jurisdiction, in motels, hotels, apartment and condominium buildings, and commercial, industrial, and institutional buildings, where the individual guest or occupant does not have access to plumbing. Also, other systems that may use a lesser quality of water than potable water such as water chillers, carwashes or an industrial process may be supplied with reclaimed water provided from a reclaimed wastewater treatment facility permitted by the Environmental Protection Division. The use of reclaimed water sourced from any new private reclaimed wastewater treatment system for outdoor irrigation shall be limited to golf courses and agriculture operations as defined in the Official Code of Georgia Section 1-3-3, and such reclaimed water shall not be approved for use for irrigating any other outdoor landscape such as ground cover, tree, shrubs, or other plants. These limitations do not apply to reclaimed water sourced from existing private reclaimed water systems or from existing or new, governmentally-owned reclaimed wastewater treatment systems.

**Appendix E, Section E101.1.2.** Revise Section E.101.1.2 to read as follows:

Because of the variable conditions encountered in hydraulic design, it is impractical to specify definite and detailed rules for sizing of the water piping system. Accordingly, other sizing or design methods conforming to good engineering practice standards are acceptable alternatives to those presented herein. Without limiting the foregoing, such acceptable design methods may include for multi-family buildings the Peak Water Demand Calculator from the IAPMO/ANSI 2020 Water Efficiency and Sanitation Standard for the Built Environment, which accounts for the demands of water-conserving plumbing fixtures, fixture fittings, and appliances. If future versions of the Peak Water

Demand Calculator including other building types, such as commercial, such updated version shall be an acceptable design method.



# COUNCIL ITEM AGENDA REQUEST FORM

**Department:** Community Development

**Meeting Date:** 12/07/2023

**Staff Contact:** Phillip Trocquet

**Agenda Section:** New Business

## Staff Report:

### Item Description:

Consideration to appoint Mr. Terry Noble to post 5 of the Town of Tyrone Planning Commission

### Background/History:

Mr. Carl Schouw who has served on the planning commission for many years has stepped down from post 5.

### Findings/Current Activity:

Mr. Terry Noble has applied for the position and has received the Mayors recommendation and endorsement to occupy the vacant post.

**Is this a budgeted item?   Y   If so, include budget line number: \_\_\_\_\_**

### Actions/Options/Recommendations:

The Mayor and Staff recommend approval to appoint Mr. Terry Noble to post 5 of the Town of Tyrone Planning Commission.



TOWN OF TYRONE  
FAYETTE COUNTY, GEORGIA

**OATH OF OFFICE**

I, Terry Noble, do solemnly swear that I will faithfully and truly perform the duties of the Planning Commission of the Town of Tyrone, that I will support and defend the United States Constitution, the Constitution of the State of Georgia, and the Charter of the Town of Tyrone, to the best of my skill and ability and as to me shall seem to the best interest and welfare of the Town without fear, favor, or affection.

I do further swear that I am not the holder of any unaccounted for public money due this State or any political subdivision or authority thereof; that I am not the holder of any office or trust under the government of the United States, any other state, or any foreign state which, by the laws of the State of Georgia, I am prohibited from holding; and that I am otherwise qualified to be a public officer according to the Constitution and Laws of the State of Georgia.

“SO HELP ME GOD.”

\_\_\_\_\_  
Terry Noble,  
Planning Commission, Post 5

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Eric Dial, Mayor



## COUNCIL AGENDA ITEM COVER SHEET

**Meeting Type:** Council - Regular

**Meeting Date:** December 7, 2023

**Agenda Item Type:** New Business

**Staff Contact:** Sandy Beach

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### STAFF REPORT

**AGENDA ITEM:**

FY 2022/2023 Budget Amendment

**BACKGROUND:**

The 2022/2023 fiscal year was the first time SBITAs (Subscription Based Information Technology Arrangements) were required to be reported on financial statements. Due to this GASB 96 change in reporting, the Finance Department needs to amend the original budget because of the nature of subscription software that is used, including payroll, accounting, and budgeting/transparency software.

**FUNDING:**

The overall budget is not changing. This is just a reclass where the extra expenses reported are reclassified from the contingency line item that was budgeted in Administration.

**STAFF RECOMMENDATION:**

Staff recommends approval to move \$50,000 of contingency funds to the Finance Software SBITA line item for the FY 2022/2023 budget.

**ATTACHMENTS:**

Budget Amendment Journal Entry #BA0000019

**PREVIOUS DISCUSSIONS:**

None







# COUNCIL ITEM AGENDA REQUEST FORM

**Department:** Community Development

**Meeting Date:** 12/07/2023

**Staff Contact:** Phillip Trocquet

**Agenda Section:** New Business

## Staff Report:

### Item Description:

### Background/History:

The Town Received an LCI master plan grant in 2021 for our downtown area. This grant served a twofold purpose of setting a consistent direction and purpose for the Town Center District (Downtown) as well as enabled the Town to pursue further LCI and State grant monies for downtown.

### Findings/Current Activity:

The latest LCI application was aimed at honing a streetscape plan for Senoia Road and other minor streets downtown. This plan will enable the Town to plan exactly which streetscape improvements can be done along certain segments of Senoia Road and allow us to move easily into construction. Construction funding has already been allocated as part of the 2023 SPLOST and ARPA budget.

As a result of the RFP selection process, TSW has been selected as the firm to prepare the 2023 Town Center Streetscape & Mobility Study. TSW prepared a strong presentation and has an impressive work history in preparing and implementing LCI programs. Our further coordination with them on Shamrock Park improvements and signage improvements will bring a cohesive design element to the downtown area.

The contract amount is for \$200,000, 80% of which is matching from the Atlanta Regional Commission via reimbursement.

**Is this a budgeted item?   Y   If so, include budget line number: \_\_\_\_\_**

### Actions/Options/Recommendations:

Staff recommends approval of the 2023 Town Center Streetscape & Mobility Study contract with TSW in an amount not to exceed \$200,000.



*Agreement – Town of Tyrone*

November 29, 2023

TSW (the Consultant) agrees to provide the Town of Tyrone (the Client) the following professional services associated with the 2023 Tyrone Town Center Streetscape & Mobility Study Livable Centers Initiative (the Project), and the Client contracts for such services and agrees to pay for them according to the fees, terms, and conditions set forth herein (the Agreement).

1. SERVICES

TSW will provide the following services:

See Exhibit A: TSW Team Proposal (Scope of Work – pages 1–4)

2. EXCLUSIONS

TSW will not be responsible for the following services:

n/a

3. SERVICE ADJUSTMENTS

Both the Consultant and the Client hereby acknowledge that the SERVICES above are subject to refinement. The Consultant and the Client may, at any time during the Agreement period (see SCHEDULE), make changes to the SERVICES and their technical provisions, as mutually agreed upon in writing. If any such change causes any increase or decrease in the Consultant’s cost of performing any part of the SERVICES, an equitable adjustment will be made in FEES, or in the SCHEDULE, or in both, and a written amendment of such adjustment will be made. Any claim by the Consultant for an equitable adjustment must be made in writing and delivered to the Client before proceeding with the additional services. The Consultant will perform no additional services until written authorization is received from Client. Nothing in this clause will excuse the Consultant from proceeding with performance of this contract in accordance with the original terms and conditions and any approved changes.

#### 4. SCHEDULE

The full length of this Agreement is as follows:

December 1, 2023 – November 30, 2024

The Consultant will provide project deliverables on dates as agreed in SERVICES and SCHEDULE, as applicable. The Consultant will make every effort to meet agreed upon dates. The Client is aware that failure to submit required information or materials may cause subsequent delays in the production. Client delays could result in significant delays in delivery of finished work.

#### 5. FEES

TSW agrees to provide services included in this AGREEMENT:

Task 1: Existing Conditions Assessment	\$30,000
Task 2: Public Engagement	\$10,000
Task 3: Concept Plan	\$100,000
Task 4: Prepare Project Deliverables	\$60,000

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Total: \$200,000

#### 6. ADDITIONAL SERVICES

Work will be completed based on the SCHEDULE section above. Changes in Client input or direction, excessive changes, or major deviation from the SCHEDULE may be cause for additional services. Any service that the Client requests that is not specified in SERVICES above will be considered an additional service. Such work requires written approval, an amendment to this AGREEMENT, and cause accrual of additional fees.

#### 7. ASSIGNMENT OF WORK

The Consultant reserves the right to assign subcontractors to the SERVICES to ensure quality and on-time completion at no additional cost to Client.

## 8. RESERVATION OF RIGHTS

All rights not expressly granted hereunder are reserved by the Consultant, including but not limited to all rights to sketches, comps, or other preliminary materials. See COPYRIGHTS below.

## 9. COPYRIGHTS

The Consultant shall retain the right to use all copyrighted materials for marketing purposes with Client's written permission. The Town shall retain copyrights associated with work after undisputed payment of each task listed in the contract. Such copyrighted material shall include, but not be limited to digital files, CAD files, plans, shapefiles, drawings, documents, etc.

## 10. PERMISSIONS AND RELEASES

The Client agrees, to the level of indemnification allowed by law, to indemnify and hold harmless Consultant against any and all claims, costs, and expenses, including attorney's fees, due to materials included in the SERVICES at the request of the Client for which no copyright permission or previous release was requested or uses which exceed the uses allowed pursuant to a permission or release.

## 11. BILLING AND PAYMENT POLICIES

In contracting with the Consultant, the Client warrants that funds are available to compensate the Consultant for the total fees agreed to, and that these funds are neither encumbered nor contingent upon subsequent approvals, permits, or financing commitments by lending institutions or other parties.

The Consultant will submit monthly invoices to the Client. Invoices are due and payable upon receipt and become delinquent if not paid in full 30 days after receipt of the invoice the disputed portion of the payment may be withheld. Interest charges will be applied at rate of 1.5% per month to delinquent accounts for professional services with the exception of charges which are under dispute.

Account delinquency longer than 60 days will result in the stoppage of work by the Consultant and any subconsultants. Seven calendar days' notice must be given prior to stoppage of work to enable accounts to be brought current. Work will recommence upon payment of all undisputed fees and service charges due. In some cases, additional fees may be required to stop and start work because of account delinquency.

## 12. TERMINATION

This Agreement may be terminated for cause upon seven calendar days' written notice sent via certified mail 7-days from receipt, as follows:

- A. The Client may terminate for their sole convenience.
- B. The Client may terminate in the event of the cancellation of funds, a change of priorities, or cancellation of a program with no right of appeal available to the Consultant.
- C. The Client or Consultant may terminate for failure of the other party to perform substantially in accordance with the terms and conditions of the Agreement.
- D. The Consultant may terminate if the project is suspended for more than 90 calendar days.

When the Agreement is terminated, the Client shall reimburse the Consultant for work actually and properly performed by the Consultant up to the date of termination.

The Client has the right to monitor performance, certification, and any subsequent recourse available in the event of default or non-performance by the Consultant.

## 13. DISPUTE RESOLUTION

All disputes arising from this Agreement, shall be referred to a court of competent jurisdiction. Venue for any cause of action shall be in Fayette County, Georgia, or the Northern District of Georgia, as the case may be.

The Client and TSW are independent parties and nothing in this Agreement constitutes either party as the employer, principal, or partner of or joint venture with the other party. Neither the Client nor the Consultant has any authority to assume or create any obligation or liability, either express or implied, on behalf of the other.

14. MISCELLANEOUS

This Agreement is governed by the law of the place where the Project is located. The undersigned agrees to the terms of this Agreement on behalf of their organization or business.

\_\_\_\_\_  
TSW

\_\_\_\_\_  
Town of Tyrone  
Eric Dial, Mayor

-----  
Attest  
Dee Baker, Town Clerk

(SEAL)



# COUNCIL ITEM AGENDA REQUEST FORM

**Department:** Community Development

**Meeting Date:** 12/07/2023

**Staff Contact:** Phillip Trocquet

**Agenda Section:** New Business

## Staff Report:

### Item Description:

### Background/History:

In conjunction with Shamrock Park improvements and the LCI study, improved signage for all town facilities as well as gateway and wayfinding signage for the downtown area was listed in the 2023 SPLOST.

### Findings/Current Activity:

With TSW preparing designs for other projects through the downtown area, simultaneous work on signage will be beneficial. The 2023 SPLOST has downtown signage listed as a project proposal for Downtown. This contract and work will be for design only. Cost of construction will be included in the scope of work for this project.

**Is this a budgeted item?   Y   If so, include budget line number: \_\_\_\_\_**

### Actions/Options/Recommendations:

Staff recommends approval of a contract with TSW for downtown signage design in an amount not to exceed \$25,500.



1447 Peachtree Street NE, Suite 850  
Atlanta, GA 30309  
Phone: 404.873.6730  
www.tsw-design.com

*Agreement - Town of Tyrone*

November 29, 2023

TSW (the Consultant) agrees to provide the Town of Tyrone (the Client) the following professional services associated with the Tyrone Downtown Signage (the Project), and the Client contracts for such services and agrees to pay for them according to the fees, terms, and conditions set forth herein (the Agreement).

1. SERVICES

TSW will provide the following services:

See Exhibit A (Scope of Services)

2. EXCLUSIONS

TSW will not be responsible for the following services:

n/a

3. SERVICE ADJUSTMENTS

Both the Consultant and the Client hereby acknowledge that the SERVICES above are subject to refinement. The Consultant and the Client may, at any time during the Agreement period (see SCHEDULE), make changes to the SERVICES and their technical provisions, as mutually agreed upon in writing. If any such change causes any increase or decrease in the Consultant's cost of performing any part of the SERVICES, an equitable adjustment will be made in FEES, or in the SCHEDULE, or in both, and a written amendment of such adjustment will be made. Any claim by the Consultant for an equitable adjustment must be made in writing and delivered to the Client before proceeding with the additional services. The Consultant will perform no additional services until written authorization is received from Client. Nothing in this clause will excuse the Consultant from proceeding with performance of this contract in accordance with the original terms and conditions and any approved changes.



4. SCHEDULE

The full length of this Agreement is as follows:

December 1, 2023 to June 30, 2024

The Consultant will provide project deliverables on dates as agreed in SERVICES and SCHEDULE, as applicable. The Consultant will make every effort to meet agreed upon dates. The Client is aware that failure to submit required information or materials may cause subsequent delays in the production. Client delays could result in significant delays in delivery of finished work.

5. FEES

TSW agrees to provide services included in this AGREEMENT:

Task 1: Kick-off Meeting and Work Session	\$4,500
Task 2: Concept Signage Design Alternative	\$6,200
Task 3: Presentation Concept Signage Design Alternative	\$1,350
Task 4: Final Concept Signage Design Package	\$4,200
Task 5: Presentation of Final Concept Signage Design Package	\$1,350
Task 6: Final Deliverables	\$7,100
Reimbursable Expenses	\$800

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Total: \$25,500

6. ADDITIONAL SERVICES

Work will be completed based on the SCHEDULE section above. Changes in Client input or direction, excessive changes, or major deviation from the SCHEDULE may be cause for additional services. Any services that the Client requests that is not specified in SERVICES above will be considered an additional service. Such work requires written approval, an amendment to this AGREEMENT, and cause accrual of additional fees.

## 7. ASSIGNMENT OF WORK

The Consultant reserves the right to assign subcontractors to the SERVICES to ensure quality and on-time completion at no additional cost to Client.

## 8. RESERVATION OF RIGHTS

All rights not expressly granted hereunder are reserved by the Consultant, including but not limited to all rights to sketches, comps, or other preliminary materials. See COPYRIGHTS below.

## 9. COPYRIGHTS

Copyright is in Consultant's name. Upon completion of Work and payment of the contract in full, the copyright will be released to the Client. The Consultant shall retain the right to use all copyrighted materials for marketing purposes, with Client's written permission.

## 10. PERMISSIONS AND RELEASES

The Client agrees, to the level of indemnification allowed by law, to indemnify and hold harmless Consultant against any and all claims, costs, and expenses, including attorney's fees, due to materials included in the SERVICES at the request of the Client for which no copyright permission or previous release was requested or uses which exceed the uses allowed pursuant to a permission or release.

## 11. BILLING AND PAYMENT POLICIES

In contracting with the Consultant, the Client warrants that funds are available to compensate the Consultant for the total fees agreed to, and that these funds are neither encumbered nor contingent upon subsequent approvals, permits, or financing commitments by lending institutions or other parties.

The Consultant will submit monthly invoices to the Client. Invoices are due and payable upon receipt and become delinquent if not paid in full 30 days of the receipt of the invoice. Any disputed portion of the payment may be withheld. Interest charges will be applied at rate of 1.5% per month to delinquent accounts for professional services with the exception of charges which are under dispute.

Account delinquency longer than 60 days will result in the stoppage of work by the

Consultant and any subconsultants. Seven calendar days' notice must be given prior to stoppage of work to enable accounts to be brought current. Work will recommence upon payment of all undisputed fees and service charges due. In some cases, additional fees may be required to stop and start work because of account delinquency.

## 12. TERMINATION

This Agreement may be terminated for cause upon receipt of written notice mailed via certified mail at least seven calendar days prior to the anticipated termination date as follows:

- A. The Client may terminate for their sole convenience.
- B. The Client may terminate in the event of the cancellation of funds, a change of priorities, or cancellation of a program with no right of appeal available to the Consultant.
- C. The Client or Consultant may terminate for failure of the other party to perform substantially in accordance with the terms and conditions of the Agreement.
- D. The Consultant may terminate if the project is suspended for more than 90 calendar days.

When the Agreement is terminated, the Client shall reimburse the Consultant for work actually and properly performed by the Consultant up to the date of termination.

The Client has the right to monitor performance, certification, and any subsequent recourse available in the event of default or non-performance by the Consultant.

## 13. ARBITRATION

All disputes arising from this Agreement, shall be referred to a court of competent jurisdiction. Venue for any cause of action shall be in Fayette County, Georgia, or the Northern District of Georgia, as the case may be.

The Client and TSW are independent parties and nothing in this Agreement constitutes either party as the employer, principal, or partner of or joint venture with the other party. Neither the Client nor the Consultant has any authority to assume or create any obligation or liability, either express or implied, on behalf of the other.

14. MISCELLANEOUS

This Agreement is governed by the law of the place where the Project is located. The undersigned agrees to the terms of this Agreement on behalf of their organization or business.

\_\_\_\_\_  
TSW

\_\_\_\_\_  
Town of Tyrone  
Eric Dial, Mayor

-----  
Attest  
Dee Baker, Town Clerk

(Seal)

Date

Date

## EXHIBIT A:

## Downtown Signage Scope of Services

## Downtown Signage Scope of Services

### Task 1: Kick-off Meeting and Work Session

- TSW will conduct a project Kick-off Meeting and Work Session with Town staff and representatives that will include:
  - Review of existing signage – what is working and what is not working
  - Presentation of other municipal signage and wayfinding examples
  - Discussion of three (3) signage types and locations, including colors, character, use of logo, etc.

### Task 2: Concept Signage Design Alternatives

Based on Task 1 meeting and work session, TSW will develop three (3) concept design alternatives for each signage type (monument, wayfinding, and gateway) with preliminary cost estimates.

### Task 3: Presentation of Concept Signage Design Alternatives

TSW will present Concept Signage Design Alternatives and preliminary cost estimates at one (1) Council Meeting to gather feedback and design direction revisions.

### Task 4: Final Concept Signage Design Package

Based on feedback from the Town Council presentation, TSW will refine the Concept Signage Design Alternatives into a Final Concept Signage Design Package with cost estimates.

### Task 5: Presentation of Final Concept Signage Design Package

TSW will present Final Concept Signage Design Package and preliminary cost estimates at one (1) Council Meeting to gather feedback and direction on needed revisions.

### Task 6: Final Deliverables

Based on feedback from the Town Council presentation, TSW will revise the Final Concept Signage Design Package that will include graphics for:

- Town Facility/Park Monument Signs (5 Parks, 1 Community Center, 1 Library, and 1 Museum/Recreation Office)
- Downtown Wayfinding Signage (4 locations/potential variations)
- Downtown Gateway Signage (2 signs that would also include wayfinding elements)



# COUNCIL ITEM AGENDA REQUEST FORM

**Department:** Community Development

**Meeting Date:** 12/07/2023

**Staff Contact:** Phillip Trocquet

**Agenda Section:** New Business

## Staff Report:

### Item Description:

Consideration to approve a contract amendment with SAFEbuilt for Permit Technician and Code Enforcement Services. **Phillip Trocquet, Community Development**

### Background/History:

The Town has faced a prolonged vacancy in the Permit and Compliance Specialist role causing a noticeable decline in the level of service and effectiveness of permit management and code enforcement. Additionally, attracting and hiring qualified individuals for this multi-faceted position has proven to be a significant challenge.

### Findings/Current Activity:

#### 1. PERMIT TECHNICIAN ACTIVITIES

- a. Current Operations: SAFEbuilt, our current firm for building official and building inspector services, receives 60% of building official-associated fees and 100% of Plan Review Fees.
- b. Proposed Operations: Staff is recommending an expansion of SAFEbuilt’s role to include permit tech services. After a review by SAFEbuilt, these additional services would increase their percentage of building official-associated fees to 100%.
- c. Fee Distribution Example (for an average new home)

<i>Fee Type</i>	<b>Standard Fees</b>	<b>Current SAFEbuilt Share (60%)</b>	<b>Proposed SAFEbuilt Share (100%)</b>	<b>Proposed Tyrone Share</b>
<i>Base Residential Fee</i>	\$2,000	\$1,200	\$2,000	\$0
<i>Residential Plan Review Fee</i>	\$1,800	\$1,800	\$1,800	\$0
<i>T-Pole Inspection Fee</i>	\$60	\$36	\$60	\$0
<i>Tyrone Administrative Fee</i>	\$90	\$90	\$90	\$90
<i>Land Disturbance Fee</i>	\$150	\$150	\$150	\$150
<i>Certificate of Occupancy Fee</i>	\$50	\$50	\$50	\$50

d. BUDGETARY IMPACT:

i. Overview:

- 1. SAFEbuilt’s services are ‘a-la-carte’ such that the Town only pays based on the number of permits issued.
- 2. This model differs from other payments because it does not impact the general fund as a cost born by the taxpayers, but by contractors and developers .
- 3. Because of this, SAFEbuilt’s additional 40% capture of fees is completely self-sufficient and does not affect the Town’s bottom line year to year. This makes moving to this model for permit technician services much more efficient for the Town.
- 4. The Town would still net collections on other non-SAFEbuilt related permit fees each year, but at a reduced rate.

2. CODE ENFORCEMENT

a. This contract amendment offers SAFEbuilt to handle all code enforcement activities in Town at a rate of \$60/hour for a minimum of 16 hours/week

i. Minimum annual cost implication is roughly \$50,000

ii. Comparative Analysis

- 1. Budget for Position (Salary, Benefits, Retirement, Training etc. . .): \$65,000
- 2. \$65,000 - \$50,000 = \$15,000 savings that can be flexed for more or less code enforcement services as needed.

b. Additional LOS Benefits:

- i. Level of Service increase to a continuous and consistent level.
- ii. More than doubles code enforcement hours on the street from what employees were previously able to dedicate.
- iii. Familiarity with system/little onboarding
- iv. No interruptions due to sick days or employee turnover.

c. Unrealized Financial Benefits:

- i. Increase in fine revenues to offset some costs.
- ii. Savings through discontinuing the Fayette County IGA of approximately \$3,000/yr.
- iii. Reduction in equipment cost associated with computers, vehicle maintenance and gas, and HR-related expenses.

Is this a budgeted item?   Y   If so, include budget line number: \_\_\_\_\_

**Actions/Options/Recommendations:**

Staff recommends approval of a contract with SAFEbuilt to add Permit Technician and Code Enforcement services.

**TOWN OF TYRONE**

**COUNTY OF FAYETTE**

**INSPECTION SERVICES AGREEMENT**

**THIS INSPECTION SERVICES AGREEMENT** (the "Agreement") made and entered into this 6<sup>th</sup> day of August, 2009 between the TOWN OF TYRONE, acting by and through its Mayor and Council, hereinafter referred to as the "Town", and SAFEbuilt, INC., acting by and through its corporate officers, hereinafter referred to as "SAFEbuilt", for the purpose of SAFEbuilt providing Building Inspection Services to the Town as described herein.

**WHEREAS**, the Town is in need of a party to perform various inspections and review plans for the Town on a regular basis; and

**WHEREAS**, SAFEbuilt is a corporation duly organized under the laws of the State of Georgia and is qualified to perform certain inspections and plan reviews; and

**WHEREAS**, the Town and SAFEbuilt desire by this writing to set forth the terms of their agreement for SAFEbuilt to perform inspections and plan reviews for the Town.

**NOW, THEREFORE**, it is agreed as follows:



1. Plan review.

1.1. SAFEbuilt agrees to review all supporting documents submitted for building permits to insure compliance with all local code and ordinance requirements. The Town agrees to submit complete copies of all supporting documents accompanying applications for building permits to SAFEbuilt. Said copies shall become the property of SAFEbuilt. Drawings that are related to site work will not be required to be reviewed under this work. SAFEbuilt agrees to submit a written record of this review process, including code and ordinance violations identified by SAFEbuilt, if any, to the Town with a recommendation of appropriate action to be taken.

1.2. The Town will pay a fee to SAFEbuilt for each review of plans performed by SAFEbuilt in accordance with this paragraph 1 based upon the schedule attached to this Agreement as Exhibit "A" and incorporated herein by this reference.

2. Inspections.

2.1. SAFEbuilt shall perform on-site inspections of building construction at the request of the Town to insure compliance with the Town's municipal code and its ordinances. SAFEbuilt shall perform all necessary inspections consistent with code and ordinance requirements. SAFEbuilt agrees to submit a written record to the Town as a result of these inspections.

2.2. At the request of the Town, SAFEbuilt shall perform periodic on-site inspections of construction pursuant to permits for plumbing, mechanical and electrical work. SAFEbuilt agrees to submit a written record to the Town as a result of these inspections.

2.3. A fee will be paid to SAFEbuilt for each permit issued (Building, Plumbing, Mechanical, Electrical) based upon the schedule attached to this Agreement as Exhibit "B". Any re-inspection deemed necessary by SAFEbuilt as a result of any one of the standard inspections shall not be part of the initial permit fee. The permittee shall be assessed an additional amount by the Town and SAFEbuilt shall be paid a separate fee by the Town for each necessary re-inspection. SAFEbuilt shall have no responsibility to

seek payment of fees from a permittee. The Town's responsibility to pay fees to SAFEbuilt shall not be contingent on receipt of payment by the Town from a permittee. All inspections shall be made within 24 hours after request.

2.4. On occasion, the Town may choose to waive the fees owed by a builder for the inspection service provided by SAFEbuilt. Should the Town decide to waive any fees owed by a builder for the inspection services provided by SAFEbuilt, the Town shall still pay SAFEbuilt 50% of the fees that would have otherwise been collected from the builder had the fees not been waived by the Town.

3. Payment of fees. SAFEbuilt shall bill the Town monthly for its services. Payment shall be due within 30 days of billing. SAFEbuilt shall be entitled to charge a finance charge of one and one-half (1 1/2%) percent per annum for any charges not paid within thirty days of the billing date.

4. Town Code and ordinances. The Town shall provide SAFEbuilt with a complete set of the current Town Code and accompanying ordinances. Upon adoption of any ordinance or resolution amending the existing Code and

ordinances, the Town shall immediately provide a copy of each new ordinance, resolution, or page(s) of the Town Code to SAFEbuilt.

5. Insurance. SAFEbuilt and its subcontractors shall procure and maintain, at their sole expense, during the term of the Contract, liability insurance as hereinafter specified:

5.1. General Liability and Property Damage Insurance including vehicle coverage issued to SAFEbuilt and protecting SAFEbuilt from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract, whether such operations be by SAFEbuilt or by any Subcontractor employed by SAFEbuilt or anyone directly or indirectly employed by SAFEbuilt or by a Subcontractor employed by SAFEbuilt. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at anytime resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$2,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$500,000 for all property damage sustained by

any one person in any one accident; and a limit of liability of not less than \$1,000,000 aggregate for any such damage sustained by two or more persons in any one accident.

5.2. Only to the extent required by law, Workmen's Compensation Insurance for all of the employees of SAFEbuilt and, in case any Work is sublet, SAFEbuilt shall require such Subcontractor similarly to provide Workmen's Compensation Insurance for all of the respective employees unless such employees are covered by the protection afforded SAFEbuilt.

5.3. SAFEbuilt shall provide evidence satisfactory to the Town that SAFEbuilt has an errors and omissions policy in the face amount of at least \$1,000,000 which covers any errors and omissions in any Work.

5.4. Certificates of insurance acceptable to the Town shall be filed with the Town prior to commencement of the Work. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least fifteen (15) days prior written notice has been given to the Town.

6. Other expenses. No other expenses or allowances are anticipated or allowed except those covered in this Agreement.

7. Term of Agreement.

7.1. This Agreement shall extend for a period of twelve (12) months, and shall be renewed automatically unless written notice to cancel is provided by one party to the other not less than 30 days prior to the anniversary date.

7.2. Should the Town, at any time, determine that a reduction in permit fees is necessary, said reduction shall not be effective until the anniversary date of this Agreement; and further, provided that said reduction shall not be effective unless SAFEbuilt receives not less than 90 days notice prior to the anniversary date of this Agreement of the permit fee reduction.

7.3. SAFEbuilt may submit a request, at any time, to the Town for renegotiating the fee structure as set out by Exhibits "A" and "B" of this Agreement. SAFEbuilt understands that a shift in percentage of payment of permit fees to allow SAFEbuilt a greater percentage or raising permit fees are the only alternatives which would result in SAFEbuilt receiving more

compensation. Either alternative would require approval by the governing body of the Town. Upon reasonable justification shown to the Town by SAFEbuilt for a requested increase in compensation, the Town will determine whether such increase is warranted. Should the Town agree in principle to an increase, SAFEbuilt understands the increase will be effective 60 days from the agreement in principle, so long as approval is forthcoming from the governing body of the Town. Should the Town determine that an increase is not warranted based upon information supplied to the Town by SAFEbuilt and any other relevant information, the level of compensation to SAFEbuilt shall remain unchanged.

8. Miscellaneous.


8.1. Time is of the essence of this Agreement.

8.2. This Agreement shall constitute the entire agreement of the parties.

No representations not contained in the body of said writings have been relied upon or shall be binding upon either of the parties hereto. This Agreement may not be modified except by written agreement signed by both parties.

IN WITNESS WHEREOF, the Town and SAFEbuilt have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

SAFEbuilt, INC.

By: , President

ATTEST:

  
M.P. McCardie Secretary

TOWN OF TYRONE

By:   
DON REHWALDT, Mayor

ATTEST:

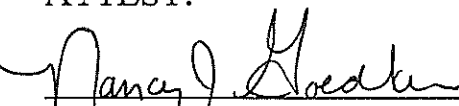
  
Nancy J. Goedker, Town Clerk



Exhibit "A"

Fees for Plan Review

1. The Town shall pay to SAFEbuilt an amount equal to 50% of the permit fee for each project for which plan review is requested.
2. Attendance at meetings of the Town Council or any appointed body thereof shall be billed at the rate of \$75.00 per hour, with a minimum of \$75.00.

Exhibit "B"

Fees for Inspection

1. The Town shall pay to SAFEbuilt 60% of the permit fee for each project.
2. The Town shall pay to SAFEbuilt \$35.00 for every necessary re-inspection performed by SAFEbuilt. The Town shall pay to SAFEbuilt \$50.00 for every subsequent re-inspection of an item which had previously failed at least twice before.
3. Required attendance at meetings of the Town Council or any appointed body thereof, shall be billed at the rate of \$75.00 per hour, with a minimum of \$75.00 per meeting.

**AMENDMENT ONE  
INSPECTION SERVICES AGREEMENT  
BETWEEN TOWN OF TYRON, GEORGIA  
AND SAFEbuilt GEORGIA, LLC**

**This Amendment is entered into to amend the Inspection Services Agreement** previously entered into on August 06, 2009, by and between Town of Tyron, Georgia, (Town) and SAFEbuilt Georgia, LLC, previously known as SAFEbuilt, Inc. and a wholly owned subsidiary of SAFEbuilt, LLC, (SAFEbuilt). Town and Consultant shall be jointly referred to as the “Parties”.

**Amendment Effective Date:** Effective the 1<sup>st</sup> (first) day of the month following full execution by both Parties.

**RECITALS AND REPRESENTATIONS**

Parties entered into an Inspection Services Agreement (Agreement), by which both Parties established the terms and conditions for service delivery on August 06, 2009; and

Parties hereto now desire to amend the Agreement as set forth herein; and

**NOW, THEREFORE**

Agreement is hereby amended as set forth below:

A. Agreement, is amended by adding the following services:

Permit Technician Services

- ✓ Provide qualified individuals to perform the functions of this position
- ✓ Facilitate the permitting process from initial permit intake to final issuance of permit
- ✓ Review submittal documents and request missing information to ensure packets are complete
- ✓ Provide front counter customer service as necessary
- ✓ Answer questions concerning the building process and requirements at the counter or over the phone
- ✓ Form and maintain positive relationships with Municipal staff and maintain a professional image
- ✓ Determine permit fees, if requested
- ✓ Work with Municipal Clerk to facilitate Freedom of Information Act (FOIA) requests, if requested
- ✓ Provide inspection scheduling and tracking to ensure code compliance
- ✓ Act as an office resource to inspectors in the field
- ✓ Process applications for Municipal Boards and Commissions – if requested
- ✓ Provide input, tracking and reporting to help increase efficiencies

Code Enforcement Services

- ✓ Customize our approach at the direction of Municipal Council/Board and staff
- ✓ Customize services in compliance with applicable Municipal code and ordinance requirements
- ✓ Proactively work with Municipality and its citizens to maintain a safe and desirable community
- ✓ Respond to and investigate code violations as requested in writing by Municipality
- ✓ Post violation notices and provide initial citizen notifications and follow-up inspections
- ✓ Address specific code enforcement issues at the direction of Municipality
- ✓ Assist in the preparation of cases for court appearances and attend meetings as requested
- ✓ Participate in educational activities and customer service surveys related to code enforcement
- ✓ Provide professional recommendations for code revisions – as needed
- ✓ Make presentations to Municipal boards as requested
- ✓ Provide agreed upon reports to demonstrate our performance against set measurements

Community Core Solutions Terms and Conditions

- ✓ Provide Community Core in accordance with the terms and conditions of Exhibit C, attached and herein incorporated by reference.

B. Agreement, Exhibit A, Fees for Plan Review is revised as follows:


- 1. The Town shall pay to SAFEbuilt an amount equal to 100% of the permit fee for each project for which plan review is requested.

C. Agreement, Exhibit B, Fees for Inspection is revised as follows:

- 1. The Town shall pay to SAFEbuilt 100% of the permit fee for each project. Permit Technician Services are included in the percentage of fee.
- 4. The Town shall pay SAFEbuilt for Code Enforcement Services at the hourly rate of \$60.00 with sixteen (16) hour minimum per week.
- 5. Community Core Solutions software is provided at no cost to the Town.
- 6. The Town shall pay SAFEbuilt for "Specific Projects" at the hourly rate of \$95.00 with a one (1) hour minimum. Both parties must agree

**All other provisions of the original Agreement shall remain in effect, to the extent not modified by Amendment.**

IN WITNESS HEREOF, the undersigned have caused this Amendment to be executed in their respective names on the dates hereinafter enumerated.

  
 Gary Amato, CAO  
 SAFEbuilt Georgia, LLC

September 01, 2023  
 Date

\_\_\_\_\_  
 Signature  
 Town of Tyrone, Georgia

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Name & Title  
 Town of Tyron, Georgia

Meritage Systems CommunityCore: Description of Services

TOWN OF TYRON, GEORGIA

This order form is subject to the [terms of service](#) and [privacy policy](#).

Meritage reserves the right to amend the terms of service and privacy policy at any time and without prior notice.

Applications and Services		One-Time Set-Up Fee	Annual Support and Licensing Fee	Number of Users
<b>CommunityCore</b> Including InspectorConnect iOS mobile app for building and code inspections	<input checked="" type="checkbox"/>	\$0.00	\$0.00	3
<b>Legacy Data Import: Permitting</b> Transfer of historical permit data from legacy system, assumes availability of readable data file or CSV	<input type="checkbox"/>	\$	\$	
<b>GIS Integration: Permitting</b>	<input type="checkbox"/>	\$	\$	
<b>Contractor &amp; Business Licensing</b>	<input checked="" type="checkbox"/>	\$	Included	
<b>CommunityConnect Online Permitting</b> Anywhere, anytime access for contractors to apply for permits, pay fees, check status, request inspections and upload plans	<input checked="" type="checkbox"/>	\$0.00 Includes Setup of CommunityCore Preferred Merchant Account for Credit Card Processing	\$0.00	3
<b>Online Payments</b> Non-Preferred Merchant Account: additional fee if Meritage Systems is not a preferred provider	<input checked="" type="checkbox"/>	\$	NA	
<b>System Training</b>	<input checked="" type="checkbox"/>		NA	
<b>Total:</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>3</b>

**CommunityCore Permit Management Features:**

**PAYMENT SHALL BE PURSUANT TO SECTION 5**

- Permitting and Inspection Management
- Address Import Setup
- Inspections (including mobile access & when available, InspeotrConnect app for iOS tablets)
- Contractor and Business Registration
- Plan Review Tracking and simple Planning/Zoning permits and workflow
- Reporting and Data Import/Export
- Complete configuration of permit type, terminology, fee structures, documents and user roles and permissions
- Permit Documents: Standard set of Permits, CO, TCO configured with your jurisdiction logo and information
- Customs Documents: Available for an additional charge
- Reports: Library of standard reports
- Custom Reports: Available for an additional charge
- Online Training for startup and post startup, ongoing and customer support
- Personalized support, including configuration updates
- Automatic updates of new features

These Service Terms of Use (“Agreement”) constitute a contract between Meritage Systems, Inc., with Cleveland Ave., Suite 444, Loveland, CO 80537 (“Meritage”), and you (“Customer”). This Agreement includes and incorporates the Order Form with which Customer purchased the Services and any subsequent Order Forms (submitted in written or electronic form), our Privacy Policy and our Copyright Policy. By accessing or using the Services, you agree to be bound by this Agreement. If you are entering into this Agreement on behalf of a company, organization or other entity, you represent that you have such authority to bind such entity and are agreeing to this Agreement on behalf of such entity. If you do not have such authority to enter into this Agreement or do not agree with these terms and conditions, you may not use the Services. Meritage reserves the right to revise this Agreement from time to time, at our sole discretion. By accessing or using the Services after such revisions, you agree to be bound by the revised Agreement.

**1. Definitions. For purposes of this Agreement the following terms have the following meanings:**

- a. “Account” means an account allowing access to the Services created in Customer’s name.
- b. “Fees” means the fees for the Services.
- c. “Confidential Information” means (a) all nonpublic information disclosed or made available under this Agreement that relates to the provision or receipt of the Services or either party’s financial condition, operations or business, and which is clearly identified as confidential at the time of disclosure, (b) the Technology, (c) the Documentation, (d) the Customer Information that is not publicly available, and (e) the User IDs.
- d. “Customer Information” means all data, information or other content entered by or collected from Customer or any User that is entered into the Services by Customer or any User while accessing the Services. Customer Information includes any third-party information collected by Customer or any User and entered into the Services.
- e. “Documentation” means the online help files and instruction manuals (whether in print or electronic form) that relate to the use of the Services that have been provided or made available by Meritage to Customer.
- f. “Go-Live Date” means the date on which the Services, hosted on a Production Server, become active.
- g. “Intellectual Property Rights” means any and all intellectual property rights throughout the world, including, without limitation, any and all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and any and all other legal rights protecting intangible proprietary information.
- h. “Order Form” means the form executed by the parties that describes the Services and any setup fees associated with the Services.
- i. “On-boarding” means the Set-Up and the Training, as specified in the Order Form.
- j. “Production Server” means the server on which the Services will be hosted.
- k. “Start of Service Date” is the date of commencement of operation of the services by Customer or 120 days following the Effective Date, whichever is first.
- l. “Services” means the publicly-available, online building department services provided by Meritage through its CommunityCore application, which can be accessed through the web site located at [www.app.communitycore.com](http://www.app.communitycore.com) and such other sites as may be designated by Meritage (each, the “Site” or collectively, the “Sites”).
- m. “Set-Up” means defining workflows and permit types, entering fee schedules and setting up Users. The purpose of Set-Up is to configure the Production Server on which the Services for Customer will be hosted.
- n. “Set-Up Fees” means the fees for Set-Up specified in the Order Form.
- o. “Subscription Fees” means the annual subscription fee specified in the Order Form.
- p. “Technology” means the software, hardware and other technology used by or on behalf of Meritage to provide the Services, and all data, information and other content included on or accessible through the Services, except for any Customer Information.
- q. “Training” means the services intended to familiarize Users on the use of the Services, as described in Section 4, and to verify configuration of the Production Server.
- r. “User ID” means each unique User identification name and password used for access to and use of the Services through the Account.
- s. “User” means anyone accessing the Services through Customer’s Account.

**2. Customer’s Access To And Use Of The Services.**

- a. Customer’s Right to Access the Services. Subject to the terms of this Agreement Meritage grants to Customer a limited, non-exclusive, non-transferrable license to access and use the Sites and Services as specified in the Order Form during the term of this Agreement, solely for Customer’s own internal business purposes. Except as set forth in this Agreement, Customer is not receiving any right or license to use, or any ownership interest with respect to, the Sites, Services or any Technology or Intellectual Property related to the Sites or Services. Customer acknowledges that the Services are hosted by third-party hosting providers contracted by Meritage. Meritage reserves the right to change hosting provider from time to time and without notice to Customer.

- b. Certain Restrictions on Customer’s Access. Customer will not, and will not permit any Users or any download or otherwise obtain a copy of the Technology in any form; (b) reverse engineer or otherwise derive the source code of the Service, Sites or Technology or otherwise modify, reverse compile, disassemble, or translate the Service, Sites or Technology or create any derivative works thereof; or (c) use the Service on behalf of any third party or for any purpose other than as described in this Agreement; (d) sell, lease, license, sublicense, distribute or otherwise transfer in whole or in part the Service or use it as a service bureau; (e) post, send, process or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material violating of third party rights; (f) post, send, process or store material containing software viruses, worms, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (g) interfere with or disrupt the integrity or performance of the Service or attempt to gain unauthorized access to the Service or related systems or networks; (h) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the IP Rights and/or Licensor’s rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the software or on any copies made in accordance with this Agreement; (i) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the intellectual property rights and/or Licensor’s rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the Service, or Documentation, or on any copies made in accordance with this Agreement; (j) use, or authorize or permit the use of, the Service except as expressly permitted herein; (k) use the Service to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortuous, or defamatory, nor to perform any activity which breaches the rights of any third party.
- c. Customer’s Use of the Services. (1.a) Accounts/User IDs. Customer will be provided with one or more User IDs to access the Services through the Account. Your Order Form specifies the number of user IDs and Read-Only IDs provided by Meritage to Customer under this agreement (“Subscription Cap”). Each User ID shall be linked to a single User and Customer agrees to limit usage of a User ID to the individual to which the User ID is assigned. Customer may request to increase the number of Users and the parties shall establish the terms under which such additional Users will be added. Customer shall use, and shall ensure that Users use, commercially reasonable efforts to ensure the security and confidentiality of all User IDs. In the event that the confidentiality of a User ID is or may be compromised, Customer shall promptly advise Meritage of the potential or actual compromise. Customer shall be responsible for the use of a User ID by unauthorized users. (1.b) Customer Information. Customer represents and warrants that it has all necessary intellectual and proprietary rights and licenses in and to any Customer Information to permit (i) it and its Users to enter Customer Information into the Services and (ii) to permit Meritage to perform the Services. Customer hereby grants to Meritage a fully paid-up, non-exclusive license to use, reproduce and create derivative works of the Customer Information as reasonably required to perform the Services. (1.c) Necessary Equipment. The Services are provided through the internet and Users must have an internet connection in order to access the Services. Meritage does not provide internet connectivity. Customer will be solely responsible, at Customer’s own expense, for acquiring, installing and maintaining all telecommunication services, hardware, software and other equipment as may be necessary for Customer and Customer’s Users to connect to, access, and use the Services. Currently, the services may be accessed through the Chrome browser or the iOS mobile app provided they have been maintained to versions supported during the three-year period prior to the date on which access is sought. (1.d) Customer will not use and will not authorize any User to use any open source software in connection with the Services in any manner that requires, pursuant to the license applicable to such open source software, that any Meritage Confidential Information or the Services be (A) disclosed or distributed in source code form, (B) made available free of charge to recipients, or (C) modifiable without restriction by recipients. (1.e) By using the Services, Customer agrees to be bound by the terms of [Meritage’s Copyright Policy](#), which terms may be revised by Meritage at its sole discretion. By using the Services after the effective date of any such revision, Customer expressly agrees to be bound by the terms of the revised Copyright Policy.
- d. Meritage will use reasonable commercial efforts to ensure that the Services perform substantially in accordance with the description of the services found at [www.app.communitycore.com](http://www.app.communitycore.com). The Services are subject to modification from time to time at Meritage’s sole discretion, provided the modifications do not materially diminish the functionality of the Services provided by Meritage.
- e. Meritage will use reasonable commercial efforts to make the Services available to Customer and its Users. Notwithstanding the foregoing, Meritage reserves the right to suspend Customer’s (or any of its Users’) access to the Services: (i) for scheduled or emergency maintenance, (ii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due to Meritage, and fails to correct that breach within the applicable cure period; (iii) in the event that Customer breaches Section 2.2 or Section 7.2 of this Agreement or (iv) as it deems reasonably necessary to respond to any actual or potential security concerns.

- f. Customer acknowledges that the Services will require the Users and third parties for whom the Services are performed by Customer to share with Meritage certain information for the purposes of providing the Services. This information may include personal information (such as email address, and/or phone number) regarding the Users or such third parties which Meritage will use for the purposes of providing the Services. Customer is fully responsible for obtaining the consent of each User and any third party to the use of his/her information by Meritage for purposes of providing the Services. Such use will be subject to and governed by the terms of Meritage's Privacy Policy, the current version of Meritage's privacy policy is available [here](#). Meritage reserves the right to revise the Privacy Policy at its sole discretion. By using the Services after the effective date of any such revision, Customer expressly agrees to be bound by the terms of the revised Privacy Policy.
- g. Customer will be fully responsible for Users' compliance with this Agreement. Any breach of this Agreement by a User shall be deemed to be a breach by Customer. Customer will promptly advise Meritage in the event that any User or third party revokes such consent or ceases to be a User. Customer is solely responsible for determining whether the Services are sufficient for Customer's purposes.

**3. Set-Up.**

- a. Set-Up Services. Subject to the terms of this Agreement Meritage will provide Customer with the Set-Up services as described in the Order Form. Except to the extent provided in the Order Form, no such services will be provided. Customer Responsibilities and Certain Restrictions on Set-Up. Customer is responsible for providing information in a timely manner and in an appropriate format to allow Meritage to provide the Set-Up and for ensuring the Customer resource(s) assigned to provide support to Meritage in performing the Set-Up, along with all Users, have adequate computer skills to perform their tasks. Set up support required beyond the specified Set-Up shall be arranged upon the agreement of the parties and will incur an additional fee. Acceptance. The purpose of Set-Up is to configure the Services for availability on the Go-Live Date. During the Training, Customer will have the opportunity to evaluate the Set-Up and note any configuration errors. Upon discovery of an error, Customer will notify Meritage of the necessary configuration changes and Meritage will modify Set-Up to make the requested changes. Upon completion of Training and prior to the Go-Live Date, Customer shall review and accept the Services by executing a form of acceptance provided by Meritage. Customer acknowledges and accepts that configuration of the Services is limited to the extent accommodated by the current capabilities and limitations of the Services.

**4. Training.**

- a. Training Services. Subject to the terms of this Agreement, Meritage will provide Customer with the Training services as described in the Order Form. Except to the extent provided in the Order Form, no such services will be provided.
- b. Delivery. All Training will be provided by Meritage using WebEx or an equivalent service agreed by the parties. Meritage will create a Training site for Customer and its Users to use for Training. In addition to WebEx training, the Training website will provide access to online documentation and training videos that may be accessed by Customer and its Users. Customer and its Users may access the Training web site on an unlimited basis through the Go-Live Date. Customer acknowledges that the Training website may not be available at all times and that Meritage shall have no liability as a result of the unavailability of the Training website.
- c. Customer Responsibilities and Certain Restrictions. Customer is responsible for providing information in a timely manner and in an appropriate format to allow Meritage to provide the Training and for ensuring the Customer resource(s) assigned to provide support to Meritage in performing the Training, along with all Users, have adequate computer skills to perform their tasks.
- d. Verification of Set-Up. Customer acknowledges that a primary purpose of the Training website is to verify functionality of the Services prior to the Go-Live Date. Customer will have the opportunity to evaluate the Set-Up and note any configuration errors. Upon discovery of an error, Customer will notify Meritage of the necessary configuration changes and Meritage will modify Set-Up to make the requested changes to the Training website.

**5. Fees And Payment.**

- a. Fees. On the Effective Date, Customer will pay Meritage the Set-Up Fee as specified in the Order Form for Set-Up. In addition, on the Start of Service Date and ending upon the termination of this Agreement, Customer will pay to Meritage the Subscription Fees as specified in Order Form, plus all applicable sales, use and other purchase related taxes (Customer shall be responsible for timely providing Meritage with a valid certificate of exemption from the requirement of paying sales, use or other purchase related taxes). Unpaid Fees are subject to a finance charge of one percent (1.0%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys' fees. In the case of any withholding requirements, Customer will pay any required withholding itself and will



not reduce the amount paid to Meritage on account thereof. In the event that Customer elects to increase the number of Users, the parties shall meet to discuss the impact on Set-Up and Subscription Fees. The Subscription Fees may be increased on an annual basis, as determined by Meritage, provided that any pricing increase will not exceed seven percent (7%) of the Subscription Fees per User for the immediately prior Term, unless the pricing was designated in the applicable Order Form as promotional or one-time. Meritage will provide 30 days advance notice of any increase in the Subscription Fees. By using the Services after the increase in the Subscription Fees becomes effective, Customer agrees to be bound by such new Subscription Fees. FEES AND FEE RATES ARE TO BE CONSIDERED CONFIDENTIAL BY BOTH PARTIES AND NOT TO BE SHARED WITH ANY THIRD PARTY WITHOUT WRITTEN PERMISSION OR AS REQUIRED BY LAW.

- b. Payment. All Set-Up Fees, Subscription Fees and other fees due under this Agreement (collectively, "Fees") are payable in U.S. dollars, unless otherwise specified in writing. Except for the Set-Up Fee, which shall be paid prior to the performance of Set-Up, Customer shall pay all Fees and any other amounts set forth on each such invoice issued by Meritage under this Agreement within 30 days of the date of invoice. Fees are payable in advance and are non-refundable. In the event that Customer disputes the amount of any Fees, it shall so notify Meritage within the 30-day payment period. The failure to provide such notice shall be deemed agreement that the Fees are undisputed.

## 6. Confidentiality.

- a. Obligations. Each party acknowledges that by reason of the relationship created between the parties by this Agreement, it may have access to certain non-public information of substantial value concerning the other party's business, operations, strategic plans, customers, suppliers, technology, competition and employees. Accordingly, each party as the recipient of Confidential Information (the "Receiving Party") from the other party (the "Disclosing Party") will not use any Confidential Information of the Disclosing Party for any purpose other than the providing and receipt of Services under this Agreement. The parties agree the use of the Confidential Information will be in accordance with all terms and conditions of this Agreement. The Receiving Party will not disclose the Confidential Information of the Disclosing Party to any third party except as expressly provided herein and will protect the Disclosing Party's Confidential Information from unauthorized use, access or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Either party may disclose the Confidential Information of the other party to the Receiving Party's employees, subcontractors and advisors who require access to such information for the performance of their obligations, all provided that the employees, subcontractors and/or agents have entered into confidentiality agreements with the Receiving Party that are at least as protective of the Disclosing Party's Confidential Information as are the terms of this Agreement. The Receiving Party shall be responsible for any disclosure or use of the Disclosing Party's Confidential Information by or through any employee, subcontractor or agent of the Receiving Party. For the avoidance of doubt, Customer acknowledges that Meritage utilizes the services of certain third parties in connection with the provision of the Services (such as data hosting) and such third parties will have access to Customer's Confidential Information, subject to compliance with this Section 6. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party; (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that, to the extent permitted by law, the Receiving Party notifies the Disclosing Party of such required disclosure in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.
- b. Termination of Obligations. The Receiving Party's obligations under this Section 6 with respect to maintaining the confidentiality of any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party and is not subject to restrictions on disclosure and/or use; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. The restrictions on use of the Disclosing Party's Confidential Information shall remain in effect for five years subsequent to the earlier of the termination of this Agreement or the date on which the obligation to maintain the Confidentiality of the Disclosing Party's Confidential Information terminates.
- c. Return of Confidential Information. The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the termination of this Agreement, whichever comes first. At the Disclosing Party's request, the Receiving Party will certify in writing

that it has fully complied with its obligations under this Section 6.3. For the purposes of this Section 6 in Section 7 below, shall not be considered Customer’s Confidential Information.

- d. Remedies. Each party acknowledges that any breach of any of its obligations with respect to the other party's Confidential Information may cause or threaten irreparable harm to such party. Accordingly, each party agrees that in such event, the aggrieved party shall be entitled to seek equitable relief in any court of competent jurisdiction without the necessity of posting bond and in addition to such other remedies as may be available to the aggrieved party under law or in equity.
- e. Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, provided that the terms and conditions may be disclosed if such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis to potential investors or acquirers in Meritage or any entity directly or indirectly controlling the majority voting interest in Meritage.

**7. Ownership.**

- a. Customer’s Ownership. Customer retains all right, title and interest in and to the Customer Information Customer or its Users provide to Meritage, other than such information that is subject to disclosure under applicable freedom of information laws and regulations. During the termination notice period specified in Section 9, Meritage will provide Customer Information in the form of Meritage native format files containing permit data to Customer within 10 business days of receipt of a written request for that Customer Information, all at no additional charge.
- b. Meritage’s Ownership. Meritage retains all right, title and interest in and to, and all Intellectual Property Rights embodied in or related to the Sites, Services, Technology, and any other information or technology used or made available in connection with the Sites or Services, including without limitation any and all improvements, updates, and modifications thereto, whether or not made in conjunction with this Agreement. Meritage’s name, logo, and the product and service names associated with the Services are trademarks of Meritage or third parties, and no right or license is granted to Customer to use them separate from Customer’s right to access the Services. In the event that Customer or any End User makes any suggestions for the addition of features to, or the improvement of the Services (“Feedback”), Meritage shall, to the maximum extent permitted by law, own all such Feedback, including any Intellectual Property Rights therein, and shall have the right to use such Feedback for any purpose without payment or accounting to Customer or any End User. Customer and/or End User agree to execute any and all materials reasonably required by Customer to perfect Customer’s ownership in such Feedback and Intellectual Property Rights, all at Meritage’s expense.

**8. Data.**

- a. Meritage will have the right to collect non-personally identifiable data and anonymized information resulting from Customer Information and Customer’s use of the Services ("Customer Data") for purposes of (i) benchmarking of Customer’s and others performance relative to that of other groups of customers served by Meritage (for the avoidance of doubt, Customer Data will be provided to third parties only as part of a larger body of anonymized data); (ii) sales and marketing of existing and future Meritage services; (iii) monitoring Service performance and making improvements to the Services and Sites.
- b. Backup and Recovery. Meritage shall provide, either directly or through its hosting partner, the following recovery services: 7.2.1 Hosting infrastructure recovery processes 7.2.2 Application recovery processes 7.2.3 Data backup with rotation and retention. Backups are done daily, the prior month of daily data is retained, each month is retained for a year, and each year retained until termination of the agreement.

**9. Term and Termination.**

- a. This Agreement will begin on the Effective Date and will continue in perpetuity until terminated in accordance with the terms of this Agreement or the applicable Order Form. Upon the expiration of the initial term, if any, specified in the Order Form, Customer may terminate this Agreement upon not less than 90 days advanced written notice to Meritage. Except with respect to a failure to timely make any payments required under this Agreement, either party may terminate this Agreement if the other party breaches this Agreement and does not cure such breach within 60 days after being provided with written notice thereof, provided that in the case of Customer such time period will be extended beyond 60 days if Customer is exercising reasonable efforts to cure such breach during such 60-day period. With respect to the failure to timely make any payments, Meritage shall have the right to suspend access to the Services and Sites or, at its option, to terminate this Agreement, in the event that Customer fails to make any required payment

within five (5) business days after receipt of notice that the payment is past due. Upon any termination of this Agreement: (a) all rights and licenses granted to Customer in this Agreement will immediately terminate and Customer shall immediately cease to use the Services and Sites; (b) Meritage will cease performing all Services; (c) all access by Customer and any Users to the Sites and the Services (including all Customer Information) will be suspended; (d) Meritage will discontinue all use of the Customer Information; and (e) all Fees and other amounts incurred under this Agreement prior to such termination or expiration will become immediately due and payable by Customer. Upon the request of Customer following any termination or expiration, Meritage will transfer all Customer Information collected by Meritage either directly to Customer or to Customer’s identified third-party partner. Customer shall compensate Meritage for the transfer on a time and materials basis at Meritage’s then-current rates and will reimburse all reasonable expenses and costs associated with the transfer. Such expenses and costs shall include, without limitation, travel, consultant costs, hardware expenses, and software costs associated with efforts involved in preparing Customer Information for transfer as well as any costs incurred as part of the physical transfer of Customer Information. Meritage will not be required to issue any refunds for any unearned Fees paid in advance. The provisions of Sections 2.2, 2.3 (section 2.3(b) and as necessary to complete the return of Customer Information), 2.6, 2.7, 5, 6, 7, 8, 9, 10, 11 and 12 of this Agreement will survive termination of the Agreement for any reason.

**10. Warranties and Disclaimers.**

- a. Warranties. Each party represents and warrants to the other party that: (a) such party has all requisite corporate or other applicable power and authority to execute, deliver and perform its obligations under this Agreement; and (b) the execution, delivery and performance of this Agreement by such party has been duly authorized; and will not conflict with, result in a breach of, or constitute a default under any other agreement to which such party is a party or by which such party is bound;
- b. Disclaimers. EXCEPT AS STATED UNDER THIS AGREEMENT, MERITAGE PROVIDES THE SERVICES “AS IS” AND “AS AVAILABLE” AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, TITLE AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS RELIED ON NO SUCH WARRANTIES IN ENTERING INTO THIS AGREEMENT. MERITAGE DOES NOT WARRANT THAT THE SERVICES WILL BE FREE FROM LOSS OR LIABILITY INCLUDING THAT ARISING OUT OF ANY THIRD-PARTY TECHNOLOGY, THIRD PARTY ACTION, SUCH AS UNAUTHORIZED ACCESS BY ANY THIRD PARTY, OR ANY ACT OR OMISSION OF CUSTOMER. MERITAGE EXPRESSLY DISCLAIMS ANY WARRANTY OR LIABILITY WITH RESPECT TO COMPLIANCE WITH LAWS, RULES OR REGULATIONS APPLICABLE TO CUSTOMER, WHICH SHALL BE THE SOLE RESPONSIBILITY OF CUSTOMER. MERITAGE DOES NOT WARRANT THE ACCURACY, RELIABILITY OR COMPLETENESS OF customer materials or ANY ADVICE, REPORT, DATA OR DELIVERABLES OBTAINED BY CUSTOMER FROM THE CUSTOMER MATERIALS SUBMITTED TO THE SERVICES, SUCH ADVICE, REPORTS, DATA OR DELIVERABLES ARE PROVIDED “AS IS” AND MERITAGE SHALL NOT BE LIABLE FOR ANY INACCURACY THEREOF. MERITAGE SHALL NOT BE RESPONSIBLE OR LIABLE FOR: (A) ANY DAMAGES IF, AND TO THE EXTENT, CAUSED BY CUSTOMER’S FAILURE TO PERFORM ITS OBLIGATIONS, AS SET FORTH IN THIS AGREEMENT OR AN ORDER FORM; (B) ANY CORRUPTION, DAMAGE, LOSS OR MIS-TRANSMISSION OF CUSTOMER MATERIALS, UNLESS SUCH TRANSMISSION IS THE RESPONSIBILITY OF MERITAGE; OR (C) THE SECURITY OF CUSTOMER MATERIALS DURING TRANSMISSION FROM CUSTOMER’S FACILITIES TO THE CLOUD PLATFORM. Customer acknowledges that the Services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Meritage is not responsible for any delays, failures, or other damage resulting from such problems.
- c. Customer represents and warrants that it: (A) owns or has the right to use all Customer Information and to submit and store such Customer Information on the Site and the infrastructure supporting the Site and Services; and (B) has all necessary licenses and permissions for usage of any third-party software or other information or material supplied or provided by Customer to Meritage in an Order Form or otherwise used in connection with the Services. Customer hereby grants to Meritage the right to use all Customer Information, including any third-party software solely for the purposes of this Agreement, including any Order Form, and the performance of Meritage’s obligations hereunder and any Order Form.

**11. Certain Liabilities, Limitation of Liability.**

- a. Customer will, at Customer’s own expense, indemnify, defend, hold harmless against, and pay all costs, damages and expenses (including reasonable attorneys’ fees) awarded against or incurred by Meritage based on, any claims, allegations or lawsuits that may be made or filed against Meritage by any person to the extent arising from or relating to any breach by Customer of any representation and warranty under this Agreement; or (b) alleging that use by

Meritage in accordance with this Agreement of Customer Information, Customer Data or Customer Information infringes or misappropriates the Intellectual Property Rights of, or has caused harm or damage to, a third party.

- b. **Limitation of Liability.** EXCEPT TO THE EXTENT ARISING FROM A BREACH OF CONFIDENTIALITY OR OF SECTIONS 2.2 OR 7, OR AS ARISING UNDER OBLIGATIONS OF INDEMNIFICATION, IN NO EVENT WILL EITHER PARTY, INCLUDING ITS VENDORS, HOSTING SERVICE PROVIDERS, OR ITS LICENSORS, BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA, OR PROFITS, OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE OR OTHERWISE), ARISING IN ANY WAY IN CONNECTION WITH OR OUT OF THE USE OF THE SITES OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT TO THE EXTENT ARISING FROM A BREACH OF CONFIDENTIALITY OR OF SECTIONS 2.2 OR 7, OR AS ARISING UNDER OBLIGATIONS OF INDEMNIFICATION OR CUSTOMER'S OBLIGATION TO MAKE PAYMENTS, EACH PARTY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SITES OR THE SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID TO MERITAGE HEREUNDER AS OF THE DATE OF THE ACT OR OMISSION GIVING RISE TO THE LIABILITY. EACH PARTY ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT NEITHER PARTY WOULD ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. IN JURISDICTIONS WHERE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES IS NOT PERMITTED, EACH PARTY'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## 12. General Provisions.

- a. Notwithstanding anything else, Customer may not provide to any person an export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.
- b. This Agreement will be binding upon the parties to this Agreement and their permitted successors and assigns. Neither party may assign, delegate or transfer this Agreement or any of its rights or obligations (in whole or in part) under this Agreement (whether by operation of law or otherwise) to any third party without the other party's prior written consent. Notwithstanding the foregoing, either party may assign this agreement to any successor in interest to such party's stock, assets or business, whether by way of sale, merger, reorganization or other form of transaction, provided that such party provides the other party with notice of such assignment and that the successor in interest agreed in advance to assume all right, obligations, liabilities, and responsibilities of the assigning party under this Agreement. Any assignment or transfer in violation of the foregoing shall be null and void.
- c. Nothing in this Agreement confers or is intended to confer, expressly or by implication, any rights or remedies upon any person or entity not a party to this Agreement.
- d. This Agreement shall be governed by and construed in accordance with the laws of Colorado without regard to conflicts of law principles. Customer agrees that it will only bring any action or proceeding arising from or relating to this Agreement in a federal court in the District of Colorado or in state court in Larimer County, Colorado, and Customer irrevocably submits to the personal jurisdiction and venue of any such court in any such action or proceeding or in any action or proceeding brought in such courts by Meritage.
- e. The parties hereto are independent parties, not agents, employees or employers of the other or joint ventures, and neither acquires hereunder any right or ability to bind or enter into any obligation on behalf of the other.
- f. Any notice to the other party required or allowed under this Agreement must be delivered in writing by express courier, personal delivery, or by certified mail, postage pre-paid to the address for the party listed in the first paragraph of this Agreement.
- g. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.
- h. Meritage may use Customer's name as a reference and publicize Customer as a customer of Meritage.
- i. Unless otherwise amended as provided herein, this Agreement will exclusively govern Customer's access to and use of the Services and the Sites and is the complete and exclusive understanding and agreement between the parties, and supersedes any oral or written proposal, agreement or other communication between the parties, regarding Customer's access to and use of the Services and the Sites. This Agreement may be amended or modified only by a writing signed by both parties.
- j. All waivers under this Agreement must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.