



## Newnan City Council Meeting

JULY 20, 2021

Newnan City Hall

Richard A. Bolin Council Chambers

25 LaGrange Street

6:30 PM

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### CALL TO ORDER

### INVOCATION

### READING OF MINUTES

- [A.](#) Minutes from Regular Meeting on June 15, 2021

### REPORTS OF BOARDS AND COMMISSIONS

- B. 1 Appointment- Convention Center Authority, 3 year term
- C. 3 Appointments- Cultural Arts Commission, 3 year term
- D. 2 Appointments- Keep Newnan Beautiful, 3 year term
- [E.](#) DDA Recommendation- City Council to Consider Ordinance Amendment to Allow Retail Alcohol License Holders to Host Tasting Events

### REPORTS ON OPERATIONS BY CITY MANAGER

- F. 3 Appointments- Retirement Board

### REPORTS AND COMMUNICATIONS FROM MAYOR

### NEW BUSINESS

- [G.](#) Public Hearing- Application for Alcohol Beverage License- Cracker Barrel Old Country Store, Inc. dba Cracker Barrel- Retail On Premise (Pouring) Sales of Malt Beverages and Wine- 527 Bullsboro Dr. - Reason: New Business
- [H.](#) Public Hearing- 2021 Update to the Capital Improvements Element, Including 2021 Update to the Short-Term Work Program
- [I.](#) Consideration of Directing Staff to Release Request for Proposals for the Abatement and Demolition of Facilities at 57 E. Broad St.
- [J.](#) Consideration of Resolution to Amend the 2021 Pay Plan
- [K.](#) Consideration of an Ordinance to Amend Section 3-25, Consumption and Sales on Public Property and Section 3-67, Growlers, of Chapter 3 Alcoholic Beverages of the Code of Ordinances
- [L.](#) Consideration of Ordinance to Regulate the Sale of Distilled Spirits
- [M.](#) Consideration of MEAG Contract Approval for Purchase of Energy from Solar Project
- [N.](#) Consideration of an Update to the City of Newnan's Code of Ordinances in regards to adding two (2) additional permissive codes as adopted and amended by the State of Georgia DCA.

### UNFINISHED BUSINESS

- [O.](#) 2nd and Final Reading- Ordinance to Amend the 2020 Budget for Special Revenue Funds

- P. Consideration of an Intergovernmental Agreement Between Coweta County and the City of Newnan, Relating to Master Planning and Potential Redevelopment of Certain Blocks of the Eastside of Downtown
- Q. Consideration of Adopting Section 3 Policies and Two Resolutions Associated with the FY2021 Community Home Investment Program (CHIP) Grant Award regarding program design, policies/procedures, homeowner eligibility and rehabilitation standards
- R. Public Hearing for the City of Newnan's Comprehensive Plan Update 2021-2041, second of two to be held

Full Comp Plan document available:

<https://www.dropbox.com/s/d0t8y6d23opuu08/Draft%20City%20of%20Newnan%20Comprehensive%20Plan%202021-2041.pdf?dl=0>

- S. Public Hearing - 62 Murray St - Resolution to Repair or Demolish
- T. Public Hearing - 29 Westgate Park Ln - Resolution to Repair or Demolish

#### **VISITORS, PETITIONS, COMMUNICATIONS & COMPLAINTS**

- U. Request from the Newnan Junior Service League to host their Annual Can-A-Thon on the square on Tuesday, November 30th

#### **MOTION TO ENTER INTO EXECUTIVE SESSION**

- V. Motion to Enter into Executive Session

#### **ADJOURNMENT**

The regular meeting of the City Council of the City of Newnan, Georgia was held on Tuesday, June 15, 2021 at 6:30 p.m. in the Richard A. Bolin Council Chambers of City Hall with Mayor Keith Brady presiding.

**CALL TO ORDER**

Mayor Brady called the meeting to order and delivered the invocation.

**PRESENT**

Mayor Keith Brady: Council members present: Rhodes Shell, George Alexander; Ray DuBose, Cynthia Jenkins, Paul Guillaume. Absent- Dustin Koritko. Also present: City Manager, Cleatus Phillips; Assistant City Manager, Hasco Craver; City Clerk, Megan Shea; Planning Director, Tracy Dunnivant; City Engineer, Michael Klahr; City Attorney, Brad Sears and Police Chief, Douglas "Buster" Meadows.

**MINUTES – REGULAR COUNCIL MEETING – MAY 25, 2021**

Motion by Councilman Guillaume, seconded by Councilman DuBose to dispense with the reading of the minutes of the Regular Council meeting on May 25, 2021 and adopt them as presented.

**MOTION CARRIED. (6-0)**

**APPOINTMENTS- CONVENTION CENTER AUTHORITY, 3 YEAR TERM**

Motion by Councilman Guillaume, seconded by Councilman Alexander to reappoint Brent Snodgrass.

**MOTION CARRIED. (6-0)**

Mayor Brady asked the City Manager to place Councilman Koritko's appointment to the Convention Center Authority on the agenda for the next meeting.

**APPOINTMENTS- CULTURAL ARTS COMMISSION, 3 YEAR TERM**

Motion by Mayor Brady, seconded by Councilwoman Jenkins to reappoint Bette Hickman.

**MOTION CARRIED. (6-0)**

Mayor Brady asked the City Manager to place Councilman DuBose, Councilman Guillaume and Councilman Koritko's appointments to the Cultural Arts Commission on the agenda for the next meeting.

**APPOINTMENTS- KEEP NEWNAN BEAUTIFUL, 3 YEAR TERM**

Motion by Councilman Guillaume, seconded by Councilman Alexander to reappoint Tim Ross.

**MOTION CARRIED. (6-0)**

Motion by Councilwoman Jenkins, seconded by Councilman Alexander to reappoint Constance Jordan.

**MOTION CARRIED. (6-0)**

Mayor Brady asked the City Manager to place Councilman Shell and Councilman Koritko's appointments to Keep Newnan Beautiful on the agenda for the next meeting.

**UPDATES RELATED TO TORNADO CLEAN UP EFFORTS AND ASSISTANCE**

Public Works Director, Ray Norton began the update. We have collected 362,000 cubic yards of debris, 3,293 tons of C&D, cut over 874 dangerous trees and cut down 811 dangerous limbs. We still have 2 trucks running pickups and city crews are grinding the stumps. Damage inventory shows to date 1100 linear feet of curb damaged, 15,000 sq. feet of sidewalk, and approximately 600 sq. yards of asphalt damaged. A request has been submitted for NRCS funding which will help fund cleaning waterways. We are also working on a submittal to FEMA for private property debris removal.

City Manager stated that we have made great progress, we are in the FEMA process with public assistance and still waiting on the individual assistance appeal. As we continue the processes it has been suggested by FEMA that we set a deadline for curbside debris removal. Couple reasons for this, one is to show closure of public debris removal if we are to enter into private property debris removal and second is how FEMA funds are reimbursed based on project and project criteria so there will be a closure date set anyway.

We had said originally no deadline but now we are 3 months out from the storm. Goodwyn, Mills and Cawood who is handling our administration is suggesting we set a two-week notice. A two-week notice would mean that after the two weeks the final punch of each street would happen, each street will be certified that it's cleaned up and then no more FEMA assistance on that particular road. If debris is put out after that day it would be picked up either by city crews or by the 2 contracted trucks that are still running there just would not be any FEMA reimbursement.

The recommendation from GMC is two weeks from today. Then after the two weeks the final pass of each street would start.



There was a discussion regarding the exact date to set and pros and cons of doing that. The City Manager commented that the amount of debris coming to the curbs now is a lot slimmer. Councilwoman Jenkins asked to give a little more time, in case people are waiting on other sources to help them. July 2<sup>nd</sup> was then recommended by Councilman Alexander as the date to set.

Motion by Councilman DuBose, seconded by Councilwoman Jenkins to set the date of July 2<sup>nd</sup> as the deadline for curbside debris removal.

**MOTION CARRIED. (6-0)**

**PINNING CEREMONY- NEW POLICE CHIEF, BRENT BLANKENSHIP**

City Manager gave a little background. Chief Meadows announced his retirement several months ago and there has been an exhaustive interview process. There were some wonderful internal candidates and after that he is excited to announce Brent Blankenship as the next chief. The City Manager further stated that the knowledge, experience, professionalism and the vision that Brent has is going to well serve us.

The Mayor then read the Oath of Office and Brent Blankenship acknowledged. Brent Blankenship introduced his family who were in attendance, sons Bren and Bryson and wife Jada assisted in pinning the stars and badge.

Brent Blankenship stated that he is very excited for the opportunity. He has received overwhelming support since the announcement, from the City Manager, City Manager's office, City Council and Chief Meadows. Chief Meadows has had a great career and provided a great department and he looks forward to continuing that and moving it forward. He said we are a special community and our citizens are amazing, Newnan is like no other. He intends on leading the department to maintain those values and looks forward to working with everyone.

**COMMENTS FROM RETIRING POLICE CHIEF, BUSTER MEADOWS**

City Manager stated that there will be a special function on June 30<sup>th</sup> for Chief Meadows.

Chief Meadows came to the podium. He began with the age old saying to Chief Blankenship, "welcome to the fire from the frying pan". He then addressed the Mayor, Council, Mr. Phillips, Mr. Craver, members of the Newnan Police Department, his wife Mary Lynn and the Citizens of Newnan and thanked everyone for allowing him to have such an amazing career.

Chief Meadows thanked his parents for raising him to work hard and treat people the same. He thanked his wife, Mary Lynn, who always encouraged and supported him. He thanked Council for always backing him and the police in their efforts to protect the Citizens of Newnan. He thanked the members of the Newnan Police Department, without

their support and efforts thing would not happen. Chief Meadows looks forward to retirement but will miss everyone and said everyone in the City is a part of his family.

**CREATION OF A PRIVATE NON-PROFIT ORGANIZATION TO OVERSEE  
REFORESTATION EFFORTS DUE TO EF4 TORNADO**

Mayor Brady explained that this idea came about as several non-profit groups in the community have wanted to provide funds and other resources for the reforestation efforts. The City of Newnan has been a Tree City USA for over 30 years. The Mayor received a call from a Delta Airline employee with their Community Development Department and they wanted to have a meeting with the City and Trees Atlanta. The Georgia Forestry Commission was also invited to the meeting. It was a great meeting and the idea of forming this non-profit organization came from that meeting.

The Mayor asked for direction from Council and if decided then instruction to legal counsel to create the non-profit and about what this organization would look like. Then it would be brought back to Council for approval. This is just to get the ball rolling. This is an important step in the process of beginning our Urban tree canopy once again.

Several Councilmembers commented that this is a great idea, that we did lose a lot of trees due to the storm. This can also allow for us to provide guidance to people on what trees to plant and where.

This would also include resources to help the City get ready for the process. Also, watershed and the right ways and wrong ways to deal with that. This would also include organizations that have already been helping with these efforts. Councilman DuBose asked if our current Tree Commission will be included and the answer was yes.

Motion by Councilman DuBose, seconded by Councilman Guillaume to approve the concept and bring back for adoption at a later date.

**MOTION CARRIED. (6-0)**

**MAYOR**

GMA is holding their annual conference again but it has been pushed out to August, the 6<sup>th</sup>-10<sup>th</sup> as opposed to June. Our regularly scheduled meeting is Tuesday, August 10<sup>th</sup> at 2:30pm. There are several councilmembers going to the conference so it is suggested to move that meeting to the 12<sup>th</sup> that week, Thursday instead of Tuesday.

Motion by Councilman Alexander, seconded by Mayor Pro Tem Shell to move the regularly scheduled meeting in the first week of August from the 10<sup>th</sup> to the 12<sup>th</sup> at 2:30pm.

**MOTION CARRIED. (6-0)**

**PUBLIC HEARING – ALCOHOL BEVERAGE LICENSE – VIET’S CUISINE**

Mayor Brady open a public hearing on the application for a Retail on Premise (Pouring) Sales of Malt Beverages and Wine License for Viet’s Cuisine located at 30 Bullsboro Drive.

A representative of applicant was present for the hearing. No one spoke for or against the application. Mayor Brady closed the public hearing. The City Clerk advised that all the documentation had been received and everything was in order.

Motion by Councilman Guillaume, seconded by Councilman Alexander to approve the application.

**MOTION CARRIED. (6-0)**

**CONSIDERATION OF AN ORDINANCE TO AMEND THE 2020 BUDGET FOR SPECIAL REVENUE FUNDS**

City Manager stated that there is a second reading for amendment to the General Fund and we were told after that one had been put forth that auditors wanted this as well. This is separate from the other one as it relates to special revenue funds.

Motion by Councilman Alexander, seconded by Councilman Guillaume to adopt the ordinance as presented. 2<sup>nd</sup> and Final Reading next agenda.

**MOTION CARRIED. (6-0)**

**REQUEST FOR STREET CLOSURES FOR SUNRISE ON THE SQUARE ROAD RACE 5K ON SATURDAY, SEPTEMBER 4<sup>TH</sup>**

Motion by Councilman DuBose, seconded by Mayor Pro Tem Shell to approve the request.

**MOTION CARRIED. (6-0)**

**CONSIDERATION OF SUPPORT FOR DOWNTOWN TRAFFIC SAFETY STUDY REGARDING SPEED LIMITS IN DOWNTOWN NEWNAN**

City Engineer stated that this item is the result of a group of stakeholders who got together last year and conducted a safety walk, focused primarily on schools and downtown area. The walk yielded good suggestions and recommendations. The report also suggested lowering the posted speed limits in downtown along the state routes. GDOT has said if we conduct a safety study they would support consideration of lowering the speed limits. City Staff is recommending to forward the safety study to GDOT with Council’s support. 25mph was the suggested speed limit from the report.

Councilwoman Jenkins asked to clarify what the motion might be? She wanted to make sure it is just to lower the speed limit and that other items contained in the report would need more time to go through. The 25mph would be between Clark and Salbide but GDOT would have the final say on where.

Motion by Councilwoman Jenkins, seconded by Mayor Pro Tem Shell to send the traffic safety study to GDOT and the recommendation for lowering the speed limit to 25mph from the report.

**MOTION CARRIED. (6-0)**

**CONSIDERATION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF NEWNAN AND COWETA COUNTY BOARD OF COMMISSIONERS FOR MASTER PLANNING OF CALDWELL TANKS AND THE COWETA COUNTY ADMINISTRATION BUILDING**

Mayor Brady explained that there has been an ongoing conversation with Lamar Wakefield and the County and what the whole master plan might look like. After a recent meeting the idea came about to put together a group to look at all of this as it's not something that can be decided at one council meeting or one commissioners meeting. This does not affect the plans for Caldwell Tanks individually. This is to look at what the County might want to do regarding their administration building and how that will affect Caldwell Tanks. Parking is specifically one of the main concerns.

The idea is to create a group with both city and county people to have offsite discussions and then bring things back to the appropriate parties for approval. It was proposed to have 2 members from each group and now as things have unfolded there are 2 councilmembers in addition to the Mayor interested in serving on this group. Councilwoman Jenkins and Councilman Alexander are both interested in participating.

Motion by Mayor Pro Tem Shell, seconded by Councilwoman Jenkins to approve with 3 members from City Council.

**MOTION CARRIED. (6-0)**

**CONSIDERATION OF AN AMENDED RESOLUTION FOR WAIVING PERMITS FEES FOR STRUCTURES IMPACTED BY THE TORNADO ON MARCH 26, 2021**

City Manager explained that back in April there was a resolution that took a lot of action related to the tornado. One of the items on that resolution dated April 13<sup>th</sup> did address permit fees. It was decided then to only waive permit fees if there was a financial hardship, such as someone uninsured or if there were no services by the City. Since then there have been many requests made to reconsider this.

The amended resolution would waive all permit fees for structures impacted by the tornado. The storm path would dictate this. There are provisions that state it only applies

to the owners at the time of the storm. It also sets a process for a contractor or property owner who seeks reimbursement that they make an application within 60 days. Since the storm we have issued approximately 640 storm related permits, fees collected about \$62,000.

Motion by Councilwoman Jenkins, seconded by Mayor Pro Tem Shell to adopt the resolution as presented.

**MOTION CARRIED. (6-0)**

**CONSIDERATION OF A RESOLUTION SETTING THE DATE FOR THE GENERAL ELECTION AND QUALIFICATION PERIOD FOR CANDIDATES IN THE 2021 GENERAL ELECTION**

Motion by Councilwoman Jenkins, seconded by Mayor Pro Tem Shell to adopt the resolution as presented.

**MOTION CARRIED. (6-0)**

**CONSIDERATION OF A RESOLUTION APPOINTING AN ELECTION SUPERINTENDENT FOR THE 2021 GENERAL ELECTION**

Motion by Councilman Guillaume, seconded by Mayor Pro Tem Shell to adopt the resolution as presented.

**MOTION CARRIED. (6-0)**

**CONSIDERATION OF A RESOLUTION CALLING FOR A SPECIAL REFERENDUM ELECTION AUTHORIZING THE CITY OF NEWNAN TO ISSUE LICENSES FOR PACKAGE SALES OF DISTILLED SPIRITS**

Mayor Brady explained that the Governor signed the state bill that changed this from a petition process to a process where local government can call for a vote on a ballot. As in the past with other alcohol changes, an ordinance will be crafted for the public to know exactly what they are voting on.

Motion by Councilman Guillaume, seconded by Councilwoman Jenkins to adopt the resolution as presented.

**MOTION CARRIED. (6-0)**

**2<sup>nd</sup> AND FINAL READING- ORDINANCE TO AMEND THE 2020 FISCAL YEAR BUDGET**

Motion by Councilman Alexander, seconded by Mayor Pro Tem Shell to adopt the ordinance on second and final reading.

**MOTION CARRIED. (6-0)**

**2<sup>ND</sup> AND FINAL READING- CONSIDERATION OF ZONING REGULATION TEXT AMENDMENTS, SECTIONS 2, 3, 5, 11 AND 13**

Motion by Councilman Alexander, seconded by Councilman Guillaume to adopt the ordinance on second and final reading.

**MOTION CARRIED. (6-0)**

**PUBLIC HEARING- CONSIDERATION OF ZONING REGULATION TEXT AMENDMENTS, SECTIONS 7, 8, 9, AND 10**

Mayor Brady opened the public hearing.

Dean Smith, Planner, stated that Council has received information with the proposed changes. This is the last section for the 2020 amendments that have been planned thus far. This includes drive thru menu signs, parking calculations for restaurant usage, relaxing distance for digital monument signs and giving the City the ability to administratively approve public rights of way requests.

Mayor Pro Tem Shell asked that section 7A be pulled out and talked about more. This section refers to restaurant parking based on restaurant capacity and employees and he would like to look at the maximum number as opposed to the minimum number of parking spots. Mr. Smith explained that prior to this there was a simple standard of 75/1 spot per 75 ft of gross floor area regardless of dine in or fast food and that is one of the reasons there is a gross amount of parking spaces in some restaurants. It was then changed to just 75 feet of seating area but then Freddy's came in and wanted more parking. So, this proposed change is to change the calculation process for parking. The success of a restaurant cannot be predicted.

Councilman Alexander asked about the message signage and the 100ft in a residential area standard. He would like to see residents to have the chance to state their opinions about this. Mr. Smith said it could be made a special exception which would require a public hearing but he doesn't think it can be specified only when it's next to residential. Currently there is nothing that states that a digital monument sign has to be a specific distance from a residential property.

City Attorney thinks it's probably best to make all cases special exceptions but we could look and see if are any precedents. Councilman Alexander and Councilwoman Jenkins both stated they would like this looked into.

Mayor Brady closed the public hearing.

It was decided that this should be continued to a later date.

Motion by Councilman Alexander, seconded by Councilwoman Jenkins to continue this item to the August 24<sup>th</sup> meeting.

**MOTION CARRIED. (6-0)**

**CONSIDERATION OF ACCEPTANCE OF FY2021 COMMUNITY HOME INVESTMENT PROGRAM (CHIP) GRANT AND AUTHORIZATION FOR THE MAYOR TO EXECUTE ALL DOCUMENTS AND ASSURANCES ON BEHALF OF THE CITY OF NEWNAN**

Councilwoman Jenkins thanked staff for working hard on this. It took a few times but we got it and it comes at a really appropriate time.

Motion by Councilwoman Jenkins, seconded by Councilman Alexander to authorize the Mayor to execute all documents.

**MOTION CARRIED. (6-0)**

**29 WESTGATE PARK LANE- SCHEDULE PUBLIC HEARING FOR JULY 20, 2021 REGARDING STRUCTURE**

Matt Murray, Code Enforcement explained that this property was damaged by a storm last spring, in 2020, when a tree fell through the roof and it still has not been repaired.

Motion by Mayor Pro Tem Shell, seconded by Councilman Alexander to schedule the public hearing for July 20<sup>th</sup>.

**MOTION CARRIED. (6-0)**

**62 MURRAY ST- SCHEDULE PUBLIC HEARING FOR JULY 20, 2021 REGARDING STRUCTURE**

Matt Murray, Code Enforcement explained that this property was damaged in January 2020 from a fire. The property has changed hands a couple of times but still not repaired or demolished.

Motion by Mayor Pro Tem Shell, seconded by Councilman Alexander to schedule the public hearing for July 20<sup>th</sup>.

**MOTION CARRIED. (6-0)**

**REQUEST FROM CORNER ARTS GALLERY TO CLOSE NORTH AND SOUTH COURT  
SQUARE FOR LABOR DAY FESTIVAL ON SEPTEMBER 6<sup>TH</sup>**

Motion by Councilman DuBose, seconded by Mayor Pro Tem Shell to grant the request.

**MOTION CARRIED. (6-0)**

**PRESENTATION FROM DR. BRENDAN KELLY, UWG PRESIDENT**

Dr. Brendan Kelly was appointed as President of the University of West Georgia in December 2019. The pandemic hit and he actually started the job on March 23, 2020. One current project is to expand the Newnan Campus so they can grow the program there and opportunities for the students.

Other updates that Dr. Kelly provided were around their new Provost and new strategic plan that is very student centric and community centric. They also have a new school for Communication, Film & Media. They have 25% graduate students. They also are looking to grow their sports programs and hired a new Director of Athletics.

He is very excited to be part of a tight knit community and he invites any feedback or partnership that they can provide to help make the City of Newnan better.

**ADJOURNMENT**

Motion by Councilman Alexander, seconded by Mayor Pro Tem Shell to adjourn the Council meeting at 7:44pm.

**MOTION CARRIED. (6-0)**

\_\_\_\_\_  
Megan Shea, City Clerk

\_\_\_\_\_  
Keith Brady, Mayor





***Downtown Development Authority***

*Ray DuBose, Chairman*

Newnan City Council  
City of Newnan  
25 LaGrange Street  
Newnan, Georgia 30263

July 7, 2021

Dear Mayor and Newnan City Council,

During the June 9, 2021 Newnan Downtown Development Authority meeting, the members discussed a desire to see local retail alcohol license holders located in the historic downtown commercial district to be permitted to host tasting events, as permitted by the State of Georgia. It is believed that the allowance of tasting events will result in an increased economic viability of those current license holders and the downtown district. In addition, the authority believes that the potential allowance of tasting events will create a more level playing field for downtown Newnan's businesses as they routinely compete with nearby communities for customers.

The Downtown Development Authority of Newnan recommends that the Newnan City Council consider an ordinance amendment to Chapter 3 of the City of Newnan Code of Ordinances to permit for retail alcohol license holders to host tasting events.

Please contact me if you require additional information.

Best Regards,

Ray DuBose  
Chairperson,  
Newnan Downtown Development Authority  
6 First Avenue  
Newnan, Georgia 30263

# APPLICATION FOR ALCOHOL BEVERAGE LICENSE

Name: **Cracker Barrel Old Country Store, Inc. dba Cracker Barrel #212**

Licensee: **Richard Michael Wolfson**

License Representative: **Robert Alan Chanady**

Type License: **Retail on Premise (Pouring) Sales of Malt Beverages & Wine**

Location: **527 Bullsboro Drive**

## TO THE CITY COUNCIL: REASON – NEW BUSINESS

(1) The above application with supporting documents and application fee has been filed in the City Clerk's office; reviewed by the appropriate departments of the City and appears to be (complete). (Sec 3-33)

If incomplete, reasons \_\_\_\_\_

(2) The citizenship requirements (have) been met. (Sec. 3-34)

If not, reasons \_\_\_\_\_

(3) Residency requirements (have) been met. (Sec. 3-35)

If not, reasons \_\_\_\_\_

(4) The location appears (to comply) with zoning requirements. (Sec 3-37)

If not, reasons \_\_\_\_\_

(5) The location of the proposed premises appears (to comply) with the distance requirements set forth in Sec. 3-39.

If not, reasons \_\_\_\_\_

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(6) All taxes or other debts to the City (are) current. (Sec 3-38)

If not, reasons \_\_\_\_\_

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(7) A publisher's affidavit (has not) been filed showing the notice requirement (has not) been complied with. (Sec 3-40 (a))

If not, reasons Advertised. Will file affidavit prior to hearing.

(8) An affidavit from the applicant certifying posting of the proposed premises (has not) been filed. (Sec. 3-40(b))

If not, reasons file prior to hearing

Respectfully submitted,

Megan Shea  
City Clerk



## City of Newnan, Georgia - Mayor and Council

Date: July 20, 2021

Agenda Item: Public Hearing for the 2021 update to the Capital Improvements Element, which includes the 2021 update to the Short-Term Work Program

Prepared and Presented by: Chris Cole, Planner

**Purpose:** To inform the public of the City of Newnan's completion and intent to adopt its update to the Capital Improvements Element (CIE) of the 2016-2036 Comprehensive Plan, this includes the Short-Term Work Program; to receive suggestions and comments on the proposed updates.

**Background:** The Georgia Development Impact Fee Act (GDIFA) was enacted into law in 1990. It sets rules for local governments that wish to charge new development for a portion of the additional capital facilities needed to serve it. Under GDIFA, local governments may impose exactions on developers to help finance the expansion of their infrastructure systems only through an impact fee system and only for the specific types of facilities and infrastructure listed in the law.

All local governments that utilize an impact fee system under the GDIFA must include CIEs in their comprehensive plans and update the CIE portion of their plan annually. The STWP is included as a part of the CIE.

Per the minimum standards of the planning process, all local governments must hold one public hearing prior to the transmittal of their updates. Official transmittal to the Three Rivers Regional Commission (RC) and the Georgia Department of Community Affairs (DCA) is planned to be requested at the August 24 Council meeting. After review and approval of the CIE update by the RC and DCA, the Council will be asked to officially adopt the CIE update for 2021.

### **Options:**

- A. Hold a public hearing to inform the public of the City's completion and intent to adopt the update to its CIE

**Funding:** N/A

**Recommendation:** N/A

**Attachments:** Draft version of 2021 CIE Update

**Previous Discussions with Council:** N/A

The seal of the City of Newnan, Georgia, is a large, circular emblem in the background. It features a central shield with a landscape scene, surrounded by a wreath. The outer ring of the seal contains the text "THE CITY OF NEWNAN, GEORGIA" at the top and "City of Homes" at the bottom, with the years "18" and "28" on either side of the bottom text.

# **Comprehensive Plan**

## **2016-2036**

Capital Improvements Element  
with Short-Term Work Program  
**2021 Update**

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# City of Newnan | Annual STWP-CIE

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## 2021 Update

### I. Introduction

The Georgia Development Impact Fee Act (GDIFA) requires all jurisdictions that levy impact fees to include a Capital Improvements Element (CIE) within the Community Agenda portion of their comprehensive plan. Furthermore, GDIFA requires those jurisdictions that prepare a CIE for their comprehensive plan to update it annually. An annual CIE update includes three components:

1. An annual update to the Short-Term Work Program (STWP) that covers a five-year period, which includes the current year plus the next four years.
2. An annual report on impact fee finances.
3. An updated list of all CIE projects that receive funding from impact fees, which covers the same five-year period as the STWP.

# City of Newnan | Annual STWP-CIE

## 2021 Update

### II. Short-Term Work Program (STWP) Updates and Long-Term and Ongoing Activities

Whether or not a jurisdiction is required to have a CIE in their comprehensive plan they must have a STWP, as required by the Georgia Planning Act. This is necessary to maintain Qualified Local Government (QLG) status. The STWP is a key implementation tool, which reflects those activities and strategies the local government has chosen to undertake in the current five-year period (2021-2025). The City of Newnan has chosen to also provide a long-term and ongoing activities table for reference.

IMPROVEMENTS   STWP ADDENDUM						
Project or Activity	Project Start Date	Project Completion Date	Estimated Project Cost	Portion Chargeable to Impact Fees	Sources of Funds (& Share)	Responsible Party
Rehabilitate and/or Reconstruction of substandard and dilapidated housing units within Chalk Level area	2021	2023	\$500,000	None	CDBG, CHIP, NSP, local homeowner funds	Planning & Zoning
Develop LINC trail system (Phases 1-4)	2017	2022	\$10,035,800	\$6,000,000 (spent \$3,146,901 already)	SPLOST 13, Impact Fees, General Fund	City Manager
Improvements to Lower Fayetteville Road (PE Phase I Scoping)	2019	2021	\$625,000	\$0	Federal Share is \$500,000, Match Amount is \$125,000 (SPLOST 13)	Engineering
Wadsworth Auditorium Parking Lot	2021	2022	\$2,000,000	\$0	Tourism Fund, General Fund	Leisure Services
Renovations of CJ Smith Park	2019	2021	\$4,500,000	\$0	SPLOST 19	City Manager
Renovations of Pickett Field	2019	2021	\$2,000,000	\$0	SPLOST 19	City Manager
Construction of Pickleball Facility	2019	2021	\$2,000,000	\$0	General Fund	City Manager
Improvements to Fire Training Facility	2021	2023	\$3,500,000	\$0	SPLOST 19	Fire
Jackson/Jefferson/Clark/Bullsboro segment traffic study	2015	2021	\$75,000	\$0	LCI, SPLOST 13, Match Amount is \$18,750	Engineering
Jackson Street (North) from Elm Street to Clark Street	2018	2022	\$355,350	\$0	TBD, City, Match Amount is \$71,070	Engineering



# City of Newnan | Annual STWP-CIE

## 2021 Update

E. Washington Street from Farmer Street to Perry Street	2019	2022	\$1,234,170	\$0	LCI, City, Match Amount is \$246,834	City
Andrew Street Extension from Augusta Drive to East Washington Street	2021	2024	\$2,340,000	\$0	SPLOST	Engineering
Intelligent traffic operations	2016	2021	\$200,000	\$0	SPLOST 13	Engineering
Obtain light duty response truck	2018	2021	\$240,000	\$240,000	Impact Fees	Fire
Acquire a heavy-duty vehicle for fire department	2024	2024	\$560,000	\$560,000	Impact Fees	Fire
Develop a Disaster Recovery Plan	2021	2022	\$75,000	\$0	City	City Manager
Obtain National Register District designation for Chalk Level Neighborhood	2013	2022	\$2,000	\$0	NURA	NURA, Planning & Zoning
Continue Neighborhood Stabilization Program (NSP III)	2011	2022	\$100,000	\$0	Neighborhood Stabilization Program Grant	Planning & Zoning, Housing Authority
Continue Neighborhood Stabilization Program (NSP I)	2013	2022	\$100,000	\$0	NSP Revenue, NSP Grant	Planning & Zoning, Housing Authority, Habitat for Humanity
Sidewalks along Greison Trail	2014	2022	\$800,000	\$0	SPLOST 19	Engineering
Sidewalks along Sprayberry Road	2014	2022	\$278,000	\$0	SPLOST 19, Transportation Alternative Program (TAP)	Engineering
Sidewalks along Jackson Street	2020	2022	\$2,240,000	\$0	SPLOST 19, Transportation Alternative Program (TAP)	Engineering
Replacement of culvert systems	2022	2024	\$500,000	\$0	CDBG, SPLOST 19	Public Works
Greenville Street at Sewell Road Intersection Improvements	2021	2024	\$1,300,000	\$1,300,000	Impact Fees	Engineering
Newnan Crossing Boulevard Widening and Operational Improvements	2021	2027	\$11,890,000	\$0	SPLOST/TBD	Engineering
Jefferson Street at Sprayberry Road Roundabout	2021	2024	\$2,340,000	\$0	SPLOST	Engineering
Bullsboro Drive Widening and Operational Improvements	2021	2027	\$18,120,000	\$0	SPLOST/TBD	Engineering
Greenville Street at Spence Avenue Intersection Improvements	2021	2024	\$1,840,000	\$0	SPLOST	Engineering
Clark Street Operational and Pedestrian Improvements	2021	2023	\$1,290,000	\$0	SPLOST	Engineering

# City of Newnan | Annual STWP-CIE

## 2021 Update

Source: City of Newnan

Note: Building, Planning & Zoning, Public Works, Beautification, Information Technology, Police, Fire, Engineering, Business Development refer to those respective departments of the City of Newnan. County refers to Coweta County. Acronyms used refer to: RC- Three Rivers Regional Commission, ARC- Atlanta Regional Commission, GRTA- Georgia Regional Transportation Authority, NURA- Newnan Urban Redevelopment Agency, NCAC – Newnan Cultural Arts Commission. Other groups referenced, like the Historical Society, represent those organizations servicing either Newnan or Coweta County as a whole.

### IMPROVEMENTS | STWP ADDENDUM LONG-TERM, INDEFINITE, AND CONTINUOUS ACTIVITIES\*

Project or Activity	Project Start Date	Project Completion Date	Estimated Project Cost	Portion Chargeable to Impact Fees	Sources of Funds (& Share)	Responsible Party
Develop LINC trail system (remaining phases)	2026	2030	\$27,847,026.90	\$3,000,000	Impact Fees, City, County	City Manager
Improvements to Lower Fayetteville Road	2017	2028	\$67,560,000	\$5,000,000	Impact Fees, City, FHWA	Engineering
Acquire a heavy-duty vehicle for fire department	2026	2026	\$750,000	\$750,000	Impact Fees	Fire
Acquire a heavy-duty vehicle for fire department	2030	2030	\$750,000	\$750,000	Impact Fees	Fire
Acquire a heavy-duty vehicle for fire department	2035	2035	\$750,000	\$750,000	Impact Fees	Fire
Acquire a heavy-duty vehicle for fire department	2040	2040	\$750,000	\$750,000	Impact Fees	Fire
Network Servers, Storage, and Switches	2026	2026	\$250,000	\$0	TBD	Information Technology
City Fiber Ring	2030	2032	\$500,000	\$0	TBD	Information Technology

Source: City of Newnan

Note: Beautification, Fire, Engineering refer to those respective departments of the City of Newnan.

\*Long-Term means any activity that is to begin in or more than five years (2026) from the current year (2021). All activities that have an indefinite or continuous end date, but a known start date prior to 2026, are included here to have the STWP represent only activities with known start end dates. Also, it is conceivable that many of the activities with unknown end dates are or may become permanently ongoing activities.

# City of Newnan | Annual STWP-CIE

## 2021 Update

### III. Impact Fee Financial Report Updates

The purpose of annually reporting on the financial state of impact fees is to provide an overview of impact fees collected and spent by category of public facility and service area. As seen below, there is a report for 2020, which is the last completed year.

ANNUAL FINANCIAL REPORT FOR 2020					
Public Facility Type	Parks and Recreation	Fire Services	Police Protection	Roads, Streets, and Bridges	Total
Service Area	City of Newnan	City of Newnan	City of Newnan	City of Newnan	
Beginning Impact Fee Fund Balance	\$621,886	\$252,883	\$2	\$231,705	\$1,106,476
Impact Fees Collected	\$147,290	\$79,320	\$0	\$143,357	\$369,967
Accrued Interest	\$2,004	\$822	\$0	\$813	\$3,639
Project Expenditures	(\$309)	(\$2,236)	(\$0)	(\$48,330)	(\$50,875)
Impact Fee Other Financing Activities	\$0.00	\$180,000	\$0.00	\$0.00	\$180,000
Ending Impact Fee Fund Balance	\$770,871	\$510,789	\$2	\$327,545	\$1,609,207
Impact Fees Encumbered	\$0	\$0	\$0	\$0	\$0

Source: City of Newnan Finance Department – Fund 375 Impact Fees

#### Administrative Fees

Three percent of each impact fee is added to the final amount as an administrative fee. This portion of the impact fee pays for banking fees to maintain the impact fee account and helps fund the salaries of the administrator who collects the impact fees and other staff members of the Planning and Zoning Department who update the CIE, prepare financial reports, and other related activities. For 2020, the only costs associated with implementation were banking fees and the salaries of those various employees. The amount collected in administrative fees was \$11,099.

# City of Newnan | Annual STWP-CIE

## 2021 Update

### IV. Capital Improvements Element (CIE) Project Updates

A capital improvement is an improvement that increases the service capacity of a public facility and has a useful life of ten or more years due to new construction or some other action. The CIE projects tables below show all planned capital improvements with expected completion dates within the current five-year period.

#### Capital Improvements Projects: Parks and Recreation

Newnan	Capital Improvements Projects - 2021						
Public Facility	Parks and Recreation						
Service Area	City Limits						
Project Description	Project Start Date	Project End Date	Estimated Cost of Project	Portion Chargeable to Impact Fees	Funding Sources	Responsible Party	Status
Develop LINC trail system (Phases 1-4)	2017	2022	\$10,035,800	\$6,000,000 (spent \$3,146,901 already)	SPLOST 13, Impact Fees, General Fund	City Manager	Under Construction

Source: City of Newnan Planning and Zoning Department

#### Capital Improvements Projects: Fire Services

Newnan	Capital Improvements Projects - 2021						
Public Facility	Fire Services						
Service Area	City Limits						
Project Description	Project Start Date	Project End Date	Estimated Cost of Project	Portion Chargeable to Impact Fees	Funding Sources	Responsible Party	Status
Obtain light duty response truck	2018	2021	\$240,000	\$240,000	Impact Fees	Fire	Planning
Acquire a heavy-duty vehicle for fire department	2024	2024	\$560,000	\$560,000	Impact Fees	Fire	Planning

Source: City of Newnan Planning and Zoning Department

# City of Newnan | Annual STWP-CIE

## 2021 Update

### Capital Improvements Projects: Roads, Streets, and Bridges

Newnan	Capital Improvements Projects - 2021						
Public Facility	Roads, Streets, and Bridges						
Service Area	City Limits						
Project Description	Project Start Date	Project End Date	Estimated Cost of Project	Portion Chargeable to Impact Fees	Funding Sources	Responsible Party	Status
Andrew Street Extension from Augusta Drive to East Washington Street	2021	2024	\$2,340,000	\$0	SPLOST	Engineering	Planning
Greenville Street at Sewell Road Intersection Improvements	2021	2024	\$1,300,000	\$1,300,000	Impact Fees	Engineering	Planning
Newnan Crossing Boulevard Widening and Operational Improvements	2021	2027	\$11,890,000	\$0	SPLOST/TBD	Engineering	Planning
Jefferson Street at Sprayberry Road Roundabout	2021	2024	\$2,340,000	\$0	SPLOST	Engineering	Planning
Bullsboro Drive Widening and Operational Improvements	2021	2027	\$18,120,000	\$0	SPLOST/TBD	Engineering	Planning
Greenville Street at Spence Avenue Intersection Improvements	2021	2024	\$1,840,000	\$0	SPLOST	Engineering	Planning
Clark Street Operational and Pedestrian Improvements	2021	2023	\$1,290,000	\$0	SPLOST	Engineering	Planning

Source: City of Newnan Planning and Zoning Department

# City of Newnan | Annual STWP-CIE

## 2021 Update

### V. Wastewater Collection and Treatment Updates

As with the Comprehensive Plan, wastewater collection and treatment is being reported separately from the other public facilities. This is due to the fact that Newnan Utilities, the City's appointed authority for administering public utilities, provides service for this specific category. The other public facilities included in this update are direct operations of the City. Newnan Utilities provides all the information for wastewater collection and treatment concerning the Comprehensive Plan and CIE updates. They also levy and collect the impact fees for wastewater collection and treatment.

Similar to previous public facilities, those items for wastewater collection and treatment that have completion dates beyond 2025 are not shown in the CIE and STWP.

ANNUAL FINANCIAL REPORT FOR 2020	
Public Facility Type	Wastewater Collection and Treatment
Service Area	City of Newnan
Beginning Impact Fee Fund Balance	\$3,506,155.59
Impact Fees Collected	\$958,102.27
Accrued Interest	\$0
Project Expenditures	\$367,530.00
Administrative Costs	\$28,743.07
Impact Fee Refunds	\$0
Ending Impact Fee Fund Balance	\$4,067,984.79
Impact Fees Encumbered	\$0

Source: Newnan Utilities

# City of Newnan | Annual STWP-CIE

## 2021 Update

IMPROVEMENTS   STWP ADDENDUM						
Project or Activity	Project Start Date	Project Completion Date	Estimated Project Cost	Portion Chargeable to Impact Fees	Sources of Funds (& Share)	Responsible Party
Expansion of Mineral Springs WPCP, Wahoo Creek; WRF	2020	2024	\$3,000,000	\$3,000,000	Impact Fees (100%)	Newnan Utilities
Collection System Improvements	2020	2024	\$2,000,000	\$2,000,000	Impact Fees (100%)	Newnan Utilities

IMPROVEMENTS-STWP ADDENDUM LONG-TERM, INDEFINITE, AND CONTINUOUS ACTIVITIES*						
Project or Activity	Project Start Date	Project Completion Date	Estimated Project Cost	Portion Chargeable to Impact Fees	Sources of Funds (& Share)	Responsible Party
Phase I – Expansion of Mineral Springs WPCP & Wahoo Creek; Conversion to WRF	Indefinite	Indefinite	\$40,513,200	\$40,513,200	Impact Fees (100%), Other Sources	Newnan Utilities
Phase II – Construction of Land Application System	Indefinite	Indefinite	\$14,130,300	\$14,130,300	Impact Fees (100%), Other Sources	Newnan Utilities
Collection System Construction	Indefinite	Indefinite	\$21,532,400	\$21,532,400	Impact Fees (100%), Other Sources	Newnan Utilities

Source: Newnan Utilities and Wiedeman and Singleton, Inc.

\*Long-Term means any activity that is to end more than five years (2026) from the current year (2021). It is conceivable that many of the activities with unknown end dates are or may become permanently ongoing activities. In addition, the figures are not exact totals for the projects they represent. They are estimates as used in the "Calculation of Impact Fee in 2005" table.

# City of Newnan | Annual STWP-CIE

## 2021 Update

### Wastewater Collection and Treatment CIE

Newnan	Capital Improvements Projects - 2020				
Public Facility	Wastewater Collection and Treatment				
Service Area	City Limits				
Project Description	Project Start Date	Project End Date	Estimated Cost of Project*	Funding Sources	Status
Belt Press Upgrade at Wahoo Creek	2019	2022	\$1,000,000	Impact Fees (100%)	Construction
Bar Screen Upgrade at Wahoo	2019	2020	\$500,000	Impact Fees (100%)	Construction
Mineral Springs Expansion to 1.2 MGD	2016	2020	\$4,500,000	Impact Fees (100%)	Construction
Collection System Improvements	2020	2024	\$500,000	Impact Fees (100%)	Planning





## City of Newnan, Georgia - Mayor and Council

Date: July 20, 2021

Agenda Item: Consideration of Directing Staff to Release Request for Proposals for the Abatement and Demolition of Facilities at 57 E. Broad St.

Prepared By: Hasco Craver, Assistant City Manager

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**Purpose:** Newnan City Council may consider and direct City staff to release a Request for Proposals to hire a qualified firm for the abatement and demolition of certain facilities located at 57 East Broad Street.

**Background:** Newnan City Council, in March 2021, acquired 6.68 acres of real property located primarily at 57 East Broad Street after a 120+ day due diligence period that allowed City staff and contracted consultants to fully investigate known and unknown environmental remediation as well as redevelopment challenges.

City staff engaged NOVA Environmental, Inc. to provide certain testing services. The report received from NOVA indicated numerous environmental challenges at the primary site. More specifically, the consultants found asbestos containing material or trace asbestos in all buildings on the site. In addition to testing for asbestos containing materials, NOVA performed soil tests that indicated that there exists three areas totaling 44,000 square feet that will require soil remediation due to the existence of lead, arsenic and petroleum-based contaminant.

A copy of certain sections of the reports received from NOVA Environmental, Inc. are included as attachments to this agenda item. Please review the attached documents for more specificity as it relates to the location of all known environmental challenges.

Please note that the subject property, under ownership of the City of Newnan, has been accepted into the Georgia Environmental Protection Division's Brownfield Program, which will require the owner to closely follow a corrective action plan.

Newnan City Council, in February 2021, engaged Nelson Worldwide to manage a master planning process that included focused group meetings as well as the administration of a community-wide survey seeking input on the potential redevelopment of the site. Upon receipt of the aforementioned information, it is the collective opinion of a majority of those that were involved in the pre-design master planning process, that the site should be demolished and prepared for new infill development. With that being said, City staff, in consultation with Nelson Worldwide, believes there exists an opportunity to retain the original brick façade of the facility located at the northeast portion of the site. City staff believes that original brick façade should be retained and incorporated into the future design and development.

Understanding the complexity involved with the successful abatement and demolition of a site such as that represented at 57 East Broad Street, City staff believes that releasing an early request for proposals will lay the groundwork for a more timely and successful infill development of the site, as desired by the Newnan City Council and interested citizens.

The recommendation herein is primarily based upon the following elements:

- Understanding of the extent of environmental challenges; and
- Desire to respond to the focus groups and citizen survey; and
- Desire to provide a desirable redevelopment opportunity for future partners

**Funding:** General Fund, Fund Balance

**Attachments:**

1. Asbestos Containing Materials Summary Report prepared by NOVA Engineering, Inc.
2. Environmental Due Diligence Report prepared by NOVA Engineering, Inc.

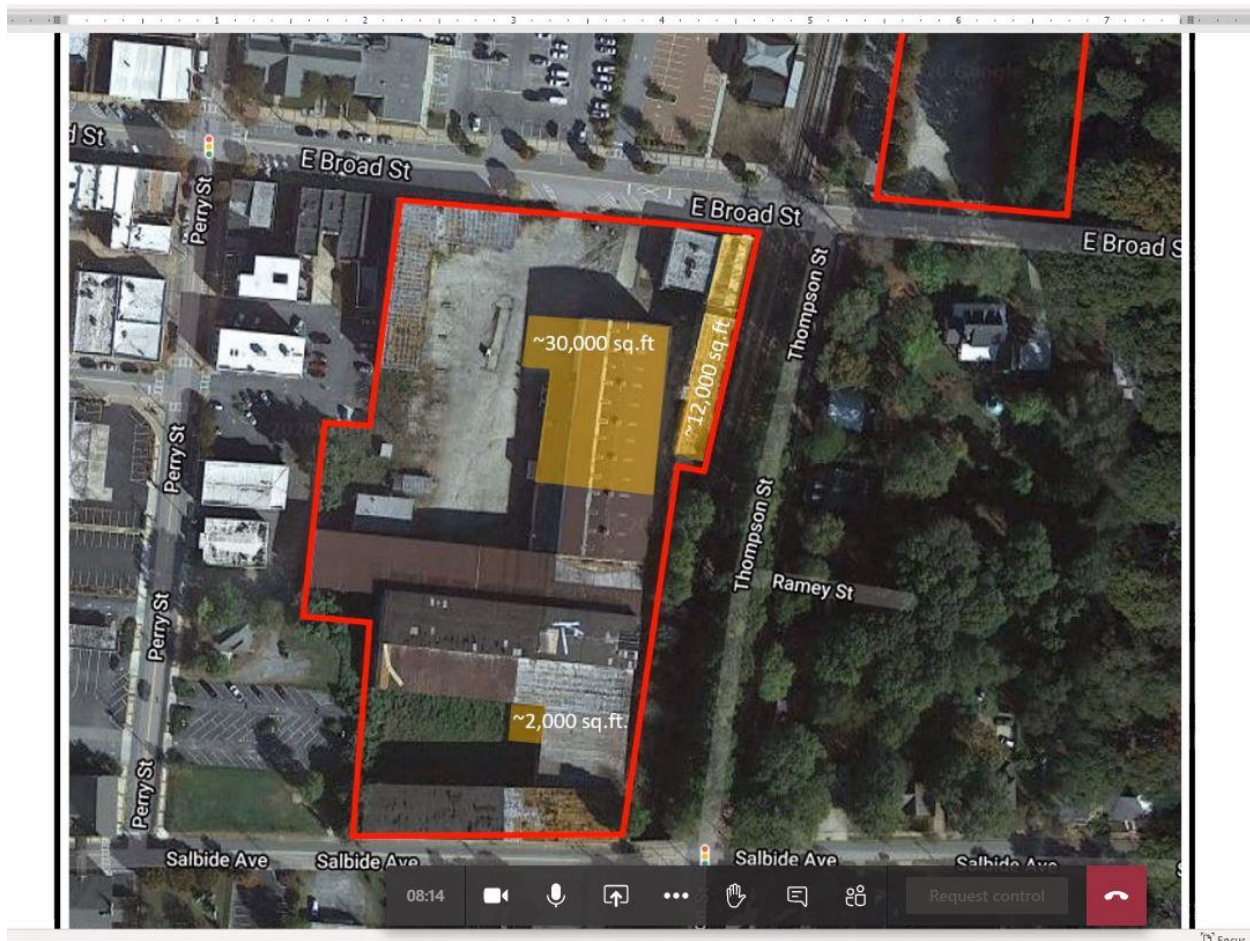
**Recommendation:** In an effort to accomplish the objectives presented to City Staff through feedback received at the Newnan City Council Retreat, Master Planning exercises and community feedback questionnaires, City staff recommends directing staff to prepare and release Request for Proposals to hire a qualified firm for the abatement and demolition of certain facilities located at 57 East Broad Street.

**Previous Discussion with Council:** Newnan City Council, beginning in 2019, has had numerous conversations related to the potential acquisition and redevelopment of the property located at 57 East Broad Street.

### Summary Update – 12.3.20

#### Environmental Due Diligence – Caldwell Tanks Acquisition

- The smaller 1 acre tract has been given a clean bill of health.
- The larger 5.5 acre tract is still listed on the Georgia Hazardous Site Inventory and has a long history of environmental remediation work. The soils outside of the building footprints were remediated several years ago and were found to be in compliance with EPD standards.
- The larger tract contains 3 areas that will require soil remediation. These three areas total 44,000 square feet and contain levels of lead, arsenic, and a petroleum-based contaminant above the allowed thresholds. The contamination lies 2' – 4' below the surface. See the contaminated areas below highlighted in yellow:



- It should also be noted that it appears demolition of the original building will be necessary to remediate the 12,000 sq. ft. contamination area on the NE corner of the site.

- Records were obtained that shows the site contained 4 underground storage tanks. NOVA was able to locate paperwork for proper removal for 3 of these tanks. It was stated that small tanks are often unknown and may be encountered during soil remediation or during sitework.
- It should be noted that NOVA believes these testing results are not out of the ordinary and were actually better than they were expecting.
- Cost estimates for soil remediation were prepared by NOVA. These estimates were developed based upon anticipated approval of a Corrective Action Plan by GA EPD and using very conservative prices. As explained by Nova, this is considered this to be the 'worst case' cost scenario for remediation:

EPD Fees:	\$10,000 - \$15,000
Consulting, Testing, and Professional Fees:	\$100,000 - \$130,000
Excavation, Hauling and Disposal:	\$650,000 - \$700,000
<b>TOTAL</b>	<b>\$760,000 - \$845,000</b>

- Matrix (the owner before Caldwell) will remain responsible for groundwater, but it is believed there may be no further action required as it relates to groundwater. We will ask Georgia EPD to clarify this. We also want to clarify what happens if additional groundwater cleanup is required and Matrix defaults.
- The finding of the 44,000 sq ft. of soil contamination will require the City, as the buyer, to apply for entry in the Georgia Brownfields Program. This program requires a Correction Action Plan, approved by EPD, and will provide indemnity for the City going forward.
- The application for the Brownfield Program, along with the Corrective Action Plan, will take about 4 weeks to prepare. It is anticipated that it will take 2-3 weeks for EPD review and acceptance. The consulting team is highly confident that the site will be approved into the Brownfield Program.
- It is recommended that we not close on the property until Georgia EPD approves the application into the Brownfield Program and subsequent approval of the Corrective Action Plan. This would move closing into early to mid-February.

## 1.0 SUMMARY

NOVA has completed the Pre-Demolition Asbestos Containing Material (ACM) Survey for 57 East Broad Street located in Newnan, Coweta County, Georgia (Subject Property). Field work for the Asbestos Containing Material (ACM) inspection of the Subject Property was performed on January 21 and 22, 2021.

A brief summary of our findings is presented below. This summary is provided for convenience and should not be substituted for review of the full report, including all attachments as provided herein.

### 1.1 ASBESTOS

During this study, one hundred eighteen (118) samples (containing 195 total layers) of window glazing, caulking, siding coating, leveler, vapor barrier, grout, mortar, roofing material, roofing debris, joint compound, wallboard, pipe wrap, ceiling tile, Thermal System Insulation (TSI), tar block, mastic, plaster, glue dots, wallpaper, floor tile, tar paper, glue, floor sheeting, and silver coating were analyzed by NOVA using Polarized Light Microscopy (PLM) with seventeen (17) of the analyzed samples indicating Asbestos Containing Material (ACM).

Below is a summary of ACM identified at the Subject Property:

#### Window Glazing

- A total of three (3) samples of the window glazing located at the warehouse in the northwest portion of the Subject Property (building 1) indicated >1% asbestos (2% Chrysotile Asbestos). Consequently, we believe all of window glazing located at Building one (1) should be considered Asbestos Containing Material (ACM).

#### Caulking

- A total of two (2) samples of the caulking associated with the framing located at the warehouse in the northwest portion of the Subject Property (building 1) indicated >1% asbestos (6% Chrysotile Asbestos). Consequently, we believe all of caulking located at Building One (1) should be considered Asbestos Containing Material (ACM).

#### Mastic

- A total of three (3) samples of the black mastic located on the exterior HVAC system at the Subject Property indicated >1% asbestos (15% Chrysotile Asbestos). Consequently, we believe all of the black mastic associated with the HVAC system at the Subject Property should be considered Asbestos Containing Material (ACM).

### **9-Inch Floor Tile**

- A total of three (3) samples of the 9-inch floor tile located inside the office at the Subject Property indicated >1% asbestos (7% Chrysotile Asbestos). Consequently, we believe all of the 9-inch floor tile located at the Subject Property should be considered Asbestos Containing Material (ACM).

### **Floor Sheeting**

- A total of two (2) samples of the gray speckled floor sheeting associated with the restrooms/hall located inside the office structure at the Subject Property indicated >1% asbestos (30% Chrysotile Asbestos). Consequently, we believe all of the gray speckled floor sheeting located at the Subject Property should be considered Asbestos Containing Material (ACM).

### **Roof Field**

- A total of two (2) samples of the roof field located on the office building at the Subject Property indicated >1% asbestos (6% - 15% Chrysotile Asbestos). Consequently, we believe all of the roofing material associated with the office structure at the Subject Property should be considered Asbestos Containing Material (ACM).

### **Roofing Coating**

- A total of two (2) samples of the roof coating located on the breakroom roof at the Subject Property indicated >1% asbestos (4% - 6% Chrysotile Asbestos). Consequently, we believe all of the roof coating associated with the breakroom at the Subject Property should be considered Asbestos Containing Material (ACM).

Below is a summary of the trace asbestos identified at the Subject Property:

### **Window Glazing**

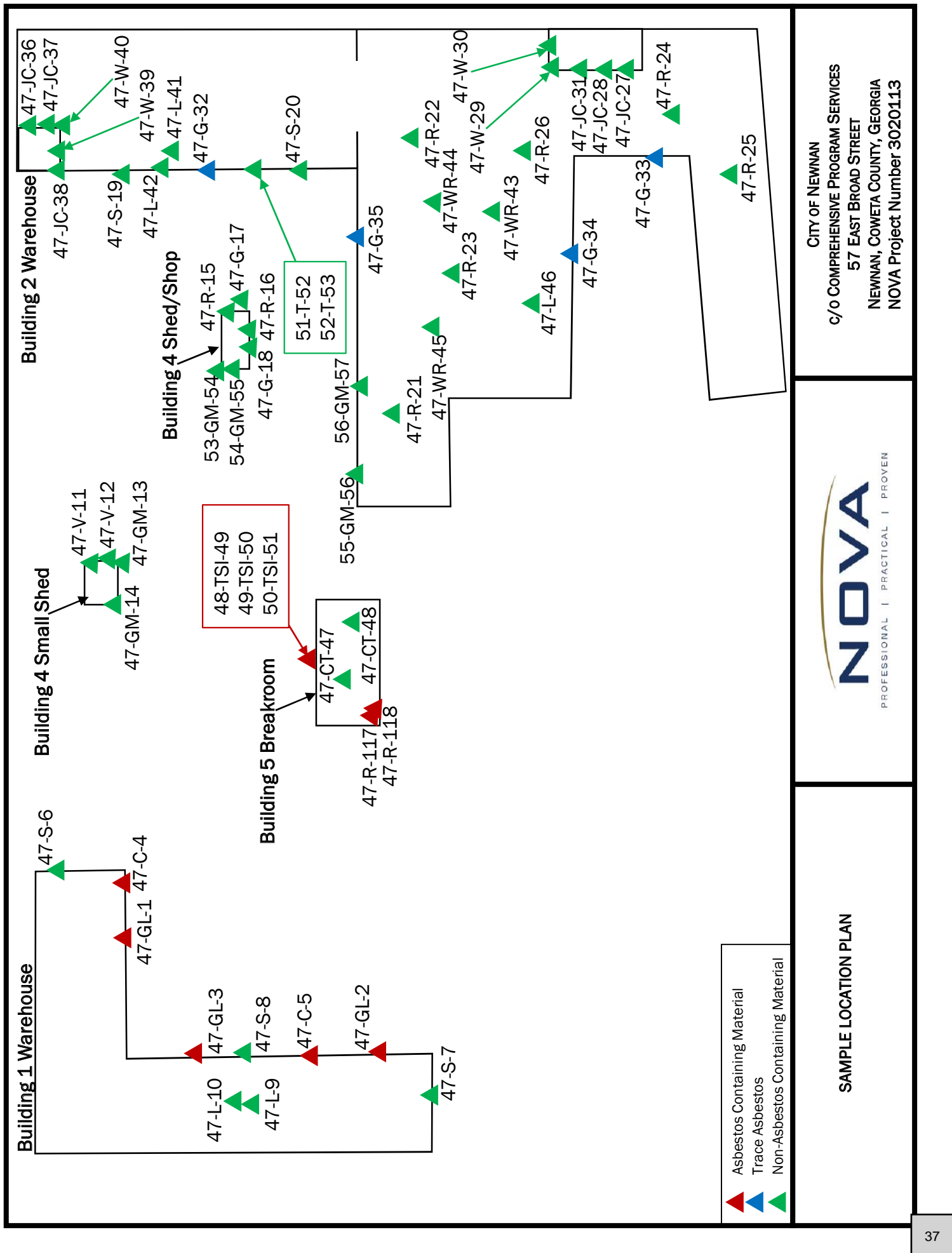
- A total of four (4) sample of the window glazing located at the warehouse in the center leading to the south of the Subject Property (Building two (2)) indicated <1% asbestos (Trace Chrysotile Asbestos). Material having results of analysis of less than 1% asbestos are considered non-asbestos containing material and do not have to be treated as asbestos in the work-place. However, if disturbed by renovation or demolition, prudent care should be observed regarding worker exposure to material containing asbestos even if less than 1% asbestos.

The Occupational Safety and Health Administration (OSHA) Asbestos Standard for Construction Industry 29 CFR 1926.1101 regulates workplace exposure to asbestos. OSHA does not define Asbestos Containing Material on asbestos content. Any detectable asbestos, even if <1%, makes it asbestos for purposes of complying with OSHA regulations to determine worker exposure. The OSHA standard requires that employee exposure to airborne asbestos fibers be maintained below 0.1 asbestos fibers per cubic centimeter of air (0.1 f/cc). The OSHA standard classifies construction and maintenance activities, which could disturb ACM, and specifies work practices and precautions which employers must follow when engaging in each class of regulated work. In addition to worker protection, the means and methods necessary for ACM abatement are the sole responsibility of the abatement contractor.

A complete list of suspected ACM samples obtained is shown in the laboratory report (included in Appendix B).









## City of Newnan, Georgia - Mayor and Council

Date: July 20, 2021

Agenda Item: Consideration of Resolution to Amend the 2021 Pay Plan

Prepared By: Hasco Craver, Assistant City Manager

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**Purpose:** Newnan City Council may consider a Resolution to Amend the 2021 Pay Plan to add certain positions as well as an amendment to the 2021 Organizational Chart to recognize departmental adjustments.

**Background:**

In response to the President of the United States' signing of the American Recovery Plan Act (ARPA), the City of Newnan is creating a position to successfully receive, administer, evaluate and report the use of anticipated funding. As allowed under the Act, the City is hiring an ARPA Project Manager to solely manage the aforementioned process. The ARPA Special Project Manager was not originally included in the 2021 Pay Plan. Therefore, City staff is requesting a plan amendment. The ARPA Special Project Manager will be paid for with funds from the Act, as permissible. The ARPA Special Project Manager will report to the Assistant City Manager.

Similarly, City Staff is requesting the establishment of a Municipal Court Clerk Manager position to oversee a fully autonomous and separated Municipal Court Department. In years past, the Municipal Court function was housed within the Police Department. As the City of Newnan continues to develop, progress and grow over time, it has become apparent that a separated Municipal Court Department is required. The Municipal Court Clerk Manager will manage a three-person staff and report to the City Manager's Office. It is anticipated that 2021 budgeted funds will sufficiently manage the aforementioned establishment and modification.

Lastly, the Engineering function, which has been held within the Public Works Department is being separated. The Engineering Department will consist of four employees and will report to the City Manager's Office. The changed described herein will not result in the addition of personnel and shall be managed with 2021 budgeted funds.

**Funding:**

General Fund, ARPA Funds

**Recommendation:**

Newnan City Council may consider a resolution to amend the 2021 Pay Plan to add certain positions as well as an amendment to the 2021 Organizational Chart to recognize departmental adjustments.

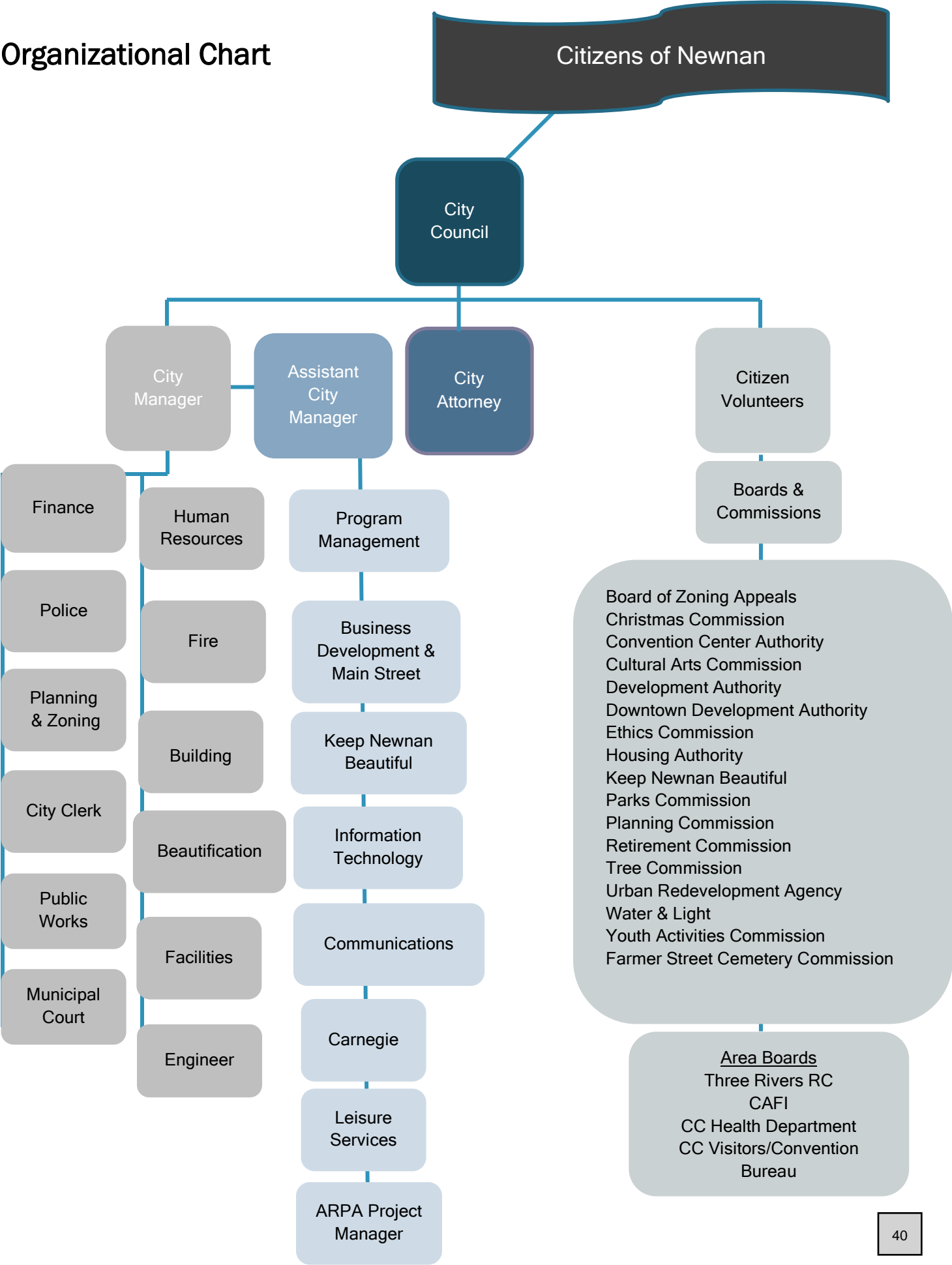
**Attachments:**

1. Resolution to Amend the 2021 Pay Plan
2. Updated 2021 Organizational Chart

**Previous Discussions with Council:**

Newnan City Council, over time, has been made aware of certain impending organizational and personnel changes as it's related to the ARPA, Municipal Court and Public Works Department.

# Organizational Chart



## RESOLUTION TO AMEND 2021 PAY PLAN

**WHEREAS,** the City of Newnan has a formal pay plan to provide an equitable basis for assigning pay rates for all employees; and

**WHEREAS,** the pay plan is annually reviewed and updated to reflect changes in classifications and pay grade assignments; and

**WHEREAS,** the pay plan has been amended to include new positions to reflect organizational needs; and

**WHEREAS,** funds are available in the current budget for the amended 2021 Pay Plan as presented;

**NOW, THEREFORE, BE IT RESOLVED,** that the 2021 *Pay Plan* which is attached hereto is adopted by the City Council this 20<sup>th</sup> day of July 2021 and is effective immediately.

**DONE, RATIFIED AND PASSED** by the City Council of the City of Newnan, Georgia, this 20<sup>th</sup> day of July 2021 in regular session assembled.

Attest:

\_\_\_\_\_  
Megan Shea, City Clerk

\_\_\_\_\_  
Keith Brady, Mayor

\_\_\_\_\_  
Rhodes H. Shell, Mayor Pro Tem

Witness:

\_\_\_\_\_  
George M. Alexander, Councilmember

\_\_\_\_\_  
C. Bradford Sears, Jr., City Attorney

\_\_\_\_\_  
Cynthia E. Jenkins, Councilmember

\_\_\_\_\_  
Cleatus W. Phillips, City Manager

\_\_\_\_\_  
Ray DuBose, Councilmember

\_\_\_\_\_  
Dustin Koritko, Councilmember

\_\_\_\_\_  
Paul Guillaume, Councilmember



## City of Newnan, Georgia - Mayor and Council

Date: July 20, 2021

Agenda Item: Consideration of an Ordinance to Amend Section 3-25, Consumption and Sales on Public Property and Section 3-67, Growlers, of Chapter 3 Alcoholic Beverages of the Code of Ordinances

Prepared By: Hasco Craver, Assistant City Manager

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**Purpose:** Newnan City Council may consider an Ordinance to Amend Section 3-25, Consumption and Sales on Public Property and Section 3-67, Growlers, of Chapter 3 Alcoholic Beverages of the Code of Ordinances of the City of Newnan.

**Background:** The Downtown Development Authority of the City of Newnan (DDA), beginning in 2012, noted its desire to use downtown sidewalks for café seating and special event alcohol service in its Strategic Plan. Reinforced in 2014, the DDA discussed the topic of café seating and special event alcohol service and decided to retain the item within the authority's Strategic Plan.

The Development Authority of the City of Newnan, in concert with the City of Newnan Business Development Department, Newnan Utilities and Georgia EMC hosted a Visioning Session in November 2016 for the purposes of updating the City's Business Development Plan. The resulting Visioning Session Report noted that attendees desired to see the City of Newnan consider the topic of café seating and special event alcohol service in the downtown commercial district.

The Newnan City Council, at the March 28, 2017 meeting, voted to amend the Code of Ordinances of the City of Newnan, Chapter 3, Alcoholic Beverages to allow for the possession and consumption of alcoholic beverages during certain city-sponsored events within a defined district within the downtown district.

Over time, the DDA has recommended that certain city-sponsored events employ the ordinance amendments listed above. The amendment has enjoyed great success. In fact, numerous residents, visitors and business owners have praised the manner in which the City of Newnan has responsibly managed the consumption of alcoholic beverages on public property in the downtown district.

Beginning in March 2020, as the COVID-19 pandemic impacted numerous local industries (restaurant, retail, hospitality, etc.), the Newnan City Council considered and approved a Temporary Ordinance to Encourage Business Within a Portion of the City's Central Business District and Other Businesses. The aforementioned ordinance permitted the consumption of alcoholic beverages on public property with a defined downtown district between 12:00 noon and 12:00 midnight Monday through Saturday. In addition, the temporary ordinance permitted the sale of certain alcoholic beverages from growler establishments, as permitted by state law. The temporary ordinance proved successful, inviting patrons into the downtown district during a time in which business owners were struggling.

In November 2020, the Temporary Ordinance to Encourage Business Within a Portion of the City's Central Business District was extended through July 31, 2021.

Newnan's historic downtown commercial district has witnessed tremendous private investment over the past several years and its popularity with residents and visitors alike continues to grow. The District offers a strong mix of business types: restaurants, retailers, professional offices, service-oriented locations, public offices, greenspace and parks and unique residential uses. With dozens of restaurants, several of which currently hold an alcohol pouring license, the desire to dine in the downtown district is as popular as ever before. Annually, the district plays host to over 500 events drawing more than 90,000 visitors.

**Funding:** N/A

**Recommendation:** Newnan City Council may adopt the ordinance as presented.

**Attachments:**

1. Ordinance to Amend Section 3-25, Consumption and Sales on Public Property and Section 3-67, Growlers, of Chapter 3 Alcoholic Beverages of the Code of Ordinances of the City of Newnan; and for Other Purposes

**Previous Discussions with Council:**

Beginning in March 2020, Newnan City Council, in response to the COVID-19 Pandemic, unanimously passed an ordinance to temporarily permit the consumption of alcoholic beverages in the downtown district and extended certain pouring provisions to growler shops, as defined in the Code of Ordinances.

**AN ORDINANCE TO AMEND SECTION 3-25.  
CONSUMPTION AND SALES ON PUBLIC PROPERTY  
AND SECTION 3-67. GROWLERS, OF CHAPTER 3 ALCOHOLIC BEVERAGES  
OF THE CODE OF ORDINANCES OF THE CITY OF NEWNAN, GEORGIA;  
AND FOR OTHER PURPOSES**

WHEREAS, the Mayor and City Council on May 26, 2020 adopted a temporary ordinance for the taking of measures to encourage business within a portion of the City's Central Business District related to COVID-19; and

WHEREAS, the Mayor and City Council have determined that it is in the best interest of the businesses in the City's Central Business District to adopt certain provisions set out in the temporary ordinance adopted on May 26, 2020 as a part of the City's Alcoholic Beverage Ordinance so as to provide for the regulations for consumption of alcoholic beverages on public property within the City's Central Business District.

NOW, THEREFORE, BE IT ORDAINED AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NEWNAN AS FOLLOWS:

Section 1: Section 3-25 Consumption and Sales on Public Property, of Chapter 3, Alcoholic Beverages of the City's Code of Ordinances is hereby amended by adding a new Paragraph (c) to read as follows:

(c) Notwithstanding the regulations of the consumption of alcoholic beverages on public property set out in Paragraph (a) and (b) hereinabove: From the hours of 12:00 noon to 12:00 midnight on Monday through Saturday alcoholic beverages purchased from a licenses establishment for on premise consumption may permit a person and that person may exit the establishment and possess and consume an alcoholic beverage on the public sidewalks and alleys and streets where permitted with in the City's Central Business District as depicted on Exhibit A attached hereto, provided that the beverage is contained in a metal, paper or plastic container as set out in Sec. 3-27 (b) of this Chapter.

Section 2: Section 3-67. Growlers, of Chapter 3, Alcoholic Beverages, of the City's Code of Ordinances, is hereby amended by adding a new Paragraph (c) to read as follows:

(c) An establishment licensed to serve malt beverages in a growler and licenses for package sales of malt beverages and wine is permitted to offer for sale to a single person up to 32 ounces of malt beverages for consumption on the premises and elsewhere as provided in this temporary ordinance in a single day and only in a metal, paper or plastic container with a sticker affixed as described in Section 3-25 Paragraph (c) of this Chapter.



Section 3. Repealer. All ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. Constitutionality. Should any phrase, clause, sentence of this Ordinance be deemed unconstitutional by a Court of competent jurisdiction, such determination shall not affect the remaining provisions of this Ordinance which provisions shall remain in full force and effect.

Section 5. Adoption of this Ordinance does not create any additional right or benefit, substantive or procedural, enforceable in law or in equity by any party against the City of Newnan, its departments, agencies, officials, employees, agents or other person or entity.

Section 6. Effective Date/Termination Date. This Ordinance shall be effective immediately upon adoption.

DONE, RATIFIED, and PASSED by the City Council of the City of Newnan, Georgia this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
Megan Shea, City Clerk

\_\_\_\_\_  
L. Keith Brady, Mayor

REVIEWED AS TO FORM:

\_\_\_\_\_  
Rhodes H. Shell, Mayor Pro-Tem

\_\_\_\_\_  
C. Bradford Sears, Jr., City Attorney

\_\_\_\_\_  
George M. Alexander, Councilmember

\_\_\_\_\_  
Cleatus Phillips, City Manager

\_\_\_\_\_  
Cynthia E. Jenkins, Councilmember

\_\_\_\_\_  
Raymond F. DuBose, Councilmember

\_\_\_\_\_  
Dustin Koritko, Councilmember

\_\_\_\_\_  
Paul Guillaume, Councilmember



## City of Newnan, Georgia - Mayor and Council

Date: July 20, 2021

Agenda Item: Consideration of Ordinance to Regulate the Sale of Distilled Spirits

Prepared By: Cleatus Phillips, City Manager

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**Purpose:** Consideration of an ordinance establishing regulations for the package sale of distilled spirits.

**Background:** On June 15<sup>th</sup>, Council passed a resolution calling for a referendum on November 2, 2021 for the purpose of allowing the package sale of distilled spirits inside the corporate limits of the City of Newnan. Attached is the first draft of a proposed ordinance to regulate such package sales provided the referendum passes in November. Below are highlights of the ordinance:

- A maximum of four (4) licenses will be issued;
- Each store must be a minimum of 5,000 square feet;
- Each store must be a stand-alone store;
- Each store must have a minimum distilled spirits inventory valued at \$300,000;
- No store shall be closer than 1,500' from another package store, 300' from a church and 500' from school;
- Permitted zoning districts of CGN, CHV, CCS, CUN, and PDC;
- No person or entity shall hold more than one (1) license.

**Funding:** N/A

**Recommendation:** Consider the ordinance as presented

**Attachments:** Draft Ordinance

**Previous Discussion with Council:** None

**AN ORDINANCE TO AMEND ARTICLE I, IN GENERAL,  
CONSUMPTION AND SALES ON PUBLIC PROPERTY, OF  
CHAPTER 3 ALCOHOLIC BEVERAGES OF THE CODE OF ORDINANCES  
OF THE CITY OF NEWNAN, GEORGIA; AND FOR OTHER PURPOSES**

WHEREAS, the Mayor and City Council on June 15, 2021, adopted a resolution calling for a special election referendum for consideration by the City's electors authorizing the City of Newnan, Georgia to issue licenses for the package sale of distilled spirits within the City limits; and

WHEREAS, pursuant to the vote of the electors of the City authorizing the sale of distilled spirits by the package and in accordance with a plan designed for the purposes, among others, of promoting the health, safety and general welfare of the citizens of the City, the Mayor and City Council have considered an ordinance which is intended:

(1) To establish reasonable standards for the regulation and control of the licensing and sale of distilled spirits by the package; and

(2) To protect and preserve schools, churches, and similar places of public assembly; and

(3) To preserve residential areas regarding, among other things, the character of the areas, their particular suitability for particular uses and the congestion in the surrounding roads and streets, with a general view of promoting desirable living conditions, and sustaining the stability of neighborhood and property values.

NOW, THEREFORE, BE IT ORDAINED AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NEWNAN AS FOLLOWS:

Section 1: Article I, In General, of Chapter 3 Alcoholic Beverages of the City's Code of Ordinances is hereby amended by deleting and reserving Section 3-3, Sale of Package Distilled Spirits Prohibited.

Section 2: Article III, In General, of Chapter 3 Alcoholic Beverages of the City's Code of Ordinances is hereby amended by adding a new Sec. 3-68 License issuance for distilled spirits package sales-Retail dealer building and inventory requirements and a new Sec. 3-69 Maximum number of distilled spirits retail licenses permitted to read as follows:

Sec. 3-68. License issuance for distilled spirits package sales – Retail dealer building and inventory requirements

(a) General regulatory and licensing procedures of distilled spirits package sales shall conform to Article I, Article II, and Article V of Chapter 3 Alcoholic Beverages of the City's Code of Ordinances.

(b) No retail dealer license for the sale of distilled spirits shall be issued to any applicant whose building where the business will be conducted (a) is not "free standing"

(i.e., is part of a larger building or structure) and (b) does not include a showroom with a minimum of 5,000 square feet and an additional storage area of at least 500 square feet. For distilled spirits retail dealers desiring to sell malt beverages and wine in addition to distilled spirits, at least an additional 500 square feet of showroom, and at least an additional 500 square feet of storage area is required over and above the minimum square feet for the establishment set forth above. In addition to the minimum square footage, retail dealers for the sale of distilled spirits shall maintain a minimum inventory of at least \$300,000.00 in distilled spirits available for sale. Retail dealers selling malt beverages and wine in addition to distilled spirits shall maintain a minimum of \$15,000.00 inventory in malt beverages and wine.

(c) No retail license for the sale of distilled spirits by the package shall be granted under this chapter unless the premises to be licensed are, at the time the application is approved by the city council, located under the planning and zoning ordinance of the city in a CGN, CHV, CCS, CUN and PDC zoning district subject to the specific limitations of the respective districts.

(d) No premises shall be licensed for the sale of distilled spirits by the package which is located within 1,500 feet of any other business licensed to sell distilled spirits by the package or within 300 feet of any church building or within 600 feet of any school building, educational building, school grounds, or college campus.

(e) No person, entity with similar members shall have an interest in more than one license for the package sale of distilled spirits issued by the city.

(e) It shall be unlawful for any person to open or consume any alcoholic beverages on premises licensed for the sale of distilled spirits by the package.

(f) It shall be unlawful for any person to sell or offer for sale distilled spirits by the package within the city by means of drive-through sale. For purposes of the section, the term "drive-through sale" means the sale of distilled spirits by the package by any means that allows the customer to remain in their motor vehicles.

(g) Each application for a package distilled spirits license shall be accompanied by a non-refundable application fee in the amount of \$500.00.

(h) The license fee for a retail sales of distilled spirits package license shall be \$5000.00 annually. To add a retail sales of package malt beverage license the fee shall be an additional \$500.00 annually; and to add a retail sales of package wine license the fee shall be an additional \$500.00 annually.

(i) There is imposed by the city an excise tax on the first sale or use of distilled spirits in the city at the rate of \$0.22 per liter and a proportionate tax at the same rate on all fractional parts of a liter.

#### Sec. 3-69 Maximum number of distilled spirits retail licenses permitted.

(a) Subject to subsection (b)-(e) below, the city will not accept any applications for the retail sale of distilled spirits by the package, and no licenses for the retail sale of distilled spirits by the package shall be issued over the number of four (4).

(b) If at any time and for whatever reason, the number of active licenses for the retail sale of distilled spirits by the package falls below four, then the city shall accept applications for and issue such additional licenses for the retail sale of distilled spirits by the package so as to bring the total number of active licenses for the retail sale of distilled spirits by the package to four.

(c) the provisions of subsection (b) notwithstanding, additional licenses may be issued once the population of the city exceeds 40,000. In this regard, one additional license shall be issued for each 10,000 person increase in population over 40,000. In determining population, the city shall utilize the most recent population figures published by the Atlanta regional Commission. In the absence of such figures, the city shall utilize the U.S. Census of 2010 or any future decennial census.

(d) If the total number of permitted licenses has increased pursuant to subsection (c) above, and if at any time and for whatever reason thereafter, the number of active licenses for the retail sale of distilled spirits by the package falls below the number then permitted, then the city shall accept applications for and issue such additional licenses for the retail sale of distilled spirits by the package so as to bring the total number of active licenses for the retail sale of distilled spirits by the package to the total number then permitted.

(e) If the city receives more applications than allotted licenses to be issued under this section which applications comply with the standards for the issuance of licenses for the sale of package distilled spirits set forth in this Chapter, then the selection of the successful application(s) shall be conducted by a lottery system overseen by an independent third party firm. The applications drawn from the lottery system shall then be presented to the city council for action on the approval of the initial licenses to be issued under this Chapter. Any person that contacts a City Council member with intent to lobby on behalf of an applicant shall subject that application to immediate disqualification.

Section 3. Repealer. All ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. Constitutionality. Should any phrase, clause, sentence of this Ordinance be deemed unconstitutional by a Court of competent jurisdiction, such determination shall not affect the remaining provisions of this Ordinance which provisions shall remain in full force and effect.

Section 5. Adoption of this Ordinance does not create any additional right or benefit, substantive or procedural, enforceable in law or in equity by any party against the City of Newnan, its departments, agencies, officials, employees, agents or other person or entity.

Section 6. Effective Date/Termination Date. This Ordinance shall be effective immediately upon adoption.

ATTEST:

\_\_\_\_\_  
Megan Shea, City Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
C. Bradford Sears, Jr., City Attorney

\_\_\_\_\_  
Cleatus Phillips, City Manager

\_\_\_\_\_  
L. Keith Brady, Mayor

\_\_\_\_\_  
Rhodes H. Shell, Mayor Pro-Tem

\_\_\_\_\_  
George M. Alexander, Councilmember

\_\_\_\_\_  
Cynthia E. Jenkins, Councilmember

\_\_\_\_\_  
Raymond F. DuBose, Councilmember

\_\_\_\_\_  
Dustin Koritko, Councilmember

\_\_\_\_\_  
Paul Guillaume, Councilmember

**To: Megan Shea**  
**From: Jeff Phillips**  
**Date: July 8, 2021**  
**Subj: MEAG contract for City Council Approval**

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Megan,

Attached is a MEAG contract that we are asking City Council to approve during the July 20, 2021 meeting. This contract is for the purchase of energy from a Solar Project that the Municipal Electric Authority of Georgia (MEAG) is coordinating on behalf of MEAG members. This contract represents the output of 10 Megawatts of generation capacity from the project.

The Newnan Utilities Board will meet on July 19<sup>th</sup> to approve the contract in a called meeting.

Please let me know if you have any questions or need additional information.

Thanks for your help.

Cc: Dennis McEntire



POWER PURCHASE CONTRACT  
BETWEEN MUNICIPAL ELECTRIC AUTHORITY OF  
GEORGIA AND THE UNDERSIGNED PARTICIPANT

This Power Purchase Contract (this “**Contract**”), made and entered into as of \_\_\_\_\_, 2021, by and between the Municipal Electric Authority of Georgia (the “**Authority**” or “**MEAG Power**”), a public body corporate and politic and a public corporation and an instrumentality of the State of Georgia, created by the provisions of the Municipal Electric Authority Act, Ga. L. 1976, p. 107, as amended (the “**Act**”), and the City of Newnan (the “**Solar Participant**”), a political subdivision of the State of Georgia.

WITNESSETH:

WHEREAS, pursuant to the Act, the Authority has previously entered into one or more Power Sales Contracts (each, as amended, a “**Power Sales Contract**”) with eligible political subdivisions, including the Solar Participant (each, a “**Participant**”) to provide, from defined production projects and sources, for the Participants’ bulk electric power supply needs;

WHEREAS, one such Power Sales Contract, the Project One Power Sales Contract (the “**Project One Power Sales Contract**”), further provides in Section 401 thereof that the Authority will provide or cause to be provided to each of the participants thereto, including the Solar Participant, (the “**Project One Participants**”) its supplemental bulk power supply (“**Supplemental Power**”) (i.e., that portion of the Solar Participant’s bulk power supply in excess of its entitlement to power, energy, output and services from any MEAG Power project) during each month of each Power Supply Year (therein defined);

WHEREAS, Section 404 of the Project One Power Sales Contract provides that a Project One Participant may elect to procure an alternate source of Supplemental Power other than that provided by the Authority, subject to providing notice to the Authority in accordance with subpart (c) of that Section;

WHEREAS, the Authority adopted a Supplemental Power Supply Policy in March of 1999, as amended (the “**Supplemental Power Policy**”), which, in part, waived the notice requirements provided for in Section 404(c) of the Project One Power Sales Contract;

WHEREAS, the Authority has an opportunity to procure a substantial amount of Supplemental Power for a multi-year term through a Power Purchase Agreement with Pineview Solar LLC (the “**Company**”) for the output and services of approximately 80 MWac from a photovoltaic solar energy generation facility located in Wilcox County, Georgia (the “**Facility**”) to be constructed, owned, operated, and maintained by the Company (hereinafter the “**SPPA**”);

WHEREAS, in accordance with the Supplemental Power Policy, the Solar Participant and certain other Project One Participants (each such participating Project One Participant referred to herein as a “**PPOP**” and each such PPOP other than the Solar Participant an “**Other PPOP**”) have requested that the Authority purchase from the Company power, output and services of the Facility to provide for their Supplemental Power;

WHEREAS, the Authority and the Solar Participant agree that this Contract is supplemental to and authorized by the Project One Power Sales Contract;

WHEREAS, the Authority has entered into power purchase contracts with the other PPOPs that are substantially similar to this Contract (each such power purchase contract an “**Other PPC**”); provided that each Other PPC reflects the applicable PPOP’s Maximum MW Subscription (as defined below);

WHEREAS, the Authority and the Solar Participant agree that the payment obligations under this Contract shall constitute the general obligations of the Solar Participant for the payment of which the full faith and credit of the Solar Participant is pledged, obligating the Solar Participant to provide for the assessment and collection of an annual tax sufficient in amount to provide funds annually to make all payments due hereunder;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreements hereinafter set forth, it is agreed by and between the parties hereto as follows:

1.

1.1 SPPA. The SPPA, in substantially the form attached hereto as Exhibit A, describes the terms under which the Products (as defined therein) of the Facility shall be made available to the Authority for the provision of solar power to the Solar Participant.

1.2 Entitlement Share.

(a) Maximum MW Subscription: The Solar Participant's "**Maximum MW Subscription**" is \_\_\_\_\_ MWac.

(b) Entitlement Share. The Solar Participant's "**Entitlement Share**" shall be that percentage of the Facility's output to which the Solar Participant is entitled. The Solar Participant's Entitlement Share shall be calculated as follows:

(i) Step One: The amount of the Solar Participant's Maximum MW Subscription shall be multiplied by a fraction, the numerator of which is the number of MWAC actually comprising the Facility and the denominator of which is the sum of the amount of the Solar Participant's Maximum MW Subscription and the amount of the maximum MW subscriptions of the Other PPOPs.

(ii) Step Two: The solution to Step One, above, shall be divided by the number of MWAC actually comprising the Facility (with the solution to this Step Two being the percentage of the Facility's output constituting the Solar Participant's Entitlement Share).

1.3 Initial Payment Obligation. The Authority shall deliver to the Solar Participant an initial billing statement up to ninety (90) days prior to the Facility's anticipated commencement of the delivery of Test Energy pursuant to the SPPA (such anticipated date of delivery referred to as the "**Start Date**"). The initial billing statement shall set forth the Solar Participant's allocable share of the sum of the

estimated Solar Costs and estimated MEAG Costs (both terms, as defined in Section 1.4 below) for the month the Authority anticipates will generate the highest aggregate amount of Solar Costs and MEAG Costs (the “**Maximum Monthly Amount**”) during the year subsequent to the year of the Start Date. Amounts collected pursuant to this Section 1.3 (the “**Escrow Amount**”) shall be held in escrow by the Authority, subject to use by the Authority pursuant to the terms hereof. At the end of each calendar year commencing the year after the year of the Start Date the Authority shall recalculate the Solar Participant’s Maximum Monthly Amount for the next year and, (i) if the Maximum Monthly Amount exceeds the Escrow Amount, the Authority shall include an amount equal to such deficit on the Solar Participant’s next Billing Statement (as defined in Section 1.4) and (ii) if the Maximum Monthly Amount is less than the Escrow Amount, the Authority shall, at the Authority’s election, either (A) refund to the Solar Participant an amount from the Escrow Amount equal to such excess or (B) credit such excess to the Solar Participant’s next succeeding Billing Statement(s).

1.4 Ongoing Payment Obligations.

(a) The Authority shall deliver to the Solar Participant a monthly Billing Statement commencing within the thirty (30) days preceding the anticipated Start Date and continuing through the Term. For purposes of this Contract, a “**Billing Statement**” shall be a written statement prepared or caused to be prepared monthly in advance by the Authority that shall set forth the Solar Participant’s estimated payment obligations pursuant to the terms hereof.

(b) The Solar Participant shall remit payment monthly in advance. The Solar Participant’s payment obligations hereunder for a particular month shall be an amount equal to the Solar Participant’s allocable share of the sum of the estimated Solar Costs and the estimated MEAG Costs. To the extent the amount paid by the Solar Participant pursuant to the preceding sentence is either greater or less than the Solar Participant’s allocable share of the sum of the actual Solar Costs and the actual MEAG Costs for a particular month, the Authority: (i) shall credit any excess payment to the Solar

Participant's next Billing Statement and (ii) may satisfy any deficit from the Solar Participant's Escrow Amount and include a corresponding charge on the Solar Participant's next Billing Statement (so as to restore the Solar Participant's Escrow Amount).

For purposes of this Contract, (i) "Solar Costs" for a particular month shall mean the gross amount due to the Company or any other person for the month by the Authority pursuant to the terms of the SPPA, but excluding any interest charged by the Company to the Authority pursuant to Section 10.3 of the SPPA and (ii) "MEAG Costs" for a particular month shall mean all costs incurred by the Authority during the month in connection with the purchase from the Company and delivery to the Solar Participant of the Solar Participant's Entitlement Share, including, but not limited to, (A) costs of (I) scheduling the delivery of solar energy, (II) energy imbalance penalties and (III) all other charges imposed on the Authority and associated with the transmission and delivery of solar energy to the Solar Participants, and (B) a share determined by the Authority to be allocable to this Contract, of all (I) administrative and general costs and (II) operation and maintenance costs, in each case related to the operation and conducting the business of the Authority, including salaries, fees for legal, engineering, and other services and all other expenses properly related to the conduct of the affairs of the Authority.

(c) The Solar Participant's payment obligations to the Authority arising under this Contract shall constitute general obligations of the Solar Participant for the payment of which the full faith and credit of the Solar Participant shall be and the same hereby is pledged to provide the funds required to fulfill all obligations arising under this Contract. Unless such payments or provisions for such payments have been made from the revenues of the Solar Participant's electric system or from other available funds, the Solar Participant will annually in each and every fiscal year during the term of this Contract include in its general revenue or appropriation measure sums sufficient to satisfy the payments required to be made in each year by this Contract until all payments hereunder have been made in full.

(d) Except as specifically provided herein, any payment due under this Contract shall be paid within ten (10) calendar days of the Solar Participant's receipt of the Billing Statement. The Parties agree to work in good faith to resolve any disputed amounts prior to the due date for such amount, and agree that any resolution of such disputed amount may, if necessary be addressed by appropriate adjustment to subsequent Billing Statements.

1.5 Rate Covenant. The Solar Participant will establish, maintain, and collect rates and charges for the electric service of its electric system so as to provide revenues sufficient to enable the Solar Participant to pay to the Authority all amounts payable under this Contract and to pay all other amounts payable from and all lawful charges against or liens on the revenues of its electric system.

2.

Term. The term of this Contract shall commence on the date that is ninety (90) days prior to the Start Date and shall continue through and include the end of the twentieth (20th) Contract Year (as defined in the SPPA), unless the SPPA is terminated prior to such date, at which point this Contract will terminate upon the Solar Participant's full and complete satisfaction of its duties and obligations hereunder.

3.

Products Constitute Supplemental Bulk Power. The Solar Participant acknowledges that all Products contemplated in the proposed SPPA, if implemented, will constitute Supplemental Power, provided, however, that the Solar Participant agrees that it will not exercise its rights under the Supplemental Power Supply Policy or Section 404(c) of the Project One Power Sales Contract to opt-out of its payment obligations under this Contract at any time prior to the expiration of the term of the SPPA.

4.

Pledge of Payments. All payments in respect of Solar Costs required to be made by the Solar Participant pursuant to this Contract, and any or all rights to collection or enforcement of such payments, may be pledged to secure the payment of the Authority's obligations under the SPPA.

5.

Governing Law; Venue. This Contract shall be interpreted and enforced in accordance with the laws of the State of Georgia, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. The Parties agree that the venue for any action arising out of, or in regard to, this Contract shall be in the Superior Court of Fulton County, Georgia and each Party hereby consents to jurisdiction over it in Fulton County, Georgia.

6.

Mutual Representations and Warranties. Each Party represents and warrants to the other that, as of the Effective Date:

(a) Organization. It is duly organized and validly existing under the laws of the State of Georgia.

(b) Authority. It (i) has the requisite power and authority to enter into this Contract and (ii) has, or as of the requisite time will have, all regulatory and other authority necessary to perform hereunder.

(c) Corporate Actions. It has taken all corporate or other applicable actions, including provision of notice, required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

(d) No Contravention. The execution, delivery and performance and observance hereof by it of its obligations hereunder do not (a) contravene any provision of, or constitute a default under, (i) any indenture, mortgage, security instrument or undertaking, or other material agreement to

which it is a party or by which it is bound, (ii) any valid order of any court, or any regulatory agency or other body having authority to which it is subject, or (iii) any material Applicable Law presently in effect having applicability to it, or (b) require the consent or approval of, or material filing or registration with, any Governmental Authority or other Person other than such consents or approvals that are not yet required but expected to be obtained in due course.

(e) Valid and Enforceable Agreement. This Contract is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by Georgia law, including the Act, and general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally, laws restricting the availability of equitable remedies, and limitations on legal remedies against public bodies corporate and politic of the State of Georgia.

(f) Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of such Party's knowledge, threatened against such Party with respect to this Contract or the transactions contemplated hereunder, in each case, that if it were decided against such Party would materially and adversely affect such Party's ability to perform its obligations hereunder.

(g) Legal Opinions. The Solar Participant shall authorize the execution and delivery of this Contract by resolution of its governing body in substantially the form attached hereto as Exhibit B. Further, the Solar Participant shall deliver to the Authority an opinion of counsel (such counsel to be reasonably acceptable to the Authority) as to the due authorization, execution and delivery and the enforceability of this Contract, in substantially the form attached hereto as Exhibit C.

## 7.

### Default; Remedies for Default.

7.1 Default. Failure of the Solar Participant to timely make to the Authority any of the payments for which provision is made in this Contract shall constitute a default on the part of the Solar



Participant (a “**Default**”). A Default may be cured by the Solar Participant’s (i) full payment of any past due amounts owed by the Solar Participant to the Authority pursuant to the terms hereof (the “**Primary Cure Payments**”), (ii) full payment of any interest which has accrued thereon (as referenced in Section 7(c), below) (the “**Interest Cure Payments**”), and (iii) with reference to paragraph (h)(i) of this Section 7, full restoration of the Escrow Amount, unless and until the Authority exercises its rights pursuant to Section 7(h)(iii), below (at which point the Default may no longer be cured).

7.2 Continuing Obligation, Right to Discontinue Service. In the event of a Default, the Solar Participant shall not be relieved of its liability for payment of the amounts in default (including interest accrued thereon pursuant to Section 7(c), below), and the Authority shall have the right to recover from the Solar Participant any amount in default (including interest accrued thereon pursuant to Section 7(c), below). In enforcement of any such right of recovery, the Authority may bring any suit, action, or proceeding in law or in equity, including mandamus and action for specific performance as may be necessary or appropriate to enforce any covenant, agreement or obligation to make any payment for which provision is made in this Contract against the Solar Participant, and the Authority may, upon the occurrence of a Default and at the Authority’s discretion, cease and discontinue providing all or any portion of the Solar Participant’s Entitlement Share.

7.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid, which rate shall not exceed the maximum permissible under Georgia law. The defaulting Solar Participant shall be and shall remain solely liable for the payment of any interest arising under this Section 7(c). For purposes of this Contract, the “**Contract Interest Rate**” shall mean one hundred (100) basis points per annum plus the rate per annum equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published); provided that if at any time during the Term, the Wall Street Journal no longer

publishes a prime lending rate, the prime lending rate for purposes of the calculation of the Contract Interest Rate will be average of the prime interest rates which are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States which publish a prime, base or reference rate.

7.4 Levy of Tax for Payment. In the event of a Default, the Solar Participant shall provide for the assessment and collection of an annual tax sufficient in amount to provide funds annually to make all payments due under the provisions of this Contract in each year over the remainder of the life of this Contract and the Authority shall have the right to bring any suit, action or proceeding in law or in equity, including mandamus and action for specific performance, to enforce the assessment and collection of a continuing direct annual tax upon all the taxable property within the boundaries of the Solar Participant sufficient in amount to provide such funds annually in each year of the remainder of the life of this Contract.

7.5 Other Default by Solar Participant. In the event of a failure of the Solar Participant to establish, maintain, or collect rates or charges adequate to provide revenue sufficient to enable the Solar Participant to pay all amounts due to the Authority under this Contract or in the event of a failure of the Solar Participant to take from the Authority its Supplemental Power in accordance with the provisions of this Contract, or in the event of any default by the Solar Participant under any other covenant, agreement or obligation of this Contract, the Authority may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction and action for specific performance as may be necessary or appropriate to enforce any covenant, agreement or obligation of this Contract against the Solar Participant.

7.6 Default by The Authority. In the event of any default by the Authority under any covenant, agreement or obligation of this Contract, the Solar Participant may bring any suit, action, or proceeding in law or in equity, including mandamus, injunction and action for specific performance as

may be necessary or appropriate to enforce any covenant, agreement, or obligation of this Contract against the Authority.

7.7 Abandonment of Remedy. In case any proceeding taken on account of any default shall have been discontinued or abandoned for any reason, the parties to such proceedings shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, owes, and duties of the Authority and the Solar Participant shall continue as though no such proceeding had been taken.

7.8 Application of Available Remedies.

(a) In the event of a Default by the Solar Participant pursuant to Section 7(b) hereof, the Authority shall:

(i) Apply the Escrow Amount (as collected from the Solar Participant pursuant to Section 1.3, above) to the defaulting Solar Participant's unpaid obligations hereunder;

(ii) Transfer all or any part of the energy generated by the Facility and attributable to the defaulting Solar Participant's Entitlement Share to other Participants or any other person, firm, association or corporation, public or private (such transferee to be determined at the Authority's discretion), for the fair market value of such energy (a "**Default Sale**"); and

(iii) Use the proceeds of such Default Sale (net of the Authority's expenses incurred to facilitate such Default Sale) to (A) satisfy the balance of the defaulting Solar Participant's unpaid obligations hereunder and/or (B) to the extent such payment obligations have been fully satisfied pursuant to Section 7(h)(i)(1) and/or this Section 7(h)(i)(3), fully or partially restore the defaulting Solar Participant's Escrow Amount.

(b) The excess, if any, of the proceeds of the Default Sale (net of the Authority's expenses incurred to facilitate such Default Sale) over the defaulting Solar Participant's unpaid payment

obligations for a particular month (calculated pursuant to Section 1.4 and inclusive of any interest amount accrued pursuant to Section 7(c), above) shall be for the benefit of the non-defaulting Other PPOPs.

(c) Notwithstanding any Default Sale, the defaulting Solar Participant shall remain liable to the Authority for the full payment of the amount reflected on its Billing Statements plus any interest accrued thereon as if such Default Sale had not been made; except that such liability shall be discharged by an amount equal to the proceeds of the applicable Default Sale (net of the Authority's expenses incurred to facilitate such Default Sale). In the event the Solar Participant's Default continues uncured for ninety (90) calendar days or the Solar Participant fails to timely satisfy its payment obligations hereunder for either three (3) consecutive months or five (5) out of eight (8) months, the Authority may sell the defaulting Solar Participant's Entitlement Share to the other Participants or any other person, firm, association or corporation, public or private (such transferee to be determined at the Authority's discretion); provided that, if such a transfer occurs, the defaulting Solar Participant shall remain liable to the Authority for the full payment of the amount attributable to its Entitlement Share plus any interest accrued thereon as if such transfer had not been made; except that such liability shall be discharged to the extent that the Authority receives payment (net of the Authority's expenses incurred in facilitating such transfer) from the transferee.

#### 7.9 Obligations with Respect to Defaults of Other PPOPs.

(a) If an Other PPOP (a "**Defaulting PPOP**") defaults on its payment obligations (the amount of such default the "**Default Amount**") pursuant to its Other PPC, then the Authority shall pursue its remedies against such Defaulting PPOP as set forth in Section 7(h)(iii) of the Defaulting PPOP's Other PPC (which remedies are identical to the provisions set forth in Section 7(h)(iii) of this Agreement). All of the proceeds generated from the application of such remedies (net of the Authority's expenses incurred in pursuing such remedies) shall be applied to reduce the Default Amount.

(b) The amount of any remaining Default Amount (calculated without including any interest accrued pursuant to Section 7(c) of the Defaulting PPOP's Other PPC) after application of the remedies described in clause (i), above, is referred to as a "**Special Cost Increase.**" Special Cost Increases shall be allocated among the non-defaulting PPOPs (including the Solar Participant) *pro rata* based on their Entitlement Shares. The Solar Participant (along with each other non-defaulting Other PPOP) shall be obligated to satisfy its allocable share of the Special Cost Increase; provided that the Solar Participant's share of a Special Cost Increase shall not exceed 25% of the amount otherwise reflected on the Solar Participant's Billing Statement for the month to which the Special Cost Increase is attributable.

(c) If a Defaulting PPOP cures a default pursuant to Section 8(a) of its Other PPOP subsequent the Solar Participant's (and non-defaulting Other PPOP's) payment of a corresponding Special Cost Increase, then the Authority shall distribute the applicable Primary Cure Payments (as determined pursuant to the Defaulting PPOP's Other PPC) ratably to the non-defaulting PPOPs (including the Solar Participant) who satisfied their ratable share of the Special Cost Increase. Interest Cure Payments attributable to Solar Costs shall be paid by the Authority to the Company in satisfaction of the Authority's obligations under the SPPA. Interest Cure Payments attributable to MEAG Costs shall be distributed to the non-defaulting PPOPs ratably based on their Entitlement Shares.

## 8.

The Solar Participant shall use commercially reasonable efforts to promptly notify the Authority in writing upon the Solar Participant's receipt of a request for a copy of the SPPA pursuant to the Georgia Open Records Act (O.C.G.A. § 50-14-1, *et seq.*). Such notification shall be provided prior to the Solar Participant's release of the SPPA.

9.

In witness whereof, the Authority has caused this Contract to be executed in its corporate name by its duly authorized officers and the Authority has caused its corporate seal to be hereunto impressed and attested; the Solar Participant has caused this Contract to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereunto impressed and attested, and delivery hereof by the Authority to the Solar Participant is hereby acknowledged, all as of the day and year first above written.

MUNICIPAL ELECTRIC AUTHORITY OF  
GEORGIA

By: \_\_\_\_\_  
Name: James E. Fuller  
Title: President and CEO

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(SEAL)

[Solar Participant Signature is on the next page]

CITY OF NEWNAN

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NEWNAN UTILITIES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A

**FORM OF SPPA**

[Form of SPPA begins on the next page]



**POWER PURCHASE AGREEMENT**

**BETWEEN**

**PINEVIEW SOLAR LLC**

**AND**

**MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA**

**dated as of**

\_\_\_\_\_, 2021

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (the “**Agreement**”), entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2021, is between Pineview Solar LLC (the “**Seller**”), a Delaware limited liability company, and the Municipal Electric Authority of Georgia (the “**Buyer**” or “**MEAG Power**”), a public body corporate and politic and an instrumentality of the State of Georgia, created by provisions of the Municipal Electric Authority Act, Ga. L. 1976, p. 107, as amended (the “**Act**”). Seller and Buyer are sometimes hereinafter referred to collectively as the “**Parties**” and individually as a “**Party**.”

### BACKGROUND RECITALS

WHEREAS, Seller intends to construct, own, operate and maintain an 80 MWac nameplate capacity photovoltaic solar energy generation facility located in Wilcox County, Georgia, which is more fully described on **Exhibit A** (the “**Facility**”);

WHEREAS, pursuant to the Act, the Buyer has entered into one or more Power Sales Contracts, as amended (each, a “**Power Sales Contract**”), with eligible political subdivisions (each, a “**Participant**”), for the provision of bulk power and other services to such Participants;

WHEREAS, under the applicable Power Sales Contracts, the Buyer has agreed to obtain for or provide to the Participants Supplemental Bulk Power Supply (“**Supplemental Power**”);

WHEREAS, the Act authorizes the Buyer to execute power purchase contracts and other agreements with publicly or privately owned entities in order to provide or make available an adequate, dependable, and economical supply of energy and related services to its Participants;

WHEREAS, in accordance with the applicable Power Sales Contracts and the Buyer’s Supplemental Power Supply Policy, certain Participants (the “**Solar Participants**”) have requested that the Buyer purchase from the Seller power, output and services of the Facility to provide Supplemental Power to the Solar Participants;

WHEREAS, in order to make Supplemental Power generated by the Facility available to the Solar Participants, each Solar Participant has, or will enter into a Power Purchase Contract with the Buyer (each, a “**PPC**”) under which such Solar Participant shall obtain its Entitlement Share of the Products (hereinafter defined) and incur its respective share of the payment obligations hereunder; each Solar Participant’s payment obligations under its PPC are general obligations to the payment of which its full faith and credit are pledged, obligating such Solar Participant to provide for the assessment and collection of an annual tax sufficient in amount to provide funds annually to make all payments when due thereunder; and

WHEREAS, Seller desires to sell and deliver to Buyer for sale to its Solar Participants, and Buyer desires to purchase and receive from Seller, the Products (as such term is hereinafter defined) associated with the Contract Amount as defined herein, in each case, generated by the Facility, all in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, mutually agree as follows:

## **SECTION 1 DEFINITIONS; RULES OF INTERPRETATION**

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein shall have the following meanings:

**“Acceptable Credit Rating”** means, with respect to Seller, having a Credit Rating of no less than (as applicable): (a) “BBB-” from S&P, or (b) “Baa3” from Moody’s.

**“Acceptable REC Registry”** means the North American Renewables Registry or any other registry as mutually agreed to by the Parties.

**“Act”** is defined in the Preamble.

**“Actual Capacity”** means the maximum installed instantaneous generation capacity of the completed Facility at which the Facility can operate during the first Contract Year of operation, and as adjusted thereafter for degradation, expressed in MWac as measured on the AC side of the inverters, when operated in compliance with the Generation Interconnection Agreement and consistent with the operating parameters provided by the manufacturer of the Facility equipment.

**“Affiliate”** means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with “control” meaning the possession, directly or indirectly, of the power to direct the management and policies, whether through the ownership of voting securities (if applicable) or by contract or otherwise.

**“Agreement”** is defined in the preamble and includes Exhibits A - F, Exhibits 1 and 2, and any amendments hereto that are executed by the Parties.

**“Ancillary Services”** means the services associated with the Contract Amount that the Facility is capable of providing, without any modifications to the Facility or the Seller’s operation of the Facility, to support the transmission of capacity and energy from generation resources to loads while maintaining the reliable operation of the GITS.

**“Applicable Law”** means any applicable federal, state and local law, statute, regulation, rule, action, order, tariff, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body.

**“Business Day”** means any day Monday through Friday from 9 a.m. to 5 p.m. Eastern Prevailing Time excluding nationally recognized public holidays.

**“Buydown Liquidated Damages”** means an amount equal to the product of (a) the positive difference between (i) the Contract Amount and (ii) the Actual Capacity of the Facility as of the Outside Commercial Operation Date and (b) \$50,000 per MWac. To be clear, if the difference is negative, the Buydown Liquidated Damages is zero dollars (\$0).

“**Buyer**” is defined in the preamble.

“**Buyer Initiated Curtailment**” means a scenario in which production and/or deliveries of Net Output from the Facility is curtailed due to an act or omission of Buyer.

“**Buyer Indemnities**” is defined in Section 12.1.1.

“**Buyer’s Cost to Cover**” means the product of (a) Buyer’s replacement cost for Products (including any charge, cost or expense incurred to import the Products) during the Performance Measurement Period for which the determination is being made, as reasonably determined by Buyer, minus the Contract Price during the Performance Measurement Period, and (b) the Minimum Production Guarantee for such Performance Measurement Period, minus the Net Output for such Performance Measurement Period determined in accordance with Section 6.10.1, which will include all Deemed Delivered Output and Deemed Generated Energy from Curtailments during such Performance Measurement Period (such amount under this clause (b) being the “**Deficient Quantity**”). If the calculation in clause (a) renders a negative number, then the amount under this clause (a) shall be \$0.00. An Example illustrating the calculation of Buyer’s Cost to Cover under certain stated assumptions is set forth in **Exhibit D**.

“**Capacity Rights**” means any current or future defined characteristic, certificate, benefit, product, tag, credit, attribute, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Actual Capacity from the Facility, or from the Facility’s capability and ability to produce energy. Capacity Rights do not include Environmental Attributes, Ancillary Services or any Tax Credits.

“**Cash Deposit**” means United States currency, deposited with a Qualified Issuer in an interest bearing account, in which Buyer holds a first and exclusive perfected security interest pursuant to an escrow agreement, account control agreement or other agreement, either: (i) in an account under which Buyer is designated as beneficiary with sole authority to withdraw cash from the account or otherwise access the funds in the account; or (ii) held in trust by the Qualified Issuer as escrow agent with instructions to pay claims made by Buyer pursuant to this Agreement.

“**Change in Law**” is defined in Section 14.6.

“**Commercial Operation**” means that not less than the Required Percentage of the Contract Amount is fully operational and reliable and is fully interconnected and synchronized with the GITS, which occurs when all of the following events have occurred:

a. Seller shall have entered into a Generation Interconnection Agreement with Transmission Owner;

b. Buyer shall have received a certificate addressed to Buyer from an officer of Seller certifying that: (i) the Nameplate Capacity of the Facility is at least equal to the Required Percentage of the Contract Amount; (ii) the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement and the Generation Interconnection Agreement; and (iii) all Permits to construct and/or operate the Facility in compliance with all



Applicable Law and this Agreement have been obtained and are in full force and effect, other than Permits which would not adversely affect Seller's ability to operate the Facility;

c. Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that: (i) in accordance with the Generation Interconnection Agreement, all required Interconnection Facilities have been constructed; (ii) all required interconnection tests have been completed; and (iii) not less than the Required Percentage of the Contract Amount is physically interconnected with the GITS in accordance with the Generation Interconnection Agreement and synchronized with the GITS;

d. Seller has provided the Seller Credit Support to Buyer as required pursuant to Section 8.1; and

e. No Seller Event of Default is outstanding or remains uncured in accordance with Article 11.

**"Commercial Operation Date"** means the date that Commercial Operation is achieved or deemed achieved pursuant to Section 2.7.

**"Confidential Information"** is defined in Section 24.1.

**"Construction Credit Support"** means a Letter of Credit, Cash Deposit, or Guaranty, or a combination thereof, provided by Seller for the benefit of Buyer in an amount equal to Three Million Dollars (\$3,000,000).

**"Contract Amount"** means 80 MWac. In the case that Buydown Liquidated Damages are paid by Seller, the Contract Amount shall be adjusted as of the Outside Commercial Operation Date pursuant to Section 2.2.3.

**"Contract Interest Rate"** means one hundred (100) basis points per annum plus the rate per annum equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published); provided that if at any time during the Term, the Wall Street Journal no longer publishes a prime lending rate, the prime lending rate for purposes of the calculation of the Contract Interest Rate will be average of the prime interest rates which are announced, from time to time, by the three (3) largest banks (by assets) headquartered in the United States which publish a prime, base or reference rate.

**"Contract Price"** means \$25.91 per MWh.

**"Contract Year"** means each consecutive twelve (12) month period during the Term that commences with the Commercial Operation Date or one of its anniversaries, provided that if this Agreement is terminated prior to its expiration, the Contract Year in which termination occurs will begin on the anniversary of the Commercial Operation Date immediately preceding the termination date (or if such termination occurs during the first Contract Year, on the Commercial Operation Date) and will end on the date of the termination of this Agreement.

**“Costs”** means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably and actually incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations (which, for the sake of clarity, does not include the non-defaulting Party’s losses or gains with respect to any such hedging arrangement) or entering into new arrangements which replace this Agreement (including costs incurred in connection with transmission services that would otherwise not have been incurred hereunder), and to the extent permitted by Georgia law, all reasonable attorneys’ fees and expenses incurred by the non-defaulting Party in connection with remedies initiated pursuant to the provisions of this Agreement.

**“Credit Rating”** means the rating then assigned to Seller’s senior, unsecured long-term debt obligations (not supported by third party credit enhancements) or if Seller does not have a rating for its senior, unsecured long-term debt, then the rating assigned to Seller as an issuer rating by S&P, Moody’s or any other rating agency agreed to by Buyer.

**“Deemed Delivered Output”** is defined in Section 4.4.2.

**“Deemed Generated Energy from Curtailments”** is defined in Section 4.4.1.

**“Defaulting Solar Participant”** means a Solar Participant that fails to timely make payments to Buyer pursuant to the terms of its PPC.

**“Deficient Quantity”** is defined in the definition of “Buyer’s Cost to Cover.”

**“Delay Damages”** means the damages payable by Seller, under the circumstances and subject to the limits described in Sections 2.2.1 or 2.2.2, which for any given day are equal to the product of Fifty Dollars (\$50) per MWac and the Nameplate Capacity of the Facility required to deliver the Contract Amount.

**“DSP Failure”** means the default listed in Sections 11.1.3(a)(2).

**“Effective Date”** is defined in Section 2.1.

**“Electric System Authority”** means each of NERC, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the geographic area in which the Facility is located.

**“Entitlement Share”** means the portion, measured in MWac, of the Contract Amount to which a Solar Participant is entitled pursuant to its PPC.

**“Entitlement Share Percentage”** means a percentage, calculated with respect to each Solar Participant by dividing such Solar Participant’s Entitlement Share by the Contract Amount. The sum of each Solar Participant’s Entitlement Share Percentage shall equal 100%.

**“Emergency”** means an abnormal GITS condition requiring manual or automatic action to maintain GITS frequency, or to prevent loss of firm load, equipment damage, or tripping of system

elements that could adversely affect the reliability of an electric system or the safety of persons or property or a condition that requires implementation of emergency procedures.

**“Environmental Attributes”** means any and all current and future attributes, claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled that are created or otherwise arise from the existence, ownership, or operation of the Facility associated with the Net Output, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include, but are not limited to, the following (a) RECs, (b) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides, nitrogen oxides, carbon monoxide, and other pollutants; and (c) any avoided emissions of carbon dioxide, methane, and other greenhouse gases as defined by U.S. laws or regulations as of the Effective Date or as they may be modified during the Term. Environmental Attributes do not include (i) the Tax Credits or any local, state or federal cash grants, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership of, or energy production from, any portion of the Facility or (ii) cash grants, depreciation deductions and other tax benefits arising from ownership or operation of the Facility. In the case of each of the foregoing clauses (i) and (ii), as between the Parties, Seller shall maintain all rights, title and interest in and to such items.

**“Event of Default”** is defined in Section 11.1.

**“Example”** means an example of certain calculations to be made hereunder. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example.

**“Expected Annual Production”** means the expected production from the Contract Amount for each Contract Year as set forth in **Exhibit B**.

**“Facility”** is defined in the Recitals and is more fully described in attached **Exhibit A**.

**“FERC”** means the Federal Energy Regulatory Commission or its successor.

**“Final Completion Date”** means the earlier of (a) the Date on which the Facility achieves Commercial Operation with respect to one hundred percent (100%) of the Contract Amount required to deliver the Contract Amount or (b) if Buydown Liquidated Damages are paid pursuant to Section 2.2.3, the Outside Commercial Operation Date.

**“Financing Party”** means any Person other than a Seller Affiliate (or any trustee or agent on behalf of such Person) lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax equity or cash equity investor, back-leverage financing or credit derivative arrangement) to Seller or its Affiliates, all or a portion of which is used (a) for the construction, term or permanent funding, financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); or (c) for any development funding, financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility.

**“Financing Party Consent or Estoppel”** means (a) a collateral assignment consent agreement, to be entered into by Seller, Buyer and Seller’s Financing Parties, in a form reasonably agreed by such parties and containing customary terms and conditions, that recognizes and consents to (i) Seller’s collateral assignment of rights and obligations under this Agreement and (ii) the Financing Parties’ rights to be notified of, and allowed to cure, any breach or default of this Agreement by Seller, and to exercise, subject to the notice, cure rights, and remedies provisions of this Agreement, any step-in rights consented to by Seller, and other customary terms as reasonably may be requested by such Financing Parties or (b) other agreements with Financing Parties reasonably requested by such Financing Parties, containing customary terms and conditions, including an estoppel certificate or other agreements with Financing Parties reasonably requested by such Financing Parties, in a form reasonably agreed by such parties and containing customary terms and conditions for tax equity or cash equity investors.

**“Force Majeure”** is defined in Section 14.1.

**“Forced Outage”** means any unplanned outage or derating of the Facility that results in the reduction of, cessation in the delivery of, or inability to deliver the Products, and specifically includes NERC Event Types U1, U2 and U3, as set forth in attached **Exhibit C** (or similar successor unplanned outages if NERC terminology or concepts are revised during the Term of this Agreement), and specifically excludes any Maintenance Outage or Planned Outage.

**“GAAP”** means generally accepted accounting principles in the United States of America as in effect from time to time.

**“Gains”** means, with respect to a non-defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner. Gains shall be measured on the basis of one hundred percent (100%) of the Expected Annual Production for each Contract Year (or portion thereof) during the remainder of the Term (ignoring any early termination of this Agreement).

**“Generation Interconnection Agreement”** means that certain Large Generator Interconnection Agreement by and between Seller and Transmission Owner, and any amendments thereto, containing terms and conditions governing the interconnection and parallel operation of the Facility with GITS.

**“Georgia Integrated Transmission System (GITS)”** means that statewide transmission system jointly owned by MEAG Power, Georgia Transmission Corporation, Dalton Utilities and Georgia Power. Individual transmission lines and substations that make up the GITS are owned and maintained by the individual participants but they are planned and operated as one system, providing each owner with transmission access throughout Georgia.

**“Good Industry Practice(s)”** means any applicable practices, methods, and acts engaged in or approved by a significant portion of the electric industry for construction, interconnection and operation of facilities similar to the Facility during the relevant time period, or the practices, methods and acts which, in the exercise of reasonable judgment by a prudent solar energy generation operator in light of the facts known or which should reasonably have been known at

the time the decision was made, could have been expected to accomplish the desired result consistent with good business practices, manufacturers' recommendations, reliability, safety, expedition, Applicable Law and the requirements of any Governmental Authority having jurisdiction. "Good Industry Practices" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include the acceptable practices, methods or acts generally accepted by the photovoltaic solar generating industry for facilities similar to the Facility during the relevant time period.

**"Governmental Authority"** means any supranational, federal or state authority or other political subdivision thereof, having jurisdiction over Seller, Buyer, the Facility or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing. An Electric System Authority shall also be considered to be a Governmental Authority.

**"Green-e Renewable Energy Standard"** means the Green-e Renewable Energy Standard Version 3.3, or successor version.

**"Guaranteed Commercial Operation Date"** means December 31, 2023, provided that the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis for each day of delay in Seller's development, permitting, construction, interconnection or completion of the Facility associated with (a) the occurrence of a Force Majeure event, (b) a breach by Buyer of any of its obligations under this Agreement, (c) the occurrence of an Emergency condition, or (d) a delay in the in-service date of the Interconnection Facilities beyond the expected date set forth in the Generation Interconnection Agreement, including as a result of a delay in the completion of any Network Upgrades, provided that such delay is not the result of Seller's failure to perform its obligations under the Generation Interconnection Agreement.

**"Guarantor"** means a Person that has issued a Guaranty and (a) has an Acceptable Credit Rating or (b) has otherwise been approved by Buyer, in Buyer's reasonable discretion, in the case of a Guaranty that is provided as Seller Credit Support.

**"Guaranty"** means a guaranty of payment (and not performance) issued by a Guarantor substantially in the form attached hereto as **Exhibit F-1** or otherwise in form and substance satisfactory to Buyer, in Buyer's reasonable discretion; it being acknowledged and agreed that, in the event Seller is obligated to post Seller Credit Support pursuant to the terms of this Agreement and Buyer is not satisfied with the form and substance of the proposed Guaranty (in Buyer's reasonable discretion), the Seller shall nevertheless be obligated to post the required Seller Credit Support by means of a Letter of Credit or Cash Deposit.

**"Interconnection Facilities"** means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the GITS, including electrical transmission lines, line upgrades, transformers, capacitor banks, inductor banks, metering, telecommunications, and associated equipment, substations, relay and switching equipment, and safety equipment, including any Network Upgrades.

**“Internal Revenue Code”** means the Internal Revenue Code of 1986, as such law may be amended or superseded.

**“Involuntary Curtailment”** is defined in Section 4.4.1.

**“ITCs”** means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

**“kWh”** means kilowatt hour.

**“Letter of Credit”** means an unconditional, irrevocable letter of credit issued by a Qualified Issuer either (a) substantially in the form of the letter of credit attached hereto as **Exhibit E** or (b) otherwise in form and substance satisfactory to Buyer, in Buyer’s reasonable discretion, in the case of a Letter of Credit provided as Seller Credit Support

**“Liabilities”** is defined in Section 12.1.1.

**“Licensed Professional Engineer”** means a Person proposed by Seller and acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in the United States, and in all States for which such Person is providing a certification, evaluation or opinion with respect to matters specific to such State, (b) has no economic relationship or association with Seller or Buyer other than services previously or currently being rendered to Seller or Buyer or their respective Affiliates in a capacity similar to the services being provided by such Person in relation to the Facility, and (c) is not a representative of Seller or Buyer or a manufacturer or supplier of any equipment installed in the Facility.

**“Losses”** means, with respect to a non-defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner. Losses shall be measured on the basis of one hundred percent (100%) of the Expected Annual Production for each Contract Year (or portion thereof) during the remainder of the Term (ignoring any early termination of this Agreement).

**“Maintenance Outage”** means any planned outage of the Facility for maintenance that occurs before the next regularly scheduled Planned Outage, which results in reduction of, cessation in the delivery of, or inability to deliver, the energy associated with the Actual Capacity to the Point of Delivery, and specifically includes NERC Event Type MO, as set forth in attached **Exhibit C** (or similar successor planned maintenance outages if NERC terminology or concepts are revised during the Term of this Agreement), and specifically excludes a Forced Outage or a Planned Outage.

**“MEAG Power”** is defined in the Preamble.

**“Minimum Production Guarantee”** is defined in Section 6.10.1.

**“Moody’s”** means Moody’s Investors Service, Inc. or its successor.

**“MW”** means megawatt.

**“MWac”** means megawatts (associated with output, rating or capacity of a solar PV facility) as measured after conversion of the direct current into alternating current by the Facility invertors.

**“MWh”** means megawatt hour.

**“Nameplate Capacity”** means, as of any date, the aggregate installed nameplate capacity of the Facility, expressed in MWac, as of such date.

**“NERC”** means the North American Electric Reliability Corporation or its successor.

**“Net Output”** means, for any period, the amount of energy generated by the Facility and delivered to the Point of Delivery, as measured by the Revenue Meter (it being understood that all electrical energy produced by the Facility, excluding line losses and Station Use, shall be delivered to the Point of Delivery).

**“Network Upgrades”** means any upgrades to the GITS that are required in order to provide interconnection service for the Facility and for which the Facility is allocated costs under the Generation Interconnection Agreement or any affected system agreement with an adjoining electric transmission system owner or operator.

**“Notice to Proceed Date”** means the date on which notice is issued by Seller to its contractor under the engineering, procurement and construction agreement or similar contract relating to the construction of the Facility, authorizing and directing the full and unrestricted commencement of construction of the Facility. The Notice to Proceed Date shall occur on or before October 1, 2022.

**“Output”** means all energy produced by the Facility.

**“Outside COD Termination Payment”** is defined in Section 2.2.2.

**“Outside Commercial Operation Date”** means the date that is three hundred and sixty-five (365) days after the Guaranteed Commercial Operation Date.

**“Participant”** is defined in the Preamble.

**“Party”** and **“Parties”** are defined in the Preamble.

**“Performance Measurement Period”** means the full one (1) Contract Year period commencing on the first day of the first Contract Year and the full one (1) Contract Year period commencing on each subsequent Contract Year.

**“Permits”** means all of the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership or operation of the Facility, sale and delivery of Net Output, and occupancy of the Premises, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Person**” means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization or Governmental Authority.

“**Planned Outage**” means any regularly scheduled planned outage of the Facility for maintenance, repair or other purposes, which results in the reduction of, cessation in the delivery of, or inability to deliver energy associated with more than ten percent (10%) of the Actual Capacity of the Facility to the Point of Delivery, and specifically includes NERC Event Type PO, as set forth in attached **Exhibit C** (or similar successor planned outages, if NERC terminology or concepts are revised during the Term of this Agreement), and specifically excludes any Maintenance Outage or Forced Outage.

“**Point of Delivery**” means the point of interconnection between the Facility and the GITS as specified in the Generation Interconnection Agreement, and is described in attached **Exhibit A**.

“**Power Sales Contract**” is defined in the Preamble.

“**PPC**” is defined in the Preamble.

“**Pre-Construction Credit Support**” means a Letter of Credit, Cash Deposit, Guaranty, or a combination thereof, as determined by Seller, provided by Seller for the benefit of Buyer in an amount equal to One and One Half Million Dollars (\$1,500,000).

“**Premises**” means the real property on which the Facility is or will be located, as more fully described on **Exhibit A**.

“**Prevailing Time**” or “**PT**” means Eastern Standard Time or Eastern Daylight Time, as applicable on the day in question.

“**Products**” means the Net Output, Environmental Attributes, Capacity Rights and Ancillary Services.

“**Qualified Issuer**” means a U.S. commercial bank (or a foreign bank with a U.S. branch) authorized under Applicable law to perform the actions described in this Agreement for the benefit of the Buyer and having total assets of at least ten billion dollars (\$10,000,000,000) and a Credit Rating of no less than (as applicable): (a) “A-” from S&P, or (b) “A3” from Moody’s, or (c) if such bank has a Credit Rating at such time from both S&P and Moody’s, “A-” from S&P and “A3” from Moody’s.

“**REC**” or “**Renewable Energy Credit**” shall mean tradable renewable energy credits that contain all the greenhouse gas (GHG) emissions reduction benefits, including carbon dioxide (CO2) reduction benefits, associated with the MWh of renewable electricity when it was generated and are therefore eligible to be certified (whether or not actually certified) in accordance with the Green-e Renewable Energy Standard.

“**Required Facility Documents**” means all Permits, authorizations, rights and agreements reasonably necessary for construction, operation, and maintenance of the Facility.



**“Required Percentage”** means ninety-five percent (95%).

**“Revenue Meter”** means the meter installed at the Point of Delivery in order to measure the energy delivered by the Facility.

**“ROFR Notice”** is defined in Section 6.6.

**“S&P”** means Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

**“Seller”** is defined in the preamble.

**“Seller Credit Support”** means (a) for the period commencing ten (10) Business Days after the Effective Date and ending ten (10) days after the issuance of the Notice to Proceed, the Pre-Construction Credit Support, (b) for the period commencing ten (10) days after the issuance of the Notice to Proceed and ending on the day before the Commercial Operation Date, the Construction Credit Support, (c) for the period commencing on the Commercial Operation Date and ending on the last day before the tenth (10<sup>th</sup>) Contract Year (or, if earlier, the termination of this Agreement and the payment of all amounts owed to Buyer hereunder), the Subsequent Credit Support Tier I, and (d) for the period commencing on the first day of the 11<sup>th</sup> Contract Year and lasting until the expiration or termination of this Agreement and the payment of all amounts owed to Buyer hereunder, the Subsequent Credit Support Tier II.

**“Seller Indemnitees”** is defined in Section 12.1.2.

**“Solar Participant(s)”** is defined in the Preamble and is further defined to mean each of Buyer’s Participants that hold an Entitlement Share to the Products pursuant to a PPC between the Solar Participant and Buyer. The Solar Participants and their respective Entitlement Share Percentages, are set forth on Schedule 1, attached hereto.

**“Station Use”** means energy produced by the Facility used to operate the Facility or to perform preventative or corrective maintenance to the Facility.

**“Subsequent Credit Support Tier I”** means a Letter of Credit, Cash Deposit, Guaranty, or a combination thereof, provided by Seller for the benefit of Buyer in an amount equal to Four Million Dollars (\$4,000,000).

**“Subsequent Credit Support Tier II”** means a Letter of Credit, Cash Deposit, Guaranty, or a combination thereof, provided by Seller for the benefit of Buyer in an amount equal to Three Million Dollars (\$3,000,000).

**“Supplemental Power”** is defined in the Background Recitals.

**“Supplemental Power Supply Policy”** means that certain policy regarding Supplemental Power Supply adopted by Buyer on March 17, 1999, as revised and adopted on October 20, 1999, and as further revised and adopted on September 19, 2002.

**“Tax Credits”** means any state, local and/or federal production tax credit, tax deduction, and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities, including ITCs.

**“Term”** is defined in Section 2.1.

**“Termination Payment”** means, with respect to a Party, the positive difference, if any, between (a) Losses and Costs incurred by such Party as a result of termination of this Agreement, less (b) Gains of such Party as a result of termination of this Agreement, expressed in U.S. dollars. If the Termination Payment calculation results in a number less than or equal to zero dollars (\$0), the Termination Payment shall be zero dollars (\$0).

**“Test Energy”** means any Net Output during periods prior to the Commercial Operation Date and any associated Capacity Rights.

**“Transmission Owner”** means MEAG Power or any successor that owns the transmission lines, Interconnection Facilities (other than those Interconnection Facilities owned by Seller) and other equipment and facilities with which the Facility interconnects at the Point of Delivery.

## 1.2 Rules of Interpretation.

1.2.1 General. Terms used in this Agreement but not specifically defined in this Section 1 shall have meanings as commonly used in the English language and, where applicable, in Good Industry Practices. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used in accordance with such recognized meanings. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity include a reference to such entity’s successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with GAAP consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not limited to”; and (h) all references to a particular law or statute means that law or statute, as amended from time to time.

1.2.2 Terms Not to be Construed For or Against Either Party. Each term hereof shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3 Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.2.4 Examples. Example calculations and other Examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the Example itself or the matters assumed for purposes of such Example. If there is a conflict between an Example and the text hereof, the text shall control.

1.2.5 Agreement is a Service Contract. The Parties acknowledge and agree that this Agreement is a service contract within the meaning of Section 7701(e) of the Internal Revenue Code.

## **SECTION 2**

### **TERM; FACILITY DEVELOPMENT**

2.1 Term. This Agreement is entered into as of the date hereof (the “Effective Date”) and, unless earlier terminated as provided herein, shall remain in effect until the end of the twentieth (20th) Contract Year (the “Term”).

#### 2.2 Facility Construction and Delay Damages and Buydown Liquidated Damages.

2.2.1 Seller shall use commercially reasonable efforts to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date. Seller shall pay Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date through the Commercial Operation Date unless the Agreement is terminated pursuant to Section 2.2.2.

2.2.2 If the Commercial Operation Date has not been achieved on or before the Outside Commercial Operation Date, Buyer may terminate this Agreement by written notice to other Party on or before the tenth (10th) day following the Outside Commercial Operation Date. If Buyer elects to terminate this Agreement pursuant to this Section 2.2.2, (a) this Agreement shall terminate and thereafter have no force or effect, (b) Seller shall owe to Buyer liquidated damages equal to the amount of the Construction Credit Support required as of such date, reduced by the aggregate amount of all damages or payments (including Delay Damages) paid by Seller to Buyer on or before such date (the “Outside COD Termination Payment”), and (c) neither Party shall have any further obligations or liabilities hereunder.

2.2.3 If Commercial Operation is declared before the Facility is capable of delivering the full Contract Amount, Seller shall use commercially reasonable efforts to cause the Facility to reach the capability of delivering the full Contract Amount. If the Facility has not reached the capability of delivering the full Contract Amount on or before the Outside Commercial Operation Date, Seller shall pay to Buyer liquidated damages in the amount of the Buydown Liquidated Damages, in which case the Contract Amount shall, for the remainder of the Term, be equivalent to the Actual Capacity of the Facility as of the Outside Commercial Operation Date.

2.3 Damages Calculation. Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to Seller’s failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date or due to the Actual Capacity of the Facility being less than that required to deliver the full Contract Amount as of the Outside Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages, Outside COD Termination Payment, and Buydown Liquidated Damages, as agreed to by the Parties and set forth herein, are a fair and reasonable calculation of such damages. Delay Damages, the Outside COD Termination Payment, and Buydown Liquidated Damages shall be payable in lieu of actual damages and, notwithstanding any other provision of this Agreement:

(i) the Buyer's right to terminate this Agreement and receive the Outside COD Termination Payment pursuant to Section 2.2.2 shall be Buyer's sole and exclusive remedy and Seller's sole and exclusive liability for any failure to achieve Commercial Operation by the Outside Commercial Operation Date. For the avoidance of doubt, such failure shall not be considered an Event of Default; and

(ii) Buydown Liquidated Damages shall be Buyer's sole and exclusive remedy and Seller's sole and exclusive liability for the Actual Capacity of the Facility being less than the Contract Amount as of the Outside Commercial Operation Date. For the avoidance of doubt, such failure shall not be considered an Event of Default.

2.4 Delay Damages Invoicing. By the fifteenth (15th) day following the end of a calendar month in which any Delay Damages have accrued, Buyer shall deliver to Seller an invoice showing Buyer's computation of Delay Damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than thirty (30) days after issuance of such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the undisputed amount set forth as due in such invoice.

2.5 Quarterly and Monthly Reports. From the Effective Date until thirty (30) days following the Final Completion Date:

(a) On or before the fifteenth (15<sup>th</sup>) day of each calendar quarter prior to the Notice to Proceed Date, commencing with the first full calendar quarter beginning after the Effective Date, Seller shall provide a quarterly status report containing the information set forth in Exhibit 1; and

(b) On or before the fifteenth (15<sup>th</sup>) day of each calendar month commencing with the calendar month next following the calendar month in which the Notice to Proceed Date occurs, Seller shall provide a monthly status report containing the information set forth in Exhibit 1.

Upon Buyer's reasonable request, representatives of Seller and Buyer shall schedule and attend telephone or in person conferences periodically during such period to discuss the status of (i) the development, construction and installation of the Facility and (ii) the achievement of Commercial Operation. Also, upon Buyer's request, Seller will facilitate Buyer's onsite inspection and monitoring of construction activities in accordance with and subject to Section 6.11.

2.6 Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller's or the Facility's eligibility to receive ITCs or other Tax Credits, or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes.

2.7 Commercial Operation. Seller shall provide written notice to Buyer stating when Seller believes that Commercial Operation has been achieved and the Actual Capacity of the Facility that will be provided to Buyer at such time together with (a) if applicable, Seller's statement of the Actual Capacity of the Facility that Seller intends to complete but that is not yet completed and (b) the certificates described in the definition of Commercial Operation. Buyer shall have ten (10) Business Days after receipt of such notice to state with specificity any

requirements that Buyer reasonably believes have not been satisfied. If, within such ten (10) Business Day period, Buyer does not respond or Buyer notifies Seller confirming that Commercial Operation has been achieved, the original date of receipt of Seller's written notice shall be the Commercial Operation Date. If Buyer notifies Seller within such five (10) Business Day period that Buyer believes Commercial Operation has not been achieved, Seller shall address the concerns stated in Buyer's notice, and Commercial Operation shall occur on the date such concerns are addressed to the mutual satisfaction of both Parties, as specified in a notice from Buyer to Seller, or as otherwise determined pursuant to the dispute resolution provisions set forth in Section 23. The Parties agree that review and approval of the conditions to Commercial Operation may occur on an ongoing and incremental basis as such conditions are satisfied.

### **SECTION 3 REPRESENTATIONS AND WARRANTIES**

3.1 Mutual Representations and Warranties. Each Party represents and warrants to the other that, as of the Effective Date:

3.1.1 Organization. It is duly organized and validly existing under the laws of the jurisdiction of its organization.

3.1.2 Authority. It (a) has the requisite power and authority to enter into this Agreement, (b) has, or as of the requisite time will have, all regulatory and other authority necessary to perform hereunder, and (c) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.1.3 Corporate Actions. It has taken all corporate, limited liability company or other applicable actions, including provision of notice, required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. The execution, delivery and performance and observance hereof by it of its obligations hereunder do not (a) contravene any provision of, or constitute a default under, (i) any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, (ii) any valid order of any court, or any regulatory agency or other body having authority to which it is subject, or (iii) any material Applicable Law presently in effect having applicability to it, or (b) require the consent or approval of, or material filing or registration with, any Governmental Authority or other Person other than such consents or approvals that are not yet required but expected to be obtained in due course.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by Georgia law, including the Act, and general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally, laws restricting the availability of equitable remedies, and limitations on legal remedies against public bodies corporate and politic of the State of Georgia.

3.1.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of such Party's knowledge, threatened against such Party or any Affiliate of such Party with respect to this Agreement or the transactions contemplated hereunder, in each case, that if it were decided against such Party would materially and adversely affect such Party's ability to perform its obligations hereunder.

3.1.7 Service Contract. The Parties agree and acknowledge this Agreement purports to be a "service contract" within the meaning of Section 7701I of the Internal Revenue Code, the Parties hereto intend it to be such, and the Agreement should be construed accordingly.

3.2 No Other Representations or Warranties. Each Party acknowledges that it has entered hereinto in reliance upon the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter hereof.

## **SECTION 4 PURCHASE AND SALE OF PRODUCTS**

4.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell and Buyer shall purchase the Products, including the Net Output delivered at the Point of Delivery. For and in consideration of Buyer's agreement to purchase from Seller the Net Output on the terms and conditions set forth herein, Seller transfers to Buyer, and Buyer accepts from Seller, all right, title, and interest that Seller may have in and to the associated REC's existing during the Term.

4.1.1 In addition, during the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and receive, the Test Energy.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any portion of the Products to any Person other than Buyer; *provided, however*, that this restriction shall not apply to the extent (i) such sales are permitted pursuant to Section 11.3 or Section 14.3, or (ii) Buyer has committed an Event of Default that is not attributable to a DSP Failure.

4.3 Title and Risk of Loss. Seller shall deliver the Products and the Test Energy free and clear of all liens, security interest, claims and encumbrances. Title to and risk of loss of the Net Output and the Test Energy shall transfer from Seller to Buyer upon its delivery to Buyer at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by the Net Output and the Test Energy up to the Point of Delivery. Buyer shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by the Net Output and the Test Energy at and from the Point of Delivery. All proceeds received by Buyer from the resale by Buyer of any portion of Products and the Test Energy shall belong exclusively to Buyer.

4.4 Curtailment. The rights and obligations of the Parties with respect to curtailments of energy from the Facility are as follows:

4.4.1 Involuntary Curtailments. Seller shall not be obligated to sell and make available energy from the Facility (or the other Products), and Buyer shall not be obligated to purchase, receive or pay for energy from the Facility (or the other Products), that is not delivered to the Point of Delivery due to any of the following (singularly, **“Involuntary Curtailment”** and collectively, **“Involuntary Curtailments”**): (a) to the extent resulting from an Emergency, or (b) during times and to the extent that an event of Force Majeure prevents either Party from delivering or receiving energy from the Facility, provided that, with respect to (b), a Party shall not be relieved of its obligations pursuant to this Section 4.4.1 if the underlying cause for the occurrence of the Force Majeure was within the reasonable control of such Party or any Person retained by such Person. For each Involuntary Curtailment, the total lost production caused by such Involuntary Curtailment, expressed in MWh (**“Deemed Generated Energy from Curtailments”**), shall be the Net Output that would have been produced by the Facility and delivered by Seller to Buyer at the Point of Delivery pursuant to this Agreement but that was not produced by the Facility and delivered to the Point of Delivery pursuant to this Agreement due to such Involuntary Curtailment, as reasonably determined by Seller using Expected Annual Production for the applicable Contract Year, Facility availability information, relevant weather conditions, solar insolation at the Facility and other pertinent data for the relevant period.

4.4.2 Buyer Initiated Curtailment. If at any time there is a Buyer Initiated Curtailment, then Seller shall not be obligated to sell and make available energy from the Facility (or the other Products). For each Buyer Initiated Curtailment, the total lost production caused by the Buyer Initiated Curtailment, expressed in MWh (**“Deemed Delivered Output”**), shall be the Net Output that would have been produced by the Facility and delivered by Seller to Buyer at the Point of Delivery pursuant to this Agreement but that was not produced by the Facility and delivered to the Point of Delivery pursuant to this Agreement due to such Buyer Initiated Curtailment, as reasonably determined by Seller using Expected Annual Production for the applicable Contract Year, Facility availability information, relevant weather conditions, solar insolation at the Facility and other pertinent data for the relevant period. Buyer shall compensate Seller for each MWh of Deemed Delivered Output at the Contract Price. Additionally, Buyer shall be responsible for any charges or penalties assessed by Transmission Owner or any Electric System Authority against either Party as a result of any Buyer Initiated Curtailment.

#### 4.5 Environmental Attributes, Capacity Rights and Ancillary Services.

4.5.1 Purchase and Sale of Environmental Attributes. For and in consideration of Buyer’s agreement to purchase from Seller the Net Output on the terms and conditions set forth herein, Seller will deliver all Environmental Attributes associated with the Net Output to Buyer. The Parties will make such filings, execute such periodic documentation and take all actions as are reasonably required to deliver documentation of the transfer of Environmental Attributes to Buyer through the Acceptable REC Registry. If the Acceptable REC Registry is unavailable, then Seller will deliver the Environmental Attributes to Buyer in an Environmental Attribute attestation to Buyer or other legal form to be agreed to by the Parties. Title and risk of loss of the Environmental Attributes shall transfer from Seller to Buyer at the time the Environmental Attributes are transferred to Buyer’s Acceptable REC Registry account or at the time the Environmental Attributes are otherwise transferred to Buyer.

4.5.2 Registration. Seller shall cooperate in any registration reasonably requested by Buyer of the Facility in any renewable portfolio standard or other equivalent program in which Buyer may wish Seller to register or maintain registration of the Facility, to the extent that Buyer pays the costs and expenses associated therewith; provided, that in no event shall Seller be required to make any modifications or upgrades to the Facility or the Interconnection Facilities or to modify the Facility's operations in any manner in order to provide Environmental Attributes or register or comply with any renewable portfolio standard or other equivalent program.

4.5.3 Purchase and Sale of Capacity Rights. For and in consideration of Buyer's agreement to purchase from Seller the Net Output on the terms and conditions set forth herein, Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to the Capacity Rights, if any, existing during the Term and associated with the Net Output to Buyer. It is acknowledged and agreed by the Parties that Seller shall not be obligated to incur any incremental costs or expenses (a) in developing, constructing or operating the Facility in order for Seller to provide Capacity Rights to Buyer or (b) to accredit the capacity of the Facility. In no event shall Seller be required to make any modifications or upgrades to the Facility or the Interconnection Facilities or to modify the Facility's operations in any manner in order to provide Capacity Rights.

4.5.4 Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and, subject to Section 4.2, covenants that during the Term it will not sell or attempt to sell to any Person, the Capacity Rights, if any. Subject to Section 4.2, during the Term, Seller shall not report to any Person that the Capacity Rights, if any, belong to anyone other than Buyer. Buyer may at its own risk and expense report to any Person that the Capacity Rights exclusively belong to it.

4.5.5 Purchase and Sale of Ancillary Services. For and in consideration of Buyer's agreement to purchase from Seller the Net Output on the terms and conditions set forth herein, Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to the Ancillary Services, if any, existing during the Term and associated with the Net Output to Buyer. It is acknowledged and agreed by the Parties that Seller shall not be obligated to incur any incremental costs or expenses in developing, constructing or operating the Facility in order for Seller to provide Ancillary Services to Buyer. In no event shall Seller be required to make any modifications or upgrades to the Facility or the Interconnection Facilities or to modify the Facility's operations in any manner in order to provide Ancillary Services.

4.5.6 Representation Regarding Ownership of Ancillary Services. Seller represents that it has not sold, and, subject to Section 4.2, covenants that during the Term it will not sell or attempt to sell to any Person, the Ancillary Services, if any. Subject to Section 4.2, during the Term, Seller shall not report to any Person that the Ancillary Services, if any, belong to anyone other than Buyer. Buyer may at its own risk and expense report to any Person that the Ancillary Services exclusively belong to it.

4.5.7 Further Assurances. At Buyer's request, and, as between Buyer and Seller, at Buyer's sole cost and expense, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights and Ancillary Services, if any, to Buyer.



4.6 Other Products. This Agreement does not create for Buyer any rights or interests in any product generated by the Facility, other than Net Output, associated Environmental Attributes, associated Capacity Rights and associated Ancillary Services. Seller shall retain all rights, title and interest in and to (i) any and all existing or future products that are produced by or in any manner attributable to the Facility (other than Net Output, Environmental Attributes, Capacity Rights and Ancillary Services, in each case as generated by the Facility during the Term), (ii) Tax Credits or any local, state or federal cash grants, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership of, or energy production from, any portion of the Facility, and (iii) cash grants, depreciation deductions and other tax benefits arising from ownership or operation of the Facility.

## **SECTION 5 CONTRACT PRICE; COSTS**

5.1 Contract Price. Commencing on the Commercial Operation Date and continuing through the Term, Buyer shall pay the Contract Price for all deliveries to Buyer of the Products. The Contract Price includes the consideration to be paid by Buyer to Seller for the Products, and Seller shall not be entitled to any compensation over and above the Contract Price for the Products, except as set forth in Section 4.4.2.

5.1.1 For the period prior to the Commercial Operation Date, Buyer shall pay seventy-five percent (75%) of the Contract Price for all deliveries to Buyer of Test Energy.

5.2 Payment Obligation. Buyer's payment obligations associated with a DSP Failure under this Agreement (including any fees, charges, penalties or interest required hereunder unless expressly provided to the contrary) are limited to the amounts actually paid to Buyer by each Solar Participant pursuant to its respective PPC. Buyer hereby conveys, assigns, pledges and grants to Seller a security interest in all amounts actually paid by each Solar Participant pursuant to its PPC. The payment obligation of each Solar Participant pursuant to its PPC shall be supported by its full faith and credit taxing power and, in the event a Solar Participant becomes a Defaulting Solar Participant, Buyer hereby commits to Seller that it shall promptly pursue each of its remedies available to it pursuant to (x) the Defaulting Solar Participant's PPC, including, if necessary enforcement of the Defaulting Solar Participant's taxing power and (y) the non-defaulting Solar Participants' PPC obligations to make payments arising from the nonpayment of a Defaulting Solar Participant. Buyer further represents and warrants that it has delivered to Seller substantially true and correct copies of each PPC and Buyer covenants that it shall not amend any PPC if to do so would have an adverse effect on Seller's rights or expected revenues under this Agreement.

5.3 Costs and Charges. Seller shall be responsible for all Liabilities, costs or charges imposed in connection with the delivery of Net Output up to the Point of Delivery, including line losses and any operation and maintenance charges imposed by the Transmission Owner for the Interconnection Facilities. Buyer shall be responsible for all Liabilities, costs or charges imposed in connection with the scheduling and transmission of Net Output from and beyond the Point of Delivery, except as otherwise provided in Section 6.1.2.

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse Buyer for, all sales, use, severance, excise, ad valorem, and any other similar taxes imposed or levied by any

Governmental Authority on the generation, sale or delivery of the Net Output up to the Point of Delivery, regardless of whether such taxes are imposed on Buyer or Seller under Applicable Law. Buyer shall pay or cause to be paid when due, or reimburse Seller for, all such taxes levied at and beyond the Point of Delivery upon and after the purchase by Buyer of the Net Output, regardless of whether such taxes are imposed on Buyer or Seller under Applicable Law. Seller shall be responsible for all federal, state and local taxes of whatever kind relating to the construction, ownership, leasing, operation or maintenance of the Facility, the Premises, or any components or appurtenances thereof, and all of Seller's income taxes, including those based upon the sale of the Products. If a Party is required to remit or pay taxes that are the other Party's responsibility hereunder, the Party required to pay such taxes shall provide prompt written notice thereof to the Party responsible for such taxes, together with appropriate supporting documentation. The paying Party shall remit such taxes to the relevant Governmental Authority and the responsible Party shall reimburse the paying Party for such taxes. Such reimbursement shall be made by the responsible Party on or before ninety (90) days after (a) such notice and supporting documentation are received, or (b) such taxes are actually paid and proper documentation thereof is furnished, whichever is later. Any Party entitled to an exemption from any such taxes or charges shall furnish the other Party any necessary documentation related thereto. The Parties specifically reserve the right to protest to the appropriate state or political subdivision the amount or validity of any such taxes, whether or not any such action must be filed in the name of Seller, Buyer or both. At the responsible Party's expense, the paying Party shall reasonably cooperate with the responsible Party with any such action.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Applicable Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or environmental attributes.

5.6 Rates Not Subject to Review. Neither Party shall petition FERC pursuant to the provisions of sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 *et seq.*) or any other Governmental Authority to amend this Agreement, or support a petition by any other Person seeking to amend this Agreement, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956) and *Fed. Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527 (2008) and *NRG Power Mktg., LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2009).

## **SECTION 6 OPERATION AND CONTROL**

### **6.1     Standard of Facility Operation.**

6.1.1   General; Operating and Forecast Procedures. Seller shall develop, build, operate, maintain and repair the Facility in all material respects in accordance with: (a) the applicable and mandatory standards, criteria and guidelines of the Transmission Owner and any Electric System Authority; (b) the Permits; (c) the Generation Interconnection Agreement; (d) all Applicable Laws; (e) the requirements of this Agreement; and (f) Good Industry Practices. Buyer and Seller shall cooperate to develop prior to the Commercial Operation Date (i) operating procedures for the scheduling, delivery and receipt of Test Energy and the Products as described hereunder, and (ii) procedures for providing non-binding forecasting of expected Net Output, in each case, in accordance with the requirements of this Agreement.

#### **6.1.2   Fines and Penalties.**

(a)     Seller shall pay when due all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with respect to any provision hereof, any agreement, commitment, obligation or liability incurred by Seller in connection with this Agreement or the Facility or any Applicable Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents, employees, contractors or subcontractors through appropriate proceedings.

(b)     If fines, penalties, or legal costs are assessed against or incurred by Buyer on account of any action by any Governmental Authority or the Transmission Owner due to noncompliance by Seller with any Applicable Law, the Generation Interconnection Agreement or the provisions hereof, or if the performance of Seller or Buyer is delayed or stopped by order of any Governmental Authority or the Transmission Owner due to Seller's noncompliance with any Applicable Law, or the Generation Interconnection Agreement, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages and claims suffered or incurred by Buyer as a result.

(c)     Without limiting the generality of anything in this Section 6.1.2, Seller shall reimburse Buyer for all fees, damages, fines, penalties or legal costs imposed on Buyer by any Governmental Authority or other Person or paid to other utilities for violations to the extent caused by Seller, and likewise Buyer shall reimburse Seller for all fees, damages, fines, penalties or legal costs imposed on Seller by any Governmental Authority or other Person or paid to other utilities for violations to the extent caused by Buyer.

6.2     Interconnection. Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at the Point of Delivery, including Interconnection Facilities

defined herein, the costs of any Network Upgrades and the costs of any upgrades for affected systems.

6.3 Coordination with the Transmission Owner. As between the Parties, Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the Transmission Owner. In the event there are unanticipated changes in FERC or any Electric System Authority rules related to the coordination and synchronization of the Facility and the Interconnection Facilities with the Transmission Owner sufficiently significant to change the benefits, risks and burdens held by the Parties under this Agreement, the Parties shall meet in good faith to adjust the terms of this Agreement to provide for the Parties the originally intended allocation of benefits, risks and burdens.

#### 6.4 Outages.

6.4.1 Planned Outages. Commencing with the second (2<sup>nd</sup>) Contract Year, Seller shall provide Buyer with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year. Buyer shall have a period of fifteen (15) calendar days following Seller's delivery of such annual forecast to review and provide Seller with any requested changes in writing. Seller shall promptly update such annual forecast, or otherwise change it, only to the extent that Seller is reasonably required to change it in order to comply with Good Industry Practices, or the terms of any of Seller's or its Affiliates' financing documents. Seller shall not schedule any Planned Outages in the daylight hours during the period starting May 15<sup>th</sup> and ending October 15<sup>th</sup> of each Contract Year, inclusive, that reduce the energy generation capability of the Facility, unless (a) such outage is required to avoid damage to the Facility, (b) such outage is necessary to perform maintenance that is required to maintain equipment warranties, (c) such outage is required in order to comply with Good Industry Practices or the Generation Interconnection Agreement or (d) the Parties agree otherwise in writing.

6.4.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent, acting reasonably). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the decrease in available capacity of the Facility, and the expected completion date and time of the outage. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage, provided that such change has no substantial impact on Seller and is consistent with Good Industry Practices. Seller shall notify Buyer of any subsequent changes in the available capacity of the Facility as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications regarding Maintenance Outages given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its reasonable efforts consistent with Good Industry Practices to minimize the frequency and duration of Maintenance Outages.

6.4.3 **Forced Outages.** Seller shall promptly provide to Buyer an oral report, via telephone to a number specified by Buyer, of any Forced Outage affecting more than ten percent (10%) of the Actual Capacity of the Facility. This report shall include the amount of the Actual Capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. Seller shall take reasonable measures consistent with Good Industry Practices to avoid Forced Outages and to minimize their duration.

6.4.4 **Notice of Deratings and Outages.** Without limiting the foregoing, Seller will inform Buyer via telephone to a number specified by Buyer, of any major limitations, restrictions, deratings, or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than ten percent (10%) of the Actual Capacity of the Facility.

6.5 **Buyer Transmission Services.** Beginning no later than [March 31], 2023 and continuing throughout the Term, Buyer shall be responsible for arranging and paying for all transmission service required to effectuate the receipt of Test Energy and Net Output at the Point of Delivery. As between Buyer and Seller, Buyer shall bear all responsibility, liability, costs, fees, penalties and any other expenses associated with any failures, errors or omissions solely due to Buyer's performance of such obligations, including the failure to timely perform such obligations in accordance with this Agreement or the requirements of any Electric System Authority. Buyer shall indemnify, hold harmless and reimburse Seller for any liability, costs, fees, penalties and any other expenses assessed against or incurred by Seller that are Buyer's responsibility pursuant to the preceding sentence.

6.6 **Increase in Actual Capacity After the Final Completion Date.** Seller shall provide Buyer with written notice if Seller or any Affiliate of Seller elects to build an additional solar project in the geographic vicinity of the Facility (such notice a "**ROFR Notice**"), which ROFR Notice shall include information regarding the additional solar project (including but not limited to anticipated capacity and pricing and timing of construction). Buyer may, but shall not be required to, elect to increase its Contract Amount by an amount of MWac up to the maximum capacity of such additional solar project by providing written notice to Seller within [sixty (60)] days of actual receipt of the ROFR Notice. If Buyer elects not to participate in the additional solar project (or otherwise fails to timely respond to the ROFR Notice), then Seller may proceed with construction and selling the resulting output to a third party; provided that Seller shall be required to submit a new ROFR Notice to Buyer in accordance with this Section 6.6 for Buyer's consideration if the price agreed upon with such third party is less than the price offered to Buyer pursuant to the declined ROFR Notice.

6.7 **Meteorological Data.** Seller shall install sufficient meteorological stations at the Facility to provide the capability of measuring and recording representative irradiance levels and other pertinent meteorological conditions, which meteorological data may be used to calculate Deemed Generated Energy from Curtailments and Deemed Delivered Output.

6.8 **Forecasting.** Seller shall prepare and provide Buyer with the Facility's forecasted Energy production and the Net Output. These non-binding forecasts of production, described in Subsections 6.8.1 through 6.8.4, will be determined and prepared with the intent of being as

accurate as possible. Seller shall update a forecast any time information becomes available indicating a material change in the forecast relative to the most previously provided forecast.

6.8.1 Year-Ahead Forecasts. Seller shall, by December 1 of each year during the Term, provide Buyer with a forecast of each month's average-day Net Output from the Facility, by hour, for the following calendar year. This forecast shall include an expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month at least five (5) Business Days before the first Business Day of such month.

6.8.2 Week-Ahead Forecasts. By 1700 EPT on the Thursday preceding the immediately upcoming week of delivery, Seller shall provide Buyer with a daily forecast of deliveries for the upcoming week (Saturday through Friday).

6.8.3 Day-Ahead Forecasts. By 0700 EPT on the calendar day immediately preceding the day of delivery, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the next seven (7) days. In the event that Seller has any information to believe that the production from the Facility on any day will be materially lower or higher than what would otherwise be expected based on the forecasts provided, then Seller will inform Buyer of such circumstance by 0700 EPT on the preceding Business Day.

6.8.4 Intra-day Forecasts. In the event that Seller has any information to believe that the production from the Facility during any hour will be materially lower or higher than what would otherwise be expected based on the forecasts provided, then Seller will inform Buyer of such circumstance as soon as practical.

6.8.5 Communication. Seller shall communicate forecasts in a form, template, substance, and manner as requested by Buyer (e.g., Excel template), which form, template, substance, and manner may be reasonably modified by Buyer from time to time. Requested forecast data may include but is not limited to, location, forecast timestamp, site capacity, a flag for actual or forecasted data, available site capacity, energy, and reason for any capacity reduction for each hour of the next seven days.

## 6.9 Operational Records and Reports.

6.9.1 Monthly Reports. Within fifteen (15) days after the end of each calendar month during the Term from and after the Commercial Operation Date, Seller shall provide to Buyer a monthly operational report, in electronic format, in a form and substance reasonably acceptable to Buyer containing the following data:

- (a) A summary of the energy production of the Facility during such month and the Net Output; and
- (b) A summary of any other significant events related to the operation of the Facility for such month.

6.9.2 Other Information to be Provided to Buyer. Seller shall provide to Buyer such other information respecting the condition or operations of Seller or the Facility as Buyer may, from time to time, reasonably request.

6.9.3 Information to Governmental Authorities. Seller shall, as soon as practicable, upon written request from Buyer, assist Buyer by providing Facility data and reports, to the extent available, that are required by Buyer to be provided to any Governmental Authority. In the event that Buyer obtains confidential technical or proprietary information related to the Facility and belonging to a third party, and Buyer is required to provide such information to a Governmental Authority or otherwise required to provide such information under Applicable Law, Seller may, at its expense, seek a protective order or other appropriate remedy to prevent such information from being disclosed to the public, all as further described in Section 24.4, below.

#### 6.10 Production Guarantee.

6.10.1 Guaranteed Production. Seller guarantees that during each Performance Measurement Period during the Term, the Net Output for such Performance Measurement Period and the associated RECs will be no less than eighty-five percent (85%) of the Expected Annual Production for each Contract Year during such Performance Measurement Period (the “**Minimum Production Guarantee**”). In determining the Net Output in any Performance Measurement Period for purposes of compliance with the Minimum Production Guarantee, Deemed Delivered Output and Deemed Generated Energy from Curtailments shall be credited to the calculation of such Net Output.

6.10.2 Liquidated Damages for Failure to Meet Guaranteed Production. If Seller fails to achieve the Minimum Production Guarantee in any Performance Measurement Period, then Seller shall pay Buyer, as liquidated damages and not as a penalty, an amount equal to Buyer’s Cost to Cover. Each Party agrees and acknowledges that the damages Buyer would incur due to any failure to achieve the Minimum Production Guarantee would be difficult to predict with certainty and therefore the liquidated damages set forth in this Section 6.10.2 are a fair and reasonable calculation of such damages. Such liquidated damages shall be payable in lieu of actual damages and shall be Buyer’s sole and exclusive remedy and Seller’s sole and exclusive liability for any failure by Seller to achieve the Minimum Production Guarantee; provided, however, notwithstanding the foregoing, Buyer shall nevertheless have the right to terminate this Agreement as a result of an Event of Default by Seller under Section 11.1.2(f) and seek those related rights and remedies upon such termination.

6.10.3 Annual Output Guarantee Report. On or before the sixtieth (60th) Day following the end of each Performance Measurement Period, Buyer shall deliver to Seller a report (and supporting data) detailing whether Seller achieved the Minimum Production Guarantee for the most recently completed Performance Measurement Period, and, if applicable, calculations of the liquidated damages set forth in Section 6.10.2 that Seller owes for such Performance Measurement Period. Within ten (10) Business Days of providing such invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice or as otherwise determined pursuant to the dispute resolution provisions set forth in Section 23.

6.11 Access Rights. Upon reasonable prior notice, during normal working hours, and subject to the safety requirements of Seller and Applicable Laws relating to workplace health and safety, Seller shall provide Buyer and its authorized agents, employees and inspectors with

reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) for purposes of implementing Section 10.6, (c) as necessary to witness any acceptance tests, and (d) for other reasonable purposes at the reasonable request of Buyer. Buyer shall indemnify and release Seller against and from any and all Liabilities resulting from actions or omissions by the Buyer Indemnitees in connection with their access to the Premises or the Facility, except to the extent that such damages are caused by the intentional or grossly negligent act or omission of any Seller Indemnitee.

6.12 Signage. If Buyer determines it would be useful for public relations purposes to have a sign at the site identifying the Solar Participants, Seller will provide such signage after review and approval by Buyer.

## **SECTION 7 GENERATOR STATUS**

7.1 Authority to Make Sales. From and after the Commercial Operation Date (or, if earlier, the date Seller commences the delivery of the Test Energy), Seller shall maintain its authority to sell Net Output hereunder.

## **SECTION 8 SELLER'S SECURITY AND CREDIT SUPPORT**

8.1 Seller Credit Support. Seller shall provide Buyer with and maintain the Seller Credit Support. The Seller Credit Support shall be available to Buyer as security for Seller's payment obligations under this Agreement. The Seller Credit Support shall be maintained at the expense of Seller and shall be, as elected by Seller, in its sole discretion, in the form of Letter of Credit, Cash Deposit, or Guaranty or a combination thereof. Seller may change the form or forms of Seller Credit Support at any time and from time to time upon reasonable prior notice to Buyer. Seller shall be required to replenish the Seller Credit Support if and as it is depleted.

8.1.1 One or More Letters of Credit. If all or a portion of the Seller Credit Support is a Letter of Credit, such Letter of Credit must be issued for a minimum term of three hundred sixty (360) days. Seller shall cause the renewal or extension of such Letter of Credit for additional consecutive terms of three hundred sixty (360) days or more no later than thirty (30) days prior to each expiration date of such Letter of Credit. If such Letter of Credit is not renewed or extended as required herein or replaced by alternate instruments of Seller Credit Support in accordance with this Section 8.1, Buyer shall have the right to draw immediately upon the Letter of Credit and to place the amounts so drawn in an interest bearing escrow account in accordance with Section 8.1.2, until and unless Seller provides Buyer with a substitute Letter of Credit or other form of Seller Credit Support meeting the requirements of this Section 8.1.

8.1.2 One or More Cash Deposits. Seller Credit Support provided in the form of a Cash Deposit shall include a requirement for immediate notice to Buyer and Seller in the event that the Cash Deposit amounts held as Seller Credit Support do not at any time meet the required level for the Cash Deposit. Cash Deposit funds held in the deposit account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three (3) months or less as may be



specified by Seller, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. At any such times as the balance in the deposit account exceeds the amount of Seller's obligation to provide the Cash Deposit hereunder, Buyer shall remit to Seller on demand any excess in the deposit account above the required level of the Cash Deposit.

8.1.3 One or more Guaranties. Seller may provide one or more Guaranties as Seller Credit Support. If the Guarantor with respect to any Guaranty provided as Seller Credit Support ceases to qualify as a Guarantor, then Seller shall be required to either (a) provide a replacement Guaranty from a qualified Guarantor, or (b) replace the Guaranty provided by the unqualified Guarantor with one or more alternate Seller Credit Support instruments meeting the criteria set forth in this Section 8.1, in each case, no later than ten (10) Business Days after such Guarantor ceases to be a qualified Guarantor.

8.1.4 Credit Support Release. Promptly following the date upon which Seller provides the Subsequent Credit Support (to the extent that the Construction Credit Support is not part of the Subsequent Credit Support) or upon earlier termination of this Agreement and payment of any outstanding Delay Damages, Buydown Liquidated Damages, and any other amounts due to Buyer, Buyer shall release the balance of the Construction Credit Support (including any accumulated interest, if applicable) to Seller. Promptly following the end of the Term or upon earlier termination of this Agreement, and payment of any outstanding amounts due to Buyer, Buyer shall release the balance of the Seller Credit Support (including any accumulated interest, if applicable) to Seller.

8.2 Not an Exclusive Remedy. The security contemplated by this Section 8 shall not be Buyer's exclusive remedy for the Seller's failure to perform its obligations in accordance with this Agreement.

## **SECTION 9 METERING AND COMMUNICATION**

9.1 Installation of Metering Equipment. Seller shall be responsible for ensuring that metering equipment is designed, furnished, installed, owned, inspected, tested, calibrated, maintained and replaced as provided in the Generation Interconnection Agreement.

9.2 Metering. Metering shall be performed at the location and in the manner specified in the Generation Interconnection Agreement and as necessary to perform Seller's obligations hereunder.

9.2.1 Revenue Meters. Upon Buyer's reasonable request and no less than once per calendar year, Seller shall inspect and test the Revenue Meter. Buyer may have a representative present during any metering inspection or test. If any of the inspections or tests, whether requested by Buyer or Seller, disclose a variance exceeding one-half of one percent (0.5%), proper correction, based upon the found variance, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding the shorter of (a) the last one-half of the period from the last test to the test that

showed the metering equipment to be in error or (b) three (3) months preceding the test that showed the metering equipment to be in error, in the amount the metering equipment shall have been shown to be in error by such test. The Parties shall use production data from Seller's computer monitoring system for the Facility to determine the amount of such inaccuracy. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered; provided, however, that, no corrections shall be made with respect to any payments that were due more than two (2) years prior to the date of the test or inspection that showed the metering equipment to be in error. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to Buyer having any obligations to Seller, or any other Person, pursuant to or under the Generation Interconnection Agreement.

9.2.2 **Communication.** Besides the communication equipment required in the Interconnection Agreement between the Seller and its transmission interconnection service provider, the Seller will provide a MEAG Power meter station to include communication equipment to allow MEAG Power to read the meters (primary and backup) in real time from MEAG Power's Supervisory Control and Data Acquisition (SCADA) system and MEAG Power's MV90 metering system in Atlanta, GA. All communication, SCADA and telemetry equipment will be provided by the Seller and will be designed to meet MEAG Power's equipment and data communication requirements which include, but are not limited to: primary revenue quality meter (with Power Quality capabilities), back-up revenue quality meter, two (2) private, redundant communication channels with related technology on both ends in order to deliver data from the facility to MEAG Power's SCADA and MV90 systems in Atlanta, GA, including redundant routers and network equipment designed to communicate real time information to MEAG Power.

## **SECTION 10**

### **BILLINGS, COMPUTATIONS AND PAYMENTS**

10.1 **Monthly Invoices.** No later than the seventh (7th) Business Day after the end of each calendar month, Seller shall deliver to Buyer an invoice detailing Seller's computation of the payment for the Net Output delivered to Buyer and any Deemed Delivered Output during the previous month. Together with the invoice, Seller shall provide detailed computations showing the Net Output that was delivered during each hour and calculations by hour for Deemed Delivered Output. All settlement statements will reflect hours in Central Prevailing Time. If any invoice is found to be inaccurate, a corrected invoice shall be issued. On or before the last day of the month during which the invoice was received, Buyer shall pay Seller the undisputed portion of the invoiced amount for Net Output and for Deemed Delivered Output.

10.2 **Offsets.** Either Party may offset any undisputed payment due hereunder against amounts owing from the other Party to the offsetting Party pursuant hereto; provided that any offset with respect to an amount attributable to a Solar Participant shall be limited by and subject to the principles in Section 5.2. Offsets shall be documented in a manner mutually acceptable to the Parties, with records retained as otherwise required by this Agreement. A Party's exercise of recoupment and set off rights shall not limit the other remedies available to such Party.

10.3 **Interest on Late Payments.** Any amounts that are not paid when due hereunder (including any amounts withheld by a Party which are later determined to have been improperly

withheld) shall bear interest at the Contract Interest Rate from the date due until paid, which rate shall not exceed the maximum permissible under Georgia law.

10.4 Disputed Amounts. Notwithstanding anything to the contrary herein, if either Party, in good faith, disputes any amount due pursuant to an invoice rendered under this Section 10, such Party shall notify the other Party of the specific basis for the dispute and may, if not previously paid, withhold payment of the amount disputed. Upon resolution of the dispute, any required payment or refund shall be paid within thirty (30) days after such resolution, along with interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment or refund.

10.5 Recordkeeping. Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying the accuracy of all relevant data, estimates or statements of charges submitted hereunder until the later of (a) a period of at least two (2) years after the date an invoice was received by a Party, or (b) if there is a dispute relating to an invoice, the date that is at least two (2) years after the date on which such dispute is resolved. Each Party agrees to take such reasonable action as may be requested by the other Party to comply with the record retention requirements imposed by a Governmental Authority or that are otherwise necessary to preserve the tax benefits of this transaction.

10.6 Required Records and Audit Rights. Seller shall maintain, or cause to be maintained, accurate and up-to-date books and records of all matters relating to operations, production, billings and other terms of this Agreement in sufficient detail and format in order that all provisions of this Agreement can be readily and adequately verified. All accounting records shall be maintained in accordance with GAAP consistently applied. All required records shall be available in electronic format. Seller shall also maintain or cause to be maintained, accurate and up-to-date records as may be required by law, Governmental Authorities, and other regulators. Buyer shall have the right, at its sole expense, upon reasonable notice, and during normal business hours, to examine, audit and copy: (i) the records of Seller to the extent reasonably necessary to verify the accuracy of any invoice, charge or computation made hereunder; (ii) operating procedures and manuals; (iii) equipment and operating records, and (iv) data and records required to be maintained pursuant this Agreement; provided however that audits shall not be conducted more frequently than once each Contract Year and shall be limited in scope to the fiscal year of the audit as well as the immediately two preceding fiscal years. Seller will support remote audits as requested through transmission of requested items in an electronic format and participation in conference calls and webinars. If, as a result of such examination, any amount is determined to be due by one Party to the other Party, the appropriate Party shall promptly pay the amount of the deficiency so owed, together with interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment.

#### 10.7 Payment Due Dates.

Except as otherwise specifically provided herein, any payment due from one Party to the other Party pursuant to this Agreement shall be due thirty (30) days after the date of the invoice that the former Party receives from the latter Party for the amount of such payment.

10.8 Rounding. In administering and interpreting this Agreement, all amounts expressed in MWh shall be rounded to the nearest thousandth of a MWh, all amounts expressed in MW shall be rounded to the nearest thousandth of a MW, all rates per MW and rates per MWh amounts expressed in dollars shall be rounded to the nearest hundredth of a dollar, and all total amounts expressed in dollars shall be rounded to the nearest dollar.

## **SECTION 11 DEFAULTS AND REMEDIES**

11.1 Defaults. The following events are defaults (each a “default” before the passing of applicable notice and cure periods, and an “Event of Default” thereafter) hereunder:

### 11.1.1 Defaults by Either Party.

(a) A Party breaches a representation or warranty made by it herein if such breach materially affects the performance of such Party’s obligations under this Agreement and the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a written notice of the default. A breach may only be “cured” by the defaulting party remedying the breach and reimbursing the non-defaulting party for any cost, expense, or liability incurred as a result of such breach (including, but not limited to, any cost or expense incurred investigating and pursuing such breach).

(b) A Party fails to perform any material obligation hereunder for which an exclusive remedy is not provided hereunder and which is not addressed in any other Event of Default described in this Section 11.1, if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party written notice of the default; *provided, however*, that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional ninety (90) days if (i) the failure cannot reasonably be cured within the original thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional ninety (90) day period, and (iii) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently proceeding to cure the failure.

### 11.1.2 Defaults by Seller.

(a) Seller (i) makes a general assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is generally unable to pay its debts when due.

(b) Seller fails to make an undisputed payment when due hereunder (including any liquidated damages or other payments upon default due hereunder) if the failure is not cured within fifteen (15) days after the Buyer gives Seller a written notice of the failure.

(c) Seller sells or transfer the Products to any other Person other than Buyer, except as otherwise permitted under this Agreement and such activity is not cured within ten (10) Business Days after Buyer gives Seller a written notice thereof.

(d) Seller fails to post or maintain Seller Credit Support as required in Section 8 if the failure is not cured within ten (10) Business Days after Buyer gives Seller a written notice of such failure.

(e) Except as provided in Section 20.3, Seller transfers all or substantially all of the assets of the Facility without the prior written consent of Buyer.

(f) If during any two (2) consecutive Performance Measurement Periods, the aggregate quantity of Net Output is less than sixty-five percent (65%) of the aggregate sum of the Expected Annual Production for such period, provided that in determining the Net Output in any Performance Measurement Period, Deemed Delivered Output and Deemed Generated Energy from Curtailments shall be credited to the calculation of such Net Output.

(g) Seller fails to deliver the Environmental Attributes and the Test Energy free and clear of all liens, security interests, claims and encumbrances if the failure is not cured within ten (10) Business Days after Buyer gives Seller a written notice of such failure.

(h) Seller fails to issue notice to its contractor (which contractor shall have been previously disclosed to Buyer) under the engineering, procurement and construction agreement or similar contract entered into by and between Seller and the contractor and relating to the construction of the Facility, authorizing and directing the commencement of construction of the Facility by the Notice to Proceed Date.

#### 11.1.3 Default by Buyer.

(a) Buyer fails to make an undisputed payment when due hereunder and:

(1) If such failure to pay is not attributable to a Defaulting Solar Participant, such failure is not cured within fifteen (15) days after the Seller gives the Buyer a written notice of the failure to pay; or

(2) If such failure to pay is attributable to a Defaulting Solar Participant (a “**DSP Failure**”), at the time of such failure Buyer fails to promptly pursue each of its available remedies under (i) the Defaulting Solar Participant’s PPC, including, if necessary, enforcement of the Defaulting Solar Participant’s taxing power and (ii) the non-defaulting Solar Participants’ PPC obligations to make payments arising from the nonpayment of a Defaulting Solar Participant.

(b) Buyer (i) makes a general assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is generally unable to pay its debts when due.

## 11.2 Termination and Remedies.

11.2.1 Buyer's Remedies. Upon the occurrence of an Event of Default by Seller (excluding any Event of Default arising out of any event or circumstance for which an exclusive remedy is expressly provided under this Agreement), the Buyer shall be entitled to all remedies available under this Agreement or at law or in equity, and may terminate this Agreement by notice to Seller designating the date of termination (provided such notice must be delivered to the Seller to the notice addresses of the Seller set forth in Section 22.1 no less than fifteen (15) Business Days before such termination date). Such notice shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested and shall state prominently therein that the notice is a notice of termination of this Agreement. In the event of a termination hereof, and without prejudice to any other remedies available to Buyer under this Agreement or at law or in equity (except as to remedies which are liquidated as hereafter provided in Section 11.2.1(c), below):

(a) Seller shall pay to Buyer all amounts due to Buyer hereunder for all periods prior to termination, subject to offset by either Party against amounts due from the other Party for periods prior to such termination.

(b) The amounts due pursuant to Section 11.2.1(a) shall be paid within sixty (60) days after receipt of invoice for such charges, or following a determination pursuant to the dispute resolution provisions set forth in Section 23 if applicable, and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for, any payments otherwise due hereunder.

(c) The Buyer shall be entitled to receive a Termination Payment as liquidated damages for all amounts owing under this Agreement for the balance of the Term. The Termination Payment shall be calculated by the Buyer within a reasonable period after termination of this Agreement. Amounts owed pursuant to this Section 11.2.1(c) shall be due within sixty (60) days after the Buyer gives the Seller notice of the amount due or following a determination pursuant to the dispute resolution provisions set forth in Section 23 if applicable. Subject to Section 11.3, the Buyer shall under no circumstances be required to account for or otherwise credit or pay the Seller for economic benefits accruing to the Buyer as a result of the Seller's default, except to the extent such benefits are contemplated in the definition of Termination Payment.

(d) In the exercise of any remedy under this Section 11.2.1, Buyer shall be entitled to recover from Seller, to the extent permitted by Georgia law, all

reasonable attorneys' fees and expenses incurred by Buyer in connection with the exercise of such remedies.

#### 11.2.2 Seller's Remedies.

(a) Upon the occurrence of an Event of Default by Buyer under Section 11.1.1, Section 11.1.3(a)(1) or Section 11.1.3(b), Seller shall be entitled to all remedies available under this Agreement or at law or in equity, and may terminate this Agreement by notice to Buyer designating the date of termination (provided such notice must be delivered to Buyer to the notice addresses of the Buyer set forth in Section 22.1 no less than fifteen (15) Business Days before such termination date). Such notice shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested and shall state prominently therein that the notice is a notice of termination of this Agreement. In the event of a termination hereof, and without prejudice to any other remedies available to Seller under this Agreement or at law or in equity (except as to remedies which are liquidated as hereafter provided in Section 11.2.2(a)(3), below):

(1) Buyer shall pay to Seller all amounts due to Seller hereunder for all periods prior to termination, subject to offset by either Party against amounts due from the other Party for periods prior to such termination.

(2) The amounts due pursuant to Section 11.2.2(a)(1) shall be paid within sixty (60) days after receipt of invoice for such charges, or following a determination pursuant to the dispute resolution provisions set forth in Section 23 if applicable, and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for, any payments otherwise due hereunder.

(3) The Seller shall be entitled to receive a Termination Payment as liquidated damages for all amounts owing under this Agreement for the balance of the Term. The Termination Payment shall be calculated by the Seller within a reasonable period after termination of this Agreement. Amounts owed pursuant to this Section 11.2.2(a)(3) shall be due within sixty (60) days after the Seller gives the Buyer notice of the amount due or following a determination pursuant to the dispute resolution provisions set forth in Section 23 if applicable. Subject to Section 11.3, the Seller shall under no circumstances be required to account for or otherwise credit or pay the Buyer for economic benefits accruing to the Seller as a result of the Buyer's default, except to the extent such benefits are contemplated in the definition of Termination Payment.

(4) In the exercise of any remedy under this Section 11.2.2(a), Seller shall be entitled to recover from Buyer, to the extent permitted by Georgia law, all reasonable attorneys' fees and expenses incurred by Seller in connection with the exercise of such remedies.

(b) Upon the occurrence of an Event of Default that is attributable to a DSP Failure, if Buyer is not, at any time, using its reasonable best efforts to pursue its available remedies against (i) the Defaulting Solar Participant pursuant to the terms of the Defaulting Solar Participant's PPC and (ii) the non-defaulting Solar Participants pursuant to the terms of their respective PPCs, then Seller may bring any suit, action or proceeding in law or in equity, including mandamus, injunction and action for specific performance as may be necessary or appropriate to cause Buyer to enforce such remedies (including but not limited to enforcement of the Defaulting Solar Participant's taxing power) until such DSP Failure is cured, and to the extent permitted by Georgia law, Seller may recover from Buyer all reasonable attorneys' fees and expenses incurred by Seller in connection with the exercise of Seller's remedy under this Section 11.2.2(b). Buyer shall periodically apprise Seller of steps taken by Buyer to pursue its remedies pursuant to clauses (i) and (ii) of the immediately preceding sentence. If any amount that is attributable to a DSP Failure remains unpaid to Seller 12 months following the month of the initial Event of Default attributable to the DSP Failure, then Seller shall have the right to terminate this Agreement with respect to the portion of the Contract Amount attributable to the Defaulting Solar Participant.

11.2.3 Notwithstanding any termination or expiration of this Agreement, this Agreement will remain in effect with respect to, and to the extent necessary to facilitate the settlement of, all liabilities and obligations arising hereunder before the effective date of such termination or expiration, and as necessary to facilitate any Termination Payment.

11.2.4 The Parties agree to pursue the remedies available hereunder in such manner as reasonably required to permit the continued performance of the remaining obligations.

11.3 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance hereof.

11.4 Security. Buyer may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any Seller Credit Support held by Buyer in whatever form to reduce any undisputed amounts that Seller owes Buyer arising from a Seller Event of Default.

11.5 Cumulative Remedies. Except with respect to events or circumstances for which an exclusive remedy is provided herein, the rights and remedies provided to each Party hereunder are cumulative and not exclusive of any rights or remedies of such Party.

## SECTION 12 INDEMNIFICATION AND LIABILITY

### 12.1 Indemnities.

12.1.1 Indemnity by Seller. To the extent permitted by Applicable Law, Seller shall release, indemnify and hold harmless Buyer, its Affiliates and members, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "**Buyer Indemnitees**") against and from any and all losses, fines, penalties, claims, demands, damages,



liabilities, actions or suits of any nature whatsoever (including reasonable legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) in each case as are claimed by third parties (collectively, "**Liabilities**") resulting from, or arising out of, or in any way connected with, Seller's breach of the performance of its obligations hereunder, gross negligence, willful misconduct, fraud, or violation of Applicable Law, for or on account of personal injury, illness, death or property damage, excepting only to the extent such Liabilities are caused by the gross negligence or willful misconduct of any Buyer Indemnitee.

12.1.2 Indemnity by Buyer. To the extent permitted by Applicable Law, Buyer shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "**Seller Indemnitees**") against and from any and all Liabilities resulting from, or arising out of, or in any way connected with, Buyer's breach of the performance of its obligations hereunder, gross negligence, willful misconduct, fraud, or violation of Applicable Law, for or on account of personal injury, illness, death or property damage, excepting only to the extent such Liabilities are caused by the gross negligence or willful misconduct of any Seller Indemnitee.

12.1.3 Defense. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in this Section 12 may apply, the indemnified Party shall notify the indemnifying Party in writing of such fact. The indemnifying Party shall assume the defense thereof with counsel designated by such indemnifying Party and satisfactory to the indemnified Party, *provided, however*, that if the defendants in any such action include both the indemnified Party and the indemnifying Party and the indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the indemnifying Party, the indemnified Party shall have the right to select and be represented by separate counsel, at the indemnifying Party's expense.

12.1.4 Failure to Defend. If the indemnifying Party fails to assume the defense of a claim meriting indemnification, the indemnified Party may at the sole expense of the indemnifying Party, contest, settle, or pay such claim; *provided however*, that settlement or full payment of any such claim may be made only following consent of the indemnifying Party or, absent such consent, written opinion of the indemnified Party's counsel that such claim is meritorious or warrants settlement.

12.1.5 Third Parties. Except as provided in this Section 12.1 and as is consistent to preserve the Financing Parties' rights in any Financing Party Consent or Estoppel, nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party hereto. No undertaking by one Party to the other under any provision hereof shall affect the status of Buyer or Seller as an independent entity.

12.2 Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN ANY LIQUIDATED DAMAGES OR TERMINATION PAYMENT PAYABLE HEREUNDER OR INDEMNIFICATION FOR THIRD PARTY DAMAGES HEREUNDER OR FOR LIABILITY ARISING FROM FRAUD, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR

PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

## **SECTION 13 INSURANCE**

13.1 Evidence of Insurance. On or before the Notice to Proceed Date and continuing through achievement of Commercial Operation, Seller shall acquire, or cause to be acquired, Builder's Risk insurance coverage as required by Exhibit 2. On or before the beginning of each Contract Year, Seller shall acquire, or cause to be acquired, all other insurance required by Exhibit 2. In connection with all insurance coverage required to be carried by Seller hereunder, Seller shall provide Buyer, upon Buyer's prior written request, with certificates of insurance evidencing that insurance coverages for the Facility are in compliance with the applicable specifications for such insurance coverage set forth in Exhibit 2. Such insurance policies shall (a) provide Buyer with additional insured status (except worker's compensation/employer's liability); and (b) provide a waiver of any rights of subrogation against Buyer, its Affiliates and their officers, trustees, directors, agents, subcontractors, and employees. If the insurer does not agree to provide Buyer thirty (30) days' prior written notice of non-renewal, cancellation of corresponding policies (except that such notice shall be ten (10) days for non-payment of premiums), Seller shall be obligated to provide such notice to Buyer. All insurance policies shall be written with insurers rated A-VIII or better by A.M. Best Company. All insurance policies shall be written on an occurrence or claims-made basis. All insurance policies, except the Umbrella/Excess Liability policy, shall contain an endorsement or otherwise provide that Seller's policy shall be primary in all instances regardless of like coverage, if any, carried by Buyer. Seller's liability under this Agreement is not limited to the amount of insurance coverage required herein. The Umbrella/Excess Liability policy shall be non-contributory.

13.2 Term and Modification of Insurance. If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide written notice to Buyer, accompanied by a certificate from an independent insurance advisor, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and design. Upon receipt of such notice, Seller shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured and Buyer shall not unreasonably withhold its consent to such modification.

## **SECTION 14 FORCE MAJEURE**

14.1 Definition of Force Majeure. "Force Majeure" or "an event of Force Majeure" means an event that (a) is not within the reasonable control of the Party affected by the event, (b) is not the result of such Party's negligence or failure to act, and (c) could not be overcome, avoided or mitigated by the affected Party's use of due diligence under the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; natural disasters; fire; severe weather; storms; lightning; tsunamis; peril of the sea; war (declared or undeclared); military or guerilla action; banditry; terrorist activity or a threat of

terrorist activity which, under the circumstances, would be considered a precursor to actual terrorist activity; economic sanction or embargo; pandemic, epidemic or quarantine; civil disturbance; sabotage; action, inaction or restraint by court order or public or Governmental Authority. Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or Buyer's ability to purchase, the Products at a more advantageous price than is provided hereunder; (ii)(a) the unavailability, variability or lack of photovoltaic rays or solar insolation, or (b) Facility equipment failures, in each case, except to the extent caused by an independent event of Force Majeure; or (iii) economic hardship, including lack of money.

14.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations hereunder because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure (other than the obligation to pay amounts due hereunder), provided that:

14.2.1 the Party affected by the Force Majeure shall give the other Party prompt written notice, without intentional delay, describing the particulars of the event;

14.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and

14.2.3 the affected Party shall use reasonable and diligent efforts to remedy its inability to perform.

14.3 Force Majeure Does Not Affect Obligations Already Incurred. No obligations, including payment obligations, of either Party that arose before the event of Force Majeure or that arise after the cessation of the event of Force Majeure shall be excused by the event of Force Majeure. In the event of an event of Force Majeure with respect to Buyer, Seller may sell all or a portion of the Products to any other Person during the continuation of such event of Force Majeure.

14.4 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.5 Right to Terminate. If a Force Majeure event prevents a Party from performing its material obligations hereunder for a period exceeding three hundred sixty-five (365) consecutive days, then either Party may terminate this Agreement by giving ten (10) days' prior written notice to the other Party, provided that if the Party claiming to be affected by the Force Majeure event is diligently taking reasonable efforts to remedy the effects of the Force Majeure event, then the Party claiming the Force Majeure event shall have such additional time (not to exceed six (6) additional months) as reasonably necessary to remedy its inability to perform. Upon such termination, each Party shall pay to the other all amounts due the other hereunder for all periods prior to the date of termination, but neither Party will have any liability to the other Party (a) as a result of such termination or (b) with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect with respect to, and to the extent necessary to, facilitate the settlement of, all liabilities and obligations arising hereunder before the effective date of such termination.

14.6 Change in Law. In the event of an enactment, adoption, promulgation, amendment, modification, repeal or change in interpretation by a Governmental Authority of any Applicable Law after the Effective Date that impairs or prevents either Party's performance of its material obligations under this Agreement, materially increases a Party's costs to perform its material obligations under this Agreement, or materially alters the allocation of risks between the Parties (a "**Change in Law**"), the Parties shall use good faith efforts to negotiate and agree on modifications to this Agreement in a manner that preserves the respective economic benefits and risk allocation of the Parties under this Agreement as of the Effective Date; *provided, however*, that neither Party shall be obligated to accept or agree to any modifications to this Agreement, nor shall any Party be bound to take any action or perform any obligation unless such action or obligation has been mutually agreed upon by the Parties.

## **SECTION 15 SEVERAL OBLIGATIONS**

Nothing contained herein shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties or any Solar Participant.

## **SECTION 16 CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Georgia, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

## **SECTION 17 PARTIAL INVALIDITY**

The Parties do not intend to violate any Applicable Law governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal, unenforceable, or void as being contrary to any Applicable Law or public policy, all other terms hereof shall remain in effect. The Parties shall use good faith efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under Applicable Law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

## **SECTION 18 NON-WAIVER**

No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof shall not be construed as a waiver of any other failure, whether of a like kind or different nature.

## **SECTION 19 AUTHORIZATIONS**

During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, and ownership of the Facility and for the sale and delivery of the Net Output, except Permits with respect to which the failure to maintain would not materially adversely affect Seller's ability to perform its obligations hereunder.

## **SECTION 20 SUCCESSORS AND ASSIGNS**

20.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment in contravention of this Section 20 will be void.

20.2 Binding Nature. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto.

20.3 Permitted Assignments by Seller. Seller may not assign this Agreement or any portion thereof to any Person without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, Seller may, without the consent of Buyer, assign this Agreement to a Financing Party for collateral security purposes in connection with any financing or refinancing of the Facility, and in connection therewith, Buyer agrees to (i) execute a reasonable Financing Party Consent or Estoppel in a form reasonably acceptable to Buyer should the Financing Party request such consent, (ii) reasonably cooperate in a timely manner with the requests of Seller or Financing Parties in conjunction with any financing involving the Facility, including any due diligence efforts of any such Financing Parties, and (iii) deliver reasonable and customary legal opinions, if required, in connection with any Financing Party Consent or Estoppel that is entered into with or for a Financing Party. If Seller seeks Buyer's consent to transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of Seller, such proposed transferee (together with the proposed transferee's Affiliates) must at the time of assignment, (x) either (A) collectively own, manage, or operate solar or wind energy electricity generating assets (not including the Facility) with a nameplate capacity of not less than 200 MW in the aggregate or (B) have engaged (or will have engaged in connection with such assignment) a Person to manage the construction of the Facility (if such transfer occurs before the Commercial Operation Date) or the operation of the Facility (if such transfer occurs after the Commercial Operation Date) that, together with its Affiliates, collectively owns, manages, or operates solar or wind energy electricity generating assets with a nameplate capacity of not less than 200 MW in the aggregate; (y) have an Acceptable Credit Rating or a credit rating at least equal to that of the assignor; and (z) have posted Credit Support in accordance with this Agreement. In connection with any permitted assignment by Seller and approved by Buyer pursuant to the immediately preceding sentence, Buyer will execute a consent and agreement to such assignment and a written full release of Seller from all of its duties and obligations under this Agreement in a form reasonably acceptable to the Parties.

20.4 Permitted Assignments by Buyer. Notwithstanding Section 20.1, Buyer may, upon Seller's written consent (such consent not to be unreasonably withheld, conditioned or delayed) assign a portion of its rights and obligations under this Agreement to a Person (including a joint action agency) with whom Buyer may be working for the supply of prepaid gas or electricity. To the extent this Agreement is novatable pursuant to the supply agreements between such Person and the prepaid gas or electricity seller, and to the extent Buyer wishes to novate this agreement, Buyer will deliver a written request for such assignment, which request will include a proposed assignment agreement. Subject to the consent required by the first sentence of this Section 20.4, Seller agrees to (i) comply with the prepaid-gas or electricity seller's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of the appropriate parties involved with Buyer's supply of prepaid gas or electricity.

## **SECTION 21 ENTIRE AGREEMENT**

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. No modification hereof shall be effective unless it is in writing and executed by both Parties.

## **SECTION 22 NOTICES**

22.1 Addresses and Delivery Methods. All notices, requests, statements or payments shall be made to the addresses set out below. Notices required to be in writing shall be delivered by letter, facsimile, electronic mail, or other written documentary form. Notice by hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt.

To Seller:

PINEVIEW SOLAR LLC  
Attn: General Counsel  
685 S. Arthur Ave., Suite 1B  
Louisville, CO 80027

with a copy to

PINEVIEW SOLAR LLC  
Attn: Alexander Zhou  
685 S. Arthur Ave., Suite 1B  
Louisville, CO 80027

To Buyer: MEAG Power  
Attn: Senior VP and Chief Operating Officer  
1470 Riveredge Parkway, NW  
Atlanta, GA 30328-4640

with a copy (which shall not constitute notice) to: MEAG Power  
Attn: Senior VP and General Counsel  
1470 Riveredge Parkway, NW  
Atlanta, GA 30328-4640

22.2 Changes of Address. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section 22.

22.3 Notices to Financing Parties. The requirements concerning notice by Buyer to Financing Parties will be set forth in the Financing Party Consent or Estoppel, if any.

## **SECTION 23 DISPUTE RESOLUTION**

23.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly in accordance with this Section 23.1. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels at least one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within fifteen (15) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter.

23.2 Choice of Forum. Any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to this Agreement must be brought in the Superior Court of Fulton County in the State of Georgia. By execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of such court in any such proceeding, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceedings brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein, and I agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

23.3 Settlement Discussions. No statements of position or offers of settlement made in the course of the negotiation process described in Section 23.1 may be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

23.4 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

## **SECTION 24 CONFIDENTIALITY**

24.1 Confidential Information; Press Releases. The Parties hereby agree to keep confidential, and shall not disclose (including by means of press release or other public announcement), the terms of this Agreement, any information relating to the business, strategy, policies, prospects, assets or plans of the other Party or any of the other Party's Affiliates (including, in the case of Buyer as the receiving Party, Facility capabilities and availability and other information contained in monthly and quarterly reports provided hereunder) and, to the extent marked in writing as confidential at the time of disclosure, all other information provided by the Parties to one another pursuant to this Agreement (collectively, "Confidential Information"). Confidential Information shall not include (i) information that is or becomes available to the public through no breach of this Agreement, (ii) information that was previously known by the receiving Party without any obligation to hold it in confidence, (iii) information that the receiving Party receives from a third party who may disclose that information without breach of law or agreement, (iv) information that the receiving Party develops independently without using the Confidential Information, and (v) information that the providing Party approves for release in writing. Buyer and Seller hereby agree that the Parties will coordinate and mutually agree upon the content and timing of press releases, public announcements, marketing materials, and branding materials concerning this Agreement or the subject matter of this Agreement. Notwithstanding the foregoing, the other Party's prior written approval shall not be required nor prevent the Parties from releasing information (a) which is required to be disclosed in order to obtain Permits and other approvals relating to the Facility or other information required to be provided to regulators having jurisdiction over a Party's business or that of its Affiliates, (b) as necessary to fulfill such Party's obligations under this Agreement, or (c) as otherwise required by Applicable Law.

24.2 Treatment of Confidential Information. Notwithstanding the foregoing, each Party may provide any Confidential Information: (i) to a Governmental Authority or any other Person (including contractors, consultants, accountants, financial advisors, agents, experts, legal counsel and other professional advisors to the Parties) as required for billing or otherwise to perform its obligations under or administer this Agreement; and (ii) in the case of Seller, to Financing Parties or potential Financing Parties, Affiliates and lessors, owners of and potential bidders and bidders



for, and potential purchasers and purchasers of, direct or indirect interests in the Facility or Seller and to any credit rating agency that has issued a Credit Rating for Seller or any of its Affiliates. Each Party shall cause its personnel and all Persons to whom it discloses the Confidential Information to treat it confidentially and to not disclose it to any other Person in any manner whatsoever, except as permitted hereunder. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

24.3 Disclosure Required by Law. Notwithstanding the foregoing, a receiving Party may use and disclose Confidential Information where required to do so in litigation, administrative, regulatory or other legal proceedings or otherwise by Applicable Law, but (to the extent reasonably possible under Applicable Law) only after providing written notice to the providing Party and affording the providing Party an opportunity to seek a protective order or other relief to prevent or limit disclosure of the Confidential Information. In such event, the receiving Party shall (to the extent permitted under Applicable Law) reasonably cooperate in connection with the providing Party's efforts to obtain such protective order or other relief. In no event shall a receiving Party be required to provide such a written notice to the providing Party when making a required disclosure in any litigation where the Parties are adverse litigants. Further, each Party shall use commercially reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation or administrative or regulatory proceeding or in any other instance where disclosure is required by Applicable Law and there is an opportunity to maintain the confidentiality of the Confidential Information under the Applicable Law, and shall promptly notify the providing Party of any attempt by any Person to obtain the Confidential Information through legal process or otherwise under Applicable Law. In addition, to the extent either Party requires additional details or other information from the other Party in order to comply with Applicable Law and such additional details or other information is in such other Party's possession or reasonably available to such other Party, such other Party shall promptly provide such additional details or other information to the first Party upon request therefor from the first Party to such other Party.

#### 24.4 Georgia Open Records Act and Georgia Open Meeting Act.

24.4.1 Notwithstanding any other provision of this Section 24 or this Agreement, the Parties recognize Buyer and the Solar Participants are governmental entities subject to certain statutory, legal obligations as a public body, including, without limitation, the Georgia Open Records Act (O.C.G.A. §50-18-70, *et seq.*) ("**GORA**") and Georgia Open Meeting Act (O.C.G.A. § 50-14-1, *et seq.*) ("**GOMA**"). The obligations and requirements of Buyer under GORA and GOMA shall be harmonized to the extent feasible with this section, provided that GORA and GOMA, as interpreted by Georgia courts, shall control. Upon receipt of a request for Confidential Information and prior to the release of any Confidential Information by Buyer pursuant to GORA or GOMA, Buyer will provide written notice to Seller of such request as set forth in Section 24.3, above, along with the information or records which Buyer has identified as responsive which may contain Confidential Information. If Seller should object to the production of any Confidential Information by Buyer under GORA or GOMA, Seller must timely notify Buyer of its objection. Buyer shall make an independent determination as to whether Confidential Information is required to be disclosed pursuant to GORA and GOMA. Seller may, if Seller disagrees with Buyer's determination, institute an action in its own name to prevent or otherwise limit such disclosure.

Each Party agrees to bear their own costs, including legal fees, in complying with this Section 24.4.

24.4.2 Upon Buyer's receipt of a Solar Participant's written notification (a "**Written Notification**"), in accordance with the terms of such Solar Participant's PPC, that such Solar Participant has received a request for a copy of this Agreement pursuant to GORA, Buyer shall use commercially reasonable efforts to promptly notify Seller of such GORA Request. Notwithstanding anything to the contrary in this Agreement, a Solar Participant's failure to provide the Written Notification and/or Buyer's failure to notify Seller upon receipt of a Written Notification (i) shall not constitute a default pursuant to Section 11.1, hereof and shall not give rise to any of the Seller remedies referenced in Section 11.2.2, hereof and (ii) Buyer shall have no recourse against the Solar Participant or Buyer.

24.5 Survival. The obligations of the Parties under this Section 24 will remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

## **SECTION 25 COUNTERPARTS; ORIGINALS**

This Agreement may be executed by facsimile or PDF (electronic copy), in one or more duplicate counterparts, and when executed and delivered (electronically or manually) by all the parties listed below, shall each be deemed an original and, taken together, shall constitute a single binding agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date first above written.

**SELLER:**

**PINEVIEW SOLAR LLC**

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

Name: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

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

**BUYER:**

**MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA**

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

Name: James E. Fuller

Title: CEO and President

## **EXHIBIT A**

### **DESCRIPTION OF FACILITY AND POINT OF DELIVERY**

The Facility shall consist of a solar photovoltaic (PV) inverter-based generator array with a nominal net capacity of 80 MW<sub>AC</sub> at the Point of Delivery, which Point of Delivery will be the 115 kV bus at MEAG Power's Pitts 230/115 kV Substation. The Facility site is located approximately at GPS coordinates Latitude 32.004384, Longitude -83.544910, in Wilcox County, Georgia.

**EXHIBIT B**  
**EXPECTED ANNUAL PRODUCTION for**  
**Contract Amount from Facility**

<b>Contract Year</b>	<b>MWh (80 MWac)</b>
1	196,149
2	195,168
3	194,192
4	193,221
5	192,255
6	191,294
7	190,338
8	189,386
9	188,439
10	187,497
11	186,559
12	185,626
13	184,698
14	183,775
15	182,856
16	181,942
17	181,032
18	180,127
19	179,226
20	178,330

## EXHIBIT C

### NERC EVENT TYPES

Event Type	Description of Outages
U1	<u>Unplanned (Forced) Outage—Immediate</u> – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2	<u>Unplanned (Forced) Outage—Delayed</u> – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3	<u>Unplanned (Forced) Outage—Postponed</u> – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF	<u>Startup Failure</u> – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine overhauls or inspections are typical planned outages.)
PE	<u>Planned Outage Extension</u> – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

## EXHIBIT D

### EXAMPLE CALCULATION OF BUYER'S COST TO COVER

Assume that during a Performance Measurement Period the Expected Annual Production is 175,000 MWh; however, during the Performance Measurement Period the actual Net Output was 125,000 MWh, representing only 71.43% of the Expected Annual Production.

Also assume that several Involuntary Curtailments were mandated by the Transmission Owner (or its transmission operator) within the Performance Measurement Period. The Seller determines that the Net Output that would have been produced by the Facility but that was not produced by the Facility due to such Involuntary Curtailments amounts to 350 MWh. This determination was based on the Expected Annual Production, Facility availability information, relevant weather conditions, and solar insolation at the Facility and other pertinent data for the relevant period.

Finally, assume that there were no Buyer Initiated Curtailments during the Performance Measurement Period, therefore, the Deemed Delivered Output is 0 MWh.

Because the actual Contract Amount of Net Output for such Performance Measurement Period and the associated RECs are less than Minimum Production Guarantee of 85%, Seller is to pay to Buyer liquidated damages in an amount equal to Buyer's Cost to Cover.

Buyer's Cost to Cover is calculated as follows:

$$(\text{Replacement Cost } \$/\text{MWh} - \text{Contract Price } \$/\text{MWh}) * ((85\% * \text{Expected Annual Production MWh}) - (\text{actual Net Output} + \text{Involuntary Curtailments MWh} + \text{Buyer Initiated Curtailments MWh}))$$

Where,

Replacement Cost = The average of the market price that MEAG Power posts for its Participants for all hours ending 900 through hours ending 1700 in the Performance Measurement Period, plus MEAG's actual price paid for RECs to replace RECs not delivered by Seller, all on a \$/MWh basis. For this example, assume MEAG's average posted market price for the hours HE900 through HE1700 for the Performance Measurement Period is \$30.00/MWh, and MEAG's actual cost of replacement RECs for the Performance Measurement Period is \$2.00/MWh.

Then,

$$\begin{aligned} \text{Buyer's Cost to Cover} &= (\$32.00 - \$25.91) * ((85\% * 175,000.00) - (125,000 + 350 + 0)) \\ &= (\$6.09) * (148,750 - 125,350) \\ &= \$142,506.00 \end{aligned}$$

**EXHIBIT E**

**FORM OF LETTER OF CREDIT**

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit No.

Issued: November \_\_, 2020

Beneficiary:  
Municipal Electric Authority of Georgia  
1470 Riveredge Pkwy  
Atlanta, GA 30328

Applicant:  
[NAME]

Initial expiration date at our counter (unless evergreen):

Final expiration date at our counter:

For overnight delivery:

Ladies and Gentlemen:

We, [\*\*] ("Issuer") do hereby issue this Irrevocable Transferable Standby Letter of Credit No. by order of and for the account of [NAME] ("Account Party") and in favor of Municipal Electric Authority of Georgia ("Beneficiary" or "You"), in connection with that certain Power Purchase Agreement dated \_\_\_\_\_, 2021, by and between Account Party and You (as amended, modified and supplemented from time to time, the "Agreement"). The term "Beneficiary" includes any successor by operation of law of the named beneficiary including without limitation any liquidator, receiver or conservator. Capitalized terms used herein but not defined shall have the meaning given such terms in the Agreement.

This Letter of Credit is issued, presentable and payable and we guaranty to you that drafts under and in compliance with the terms of this Letter of Credit will be honored on presentation and surrender of certain documents pursuant to the terms of this Letter of Credit.

This Letter of Credit is available in one or more drafts and may be drawn hereunder, in part or in full, for the account of up to an aggregate amount not exceeding \_\_\_\_\_. This Letter of Credit is drawn against by presentation to us at our office located at [\*\*, Attention: \*\*], of a drawing

Exhibit E-1



certificate: (i) signed by an officer or authorized agent of the Beneficiary; (ii) dated the date of presentation; and (iii) the following statement:

“The undersigned hereby certifies to [\*\*] (“Issuer”), with reference to its Irrevocable Transferable Standby Letter of Credit No., dated , issued on behalf of [NAME] (“Account Party”) and in favor of Municipal Electric Authority of Georgia (“Beneficiary”) that (i) the Account Party failed to furnish a replacement or extension letter of credit (or other substitute credit support) thirty (30) days prior to the final expiration date of the Letter of Credit; (ii) the Account Party failed to furnish a replacement letter of credit (or other substitute credit support) within thirty (30) days after the Issuer notified us that it elected not to consider the letter of credit extended for one (1) year; (iii) the Issuer no longer qualifies as a Qualified Issuer; or (iv) an Event of Default with respect to the Account Party has occurred under the Agreement. Based upon the foregoing and in accordance with the terms of Section 8 of the Agreement, the Beneficiary hereby draws upon the Letter of Credit in an amount equal to \$ (United States Dollars ).”

If presentation of any drawing certificate is made on a Business Day and such presentation is made on or before 10:00 a.m. Eastern Time, Issuer shall satisfy such drawing request on the same Business Day. If the drawing certificate is received after 10:00 a.m. Eastern Time, Issuer will satisfy such drawing request on the next Business Day. As used herein, “Business Day” means any day on which (a) commercial banks are not closed, or authorized or required to close, in New York City, New York and (b) with respect to certain drawing request, the bank to which funds are requested to be transferred hereunder as set forth in such drawing certificate is not closed, or authorized or required to close, and may receive such funds by wire transfer as requested hereunder.

It is a condition of this Letter of Credit that it will be automatically extended without amendment for one (1) year from the initial expiration date hereof, or any future expiration date subject to the final expiration date hereof, unless at least one hundred twenty (120) days prior to any expiration date we send you written notice at the above address by registered mail or overnight courier service that we elect not to consider this Letter of Credit extended for any such period.

However, in no event shall this Letter of Credit be extended beyond the final expiration date.

This Letter of Credit may be transferred in its entirety (but not in part) upon presentation to us of a transfer certificate signed by the Beneficiary in the form of Exhibit A accompanied by this Letter of Credit and any amendment(s), in which the Beneficiary irrevocably transfers to such transferee all of its rights hereunder, whereupon we agree to either issue a substitute letter of credit to such successor or endorse such transfer on the reverse of this Letter of Credit. Any transfer fees assessed by Issuer will be payable solely by Account Party, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer or this Letter of Credit.

This Letter of Credit is not transferable to any person or any entity with which U.S. persons are prohibited from doing business under applicable U.S. law or regulation.

Disbursements under the Letter of Credit shall be in accordance with the following terms and conditions:

1. The amount, which may be drawn by the Beneficiary under this Letter of Credit, may be reinstated by the amount of any drawings hereunder via amendment.
2. All commissions and charges will be borne by the Account Party.
3. This Letter of Credit shall be governed by the International Standby Practices Publication No. 590 of the International Chamber of Commerce (the “ISP”), except to the extent that terms hereof are inconsistent with the provisions of the ISP, in which case the terms of the Letter of Credit shall govern. This Letter of Credit shall be governed by the internal laws of the State of New York to the extent that the terms of the ISP are not applicable; provided that, in the event of any conflict between the ISP and such New York laws, the ISP shall control.
4. This Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary and the Issuer.
5. The Beneficiary shall not be deemed to have waived any rights under this Letter of Credit, unless the Beneficiary or an authorized agent of the Beneficiary shall have signed a written waiver.  
  
No such waiver, unless expressly so stated therein, shall be effective as to any transaction that occurs subsequent to the date of the waiver, nor as to any continuance of a breach after the waiver.  
Partial drawing permitted.
6. A failure to make any partial drawing at any time shall not impair or reduce the availability of this Letter of Credit in any subsequent period or our obligation to honor your subsequent demands for payment made in accordance with the terms of this Letter of Credit.
7. All payments hereunder shall be made free and clear of, and without deduction or set off for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature and by whomsoever imposed.

Exhibit A

(FORM TO BE ADDRESSED TO THE NOMINATED BANK BY THE BENEFICIARY OF A TRANSFERABLE CREDIT WHEN TRANSFERRING THE CREDIT IN ITS ENTIRETY INCLUDING ALL EXISTING AND FUTURE AMENDMENTS, IF ANY)

\_\_\_\_\_  
To: .....

Gentlemen:

Re: Letter of Credit No.

Issued by: [\*\*]

For value received, the undersigned beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of the undersigned beneficiary to Draw under the above Letter of Credit In its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The advice of such Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it direct to the transferee with your customary notice of transfer.

Very truly yours,

Signature of  
Beneficiary

SIGNATURE AUTHENTICATED &  
SIGNOR IS AUTHORIZED TO REQUEST SAID TRANSFER

\_\_\_\_\_  
(Bank)

\_\_\_\_\_  
(Authorized Signature)

Exhibit E-4

## EXHIBIT F

### FORM OF SELLER GUARANTY

This Guaranty is executed and delivered as of this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_ [corporation] (“Guarantor”), in favor of [\_\_\_\_\_] (“Buyer”), in connection with the performance by [\_\_\_\_\_] (“Seller”), of a Power Purchase Agreement dated [\_\_\_\_\_] between Seller and Buyer (the “PPA”).

#### - RECITALS -

A. Seller is planning to develop, design, construct, own, and operate a solar power electric generation facility expected name plate capacity of approximately [\_\_\_\_\_] MW to be located in [\_\_\_\_\_] (the “Facility”).

B. Seller and Buyer have entered into the PPA for the purchase and sale of electrical energy and associated Environmental Benefits (as defined in the PPA) from the Facility on the terms and conditions set forth therein.

[Seller is controlled by Guarantor.] Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Buyer. To induce Buyer to enter into the PPA and consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

#### - AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Buyer the due, prompt, and complete observance, performance, and discharge of all amounts payable by Seller under the PPA when the same shall become due and payable, whether on scheduled payment dates, upon demand, upon declaration of termination, upon acceleration or otherwise, and whether incurred before or after the date of delivery of this Guaranty (the “Obligations”). The obligations of Guarantor under this Guaranty are primary obligations for which Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty, except as expressly contained herein. This is a guaranty of payment, not of collection and shall apply regardless of whether recovery of all such Obligations may be discharged, or uncollectible in any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Seller or its assets. Buyer shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty.

2. Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor’s maximum liability under this Guaranty shall be limited to (\$US \_\_\_\_\_), plus costs of collection with respect to any valid claim(s) made by Buyer hereunder that are incurred in the enforcement or protection of the rights of Buyer.

3. Guaranty Absolute. The liability of Guarantor under this Guaranty shall be absolute, irrevocable and unconditional irrespective of:

(a) any defect or deficiency, or other unenforceable provision, in the PPA or any other documents executed in connection with the PPA;

(b) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by Buyer to exercise, in whole or in part, any right or remedy held by Buyer with respect to the PPA, including but not limited to those rights set forth in Section 4 of this Guaranty; or

(c) any change in the existence, structure or ownership of Guarantor or Seller, or any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Seller or its assets.

4. Rights of Buyer. Guarantor hereby grants to Buyer, in Buyer's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;

(b) to enter into any amendments, supplements or modifications to the PPA;

(c) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(d) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

5. Performance. If any of the Obligations are not performed according to the tenor thereof ("Default"), Guarantor shall within five (5) days of receipt of written demand by Buyer (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Buyer against any liabilities, damages, and related costs (including attorneys' fees) incurred by Buyer as a result thereof, all in such manner and at such times as Buyer may reasonably direct.

6. Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to such Default that was satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been

automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

7. Guarantor shall be subrogated to all rights of Buyer against Seller in respect of any amounts paid by Guarantor pursuant to this Guaranty, provided that Guarantor waives any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. §509, or otherwise), reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of Buyer against Seller or any collateral which Buyer now has or acquires, until all of the Obligations shall have been irrevocably paid to Buyer in full.

8. Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Buyer.

9. Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 5 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by applicable laws;

(b) any right to require Buyer to proceed against Seller or any other person, or to require Buyer first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by Buyer;

(d) any duty of Buyer to protect or not impair any security for the Obligations;

(e) the benefit of any laws limiting the liability of a surety;

(f) any duty of Buyer to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Buyer, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances;

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Buyer; and

(h) all defenses based on suretyship, including any defense arising from a matter waived under this Guaranty.

Notwithstanding the foregoing or anything else herein, Guarantor does not waive and shall be entitled to assert any defenses, claims or other rights that are available to Seller (other than bankruptcy or insolvency) and all limitations of liability under the PPA shall also apply to this Guaranty.

10. Cumulative Remedies. The rights and remedies of Buyer hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Buyer may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Buyer need not join Seller in any action against Guarantor to preserve its rights set forth herein.

11. Representations and Warranties. Guarantor represents and warrants to Buyer as follows:

(a) Guarantor is a [corporation,] duly organized, validly existing, and in good standing under the laws of the state of its incorporation. [Seller is a direct or indirect wholly-owned subsidiary of Guarantor.] Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

12. Collection Costs. Guarantor hereby agrees to pay to Buyer, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Buyer may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Buyer in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Buyer of its rights and remedies hereunder.

13. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

14. Waiver or Amendment. No provision of this Guaranty or right of Buyer hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Buyer. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Buyer.

15. Successors and Assigns. Guarantor shall not assign its rights or obligations under this Guaranty without the prior written consent of Buyer, and any assignment without such prior written consent shall be null and void and of no force or effect. This Guaranty shall inure to the benefit of and bind the successors and permitted assigns of Buyer and Guarantor.

16. Entire Agreement. This Guaranty reflects the whole and entire agreement of the parties and supersedes all prior agreements related to the subject matter hereof.

17. Governing Law. The interpretation and performance of this Guaranty and each of its provisions shall be governed and construed in accordance with the laws of the State of California. The parties hereby submit to the exclusive jurisdiction of the courts of the State of California, and venue is hereby stipulated as San Francisco, California.

18. Termination. Guarantor may terminate this Guaranty by providing written notice of such termination to Buyer; provided, however, that such termination by Guarantor shall not be effective unless and until Guarantor has provided replacement Seller Credit Support (as defined in the PPA) in accordance with Article 8 of the PPA. No such termination shall affect Guarantor's liability with respect to any Obligations incurred under the PPA prior to the time the termination is effective, which liabilities remain guaranteed pursuant to the terms of this Guaranty.

19. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a) if to Buyer as provided in the PPA

(b) If to Guarantor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_

or to such other address(es) as the person to whom notice is given may have previously furnished to the others in writing in the manner set forth above.



IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized representative as of the day and year first above written.

**[Guarantor]**

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

Name:

Title:

**EXHIBIT 1**  
**QUARTERLY/MONTHLY REPORTS**

Each quarterly/monthly report shall include the following items:

1. Cover page.
2. Brief description of the Facility.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility.
5. Table showing critical path schedule of major items and activities.
6. Summary of major activities in the preceding quarter/month.
7. Forecast of major activities scheduled for the current quarter/month.
8. Forecast of Commercial Operation Date.

## EXHIBIT 2

### REQUIRED INSURANCE

Type of Insurance	Minimum Limits of Coverage
<b>Commercial General Liability and Excess or Umbrella policies combined limits.</b>	\$11,000,000 each occurrence and \$11,000,000 general aggregate

Commercial General Liability (“CGL”) insurance shall cover liability arising from premises, operations, products/completed operations, bodily injury and property damage, personal injury and advertising injury, sudden and accidental pollution, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage. Sudden and accidental pollution coverage may be placed separately with limits equal to the combined policy limited noted above.

Buyer shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella or excess insurance. The commercial umbrella or excess insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employer’s Liability insurance.

The CGL and commercial umbrella or excess insurance to be obtained by or on behalf of Seller shall be endorsed or shall otherwise provide as follows:

The CGL insurance as afforded by this policy for the benefit of Buyer shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this Agreement, and insured hereunder, and any insurance carried by Buyer shall be excess of and noncontributing with insurance afforded by this policy. Commercial umbrella or excess insurance shall be non-contributory.

Seller shall not be required to have the above mentioned liability insurance coverages until the Commercial Operation Date.

<b>Business Automobile Liability</b>	\$1,000,000 each accident, including all Owned (if any), Non-Owned, Hired and Leased Autos Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage.
<b>Workers Compensation</b>	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
<b>Employers Liability</b>	\$1,000,000 bodily injury by accident - each accident; \$1,000,000 bodily injury by disease - each employee; \$1,000,000 bodily injury by disease-policy limit.

**Builder's Risk**

No later than the date construction begins, Builder's Risk insurance, or an installation floater, shall be written on an "all risk" basis and include earthquake, flood, collapse, hot testing and debris removal. Coverage shall be written on a replacement cost basis for physical damage with reasonable sublimits. The Policy Limits will be based upon Maximum Foreseeable Loss (MFL) which is supported by an engineering assessment or an amount no less than 75% of the hard costs of the Facility.

**All-Risk Property insurance**

Beginning on the Commercial Operations Date, All-Risk Property insurance on a replacement costs bases including coverage for: (i) fire, flood, wind storm, tornado and earthquake and (ii) Machinery Breakdown insurance; all subject to reasonable sublimits. The Policy Limits will be based upon Maximum Foreseeable Loss which is supported by an engineering assessment or an amount no less than 75% of the hard costs of the Facility.

**Business Interruption insurance**

Amount required to cover Seller's continuing expenses resulting from full interruption for a period of twelve (12) calendar months.

Business Interruption insurance shall cover loss of revenues attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on commercially reasonable terms as determined by Buyer, subject to a reasonable deductible which shall be the responsibility of Seller. Notwithstanding any other provision of this Agreement, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

## EXHIBIT B

### FORM OF AUTHORIZING RESOLUTION OF SOLAR PARTICIPANT

**RESOLUTION OF THE [GOVERNING BODY] OF THE [SOLAR PARTICIPANT] APPROVING AND AUTHORIZING THE EXECUTION OF A POWER PURCHASE CONTRACT BETWEEN THE SOLAR PARTICIPANT AND THE MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA, THE PLEDGE OF THE FULL FAITH AND CREDIT OF THE SOLAR PARTICIPANT TO SECURE ITS PAYMENT OBLIGATIONS THEREUNDER, AND FOR SUCH OTHER PURPOSES.**

**WHEREAS**, pursuant to the Municipal Electric Authority Act (the “**Act**”), the [Solar Participant] (the “**Solar Participant**”) has previously entered into one or more Power Sales Contracts (each, as amended, a “**Power Sales Contract**”) with the Municipal Electric Authority of Georgia (the “**Authority**”) for provision of the Solar Participant’s bulk electric power supply needs by the Authority from defined projection projects and sources; and

**WHEREAS**, under one such Power Sales Contract, the Project One Power Sales Contract (the “**Project One Power Sales Contract**”), the Authority further agreed to provide or cause to be provided additional power needs of the Solar Participant in excess of its entitlement to power supplied under the Project One Power Sales Contract (“**Supplemental Power**”); and

**WHEREAS**, the Project One Power Sales Contract provides that the Solar Participant may elect to procure an alternate source of Supplemental Power other than that provided by the Authority from the output of an Authority project; and

**WHEREAS**, the Authority adopted a Supplemental Power Policy (the “**Supplemental Power Policy**”) under which the Solar Participant and the Authority may make elections regarding provision and procurement of Supplemental Power; and

**WHEREAS**, the Solar Participant has determined that, in order to meet the growing and diverse energy needs of its customers, it has need for an additional type of economical, reliable source of electric power and energy beyond that provided from the sources available resources of the Authority under the Project One Power Sales Contract and other contracts between the City and the Authority; and

**WHEREAS**, the Authority has informed the Solar Participant that the Authority has an opportunity to procure a substantial amount of Supplemental Power for a multi-year term through a Power Purchase Agreement with Pineview Solar LLC (the “**Company**”) for the output and services of approximately 80 MWac from a photovoltaic solar energy generation facility located in Wilcox County, Georgia (the “**Facility**”) to be constructed, owned, operated, and maintained by the Company (such agreement, the “**Supplemental Power Purchase Agreement**” or “**SPPA**”); and

**WHEREAS**, in accordance with the Supplemental Power Policy, the Solar Participant has requested that the Authority purchase from the Company power, output and services of the Facility to cause to be provided to the City its Supplemental Power; and

**WHEREAS**, the Authority has agreed to cause to be provided the Solar Participant's Supplemental Power from the power, output and services of the Facility pursuant to the terms of a Power Purchase Contract (the "**PPC**") in substantially the form attached as Exhibit A hereto; and

**WHEREAS**, the Solar Participant finds, and the Solar Participant and the Authority agree that the PPC is supplemental to, and is authorized by, the Project One Power Sales Contract and that the Products (as defined in the SPPA) constitute Supplemental Power as defined in the Supplemental Power Policy; and

**WHEREAS**, the Solar Participant determines that the Solar Participant's payment obligations for Supplemental Power under the PPC authorized thereby shall constitute the general obligations of the Solar Participant for the payment of which the full faith and credit of the Solar Participant is pledged, obligating the Solar Participant to provide for the assessment and collection of an annual tax sufficient in amount to provide funds annually to make all payments due thereunder; and

**WHEREAS**, the [Governing Body] desires to approve the PPC; to authorize the execution and delivery of the PPC and other such documents, certificates, and opinions described therein; and authorize such further actions as necessary for the Solar Participant to procure Supplemental Power as provided thereby.

**NOW, THEREFORE, BE IT RESOLVED** by the [Governing Body] of the Solar Participant as follows:

1. Incorporation of Recitals. The recitals set forth above are hereby incorporated in the body of this Resolution.
2. Findings and Determinations. All findings and determinations contained in the PPC, including the recitals thereto, are hereby incorporated herein by reference, and are hereby adopted as findings and determinations of the [Governing Body] of the Solar Participant.
3. Defined Terms. All capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the PPC.
4. Supplemental Power Purchase Agreement. The [Governing Body] of the Solar Participant acknowledges receipt of the form of the SPPA to be executed by the Authority and Company.
5. Authorization to Execute PPC. The [Governing Body] of the Solar Participant hereby authorizes the Solar Participant to enter, as a Solar Participant (defined therein) into the PPC in substantially the form attached as Exhibit A hereto, and to perform the same, and the [Title of Officer] of the Solar Participant is hereby authorized on behalf of the Solar Participant to execute and deliver the PPC. The [Title of Officer], with the advice of Counsel to the Solar Participant, is authorized to agree to such changes to the PPC as may be necessary prior to execution thereof, and the execution and delivery of the PPC shall be conclusive evidence of such approval. The [Title of Officer] of the Solar Participant is authorized to attest the execution by the [Title of Officer] of the PPC and to affix the seal of the Solar Participant to such documents.
6. Further Authority. The [Governing Body] hereby authorizes, empowers and directs the [\_\_\_\_\_] and any necessary representatives of the Solar Participant to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions and intent of this Resolution and the PPC.

7. Authorized Representative. The [Title of Officer] and [Title of Officer] of the Solar Participant are each hereby each designated as Authorized Representatives of the Solar Participant, and may execute notices, certificates, requests, estimates and other documents contemplated by the PPC, subject to the limitations contained herein.

8. Repeal of Conflicting Resolutions. All resolutions and parts of resolutions in conflict with this Resolution are hereby repealed to the extent of such conflict.

9. Effective Date. This Resolution (including the recitals first above written, which are hereby incorporated into this Resolution) shall take effect immediately upon its adoption; a copy of this Resolution may be filed in such offices as the undersigned or such development authority may elect to file this Resolution. All resolutions, or parts of resolutions, in conflict herewith are repealed.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

**DULY ADOPTED** at a meeting of the [Governing Body] of the Solar Participant, held  
this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

**Solar Participant**

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

Name: \_\_\_\_\_

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

ATTEST:

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

Name: \_\_\_\_\_

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

[SEAL]



**EXHIBIT A**  
**FORM OF PPC**  
**[FORM ATTACHED]**

## CERTIFICATE OF CLERK

The undersigned, being the duly appointed, qualified, and acting Clerk of the [Governing Body] of the Solar Participant, **DOES HEREBY CERTIFY** that the foregoing pages of typewritten matter constitute a true and correct copy of a resolution adopted on \_\_\_\_\_, 2021, by the [Governing Body] of the Solar Participant in a meeting duly called and assembled, after due and reasonable public notice was given in accordance with the procedures of the Solar Participant and with the applicable provisions of law, which was open to the public and at which a quorum was present and acting throughout, and that the original of such resolution appears of public record in the minute books of the [Governing Body] of the Solar Participant, which are in my custody and control.

I do hereby further certify that all members of the [Governing Body] were present at said meeting except the following members who were absent:

\_\_\_\_\_

and that the resolution was duly adopted by the following vote:

The following voted "Aye": \_\_\_\_\_  
\_\_\_\_\_;

The following voted "Nay": \_\_\_\_\_  
\_\_\_\_\_;

The following Did Not Vote: \_\_\_\_\_  
\_\_\_\_\_.

**WITNESS** my hand and the official seal of the [Solar Participant], this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Clerk

[SEAL]

EXHIBIT C

**FORM OF OPINION OF COUNSEL TO SOLAR PARTICIPANT**

[TO BE REPRINTED ON LETTERHEAD OF SOLAR PARTICIPANT’S COUNSEL]

\_\_\_\_\_, 2021

Municipal Electric Authority of Georgia  
Atlanta, Georgia

[Solar Participant]  
[Address], Georgia

Seyfarth Shaw LLP  
Atlanta, Georgia

RE: Power Purchase Contract between the Municipal Electric  
Authority of Georgia and [Solar Participant]

Ladies and Gentlemen:

[I/We] have acted as Counsel to [Solar Participant] (the “**Solar Participant**”) preliminary to and in connection with the authorization and execution of the above-captioned Power Purchase Contract, dated as of \_\_\_\_\_, 2021 (the “**PPC**”), between the Municipal Electric Authority of Georgia (the “**Authority**”) and the Solar Participant. In so acting, we have examined such documents and matters of law as we have considered desirable to render the opinions hereinafter expressed, including but not limited to the following:

(a) The Constitution of the State of Georgia of 1983, particularly Article IX, Section III, Paragraph I(a) thereof and various acts of the General Assembly of Georgia relating to the Solar Participant;

(b) The PPC;

(c) The Project One Power Sales Contract;

(d) The validation certificate provided pursuant to the order issued by the Superior Court of Fulton County in *State of Georgia v. Municipal Elec. Auth. of Georgia et al.* Civil Action File No. 2018CV37032 (Fulton Co. Sup. Ct. July 17, 2018);

(e) Minutes of the meeting of the [Governing Body] of the Solar Participant held on \_\_\_\_\_, 2021, authorizing at such meeting the execution of the PPC by the Solar Participant; and

(f) Such other documentation and matters of law as [I/we] have deemed necessary.

Whenever [I/we] have stated that [I/we] have assumed any matter, it is intended to indicate that we have assumed such matter without making any factual, legal or other inquiry or investigation, and without expressing any opinion or conclusion of any kind, concerning such matter. [I/we] assume no issue of unconstitutionality or invalidity of a relevant law unless a reported case has so held.

Reference is made to the opinion dated the date hereof of Seyfarth Shaw LLP, Atlanta, Georgia, as counsel to the Authority, upon which [I/we] have relied, with your permission, with respect to all matters related to the validity and enforceability of the Supplemental Power Purchase Agreement (the “**SPPA**”) between the Authority and RE Sumter LLC and the security pledged thereunder. [I/we] have reviewed sufficient information to assume that the Project One Power Sales Contract between the Solar Participant and the Authority has been judicially confirmed and validated by order of the Superior Court of Fulton County, Georgia. [I/we] have further assumed, in reliance upon the opinion of Seyfarth Shaw LLP, that the Authority has all requisite power and authority to enter into and perform its obligations under the SPPA, and that the SPPA is a valid and binding agreement, enforceable against the Authority in accordance with its terms.

Based upon the foregoing, it is [my/our] opinion that:

1. The PPC has been duly and validly authorized, executed and delivered by the Solar Participant and the provisions thereof which obligate the Solar Participant are legal, valid and binding obligations of the Solar Participant enforceable in accordance with the terms thereof. Under the terms of the PPC, the Solar Participant is obligated to levy a tax, at a rate sufficient, as described in the PPC, on all property in the Solar Participant’s jurisdiction subject to such tax, to the extent necessary to generate sufficient revenue to pay its obligations under the PPC.

2. To the best of [my/our] knowledge and belief after reasonable inquiry, the PPC and the performance of the Solar Participant’s obligations thereunder will not conflict with or be in violation of any applicable federal, state, or local law or ordinance or, to the best of [my/our] knowledge and belief, be in violation of, or constitute a default under, any agreement or instrument to which the Solar Participant is party or by which the Solar Participant is bound.

3. Each [officer/official] of the Solar Participant who executed the PPC was on the date of the execution thereof, and is on the date hereof, the duly, elected or appointed qualified incumbent of his or her office.

4. The notices given prior to each meeting of the Solar Participant at which any action was taken relating to the PPC and the security therefor comply with the applicable notice requirements of Georgia law, and said meetings were conducted in accordance with all other applicable requirements of Georgia law.

5. There is no action, suit, proceeding, inquiry or investigation, at law or equity, by or before any court or public board or body pending or, to the best of [my/our] knowledge and belief, after making due inquiry with respect thereto, threatened against or affecting the Solar Participant, nor to [my/our] knowledge is there any basis therefore, which in any way questions the creation

or existence of the Solar Participant or the powers of the Solar Participant, or which might result in a material adverse change in the condition (financial or otherwise), business or affairs of the Solar Participant or wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of the PPC or any other agreement or instrument to which the Solar Participant is a party and which is used or contemplated for use in connection with the consummation of the transactions contemplated by the PPC or which in any way would adversely affect the levy or collection of taxes by the Solar Participant to fulfill its obligations pursuant to the PPC.

6. All consents, approvals or authorizations, if any, of any governmental authority or agency or other person required on the part of the Solar Participant in connection with the approval of the PPC, the execution and delivery of the same and the consummation of the transactions contemplated thereby have been obtained, and the Solar Participant has complied with any applicable provisions of law requiring any designation, declaration, filing, registration and/or qualification of the Solar Participant with any governmental authority or agency or other person in connection with such execution, delivery and consummation.

The foregoing opinions are qualified to the extent that the enforceability of the PPC might be limited by (i) bankruptcy, fraudulent transfer, moratorium, insolvency, reorganization, or other laws affecting the enforcement of creditors' rights, (ii) limitations imposed by general principles of equity upon specific enforcement, injunctive relief or other equitable remedies, (iii) the exercise of judicial discretion in appropriate cases and (iv) to the following qualifications:

(a) [I/We] express no opinion as to the validity or enforceability of any of the following provisions that may be contained therein: (i) any provisions which purport to waive any defense, counterclaim, set off or deduction arising from any violation of applicable federal or state securities or usury laws, any fraud on the part of any other party, any failure to give notice of a disposition of collateral to the extent required under applicable law, any disposition of collateral other than in a commercially reasonable manner, or the effect of any applicable statute of limitation, (ii) any choice of law provisions therein, (iii) any provisions which purport to waive the right to trial by jury or purport to consent to or waive any objection to the jurisdiction or venue of any particular court, and (iv) any provisions which provide for payment of interest on unpaid interest or which, due to prepayment, acceleration, or otherwise, would cause the rate of interest to exceed five percent (5.0%) per month. [I/We] also note that any provisions requiring any party to pay the attorneys' fees of any other party may be subject to compliance with applicable legal requirements and limitations and that the provisions thereof may be subject to the effect of the provisions of law regarding mutual departures from strict contractual terms. Nothing in this paragraph (a) is intended to limit any of the other qualifications or exceptions to [my/our] opinions set forth in this letter.

(b) Enforcement of any warranties and indemnities contained therein may be limited by applicable federal or state securities laws as violations of public policy and may be limited to the extent such indemnities would require any party to indemnify another party for costs, losses, liabilities, claims, damages or expenses incurred by or asserted against such party as a result of action or inaction of such party constituting negligence. In

addition, it is possible that a court would not enforce any warranties or indemnities with respect to environmental matters contained therein.

(c) With respect to the enforceability thereof, [I/we] have assumed that, to the extent that applicable law would require the rights and remedies set forth therein to be exercised in good faith or in a reasonable or commercially reasonable manner as a condition to the enforceability thereof, the persons having remedial rights thereunder will observe and satisfy such legal requirements.

The undersigned's engagement as Counsel to the Solar Participant imposed no duty upon the undersigned to undertake any due diligence investigation as to either: (i) the adequacy of the security for the PPC, (ii) the business or financial condition of the Solar Participant, or (iii) the veracity of any representations or certification made by the [Solar Participant] on which [I/we] have relied. No opinion is expressed as to the federal or state tax-exempt status of the obligations or the interest thereon, or the applicability of the federal securities laws or the Blue Sky laws of any state with respect to the PPC.

The opinions set forth herein are limited to the laws of the State of Georgia and applicable federal laws. The opinions represent [my/our] legal judgment based upon our review of the law and the facts that we deem relevant to render such opinion and is not a guarantee of a result.

This opinion letter is rendered as of its date, and [I/we] express no opinion as to circumstances or events that may occur subsequent to such date. Further [I/we] undertake no, and hereby disclaim any, obligation to advise you, or any other person permitted to rely hereon, of any change in applicable law or relevant facts or any new development which might affect any matters or opinions set forth herein.

This opinion letter is given solely for the benefit of the addressees and their successors and assigns. This opinion letter is not intended to be employed in any transaction other than the one described above and is being delivered to the addressees with the understanding that it may not be published, quoted, relied on or referred to by, and copies may not be delivered or made available to, in whole in or part, any other person or entity (other than the addressees' counsel or any applicable rating agency) or used for any other purpose with the express prior written consent of this firm in each instance.

Very truly yours,



**To:** MEAG Power Solar Participants

**From:** Steve Jackson, Sr. VP and COO *Steve*

**Date:** June 24, 2021

**Subject:** Solar Initiative – Power Purchase Contract

MEAG Power staff has been working through a Request for Proposals process to acquire solar output and services on behalf of the Participants. Given changes in Participant interest, which at last survey amounted to 92 MW, MEAG Power shifted our efforts to a developer offering a smaller facility sized at 80 MW. MEAG Power staff has completed negotiations of the Solar Purchase Power Agreement (SPPA) between MEAG Power and this second solar developer that will provide interested Participants the avenue to add photovoltaic solar power to their resource portfolio.

In conjunction with the SPPA, any Participant that commits to an entitlement share of the output under this SPPA (a Solar Participant) will execute a Power Purchase Contract (PPC) with MEAG Power. This Power Purchase Contract addresses the Solar Participants entitlement share to the products, your cost and payment obligations and the financial assurance provided by the Solar Participants to the project developer. This PPC is non-recourse to MEAG Power and the project developer will be looking directly to the Solar Participants for the security of the payments. The enclosed material includes: 1) the PPC for execution; 2) the SPPA as Exhibit A of the PPC for information only; 3) a form of Resolution as Exhibit B of the PPC for your use with your governing body; and 4) a form of Opinion of Counsel as Exhibit C of the PPC for use by your attorney. If viewing on your computer, please use the bookmark feature to help you navigate to these sections.

In order to maintain the late 2023 commercial operation date for the project, all agreements are requested by mid-August 2021 and the following steps are required.

1. Participant execution of the Power Purchase Contract (PPC) including the Participants desired maximum MW amount
2. Based on all received nominations, MEAG Power will determine the final Participant entitlement share based on the formula included in the PPC. This step may require prorating each Participant's MW amount if the total amount of nominations exceed 80 MW. (If the maximum nominations do not amount to 80 MW, MEAG Power will have to terminate the current initiative). An example of the proration calculation is available on request.
3. MEAG Power Board approval of the SPPA for 80 MW.
4. MEAG Power execution of the SPPA and Solar Participant PPCs with final entitlement share.

If you are a Participant engaged with ECG for the supply of solar energy to Walmart, the Renewable Energy Customer Agreement (RECA), expected to be executed by Walmart by July 2<sup>nd</sup>, and the solar tariff have been provided by ECG through a separate transmittal. The approval and execution of those agreements is another step in the effort.

**In order to support your consideration of this agreement, MEAG Power and ECG staff will host two virtual meetings to discuss the key provisions of the PPC, SPPA, and RECA. These meetings will be offered at the following dates/times:**

- 1. Tuesday, June 29<sup>th</sup> at 2:30 p.m.**
- 2. Thursday, July 8<sup>th</sup> at 10:00 a.m.**

Your Regional Manager will be in contact to discuss your participation in one of these meetings, and also any further assistance needed from MEAG Power staff in this effort.

We are very pleased that the final price for solar energy and services under the SPPA is very competitive and fixed for 20 years. With the project interconnecting to the ITS through a new 115 kV breaker at MEAG Power's Pitts substation, there will be no Transmission Service Facilities fee assessed by Georgia Power from MEAG Power. With this ideal interconnection arrangement, we estimate a savings of approximately \$2.00/MWh in total solar costs to our Participants.

In order to support the project schedule, execution of the PPC (step 1) is requested by Friday, August 13, 2021. Please contact your Regional Manager with any questions or concerns.

cc: Jim Fuller





## City of Newnan, Georgia - Mayor and Council

Date: July 20, 2021

Agenda Item: New Business

Prepared by: Bill Stephenson, Chief Building Official

**Purpose:** Amending current ordinance, chapter 5, Buildings and Building Regulations, section 5-3 by adding two permissive codes as adopted and amended by the State of Georgia DCA, allowing greater flexibility and reduce conflicting code requirements and interpretations.

**Background:** None

**Funding:** No funding requirements

**Ordinance Considerations:** Update ordinance to reflect changing code requirements of the built environment as adopted and amended by DCA, specifically the addition of the Green Building Standard and the International Existing Building Code (IEBC). The Green Building Standard would be available as an option to users and the IEBC would be mandatory, replacing the IBC 2012 chapter 34 (existing buildings chapter) currently mandated by the State of Georgia DCA as the Existing Building Code. Please see summary for additional information.

**Previous Discussion with Council:** None.



## Building Department

25 LaGrange Street  
Newnan, GA 30263  
Ph. 770-254-2362 Fax 770-254-2361

July 20, 2021

Re: Code Adoption, Executive Summary

To: Mayor and City Council

The Chief Building Official has requested the Code of Ordinances be updated to reflect the growing need for a uniform code that is consistent with the State of Georgia and the Nation as a whole. Both of these codes are used in varying degrees throughout the country and adopting them will enable architects, engineers and designers to design to a code in which they are already familiar with and requires less interpretation.

The International Existing Building Code (IEBC) gives specific guidance as opposed to the general guidance that the currently adopted single chapter provides (2012 IBC Chapter 34 as amended by the State of Georgia). This single chapter has served the community well as repairs and renovations have been limited, however it is inadequate to address the number of differing repairs that are currently underway due to the widespread damage done by the tornado in March of 2021.

The National Green Building Standard should be adopted in order to make it available to those builders and owners that choose to construct in accordance to the Green Standard and as a reference for the residential built environment. The intent is that it not be mandatory, with the Performance Category selected by the owner of the property when construction is proposed under the Standard.

Kindest Regards,

Bill Stephenson  
Chief Building Official  
678-673-5476

**AN ORDINANCE TO AMEND SECTION 5-3, SCOPE (a) (2), BUILDING, OF  
ARTICLE I, ADMINISTRATION, ADOPTION, ENFORCEMENT, OF CHAPTER  
5, BUILDINGS, OF THE CODE OF ORDINANCES OF THE CITY OF NEWNAN,  
GEORGIA; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING  
ORDINANCES; AND FOR OTHER PURPOSES**

WHEREAS, in an ongoing effort to protect the health, safety and welfare of the citizens of the City of Newnan, the City has conducted a review of its current building construction code for the City of Newnan; and

WHEREAS, the City has determined that the City's current building code ordinance needs updating to clarify the various construction building codes applicable in the City of Newnan by adopting an amendment to the City's building construction code ordinance by adopting the International Existing Building Code as amended and by adopting the National Green Building Standard, as amended, both which have been adopted by the Georgia Department of Community Affairs, and that it is the best interest of its citizens and its citizens health, safety and welfare to adopt said amendment to the City's building construction codes.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Newnan, Georgia, and it is hereby ordained by the authority of same that Article 1, Administration, Adoption, Enforcement, of Chapter 5 Buildings, Section 5-3. Scope (a) (2) Building, of the Code of Ordinances is hereby deleted in its entirety and a new Section 5-3, Scope (a) (2) Building, of Article 1, Administration, Adoption, Enforcement, of Chapter 5 Buildings, of the Code of Ordinances is hereby adopted to read as follows:

Sec. 5-3:      Scope (a) (2) Building.

(2)      Building.

(a)      The provisions of the International Building Code, as adopted and amended by the Georgia Department of Community Affairs, shall apply to the construction, alteration, repair, equipment, use and occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures, except in one and two family dwellings.

(b)      The provisions of the International Existing Building Code, as adopted and amended by the Georgia Department of Community Affairs shall apply to the repair, alteration, change of occupancy, addition, to and relocating of existing buildings.

(c)      The provisions of the National Green Building Standard, as adopted and amended by the Georgia Department of Community Affairs shall apply as to new and existing construction, as applicable, and as requested by the property owner.

SECTION II: All ordinances or parts of ordinances in conflict or inconsistent with this Ordinance are hereby repealed.

Section III: Should any phrase, clause, sentence, or section of this Ordinance be deemed unconstitutional by a Court of competent jurisdiction, such determination shall not affect the remaining provisions of this Ordinance, which provisions shall remain in full force and effect.

Section IV: The effective date of this Ordinance shall be January 1, 2021.

DONE, RATIFIED AND PASSED by the City Council of the City of Newnan, this \_\_\_\_ day of \_\_\_\_\_ 2021, in regular session assembled.

ATTEST:

\_\_\_\_\_  
L. Keith Brady, Mayor

\_\_\_\_\_  
Megan Shea, City Clerk

\_\_\_\_\_  
Rhodes H. Shell, Mayor Pro-Tem

REVIEWED AS TO FORM:

\_\_\_\_\_  
C. Bradford Sears, Jr., City Attorney

\_\_\_\_\_  
George M. Alexander, Councilmember

\_\_\_\_\_  
Cleatus Phillips, City Manager

\_\_\_\_\_  
Cynthia E. Jenkins, Councilmember

\_\_\_\_\_  
Raymond F. DuBose, Councilmember

\_\_\_\_\_  
Dustin Koritko, Councilmember

\_\_\_\_\_  
Paul Guillaume, Councilmember

## AN ORDINANCE TO AMEND THE 2020 FISCAL YEAR BUDGET

**BE IT ORDAINED**, and it is hereby ordained that the City Council has authorized an amendment to the 2020 Special Revenue Funds expense budgets for Confiscated Assets and Hotel/Motel Taxes in the amount of \$41,332 and \$3,675 respectively. This amendment ensures that all appropriations for 2020 have been approved by Council. Therefore, the 2020 Budget is hereby amended to include the additional appropriations, per the attached 2020 Budget Amendment worksheet.

**DONE, RATIFIED AND PASSED** in regular session this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
Megan Shea, City Clerk

\_\_\_\_\_  
L. Keith Brady, Mayor

REVIEWED AS TO FORM:

\_\_\_\_\_  
C. Bradford Sears, Jr., City Attorney

\_\_\_\_\_  
Rhodes H. Shell, Mayor Pro-Tem

\_\_\_\_\_  
George M. Alexander, Councilmember

\_\_\_\_\_  
Cleatus Phillips, City Manager

\_\_\_\_\_  
Cynthia E. Jenkins, Councilmember

\_\_\_\_\_  
Raymond F. DuBose, Councilmember

\_\_\_\_\_  
Dustin Koritko, Councilmember

\_\_\_\_\_  
Paul Guillaume, Councilmember

**DONE, RATIFIED AND PASSED** in regular session, on second reading this the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

ATTEST:

\_\_\_\_\_  
Megan Shea, City Clerk

\_\_\_\_\_  
L. Keith Brady, Mayor

REVIEWED AS TO FORM:

\_\_\_\_\_  
Rhodes H. Shell, Mayor Pro Tem

\_\_\_\_\_  
C. Bradford Sears, Jr., City Attorney

\_\_\_\_\_  
George M. Alexander, Councilmember

\_\_\_\_\_  
Cleatus Phillips, City Manager

\_\_\_\_\_  
Cynthia E. Jenkins, Councilmember

\_\_\_\_\_  
Raymond F. DuBose, Councilmember

\_\_\_\_\_  
Dustin Koritko, Councilmember

\_\_\_\_\_  
Paul Guillaume, Councilmember



## City of Newnan, Georgia - Mayor and Council

Date: July 20, 2021

Agenda Item: Consideration of an Intergovernmental Agreement Between Coweta County and the City of Newnan, Relating to Master Planning and Potential Redevelopment of Certain Blocks of the Eastside of Downtown

Prepared By: Cleatus Phillips, City Manager

---

**Purpose:** City Council may consider entering into an intergovernmental agreement with Coweta County as originally proposed in order to form a joint planning committee for master planning and potential redevelopment of certain blocks of Downtown Newnan.

**Background:** This intergovernmental agreement was brought to City Council on June 15, 2021. The agreement was originally proposed to include 2 members of the Newnan City Council to be part of the committee formed. At the City Council Meeting on June 15, City Council voted to accept the agreement but with 3 members of City Council. Coweta County has requested City Council to reconsider the original agreement and to proceed with 2 members of City Council participating on the committee.

**Funding:** N/A

**Recommendation:** Enter into the agreement as proposed with 2 members of City Council.

**Previous Discussion with Council:** City Council Meeting on June 15, 2021

STATE OF GEORGIA  
COUNTY OF COWETA

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN COWETA COUNTY,  
GEORGIA AND THE CITY OF NEWNAN, GEORGIA, RELATING  
MASTERPLANNING AND POTENTIAL REDEVELOPMENT OF CERTAIN  
BLOCKS ON THE EASTSIDE OF DOWNTOWN NEWNAN, GEORGIA**

**THIS AGREEMENT** (hereinafter “Agreement”), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between COWETA COUNTY, GEORGIA, a political subdivision of the State of Georgia (hereinafter “County”) and the CITY OF NEWNAN, a political subdivision of the State of Georgia (hereinafter “City”).

**WHEREAS**, the County is the owner of property in Downtown Newnan commonly referred to as the Coweta County Administration Building located in the block bounded by Perry Street, East Broad Street, and East Washington Street; and

**WHEREAS**, the County is also the owner of other properties in the eastern portion of Downtown Newnan, collectively with the Administration Building referred to hereinafter as “County Properties”; and

**WHEREAS**, the City is the owner of two (2) properties in Downtown Newnan formerly referred to as Caldwell Tanks or Brown Steel, located along East Broad Street; and

**WHEREAS**, the City is also the owner of other properties in the eastern portion of Downtown Newnan, collectively with the Caldwell Tanks property referred to hereinafter as “City Properties”; and

**WHEREAS**, the County and the City have determined that it is in the best interest of the parties and the community to consider joint master planning efforts and redevelopment opportunities in and around the above referenced properties; and

**WHEREAS**, in consideration of the mutual benefits and consideration accruing to each of the parties hereto and for the use of and benefit of the citizens of the entire County, which benefits are hereby expressly acknowledged, the County and the City, as authorized by Art. IX, Sec. III, Para. I, of the Constitution of the State of Georgia, enter into this intergovernmental agreement for the following purposes; and

**NOW, THEREFORE**, the Parties hereto mutually agree as follows:

Section 1. Representations of the Parties. Each party hereto makes the following representations and warranties, which are specifically relied upon by all of the other parties as a basis for entering this Agreement:



- (a) The City is a municipal corporation as defined by statutory law and judicial interpretation that has validly adopted this Agreement at a public meeting pursuant to the Open Meetings Act, O.C.G.A. § 50-14-1, *et seq.*; and
- (b) The County has validly adopted this Agreement at a public meeting pursuant to the Open Meetings Act, O.C.G.A § 50-14-1, *et seq.*

Section 2. Obligations of the Parties.

- (a) The County and City each shall:
  - a. Agree to the creation of a Joint Planning Committee, hereinafter “Committee”, which shall have the following directives and responsibilities:
    - i. To conceptually masterplan the City Properties and County Properties;
    - ii. To analyze the potential use of Project Delivery Methods, including, but not limited to, public partnerships, public/private partnerships, real estate agreements, financing mechanisms, and related matters;
    - iii. To develop a recommendation (hereinafter “Final Report”) to the Coweta County Board of Commissioners and the Newnan City Council regarding the feasibility of moving the joint project forward.
  - b. Appoint two (2) elected officials and one (1) staff person to serve on the Committee;
  - c. Provide design professionals, at the cost of each party, to assist the members of the Committee and to represent the interests of each party;
  - d. Mutually agree upon a financial advisor, at a 50/50 cost share, to assist the members of the Committee and the interests of both parties;

Section 3. Term of Agreement. The term of this Agreement shall commence upon execution and shall continue until the Final Report is presented or twelve (12) months from the date of execution, whichever event occurs first.

Section 4. Termination. This Agreement may be terminated at any time, with or without cause, by either party upon sixty (60) days written notice.

Section 5. Modification. The parties may modify this Agreement only in writing by having a modification signed by all parties and adopted pursuant to the Open Meetings Act, O.C.G.A. 50-14-1 *et seq.*

Section 6. Entire Agreement. This Agreement is a full and complete statement of the agreement of the parties as to the subject matter hereof and has been authorized by proper action of the respective parties.

Section 7. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute the same instrument.

Section 8. Governing Law. This Agreement and all transactions contemplated hereby, shall be governed by, construed and enforced according to the laws of the State of Georgia.

Section 9. Severability. Should any provision of this agreement or application thereof to any person or circumstance be held invalid or unenforceable, the remainder of this agreement, or the application of such provision, to any person or circumstance, other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the full extent permitted by law.

Section 10. Notices. All notices, demands, or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served and shall be effective on being deposited in the United States mail, postage prepaid and registered, or certified with return receipt requested to the addresses appearing on the executed page hereof, or when delivered by hand to the addresses shown below or when transmitted to any telex number appearing below; provided, however, in those cases where a telex number is stated on the execution page for any particular party, notice to such party must be given by telex message to such number to be an effective notice hereunder:

- (a) Coweta County – County Administrator Michael Fouts, Coweta County Board of Commissioners, 22 East Broad Street, Newnan, Georgia 30263.
- (b) City of Newnan – City Manager Cleatus Phillips, City of Newnan, 25 LaGrange Street, Newnan, Georgia 30263.

All notices shall be sent to the successors in office to any of the foregoing.

*Intentionally left blank - Signatures follow*

**SO AGREED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

COWETA COUNTY, GEORGIA

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

Chairman

ATTEST: \_\_\_\_\_

Clerk

[SEAL]

CITY OF NEWNAN, GEORGIA

Acting by and through the Mayor  
And Council

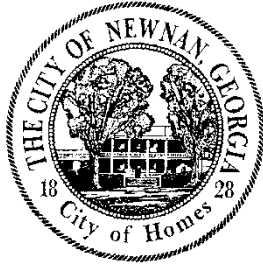
By: \_\_\_\_\_

Mayor

ATTEST: \_\_\_\_\_

Clerk

[SEAL]



## City of Newnan, Georgia – City Council

Date: July 20, 2021

Agenda Item: Consider adopting Section 3 policies and two resolutions associated with the FY2021 Community Home Investment Program (CHIP) grant award regarding program design, policies/procedures, homeowner eligibility and rehabilitation standards

Prepared and Presented by: Tracy Dunnavant, Planning Director

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**Purpose:** To consider adopting Section 3 policies and two resolutions establishing the program design, policies and procedures, rehabilitation standards and homeowner eligibility for the City's FY2021 CHIP grant award.

**Background:** The City of Newnan has been awarded a CHIP grant to benefit low- and moderate-income persons in the amount of \$400,000. The funds will be used to rehab the homes of qualified homeowners within the Chalk Level area. As part of the acceptance process, the City must adopt certain resolutions and policies dictated by the Georgia Department of Community Affairs (DCA) as a condition of the grant award agreement. These documents are as follows:

- Section 3 Policy for HUD funded activities
- A resolution adopting CHIP grant homeowner eligibility requirements
- A resolution adopting policies and procedures and program design standards for the City's CHIP program as well as written rehabilitation standards

The policies, procedures and rehabilitation standards are spelled out in the CHIP award manual with the City's grant application serving as the basis for the program design.

**Funding:** N/A

**Recommendation:** Authorize approval of the two resolutions and adoption of the Section 3 policy.

**Previous Discussion with Council:** September 21, 2020; December 8, 2020; January 12, 2021, June 15, 2021

## **Section 3 Policy for Covered HUD Funded Activities**

This Section 3 policy pertains to training, employment contracting, and other economic opportunities arising in connection with the expenditure of Federal housing assistance and community development assistance that is used in conjunction with the following activities:

- Housing rehabilitation,
- Housing construction, and
- Other public construction.

All Recipients and Sub-recipients of Section 3 Covered Assistance (including but not limited to contractors, sub-contractors, developers, grantees, CHDOs, non-profits, and local government entities) must be in compliance with the provisions of this policy in order to be eligible for DCA awards.

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#### SOLICITATION PACKAGE AND CERTIFICATION DOCUMENTS

## **BACKGROUND ON THE SECTION 3 REGULATION:**

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992 (Section 3), is to “ensure that employment and other economic opportunities generated by certain HUD financial funding shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed toward low and very low-income persons, particularly those who are recipients of government funding for housing and to Business Concerns which provide economic opportunities to low- and very low-income persons.”

Consistent with 24 CFR Part 135, as a recipient of HUD Housing and Community Development Funding, the State of Georgia Department of Community Affairs (DCA) requires fulfillment of Section 3 obligations on all contracts subject to 24 CFR Part 135 that make use of that assistance. These policies are implemented for contract amounts as specified in 24 CFR Part 135 whether it is designated as housing construction, housing rehabilitation, lead based paint abatement, or other public construction project. DCA works to ensure the provision of employment, training, contracting, and other economic opportunities to low-income persons. In doing so, DCA utilizes Section 3 as a means of promoting stability and self-sufficiency of Section 3 Residents. Implementation procedures may be amended periodically by DCA to insure that the policy requirements are being met and/or to enhance the efficiencies of compliance.

### **PART I. APPLICABILITY:**

Section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992. Section 3, as amended, requires that economic opportunities generated by Federal Housing and Community Development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

Section 3 requirements apply to all housing rehabilitation, housing construction or other public construction projects, and activities for which the recipient or sub recipient's award exceeds \$200,000 and the contract or subcontract exceeds \$100,000. If the recipient or sub recipient's award of assistance exceeds \$200,000, but the contracts and subcontracts do not exceed \$100,000, then only the recipient or sub recipient is subject to the Section 3 requirements. The recipient or sub recipient's responsibility includes awarding contracts, to the greatest extent feasible, to Section 3 business concerns.

## **PART II.     DEFINITIONS:**

Please refer to the 24 CFR 135.5 for a full list of prevailing definitions found in the regulation.

*Employment Opportunities Generated by Section 3 Covered Assistance:* All employment opportunities generated by the expenditure of applicable Federal Section 3 covered funding (i.e., Housing and Community Development Funding) and with respect to Section 3 covered Housing and Community Development Funding, all employment opportunities arising in connection with Section 3 Covered Projects.

*Full-Time:* For recipient, sub-recipients, and contractors, this term refers to an employee assigned to a position who regularly works a minimum of forty (40) hours per week on a continuous basis. For DCA, this term refers to an employee who is assigned to an unclassified position who regularly works a minimum of forty (40) hours per week on a continuous basis. Regular full-time employees will be eligible to receive full State-sponsored benefits and accrue any form of service credit.

*Housing and Community Development Funding:* Resources from the U.S. Department of Housing and Urban Development (HUD) covered by Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) include Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Emergency Solutions Grant (ESG), Housing Opportunities for Persons with AIDS (HOPWA), and Neighborhood Stabilization (NSP) programs, as well as certain grants awarded under HUD Notices of Funding Availability (NOFAs). The requirements for Section 3 only apply to the portion(s) of covered funding used for project/activities involving housing construction, rehabilitation, demolition, and/or other public construction.

*Low Income Person:* A person whose household (including single persons) has a total income that does not exceed 80% of the median income for the project area. Income levels can be obtained online at: <https://www.huduser.gov/portal/datasets/il.html>.

*New Hires:* Full-time employees for at-will, permanent, temporary or seasonal employment opportunities for any Section 3 covered contract.

*Recipient:* An entity which receives Section 3 covered assistance directly from HUD (i.e., DCA) or from any other recipient (e.g., local government, PHA or other public body, public or private non-profit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, Community Housing Development organization, resident management corporation, resident council, or cooperative association). For the purpose of this policy, the phrase, “any other recipient” will carry the same definition as “Sub-recipient” and may include DCA in cases when program terminology establishes a “Recipient” as any entity receiving an award of DCA funds under a HUD-funded program.



*Resident Owned Business (ROB)*: A Business Concern owned or controlled by low or very low-income residents who reside within the legal boundaries where the funds are expended. A ROB must meet these requirements: (a) at least 51% owned and operated by Section 3 residents, and (b) whose management and daily business operations are controlled by one or more such individuals. For purposes of Section 3 compliance, a ROB must also meet Subpart A to the definition of a Section 3 Business Concern.

*Section 3*: Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

*Section 3 Resident*:

- (1) A public housing resident; or
- (2) An individual who resides in the area in which the Section 3 covered assistance is expended, and who is a low-income person whose household income does not exceed 80% of the average median income for the area or a very low-income person whose household income does not exceed 50% of the average median income for the area as per Section 3(b) (2) of the U.S. Housing Act of 1937 (1937 Act).

To find the current Average Median Income go to:

<https://www.huduser.gov/portal/datasets/il.html>

*Section 3 Business Concern*: As defined by HUD, an entity:

- A. That is Fifty-one (51%) percent or more owned by Section 3 Residents; or
- B. Whose permanent, full-time employees includes persons, at least 30 percent of whom are current Section 3 Residents, or were Section 3 Residents within three (3) years of the date of first employment with the Business; or
- C. That provides evidence of a commitment to subcontract in excess of 25 percent of the total contract award amount (including any modifications) to Section 3 Business Concerns as defined in A or B. Example: If the Contract Amount is = \$1,000,000, the contractor must subcontract in excess of 25%, or greater than \$250,000, to a Section 3 Business Concern (s) as defined in A or B in this part.

*Section 3 Clause*: The contract provisions and sanctions set forth in 24 CFR 135.38

*Section 3 Covered Activity*: Any activity that involves housing construction, rehabilitation, or other public construction funded by Section 3 covered assistance.

*Section 3 Covered Assistance*: The requirements of Part 135 apply to Recipients of covered Section 3 Housing and Community Development Funding for which the amount of the assistance exceeds \$200,000. These requirements also apply to contractors and subcontractors performing

work on projects using Federal Housing and Community Development Funding from DCA for which the Recipient's award exceeds \$200,000 and the contract or subcontract exceeds \$100,000. If the Recipient or Sub-recipient's award of assistance exceeds \$200,000, but the contracts and subcontracts do not exceed \$100,000, then only the Recipient or Sub-recipient is subject to the Section 3 requirements. The Recipient's responsibility includes awarding contracts, to the greatest extent feasible, to Section 3 business concerns.

*Section 3 Covered Contract:* A contract or subcontract, including a professional service contract, awarded by a recipient, sub-recipient, or contractor for work generated by the expenditure of Section 3 Covered Assistance or for work arising in connection with a Section 3 Covered Project. "Section 3 Covered Contracts" do not include contracts for the purchase of supplies and materials except whenever a contract for materials includes the installation of the materials.

*Section 3 Covered Project:* The construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with applicable Federal Housing and Community Development Funding.

*Section 3 Joint Venture:* An association of Business Concerns, one of which qualifies as a Section 3 Business Concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the Business Concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 Business Concern:

- Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- Performs at least 25% of the work and is contractually entitled to compensation proportional to its work.

*Sub-recipient:* Any public or private agency, institution, organization, or other entity ( e.g. Local government, Public Housing Authority, public or private non-profit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, Community Housing Development organization, resident management corporation, resident council, or cooperative association) to whom Federal financial assistance is extended, through the Georgia Department of Community Affairs for any program or activity, or who otherwise participates in carrying out such program or activity but such term does not include any Beneficiary under any such program. The term "Sub-recipient" may include the term "Recipient" when program terminology establishes a "Recipient" as any entity receiving an award of DCA funds under a HUD-funded program.

*Very Low Income Person:* A person whose household (including single persons) has a total income that does not exceed 50% of the median family income for the project area.

### **PART III.     GOALS OF THE SECTION 3 REGULATION:**

DCA's Section 3 protocol seeks to aid Section 3 residents to the greatest extent feasible in three ways, listed in order of preference:

#### *A. Hiring low- and very low-income workers*

DCA requires that a recipient or sub-recipient and its contractors make every effort within their disposal to attempt to hire at least 30% Section 3 residents of the aggregate number of full-time new hires with a preference for Section 3 residents in this order:

- 1: Residents of HUD-assisted housing.
- 2: Residents at the site where the work is being performed.
- 3: Residents of the city where the work is being performed.
- 4: Residents of the county where the work is being performed.

#### *B. Awarding contracts to Section 3 business concerns*

DCA requires that the recipient or sub-recipient, and its contractors make every effort within their disposal to award at least 10% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction, and other public construction, to Section 3 business concerns. DCA also requires that the recipient or sub-recipient and its contractors make every effort within their disposal to award at least 3% of the total dollar amount of all "Other" Section 3 covered contracts.

#### *C. Providing other economic opportunities*

If a recipient, sub-recipient, or contractor identifies a greater need, other training and employment opportunities may be provided to substitute for goals A and B. In such cases, a recipient, sub-recipient, or contractor must provide training and other employment opportunities as described in Part VII equal to or exceeding 3% of the total contract award in order to meet this goal.

### **PART IV.     RECIPIENT AND SUBRECIPIENT RESPONSIBILITIES:**

The recipient or sub recipients of DCA Housing and Community Development Funding accept the responsibility of not only enforcing the Section 3 requirements, but also for pro-actively providing notice, encouraging, and facilitating compliance with Section 3 subject to the definition of a Section 3 Covered Project. The recipient or sub-recipient will have fulfilled this responsibility when they can provide evidence that the following have occurred in the case of every contract and sub-contract solicitation that exceeds the threshold requirements of 24 CFR Part 135:

The following actions are required for all contract and sub-contract solicitations:

- A) Notifying Section 3 residents of opportunities through posting of job openings in community sources that are generally available to low income residents and the general public, including but not limited to: the local community newspaper; the most widely distributed newspaper; the management office of the local housing authority, or homeless agency, or/local low-income housing community; the local workforce board; the local office of the Georgia Division of Family and Children Services; and the local office of the Georgia Department of Public Health serving the county in which the project is located.
- B) Conveying that the contract work is a Section 3 Covered Contract in any advertisement for bids and proposals by placing the following language in each advertisement/public notice and website: **“This project is covered under the requirements of Section 3 of the HUD Act of 1968.”**
- C) Notifying contractors of Section 3 requirements in any pre-bid or pre-construction meeting held.
- D) Incorporating the HUD mandated Section 3 clauses in all contracts where the work to be performed is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).
- E) Providing Resident Certification and Affidavit forms for employment at the recipient or sub-recipient’s business offices and allowing applications to be submitted at appropriate local locations.
- F) Encouraging the training of Section 3 residents by the contractors.
- G) Reporting quarterly on its efforts regarding Section 3 implementation on the DCA prescribed mechanism or form.
- H) Refusing to award contracts to businesses or persons that have previously violated Section 3 requirements.
- I) Using the attached Solicitation Package for each procurement associated with a covered project indicating that the work to be performed is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).
- J) Documenting actions taken to comply with Section 3 requirements including all results and impediments using the DCA prescribed mechanism or form.

Recipients or Sub-recipients also must implement at least one (1) of the following actions:

- K) Facilitating an opportunity fair annually for contractors to meet interested Section 3 residents for possible employment. A list can be developed as a resource for the recipient or sub-recipient and contractors when seeking to hire Section 3 workers in the future.
- L) When employment opportunities arise or are anticipated, posting all job sites funded by DCA with a location or phone number of whom and how to apply for any opportunities for employment, training or contracting. The sign should be no smaller than 24" x 24" in Black ink and specifically read:

*"This project is covered under Section 3 of the HUD Act of 1968 which requires that any new hiring opportunities first be directed to low- and very low income persons in this community. Please contact (list the contact person name and number) for information on any employment, contracting and sub-contracting opportunities."*

#### **PART V. RECIPIENT, SUB-RECIPIENT, AND CONTRACTOR RESPONSIBILITIES:**

All recipient, sub-recipients, and contractors must submit prior to an award exceeding \$100,000 the prescribed forms in the attached solicitation package describing their proposal to implement Section 3. Omission of a satisfactorily completed solicitation package prior to award makes that contractor ineligible for award. Regardless of the amount of the potential contract award, all recipient, sub-recipients, and contractors that wish to claim a Section 3 preference must submit with any bid or proposal the *Section 3 Self-Certification and Action Plan* and the *Section 3 Business Concern Self Certification* that is part of the attached solicitation package. Prior to award of a contract exceeding \$100,000, the remainder of the solicitation package must be prepared in its entirety. No preference may be claimed after bids are opened.

The only safe harbors for determining whether Section 3 requirements have been met are the following:

- A. The 30% new hiring of Section 3 Residents goal;
- B. The 10% Section 3 Business Concern Contracting for Building Trades Work goal; and,
- C. The 3% Section 3 Business Concern Contracting for "Other" Covered Contracts goal.

As DCA does not execute final funding contracts, it is reliant upon the compliance of its recipient, sub-recipient, and/or contractor(s) to execute DCA's Section 3 initiatives. If the goals above cannot be met by the recipient, sub-recipient, and/or contractor, the recipient, sub-recipient, and/or contractor must provide documentation explaining why those numerical goals could not be met, including a description of any actions taken, any impediments encountered, and any other economic opportunities provided (See Part VII – Other Economic Opportunities). This documentation must be submitted to DCA for review and approval. DCA will take each recipient or sub-recipient's explanation into consideration when making the determination of compliance.

In addition to the notice requirements for both hiring and contracting, other examples of activities to demonstrate effort to comply with the Safe Harbor Limits are listed in the appendix to part 135 of the Code of Federal Regulations—24 CFR Part 135 and include:

1. Distributing or posting flyers advertising positions to be filled;
2. Contacting the local government or housing authority for a list of residents who have expressed interest in Section 3 employment;
3. Holding job informational meetings for residents, contractors, etc...;
4. Contacting agencies administering HUD YouthBuild programs and requesting their assistance in recruiting HUD YouthBuild program participants for training and employment positions.

#### **PART VI. PREFERENCES AND ELIGIBILITY:**

*Note: All persons who are recipients of housing assistance from the government are Section 3 residents. Residents of HUD assisted housing are top priority Section 3 residents (Tier One). HUD assisted housing includes: (A) public housing, (B) Housing Choice Voucher holders, (C) substance abuse rehabilitation housing, (D) domestic violence shelters, (E) transitional housing facilities, (F) homeless shelters, and (G) veterans housing. The businesses owned by Section 3 residents (ROBs) are top priority business concerns (Tier One). When employment or contracting opportunities are offered and all requirements are met and remain equal, HUD assisted housing residents and ROBs within the area of the project shall be provided preference over other Section 3 residents/business concerns and non-Section 3 residents/business concerns.*

- A) Regarding the hiring of Section 3 residents, preference, in the following order, shall be given to those residents who live:
  1. In HUD assisted housing.
  2. At the site where the work is being performed.
  3. In the city where the work is being performed.
  4. In the county where the work is being performed.
- B) Regarding the contracting opportunities for Section 3 business concerns, preference shall be given to business concerns, in the order of preference described in Section A of Part VI, Preference and Eligibility, meeting these definitions and in this order:
  1. Resident Owned Businesses (ROBs) owned and operated at 51% by Section 3 Residents.
  2. Businesses that employ Section 3 residents at no less than 30% of the contractors aggregate full time staff.

3. Contractors that at the time of bid show evidence (meaning the specific name and preference met) of their intent to award no less than 25% of their total award to Section 3 business concerns.
- C) A Section 3 resident seeking employment must fulfill the requirements of the sought position and, if asked, must provide evidence of their Section 3 status (e.g., proof of residency in public housing development; evidence of participation in a HUD YouthBuild program operated in the metropolitan area (or non-metropolitan county) where the Section 3 covered assistance is spent; evidence that the individual resides in the Section 3 area and is a low or very low-income person as defined in Section 3(b) (2) of the U.S. Housing Act of 1937). Recipient agencies may choose to allow prospective Section 3 residents to self-certify their eligibility. Any self-certification should include a statement of penalty for falsifying information. A Section 3 Business Concern seeking to win a contract must fulfill the requirements of the contract and, if asked, provide evidence of their Section 3 status.

#### **PART VII. OTHER ECONOMIC OPPORTUNITIES:**

The Other Economic Opportunities provision may only be used when a contractor, recipient, or sub-recipient desires to claim a preference under Part VI and cannot comply with the hiring or subcontracting goals set forth in the Preference Tier structure, or, based on observed special needs, has concluded that providing Other Economic Opportunities will be a greater benefit to Section 3 Residents or Businesses. Whenever the Other Economic Opportunities provision is employed, the actions must equal or exceed 3% of the total contract value including all labor and material costs as well as any change orders to these costs.

Firms that will provide other economic opportunities will be responsible for soliciting and contracting a qualified firm/individual experienced in providing a Georgia Department of Labor Approved training curriculum consistent with Section 3 requirements of 135.11 in the area of Section 3 resident training in the following areas:

- Employment Readiness and Professional Development
- Section 3 Small Business Concern Development Training
- Computer Literacy and Data Entry Skills Training
- Employment Skills Training (Any Viable Employment Field)
- Other training curriculum approved by DCA

The acceptability of these efforts will be determined by DCA in the case of a recipient, sub-recipient, and by the recipient or sub-recipient in the case of a contractor, or in cases of a complaint, by HUD.

#### **PART VIII. DCA SECTION 3 RESPONSIBILITIES:**



Refer to the Georgia Department of Community Affairs Section 3 Hiring Policy available upon request to the Georgia Department of Community Affairs Human Resources Department.

#### **PART IX. COMPLAINTS AND COMPLIANCE:**

Any Section 3 resident or business concern that feels that the Section 3 regulations were not complied with may file a complaint directly to the Assistant Secretary for Fair Housing and Equal Opportunity at the following address (or as otherwise directed by HUD):

Assistant Secretary for Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
Regional Field Office  
40 Marietta Street, NW  
Atlanta, Georgia 30303

The complaint must be in writing and be received within 180 days from the date of the action upon which the complaint is based. It should include the complainant's name and address, the recipient, sub-recipient's or contractor's name and address, and a description of the acts in question. The complainant will receive a response from HUD within 10 days in which further investigation will be explained.

#### **PART X. DCA STANDARD SECTION 3 OPERATING PROCEDURES**

Policy Effective Date: \_\_\_\_\_, 20\_\_      Procedural Change Date: \_\_\_\_\_, 20\_\_

##### **Procedure Title: Section 3**

This operating procedure is tied to the Operating Policy on Section 3 designed to achieve and maintain compliance with the HUD Act of 1968 revised in 1992 and in 1994.

The procedures contained within are relative to the Section 3 daily operations in:

- Hiring
- Procurement
- Contracting
- Compliance Management
- Solicitation Package and Certification Documents

#### **Section 1 – Recipient, Sub-Recipients and Contractors: Hiring**

This procedure encompasses all full time employment types including, long term, short term, temporary and special assignments. In the process of seeking new employees for the recipient,



sub-recipient, contractor, or subcontractor, the following procedures should be followed in an effort to create as many employment opportunities for Tier 1 HUD direct beneficiaries:

**Step 1:** Post the position in community sources that are generally available to low income residents and the general public. It is required that a minimum of three (3) of the following listed sources will be exercised at least once prior to extending an offer of employment to anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e., Department of Labor)
- F) Local office of the Georgia Division of Family and Children Services
- G) Local office of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

**Step 2:** Be certain to list in the notice that the position is a **“Section 3 Covered Position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply.”**

**Step 3:** In reviewing all applicants, be certain to first select candidates that best fit the position requirements. If a Tier I resident is identified as a qualified candidate, all things being equal with others in consideration, a preference for employment should be given to the Section 3 Resident based on the Policy order established in Part VI – Preferences and Eligibility.

**Step 4:** In cases where a recipient, sub-recipient or contractor establishes a relationship and requirement with any temporary employment agency contractor, the temporary employment agency contractor or temporary employment agency must require placements to its recipient, sub-recipient or contractors to complete the Self Certification form clarifying their qualifications as a qualified Section 3 Resident. Any person certifying as a qualified Section 3 Resident must be given Preference for any Section 3 covered assignment with the recipient, sub-recipient or contractor providing they meet all other position requirements.

## **Section 2 –Recipient, Sub-Recipients and Contractors: Procurement**

Whenever a contract opportunity is solicited, these steps must be followed in order to comply with DCA’s Section 3 Policy.

**ROB Verification:** Whenever ROB status is sought, the recipient, sub-recipient or contractor staff shall request address and ownership verification of the 51% Owner/Operator rule as stated in

the HUD Act of 1968. Use of the “**Section 3 Self-Certification Form**” attached to this policy is an acceptable statement of address and business data, when presented along with all other required incorporation documents, including any Letter of Issuance of a Federal Employer Identification Number (FEIN) and state Articles of Incorporation.

**Step 1: *This step is only applicable when a public housing authority is involved in the transaction.*** During the development process of any solicitation or work project, there should be a determination as to whether or not the work can be and/or should be isolated to Resident Owned Businesses (ROB’s) under the **24 CFR Part 963.12 Alternative Procurement Method**. If so, then Steps 2-8 should be followed with respect for **ROB’s ONLY**. Keep in mind, a qualified ROB can be one that is a Joint Venture Partnership where a non-ROB can participate at no more than 49% ownership, operations and profit. A statement where both parties have committed to these terms is required as validation of ROB status.

**Step 2:** As a direct method of encouraging greater participation and election of Section 3 Preference by contractors, DCA requires that all recipient, sub-recipient, and contractors conduct at least one pre-bid meeting or workshop to facilitate the meeting of contractors (large and small) in hopes that more opportunities will be afforded all parties in covered DCA funded contracts. These steps must be in compliance with State of Georgia procurement laws. Where a conflict occurs, the recipient, sub-recipient, or contractor should not conduct such acts that would constitute a violation.

**Step 3:** Post the contract opportunity in community sources that are generally available to Section 3 Businesses, low income residents and the general public. It is required that a minimum of three (3) of the listed sources will be exercised at least once prior to entering into a contract with anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e. Georgia Department of Labor)
- F) Local Office of the Georgia Division of Family and Children Services
- G) Local Offices of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

DCA recommends that all such posting periods shall last at least one calendar week.

**Step 4:** The recipient, sub-recipient or contractor must check the HUD Section 3 Business Registry to determine if there are any Section 3 businesses in the County where the work will be performed. If there are Section 3 businesses in the County that may be able to perform the work, the recipient,

sub-recipient or contractor must provide a copy of the contracting opportunity(ies) (e.g., bid notices) to the Section 3 businesses. See the HUD Section 3 Business Registry at: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>.

**Step 5:** All ads must include a notice that the contract opportunity is a **“Section 3 Covered Contract and that Section 3 Business Concerns are encouraged to apply.”**

**Step 6:** All awardees must include the attached **“Solicitation Package”** for recipient, sub-recipients and contractors to complete and return with their applications/responses. Any application/response claiming a preference must include the satisfactorily completed *Section 3 Self-Certification and Action Plan* and the *Section 3 Business Concern Self Certification*.

**Step 7:** In reviewing the solicitation responses, any contractors that claim a preference and are identified as qualified Section 3 Concerns should be reviewed and if legitimate, granted a Preference in contracting, all other things being equal.

**Step 8:** When procurements require point scores as part of the award process, the recipient, sub-recipient or contractor shall ensure that a method of providing Preference exists based on the solicitation criteria to secure the most qualified firm or individual for the contract. Under no circumstances shall a contract be awarded to a firm (Section 3 or Non-Section 3) if they fail to meet minimum standards or do not score high enough to surpass “competitive range” scoring. **Section 3 Preference only is to be considered after all other relative quantitative and qualitative factors have been scored and weighted.**

**Step 9:** All solicitations exceeding \$100,000 shall require that applicants/respondents prior to award convey prior compliance with Section 3 on any HUD funded contract. **If a contractor has not complied on any HUD funded contract effective on or after January 1, 2014, they should be considered non-responsive.**

**Step 10:** All solicitations exceeding \$100,000 must include a certification of prior compliance with HUD Section 3 for all HUD funded contracts effective on or after January 1, 2014 as a requirement for award. See the attached form titled: “Previous Compliance Certification.”

### **Section 3 – Recipient, Sub-Recipients and Contractors: Contracting**

**Step 1:** In addition to the required Section 3 contract language provided in 24 CFR §135.38, the following language is to be added to all new contracts effective immediately:

“All contractors claiming a Preference in contracting by meeting any of the three qualifications including: a Resident Owned Business, Hiring/Employing 30% of New Hires, and/or sub-contracting at least 25% of their total award to a Section 3 Concern, shall maintain that status throughout the life of the contract. Failure to meet this requirement will result in penalties up to and including contract termination.”

**Step 2:** Any recipient, sub-recipient or contractor claiming a Preference **must be in compliance prior to the issuance of a notice to proceed** by DCA, recipient, sub-recipient, or contractor based on the policies established for the applicable DCA funding program.

**Step 3:** The sub-recipient or contractor must maintain compliance. If at any time a recipient, sub-recipient or contractor fails to bring the contract into compliance, DCA, recipient, the sub-recipient, or contractor must withhold all future payments until the contract is in compliance or until other penalties have been levied as stated below.

DCA, the recipient, sub-recipient, or the contractor shall execute these remedies to achieve compliance in this order:

- A. Based on the first observation or report of non-compliance with Section 3, the recipient, sub-recipient or contractor will be sent an e-mail by the compliance manager notifying them of their non-compliance issue. The recipient, sub-recipient or contractor will have until the next payroll or 10 business days, whichever is less, to bring the contract into compliance and/or justify in writing why they cannot meet compliance requirements.
- B. DCA, the recipient, sub-recipient or contractor must render a response to the violating party within 10 business days of receipt of the violating party's letter of reason for non-compliance. If DCA, the recipient, sub-recipient, or the contractor deems the reason to be unacceptable, at its option, DCA, the recipient, sub-recipient, or the contractor can extend the response period one time for up to 5 business days to allow the violating party to identify and secure other compliance options.
- C. If the violating party fails to take any corrective action to bring the contract into compliance within the allotted time, or DCA, the recipient, sub-recipient, or the contractor rejects any of the corrective plans and justifications for non-compliance, DCA, the recipient, sub-recipient, or the contractor will either terminate the contract immediately or impose liquidated damages equal to \$100 a day for every day out of compliance. At DCA's determination, any liquidated damages received must be paid to the recipient, sub-recipient or DCA, at DCA's determination, and be used to promote economic opportunities for Section 3 Residents and Business Concerns.
- D. .

DCA, the recipient, sub-recipient, or the contractor will hold **all funds due to the violating party until such time that a financial workout is completed.**

***Additionally the violating party may be banned by DCA, the recipient, the sub-recipient, and the contractor on future HUD funded projects.***

RESOLUTION

CITY OF NEWNAN

ADOPTION OF POLICIES AND PROCEDURES AND PROGRAM DESIGN  
STANDARDS AND ADOPTION OF WRITTEN REHABILITATION STANDARDS  
FOR COMMUNITY HOME INVESTMENT PROGRAM (CHIP) GRANT

BE IT RESOLVED, by the Mayor and Council and it is hereby resolved by authority of same.

WHEREAS, the Mayor and Council have found it necessary to adopt policies and procedures and program design standards for the Community HOME Investment Program (CHIP) Grant Number 2021-111, and;

WHEREAS, the Mayor and Council have adopted the Policies and Procedures for the homeowner rehabilitation design by DCA in accordance with the requirements of the 2021 CHIP Program Administrative Manual, HUD and other required federal and state regulations, and;

WHEREAS, the Manual should be used in conjunction with that already accepted Program Design based on the City of Newnan's approved 2021 application, and;

WHEREAS, the Mayor and Council have found it necessary to adopt written rehabilitation standards designed by DCA in accordance with the requirements of the 2021 CHIP manual, HUD, and other required federal and state regulations, and;

WHEREAS, the Mayor and Council have adopted written rehabilitation standards designed by DCA in accordance with the requirements of the 2021 CHIP manuals, HUD, and other required federal and state regulations, and;

THEREFORE, BE IT FURTHER RESOLVED, by the Mayor and Council that they have adopted the Policies and Procedures and Written Rehabilitation Standards in accordance with the requirements of the 2021 CHIP Program Description. Manuals, Housing and Urban Development (HUD) and other required federal and state regulations. The Standards will be used in conjunction with the City of Newnan's already accepted design based on the City of Newnan's Approved application.

Keith Brady, Mayor

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Attest:

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Megan Shea, City Clerk

RESOLUTION

CITY OF NEWNAN  
ADOPTION OF CHIP GRANT HOMEOWNERS ELIGIBILITY REQUIREMENTS FOR  
COMMUNITY HOME INVESTMENT PROGRAM (CHIP) GRANT

BE IT RESOLVED, by the Mayor and City Council and it is hereby resolved by authority of same.

WHEREAS, the Mayor and City Council have found it necessary to adopt homeowner's eligibility requirements for the Community HOME Investment Program (CHIP) Grant Number 2021-111 and,

WHEREAS, The Mayor and City Council have established eligibility requirements as follows:

- Must be a single unit owner-occupied, stick built.
- Must be properly owned as per 24 CFR 92.254.
- Gross household income must be less than 80% of the average median income for the county as established by HUD.
- Must be a homeowner in the Chalk Level Neighborhood within Census Tract 1706.01
- Must have and maintain fire insurance.
- Must have property taxes paid up to date.
- After rehabilitation property value limit not to exceed 95% of the median property values for the area as per 24 CFR 92.254.

THEREFORE, BE IT FURTHER RESOLVED, that the Mayor and City Council will provide assistance through the CHIP grant according to the property value limits for homeownership activities as outlined in the HOME Final Rule published on July 24, 2013. No home receiving assistance will have an after-rehabilitation value that exceeds 95 percent of the area median purchase price for existing single-family units, as issued by Housing and Urban Development (HUD). The after rehabilitation will be established prior to any rehabilitation work being performed, and;

THEREFORE, BE IT FURTHER RESOLVED AND ADOPTED, by the Mayor and City Council the eligibility requirements that will be used to administer the CHIP program set forth by the Georgia Department of Community Affairs for financial assistance pursuant to this housing rehabilitation grant project.

BE IT RESOLVED this 20<sup>th</sup> day of July 2021.

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Keith Brady, Mayor

Attest:

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Megan Shea, City Clerk



## City of Newnan, Georgia - Mayor and Council

Date: July 20, 2021

Agenda Item: Public Hearing for the City of Newnan's Comprehensive Plan 2021-2041, second of two to be held

Prepared and Submitted by: Chris Cole, Planner

**Purpose:** Second Required Public Hearing in regards to the development of the Comprehensive Plan 2021-2041

**Background:** Per the minimum standards of the planning process, all local governments must hold two public hearings during the Comprehensive Plan process. The first hearing was held on February 9, 2021. The purpose of this second public hearing is to brief the community on the contents of the Comprehensive Plan 2021-2041, including the Capital Improvements Element (CIE). It also provides an opportunity for residents to make final suggestions, additions or revisions, and for staff to notify the community of when the Comprehensive Plan will be submitted to the Regional Commission for review.

Once public comments have been addressed, the Comprehensive Plan must be transmitted to the Regional Commission with a cover letter signed by the Mayor. Official transmittal to Three Rivers Regional Commission and DCA will be sought at the August 24, 2021 Council meeting. The anticipated adoption date by Mayor and Council is for either October 12, 2021 or October 26, 2021 (depending on when we are notified to proceed by the Regional Commission after transmittal). The adoption due date is October 31, 2021.

In regards to the Capital Improvements Element (CIE), the Georgia Development Impact Fee Act (GDIFA) was enacted into law in 1990. It sets rules for local governments that wish to charge new development for a portion of the additional capital facilities needed to serve it. Under GDIFA, local governments may impose exactions on developers to help finance the expansion of their infrastructure systems only through an impact fee system and only for the specific types of facilities and infrastructure listed in the law. All local governments that utilize an impact fee system under the GDIFA must include CIEs in their comprehensive plans and update the CIE portion of their plan annually.

Full Comprehensive Plan document can be found via the link below.

<https://www.dropbox.com/s/d0t8y6d23opuu08/Draft%20City%20of%20Newnan%20Comprehensive%20Plan%202021-2041.pdf?dl=0>

### **Options:**

- A. Hold the second Public Hearing to inform the public of the City's completion of the Comprehensive Plan 2021-2041, which contains the Capital Improvements Element

**Funding:** N/A

**Recommendation:** N/A

**Attachments:** The draft Comprehensive Plan 2021-2041

**Previous Discussions with Council:** February 9, 2021



## City of Newnan, Georgia - Mayor and Council

Date: July 20, 2021

Agenda Item: 62 Murray St., Newnan, GA 30263

Prepared and  
Presented by: Matt Murray, Code Enforcement Officer

Submitted by: Bill Stephenson, Chief Building Official

**Purpose:** To conduct a public hearing concerning the dilapidated structure located at 62 Murray St., Newnan, GA 30263.

**Background:** Owner: A&C Renovations LLC  
Date Sub-Standard housing file was opened: January 27, 2020  
Does the cost to bring this structure into compliance by means of repair exceed 50% of the structure's assessed tax value? **YES**

On January 27, 2020 the Building Department conducted an inspection of the premises. The structure has been determined to be unsafe as set forth by City Ordinance, Section 5-24. (a), Sub-sections (2, 3, 4, 5, 6, 7, 8, 9, 10).

**Options:** 1. Adopt a resolution directing the property owner to either repair or demolish the structure within forty-five (45) days.

2. Other direction from Council.

**Funding:** Not applicable.

**Recommendation:** Staff is requesting Council's approval for Option 1.

**Previous Discussion  
With Council:** January 28, 2020 – Council informed of conditions.

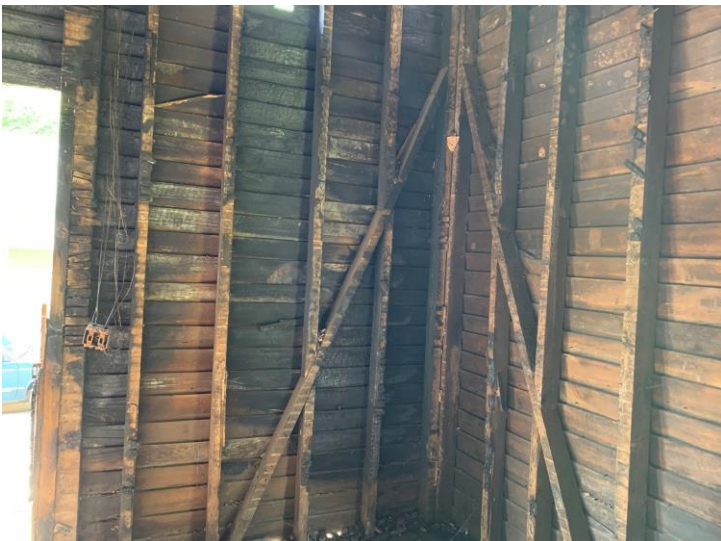
June 15, 2021 – Public Hearing was requested.

















After recording please return to:  
Megan Shea, City of Newnan  
25 LaGrange Street, Newnan, GA 30263

### RESOLUTION

IN RE:           A & C RENOVATIONS, LLC           Lien Holders: N/A  
                  62 Murray Street  
                  Newnan, Georgia 30263  
                  Deed Book 5112, Page 505-506

WHEREAS, the property of A & C RENOVATIONS, LLC located at 62 Murray Street, Newnan, Georgia 30263, in the City of Newnan was alleged by the Building Official of the City to be an unsafe building, as defined by an Ordinance adopted by the Mayor and Council on October 10, 1977; and,

WHEREAS, a hearing was set for the Mayor and Council to determine in accordance with the provisions of such Ordinance whether such building was in fact an unsafe building, as defined in such Ordinance and/or that the same was unsafe to the extent that it should be demolished or repaired; and,

WHEREAS, notice of such hearing was given to the owner, lien holder and tenant, if any, as required by such Ordinance, and all other provisions of the Ordinance have been complied with;

NOW THEREFORE, the Mayor and Council of the City of Newnan, after hearing evidence upon the question of whether such building is an unsafe building as defined by the Ordinance of the City of Newnan, do hereby determine that the building of A & C RENOVATIONS, LLC, at 62 Murray Street, Newnan, Georgia 30263, should be repaired or demolished, and the owner thereof is given \_\_\_\_\_ (\_\_\_\_\_) days within which to repair or demolish and remove the same;

RESOLVED FURTHER, that in the event the owner shall fail to repair or demolish and remove the same within the period of \_\_\_\_\_ (\_\_\_\_\_) days herein fixed, the Building Official of the City of Newnan is hereby ordered to repair or demolish and remove the same, and to prepare an itemization of the cost of such repair or demolition and removal, and deliver such itemization to the Clerk of the City of Newnan, who is ordered to issue an execution against the owner for the total cost of such repair or demolition and removal, which execution shall constitute a lien against such real estate as of the date of this resolution - all in accordance with the Ordinances of the City of Newnan.

Said property being more particularly described on Exhibit "A" attached hereto and made a part hereof.

ADOPTED AND APPROVED by the Mayor and Council of the City of Newnan this \_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
Megan Shea, City Clerk

\_\_\_\_\_  
L. Keith Brady, Mayor

REVIEWED AS TO FORM:

\_\_\_\_\_  
Rhodes H. Shell, Mayor Pro-Tem

\_\_\_\_\_  
C. Bradford Sears, Jr., City Attorney

\_\_\_\_\_  
George M. Alexander, Councilmember

\_\_\_\_\_  
Cleatus Phillips, City Manager

\_\_\_\_\_  
Cynthia E. Jenkins, Councilmember

\_\_\_\_\_  
Raymond F. DuBose, Councilmember

\_\_\_\_\_  
Dustin Koritko, Councilmember

\_\_\_\_\_  
Paul Guillaume, Councilmember

62 MURRAY STREET

ALL THAT CERTAIN TRACT OR PARCEL OF LAND LOCATED IN THE CITY OF NEWNAN, COWETA COUNTY, GEORGIA LOCATED ON THE WESTERLY SIDE OF MURRAY STREET AND IDENTIFIED AS 62 MURRAY STREET IN THE PLAN OF NUMBERING HOUSES IN THE CITY OF NEWNAN AND FURTHER IDENTIFIED AS LOT 112 ACCORDING TO PLAT OF NEWNAN COTTON MILLS PROPERTY, WHICH PLAT IS OF RECORD IN PLAT BOOK 1, PAGE 279, COWETA COUNTY RECORDS AND REFERENCE TO WHICH PLAT IS HEREBY HAD FOR A MORE PARTICULAR DESCRIPTION OF METES AND BOUNDS OF SAID LOT. THE HOUSE ABOVE IS DEEDED SUBJECT TO AN EASEMENT TO WATER MAIN RUNNING FROM MILL NO. 2 TO MILL NO. 1 AND SUBJECT TO THE RIGHTS OF BEN T. COMER, JR, HIS HEIRS AND ASSIGNS TO FULL AND FREE ACCESS TO SAID PIPES AND MAINS FOR THE PURPOSE OF MAKING INSPECTION, REPAIRS, ALTERATIONS AND EXTENSION THEREOF, THERETO OR THERE FROM TOGETHER WITH THE RIGHT TO CUT ALWAYS AND KEEP CLEAR ALL TREES AND OTHER OBSTRUCTIONS THAT MAY NOW OR HEREAFTER IN ANY WAY INTERFERE OR BE LIKELY TO INTERFERE WITH THE PROPER OPERATION OF SAID MAIN.

THIS PROPERTY IS CONVEYED TO A COVENANT RUNNIGN WITH THE LAND THAT SIAD PROPERTY MAY BE USED FOR RESIDENTIAL PURPOSES.



IN RE:           A&C RENOVATIONS, LLC           Lien Holders: N/A  
                  62 Murray Street  
                  Newnan, Georgia 30263  
                  Deed Book 5112, Page 505-506

GEORGIA, COWETA COUNTY:

The requirements of the resolution of the Mayor and Council of the City of Newnan adopted on the \_\_\_\_ day of \_\_\_\_\_, 2021 and recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ of the Deed Records of Coweta County, Georgia relating to property located at 62 Murray Street, in the City of Newnan, Georgia having been complied with, the Clerk of Superior Court is authorized to enter this satisfaction thereof of record.

This \_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF NEWNAN

By: \_\_\_\_\_  
Building Official

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

[SEAL]

## City of Newnan, Georgia - Mayor and Council



Date: July 20, 2021

Agenda Item: 29 Westgate Park Ln

Prepared and Presented by:  
Matt Murray, Code Enforcement Officer

Submitted by: Bill Stephenson, Chief Building Official

**Purpose:** To conduct a public hearing concerning the dilapidated structure located at 29 Westgate Park Ln.

**Background:** Owner: Keirston Stepp

Date Sub-Standard housing file was opened: May 28, 2020  
Does the cost to bring this structure into compliance by means of repair exceed 50% of the structure's assessed tax value? **YES**

On May 28, 2020 the Building department conducted an inspection of the premises. The structure has been determined to be unsafe as set forth by City Ordinance Section 5-24 (a), Sub-sections (3,4,5,6,8,9,10).

**Options:**

1. Adopt a resolution directing the property owner to either repair or demolish the structure within forty five (45) days.
2. Other direction from Council.

**Funding:** Not Applicable

**Recommendation:** Staff is requesting Council's approval to proceed with Option 1.

### **Previous Discussions with Council:**

May 27, 2021 - Council informed of conditions.

June 15, 2021 – Public Hearing was requested.



After recording please return to:  
Megan Shea, City of Newnan  
25 LaGrange Street, Newnan, GA 30263

RESOLUTION

IN RE:           NAJARIAN CAPITAL, LLC  
                  29 Westgate Park Lane  
                  Newnan, Georgia 30263  
                  Deed Book 5150, Page 44

Lien Holders: N/A

WHEREAS, the property of NAJARIAN CAPITAL, LLC located at 29 Westgate Park Lane, Newnan, Georgia 30263, in the City of Newnan was alleged by the Building Official of the City to be an unsafe building, as defined by an Ordinance adopted by the Mayor and Council on October 10, 1977; and,

WHEREAS, a hearing was set for the Mayor and Council to determine in accordance with the provisions of such Ordinance whether such building was in fact an unsafe building, as defined in such Ordinance and/or that the same was unsafe to the extent that it should be demolished or repaired; and,

WHEREAS, notice of such hearing was given to the owner, lien holder and tenant, if any, as required by such Ordinance, and all other provisions of the Ordinance have been complied with;

NOW THEREFORE, the Mayor and Council of the City of Newnan, after hearing evidence upon the question of whether such building is an unsafe building as defined by the Ordinance of the City of Newnan, do hereby determine that the building of NAJARIAN CAPITAL, LLC, at 29 Westgate Park Lane, Newnan, Georgia 30263, should be repaired or demolished, and the owner thereof is given \_\_\_\_\_ (\_\_\_\_\_) days within which to repair or demolish and remove the same;

RESOLVED FURTHER, that in the event the owner shall fail to repair or demolish and remove the same within the period of \_\_\_\_\_ (\_\_\_\_\_) days herein fixed, the Building Official of the City of Newnan is hereby ordered to repair or demolish and remove the same, and to prepare an itemization of the cost of such repair or demolition and removal, and deliver such itemization to the Clerk of the City of Newnan, who is ordered to issue an execution against the owner for the total cost of such repair or demolition and removal, which execution shall constitute a lien against such real estate as of the date of this resolution - all in accordance with the Ordinances of the City of Newnan.

Said property being more particularly described on Exhibit "A" attached hereto and made a part hereof.

ADOPTED AND APPROVED by the Mayor and Council of the City of Newnan this \_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

\_\_\_\_\_  
Megan Shea, City Clerk

\_\_\_\_\_  
L. Keith Brady, Mayor

REVIEWED AS TO FORM:

\_\_\_\_\_  
Rhodes H. Shell, Mayor Pro-Tem

\_\_\_\_\_  
C. Bradford Sears, Jr., City Attorney

\_\_\_\_\_  
George M. Alexander, Councilmember

\_\_\_\_\_  
Cleatus Phillips, City Manager

\_\_\_\_\_  
Cynthia E. Jenkins, Councilmember

\_\_\_\_\_  
Raymond F. DuBose, Councilmember

\_\_\_\_\_  
Dustin Koritko, Councilmember

\_\_\_\_\_  
Paul Guillaume, Councilmember

## EXHIBIT "A"

All that tract or parcel of land, situate, lying and being in the City of Newnan, Coweta County, Georgia, known and designated as Lot 261, Section 2, Westgate Park Subdivision as shown on plat recorded in Plat Book 14, Page 253, Office of the Clerk, Coweta Superior Court.

Said lot has such size shape, metes, bounds and distances as shown on said plat which plat is by referenced made a part hereof.

Said lot is subject to a 10 ft. drainage easement along the Westerly or rear line of said property as shown by plat referred to above.

Subject Property Address: 29 Westgate Park Lane, Newnan, GA 30263

Parcel ID: N43A 067

IN RE: NAJARIAN CAPITAL, LLC  
29 Westgate Park Lane  
Newnan, Georgia 30263  
Deed Book 5150, Page 44

Lien Holders: N/A

GEORGIA, COWETA COUNTY:

The requirements of the resolution of the Mayor and Council of the City of Newnan adopted on the \_\_\_\_ day of \_\_\_\_\_, 2021 and recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ of the Deed Records of Coweta County, Georgia relating to property located at 29 Westgate Park Lane, in the City of Newnan, Georgia having been complied with, the Clerk of Superior Court is authorized to enter this satisfaction thereof of record.

This \_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF NEWNAN

By: \_\_\_\_\_  
Building Official

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

[SEAL]

July 6, 2021

Mr. Cleatus Phillips  
City Manager  
25 LaGrange Street  
Newnan, GA 30263

Dear Mayor and City Council,

I am writing to request permission from the City of Newnan to establish a collection point on the downtown square for the Newnan Junior Service League's annual Can-A-Thon to benefit the Coweta Community Food Pantry. This is our 38th year to host the Can-A-Thon, and it has always been well supported throughout the community.

This year's event is planned for Tuesday, November 30 from 7a.m. to 7p.m. We will need to set up the collection point on the north side of the Square. We also request permission to accept cash contributions from passersby and contributors to the event. In addition, we would like to hang a banner as we have done in previous years.

We are so appreciative of the assistance you have given us in the past, and we look forward to hearing from you on this matter.

Best,

Katie Barnes and Erin Randolph  
Can-A-Thon Chairs  
njslcanathon@gmail.com



### **Motion to Enter into Executive Session**

I move that we now enter into closed session as allowed by O.C.G.A. §50-14-4 and pursuant to advice by the City Attorney, for the purpose of discussing

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And that we, in open session, adopt a resolution authorizing and directing the Mayor or presiding officer to execute an affidavit in compliance with O.C.G.A. §50-14-4, and that this body ratify the actions of the Council taken in closed session and confirm that the subject matters of the closed session were within exceptions permitted by the open meetings law.

### **Motion to Adopt Resolution after Adjourning Back into Regular Session**

I move that we adopt the resolution authorizing the Mayor to execute the affidavit stating that the subject matter of the closed portion of the council meeting was within the exceptions provided by O.C.G.A. §50-14-4(b).