



Newnan City Council Meeting

OCTOBER 22, 2019

Newnan City Hall
Richard A. Bolin Council Chambers
25 LaGrange Street
6:30 pm

CALL TO ORDER – Mayor Keith Brady

INVOCATION

READING OF MINUTES

- I Minutes from Regular Meeting on October 8, 2019 Tab A

REPORTS OF BOARDS AND COMMISSION

- I 1 Appointment – Cultural Arts Commission – 3 Year Term
- II Youth Activities Commission Annual Report

REPORTS ON OPERATIONS BY CITY MANAGER

REPORTS AND COMMUNICATIONS FROM MAYOR

NEW BUSINESS

- I Presentation of Pickleball Concept..... Tab B
- II 2019 Newnan/Coweta County Jail Agreement update due to election of Sheriff Lenn Wood Tab C
- III **Public Hearing** – Amendments to the City of Newnan Zoning Ordinance..... Tab D
 - *Ordinance*
- IV *Information Only* – Rezoning request by John Edwards on behalf of Edwards6, LLC, for 2.15+ acres located on Summerlin Boulevard from OI-1 (Low Density Office and Institutional District) to CCS (Community Shopping Center District) for the purpose of constructing a restaurant – Planning Commission..... Tab E
- V Consider Indemnification and Hold Harmless Agreement between the Georgia Department of Transportation and the City of Newnan to move forward with Phase D of the Newnan LINC project Tab F
- VI Contract Award Consideration for Design-Builder of Park Facilities at C Jay Smith Park and Pickett Field Tab G
- VII Consideration of Acceptance of 1.307 acres of Real Property located at Summerlin Boulevard from the Board of Education of Coweta County Tab H

UNFINISHED BUSINESS

- I **Continue Public Hearing** – Consideration of Ordinance to Amend the Code of Ordinances of the City of Newnan adopting revisions to Article 1, Chapter 6, Businesses Tab I
- II **2nd and Final Reading** – An Ordinance to Amend Article III Excise Tax on Hotels/Motels of Chapter 19, Taxation of the Code of Ordinances of the City of Newnan, Implement Title 48, Chapter 13, Articles 3, Section 51 of the Official Code of Georgia Annotated, - Excise Tax on Rooms, Lodgings and Accommodations, and Provide for the Collection by Operator; to Provide for Administration; to provide for an Effective Date and for Other Purposes Tab J

- III 18 Berry Avenue – Owner update and request for extension Tab K
- IV 100 Sprayberry – Owner update and request for extension Tab L

VISITORS, PETITIONS, COMMUNICATIONS & COMPLAINTS

- I Foundation Christian Church request to use three parking spaces on West Washington Street next to the Alamo from 8:30 am to 11:30 am to participate with Free Ice Cream truck during Munchkin Masquerade on 10/31/2019 Tab M
- II Troup-Coweta Alumnae Chapter of Delta Sigma Theta Sorority, Inc., request to set up table on North Court Square at 7:00 am on March 28, 2020 for 5k which begins at 8:00 am Tab N
- III Request to close portion of S York Drive to host a Neighborhood Block Party for the new neighborhood on Saturday November 2, 2019 from 2 pm to 10 pm Tab O
- IV Request to close a portion of Madison Street (between Jefferson and Jackson on Sunday November 3, 2019 for a “Craft Event” at RPM from 12 pm to 7 pm Tab P
- V Request to hold the 2019 GLOW Run on Sunday December 1, 2019 at 6:00 pm in Ashley Park area using the same route as in previous years Tab Q

EXECUTIVE SESSION – LEGAL, PERSONNEL AND REAL ESTATE

ADJOURNMENT

The regular meeting of the City Council of the City of Newnan, Georgia was held on Tuesday, October 8, 2019 at 2:30 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: Ray DuBose, Paul Guillaume; Dustin Koritko; Rhodes Shell; George Alexander and Cynthia E. Jenkins. Also present: City Manager, Cleatus Phillips; City Clerk, Della Hill; Public Works Director, Michael Klahr; Assistant City Manager, Hasco Craver; City Attorney, Brad Sears and Police Chief, Douglas "Buster" Meadows.

MINUTES – REGULAR COUNCIL MEETING – SEPTEMBER 24, 2019

Motion by Councilman DuBose, seconded by Councilman Koritko to dispense with the reading of the minutes of the Regular Council meeting for September 24, 2019 and adopt them as presented.

MOTION CARRIED. (7 – 0)

APPOINTMENT - CULTURAL ARTS COMMISSION

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

APPOINTMENTS – DEVELOPMENT AUTHORITY

Motion by Councilman Alexander, seconded by Councilman DuBose to re-appoint Patrick McKee to the Development Authority for another four-year term.

MOTION CARRIED. (7 – 0)

Motion by Mayor Brady, seconded by Councilman Alexander to re-appoint Parks Avery to the Development Authority for another four-year term.

MOTION CARRIED. (7 – 0)

Motion by Councilman Guillaume, seconded by Councilman Koritko to re-appoint Chris Hunt to the Development Authority for another four-year term.

MOTION CARRIED. (7 – 0)

Motion by Councilman Shell, seconded by Councilman Alexander to re-appoint James Poulakos to the Development Authority for another four-year term.

MOTION CARRIED. (7 – 0)

APPOINTMENT – WATER AND LIGHT COMMISSION

Motion by Mayor Brady, seconded by Councilman Shell to re-appoint Parnell Odom to the Water & Light Commission for another three-year term.

MOTION CARRIED. (7 – 0)

ANNUAL REPORT - PARKS COMMISSION

The Landscape Architect gave a brief report on the Parks Commission. Some of the members have served on the Commission for over ten years. The objectives for this year: open Dog Park (opens today on Sprayberry Road), observe and comment on second phase of the LINC, renovation of Pickett Field and C.J. Smith Field, and submit annual report to Council. Moving forward to 2020 overall maintenance of the Dog Park, The LINC project, Pickett Field and C.J. Smith projects and working and coordinating with Leisure Services.

ANNUAL REPORT – TREE COMMISSION

The Landscape Architect stated the Tree Commission has 7 members. The Commission meets monthly. The Tree Planting program was held in March. For over 30 years the U.S. Tree City recognition will be submitted in November. The Landscape excellent award will take place this year. We have had some tree donors during the year. The Heritage Tree program for the City was started in 2019. Objectives for 2020 will be to focus on the current projects.

**AGREEMENT – CORPORATE HEALTH PARTNERS (CHP) – EMPLOYEES
COMPREHENSIVE WELLNESS PROGRAM FOR 2020**

Motion by Councilman Alexander, seconded by Councilman Shell to approve the agreement with Corporate Health Partners (CHP) to offer employees a comprehensive wellness program for 2020.

MOTION CARRIED. (7 – 0)

AGREEMENT – COURTWARE SOLUTIONS, INC. – COURT SOFTWARE

Motion by Councilman Guillaume, seconded by Councilman Koritko to approve the contractual agreement for Courtware Solutions, Inc. to provide court software for municipal courts.

MOTION CARRIED. (7 - 0)

UPDATE – NEWNAN/COWETA COUNTY JAIL AGREEMENT ADDING SHERIFF LENN WOOD TO AGREEMENT

Withdrawn - working on update.

ORDINANCE – AUTHORIZE IMPOSITION OF AN EXCISE TAX ON ROOMS, LODGINGS AND ACCOMMODATION IN THE AMOUNT OF 8% - PURPOSE OF PROMOTING CONVENTIONS AND TOURISM BY DESTINATION MARKETING ORGANIZATION – FIRST READING

Motion by Councilman DuBose, seconded by Councilman Shell to adopt an Ordinance to authorize imposition of an Excise Tax on rooms, lodgings and accommodation in the amount of 8% for the purpose of promoting conventions and tourism by a destination marketing organization on first reading. Opposed: Koritko.

MOTION CARRIED. (6 – 1)

ARTICLES OF INCORPORATION AND BYLAWS ESTABLISHING EXPLORE NEWNAN-COWETA, INC. – PROMOTING CONVENTIONS AND TOURISM

Motion by Councilman DuBose, seconded by Councilman Shell to approve the articles of Incorporation and Bylaws establishing Explore Newnan-Coweta, Inc. for the purpose of promoting conventions and tourism. Opposed: Koritko.

MOTION CARRIED. (6 – 1)

ORDINANCE – AMEND ORDINANCE TO PROVIDE REGULATIONS FOR SALE AND POSSESSION OF ALCOHOLIC BEVERAGES IN CERTAIN ESTABLISHMENTS HOLDING A PRIVATE SPECIAL EVENT LICENSE AND IN INDEPENDENT LIVING FACILITIES AND/OR AN ASSISTED LIVING FACILITY

Motion by Councilman Guillaume, seconded by Mayor Pro Tem Jenkins to adopt an ordinance to amend the regulations for the sale and possession of alcoholic beverages in certain establishments holding a private special event license and in independent living facilities and/or an assisted living facility.

MOTION CARRIED. (7 – 0)

ORDINANCE – AMEND CHAPTER 5 ADDING A NEW ARTICLE FOR MULTI FAMILY RENTAL HOUSING TO PROMOTE ONGOING INVESTMENTS IN UPKEEP AND MAINTENANCE

Motion by Councilman Shell, seconded by Councilman Guillaume to adopt the amendments to Chapter 5 by adding a new article for Multi Family Rental Housing to Promote ongoing investments in upkeep and maintenance.

MOTION CARRIED. (7 – 0)

SUBSTANDARD HOUSING – EXTENSION – 15 ELM CIRCLE

The Code Enforcement Officer informed Council this property has been sold to Doug Frost. He is requesting an extension to complete the repairs.

Mr. Frost is asking for an extension of ninety (90) days to complete the repairs.

Motion by Councilman Alexander, seconded by Mayor Pro Tem Jenkins to approve the request for an extension for 15 Elm Circle for ninety (90) days.

MOTION CARRIED. (7 – 0)

SUBSTANDARD HOUSING - EXTENSION REQUEST – 18 BERRY AVENUE

The Code Enforcement Officer stated this file was opened on December 18, 2018. He stated he had spoken with the owner and is requesting a thirty (30) day extension on the property.

Motion by Mayor Pro Tem Jenkins, seconded by Councilman Koritko to approve an extension until October 21, 2019 for the structure located at 18 Berry Avenue.

MOTION CARRIED. (7 – 0)

SUBSTANDARD HOUSING – EXTENSION REQUEST – 33 HARDAWAY STREET

The Code Enforcement Officer stated the owner is requesting an extension on 33 Hardaway Street.

Ms. Jennie Smith informed Council the family members are trying to decide if they will repair or demolish the structure. She is asking for an extension until January 13, 2020.

Motion by Councilman Alexander, seconded by Councilman Shell to approve an extension until January 13, 2020 for the structure located at 33 Hardaway Street.

MOTION CARRIED. (7 – 0)

SUBSTANDARD HOUSING – EXTENSION REQUEST – 121 PINSON STREET

The Code Enforcement Officer Informed Council the repairs for 121 Pinson Street have been completed.

SUBSTANDARD HOUSING STATUS REPORTS – 280 W WASHINGTON, 180 W WASHINGTON ST, 6 GLENN STREET, 8 GLENN STREET AND 100 SPRAYBERRY ROAD

These structures have been before Council with public hearings.

<u>Property</u>	<u>Owner</u>	<u>Status</u>	<u>Resolution Deadline</u>
280 W. Washington	Irvan Jones Estate	Progress made	03/23/2020
180 W. Washington	Render Godfrey	No progress	11/09/2019
100 Sprayberry Rd	Edwin Jean-Pierre	Progress made	
8 Glenn St	D Free Mgt. LLC	Progress made	
6 Glenn St	D Free Mgt LLC	Reno plans submitted	11/24/2019

REQUEST – WHITE OAK GOLDEN K-KIWANIS CLUB – SELL PECANS ON THE SQUARE

Motion by Councilman DuBose, seconded by Councilman Shell to approve the request by White Oak Golden K-Kiwanis Club to sell pecans on the square for their twenty fifth year on November 8 through November 22, 2019.

MOTION CARRIED. (7 – 0)

REQUEST – FOUNDATION CHRISTIAN CHURCH – USE THREE PARKING SPACES IN FRONT OF GREENVILLE STREET PARK FOR FREE ICE CREAM TRUCK – NHS HOMECOMING PEP RALLY

Motion by Councilman Koritko, seconded by Councilman Alexander to approve the request by Foundation Christian Church to use three parking spaces in front of Greenville Street Park for their free ice cream truck to participate in the NHS Homecoming Pep Rally on October 10, 2019 beginning at 4 pm.

MOTION CARRIED. (7 – 0)

REQUEST – ARTISTS AND MAKERS POP UP MARKET -THIRD EVENT DOWNTOWN INCLUDES ADDITIONAL SPACE AND AN ADDITION OF TWO ALPACA FOR PETTING AND PHOTOS AND TWO TURTLES FROM GEORGIA REPTILE SOCIETY

Withdrawn

ADJOURNMENT

Motion by Councilman Alexander, seconded by Councilman Koritko to adjourn the Council meeting at 2:55 pm.

MOTION CARRIED. (7 – 0)

Della Hill, City Clerk

Keith Brady, Mayor

Pickleball in Newnan

A Fast-Growing Sport

- Pickleball is the fastest growing sport in the US.
- Currently played in more than 15 other countries.
- Currently over 3 million players in the US, with a 10% annual growth rate.
- Over the last 6 years a growth rate of 650% (NBC News).
- 24,000 courts at 6,500 venues.
- 2,200 courts added each year.

Pickleball in Newnan

- Introduced in 2015
- What started with a handful of players, has grown to over 100 regular players today.
- Existing Facilities in Coweta County
 - White Oak Country Club – 6 outdoor (\$80/month Membership)
 - Coweta County Rec Center – 4 indoor courts with limited availability (Public-Fee)
 - Lake Redwine Plantation – 2 outdoor (Private)
 - Northshore at Lake Redwine – 1 outdoor (Private)

Area Pickleball Courts

- PTC 12 private
- Griffin 18 public, 5 private
- Opelika 12 public
- Columbus 8 private

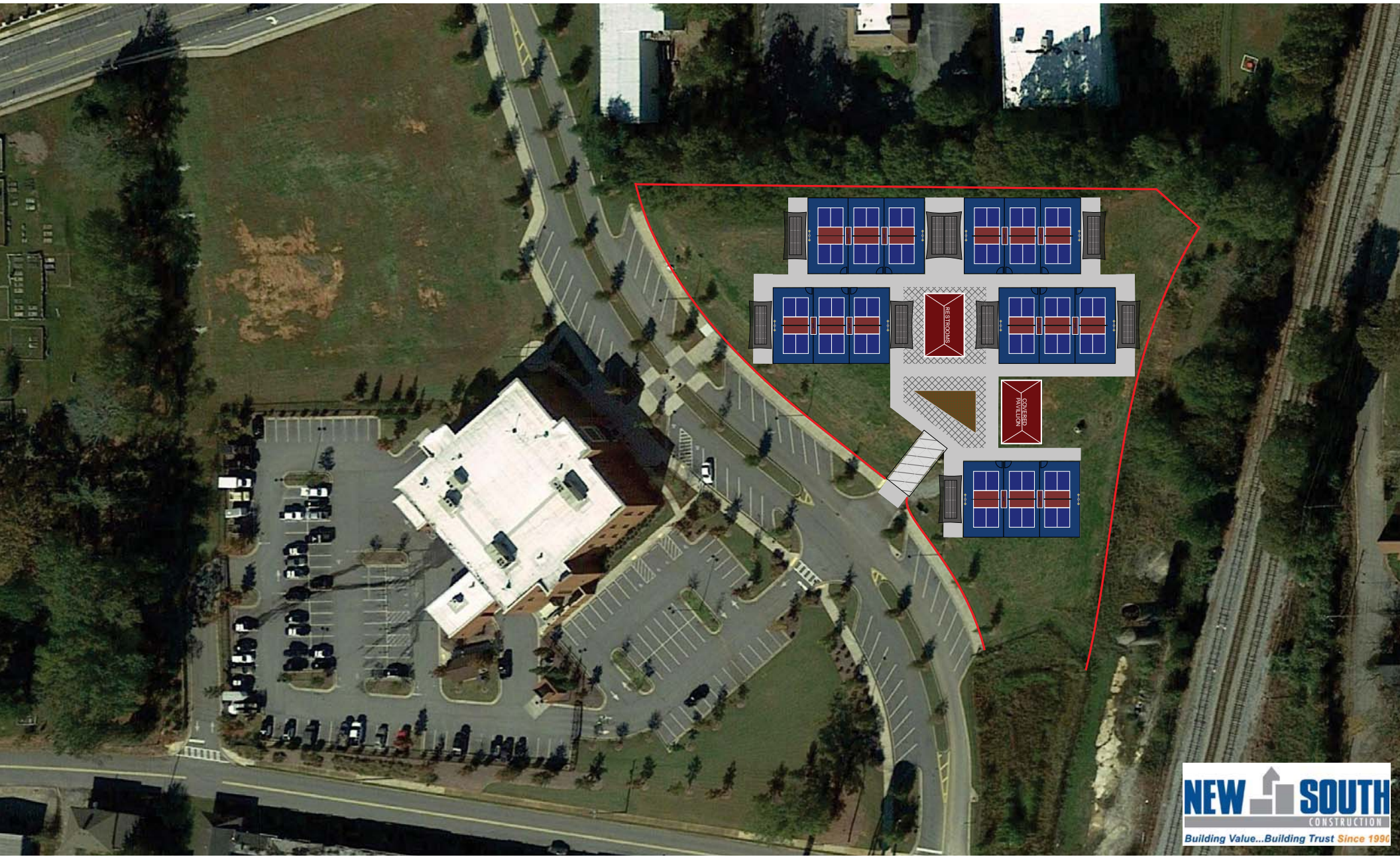
Benefits for Newnan

- Promotes social recreation – families, organizations, friends, community.
- Encourages active lifestyle
- Potential for Kids Camp
- Possible Citywide Leagues, Events & Tournaments
- Public Lessons
- Regional Tournaments
- Another amenity to bring residents to downtown
- Proximity to CJ Smith Park & the Linc Trail

What is Pickleball?

- Pickleball was created during the summer of 1965 on Bainbridge Island - a short ferry ride from Seattle, Washington.
- The original purpose of the game was to provide a sport for the entire family, according to co-inventors U.S. Congressman Joel Pritchard, William Bell, and Barney McCallum.
- Pickles was the family dog that would chase after the errant balls and then hide in the bushes, thus “Pickle's ball”, which was later shortened to the namesake of Pickleball.
- Pickleball is a popular paddle sport created for all ages and skill levels.
- The rules are simple, and the game is easy for beginners to learn, but can develop into a quick, fast-paced, competitive game for experienced players. It is a fun sport that combines elements of tennis, badminton and ping-pong.
- It is played both indoors or outdoors on a badminton-sized court and a slightly modified tennis net (think of it as a smaller-sized tennis court). It is played with a paddle and a plastic ball.
- The USA Pickleball Association (USAPA) indicates that there are now pickleball facilities in all fifty states. Many kids and teenagers play it in physical education classes in middle and high schools and compete in tournaments.
- Seniors enjoy the social aspects and the ability to stay active in towns and retirement communities.
- Pickleball competition, has health and wellness benefits. It helps develop reflex and coordination skills, as well as quickness and agility.
- Playing pickleball also helps to improve muscular strength, endurance, and increases cardiovascular activity.
- Pickleball has been proven to be one of the best activities for Parkinson's patients due to the social and physical aspects of the sport

The evolution of the sport speaks not only to its popularity, but to the benefits of being physically active.





City of Newnan, Georgia - Mayor and Council

Date: October 22, 2019

Agenda Item: Newnan/Coweta County Jail Agreement

Presented by: Douglas L. Meadows, Chief of Police

Purpose: Updating of the Jail Agreement from March 30, 2015, due to the retirement of Sheriff Mike Yeager and the election of Sheriff Lenn Wood.

Background: Newnan Police Department houses city prisoners with the Coweta County Sheriff Department. This agreement notes the responsibilities of the Sheriff Department and Newnan Police Department. There are no changes in the agreement with the exception of Sheriff Wood being added to the agreement.

Options:

A. Approve Request

B. Mayor and Council Directed Options

Funding: N/A

Recommendation: Recommend approval.

Attachments: Newnan/Coweta County Jail Agreement

Previous Discussions with Council: March 30, 2015

**STATE OF GEORGIA
COUNTY OF COWETA**

**INTERGOVERNMENTAL AGREEMENT BETWEEN
COWETA COUNTY, GEORGIA, THE CITY OF
NEWNAN, AND THE SHERIFF OF COWETA COUNTY REGARDING THE
DETENTION OF INMATES AT THE COUNTY JAIL**

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter the “Agreement”), entered into this _____ day of _____, 2019, by and between Coweta County, Georgia, a political subdivision of the State of Georgia (hereinafter the “County”), the City of Newnan, Georgia, a municipal corporation of the State of Georgia (hereinafter the “City”), and the Sheriff of Coweta County, Georgia (hereinafter the “Sheriff”).

WITNESSETH:

WHEREAS, the City desires to contract with the County and the Sheriff for the detention of individuals charged with or convicted of violation of the laws and ordinances of the City or held as material witnesses (hereinafter the “Inmates”); and

WHEREAS, the County, through the Sheriff’s Office Jail Division, operates a jail facility located at 560 Greison Trail (hereinafter the “Jail”); and

WHEREAS, the Jail complies with federal and state laws and is operated in accordance with such laws, standards, policies and procedures; and

WHEREAS, State law defines the Sheriff as the official jailer of the county (hereinafter the “Jailer”), and is responsible for the health, safety, and welfare of all Inmates in the Jail; and

WHEREAS, sufficient space is available at the Jail to house Inmates for the City.

NOW, THEREFORE, for and in consideration of the premises and the mutual undertakings hereinafter contained, the County, the City, and the Sheriff hereby agree as follows:

1. Scope of Services

1.1 It is the intent of this Agreement that, in pursuance of law enforcement in and for the City, the Sheriff will accept, book, and house Inmates for the City as defined herein.

2. Definitions

2.1 As used throughout this Agreement, the following terms shall have the meaning set forth below:

- a. "Book" shall mean (1) to complete NCIC/GCIC fingerprinting and submit to the appropriate jurisdiction(s); (2) to complete and submit Offender Based Tracking System; and (3) to complete intake booking procedures.
- b. "Jail Officer in Charge" means the Sheriff's designee who supervises the Jail.
- c. "Inmate Day" means any part of one (1) calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.

3. Obligations of the Sheriff

3.1 The Sheriff will accept into the Jail such Inmates as the City may request and shall give priority in the housing of Inmates over prisoners from other counties at the sole discretion of the Sheriff. The Sheriff shall accept the Inmates into the Jail and provide for the health, safety, and welfare of the Inmates in accordance with federal, state, and local laws, standards, policies and procedures applicable to the operation of the Jail.

3.2 The Sheriff shall keep a record of the Inmates committed to the Jail, which shall include but not be limited to the following:

- a. the name of the person committed;
- b. the person's age, sex and race;
- c. the process under which the person was committed;
- d. the date of commitment to the Jail;
- e. under what order discharged.

3.3 Transportation of Inmates to and from the Jail to Coweta County Superior, State, Magistrate and Probate Court shall be performed by the Sheriff's Office and the expense thereof shall be borne by the County.

3.4 All Inmates delivered to the Jail by the City shall be under the direct supervision and control of the Sheriff. The City agrees that the Sheriff shall compute the maximum "good time allowance" for Inmates the same as for non-State or Superior Court sentenced Inmates. The conversion of the computation of the Inmates from earned time governed sentences to good-time governed sentences shall be made by the Sheriff and the City agrees to be bound by such determination.

3.5 All rules and regulations legally and constitutionally adopted and promulgated by the Sheriff for the operation of the Jail shall be applicable to Inmates, and the Sheriff is granted the authority to enforce same, including the right to work Inmates and allow them to serve as trustees.

4. Obligations of the City

4.1 The City agrees to transport the Inmates to the Jail and release them to the custody of the Jail Officer in Charge. The Jail Officer in Charge has the right to refuse an Inmate without adequate medical clearance.

4.2 The City shall provide transportation to and from Municipal Court and Juvenile Court and the expense thereof shall be borne by the City. Removal and return of the same Inmate in a 24-hour period by the City shall not constitute a new Inmate.

4.3 The City shall impose a ten (10) percent fee applicable to fine cases and an additional ten (10) percent fee when a defendant is posting bail or bond as required by O.C.G.A. §15-21-90, et seq. Said fees collected by the City shall be remitted to the County within forty-five (45) business days for deposit in the County's Jail Fund.

5. Cost Attendant to Custody

5.1 The Sheriff shall maintain physical custody of the Inmates and shall furnish food and clothing. All health care expenses including transportation (ambulance), medical or prescription expenses shall be billed to the City. Should a City Inmate housed at the County Jail need outside medical attention, it will be the responsibility of the City to transport the Inmate to that facility and maintain security on that Inmate until such time the Inmate is medically cleared to return to the Jail. The decision of when medical care shall be provided shall be at the discretion of the Jail Officer in Charge. The decision regarding what medical facility the Inmate should be transported to shall be at the discretion of the City.

6. Transition from City Inmate Status

6.1 It is understood and agreed that Inmates shall be chargeable to the City unless release or booked for violation of State misdemeanor or felony charges or bound over by the Municipal Court to State Court or Superior Court of Coweta County, Georgia.

7. Term and Termination

7.1 The term of this Agreement shall commence on October 1, 2019 and shall expire on September 30, 2020.

7.2 This Agreement shall automatically renew for additional terms of one (1) year beginning on October 1 unless terminated as defined herein. In no event shall this Agreement exceed fifty (50) years.

7.3 This Agreement may be terminated by either party, with or without cause, upon ninety (90) days written notice.

8. Notices

8.1 All notices provided herein shall be in writing and shall be deemed to have been given when deposited in the United States mail and sent via certified mail, return receipt requested, addressed as follows:

County: County Administrator
Coweta County, Georgia
22 East Broad Street
Newnan, Georgia 30263

City: City Manager
City of Newnan
P.O. Box 1193
Newnan, Georgia 30264

Sheriff: Coweta County Sheriff
560 Greison Trail
Newnan, Georgia 30263

9. Modification

9.1 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.

10. Severability

10.1 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.

11. Entire Agreement

11.1 This Agreement is a full and complete statement of the terms of the parties as to the subject matter hereof and has been authorized by proper action of the respective parties.

12. Governing Law

12.1 This Agreement and all transactions contemplated hereby, shall be governed by, construed and enforced according to the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties hereto, acting through the duly authorized officer of the governing authority, as witnessed, have executed this Agreement, in duplicate originals, under their respective seals, the day and year as first above written.

CITY OF NEWNAN, GEORGIA:

By: _____

Mayor

Attest: _____

Clerk

(SEAL)

COWETA COUNTY, GEORGIA:

By: _____

Chairman

Attest: _____

Clerk

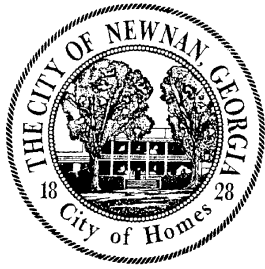
(SEAL)

SHERIFF OF COWETA COUNTY:

By: _____

Sheriff

Witness: _____



City of Newnan, Georgia – Mayor and Council

Date: October 22, 2019

Agenda Item: Public hearing on amendments to the Zoning Ordinance

Prepared and Presented by: Dean Smith, Planner

Purpose: To consider several amendments to the Zoning Ordinance, particularly in Articles 1, 2, 3, 4, 5, 6, 7, 8, 10 & 13.

Background:

Since the adoption of the zoning ordinance in September 2017, staff has been noting some items that, in staff's opinion, need to be changed in the Zoning Ordinance. On September 10, 2019, the City of Newnan's Planning Commission held a public hearing on the proposed amendments. Planning Commission voted to recommend approval of the proposed amendments that are presented herein.

Article 1.

1. Section 1-5 –Exemptions– Insert a new #5 – Utilities and Government entities, the following language *a. The following utility uses are exempt from the provisions of this Ordinance: electrical transmission lines, poles, wires, cables, conduits, vaults, laterals, pipes, mains, valves or any other similar equipment when used for the purpose of distributing service to individual customers, and also including substations, transmission lines, or trunk lines on or above the surface of the ground, for the distribution to consumers of telephone, cable television or other communications, electricity, gas or water, or for the collection of sewage or surface water. b. All railroad facilities contained within the right-of-way of a railroad company duly recognized by the U.S. Department of Commerce and the Georgia Department of Transportation (GDOT) including railroad tracks, signals, bridges, and similar facilities and equipment and the maintenance and repair work on such facilities and equipment. c. All federal, state and local government agencies, quasi-governmental authorities, and other similar institutions shall be exempt from the provisions of this Ordinance.*

Article 2

1. Section 2-24, Table 2-B: Principal Uses Allowed by Zoning District

Add the following principal uses: Auto Broker; Catalog and Mail Order (including internet-only sales; Firearms Sales; Towing Service-Office Use only; as allowed uses in CBD, CUN, CGN, CCS, CHV, PDC, IHV and ILT.

Revise Accessory Apartments in PDR from "S" for special exception to "A/R" allowed with restriction.

2. Section 2-24, Table 2-C: Accessory and Temporary Uses allowed by Zoning District

Under the following accessory uses: In-home occupation in CBD, OI-1, OI-2, CCS and CGN; Permanent Makeup accessory to Beauty/barber shops and nail salons in PDC, OI-1, OI-2, PDO, CUN, CCS, CBD, CGN, CHV, ILT and IHV and internet sales in CBD, CUN, CCS, CGN, PDC and CHV.

Article 3

1. Section 3-7-Standards For Residential Uses-subsection c-Townhouses. Amend #1, to allow a row of townhouses to have up to 8 dwelling units in a row and facades must be articulated to vary the appearance of each townhouse, thereby avoiding the appearance of row houses, no two facades shall be alike in a single row of townhouse buildings. Remove subsection #2, which limits a development over 20 acres to building 30% as townhouses.
2. Section 3-13-Residential Accessory Uses In-home occupations: Delete subsection 13 which is former language on in-home day care uses. This is now replaced by requiring all day care facilities to obtain a special exception use before accepting any children via a Public Hearing.
3. Section 3-72 – Delete subsection H – Unit Registration and Permitting in its entirety.

Article 4

1. Table 4-A: Residential Dimensional Requirements: Under the columns for RS-20, RS-15, and RU-7, amend “Base/Maximum Density” to “Maximum Density” and leave the units per acre unchanged.

Article 5

1. Section 5-4-QDC, Quality Development Corridor Overlay District, subsection e, add new section #8 – Retaining Walls, as follows: *Retaining walls visible by pedestrians, motorists, etc. and from likely vantage points within a non-residential site shall be constructed of high-quality materials such as stone masonry block with an integral color and exterior texture, brick or stucco facing. Materials for retaining walls should complement or match the materials used on the primary structure and be in character with the landscape design. Retaining wall plans must be included with Overlay Certificate of Approval applications.*
2. Section 5-4, subsection e, 3, 1, amend section to allow storage areas to be screened not only by a solid masonry wall, but solid wood fence.
3. Section 5-4, subsection e, 6 b-Sign Requirements, amend as follows: *Monument or permanent freestanding signs shall be of wood, stone or other similar materials and shall complement the material and color of the building. Sign supports shall be faced with the primary material used on the primary structure. The primary structure material shall be used to frame the sign in such a way as to completely surround the sign a minimum of eight inches (8”) on the top and sides. No part of a metal can shall be left exposed, except has required for maintenance of the sign and/or its components.*
4. Section 5-6-DDO, Downtown Design Overlay District – add under subsection d-Exemptions, the following: *4. Properties that have undergone a rezoning or annexation process wherein architectural and site design features were approved by City Council as a condition of zoning approval.*

Article 6

1. Division II- Mixed Use Development. Add new Section 6-29 – *Variance and Special Exceptions. Add the following language: The Planning Commission shall have authority to hear any variance requests or special exception applications within an approved MXD development. Major, or significant changes to a previously approved MXD development shall be heard by City Council. Developments of Regional Impact (DRI) applications are also heard by City Council.*

Article 7

1. Section 7-5, Table 7-A-Minimum Off-Street Parking Spaces Required by Use. Amend Restaurant to 1 parking space per 75 square feet of seating area. Add a new use – Car Inventory Lot with a minimum parking count of 1 space per 300 square feet of impervious surface.

Article 8

1. Section 8-11 (r)-Prohibited Signs as follows: *“Illuminated Canopy Signs, illuminated canopy and illuminated projecting signs, except for canopy signs regulated in Section 8-19,(b), (4).*
2. Section 8-19, (b), (4), (a), amend as follows: *Convenience Stores and Service Stations with Pump Islands....One sign per freestanding or building canopy face per street frontage with a maximum of 32 square feet each is allowed. The canopy sign shall not extend above or below the edge of the canopy. The canopy sign and optional trim band can be internally illuminated with a light source that is concealed or contained within the sign and becomes visible in darkness through a translucent surface. The lighting shall be limited to the allowed canopy signage and illuminated trim band. Canopy lighting shall be directed downward and shall not be directed toward, nor shine directly upon, any adjoining property or street or street traffic.*

Article 10

1. Section 10-24 – Public Hearings, subsection b, Procedures, amend the language to have recommendations and presentations by staff go before the applicants, proponents or opponent’s testimony.

Article 13

1. Add a new definition for Permanent Makeup. Add following language: *Permanent Makeup in synonymous with cosmetic tattooing and includes the application of permanent eyeliner, eyebrows, full lip color, re-pigmentation or camouflage using tattooing techniques of placing pigment under the skin. Camouflage, a method of disguising or concealing permanently blotchy or irregularly pigmented skin, acne scarring or other permanent skin irregularities by the use of blending pigments into the skin, is allowed. Tattoo camouflage using tattooing methods to cover up, mask or alter an existing tattoo so that it is rendered less noticeable or takes on a different design thereby obliterating the original design is not allowed as an accessory permanent makeup use, but would fall under the use regulations for a Tattoo Parlor as contained elsewhere in this ordinance.*

Options:

- A. Approve the amendments as proposed.

- B. Approve the amendments with conditions or exclusions.
- C. Deny the amendments.

Recommendation:

Staff respectfully would submit Option A, to approve the proposed amendments.

Previous Discussions with City Council: None

**AN ORDINANCE TO AMEND THE ZONING ORDINANCE
OF THE CITY OF NEWNAN, GEORGIA, BY ADOPTING CERTAIN
TEXT AMENDMENTS; AND FOR OTHER PURPOSES**

WHEREAS, the City Council of the City of Newnan has discussed the issue of providing for certain text amendments to the City's Zoning Ordinance with regard to certain regulations and requirements of the City's Zoning Ordinance adopted September 12, 2017, as amended, and referred the issue to the Planning Commission for consideration and recommendation of certain text amendments to the City's Zoning Ordinance; and

WHEREAS, in accordance with the requirements of the City Zoning Ordinance, the Planning Commission of the City of Newnan has forwarded its recommendation to the City Council with regard to such text amendments; and

WHEREAS, pursuant to said requirements of the City Zoning Ordinance, the City Council has conducted a properly advertised public hearing on the rezoning application not less than fifteen (15) nor more than forty-five (45) days from the date of publication of notice, which public hearing was held on the 22nd day of October, 2019; and

WHEREAS, after the above referenced public hearing, the City Council has determined that it would be in the best interest of the residents, property owners and citizens of the City of Newnan, Georgia to adopt certain text amendments to the City's Zoning Ordinance to amend the regulations and requirements of the City's Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Newnan, Georgia, and it is hereby ordained by authority of the same that the following text amendments to the City's Zoning Ordinance be and are hereby adopted as follows:

Section I.

Article 1.

1. Section 1-5 –Exemptions– Insert a new #5 – Utilities and Government entities, the following language

(a) The following utility uses are exempt from the provisions of this Ordinance: electrical transmission lines, poles, wires, cables, conduits, vaults, laterals, pipes, mains, valves or any other similar equipment when used for the purpose of distributing service to individual customers, and also including substations, transmission lines, or trunk lines on or above the surface of the ground, for the distribution to consumers of telephone,

cable television or other communications, electricity, gas or water, or for the collection of sewage or surface water.

(b) All railroad facilities contained within the right-of-way of a railroad company duly recognized by the U.S. Department of Commerce and the Georgia Department of Transportation (GDOT) including railroad tracks, signals, bridges, and similar facilities and equipment and the maintenance and repair work on such facilities and equipment. c. All federal, state and local government agencies, quasi-governmental authorities, and other similar institutions shall be exempt from the provisions of this Ordinance.

Article 2

1. Section 2-24, Table 2-B: Principal Uses Allowed by Zoning District

Add the following principal uses: Auto Broker; Catalog and Mail Order (including internet-only sales; Firearms Sales; Towing Service-Office Use only; as allowed uses in CBD, CUN, CGN, CCS, CHV, PDC, IHV and ILT.

Revise Accessory Apartments in PDR from “S” for special exception to “A/R” allowed with restriction.

2. Section 2-24, Table 2-C: Accessory and Temporary Uses allowed by Zoning District

Under the following accessory uses: In-home occupation in CBD, OI-1, OI-2, CCS and CGN;

Permanent Makeup accessory to Beauty/barber shops and nail salons in PDC, OI-1, OI-2, PDO, CUN, CCS, CBD, CGN, CHV, ILT and IHV and internet sales in CBD, CUN, CCS, CGN, PDC and CHV.

Article 3

1. Section 3-7-Standards For Residential Uses-subsection c-Townhouses. Amend #1, to allow a row of townhouses to have up to 8 dwelling units in a row and facades must be articulated to vary the appearance of each townhouse, thereby avoiding the appearance of row houses, no two facades shall be alike in a single row of townhouse buildings. Remove subsection #2, which limits a development over 20 acres to building 30% as townhouses.

2. Section 3-13-Residential Accessory Uses In-home occupations: Delete subsection 13 which is former language on in-home day care uses. This is now replaced by requiring all day care facilities to obtain a special exception use before accepting any children via a Public Hearing.

3. Section 3-72 – Delete subsection H – Unit Registration and Permitting in its entirety.

Article 4

1. Table 4-A: Residential Dimensional Requirements: Under the columns for RS-20, RS-15, and RU-7, amend “Base/Maximum Density” to “Maximum Density” and leave the units per acre unchanged.

Article 5

1. Section 5-4-QDC, Quality Development Corridor Overlay District, subsection e, add new section #8 – Retaining Walls, as follows: Retaining walls visible by pedestrians, motorists, etc. and from likely vantage points within a non-residential site shall be constructed of high-quality materials such as stone masonry block with an integral color and exterior texture, brick or stucco facing. Materials for retaining walls should complement or match the materials used on the primary structure and be in character with the landscape design. Retaining wall plans must be included with Overlay Certificate of Approval applications.
2. Section 5-4, subsection e, 3, 1, amend section to allow storage areas to be screened not only by a solid masonry wall, but solid wood fence.
3. Section 5-4, subsection e, 6 b-Sign Requirements, amend as follows: Monument or permanent freestanding signs shall be of wood, stone or other similar materials and shall complement the material and color of the building. Sign supports shall be faced with the primary material used on the primary structure. The primary structure material shall be used to frame the sign in such a way as to completely surround the sign a minimum of eight inches (8”) on the top and sides. No part of a metal can shall be left exposed, except as required for maintenance of the sign and/or its components.
4. Section 5-6-DDO, Downtown Design Overlay District – add under subsection d-Exemptions, the following: 4. Properties that have undergone a rezoning or annexation process wherein architectural and site design features were approved by City Council as a condition of zoning approval.

Article 6

1. Division II- Mixed Use Development. Add new Section 6-29 – Variance and Special Exceptions. Add the following language: The Planning Commission shall have authority to hear any variance requests or special exception applications within an approved MXD development. Major, or significant changes to a previously approved MXD development shall be heard by City Council. Developments of Regional Impact (DRI) applications are also heard by City Council.

Article 7

1. Section 7-5, Table 7-A-Minimum Off-Street Parking Spaces Required by Use. Amend Restaurant to 1 parking space per 75 square feet of seating area. Add a new use – Car Inventory Lot with a minimum parking count of 1 space per 300 square feet of impervious surface.

Article 8

1. Section 8-11 (r)-Prohibited Signs as follows: “Illuminated Canopy Signs, illuminated canopy and illuminated projecting signs, except for canopy signs regulated in Section 8-19,(b), (4).
2. Section 8-19, (b), (4), (a), amend as follows: Convenience Stores and Service Stations with Pump Islands....One sign per freestanding or building canopy face per street frontage with a maximum of 32 square feet each is allowed. The canopy sign shall not extend above or below the edge of the canopy. The canopy sign and optional trim band can be internally illuminated with a light source that is concealed or contained within the sign and becomes visible in darkness through a translucent surface. The lighting shall be limited to the allowed canopy signage and illuminated trim band. Canopy lighting shall be directed downward and shall not be directed toward, nor shine directly upon, any adjoining property or street or street traffic.

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Section II. All Ordinances or parts of Ordinances in conflict or inconsistent with this Ordinance hereby are 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. This Ordinance shall be effective upon adoption.

DONE, RATIFIED, and PASSED by the City Council of the City of Newnan, Georgia, this ____ day of _____, 2019 in regular session assembled.

ATTEST:

L. Keith Brady, Mayor

Della Hill, City Clerk

Cynthia E. Jenkins, Mayor Pro-Tem

REVIEWED AS TO FORM:

C. Bradford Sears, Jr., City Attorney

George M. Alexander, Councilmember

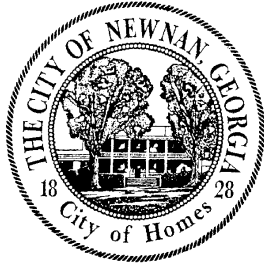
Cleatus Phillips, City Manager

Raymond F. DuBose, Councilmember

Rhodes H. Shell, Councilmember

Dustin Koritko, Councilmember

Paul Guillaume, Councilmember



City of Newnan, Georgia - Mayor and Council

Date: November 22, 2019

Agenda Item: Rezoning Request RZ2019-08, Edwards6, LLC for 2.15 ± acres located on Summerlin Boulevard (Tax Parcel # 098A 654)

Prepared and Presented by: Tracy S. Dunnavant, Planning Director

Purpose: To inform the City Council that RZ2019-08 is before the Planning Commission for consideration and a recommendation on the requested zoning classification.

Background: John Edwards, on behalf of Edwards6, LLC, has applied for the rezoning of 2.15 ± acres located on Summerlin Boulevard. The request is to rezone the property from OI-1 (Low Density Office and Institutional District) to CCS (Community Shopping Center District) for the purpose of constructing a restaurant.

Current Zoning

Tax Parcel #	Acres	Zoning	Units
098A 654	2.15±	OI-1	N/A

Requested Zoning

Tax Parcel #	Acres	Zoning	Units
098A 654	2.15±	CCS	N/A

Attachments: Application for Rezoning
Location Map

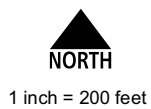
Previous Discussions with Council: None



CITY OF NEWNAN | Project Location



CITY OF NEWNAN
 PLANNING DEPT.
 25 LAGRANGE STREET
 NEWNAN, GEORGIA 30263
www.cityofnewnan.com



LEGEND

- Project Location
- PARCELS
- CITY LIMITS

ADDRESS

Summerlin Blvd
 NEWNAN GA. 30265



CITY OF NEWNAN, GEORGIA
Planning & Zoning Department

25 LaGrange Street
Newnan, Georgia 30263
Office (770) 254-2354
Fax (770) 254-2361

APPLICATION TO AMEND ZONING MAP

Note to Applicant: Please be sure to complete all entries on the application form. If you are uncertain to the applicability of an item, contact The Planning & Zoning Department at 770-254-2354. Incomplete applications or applications submitted after the deadline *will not be accepted*.

Name of Applicant EDWARDS6, LLC.- JOHN EDWARDS

Mailing Address 3421 MAIN ST., ATLANTA, GA. 30337

Telephone 404-583-1055 Email: jedwards@coregroupsales.com

Property Owner (Use back if multiple names) NEWNAN CROSSING PARTNERS, LLC.- BILL LAMB

Mailing Address 252 PHARR RD. NE, ATLANTA, GA. 30305

Telephone 404-231-0579

Address/Location of Property LOT 5 THE OUTPARCELS @ SUMMERLIN BLVD.

Tax Parcel No.: 098A 654 Land Lot 20 & 21

District/Section 5 Size of Property (Square Feet or Acres) 2.15 Ac.

Present Zoning Classification: O-I Proposed Zoning Classification: CCS

Present Land Use: WOODED/ VACANT

To the best of your ability, please answer the following questions regarding the application:

Explain how conditions have changed that renders the zoning map designation invalid and no longer applicable _____

This lot is a small outparcel and there is a glut of O-I property nearby. This area is best suited for a neighborhood comm. use

If the proposed zoning map change is an extension of an existing adjacent zoning district, provide an explanation why the proposed extension should be made The adjacent property is zoned CCS. The proposed restaurant use is

one that is allowed in CCS.

If the requested change is not designed to extend an adjacent zoning district, explain why this property should be placed in a different zoning district than all adjoining property. In other words, how does this property differ from adjoining property and why should it be subject to different restrictions?

N/A

Please attach all the following items to the completed application:

1. A letter of intent giving the details of the proposed use of the property which should include, at a minimum, the following information:
 - What the property is to be used for, if known.
 - The size of the parcel or tract.
 - The zoning classification requested and the existing classification at the filing of this application.
 - The number of units proposed.
 - For non-residential projects, provide the density of development in terms of floor area ratio (FAR).
 - Any proposed buffers and modification to existing buffers.
 - Availability of water and sewer facilities including existing distance to property.
2. Name and mailing addresses of all owners of all property within 250 feet of the subject property (available from the County Tax Assessor records). This is encouraged to be submitted in a mail merge Microsoft Word data file format.
3. Legal description of property. This description must establish a point of beginning; and from the point of beginning, give each dimension bounding the property that the boundary follows around the property returning to the point of beginning. If there are multiple property owners, all properties must be combined into one legal description. If the properties are not contiguous, a separate application and legal description must be submitted for each property. For requests for multiple zoning districts, a separate application and legal description must be submitted for each district requested. A copy of the deed may substitute for a separate description.
4. A certified plat (stamped and dated) drawn to scale by a registered engineer, architect, land planner, land surveyor, or landscape architect that shall include the following information:
 - ✓ Boundary survey showing property lines with lengths and bearings
 - ✓ Adjoining streets, existing and proposed, showing right-of-way
 - ✓ Locations of existing buildings dimensioned and to scale, paved areas, dedicated parking spaces, and other property improvements
 - ✓ North arrow and scale
 - ✓ Adjacent land ownership, zoning and current land use
 - ✓ Total and net acreage of property
 - ✓ Proposed building locations
 - ✓ Existing and proposed driveway(s)
 - ✓ Lakes, ponds, streams, and other watercourses
 - ✓ Floodplain, wetlands, and slopes equal to or greater than 20 percent
 - ✓ Cemeteries, burial grounds, and other historic or culturally significant features
 - ✓ Required and/or proposed setbacks and buffers
5. Submit one (1) copy in an 18" x 24" format and one copy in a pdf digital file format.
6. Completed Proffered Conditions form.
7. Completed Disclosure of Campaign Contributions and Gifts form.
8. If the applicant and the property owner are not the same, complete the Property Owner's Authorization form and/or the Authorization of Attorney form.
9. For multiple owners, a Property Owner's Authorization form shall be submitted for each owner.
10. A community impact study must be submitted if the development meets any of the following criteria:
 - Office proposals in excess of 200,000 gross square feet
 - Commercial proposals in excess of 250,000 gross square feet
 - Industrial proposals which would employ over 500 persons
 - Multi-Family proposals in excess of 150 units

11. A Development of Regional Impact form shall be completed and submitted to the City if the request meets any of the criteria in §10-10 (b)(2)(h) on page 10-7 of the Newnan Zoning Ordinance.

12. Fees for Amending the Zoning Map shall be made payable to the *City of Newnan* and are listed below:

- Single-Family Application.....\$500.00/Plus \$15.00 Per Acre
- Multi-Family Application.....\$500.00/Plus \$25.00 Per Acre
- Office/Institutional Application.....\$500.00/Plus \$15.00 Per Acre
- Commercial Application.....\$500.00/Plus \$25.00 Per Acre
- Industrial Application.....\$500.00/Plus \$15.00 Per Acre
- Mixed Use Application.....\$500.00/Plus Per Acre fee based upon proposed land use.
- Planned Development Application.....\$500.00/Plus per Acre fee based upon proposed land use.
- Overlay Zoning Application.....\$350.00

PLEASE NOTE: THIS APPLICATION MUST BE FILED BY THE 1st OF THE MONTH TO BE CONSIDERED FOR THE PLANNING COMMISSION MEETING OF THE FOLLOWING MONTH.

I (We) hereby authorize the staff of the City of Newnan to inspect the premises of the above-described property. I (We) do hereby certify the information provided herein is both complete and accurate to the best of my (our) knowledge, and I (we) understand that any inaccuracies may be considered just cause for invalidation of this application and any action taken on this application.

Sworn to and subscribed before me this 9th day of October, 2019

Signature of Applicant [Handwritten Signature]

NOTARY
 JOSLIN H. JUSTICE
 My Comm. Expires March 2022
 Affix Seal Here
 PUBLIC
 CHATTAHOOCHEE COUNTY, GEORGIA

Joslin H. Justice
Notary Public

FOR OFFICIAL USE ONLY

DATE OF PRE-APPLICATION CONFERENCE: _____

RECEIVED BY: Dean Smith

DATE OF FILING: 10-10-19

FILING FEE RECEIVED: \$550.00

DATE OF NOTICE TO NEWSPAPER: _____

DATE OF PUBLIC HEARING: _____

PLANNING COMMISSION RECOMMENDATION (DATE): _____

DATE OF TRANSMITTAL TO CITY COUNCIL: _____

CITY COUNCIL DECISION (DATE): _____



City of Newnan, Georgia
Attachment A
Proffered Conditions

As part of an application for a rezoning, a property owner **MAY** proffer, in writing, proposed conditions to apply and be part of the rezoning being requested by the applicant. Proffered conditions may include written statements, development plans, profiles, elevations, or other demonstrative materials.
(Please refer to Article 10 of the Zoning Ordinance for complete details.)

Please list any written proffered conditions below:

This property is located in the QDC (Quality Development Corridor) which requires additional landscaping and building facade requirements. It is our opinion that these additional requirements are sufficient to provide a quality and attractive development..

Any development plans, profiles, elevations, or other demonstrative materials presented as proffered conditions shall be referenced below and attached to this application:

QDC Facade & Landscaping Requirements

I do hereby certify the information provided herein is both complete and accurate to the best of my knowledge.

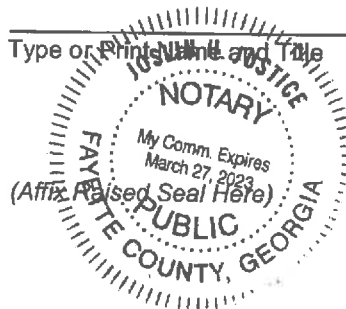
John R. Edwards
Signature of Applicant

John R. Edwards III
Type or Print Name and Title

Signature of Applicant's Representative

Type or Print Name and Title

Justin H. Justice 10.9.19
Signature of Notary Public Date





City of Newnan, Georgia
Attachment B

Disclosure of Campaign Contributions & Gifts

Application filed on _____, 20__ for action by the Planning Commission on rezoning requiring a public hearing on property described as follows:

The undersigned below, making application for Planning Commission action, has complied with the Official Code of Georgia Section 36-67A-1, et.seq., Conflict of Interest in Zoning Actions, and has submitted or attached the required information on this form as provided.

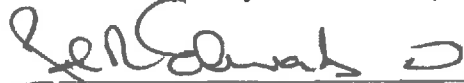
All individuals, business entities, or other organizations¹ having a property or other interest in said property subject of this application are as follows:

Have you as applicant or anyone associated with this application or property, within the two (2) years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the Newnan City Council or a member of the Newnan Planning Commission? Yes No

If YES, please complete the following section (attach additional sheets if necessary):

Name and Official Position of Government Official	Contributions (List all which aggregate to \$250 or more)	Date of Contribution (Within last 2 years)

I do hereby certify the information provided herein is both complete and accurate to the best of my knowledge.

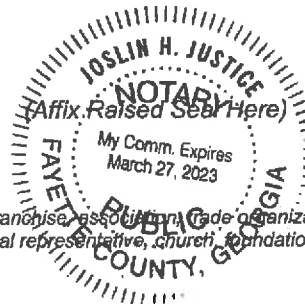

Signature of Applicant


Type or Print Name and Title

Signature of Applicant's Representative

Type or Print Name and Title


Signature of Notary Public Date



¹Business entity may be a corporation, partnership, limited partnership, firm, enterprise, franchise, association, trade organization, or trust while other organization means non-profit organization, labor union, lobbyist or other industry or casual representative, church, foundation, club, charitable organization, or educational organization.



City of Newnan, Georgia
Attachment C
Property Owner's Authorization

The undersigned below, or as attached, is the owner of the property which is the subject of this application. The undersigned does duly authorize the applicant named below to act as applicant in the pursuit of a rezoning of the property

Name of Property Owner NEWNAN CROSSING PARTNERS, LLC.- BILL LAMB

Telephone Number 404-231-0579

Address of Subject Property LOT 5 THE OUTPARCELS @ SUMMERLIN BLVD.

I swear that I am the owner of the property which is the subject matter of the attached application, as it is shown in the records of Coweta County, Georgia.

Greg Lee Investments, Inc, Manager

Hal Lamb, President

Signature of Property Owner

Personally appeared before me

Hal Lamb

who swears the information contained in this authorization is true and correct to the best of his/her knowledge and belief.

Beth Boylen

Notary Public

(Affix Raised Seal Here)

10-09-2019

Date

Beth Boylen
NOTARY PUBLIC
DeKalb County, GEORGIA
My Commission Expires 6-20-2020



City of Newnan, Georgia
Attachment D
Attorney's Authorization

NOTE: *If an attorney-at-law has prepared this application, please fill out the information below:*

I swear as an attorney-at-law, I have been authorized by the owner(s) to file the attached application for a rezoning of property.

(Signature of Attorney)

Name of Attorney _____

Address _____

Telephone _____

Date _____



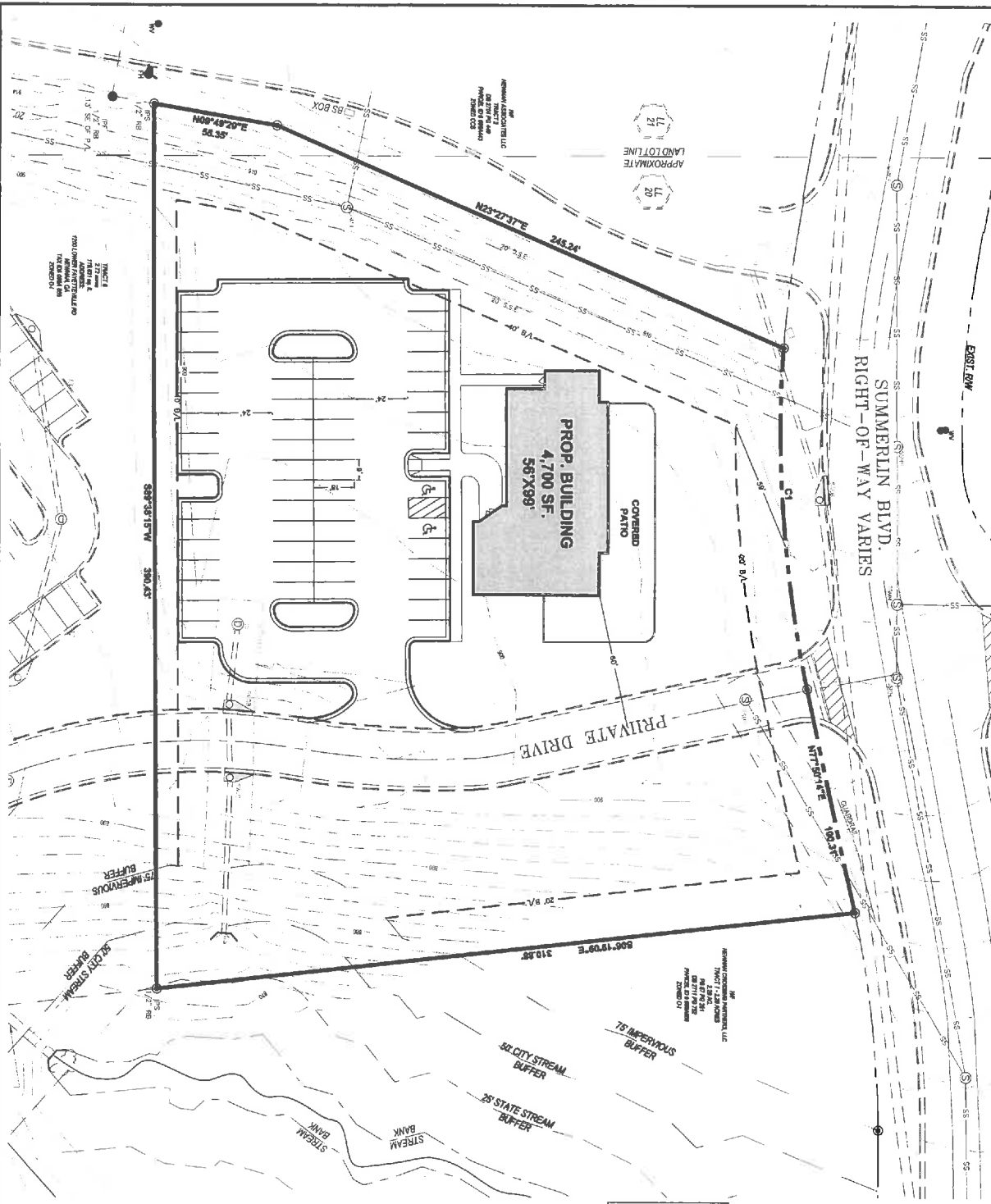
City of Newnan, Georgia
Attachment E
Rezoning Checklist

The following is a checklist of information required for the submittal of a rezoning application. The Planning & Zoning Department will not accept an incomplete application.

- _____ Completed application form
- _____ Letter of intent
- _____ Names and addresses of all owners of all property within 250 feet of the subject property
- _____ Legal description of property
- _____ Certified plat
- _____ Completed Attachment A – Proffered Conditions (if applicable)
- _____ Completed Attachment B – Disclosure of Campaign Contributions & Gifts (if applicable)
- _____ Completed Attachment C – Property Owner's Authorization (if applicable)
- _____ Completed Attachment D – Attorney's Authorization (if applicable)
- _____ Community Impact Study (if applicable)
- _____ Filing Fee in the form of a check payable to the **City of Newnan**

Note: Please attach this form to the filing application.

THIS IS A PRELIMINARY DRAWING AND NOT FOR CONSTRUCTION. THE PROJECT LOCATION, PROPERTY SHOWN HEREON IS OUTLINE OF ONLY APPROXIMATE DATA. THE COMPLETION DATE IS APPROXIMATE. DATED: FEBRUARY 4, 2015



CAUTION
THIS DRAWING IS THE PROPERTY OF PARAMOUNT ENGINEERING, LLC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF PARAMOUNT ENGINEERING, LLC.

CAD FILE
DATE: 10/09/15
DRAWN BY: GPH
CHECKED BY: [blank]
APP. NO. 291005

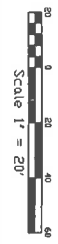
NOTES:
1. EXISTING ZONING: O1 (OFFICE/INSTITUTIONAL) A OCC
2. PROPOSED ZONING: CCS COMMUNITY SHOPPING CENTER DIST 7, W1 OCC
3. TOTAL ACRES: 2.15 AC.
4. PROPOSED SETBACKS: FRONT - 60', SIDE - 15', REAR - 45'
5. PROPOSED USE: 44,700 SF. RETAIL BOUTIQUE W/ OUTDOOR PATIO

OWNER:
PARAMOUNT DEVELOPMENT
2011 NEWMAN BLVD.
NEWMAN, GA 30059
PH: 404-251-0876
E: jshelton@paramounteng.com

DEVELOPER:
PARAMOUNT DEVELOPMENT
2011 NEWMAN BLVD.
NEWMAN, GA 30059
PH: 404-251-0876
E: jshelton@paramounteng.com

LEGEND

	PROPOSED BUILDING
	COVERED PATIO
	PROPOSED PARKING
	STREAM BANK
	25' CITY STREAM BUFFER
	25' STATE STREAM BUFFER
	75' IMPERIOUS BUFFER
	PRIVATE DRIVE
	SURVEY POINTS
	EASEMENTS
	UTILITY LINES
	PROPERTY LINES



SHEET 1	PROJECT: PALMERS NEWMAN	REV.: [blank]	DATE: [blank]	DESCRIPTION: [blank]
	SHEET: CONCEPTUAL SITE PLAN	[blank]	[blank]	[blank]
	LL 20 & 21	5TH DISTRICT	CITY OF NEWMAN	DRAWING NO: 291005-PALMERS
DATE: 10-09-19	DRAWN BY: GPH	SCALE: 1" = 20'		



Paramount ENGINEERING, LLC
11 E. BROAD ST. NEWMAN, GA 30063
PH: (770)-473-9676
george@paramountengineering.com



October 10, 2019

City of Newnan
Planning & Zoning Department
25 Lagrange St.
Newnan, Georgia 30263

RE: Letter of Intent- Palmers Restaurant- Summerlin Blvd.

To Whom It May Concern,

This letter is in reference to the requested rezoning of a 2.15 ac. tract (Lot 5 The Outparcels @ Summerlin Blvd) from O-I to CCS for construction of an approximately 4,700 sqft restaurant. The proposed floor area ratio (FAR) is $4,700 \text{ GFA} / 93,654 \text{ sf} = 0.05$. Only one building is proposed at this time. There are existing stream buffers on this site that will remain undisturbed. There are currently water and sewer service available for this lot.

Please feel free to call with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'George Harper', followed by a horizontal line extending to the right.

George P. Harper, P.E.

2005-
2140

DOCH 008469
FILED IN OFFICE
03/31/2005 02:51 PM
BK:2711 PG:752-768
CINDY G BROWN
CLERK OF SUPERIOR COURT
COWETA COUNTY

Cindy G. Brown
REAL ESTATE TRANSFER TAX
PAID: \$0.00 ✓

SPACE ABOVE LINE FOR RECORDER'S USE

Please record and return to:

Jonathan M. Perry, Esq.
Greenberg Traurig, LLP
The Forum, Suite 400
3290 Northside Parkway
Atlanta, Georgia 30327

RETURN TO:
GLOVER & DAVIS, P.A.
P.O. DRAWER 1038
NEWNAN, GA 30864

STATE OF GEORGIA)
) ss:
COUNTY OF COWETA)

QUITCLAIM DEED

THIS INDENTURE, made this 30th day of March, 2005 by and between CHRIS COOPER, INC., a Texas corporation (hereinafter referred to as "Grantor"), having an address of 1909 Woodall Rodgers Freeway, Dallas, Texas 75201, and NEWNAN CROSSING PARTNERS, LLC, a Georgia limited liability company (hereinafter referred to as "Grantee"), having an address of 525 Pharr Road, N.E., Atlanta, Georgia 30305 (the words "Grantor" and "Grantee" to include its respective heirs, successors and assigns where the context requires or permits);

WITNESSETH:

Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid, the receipt and sufficiency whereof is hereby acknowledged, has bargained, sold, and quitclaimed and by these presents does hereby remise, convey and forever QUITCLAIM unto Grantee, its heirs, legal representatives, successors and assigns, the property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property");

TO HAVE AND TO HOLD the said described premises to Grantee, so that neither Grantor nor any person or persons claiming under Grantor shall at any time, by any means or ways, have, claim or demand any right or title to said premises or appurtenances, or any rights thereof.

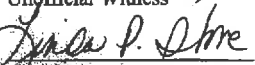
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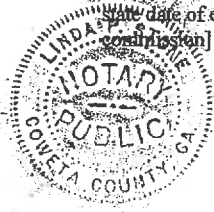
17/02

IN WITNESS WHEREOF, Grantor has signed, sealed and delivered this Quitclaim Deed as of the date and year first above written.

Signed, sealed and delivered
in the presence of:



Unofficial Witness


Notary Public [Affix seal and
state date of expiration of
commission] 2-10-07



GRANTOR:

CHRIS COOPER, INC.,
a Texas corporation

By: 
Chris Cooper,
President

[CORPORATE SEAL]

EXHIBIT A

LEGAL DESCRIPTION

TRIANGLE TRACT

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN Land Lots 20 & 21, 5th District, Coweta County, Georgia, containing 7.15 acres or 311,420 square feet, being known as Tract 1 in accordance with an Boundary Survey for Newnan Crossing Partnership by Moore Bass Consulting, Inc., Wayne Alan Powers #2891, dated 10-26-04, and being more particularly described as follows:

Commencing at the intersection of the easterly right-of-way of Interstate 85 (right-of-way varies) and the northern right-of-way of Lower Fayetteville Road (right-of-way varies); Thence along the northern right-of-way of Lower Fayetteville Road North 80 degrees 06 minutes 42 seconds East a distance of 216.83 feet, to a point;

Thence continuing along said right-of-way of Lower Fayetteville Road South 85 degrees 38 minutes 21 seconds East a distance of 350.82 feet, to a point;

Thence continuing along said right-of-way of Lower Fayetteville Road South 85 degrees 38 minutes 21 seconds East a distance of 148.37 feet, to a point;

Thence continuing along said right-of-way of Lower Fayetteville Road North 82 degrees 25 minutes 03 seconds East a distance of 133.71 feet, to a point at the intersection of the western right-of-way of Proposed Newnan Crossing Boulevard East (right-of-way varies);

Thence continuing along said right-of-way of Lower Fayetteville Road North 82 degrees 25 minutes 03 seconds East a distance of 120.00 feet, to a one half-inch rebar found at the eastern right-of-way of Proposed Newnan Crossing Boulevard East;

Thence leaving said right-of-way of Lower Fayetteville Road and along the eastern right-of-way of Proposed Newnan Crossing Boulevard East North 07 degrees 34 minutes 57 seconds West a distance of 15.94 feet, to a point on the proposed northerly right-of-way of Lower Fayetteville Road;

Thence leaving said right-of-way and along the proposed northerly right-of-way of Lower Fayetteville Road along an arc of a curve to the left and arc length of 294.71 feet and a radius of 2799.79 feet, said curve being subtended by a chord bearing, North 77 degrees 44 minutes 49 seconds East a distance of 294.58 feet, to a point;

Thence continuing along said right-of-way along an arc of a curve to the left an arc length of 337.50 feet and a radius of 2799.79 feet, said curve being subtended by a chord bearing, North 71 degrees 16 minutes 41 seconds East a distance of 337.30 feet, to a point;

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Thence continuing along said right-of-way along an arc of a curve to the left an arc length of 277.93 feet and a radius of 2799.79 feet, said curve being subtended by a chord bearing, North 64 degrees 58 minutes 51 seconds East a distance of 277.81 feet, to a point, said point being the POINT OF BEGINNING;

Thence North 09 degrees 49 minutes 14 seconds East a distance of 417.56 feet to a point;

Thence North 09 degrees 49 minutes 14 seconds East a distance of 74.25 feet to a point;

Thence North 23 degrees 28 minutes 31 seconds East, a distance of 245.24 feet to a point on the southerly right-of-way of Proposed Summerlin Blvd. (80' right-of-way);

Thence continuing along said right-of-way of Proposed Summerlin Blvd. (80' right-of-way), along an arc of a curve to the left an arc length of 151.89 feet and a radius of 540.00 feet, said curve being subtended by a chord bearing, North 85 degrees 53 minutes 35 seconds East a distance of 151.39 feet, to a point;

Thence continuing along the said right-of-way North 77 degrees 50 minutes 07 seconds East, a distance of 100.31 feet to a point;

Thence continuing along the said right-of-way along an arc of a curve to the right an arc length of 97.66 feet and a radius of 460.00 feet, said curve being subtended by a chord bearing, North 83 degrees 55 minutes 04 seconds East, a distance of 97.48 feet, to a point;

Thence continuing along said right-of-way North 90 degrees 00 minutes 00 seconds East, a distance of 68.59 feet to a point on the southerly right-of-way of Proposed Summerlin Blvd. (80' right-of-way) at this point;

Thence continuing along said right-of-way South 00 degrees 00 minutes 00 seconds West, a distance of 10.00 feet to a point on the southerly right-of-way of Proposed Summerlin Blvd. (100' right-of-way) at this point

Thence continuing along said right-of-way of Proposed Summerlin Blvd. (100' right-of-way), South 90 degrees 00 minutes 00 seconds East, a distance of 79.56 feet to a point;

Thence continuing along said right-of-way along an arc of a curve to the right an arc length of 158.18 feet and a radius of 200.00 feet, said curve being subtended by a chord bearing, South 67 degrees 20 minutes 34 seconds East, a distance of 154.09 feet to a point;

Thence continuing along said right-of-way South 44 degrees 41 minutes 09 seconds East, a distance of 24.39 feet to a point on the proposed northerly right-of-way of Lower Fayetteville Road (right-of-way varies);

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Thence leaving said right-of-way of Proposed Summerlin Blvd. (100' right-of-way), and along the proposed northerly right-of-way of Lower Fayetteville Road (right-of-way varies), South 43 degrees 50 minutes 59 seconds West, a distance of 179.66 feet to a point;

Thence continuing along said right-of-way, along an arc of a curve to the right an arc length of 893.62 feet and a radius of 2799.79 feet, said curve being subtended by a chord bearing South 52 degrees 59 minutes 36 seconds West, a distance of 889.83 feet to a point, said point being the POINT OF BEGINNING.

TOGETHER WITH:

RIGHT-OF-WAY ACQUISITION-TRIANGLE TRACT

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN Land Lots 20 & 21, 5th District, Coweta County, Georgia, 1.69 acres or 73,499 square feet, being known as Tract 2 in accordance with an Boundary Survey for Newnan Crossing Partnership by Moore Bass Consulting, Inc., Wayne Alan Powers #2891, dated 10-26-04, and being more particularly described as follows:

Commencing at the intersection of the easterly right-of-way of Interstate 85 (right-of-way varies) and the northern right-of-way of Lower Fayetteville Road (right-of-way varies); Thence along the northern right-of-way of Lower Fayetteville Road North 80 degrees 06 minutes 42 seconds East a distance of 216.83 feet, to a point;

Thence continuing along said right-of-way of Lower Fayetteville Road South 85 degrees 38 minutes 21 seconds East a distance of 350.82 feet, to a point;

Thence continuing along said right-of-way of Lower Fayetteville Road South 85 degrees 38 minutes 21 seconds East a distance of 148.37 feet, to a point;

Thence continuing along said right-of-way of Lower Fayetteville Road North 82 degrees 25 minutes 03 seconds East a distance of 133.71 feet, to a point at the intersection of the western right-of-way of Proposed Newnan Crossing Boulevard East (right-of-way varies);

Thence continuing along said right-of-way of Lower Fayetteville Road North 82 degrees 25 minutes 03 seconds East a distance of 120.00 feet, to a one half-inch rebar found at the eastern right-of-way of Proposed Newnan Crossing Boulevard East;

Thence leaving said right-of-way of Lower Fayetteville Road and along the eastern right-of-way of Proposed Newnan Crossing Boulevard East North 07 degrees 34 minutes 57 seconds West a distance of 15.94 feet, to a point on the proposed northerly right-of-way of Lower Fayetteville Road.

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City of Newnan, Georgia - Mayor and Council

Date: October 22, 2019

Agenda Item: Indemnification and Hold Harmless Agreement

Prepared by: Michael Klahr, Public Works Director

Purpose: To consider an *Indemnification and Hold Harmless Agreement* between the Georgia Department of Transportation and the City of Newnan

Background: In order to move forward with Phase D of the Newnan LINC project, the Georgia Department of Transportation (GDOT) will require the execution of an *Indemnification and Hold Harmless Agreement*, as it relates to an Encroachment Permit (Permit Number: A-077-002831-3), for construction of a pedestrian bridge spanning State Route 403 (Interstate 85) at Mile Post 46.

The *Permit* will be executed by GDOT once the project receives final approval.

Options:

- A. Execute the *Agreement*
- B. Other action as directed by Council

Funding: N/ A

Recommendation: Option A

Attachments: Document: *Indemnification and Hold Harmless Agreement*

Document: *GDOT Permit Number: A-077-002831-3*



INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

(READ BEFORE SIGNING)

District 3

NAME OF APPLICANT: City of Newnan

S.R. NUMBER: 403 MILE POST: 46

PERMIT NUMBER: A-077-002831-3 COUNTY: Coweta

The undersigned agrees to indemnify and hold harmless the Georgia Department of Transportation, the State of Georgia, its agencies and instrumentalities and all of their respective officers, members, employees and directors (collectively referred to as the "DOT") from and against any and all claims, demands, liabilities, losses, cost of expenses, including attorneys', and from the payment of any sum or sums of money to any persons whomsoever (including third persons or subcontractors, employees or agents of the undersigned or of "DOT") from and against any and all claims, demands, liabilities, losses, cost or expensed, including attorney's fees, and from the payment of any sum or sums of money to any persons whomsoever (including third persons or subcontractors, employees or agents of the undersigned or of DOT), for any loss due to personal injury, bodily injury, death, or property damage arising out of, attributable to, or resulting from this permit or in any way attributable to the activities authorized by this permit; or due to any violation of this permit by the permit holder, or due to the application or violation of any pertinent Federal, State, or Local Law, rule or regulation in connection with this permit or authorized by this permit. If and to the extent such damage or loss covered by this indemnification is paid by any State self-insured funds (the "Funds") established and maintained by the State of Georgia Departments of Administrative Services Risk Management Division (DOAS), the undersigned agrees to reimburse the Funds for such monies paid out by the Funds. The undersigned acknowledges the permits can be granted in situations where limited sight distance exists, and that the DOT makes no warranty, express or implied, concerning sight distance or other engineering considerations involved in granting this permit. The undersigned further acknowledges that the DOT has relied upon the representations made by the undersigned in applying for this permit, including the undersigned's representations that all conditions of the permit shall be met and that the undersigned shall meet all DOT Specifications, as well as all relevant Federal, State and local Laws, rules or regulations in the activities authorized by this permit. This indemnification shall apply where the DOT may be partially responsible for the situation giving rise to the claim.

SIGNATURE OF APPLICANT

DATE

DEPARTMENT OF TRANSPORTATION

STATE OF GEORGIA
ATLANTA, GEORGIA



(FOR DOT USE ONLY)
District No. 3
State Highway No. 00040300
Milepost No. 46, 46
County Coweta
Permit No. A-077-002831-3

APPLICATION AND PERMIT FOR SPECIAL ENCROACHMENT
TO: GEORGIA DEPARTMENT OF TRANSPORTATION
ONE GEORGIA CENTER, 600 WEST PEACHTREE STREET, NW, ATLANTA, GEORGIA 30308

Application is hereby made by CITY OF NEWNAN 404-433-1900
Name of Applicant (Area Code) Phone No.
25 LaGrange Street Newnan, GA 30263
Post Office Address City and State Zip Code

for permission to accomplish work on the Right-of-Way of STATE HIGHWAY NO. 00040300
U.S. I-85 within the City Limits of Newnan and in Coweta County,
in accordance with the ATTACHED PLANS and subject to the Rules and Regulations for Driveway and Encroachment Control on
file in the General Office of the Georgia Department of Transportation, and made a part hereof by reference thereto, and any
SPECIAL REQUIREMENTS set forth herein. The description of the proposed work is to:

The City of Newnan is proposing to set a pre-engineered pedestrian bridge over SR 403 (I-85) near mile marker 46 for
the Newnan Linc Trail System.

The proposed work site is located on the property on the BOTH side of the highway beginning 5048 Feet,
From Nearest Street
S of the center line, of SR 34 (Bullsboro Road) and fronting 25
NSEW Nearest Street or Road Total Frontage Used

Feet further S along said Highway; and at mile post 46 to 46
NSEW
33.380430 -84.757450

Permit requested this 19 day of June, 20 19.

By Jonathan McCaig
Type or Print Name
Sign in Ink on All Copies
Title Project Manager
If Agent or Official for Applicant

FORM TO BE COMPLETED BELOW THIS LINE BY GEORGIA DEPARTMENT OF TRANSPORTATION

Non-Limited Access - Approval by District Office Limited Access - Approval by General Office

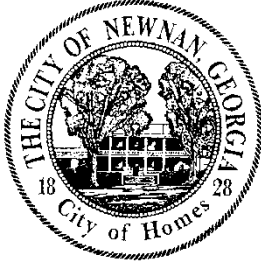
SPECIAL REQUIREMENTS: (by DOT only)

- Any conflicts with existing utilities are to be resolved at applicant's expense. - A \$5,000,000 bond is required for this
permit. - No bond will be required if work is accomplished using City/County Forces. If City/County lets this to contract
no bond will be required if they furnish the D.O.T. a letter stating that they will hold the contractors bond for \$5,000,000

PERMIT GRANTED to perform the above-described work in accordance with REQUIREMENTS of the Georgia Department
of Transportation;

This permit is to be strictly construed and no work other than that
specifically described above is hereby authorized. The work authorized
herein must begin within three months from the date of approval and
must become completed on a schedule satisfactory to the department
and not to exceed twelve months from the date the permit is approved.

DEPARTMENT OF TRANSPORTATION STATE OF GEORGIA
By
Approved on behalf of Russell McCurry by Andrew Heath
Commissioner (DOT)
Title



City of Newnan, Georgia - Mayor and Council

Date: October 22, 2019

Agenda Item: Contract Award Consideration for Design-Builder of Park Facilities at C Jay Smith Park and Pickett Field

Prepared by: Hasco Craver, Assistant City Manager

Purpose:

Newnan City Council may consider and award a contract for a qualified Design-Builder firm to construct park facilities at C Jay Smith Park and Pickett Field.

Background:

Identified as a priority on the 2019 SPLOST project list, the improvement and construction of parks facilities is designed to enable the City of Newnan to better serve its citizens and visitors.

A comprehensive study led by the City of Newnan's Beatification Department, in consultation with the City's Park Commission, determined that improvements of C Jay Smith Park, to include the addition of a skate park, pump track, splash pad, adventure playground, new restrooms and a connection to the LINC, were needed to serve our 21st century citizenry. In addition, the improvement of Pickett Field shall include an upgrade to the existing baseball field to allow for use as a baseball field and soccer field. Both projects were determined to be of great benefit by the Newnan City Council at their 2019 City Council retreat.

In summer 2019, the City of Newnan entered into a contract with Comprehensive Program Services for professional services related to the development of a Request for Qualifications to identify a design-build team with the experience and wherewithal to actualize the City's vision.

The City of Newnan, on August 9, 2019, released a request for qualifications to provide design-build services for parks project. As with similar projects of type and size, addendums were issued in order to provide clarification to interested firms. Providing additional information to all interested firms through an addendum is a common practice utilized by local governments interested in confirming a project's scope as well as unique owner requirements (i.e. alternate items, schedule, warranty, proposal format, State and Federal requirements, bonding requirements, etc.).

The City of Newnan received proposals from six (6) firms. Please see the list of responding firms below:

Astra Group, Inc.
300 Churchill Ct
Woodstock, GA 30188

Integrated Construction and Nobility, Inc.
228 Old Driver Rd
Whitesburg, GA 30185

New South Construction Company
180 W Peachtree St NE #700
Atlanta, GA 30309

Piedmont Paving, Inc.
1226 GA-16
Newnan, GA 30263

Reeves Young, LLC
45 Peachtree Industrial Blvd
Sugar Hill, GA 30518

Tri Scapes, Inc.
220 Curie Dr,
Alpharetta, GA 30005

Upon receipt of proposals, City staff performed a detailed investigation of each firm's wherewithal, project understanding, and previous and similar project experience and proposal responsiveness. Upon completion of the aforementioned review, the following firms were invited to meet with City staff for an interview:

Astra Group, Inc.

Integrated Construction and Nobility, Inc.

New South Construction Company

City staff held interviews on September 9, 2019. Thereafter, City staff individually scored each firm/team based upon questions related to project understanding, previous and similar project experience, understanding of project scope, understanding of project budget, firm's availability and presentation.

Upon review of individual scores, it was determined that New South Construction Company was selected as the preferred design-builder firm.

City staff, on October 4, 2019, met with principals from New South Construction Company to discuss the design-builder fee proposal.

Funding:

SPLOST 2019

Please note that City staff, including members of the design-builder team and program managers will conduct a thorough investigation of the described project in order to deliver the projects, as described, within the \$5.8M stated project budget.

Recommendation:

It is the recommendation of City staff that the Newnan City Council enter into a contract with New South Construction Company for design-builder services for the improvement of C Jay Smith Park and Picket Field. In addition, please find a recommendation letter from Comprehensive Program Services attached herein.

Attachments:

1. Bid Tabulation (Interview Results)
2. Recommendation Letter from Comprehensive Program Services (Program Manager)
3. AIA Document, Standard Form of Agreement Between Owner and Design-Builder
4. Exhibit C – Fee Proposal (Compensation for Work Performed Prior To Execution of Design-Build Amendment)

Previous Discussions with Council: The Newnan City Council, beginning in 2019, discussed their desire to fund park improvement projects at C Jay Smith Park and Picket Field. Numerous additional meetings have taken place over time to actualize the construction of parks facilities.

SELECTION COMMITTEE SCORING AND OVERALL RANKING OF DB FIRMS (STEP II)

SOLICITATION TYPE: Design-Build Services

***** DATE OF INTERVIEWS: 9/19/2019 *****

Step 1- Individual Committee Member Scoring based on Published Criteria

**Project: Parks Project/Newnan,
GA**

Step 2- CPS Overall Ranking using Sum of Individual Rankings of Firms

INTERVIEWING FIRMS	Sum of Individual Rankings	Group Ranking*	Rank	Rankings**	Overall Ranking of Submittals
New South Construction Company	6	1		1	New South Construction Company
Astra Group, Inc.	6	2		1	Astra Group, Inc.
Integrated Construction and Nobility Inc.	12	3		3	Integrated Construction and Nobility Inc.

* Will not show a tie.

** Will show a tie.

**Project: Parks
Project/Newnan, GA**

SCORER 1 _____

METHODOLOGY PRESENTED
OVERALL FIT

Maximum Points Allowed	50	50	Total Score	Ranking	Scorer Notes
SUBMITTING FIRMS	▼	▼			
New South Construction Company	48	43	91	1	
Astra Group, Inc.	45	40	85	2	
Integrated Construction and Nobility Inc.	40	40	80	3	
Maximum Points Allowed	50	50	100		

Cell will turn red if value exceeds allowable score for criteria

Project: Parks Project/Newnan, GA

SCORER 2 _____

METHODOLOGY PRESENTED
OVERALL FIT

Maximum Points Allowed	50	50	Total Score	Ranking	Scorer Notes
SUBMITTING FIRMS	▼	▼			
New South Construction Company	45	45	90	2	
Astra Group, Inc.	47	47	94	1	
Integrated Construction and Nobility Inc.	41	44	85	3	
Maximum Points Allowed	50	50	100		

Cell will turn red if value exceeds allowable score for criteria

Project: Parks Project/Newnan, GA

SCORER 3 _____

METHODOLOGY PRESENTED
OVERALL FIT

Maximum Points Allowed	50	50	Total Score	Ranking	Scorer Notes
SUBMITTING FIRMS	▼	▼			
New South Construction Company	50	45	95	2	
Astra Group, Inc.	48	50	98	1	
Integrated Construction and Nobility Inc.	40	40	80	3	
Maximum Points Allowed	50	50	100		

Cell will turn red if value exceeds allowable score for criteria



Comprehensive
Program Services

October 11, 2019

Mr. Cleatus Phillips
Office of the City Manager
City of Newnan
25 LaGrange Street
Newnan, GA 30263

**Re: City of Newnan Parks Project (CJ Smith and Lynch Parks)
Design-Build Contract with New South Construction.**

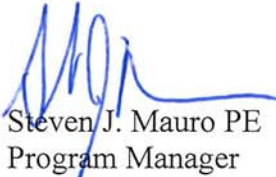
Dear Mr. Phillips,

Please find attached the Design-Build Contract from New South Construction, for design and construction services for a total budget of \$5,800,000.00 for work on the above referenced project. The contract calls for a phase I Programming and Schematic design, shown in exhibit C, allowing for City approval, before any further work is approved, thus CPS recommends approval to New South Construction to begin Phase I at a cost of \$82,610.00.

If you should have any questions, please feel free to call.

Sincerely,

Comprehensive Program Services, Inc.



Steven J. Mauro PE
Program Manager

Cc: Ronda Helton, City of Newnan Program Manager
Eric Johnson, CPS

AIA[®] Document A141[™] – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 25th day of October in the year 2019
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Newnan
25 LaGrange Street
Newnan, Georgia 30263

and the Design-Builder:
(Name, legal status, address and other information)

New South Construction Company
1180 West Peachtree Street
Suite 700
Atlanta, Georgia 30309

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

Parks Project, City of Newnan, Georgia

Lynch Park
23 Richard Allen Drive
Newnan, Georgia 30263

C.J. Smith Park
5 Glynn Street
Newnan, Georgia 30263

The Owner and Design-Builder agree as follows.

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

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User Notes:

(3B9ADA43)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1. Design-Builder is entitled to rely upon any design information or materials that Owner provides to Design-Builder and requires that the Design-Builder use or incorporate into the design for the Project.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

Int.

Design Builder will work with the Owner to evaluate the Owner's criteria and develop the project program / schematic design documents to verify the Owner's Preliminary Project Budget.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.) To the extent that the Owner provides any performance specifications for the Project, the Design-Builder is not providing any warranty or assurance that such performance specifications can or will be achieved.

Lynch Park:

Modify the existing baseball field so the park can be utilized both as a baseball field and soccer field.

C.J. Smith Park:

Expand park to add amenities, including a splash pad, pump track, skate plaza, skate bowl, multiple use trail, restrooms and a pavilion.

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.) If the Owner provides the Design-Builder with geotechnical or other Project-specific evaluations, reports, or studies, the Design-Builder will be entitled to rely upon that information or materials without further evaluation.

Lynch Park

23 Richard Allen Drive
Newnan, Georgia 30263

C.J. Smith Park

5 Glynn Street
Newnan, Georgia 30263

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective

It is the Owner's desire to incorporate sustainable design in construction concepts where feasible to do so.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

N/A

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Five Million Eight Hundred Thousand Dollars (\$5,800,000.00)

Init.

The Design-Builder understands that this is the existing budget of the Owner for the intended Project. While Design-Builder will make reasonable effort to develop within the existing budget, Design-Builder is not warranting that the Owner's intended Project can be designed and constructed for equal to or lesser than that amount.

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone durations:

Owner's Criteria / Program / Schematic Design 10-12 Weeks
Preliminary Design / Design Development 4-6 Weeks
Construction Documents 8-10 Weeks

.2 Submission of Design-Builder Proposal:

4 weeks after approval of Preliminary Design

.3 Phased completion dates:

N/A

.4 Substantial Completion date:

To be determined based upon final approved design

.5 Other milestone dates:

N/A

The Design-Builder understands, and the Owner agrees, that these dates provided by the Owner are the Owner's current and preliminary intentions for the timing of completion of certain aspects of the Project. While such dates are preliminary, Design-Builder will endeavor to achieve that schedule, subject to the revisions and the subsequent agreement to a target date for completion in Exhibit A.

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

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

.1 Architect

K A Oldham Design, Inc.
75 Jackson St. Suite 401
Newnan, GA 30263

.2 Consultants

HGOR
3445 Peachtree Rd NE
Suite 1425
Atlanta, GA 30326

Croy Engineering
200 Cobb Parkway N
Building 400 Suite 413
Marietta, GA 30062

Init.

Great Southern Recreation
2441Q Old Fort Pkwy 462
Murfreesboro, TN 37128

Newline Skateparks
#1 – 20177 97 Ave
Langley, BC
V1m 4B9

.3 Contractors

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

N/A

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict, and, until modified, the Owner's Criteria that conflict will not be a part of the Project.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

Ronda Helton
City of Newnan
25 LaGrange Street
Atlanta, Georgia 30309

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

Steve Mauro
CPS
3368 Hardee Avenue
Atlanta, GA 30341

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§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

1. Geotechnical Engineer / Materials Testing Agency
2. Surveyor to provide to the Design Builder a complete existing site survey identifying all topographic elevations, existing utilities, easements, trees, etc

The Owner, and not the Design-Builder, is responsible for any acts or omissions of the consultants and separate contractors that Owner retains pursuant to this section. The Owner shall be liable to the Design-Builder for any damages that the Design-Builder sustains as a result of the acts or omissions of these consultants and/or separate contractors.

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Rob Dunn

New South Construction Company
1180 West Peachtree Street
Suite 700
Atlanta, Georgia 30309

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in and incorporated by reference within this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents

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shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services. Separate and apart, under paragraph 1.1.8, the Owner may have agreed to retain the services of consultants for which it will be responsible as set forth in that paragraph.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

See Exhibit C

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit C. Rates are included in Lump Sum amounts for each phase of design

Individual or Position	Rate
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§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of N/A percent (%) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

18 %

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment and as required by Article 9.

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ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner, unless any of those prevents or otherwise makes the work of the Design-Builder no longer possible in the manner set forth in the Design-Build documents.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction, unless such costs result from the Owner or its representative(s) having directed the Design-Builder to perform Work in a manner contrary to applicable laws, ordinances, codes, rules, or regulations.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work. Design-Builder's responsibility for the acts, errors or omissions of any persons or entities who are design professionals, however, shall be evaluated based upon whether the person or entity whom was directly responsible for the specific act(s), error(s) or omission(s) at issue adhered to the applicable prevailing standard of care for that design professional in the jurisdiction where the Project is located.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;

- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Additional information as agreed to by the Owner and Design-Builder.

(Paragraphs Deleted)

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 With the understanding of the parties that it is a preliminary schedule and that details of what will be constructed and in what manner it will be constructed are subject to changes, the Design-Builder, after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The design-builder may revise such schedule to adjust for changes or alterations to the progress of the Work.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner as updated pursuant to Section 3.1.9.1.

§ 3.1.10 N/A

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work.

§ 3.1.11.2 Before providing any Submittal to the Owner for its review and approval, the Design-Builder will review and approve all Submittals; will make reasonable efforts to determine and verify materials, field measurements and field construction criteria related thereto; and make reasonable efforts to check and coordinate the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal. The Design-Builder shall not be liable for any delays in the Owner's review and approval of Submittals, and the Design-Builder shall be entitled to extensions of time to the Project Schedule and to additional monetary compensation in the event the delays affect the Project Schedule and/or Project Costs.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered non-conforming. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Other than the above, the Design-Builder makes no other warranty, representation, or guarantee, whether express or implied, and such are expressly disclaimed. Further, as to the design elements of the Design-Builder's Work, Design-Builder makes no warranties whatsoever, and any questions about the quality of the design will be evaluated based upon the normal standard of care for a design professional in the location of the Work.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder knows that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification, unless it has been stated in the written report that there has been a modification of a certain aspect of the Owner's Criteria, in which case that modification shall be deemed approved by the Owner once the Owner has provided the written consent set forth in this section..

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;

- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification, unless it has been stated in the Preliminary Design that there has been a modification of a certain aspect of the Owner's Criteria, in which case that modification shall be deemed approved by the Owner once the Owner has provided the written consent set forth in this section..

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

§ 4.5 All design work performed by or for the Design-Builder will be to the level of the normal standard of care for design professionals in the area where the Project is located

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents. If there are any deviations in the Construction Documents from the Design-Build Documents, the Owner's remedy will be a reduction in the Contract Sum, if any, to reflect the difference in value (either higher or lower) of what is in the Construction Documents versus the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal. And Owner hereby agrees to compensate Design-Builder for any construction performed prior to execution of the Design-Build Amendment, either through incorporation of that into the Design-Build Amendment or based upon the costs and a 10% mark-up, if a Design-Build Amendment is not entered into.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's skill and attention in a good and workmanlike manner. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters. However, Design-Builder will not be responsible for coordinating Owner's consultants or separate contractors unless set forth explicitly elsewhere in the Design-Build Documents.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. However, the Design-Builder will not be responsible under this section if the work already performed was performed for the Owner by some person or entity who is not a part of the Design-Builder's team.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, once such taxes are effective and must be collected and paid under applicable law or ordinance.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder, Owner, or Architect encounter conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the encountering party shall promptly provide notice to the other parties before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the

conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder knowingly encounters and recognizes the existence of human remains, burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features, and/or Design-Builder's good faith belief it may have encountered such remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection. The Design-Builder shall not be responsible for any delays in the Owner's selection of materials or equipment, and the Design-Builder shall be entitled to extensions of time to the Contract Time and to additional monetary compensation in the event the delays impact the Contract Sum or Contract Time.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work, provided that the Owner or its separate contractor shall provide reasonable notice to the Design-Builder of the intent to cut or otherwise alter the Work, and the Design-Builder shall not be liable for any cutting or alterations in the Work performed by the Owner or a separate contractor..

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner with reasonable access to the Work, and the Owner (or anyone else Owner brings onto the site) shall not interfere with the Work or act in an unsafe manner. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules, when directed to do so. The Design-Builder shall make any revisions to the construction schedule and contract sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying discrepancies or defects in the construction or operations by the Owner or separate contractor actually known to Design-Builder that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for direct costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. In the event of the use of a Change Order, the Design-Builder shall not be required to proceed with the modified Work until a Change Order has been issued and signed by Owner and provided to the Design-Builder. If, however, the Owner provides direction to the Design-Builder to proceed with modified Work in lieu of a Change Order or Construction Change Directive, and the Design-Builder does so, then the Owner will be responsible to pay Design-Builder for that modified Work.

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§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work and stating a proposed basis for prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

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- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

The Owner's determination, as specified above, shall not be less than the actual costs expended by the Design-Builder in performing the changed Work. If the Owner's determination is believed by the Design-Builder to be less than its actual costs (incurred or projected) in performing the Work, the Design-Builder may initiate dispute resolution procedures pursuant to Article 14.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

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§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder. If the Owner fails to provide such evidence, as required, within fourteen days of the Design-Builder's request, the Design-Builder may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. If the Work is stopped under this Section 7.2.7, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently and willfully fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. If the Design-Builder disagrees with the actions of the Owner or the amounts claimed as costs to the Owner, the Design-Builder may file a Claim pursuant to Article 14.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not knowingly, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, modified by the other provisions and processes set forth in this Design-Build Agreement.

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§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay or such amounts are withheld in a good faith belief in accord with Design-Builder's agreement with such entity.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

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§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 n/a;
- .5 damage to the Owner or a separate contractor;
- .6 n/a; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 N/A

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 N/A

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder. For any partial occupancy or use, the Owner shall reduce retainage proportionately to the Design-Builder at the time of partial occupancy or use.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

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- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable

time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. Nothing in this Section 10.3 or elsewhere in this contract shall be construed as a requirement that Design-Builder perform any Work relating to a hazardous substance or material unless expressly required by the Design-Build Documents.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the gross negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's gross negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's gross negligence.

§ 10.3.6 If the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time

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and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense. In addition, the Owner shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by design professional hired by the Owner, and any other contractor under contract with the Owner, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work and to make a claim for breach of warranty, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be

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reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

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

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the

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Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

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

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

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 persistently refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

Init.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. To the extent reasonably possible, the Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. Such information may be provided via subsequent update to the aforementioned notice. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes but is not limited to:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, diminution in value, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

Int.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time.

§ 14.2.6.1 N/A

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien or bond, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien or bond notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the Reid Firm. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an

Init.

arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

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

§ 14.4.4 Consolidation or Joinder

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

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common or related question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

§ 14.5 Questions as to the scope of the arbitration agreement and jurisdiction of the Arbitrator(s), including but not limited to whether the parties have complied with the prerequisite of mediation in Section 14.3, shall be decided by the Arbitrator(s).

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents including those obligations incurred prior to the date of the assignment. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail, statutory overnight mail, hand delivery or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder as provided for in the Design-Build Documents.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

Init.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds

| *(Paragraphs Deleted)*

| .4 Other:

| Exhibit C - Compensation for work performed prior to execution of Design Build Amendment

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

Int.

OWNER *(Signature)*

(Printed name and title)

DESIGN-BUILDER *(Signature)*

Rob Dunn, Executive Vice President

(Printed name and title)

Init.

Additions and Deletions Report for AIA® Document A141™ – 2014

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 18:07:37 ET on 10/08/2019.

PAGE 1

AGREEMENT made as of the ~~day of~~ 25th day of October in the year 2019

...

City of Newnan
25 LaGrange Street
Newnan, Georgia 30263

...

(Name, legal status, address and other ~~information~~)information

...

New South Construction Company
1180 West Peachtree Street
Suite 700
Atlanta, Georgia 30309

...

Parks Project, City of Newnan, Georgia

Lynch Park
23 Richard Allen Drive
Newnan, Georgia 30263

C.J. Smith Park
5 Glynn Street
Newnan, Georgia 30263

PAGE 2

TABLE OF ARTICLES

...

This Agreement is based on the Owner's Criteria set forth in this Section 1.1. -Design-Builder is entitled to rely upon any design information or materials that Owner provides to Design-Builder and requires that the Design-Builder use or incorporate into the design for the Project.

PAGE 3

Design Builder will work with the Owner to evaluate the Owner's criteria and develop the project program / schematic design documents to verify the Owner's Preliminary Project Budget.

...

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.) To the extent that the Owner provides any performance specifications for the Project, the Design-Builder is not providing any warranty or assurance that such performance specifications can or will be achieved.

...

Lynch Park:

Modify the existing baseball field so the park can be utilized both as a baseball field and soccer field.

...

C.J. Smith Park:

Expand park to add amenities, including a splash pad, pump track, skate plaza, skate bowl, multiple use trail, restrooms and a pavilion.

...

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.) If the Owner provides the Design-Builder with geotechnical or other Project-specific evaluations, reports, or studies, the Design-Builder will be entitled to rely upon that information or materials without further evaluation.

...

Lynch Park
23 Richard Allen Drive
Newnan, Georgia 30263

C.J. Smith Park
5 Glynn Street
Newnan, Georgia 30263

...

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.) Objective

...

It is the Owner's desire to incorporate sustainable design in construction concepts where feasible to do so.

...

N/A

...

Five Million Eight Hundred Thousand Dollars (\$5,800,000.00)

PAGE 4

The Design-Builder understands that this is the existing budget of the Owner for the intended Project. While Design-Builder will make reasonable effort to develop within the existing budget, Design-Builder is not warranting that the Owner's intended Project can be designed and constructed for equal to or lesser than that amount.

...

.1 Design phase milestone ~~dates~~ durations:

...

Owner's Criteria / Program / Schematic Design 10-12 Weeks

...

Preliminary Design / Design Development 4-6 Weeks

...

Construction Documents 8-10 Weeks

...

4 weeks after approval of Preliminary Design

...

N/A

...

To be determined based upon final approved design

...

N/A

...

The Design-Builder understands, and the Owner agrees, that these dates provided by the Owner are the Owner's current and preliminary intentions for the timing of completion of certain aspects of the Project. While such dates are preliminary, Design-Builder will endeavor to achieve that schedule, subject to the revisions and the subsequent agreement to a target date for completion in Exhibit A.

...

K A Oldham Design, Inc.

...

75 Jackson St. Suite 401

...

Newnan, GA 30263

...

HGOR

...

3445 Peachtree Rd NE

...

Suite 1425

...

Atlanta, GA 30326

...

Croy Engineering

...

200 Cobb Parkway N

...

Building 400 Suite 413

...

Marietta, GA 30062

PAGE 5

Great Southern Recreation

...

2441Q Old Fort Pkwy 462

...

Murfreesboro, TN 37128

...

Newline Skateparks

...

#1 – 20177 97 Ave

...

Langley, BC

...

V1m 4B9

...

N/A

...

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the ~~conflict~~conflict, and, until modified, the Owner's Criteria that conflict will not be a part of the Project.

...

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. ~~Unless otherwise agreed, the parties will use AIA Document E203™ 2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.~~

...

Ronda Helton
City of Newnan
25 LaGrange Street
Atlanta, Georgia 30309

...

Steve Mauro
CPS
3368 Hardee Avenue
Atlanta, GA 30341

PAGE 6

1. Geotechnical Engineer / Materials Testing Agency
2. Surveyor to provide to the Design Builder a complete existing site survey identifying all topographic elevations, existing utilities, easements, trees, etc

The Owner, and not the Design-Builder, is responsible for any acts or omissions of the consultants and separate contractors that Owner retains pursuant to this section. The Owner shall be liable to the Design-Builder for any damages that the Design-Builder sustains as a result of the acts or omissions of these consultants and/or separate contractors.

...

Rob Dunn

New South Construction Company
1180 West Peachtree Street
Suite 700
Atlanta, Georgia 30309

...

Litigation in a court of competent jurisdiction

...

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in and incorporated by reference within this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

PAGE 7

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services. -Separate and apart, under paragraph 1.1.8, the Owner may have agreed to retain the services of consultants for which it will be responsible as set forth in that paragraph.

PAGE 8

See Exhibit C

...

See Exhibit C. Rates are included in Lump Sum amounts for each phase of design

...

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of N/A percent (%) of the expenses incurred.

...

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid (thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

...

18 %

...

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build ~~Amendment~~ Amendment and as required by Article 9.

PAGE 9

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the ~~Owner~~ Owner, unless any of those prevents or otherwise makes the work of the Design-Builder no longer possible in the manner set forth in the Design-Build documents.

...

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to ~~correction~~ correction, unless such costs result from the Owner or its representative(s) having directed the Design-Builder to perform Work in a manner contrary to applicable laws, ordinances, codes, rules, or regulations.

...

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work. Design-Builder's responsibility for the acts, errors or omissions of any persons or entities who are design professionals, however, shall be evaluated based upon whether the person or entity whom was directly responsible for the specific act(s), error(s) or omission(s) at issue adhered to the applicable prevailing standard of care for that design professional in the jurisdiction where the Project is located.

PAGE 10

~~.11~~ Current Project cash flow and forecast reports; and

...

~~.12~~—Additional information as agreed to by the Owner and Design-Builder.

...

~~§ 3.1.8.2~~ In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

...

~~1~~—Design-Builder's work force report;

...

~~2~~—Equipment utilization report; and

...

~~3~~ Cost summary, comparing actual costs to updated cost estimates.

...

~~§ 3.1.9.1 The Design-Builder, promptly~~ With the understanding of the parties that it is a preliminary schedule and that details of what will be constructed and in what manner it will be constructed are subject to changes, the Design-Builder, after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The design-builder may revise such schedule to adjust for changes or alterations to the progress of the Work.

...

~~§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.~~ Owner as updated pursuant to Section 3.1.9.1.

...

~~§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.~~ N/A

...

~~§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.~~

...

~~§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified~~ Before providing any Submittal to the Owner for its review and approval, the Design-Builder will review and approve all Submittals; will make reasonable efforts to determine and verify materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated thereto; and make reasonable efforts to check and coordinate the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

...

~~§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal. The Design-Builder shall not be liable for any delays in the Owner's review and approval of Submittals, and the Design-Builder shall be entitled to extensions of~~

time to the Project Schedule and to additional monetary compensation in the event the delays affect the Project Schedule and/or Project Costs.

PAGE 11

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered ~~defective-non-conforming~~. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Other than the above, the Design-Builder makes no other warranty, representation, or guarantee, whether express or implied, and such are expressly disclaimed. Further, as to the design elements of the Design-Builder's Work, Design-Builder makes no warranties whatsoever, and any questions about the quality of the design will be evaluated based upon the normal standard of care for a design professional in the location of the Work.

...

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder ~~has reason to believe~~ knows that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

PAGE 12

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a ~~Modification-Modification~~, unless it has been stated in the written report that there has been a modification of a certain aspect of the Owner's Criteria, in which case that modification shall be deemed approved by the Owner once the Owner has provided the written consent set forth in this section.

PAGE 13

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a ~~Modification-Modification~~, unless it has been stated in the Preliminary Design that there has been a modification of a certain aspect of the Owner's Criteria, in which case that modification shall be deemed approved by the Owner once the Owner has provided the written consent set forth in this section.

...

§ 4.5 All design work performed by or for the Design-Builder will be to the level of the normal standard of care for design professionals in the area where the Project is located

...

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents. If there are any deviations in the Construction Documents from the Design-Build Documents, the Owner's remedy will be a reduction in the Contract Sum, if any, to reflect the difference in value (either higher or lower) of what is in the Construction Documents versus the Design-Build Documents.

PAGE 14

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal. -And Owner hereby agrees to compensate Design-Builder for any construction performed prior to execution of the Design-Build Amendment, either through incorporation of that into the Design-Build Amendment or based upon the costs and a 10% mark-up, if a Design-Build Amendment is not entered into.

...

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's ~~best skill and attention,~~ skill and attention in a good and workmanlike manner. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters. However, Design-Builder will not be responsible for coordinating Owner's consultants or separate contractors unless set forth explicitly elsewhere in the Design-Build Documents.

...

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. However, the Design-Builder will not be responsible under this section if the work already performed was performed for the Owner by some person or entity who is not a part of the Design-Builder's team.

...

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, ~~whether or not yet effective or merely scheduled to go into effect,~~ once such taxes are effective and must be collected and paid under applicable law or ordinance.

PAGE 15

§ 5.5.3 **Concealed or Unknown Conditions.** ~~If the Design-Builder encounters Design-Builder, Owner, or Architect~~ encounter conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, ~~the Design-Builder encountering party~~ shall promptly provide notice to the ~~Owner~~ other parties before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

...

§ 5.5.4 If, in the course of the Work, the Design-Builder ~~encounters human remains, or knowingly encounters and~~ recognizes the existence of human remains, burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features, and/or Design-Builder's good faith belief it may have encountered such remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

...

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection. The Design-Builder shall not be responsible for any delays in the Owner's selection of materials or equipment, and the Design-Builder shall be entitled to extensions of time to the Contract Time and to additional monetary compensation in the event the delays impact the Contract Sum or Contract Time.

PAGE 16

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the ~~Work-Work~~, provided that the Owner or its separate contractor shall provide reasonable notice to the Design-Builder of the intent to cut or otherwise alter the Work, and the Design-Builder shall not be liable for any cutting or alterations in the Work performed by the Owner or a separate contractor.

...

The Design-Builder shall provide the Owner ~~and its separate contractors and consultants access to the Work in preparation and progress wherever located,~~ with reasonable access to the Work, and the Owner (or anyone else Owner brings onto the site) shall not interfere with the Work or act in an unsafe manner. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

PAGE 17

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction ~~schedules-schedules, when directed to do so.~~ The Design-Builder shall make any revisions to the construction schedule and contract sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

...

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying ~~apparent~~ discrepancies or defects in the construction or operations by the Owner or separate contractor actually known to Design-Builder that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

...

§ 5.14.3 The Design-Builder shall reimburse the Owner for direct costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

...

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. In the event of the use of a Change Order, the Design-Builder shall not be required to proceed with the modified Work until a Change Order has been issued and signed by Owner and provided to the Design-Builder. If, however, the Owner provides direction to the Design-Builder to proceed with modified Work in lieu of a Change Order or Construction Change Directive, and the Design-Builder does so, then the Owner will be responsible to pay Design-Builder for that modified Work.

PAGE 18

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work and stating a proposed basis for prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

PAGE 19

The Owner's determination, as specified above, shall not be less than the actual costs expended by the Design-Builder in performing the changed Work. If the Owner's determination is believed by the Design-Builder to be less than its actual costs (incurred or projected) in performing the Work, the Design-Builder may initiate dispute resolution procedures pursuant to Article 14.

...

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project ~~matters requiring the Owner's approval or authorization matters.~~

PAGE 20

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may ~~only~~ request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder. If the Owner fails to provide such evidence, as required, within fourteen days of the Design-Builder's request, the Design-Builder may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. If the Work is stopped under this Section 7.2.7, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently and willfully fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

...

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. If the Design-Builder disagrees with the actions of the Owner or the amounts claimed as costs to the Owner, the Design-Builder may file a Claim pursuant to Article 14.

...

§ 8.1.2 The Design-Builder shall ~~not~~ not knowingly, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

...

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract ~~Time~~ Time, modified by the other provisions and processes set forth in this Design-Build Agreement.

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work ~~by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay,~~ then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment ~~as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers,~~ and shall reflect retainage if provided for in the Design-Build Documents.

...

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom

the Design-Builder intends to ~~pay-pay~~ or such amounts are withheld in a good faith belief in accord with Design-Builder's agreement with such entity.

PAGE 23

~~.2~~ third party claims filed ~~or reasonable evidence indicating probable filing of such claims-unless security acceptable to the Owner is provided by the Design-Builder;~~

...

~~.4~~ reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract ~~Sum;n/a;~~

...

~~.6~~ reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~n/a;~~ or

...

~~.7~~ ~~repeated-persistent~~ failure to carry out the Work in accordance with the Design-Build Documents.

...

~~§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.N/A~~

...

~~§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.N/A~~

PAGE 25

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder. For any partial occupancy or use, the Owner shall reduce retainage proportionately to the Design-Builder at the time of partial occupancy or use.

PAGE 27

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a ~~hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance~~, including but not limited to asbestos or polychlorinated biphenyl (PCB), ~~encountered on the site by the Design-Builder~~, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. Nothing in this Section 10.3 or elsewhere in this contract shall be construed as a requirement that Design-Builder perform any Work relating to a hazardous substance or material unless expressly required by the Design-Build Documents.

...

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the ~~fault or gross~~ negligence of the party seeking indemnity.

...

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's ~~fault or gross~~ negligence in the use and handling of such materials or substances.

...

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's ~~fault or gross~~ negligence.

...

§ 10.3.6 ~~If, without negligence on the part of the Design-Builder,~~ If the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance ~~solely~~ by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

PAGE 28

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense. In addition, the Owner shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by design professional hired by the Owner, and any other contractor under contract with the Owner, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable.

...

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the ~~Work, Work and to make a claim for breach of warranty,~~ if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the ~~Design-Builder and to make a claim for breach of warranty-Design-Builder.~~ If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

PAGE 30

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, ~~repeated~~-suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

PAGE 31

.2 ~~repeatedly~~-persistently refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;

...

.4 ~~repeatedly~~-persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

...

.1 Exclude the Design-Builder from the ~~site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;~~ site;

PAGE 32

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. ~~The To the extent reasonably possible, the Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. Such information may be provided via subsequent update to the aforementioned notice.~~ In the case of a continuing delay, only one Claim is necessary.

...

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes but is not limited to:

...

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, diminution in value, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

PAGE 33

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1. time.

...

~~§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. N/A~~

...

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, lien or bond, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien or bond notice or filing deadlines.

PAGE 34

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the ~~American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. Reid Firm.~~ A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

...

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

...

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common or related question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

...

§ 14.5 Questions as to the scope of the arbitration agreement and jurisdiction of the Arbitrator(s), including but not limited to whether the parties have complied with the prerequisite of mediation in Section 14.3, shall be decided by the Arbitrator(s).

PAGE 35

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build ~~Documents. Documents including those obligations incurred prior to the date of the assignment.~~ The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

...

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified ~~mail~~ mail, statutory overnight mail, hand delivery or by courier service providing proof of delivery to, the last business address known to the party giving notice.

...

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the ~~Design-Builder~~ Design-Builder as provided for in the Design-Build Documents.

PAGE 36

~~.4 AIA Document A141™ 2014, Exhibit C, Sustainable Projects, if completed~~

...

~~.5 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:~~

...

~~.6~~ .4 Other:

...

Exhibit C - Compensation for work performed prior to execution of Design Build Amendment

PAGE 37

Rob Dunn, Executive Vice President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 18:07:37 ET on 10/08/2019 under Order No. 1365415032 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ - 2014, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

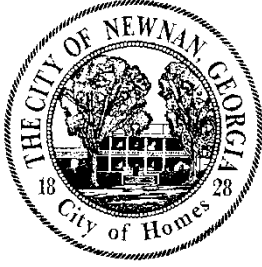
EXHIBIT C

Compensation for Work Performed Prior To Execution of Design-Build Amendment

For the Design-Builder’s performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

Programing and Schematic Design	10-12 Weeks	\$	82,610.00	Amount Remaining
	Design	\$	52,610.00	\$ 210,440.00
	Preconstruction	\$	30,000.00	\$ 52,700.00
Design Development	4-6 Weeks	\$	145,000.00	
	Design	\$	105,000.00	\$ 105,440.00
	Preconstruction	\$	40,000.00	\$ 12,700.00
Construction Documents	8-10 Weeks	\$	107,700.00	
	Design	\$	95,000.00	\$ 10,440.00
	Preconstruction	\$	12,700.00	\$ -
Designer Contract Administration		\$	10,440.00	
Total design and preconstruction:		\$	345,750.00	

Fee Proposal accepted fees	
Design Services Fee	\$ 263,050.00
Pre- Construction Fee	<u>\$ 82,700.00</u>
Total	\$ 345,750.00



City of Newnan, Georgia - Mayor and Council

Date: October 22, 2019

Agenda Item: Consideration of Acceptance of 1.307 acres of Real Property located at Summerlin Boulevard from the Board of Education of Coweta County

Prepared by: Hasco Craver, Assistant City Manager

Purpose: Newnan City Council may consider accepting 1.307 acres of real property from the Board of Education of Coweta County.

Background: The City of Newnan and the Board of Education of Coweta County began discussing the transfer of property, as described herein, upon the completion of the first section of the LINC project.

Existing parking and pedestrian facilities currently located at the subject property have been identified as an ideal location for a LINC trail head. In fact, trail users have been routinely utilizing the existing facilities to access the LINC.

The subject property is separated from Newnan Crossing Elementary School, with little to no pedestrian or vehicular access between both locations. The subject property, which requires regular maintenance is not currently providing a benefit to the Board of Education of Coweta County.

The Board of Education of Coweta County considered and unanimously approved the authorization of a limited warranty deed conveying the subject property to the City of Newnan at the October 8, 2019 meeting.

The proposed amendment allows for the City of Newnan to maintain parking and pedestrian facilities, which will complement the LINC and benefit our citizenry.

Funding: N/A

Recommendation: In an effort to allow for the ongoing promotion of LINC, City staff recommends that the Newnan City Council authorize the acceptance of real property located at Summerlin Boulevard, currently owned by the Board of Education of Coweta County, as presented herein.

Attachments:

1. Limited Warranty Deed describing conveyance of real property between the Board of Education of Coweta County and the City of Newnan; and
2. Survey of real property located at Summerlin Boulevard

Previous Discussions with Council: None

**After recording return to:
C. Bradford Sears, Jr., Esq.
Sanders, Haugen & Sears, P.C.
P.O. Box 177
Newnan, Georgia 30264**

LIMITED WARRANTY DEED

STATE OF GEORGIA,
COUNTY OF COWETA

THIS CONVEYANCE is made as of the ____ day of _____, 20 ____, between COWETA COUNTY BOARD OF EDUCATION, a Georgia body politic (hereinafter referred to as "Grantor") and THE CITY OF NEWNAN, a Georgia municipal corporation (hereinafter referred to as "Grantee").

WITNESSETH that: for and in consideration of the benefit to the Grantor by the construction and maintenance of the roadway being constructed thereon, and in consideration of the sum of Ten (\$10.00) Dollars in hand paid at and before the sealing and delivery of these presents, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledge, Grantor does hereby grant, sell and convey to the Grantee, its successors and assigns, a 1.307 acre tract of land as survey, being more particularly described on Exhibit A attached hereto, incorporated herein and made a part hereof of reference.

TO HAVE AND TO HOLD the said conveyed premises in fee simple and any rights Grantor has or may have in and to existing public rights of way are hereby quitclaimed and conveyed to Grantee., with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of Grantee forever in FEE SIMPLE.

AND THE SAID GRANTOR WILL WARRANT and forever defend the right and title to the above-described property unto Grantee against the claims of any persons owing, holding or claiming by, through or under Grantor herein.

IN WITNESS WHEREOF, the said Grantor has hereunto set its hand, affixed its seal, and delivered these presents this day and year first above written.

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Notary Public
My commission expires: _____

COWETA COUNTY BOARD OF EDUCATION

By: _____ (SEAL)
Chairman

ATTEST: _____
Secretary

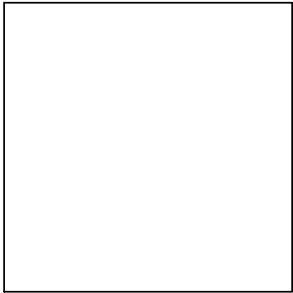
EXHIBIT "A"

DESCRIPTION

All that tract or parcel of land lying and being in Part Land Lot 20 of the 5th. District Coweta County, Georgia City of Newnan and being shown on a plat of Boundary Survey for City of Newnan by Harbuck Land Surveyors, Inc. dated 08.06.2019 and being more fully described as follows;

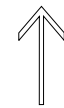
Start at a rebar set located at the Northerly corner of a mitered intersection located at the intersection of the Southeasterly Right-of-way Lower Fayetteville Road (80' R/W) and the Northeasterly Right-of-Way of Summerlin Boulevard (100' R/W) (said rebar also being the Point of Beginning). Thence from the Point of Beginning and running Northeasterly along the Southeasterly Right-of-Way of Lower Fayetteville Road and following the arc of a curve to the right an arc distance of 298.00 feet (said arc having a radius of 1,918.36 feet, a chord bearing of N51°24'13"E and a chord distance of 297.70 feet) to a rebar found. Thence leaving Right-of-Way and running S00°44'53"E a distance of 409.54 feet to a rebar set located along the Northeasterly Right-of-Way of Summerlin Boulevard. Thence running N64°51'32"W along Right-of-Way a distance of 28.19 feet to a point. Thence continuing along Right-of-Way and following the arc of a curve to the right an arc distance of 159.93 feet (said arc having a radius of 450.00 feet, a chord bearing of N54°40'38"W and a chord distance of 159.09 feet) to a point. Thence running N44°29'44"W along Right-of-Way a distance of 118.91 feet to a rebar set located at the Southerly corner of said mitered intersection. Thence leaving the Northeasterly Right-of-Way of Summerlin Boulevard and running N01°02'32"E along mitered intersection a distance of 35.02 feet to said rebar set located at the Northerly corner of mitered intersection and along the Southeasterly Right-of-Way of Lower Fayetteville road and the Point of Beginning.

Said tract or parcel of land containing 1.307 Acres and being more particularly shown on the Plat of Survey referenced hereinabove, said Plat of Survey being recorded in Plat Book _____, Page _____, in the Office of the Clerk of Superior Court of Coweta County, Georgia to which plat reference is hereby made for a more particular description of the property herein conveyed.

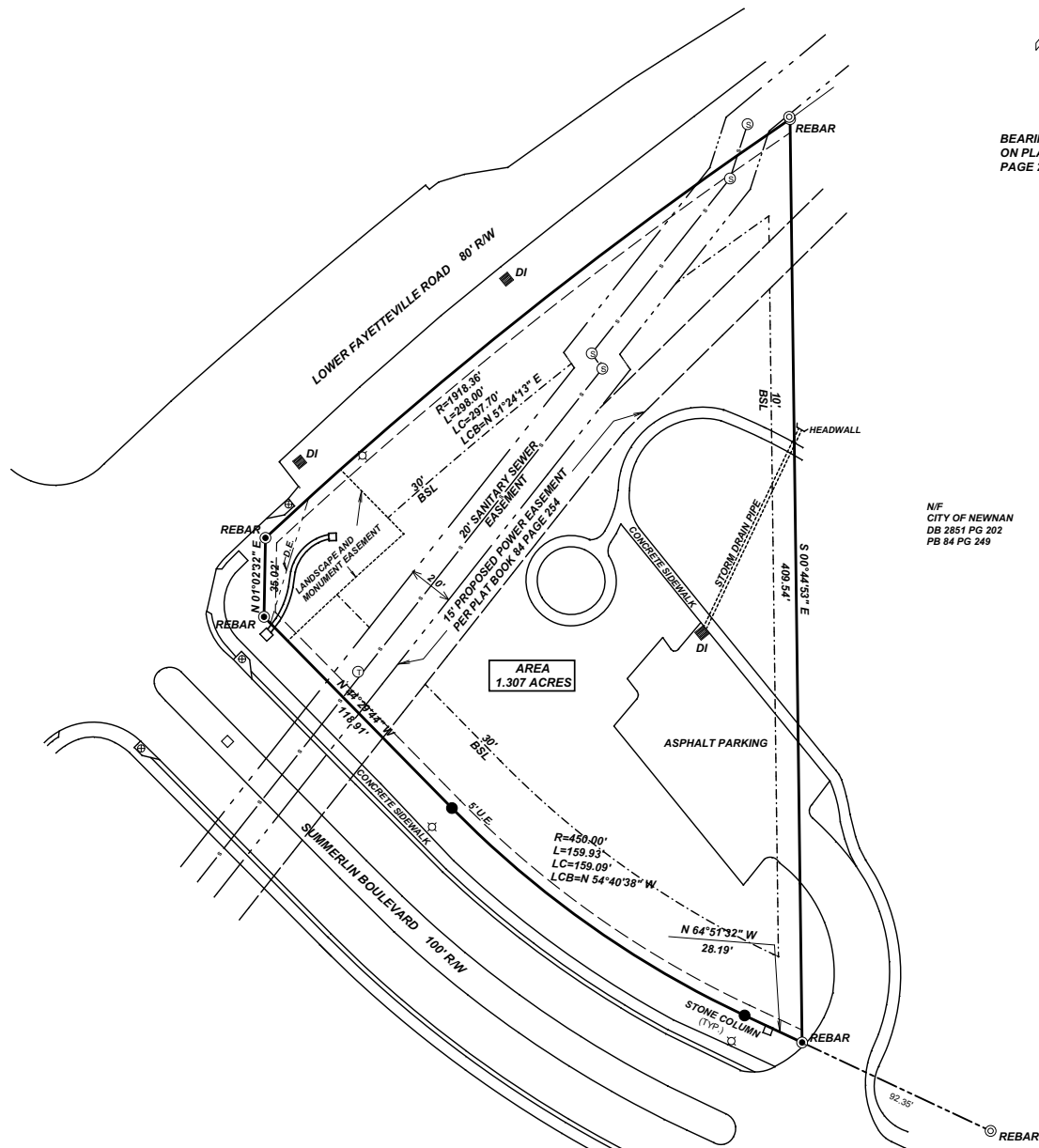


RESERVED FOR CLERK OF SUPERIOR COURT

LEGEND	
POC	POINT OF COMMENCEMENT
POB	POINT OF BEGINNING
⊙	IRON PIN FOUND
⊗	IRON PIN SET
⊕	UTILITY POLE
—	OVERHEAD POWER LINE
BOC	BACK OF CURB
⊕	TRANSFORMER
⊙	SANITARY SEWER MANHOLE
U.E.	UTILITY EASEMENT
DI	DROP INLET



BEARINGS ARE BASED ON PLAT BOOK 84 PAGE 254



N/F
CITY OF NEWNAN
DB 2851 PG 202
PB 84 PG 249

SURVEYOR NOTES

THIS SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT A CURRENT TITLE SEARCH MAY DISCLOSE.

THIS PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON, PERSONS OR ENTITY NAMED HEREON. THIS PLAT DOES NOT EXTEND TO ANY UNNAMED PERSON, PERSONS OR ENTITY WITHOUT THE EXPRESS RECERTIFICATION OF THE SURVEYOR NAMING SUCH PERSON, PERSONS OR ENTITY.

THIS PROPERTY IS SUBJECT TO CURRENT ZONING REGULATIONS AND RESTRICTIONS.

THE EXISTENCE, SIZE, AND LOCATION OF IMPERVIOUS BUFFERS ARE SUBJECT TO FINAL DETERMINATION BY THE LOCAL ISSUING AUTHORITY, CITY OR COUNTY.

REFERENCES

PLAT BOOK 84 PAGE 254

BOUNDARY SURVEY FOR:

CITY OF NEWNAN
PART LAND LOT 20 OF THE 5TH LAND DISTRICT OF COWETA COUNTY, GEORGIA
CITY OF NEWNAN

HARBUCK LAND SURVEYORS, INC.
LAND SURVEYOR FIRM NO. 959
WILLIAM G. HARBUCK
GEORGIA REGISTERED LAND SURVEYOR NO. 3006
53C JEFFERSON STREET
NEWNAN, GA. 30263
TELEPHONE 770-253-5585
SURVEYOR8591@GMAIL.COM
SCALE 1" = 40'
08.06.2019
FIELD WORK 08.01.2019

This plat is a retracement of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other instruments which created the parcel or parcels are stated hereon. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.

William G. Harbuck

WILLIAM G. HARBUCK, GA RLS #3006



THE FIELD DATA UPON WHICH THIS MAP OR PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 12,558 FEET AND AN ANGULAR ERROR OF 3 SECONDS PER ANGLE POINT, AND WAS NOT ADJUSTED.
THIS MAP OR PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 153,188 FEET. THE TYPE OF EQUIPMENT USED TO OBTAIN THE LINEAR AND ANGULAR MEASUREMENTS USED IN THE PREPARATION OF SAID MAP OR PLAT IS AN ELECTRONIC TOTAL STATION.

GRAPHIC SCALE IN FEET





City of Newnan, Georgia Mayor and Council

Date: October 22, 2019

Agenda Item: Ordinance to amend the Code of Ordinances of the City of Newnan adopting revisions to Article 1, Chapter 6, Businesses

Prepared By: Katrina Cline, Finance Director

Presented By: Cleatus Phillips, City Manager

Purpose: To adopt an ordinance to amend the Code of Ordinances for the City of Newnan by adopting revisions to Chapter 6, Businesses.

Background: The City's Occupational Tax Ordinance has been thoroughly reviewed and the revisions suggested by staff are redlined on the copy attached. These revisions are being suggested after many years of occupational tax collections by staff, where such revisions will clarify existing requirements for certificate issuance or help to ensure that all businesses renew their annual certificates in a timely manner. Additionally, minimum occupational tax amounts have been added to more fairly spread the cost of collections and maintenance by staff across all businesses operating in the city of Newnan. Finally, the annual pay-by date is being changed from April 1st to April 15th to match the IRS due date for filing taxes. The due date remains the same – January 1st.

Funding: N/A.

Recommendation: Staff recommends that Council adopt the ordinance revisions as submitted.

Options:

1. Adopt the ordinance revisions as submitted.
2. Other action as directed by Council.

Attachments:

1. 10/22/2019 - Redlined copy of Chapter 6 with suggested revisions outlined.
2. 09/24/2019 - Redlined copy of Chapter 6 with suggested revisions outlined.

Previous Discussion with Council: N/A.

Chapter 6 - BUSINESSES

ARTICLE I. - OCCUPATION TAX

Sec. 6-1. - Occupation tax required.

- (a) Each person engaged in any business, trade, profession, or occupation within the city shall pay an occupation tax each calendar year for said business, trade, profession, or occupation. Upon payment of the occupation tax, the ~~city-clerk~~finance department shall issue a certificate showing that the occupation tax has been paid for the current year, which certificate shall be maintained by each person engaged in any business, trade, profession, or occupation and available for inspection by the ~~city-clerk~~finance department or such officer's deputies, or to any police officer of the city so as to aid the city's enforcement of this article and to determine if such tax has been paid.
- (b) Each person engaged in any business, trade, profession, or occupation which does not have a location within the state, which exerts substantial efforts to do business within the city, pursuant to O.C.G.A. § 48-13-7, shall pay an occupation tax each calendar year for said business, trade, profession, or occupation. Upon payment of the occupational tax, the ~~city-clerk~~finance department shall issue a certificate showing that the occupational tax has been paid for the current year. Said certificate shall be maintained and available for inspection by the ~~city-clerk~~finance department or such officer's deputies, or to any police officer of the city upon request.
- (c) It shall be the duty of the city council to enact an occupational tax ordinance, specifying the rate, terms, and conditions upon which such tax shall be levied upon each person doing business within the city. The occupational tax ordinance may be amended as necessary in accordance with this Code.
- (d) It shall be the special duty of the chief of police and other police officers of the city to see that the provisions of this chapter are enforced, and, in the performance of this duty, they shall have the right to inspect each person's occupational tax certificate so as to determine whether the occupational tax has been paid in the current year.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 1, 6-9-98)

Sec. 6-2. - Certificate subject to Charter, ordinance restrictions.

Certificates issued are to be held and used subject to the restrictions provided by the charter and ordinances of the city. Before a certificate is issued such business shall meet all zoning regulations.

(Ord. No. 13-94, 11-8-94)

Sec. 6-3. - Construction of terms; definitions.

- (a) Wherever the term "City of Newnan" is used herein, such term shall be construed to mean "Newnan, Georgia;" wherever the term "City" is used herein, it shall be construed to mean "Newnan, Georgia".
- (b) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
 - (1) *Administrative fee* means a component of an occupational tax which approximates the reasonable cost of handling and processing the occupation tax.

(2)

(a)

Gross receipts means the total revenue of the business or practitioner for the period, including without limitation to the following:

- (i) Total income without deduction for the cost of goods sold or expenses incurred;
- (ii) Gain from trading in stocks, bonds, capital assets or instruments of indebtedness;
- (iii) —Proceeds from commissions on the sale of property, goods or service;
- (iv) —Proceeds from fees for services rendered; and
- (v) Proceeds from rent, interest, royalty or dividend income.
- (b) Gross receipts shall not include the following:
 - (i) Sales, use or excise tax;
 - (ii) Sales returns, allowances and discounts;
 - (iii) —Interorganizational sales or transfers between or among the units of a parent-subsidiary controlled group of corporations as defined by 26 U.S.C. § 1563(a)(1), or between or among the units of a brother-sister controlled group of corporations as defined by 26 U.S.C. § 1563(a)(2), or between or among wholly owned partnerships or other wholly owned entities.
 - (iv) —Payments made to a subcontractor or an independent agent, who is employed by the business to perform work related to the business's primary activity. If the subcontractor or independent agents are employed by the business solely to support business operations (i.e. grass cutting, janitorial services, repairs, maintenance, etc.), then the payments are considered business expenses and shall not be deducted from gross receipts; and
 - (v) —Governmental and foundation grants, charitable contributions or the interest income derived from such funds received by a non-profit organization, which employs salaried practitioner otherwise covered by this ordinance, if such funds constitute 80 percent or more of the organization's receipts.
 - (vi) Proceeds from sales to customers outside the state, only when actual receipt of the goods or services takes place outside the state of Georgia.
 - (vii) —Sales of product or products which product or products are picked up and delivered from a point located outside the city limits to a final destination point also located outside the city limits, (i.e. said product or products never enter into the city limits).
- (3) —*Location of office* shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office.
- (4) —*Occupation tax* means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, profession or business for revenue raising purposes.
- (5) —*Regulatory fees* means payments, whether designated as license fees, permit fees or by another name, which are required by the city as an exercise of its police power and as a part of or as an aid to regulation of an occupation, profession or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the city. A regulatory fee may not include an administrative fee. Regulatory fees do not include development impact fees as defined by paragraph (8) of O.C.G.A. section 36-71-2 or their costs or conditions of zoning or land development.
- (6) —*Dominant line* means the type of business within a multiple line business that the greatest amount of income is derived from.

- (7) ~~Person~~ wherever used in this ordinance shall be held to include sole proprietors, corporations, partnerships or any other form of business organization.
- (8) ~~Practitioner of professions or occupation~~ is one who by state law requires state licensure regulating such profession or occupation.
- (9) ~~Practitioners of professions and occupations~~ shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

(Ord. No. 13-94, 11-8-94; Ord. No. 95-4, § I, 3-15-95; Ord. No. 95-44, §§ I—IV, 12-12-95; Ord. No. 04-15, § I, 5-25-04)

Sec. 6-4. - Administrative fee.

A non-prorated, non-refundable administrative fee of ~~\$20.00~~\$25.00 shall be required on all business occupation tax accounts for the initial start-up, renewal or re-opening of those accounts.

(Ord. No. 13-94, 11-8-94)

Sec. 6-5. - Occupation tax levied; restrictions.

- (a) ~~An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one or more locations or offices within the corporate limits of the city, and upon the applicable out-of-state businesses with no location or office in Georgia pursuant to O.C.G.A. § 48-13-7 based upon the following criteria:~~

The tax shall be levied on the gross receipts of the business or practitioner in combination with the profitability ratio for the type of business, profession or occupation as measured by nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service or successor agencies of the United States.

The minimum occupational tax to be charged for new applications and renewals shall be set at \$25.00 annually, or the amount calculated based on gross receipts reported, whichever is greater.

- (b) ~~To determine basic profitability ratios, each business, practitioner, and occupation is classified according to the Standard Industrial North American Industry Classification System (SICNAICS) code. Table 1 of this chapter contains a listing of two-digit SIC codes, with their corresponding profit ratios and tax classes. Table 2 of this chapter contains a listing of two-digit SIC codes, with their corresponding business descriptions and tax classes. In addition to Tables 1 and 2 which are included with this chapter, an Alphabetical Business Classification (SIC)NAICS Index is on file and available for inspection in the clerk's finance office.~~

- (c) Occupation tax schedule:

The tax classification for each business, trade, profession or occupation is as follows:

Profitability Ratio/ Tax Class	Tax Rate per \$1,000 of Gross Receipts
Class 1	1.200

Class 2	1.250
Class 3	1.300
Class 4	1.350
Class 5	1.400
Class 6	1.450
Class 7	1.500
Class 8	1.550
Class 9	1.600
Class 10	1.650

- (d) —(1) A business or practitioner shall not be required to pay more than one occupation tax for each of its locations.
- (2) An occupation tax will not be required upon more than 100 percent of a business's gross receipts.
- (3) An occupation tax will not be required on receipts on which such tax has been levied in other localities or states.
- (4) No fee is required for the cost of ascertaining whether or not a business or practitioner has paid occupation tax to another local government, but the burden of showing such payment shall be upon the business or practitioner claiming payment to another local government.

(Ord. No. 13-94, 11-8-94; Ord. No. 95-44, § V, 12-12-95)

Sec. 6-6. - Real estate brokers.

The city shall levy and collect an occupation tax on all real estate brokers who sell property which is located within the corporate limits of the city, which tax shall be based on the occupational tax schedule in section 6-5 of this article with respect to property located within the corporate limits of the city.

(Ord. No. 13-94, 11-8-94)

Sec. 6-7. - Professionals.

Practitioners of professions listed below shall elect as their entire occupation tax one of the following:

- (1) The occupation tax based on gross receipts combined with profitability ratios as set forth herein.
- (2) —A fee of \$400.00 per practitioner who is licensed to provide the service, such tax to be paid at the practitioner's office or location; provided, however, that a practitioner paying according to this paragraph shall not be required to provide information to the local government relating to the gross receipts of the business or practitioner. The per practitioner fee of \$400 shall ~~include~~ apply to all each persons in the business who ~~qualify~~ qualifies as a practitioner under the state's regulatory guidelines and framework. Additionally, a separate occupational tax certificate is required for each professional employed by the business, if the business chooses to pay occupational taxes by professional rather than the gross receipts method.
- (3) —Practitioners include only those specific professions and occupations listed in O.C.G.A. § 48-13-9, paragraphs (1) through (18) of subsection (c): Lawyers; Physicians licensed under Chapter 34 of Title 43; Osteopaths licensed under Chapter 34 of Title 43; Chiropractors; Podiatrists; Dentists; Optometrists; Psychologists; Veterinarians; Landscape architects; Land surveyors; Practitioners of physiotherapy; Public accountants; Embalmers; Funeral directors; Civil, mechanical, hydraulic, or electrical engineers; Architects; and Marriage and family therapists, social workers, and professional counselors.

(Ord. No. 13-94, 11-8-94)

Sec. 6-8. - Paying occupation tax of business with no location in Georgia.

The council requires a registration and the assessment of an occupational tax on those businesses and practitioners of professions with no location or office in the State of Georgia if the business' largest dollar volume of business in Georgia is in the city and the business or practitioner:

- (1) Has one or more employees or agents who exert substantial efforts within the jurisdiction of the city for the purpose of soliciting business or serving customers or clients; or
- (2) Owns personal or real property which generates income and which is located within the jurisdiction of the city.

(Ord. No. 13-94, 11-8-94)

Sec. 6-9. - Each line of business to be identified on business registration.

The business registration of each business operated within the city shall identify the line or lines of business that the business conducts. Each business shall register its line of business with the ~~city~~ clerk/finance department, and have that line of business noted upon the occupational tax certificate within 90 days of the commencement of such business within the city.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 2, 6-9-98)

Sec. 6-10. - The number of businesses considered operating in city.

Where a person conducts business at more than one store or place, each store or place shall be considered a separate business for the purpose of occupation tax.

(Ord. No. 13-94, 11-8-94)

Sec. 6-11. - Practitioners exclusively practicing for the government.

Any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the State, a municipality or county of the State, instrumentalities of the United States, the State or a municipality or county of the State, shall not be required to obtain a license or pay an occupation tax for that practice.

(Ord. No. 13-94, 11-8-94)

Sec. 6-12. - Purpose of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes.

(Ord. No. 13-94, 11-8-94)

Sec. 6-13. - When tax due and payable; delinquency of tax.

~~(a)~~ (a) Each occupation tax shall be for the calendar year unless otherwise specified. Said occupation tax shall be due and payable January 1 of each year and shall, if not paid by April 4 15 of each year, be subject to a ten percent (10%) penalty for delinquency and shall also accrue interest at the rate of one and five-tenths percent per month until said tax, penalties and interest are paid in full. On any new profession, trade, business or occupation begun in the city in 1998 or succeeding years thereafter, the registration and tax shall be due and payable immediately upon beginning business, and shall be subject to a ten percent penalty for delinquency if not paid within 90 days of the commencement of such business, and interest shall accrue at the rate of one and five-tenths percent per month until said tax, penalties and interest are paid in full. In addition, any person who is delinquent in paying such tax shall, upon conviction by the city judge, be punished by a fine not to exceed ~~\$200.00~~\$400.00. Notwithstanding the criminal provisions contained herein, such criminal provisions shall not apply to those professions for which state licensure or registration is required by state law, unless otherwise specifically allowed for by state law.

(b) The city accepts postmark dates when considering the delinquency of occupational taxes and returns. A postmark is an official Postal Service imprint applied in black ink on the address side of a stamped mail piece. A postmark indicates the location and date the Postal Service accepted custody of a mail piece and it cancels affixed postage. Renewals and/or payments postmarked after the due date will be considered late, regardless of the reason. To be considered on time, the official postmark must be present on the envelope received by city staff.

~~(cb)~~ —In addition to the above remedies, the city and its officers may proceed to collect the occupation tax in the same manner as provided by law for tax executions.

(Ord. No. 13-94, 11-8-94; Ord. No. 18-94, § I, 12-13-94; Ord. No. 98-18, § 3, 6-9-98)

Sec. 6-14. - Gross receipts of businesses with multiple intra or interstate locations.

For those businesses who have multiple locations inside and outside of the city where the gross receipts can be allocated to each location, the gross receipts used to determine the occupational tax assessed will be those gross receipts attributed to each city location. In the case where the dollar amount of gross receipts attributed locally cannot be determined in those businesses with multiple locations, the total gross receipts will be divided by the total number of locations in the city and elsewhere and allotted to those locations. Upon request, the business or practitioner with a location or office situated in more than one jurisdiction shall provide to the city the following:

- (1) Financial information necessary to allocate the gross receipts of the business or practitioner; and

- (2) Information relating to the allocation of the business' or practitioner's gross receipts by other local governments.

Provided, however, that no person shall be required to disclose information to the city which is deemed to be a privileged communication pursuant to O.C.G.A. §§ 24-9-21, 24-9-24, or 24-9-40. Where the business has locations outside the city and taxation is levied for a criteria other than gross receipts in the other local governments, the city shall not assess more than the allotted share of gross receipts for the local operation.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 4, 6-9-98)

Sec. 6-15. - Exemption for state or local authority and nonprofit organizations.

An occupation tax, regulatory fee, or administrative fee will not be required on any state or local authority or nonprofit organization.

(Ord. No. 95-44, § VI, 12-12-95)

Sec. 6-16. - Evidence of state registration required if applicable; state registration to be displayed.

Each person who is licensed under Title 43 of the State license examining boards shall provide evidence of proper and current state licensure before the city registration may be issued.

Sec. 6-17. - Evidence of qualification required if applicable.

- (a) Any business required to obtain health permits, bonds, certificate of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of a city business registration, show evidence of such qualification.
- (b) Any business required to submit an annual application for continuance of that business shall do so before the registration is issued.

(Ord. No. 13-94, 11-8-94)

Sec. 6-18. - Liability of officers and agents; registration required; failure to pay.

All persons subject to the occupational tax levied pursuant to this article shall be required to pay the tax for said business as described in this Article, and in default thereof the officer or agent soliciting for or representing such business shall be subject to the same penalty as other persons who fail to pay the tax. Every person commencing business in the city after January 1 of each year shall likewise pay the tax herein provided for within 90 days of commencing the same; and any person who fails the tax prior to the delinquency date for the payment of such tax shall be subject to penalties provided herein.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 5, 6-9-98)

Sec. 6-19. - Reserved.

Editor's note— Ord. No. 98-18, § 6, adopted June 9, 1998 repealed section 6-19 in its entirety. Former section 6-19 pertained to when registration and tax due and payable and the effect of transacting business when tax delinquent and derived from Ord. No. 13-94, adopted Nov. 8, 1994; and Ord. No. 18-94, § I, adopted Dec. 13, 1994.

Sec. 6-20. - Penalty for violation.

Any person violating any provisions of this Article shall, upon conviction before the city judge, be fined in an amount not exceeding ~~\$200.00~~\$400.00. Notwithstanding the criminal provisions contained herein, such criminal provisions shall not apply to those professions for which state licensure or registration is required by state law, unless otherwise specifically allowed for by state law.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 7, 6-9-98)

Sec. 6-21. - Occupation taxes levied on business to be transacted during calendar year; filing of returns showing gross receipts during preceding calendar year.

- (A) —All occupation taxes levied by this article are levied on amount of business to be transacted during the calendar year. However, for convenience of both the city and the taxpayer, and the necessity of making numerous returns, those businesses subject to the occupation tax levied herein, on or before the times hereinafter set forth, file with the city and its officers the returns hereinafter specifically provided for, showing the gross receipts of that business during the preceding calendar year.
- (b) —The owner, proprietor, manager, secretary, or other officer of the business subject to said occupation tax for the current calendar year shall, at the end of the preceding year, and on or before April 4-15 of the current calendar year, file with the city and its officers, on a renewal form furnished by the city clerkfinance department, a signed return setting forth the amount of gross receipts of such business for the entire preceding calendar year. This return will be used to determine the final tax for the calendar year just completed and as an estimate of the gross receipts and occupation tax for the current year.
- (c) —Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis, which figure shall bear the same ratio to the amount of gross receipts for such part year as the full year bears to such part. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year.

(Ord. No. 13-94, 11-8-94; Ord. No. 18-94, § I, 12-13-94)

Sec. 6-22. - Payment of occupation tax by newly established businesses.

In the case of a business subject to occupation tax for a calendar year which was not conducted for any period of time in the city in the preceding year, the owner, proprietor, manager or executive officer of the business liable for the occupation tax shall estimate the gross volume of revenue from the commencing date to the end of the calendar year and such tax shall be paid as provided in this article. Such tax shall be due upon the commencement of the business, and if not paid within 90 days of the commencement thereby shall be subject to a ten percent penalty for delinquency and interest shall accrue at the rate of one and five-tenths percent per month until said tax, penalties and interest are paid in full.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 8, 6-9-98)

Sec. 6-23. - More than one place or line of business.

Where a business is operated at more than one place or where the business includes more than one line, the gross receipts of each location will be entered on a separate occupation tax return and the tax will be calculated at the rate of the dominant line of business conducted by the business identified on a form to be furnished by the city.

(Ord. No. 13-94, 11-8-94)

Sec. 6-24. - Transfer of certificate.

Certificates may be transferred upon payment of fee under the following conditions:

1. Same ownership, different location.
2. Different ownership, same location.
3. Any transfer must meet all applicable zoning requirements. The amount of fee shall be \$50.00.

(Ord. No. 13-94, 11-8-94)

Sec. 6-25. - Veterans' ~~licenses~~certificates and certificates of exemption.

Veterans holding a veteran's license and certificate of exemption shall, before doing business or peddling pursuant to such license and certificate in the city, exhibit such license and certificate and register annually with the ~~city clerk~~finance department and receive a "no fee veteran's occupation tax certificate" from the city. To be exempt from paying ~~an~~-occupation tax under this chapter, a veteran must qualify under and comply with O.C.G.A. §§ 43-12-1 through 43-12-8. This exemption shall apply to only one business at a time owned and operated by the veteran and shall not apply to multiple businesses or locations for the same veteran.

(Ord. No. 13-94, 11-8-94)

Sec. 6-26. - Authority to inspect certificates.

The city taxing authorities, chief of police, all police officers, code enforcement officers, finance department staff and any authorized agent of the city taxing authorities shall have the right to inspect all certificates and to require the exhibition of the same.

(Ord. No. 13-94, 11-8-94)

Sec. 6-27. - Returns confidential.

Except in the case of judicial proceedings or other proceedings necessary to collect the occupation tax hereby levied, it shall be unlawful for any officer, employee, agent or clerk of the city or any other person to divulge or make known in any manner the amount of gross receipts or any particulars set forth or disclosed in any occupation tax return required under this article. All contents of said return shall be confidential and open only to the officials, employees, agents or clerks of the city using said returns for the purpose of this occupation tax levy and the collection of the tax. Independent auditors or bookkeepers employed by the city shall be classed as "employees". Nothing herein shall be construed to prohibit the publication by the city officials of statistics, so classified as to prevent the identification of particular reports or returns and items thereof, or the inspection of the records by duly qualified employees of the tax departments of the State of Georgia or of the United States, and other local governments. Information provided by a business or practitioner may be disclosed to the governing authority of another local government for occupational tax purposes.

(Ord. No. 13-94, 11-8-94)

Sec. 6-28. - Inspection of books and records.

In any case the city, through its officers, agents, employees or representatives, may inspect the books of the business for which returns are made. The city shall have the right to inspect the books or records for the business of which the return was made in the city, and upon the demand of the city such books or records shall be submitted for inspection by a representative of the city within 30 days. Provided, however, that no person shall be required to disclose information to the city which is deemed to be a privileged communication pursuant to O.C.G.A. §§ 24-9-21, 24-9-24, or 24-9-40. Failure of submission of such books or records within 30 days shall be grounds for the imposition of a ten percent penalty against such person. Adequate records shall be kept in the city for examination by the city and its officers at their discretion. If after examination of the books or records it is determined that a deficiency occurs as a result of under reporting, a penalty of ten percent of the deficiency and an additional one percent of the deficiency for each month or fraction thereof that the deficiency was due and unpaid shall be assessed.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 9, 6-9-98)

Sec. 6-29. - Effect of failure to comply with occupational tax requirements.

Any person, his manager, agent, or employee who is required to make occupational tax returns, and who fails to make said returns within the time and in the manner herein provided, or who refuses to amend such returns so as to set forth the truth, or who makes false returns or who fails to produce the occupation tax certificate when requested to do so by the city; and any person, his manager, agent, or employee who refuses to permit an inspection of books in his charge except as provided herein when the officer, agent, employee, or representative of the city requests such inspection, during business hours, for the purpose of determining the accuracy of the returns herein provided for, shall be subject to penalties as provided in section 6-20.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 10, 6-9-98)

Sec. 6-30. - Amendment, repeal of provision.

This article shall be subject to amendment or repeal, in whole or in part, at any time, and no such amendment or repeal shall be construed to deny the right of the council to assess and collect any of the taxes or other charges prescribed. Said amendment may increase or lower the amounts and tax rates of any occupation and may change the classification thereof. The payment of any occupation tax provided for shall not be construed as prohibiting the levy or collection by the city of additional occupation taxes upon the same person, property or business.

(Ord. No. 13-94, 11-8-94)

Sec. 6-31. - Applications of provisions to prior ordinance.

This article does not repeal or affect the force of any part of any ordinance heretofore passed where taxes levied under such prior ordinance have not been paid in full. So much and such parts of ordinances heretofore and hereinafter passed as provided for the issuing and enforcing of execution for any tax or assessment required by such ordinances, or that imposed fines or penalties for the nonpayment of such tax, or for failure to pay regulatory fees provided for in said ordinance or ordinances, or failure to comply with any other provisions hereof, shall continue and remain in force until such tax, regulatory fee, or assessment shall be fully paid.

(Ord. No. 13-94, 11-8-94)

Sec. 6-32. - Enforcement of provision.

It is hereby made the duty of the city to see that the provisions of this article relating to occupation taxes are observed; and to summon all violators of the same to appear before the municipal court. It is hereby made the further duty of the city and its officers, to inspect all certificates issued by the city, as often as in their judgment it may seem necessary to determine whether the certificate held is the proper one for the business sought to be transacted thereunder.

(Ord. No. 13-94, 11-8-94)

Sec. 6-33. - Provisions to remain in full force and effect until changed by council.

This article shall remain in full force and effect until changed by amendment adopted by the council. All provisions hereto relating to any form of tax herein levied shall remain in full force and effect until such taxes have been paid in full.

(Ord. No. 13-94, 11-8-94)

Sec. 6-34. - Option to establish exemption or reduction in occupation tax.

- (a) The council may ~~be by~~ subsequent ordinance or resolution provide for an exemption or reduction in occupation tax to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting or encouraging selected types of businesses or practitioners of selected occupations or professions to locate within the city or a part of a plan to retain or encourage expansion of existing business or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious, and the reasons shall be set forth in the minutes of the city council.
- (b) Notwithstanding, it is apparent to the city that attracting, retaining and encouraging expansion of certain types of manufacturing businesses within the city is vital to the economic well-being of the citizens of the city by providing jobs and increasing the property tax base; therefore, as part of an economic plan of development within the city, each manufacturing business classified with an SIC code beginning with section 20 and continuing through and including section 39 shall be given a ten dollar per employee credit as a reduction in the annual occupational tax due by such manufacturing business.

"Employee" means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099. In calculating the number of employees for which credit is to be given, the manufacturer shall use its average daily complement of employees for the preceding year.

- (c) *New vehicle dealerships.* Notwithstanding, the city has determined that it is in the best interest of the residents and taxpayers to provide for jobs, increase the property tax base and sales tax receipts and to stimulate economic development, the city shall levy and collect an occupation tax on all new vehicle dealerships located within the city as defined in this section herein. The tax on new vehicle dealerships shall be levied on the total gross income of the new vehicle dealership as reported by said dealership to its automobile manufacturer on the manufacturer's monthly financial statements in combination with the profitability ratio for the new vehicle dealerships as measured by nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Revenue Service or successor agencies of the United States. Profitability rates for new vehicle dealerships shall be determined in accordance with subsections (c) and (h) of article I, occupational tax of chapter 6, business, City Code of Ordinances. Notwithstanding the language in subsection 6-5(c) of article I, occupational tax of chapter 6, business, City Code of Ordinances, for purposes of this section, the tax rate will be based upon the applicable tax rate per \$1,000.00 of gross income. Further, for purposes of this section, "new vehicle

dealerships" shall be defined as any new auto dealership located within the city that is licensed, authorized, accepted and approved as a franchisee of an automobile manufacturer that shall:

- (1) Be required to maintain minimum working capital requirements per manufacturer;
- (2) Be responsible for market share per trade area as set by the manufacturer on new vehicles;
- (3) Be responsible for maintaining customer satisfaction indexes per manufacturer's requirements on new vehicles sold and serviced while under the manufacturer's warranty;
- (4) Be responsible for ongoing training and certification of all employees, especially sales, service, and parts employees as required by the manufacturer on new vehicles; and
- (5) Be responsible for carrying manufacturer's required level of parts inventory and necessary tools to provide service on new vehicles.

(Ord. No. 13-94, 11-8-94; Ord. No. 95-3, § I, 3-15-95; Ord. No. 04-11, § I, 5-25-04)

Sec. 6-35. - Conflicts between specific and general provisions.

Where there is an apparent conflict in this article between specific and general provisions, it is the intention hereof that the specific shall control.

(Ord. No. 13-94, 11-8-94)

Sec. 6-36. - Severability.

If any section, provision, or clause of any part of this article shall be declared invalid or unconstitutional, or if the provisions of any part of this article as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such individuality shall not be construed to affect the portions of this article not so held to be invalid, or the application of this article to other circumstances not so held to be invalid. It is hereby declared as the intent that this article would have been adopted had such invalid portion not been included herein.

(Ord. No. 13-94, 11-8-94)

Sec. 6-37. – Closing a business.

Businesses which cease operations in Newnan must notify the finance department in writing. Failure to renew a certificate does not cancel the certificate. Verbal notifications are not acceptable, as the owner must surrender the current occupational tax certificate to the city so that the business can be properly closed out. A Closed Business Form is the preferred method of closing out a business; the form is available on the City's website or by contacting the finance department.

Sec. 6-3~~87~~. - Repeal of conflicting provisions.

All ordinances or parts of ordinances in conflict with this article, and not preserved hereby, are hereby repealed.

Secs. 6-3~~98~~—6-50. - Reserved.

TABLE 1

SIC Codes Ranked According to Nationwide Average of Profitability Ratios

<u>SIC-Code</u>	Profit Ratio	Tax Class	SIC	Profit Ratio	Tax Class	SIC	Profit Ratio	Tax Class
55	0.84	1	70	3.75	3	32	6.12	6
45	1.26	1	16	3.76	3	27	6.28	6
54	1.8	1	56	3.83	3	14	6.31	6
50	1.82	1	33	3.9	3	26	6.39	6
51	1.82	1	25	3.98	3	36	6.44	6
47	2.29	2	63	4.03	4	81	6.49	6
99	2.3	2	8	4.12	4	29	6.56	6
52	2.45	2	7	4.12	4	87	6.77	6
15	2.5	2	9	4.12	4	62	7.14	7
57	2.55	2	31	4.14	4	49	7.17	7
37	2.71	2	78	4.18	4	79	7.21	7
42	2.74	2	30	4.27	4	38	7.9	7
86	2.75	2	23	4.47	4	35	8.04	8
59	2.77	2	20	4.64	4	64	8.31	8
41	2.84	2	73	4.75	4	48	8.51	8
53	3.15	3	40	4.75	4	65	9.09	9
17	3.28	3	76	4.8	4	28	10.13	10

75	3.29	3	82	5	5	10	10.77	10
22	3.39	3	34	5.18	5	13	11.67	10
80	3.41	3	72	5.29	5	21	13.48	10
58	3.47	3	1	5.43	5	61	31.6	10
83	3.68	3	2	5.43	5	46	39.38	10
12	3.68	3	39	5.44	5	60	41	10
11	3.68	3	89	5.89	5	67	217.5	10
24	3.75	3	84	6.1	6			

TABLE 2

Tax Class by SIC Code and Business Description

SIC	Business Description	Tax Class
1	Agricultural Production - Crops	5
2	Agricultural Production - Livestock	5
7	Agricultural Services	4
8	Forestry	4
9	Fishing, Hunting, and Trapping	4
10	Metal Mining	10
11	Anthracite Mining	3

12	Bituminous Coal and Lignite Mining	3
13	Oil and Gas Extraction	10
14	Mining and Quarrying of Nonmetallic Mineral, Except Fuels	6
15	Building Construction - General Contractors	2
16	Construction Other Than Building - General Contractors	3
17	Construction - Special Trade Contractors	3
20	Manufacturing - Food and Kindred Products	4
22	Manufacturing - Textile Mill Products	3
23	Manufacturing - Apparel and Other Finished Textile Products	4
24	Manufacturing - Lumber and Wood Products, Except Furniture	3
25	Manufacturing - Furniture and Fixtures	3
26	Manufacturing - Paper and Allied Products	3
27	Manufacturing - Printing, Publishing, and Allied Industries	6
28	Manufacturing - Chemicals and Allied Products	10
29	Manufacturing - Petroleum and Related Products	6
30	Manufacturing - Rubber and Miscellaneous Plastic Products	4
31	Manufacturing - Leather and Leather Products	4
32	Manufacturing - Stone, Clay, Glass, and Concrete Products	6
33	Manufacturing - Primary Metal Industries	3
34	Manufacturing - Fabricated Metal Products, Except Machinery and Transportation Equipment	5

35	Manufacturing - Machinery, Except Electrical	8
36	Manufacturing - Electrical and Electrical Machinery, Equipment, and Supplies	6
37	Manufacturing - Transportation Equipment	2
38	Manufacturing - Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks	7
39	Manufacturing - Miscellaneous Manufacturing Equipment	5
40	Railroad Transportation	4
41	Local and Suburban Transit and Interurban Highway Passenger Transportation	2
42	Motor Freight Transportation and Warehousing	2
45	Transportation by Air	1
46	Pipe Lines, Except Natural Gas	10
47	Services Incidental to Transportation	2
48	Communication	8
49	Electrical, Gas, and Sanitary Services (Utilities)	7
50	Wholesale Trade - Durable Goods	1
51	Wholesale Trade - Nondurable Goods	1
52	Retail Trade - Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	2
53	Retail Trade - General Merchandise Stores	3
54	Retail Trade - Food Stores	1
55	Retail Trade - Automotive Dealers and Gasoline Service Stations	1
56	Retail Trade - Apparel and Accessory Stores	3

57	Retail Trade - Furniture, Home Furnishing, and Equipment Stores	2
58	Retail Trade - Eating and Drinking Places	3
59	Retail Trade - Other	2
60	Banking	10
61	Credit Agencies Other Than Banks	10
62	Security and Commodity Brokers, Dealers, Exchanges, and Services	7
63	Insurance Carriers (Underwriters)	4
64	Insurance Agents, Brokers, and Services	8
65	Real Estate	9
67	Holding and Other Investment Offices	10
70	Services - Hotels, Rooming Houses, Camps, and Other Lodging Places	3
72	Services - Personal	5
73	Services - Business	4
75	Automotive Repair, Automotive Services, and Garages	3
76	Miscellaneous Repair Services	4
78	Services - Motion Pictures	4
79	Services Amusement and Recreation, Except Motion Pictures	7
80	Health Services	3
81	Legal Services	6
82	Educational Services	5

83	Social Services	3
86	Membership Organizations	2
87	Professional Services	6
89	Services Not Elsewhere Classified	5
99	Nonclassifiable Establishments	2

Alphabetical Business Classification (SIC) Index *North American Industry Classification System*

The *Alphabetical Business Classification (SIC) North American Industry Classification* Index is not set out herein but available for inspection in the *clerk's finance* office.

9/24/2019

Redlined copy of Chapter 6 with suggested revisions outlined.

Chapter 6 - BUSINESSES

ARTICLE I. - OCCUPATION TAX

Sec. 6-1. - Occupation tax required.

- (a) Each person engaged in any business, trade, profession, or occupation within the city shall pay an occupation tax each calendar year for said business, trade, profession, or occupation. Upon payment of the occupation tax, the ~~city-clerk~~finance department shall issue a certificate showing that the occupation tax has been paid for the current year, which certificate shall be maintained by each person engaged in any business, trade, profession, or occupation and available for inspection by the ~~city-clerk~~finance department or such officer's deputies, or to any police officer of the city so as to aid the city's enforcement of this article and to determine if such tax has been paid.
- (b) Each person engaged in any business, trade, profession, or occupation which does not have a location within the state, which exerts substantial efforts to do business within the city, pursuant to O.C.G.A. § 48-13-7, shall pay an occupation tax each calendar year for said business, trade, profession, or occupation. Upon payment of the occupational tax, the ~~city-clerk~~finance department shall issue a certificate showing that the occupational tax has been paid for the current year. Said certificate shall be maintained and available for inspection by the ~~city-clerk~~finance department or such officer's deputies, or to any police officer of the city upon request.
- (c) It shall be the duty of the city council to enact an occupational tax ordinance, specifying the rate, terms, and conditions upon which such tax shall be levied upon each person doing business within the city. The occupational tax ordinance may be amended as necessary in accordance with this Code.
- (d) It shall be the special duty of the chief of police and other police officers of the city to see that the provisions of this chapter are enforced, and, in the performance of this duty, they shall have the right to inspect each person's occupational tax certificate so as to determine whether the occupational tax has been paid in the current year.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 1, 6-9-98)

Sec. 6-2. - Certificate subject to Charter, ordinance restrictions.

Certificates issued are to be held and used subject to the restrictions provided by the charter and ordinances of the city. Before a certificate is issued such business shall meet all zoning regulations.

(Ord. No. 13-94, 11-8-94)

Sec. 6-3. - Construction of terms; definitions.

- (a) Wherever the term "City of Newnan" is used herein, such term shall be construed to mean "Newnan, Georgia;" wherever the term "City" is used herein, it shall be construed to mean "Newnan, Georgia".
- (b) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
 - (1) ~~Administrative fee~~ means a component of an occupational tax which approximates the reasonable cost of handling and processing the occupation tax.

(2)

(a)

Gross receipts means the total revenue of the business or practitioner for the period, including without limitation to the following:

- (i) Total income without deduction for the cost of goods sold or expenses incurred;
 - (ii) Gain from trading in stocks, bonds, capital assets or instruments of indebtedness;
 - (iii) Proceeds from commissions on the sale of property, goods or service;
 - (iv) Proceeds from fees for services rendered; and
 - (v) Proceeds from rent, interest, royalty or dividend income.
- (b) Gross receipts shall not include the following:
- (i) Sales, use or excise tax;
 - (ii) Sales returns, allowances and discounts;
 - (iii) Interorganizational sales or transfers between or among the units of a parent-subsidary controlled group of corporations as defined by 26 U.S.C. § 1563(a)(1), or between or among the units of a brother-sister controlled group of corporations as defined by 26 U.S.C. § 1563(a)(2), or between or among wholly owned partnerships or other wholly owned entities.
 - (iv) Payments made to a subcontractor or an independent agent; who is employed by the business to perform work related to the business's primary activity. If the subcontractor or independent agents are employed by the business solely to support business operations (i.e. grass cutting, janitorial services, repairs, maintenance, etc.), then the payments are considered business expenses and shall not be deducted from gross receipts; and
 - (v) Governmental and foundation grants, charitable contributions or the interest income derived from such funds received by a non-profit organization, which employs salaried practitioner otherwise covered by this ordinance, if such funds constitute 80 percent or more of the organization's receipts.
 - (vi) Proceeds from sales to customers outside the state, only when actual receipt of the goods or services takes place outside the state of Georgia.
 - (vii) Sales of product or products which product or products are picked up and delivered from a point located outside the city limits to a final destination point also located outside the city limits, (i.e. said product or products never enter into the city limits).
- (3) — *Location of office* shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office.
- (4) — *Occupation tax* means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, profession or business for revenue raising purposes.
- (5) — *Regulatory fees* means payments, whether designated as license fees, permit fees or by another name, which are required by the city as an exercise of its police power and as a part of or as an aid to regulation of an occupation, profession or business. The amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the city. A regulatory fee may not include an administrative fee. Regulatory fees do not include development impact fees as defined by paragraph (8) of O.C.G.A. section 36-71-2 or their costs or conditions of zoning or land development.
- (6) — *Dominant line* means the type of business within a multiple line business that the greatest amount of income is derived from.

- (7) — *Person* wherever used in this ordinance shall be held to include sole proprietors, corporations, partnerships or any other form of business organization.
- (8) — *Practitioner of professions or occupation* is one who by state law requires state licensure regulating such profession or occupation.
- (9) — *Practitioners of professions and occupations* shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

(Ord. No. 13-94, 11-8-94; Ord. No. 95-4, § I, 3-15-95; Ord. No. 95-44, §§ I—IV, 12-12-95; Ord. No. 04-15, § I, 5-25-04)

Sec. 6-4. - Administrative fee.

A non-prorated, non-refundable administrative fee of ~~\$20.00~~\$25.00 shall be required on all business occupation tax accounts for the initial start-up, renewal or re-opening of those accounts.

(Ord. No. 13-94, 11-8-94)

Sec. 6-5. - Occupation tax levied; restrictions.

- (a) — An occupation tax shall be levied upon those businesses and practitioners of professions and occupations with one or more locations or offices within the corporate limits of the city, and upon the applicable out-of-state businesses with no location or office in Georgia pursuant to O.C.G.A. § 48-13-7 based upon the following criteria:

The tax shall be levied on the gross receipts of the business or practitioner in combination with the profitability ratio for the type of business, profession or occupation as measured by nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service or successor agencies of the United States.

The minimum occupational tax to be charged for new applications and renewals shall be set at \$25.00 annually, or the amount calculated based on gross receipts reported, whichever is greater. The maximum amount of occupational tax charged annually shall not exceed \$500,000, regardless of the gross receipts calculation.

- (b) — To determine basic profitability ratios, each business, practitioner, and occupation is classified according to the ~~Standard Industrial~~North American Industry Classification ~~System (SIC)~~NAICS ~~code~~. Table 1 of this chapter contains a listing of two-digit ~~SIC~~ codes, with their corresponding profit ratios and tax classes. Table 2 of this chapter contains a listing of two-digit ~~SIC~~ codes, with their corresponding business descriptions and tax classes. In addition to Tables 1 and 2 which are included with this chapter, an ~~Alphabetical Business Classification (SIC)~~NAICS Index is on file and available for inspection in the ~~clerk's finance~~ office.

- (c) Occupation tax schedule:

The tax classification for each business, trade, profession or occupation is as follows:

Profitability Ratio/ Tax Class	Tax Rate per \$1,000 of Gross Receipts
Class 1	1.200

Class 2	1.250
Class 3	1.300
Class 4	1.350
Class 5	1.400
Class 6	1.450
Class 7	1.500
Class 8	1.550
Class 9	1.600
Class 10	1.650

- (d) —(1) A business or practitioner shall not be required to pay more than one occupation tax for each of its locations.
- (2) An occupation tax will not be required upon more than 100 percent of a business's gross receipts.
- (3) An occupation tax will not be required on receipts on which such tax has been levied in other localities or states.
- (4) No fee is required for the cost of ascertaining whether or not a business or practitioner has paid occupation tax to another local government, but the burden of showing such payment shall be upon the business or practitioner claiming payment to another local government.

(Ord. No. 13-94, 11-8-94; Ord. No. 95-44, § V, 12-12-95)

Sec. 6-6. - Real estate brokers.

The city shall levy and collect an occupation tax on all real estate brokers who sell property which is located within the corporate limits of the city, which tax shall be based on the occupational tax schedule in section 6-5 of this article with respect to property located within the corporate limits of the city.

(Ord. No. 13-94, 11-8-94)

Sec. 6-7. - Professionals.

Practitioners of professions listed below shall elect as their entire occupation tax one of the following:

- (1) The occupation tax based on gross receipts combined with profitability ratios as set forth herein.
- (2) — A fee of \$400.00 per practitioner who is licensed to provide the service, such tax to be paid at the practitioner's office or location; provided, however, that a practitioner paying according to this paragraph shall not be required to provide information to the local government relating to the gross receipts of the business or practitioner. The per practitioner fee of \$400 shall include apply to all each persons in the business who qualify-qualifies as a practitioner under the state's regulatory guidelines and framework. Additionally, a separate occupational tax certificate is required for each professional employed by the business, if the business chooses to pay occupational taxes by professional rather than the gross receipts method.
- (3) — Practitioners include only those specific professions and occupations listed in O.C.G.A. § 48-13-9, paragraphs (1) through (18) of subsection (c): Lawyers; Physicians licensed under Chapter 34 of Title 43; Osteopaths licensed under Chapter 34 of Title 43; Chiropractors; Podiatrists; Dentists; Optometrists; Psychologists; Veterinarians; Landscape architects; Land surveyors; Practitioners of physiotherapy; Public accountants; Embalmers; Funeral directors; Civil, mechanical, hydraulic, or electrical engineers; Architects; and Marriage and family therapists, social workers, and professional counselors.

(Ord. No. 13-94, 11-8-94)

Sec. 6-8. - Paying occupation tax of business with no location in Georgia.

The council requires a registration and the assessment of an occupational tax on those businesses and practitioners of professions with no location or office in the State of Georgia if the business' largest dollar volume of business in Georgia is in the city and the business or practitioner:

- (1) Has one or more employees or agents who exert substantial efforts within the jurisdiction of the city for the purpose of soliciting business or serving customers or clients; or
- (2) Owns personal or real property which generates income and which is located within the jurisdiction of the city.

(Ord. No. 13-94, 11-8-94)

Sec. 6-9. - Each line of business to be identified on business registration.

The business registration of each business operated within the city shall identify the line or lines of business that the business conducts. Each business shall register its line of business with the city clerk/finance department, and have that line of business noted upon the occupational tax certificate within 90 days of the commencement of such business within the city.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 2, 6-9-98)

Sec. 6-10. - The number of businesses considered operating in city.

Where a person conducts business at more than one store or place, each store or place shall be considered a separate business for the purpose of occupation tax.

(Ord. No. 13-94, 11-8-94)

Sec. 6-11. - Practitioners exclusively practicing for the government.

Any practitioner whose office is maintained by and who is employed in practice exclusively by the United States, the State, a municipality or county of the State, instrumentalities of the United States, the State or a municipality or county of the State, shall not be required to obtain a license or pay an occupation tax for that practice.

(Ord. No. 13-94, 11-8-94)

Sec. 6-12. - Purpose of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes.

(Ord. No. 13-94, 11-8-94)

Sec. 6-13. - When tax due and payable; delinquency of tax.

~~(a)~~ Each occupation tax shall be for the calendar year unless otherwise specified. Said occupation tax shall be due and payable January 1 of each year and shall, if not paid by April 4 15 of each year, be subject to a ten percent (10%) penalty for delinquency and shall also accrue interest at the rate of one and five-tenths percent per month until said tax, penalties and interest are paid in full. On any new profession, trade, business or occupation begun in the city in 1998 or succeeding years thereafter, the registration and tax shall be due and payable immediately upon beginning business, and shall be subject to a ten percent penalty for delinquency if not paid within 90 days of the commencement of such business, and interest shall accrue at the rate of one and five-tenths percent per month until said tax, penalties and interest are paid in full. In addition, any person who is delinquent in paying such tax shall, upon conviction by the city judge, be punished by a fine not to exceed ~~\$290.00~~\$400.00. Notwithstanding the criminal provisions contained herein, such criminal provisions shall not apply to those professions for which state licensure or registration is required by state law, unless otherwise specifically allowed for by state law.

(b) The city accepts postmark dates when considering the delinquency of occupational taxes and returns. A postmark is an official Postal Service imprint applied in black ink on the address side of a stamped mail piece. A postmark indicates the location and date the Postal Service accepted custody of a mail piece and it cancels affixed postage. Renewals and/or payments postmarked after the due date will be considered late, regardless of the reason. To be considered on time, the official postmark must be present on the envelope received by city staff.

~~(c)~~ —In addition to the above remedies, the city and its officers may proceed to collect the occupation tax in the same manner as provided by law for tax executions.

(Ord. No. 13-94, 11-8-94; Ord. No. 18-94, § I, 12-13-94; Ord. No. 98-18, § 3, 6-9-98)

Sec. 6-14. - Gross receipts of businesses with multiple intra or interstate locations.

For those businesses who have multiple locations inside and outside of the city where the gross receipts can be allocated to each location, the gross receipts used to determine the occupational tax assessed will be those gross receipts attributed to each city location. In the case where the dollar amount of gross receipts attributed locally cannot be determined in those businesses with multiple locations, the total gross receipts will be divided by the total number of locations in the city and elsewhere and allotted to those locations. Upon request, the business or practitioner with a location or office situated in more than one jurisdiction shall provide to the city the following:

- (1) Financial information necessary to allocate the gross receipts of the business or practitioner; and

- (2) Information relating to the allocation of the business' or practitioner's gross receipts by other local governments.

Provided, however, that no person shall be required to disclose information to the city which is deemed to be a privileged communication pursuant to O.C.G.A. §§ 24-9-21, 24-9-24, or 24-9-40. Where the business has locations outside the city and taxation is levied for a criteria other than gross receipts in the other local governments, the city shall not assess more than the allotted share of gross receipts for the local operation.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 4, 6-9-98)

Sec. 6-15. - Exemption for state or local authority and nonprofit organizations.

An occupation tax, regulatory fee, or administrative fee will not be required on any state or local authority or nonprofit organization.

(Ord. No. 95-44, § VI, 12-12-95)

Sec. 6-16. - Evidence of state registration required if applicable; state registration to be displayed.

Each person who is licensed under Title 43 of the State license examining boards shall provide evidence of proper and current state licensure before the city registration may be issued.

Sec. 6-17. - Evidence of qualification required if applicable.

- (a) Any business required to obtain health permits, bonds, certificate of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of a city business registration, show evidence of such qualification.
- (b) Any business required to submit an annual application for continuance of that business shall do so before the registration is issued.

(Ord. No. 13-94, 11-8-94)

Sec. 6-18. - Liability of officers and agents; registration required; failure to pay.

All persons subject to the occupational tax levied pursuant to this article shall be required to pay the tax for said business as described in this Article, and in default thereof the officer or agent soliciting for or representing such business shall be subject to the same penalty as other persons who fail to pay the tax. Every person commencing business in the city after January 1 of each year shall likewise pay the tax herein provided for within 90 days of commencing the same; and any person who fails the tax prior to the delinquency date for the payment of such tax shall be subject to penalties provided herein.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 5, 6-9-98)

Sec. 6-19. - Reserved.

Editor's note— Ord. No. 98-18, § 6, adopted June 9, 1998 repealed section 6-19 in its entirety. Former section 6-19 pertained to when registration and tax due and payable and the effect of transacting business when tax delinquent and derived from Ord. No. 13-94, adopted Nov. 8, 1994; and Ord. No. 18-94, § I, adopted Dec. 13, 1994.

Sec. 6-20. - Penalty for violation.

Any person violating any provisions of this Article shall, upon conviction before the city judge, be fined in an amount not exceeding ~~\$200.00~~\$400.00. Notwithstanding the criminal provisions contained herein, such criminal provisions shall not apply to those professions for which state licensure or registration is required by state law, unless otherwise specifically allowed for by state law.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 7, 6-9-98)

Sec. 6-21. - Occupation taxes levied on business to be transacted during calendar year; filing of returns showing gross receipts during preceding calendar year.

- (A) —All occupation taxes levied by this article are levied on amount of business to be transacted during the calendar year. However, for convenience of both the city and the taxpayer, and the necessity of making numerous returns, those businesses subject to the occupation tax levied herein, on or before the times hereinafter set forth, file with the city and its officers the returns hereinafter specifically provided for, showing the gross receipts of that business during the preceding calendar year.
- (b) —The owner, proprietor, manager, secretary, or other officer of the business subject to said occupation tax for the current calendar year shall, at the end of the preceding year, and on or before April ~~4-15~~ of the current calendar year, file with the city and its officers, on a renewal form furnished by the city clerk/finance department, a signed return setting forth the amount of gross receipts of such business for the entire preceding calendar year. This return will be used to determine the final tax for the calendar year just completed and as an estimate of the gross receipts and occupation tax for the current year.
- (c) — Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis, which figure shall bear the same ratio to the amount of gross receipts for such part year as the full year bears to such part. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year.

(Ord. No. 13-94, 11-8-94; Ord. No. 18-94, § I, 12-13-94)

Sec. 6-22. - Payment of occupation tax by newly established businesses.

In the case of a business subject to occupation tax for a calendar year which was not conducted for any period of time in the city in the preceding year, the owner, proprietor, manager or executive officer of the business liable for the occupation tax shall estimate the gross volume of revenue from the commencing date to the end of the calendar year and such tax shall be paid as provided in this article. Such tax shall be due upon the commencement of the business, and if not paid within 90 days of the commencement thereby shall be subject to a ten percent penalty for delinquency and interest shall accrue at the rate of one and five-tenths percent per month until said tax, penalties and interest are paid in full.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 8, 6-9-98)

Sec. 6-23. - More than one place or line of business.

Where a business is operated at more than one place or where the business includes more than one line, the gross receipts of each location will be entered on a separate occupation tax return and the tax will be calculated at the rate of the dominant line of business conducted by the business identified on a form to be furnished by the city.

(Ord. No. 13-94, 11-8-94)

Sec. 6-24. - Transfer of certificate.

Certificates may be transferred upon payment of fee under the following conditions:

1. Same ownership, different location.
2. Different ownership, same location.
3. Any transfer must meet all applicable zoning requirements. The amount of fee shall be \$50.00.

(Ord. No. 13-94, 11-8-94)

Sec. 6-25. - Veterans' ~~licenses-certificates~~ and certificates of exemption.

Veterans holding a veteran's license and certificate of exemption shall, before doing business or peddling pursuant to such license and certificate in the city, exhibit such license and certificate and register annually with the ~~city-clerk~~finance department and receive a "no fee veteran's occupation tax certificate" from the city. To be exempt from paying ~~aan~~-occupation tax under this chapter, a veteran must qualify under and comply with O.C.G.A. §§ 43-12-1 through 43-12-8. This exemption shall apply to only one business at a time owned and operated by the veteran and shall not apply to multiple businesses or locations for the same veteran.

(Ord. No. 13-94, 11-8-94)

Sec. 6-26. - Authority to inspect certificates.

The city taxing authorities, chief of police, all police officers, ~~code enforcement officers,~~ finance department staff and any authorized agent of the city taxing authorities shall have the right to inspect all certificates and to require the exhibition of the same.

(Ord. No. 13-94, 11-8-94)

Sec. 6-27. - Returns confidential.

Except in the case of judicial proceedings or other proceedings necessary to collect the occupation tax hereby levied, it shall be unlawful for any officer, employee, agent or clerk of the city or any other person to divulge or make known in any manner the amount of gross receipts or any particulars set forth or disclosed in any occupation tax return required under this article. All contents of said return shall be confidential and open only to the officials, employees, agents or clerks of the city using said returns for the purpose of this occupation tax levy and the collection of the tax. Independent auditors or bookkeepers employed by the city shall be classed as "employees". Nothing herein shall be construed to prohibit the publication by the city officials of statistics, so classified as to prevent the identification of particular reports or returns and items thereof, or the inspection of the records by duly qualified employees of the tax departments of the State of Georgia or of the United States, and other local governments. Information provided by a business or practitioner may be disclosed to the governing authority of another local government for occupational tax purposes.

(Ord. No. 13-94, 11-8-94)

Sec. 6-28. - Inspection of books and records.

In any case the city, through its officers, agents, employees or representatives, may inspect the books of the business for which returns are made. The city shall have the right to inspect the books or records for the business of which the return was made in the city, and upon the demand of the city such books or records shall be submitted for inspection by a representative of the city within 30 days. Provided, however, that no person shall be required to disclose information to the city which is deemed to be a privileged communication pursuant to O.C.G.A. §§ 24-9-21, 24-9-24, or 24-9-40. Failure of submission of such books or records within 30 days shall be grounds for the imposition of a ten percent penalty against such person. Adequate records shall be kept in the city for examination by the city and its officers at their discretion. If after examination of the books or records it is determined that a deficiency occurs as a result of under reporting, a penalty of ten percent of the deficiency and an additional one percent of the deficiency for each month or fraction thereof that the deficiency was due and unpaid shall be assessed.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 9, 6-9-98)

Sec. 6-29. - Effect of failure to comply with occupational tax requirements.

Any person, his manager, agent, or employee who is required to make occupational tax returns, and who fails to make said returns within the time and in the manner herein provided, or who refuses to amend such returns so as to set forth the truth, or who makes false returns or who fails to produce the occupation tax certificate when requested to do so by the city; and any person, his manager, agent, or employee who refuses to permit an inspection of books in his charge except as provided herein when the officer, agent, employee, or representative of the city requests such inspection, during business hours, for the purpose of determining the accuracy of the returns herein provided for, shall be subject to penalties as provided in section 6-20.

(Ord. No. 13-94, 11-8-94; Ord. No. 98-18, § 10, 6-9-98)

Sec. 6-30. - Amendment, repeal of provision.

This article shall be subject to amendment or repeal, in whole or in part, at any time, and no such amendment or repeal shall be construed to deny the right of the council to assess and collect any of the taxes or other charges prescribed. Said amendment may increase or lower the amounts and tax rates of any occupation and may change the classification thereof. The payment of any occupation tax provided for shall not be construed as prohibiting the levy or collection by the city of additional occupation taxes upon the same person, property or business.

(Ord. No. 13-94, 11-8-94)

Sec. 6-31. - Applications of provisions to prior ordinance.

This article does not repeal or affect the force of any part of any ordinance heretofore passed where taxes levied under such prior ordinance have not been paid in full. So much and such parts of ordinances heretofore and hereinafter passed as provided for the issuing and enforcing of execution for any tax or assessment required by such ordinances, or that imposed fines or penalties for the nonpayment of such tax, or for failure to pay regulatory fees provided for in said ordinance or ordinances, or failure to comply with any other provisions hereof, shall continue and remain in force until such tax, regulatory fee, or assessment shall be fully paid.

(Ord. No. 13-94, 11-8-94)

Sec. 6-32. - Enforcement of provision.

It is hereby made the duty of the city to see that the provisions of this article relating to occupation taxes are observed; and to summon all violators of the same to appear before the municipal court. It is hereby made the further duty of the city and its officers, to inspect all certificates issued by the city, as often as in their judgment it may seem necessary to determine whether the certificate held is the proper one for the business sought to be transacted thereunder.

(Ord. No. 13-94, 11-8-94)

Sec. 6-33. - Provisions to remain in full force and effect until changed by council.

This article shall remain in full force and effect until changed by amendment adopted by the council. All provisions hereto relating to any form of tax herein levied shall remain in full force and effect until such taxes have been paid in full.

(Ord. No. 13-94, 11-8-94)

Sec. 6-34. - Option to establish exemption or reduction in occupation tax.

- (a) The council may ~~be~~by subsequent ordinance or resolution provide for an exemption or reduction in occupation tax to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting or encouraging selected types of businesses or practitioners of selected occupations or professions to locate within the city or a part of a plan to retain or encourage expansion of existing business or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious, and the reasons shall be set forth in the minutes of the city council.
- (b) Notwithstanding, it is apparent to the city that attracting, retaining and encouraging expansion of certain types of manufacturing businesses within the city is vital to the economic well-being of the citizens of the city by providing jobs and increasing the property tax base; therefore, as part of an economic plan of development within the city, each manufacturing business classified with an SIC code beginning with section 20 and continuing through and including section 39 shall be given a ten dollar per employee credit as a reduction in the annual occupational tax due by such manufacturing business.

"Employee" means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099. In calculating the number of employees for which credit is to be given, the manufacturer shall use its average daily complement of employees for the preceding year.

- (c) *New vehicle dealerships.* Notwithstanding, the city has determined that it is in the best interest of the residents and taxpayers to provide for jobs, increase the property tax base and sales tax receipts and to stimulate economic development, the city shall levy and collect an occupation tax on all new vehicle dealerships located within the city as defined in this section herein. The tax on new vehicle dealerships shall be levied on the total gross income of the new vehicle dealership as reported by said dealership to its automobile manufacturer on the manufacturer's monthly financial statements in combination with the profitability ratio for the new vehicle dealerships as measured by nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Revenue Service or successor agencies of the United States. Profitability rates for new vehicle dealerships shall be determined in accordance with subsections (c) and (h) of article I, occupational tax of chapter 6, business, City Code of Ordinances. Notwithstanding the language in subsection 6-5(c) of article I, occupational tax of chapter 6, business, City Code of Ordinances, for purposes of this section, the tax rate will be based upon the applicable tax rate per \$1,000.00 of gross income. Further, for purposes of this section, "new vehicle

dealerships" shall be defined as any new auto dealership located within the city that is licensed, authorized, accepted and approved as a franchisee of an automobile manufacturer that shall:

- (1) Be required to maintain minimum working capital requirements per manufacturer;
- (2) Be responsible for market share per trade area as set by the manufacturer on new vehicles;
- (3) Be responsible for maintaining customer satisfaction indexes per manufacturer's requirements on new vehicles sold and serviced while under the manufacturer's warranty;
- (4) Be responsible for ongoing training and certification of all employees, especially sales, service, and parts employees as required by the manufacturer on new vehicles; and
- (5) Be responsible for carrying manufacturer's required level of parts inventory and necessary tools to provide service on new vehicles.

(Ord. No. 13-94, 11-8-94; Ord. No. 95-3, § I, 3-15-95; Ord. No. 04-11, § I, 5-25-04)

Sec. 6-35. - Conflicts between specific and general provisions.

Where there is an apparent conflict in this article between specific and general provisions, it is the intention hereof that the specific shall control.

(Ord. No. 13-94, 11-8-94)

Sec. 6-36. - Severability.

If any section, provision, or clause of any part of this article shall be declared invalid or unconstitutional, or if the provisions of any part of this article as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such individuality shall not be construed to affect the portions of this article not so held to be invalid, or the application of this article to other circumstances not so held to be invalid. It is hereby declared as the intent that this article would have been adopted had such invalid portion not been included herein.

(Ord. No. 13-94, 11-8-94)

Sec. 6-37. - Closing a business.

Businesses which cease operations in Newnan must notify the finance department in writing. Failure to renew a certificate does not cancel the certificate. Verbal notifications are not acceptable, as the owner must surrender the current occupational tax certificate to the city so that the business can be properly closed out. A Closed Business Form is the preferred method of closing out a business; the form is available on the City's website or by contacting the finance department.

Sec. 6-3~~87~~. - Repeal of conflicting provisions.

All ordinances or parts of ordinances in conflict with this article, and not preserved hereby, are hereby repealed.

Secs. 6-3~~98~~—6-50. - Reserved.

TABLE 1

SIC Codes Ranked According to Nationwide Average of Profitability Ratios

<u>SIC Code</u>	Profit Ratio	Tax Class	SIC	Profit Ratio	Tax Class	SIC	Profit Ratio	Tax Class
55	0.84	1	70	3.75	3	32	6.12	6
45	1.26	1	16	3.76	3	27	6.28	6
54	1.8	1	56	3.83	3	14	6.31	6
50	1.82	1	33	3.9	3	26	6.39	6
51	1.82	1	25	3.98	3	36	6.44	6
47	2.29	2	63	4.03	4	81	6.49	6
99	2.3	2	8	4.12	4	29	6.56	6
52	2.45	2	7	4.12	4	87	6.77	6
15	2.5	2	9	4.12	4	62	7.14	7
57	2.55	2	31	4.14	4	49	7.17	7
37	2.71	2	78	4.18	4	79	7.21	7
42	2.74	2	30	4.27	4	38	7.9	7
86	2.75	2	23	4.47	4	35	8.04	8
59	2.77	2	20	4.64	4	64	8.31	8
41	2.84	2	73	4.75	4	48	8.51	8
53	3.15	3	40	4.75	4	65	9.09	9
17	3.28	3	76	4.8	4	28	10.13	10

75	3.29	3	82	5	5	10	10.77	10
22	3.39	3	34	5.18	5	13	11.67	10
80	3.41	3	72	5.29	5	21	13.48	10
58	3.47	3	1	5.43	5	61	31.6	10
83	3.68	3	2	5.43	5	46	39.38	10
12	3.68	3	39	5.44	5	60	41	10
11	3.68	3	89	5.89	5	67	217.5	10
24	3.75	3	84	6.1	6			

TABLE 2

Tax Class by SIC Code and Business Description

SIC	Business Description	Tax Class
1	Agricultural Production - Crops	5
2	Agricultural Production - Livestock	5
7	Agricultural Services	4
8	Forestry	4
9	Fishing, Hunting, and Trapping	4
10	Metal Mining	10
11	Anthracite Mining	3

12	Bituminous Coal and Lignite Mining	3
13	Oil and Gas Extraction	10
14	Mining and Quarrying of Nonmetallic Mineral, Except Fuels	6
15	Building Construction - General Contractors	2
16	Construction Other Than Building - General Contractors	3
17	Construction - Special Trade Contractors	3
20	Manufacturing - Food and Kindred Products	4
22	Manufacturing - Textile Mill Products	3
23	Manufacturing - Apparel and Other Finished Textile Products	4
24	Manufacturing - Lumber and Wood Products, Except Furniture	3
25	Manufacturing - Furniture and Fixtures	3
26	Manufacturing - Paper and Allied Products	3
27	Manufacturing - Printing, Publishing, and Allied Industries	6
28	Manufacturing - Chemicals and Allied Products	10
29	Manufacturing - Petroleum and Related Products	6
30	Manufacturing - Rubber and Miscellaneous Plastic Products	4
31	Manufacturing - Leather and Leather Products	4
32	Manufacturing - Stone, Clay, Glass, and Concrete Products	6
33	Manufacturing - Primary Metal Industries	3
34	Manufacturing - Fabricated Metal Products, Except Machinery and Transportation Equipment	5

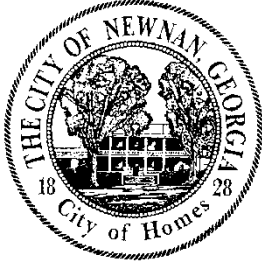
35	Manufacturing - Machinery, Except Electrical	8
36	Manufacturing - Electrical and Electrical Machinery, Equipment, and Supplies	6
37	Manufacturing - Transportation Equipment	2
38	Manufacturing - Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks	7
39	Manufacturing - Miscellaneous Manufacturing Equipment	5
40	Railroad Transportation	4
41	Local and Suburban Transit and Interurban Highway Passenger Transportation	2
42	Motor Freight Transportation and Warehousing	2
45	Transportation by Air	1
46	Pipe Lines, Except Natural Gas	10
47	Services Incidental to Transportation	2
48	Communication	8
49	Electrical, Gas, and Sanitary Services (Utilities)	7
50	Wholesale Trade - Durable Goods	1
51	Wholesale Trade - Nondurable Goods	1
52	Retail Trade - Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	2
53	Retail Trade - General Merchandise Stores	3
54	Retail Trade - Food Stores	1
55	Retail Trade - Automotive Dealers and Gasoline Service Stations	1
56	Retail Trade - Apparel and Accessory Stores	3

57	Retail Trade - Furniture, Home Furnishing, and Equipment Stores	2
58	Retail Trade - Eating and Drinking Places	3
59	Retail Trade - Other	2
60	Banking	10
61	Credit Agencies Other Than Banks	10
62	Security and Commodity Brokers, Dealers, Exchanges, and Services	7
63	Insurance Carriers (Underwriters)	4
64	Insurance Agents, Brokers, and Services	3
65	Real Estate	9
67	Holding and Other Investment Offices	10
70	Services - Hotels, Rooming Houses, Camps, and Other Lodging Places	3
72	Services - Personal	5
73	Services - Business	4
75	Automotive Repair, Automotive Services, and Garages	3
76	Miscellaneous Repair Services	4
78	Services - Motion Pictures	4
79	Services Amusement and Recreation, Except Motion Pictures	7
80	Health Services	3
81	Legal Services	6
82	Educational Services	5

83	Social Services	3
86	Membership Organizations	2
87	Professional Services	6
89	Services Not Elsewhere Classified	5
99	Nonclassifiable Establishments	2

Alphabetical Business Classification (SIC) Index North American Industry Classification System

The **Alphabetical Business Classification (SIC) North American Industry Classification** Index is not set out herein but available for inspection in the clerk's finance office.



City of Newnan, Georgia - Mayor and Council

Date: October 8, 2019 / Second Reading: October 22, 2019

Agenda Item: Hotel-Motel Tax

Prepared by: Cleatus Phillips, City Manager

Purpose: Consideration of an ordinance to authorize imposition of an excise tax on rooms, lodging, and accommodations in the amount of 8% for the purposes of promoting conventions and tourism by a destination marketing organization.

Background: During the 2019 Regular Session of the Georgia General Assembly HB 626 was approved pursuant to OCGA 48-13-51(b), therefore authorizing the City of Newnan to impose an excise tax of 8% on rooms, lodging, and accommodations. This is commonly referred to as "hotel-motel tax". In 1999, the City implemented the tax at a rate of 5%. The additional 3% is restricted for the purposes of promoting tourism, convention, and trade. A minimum of ½ of the 3% must be expended via a destination marketing organization (DMO) and any remaining funds shall be expended on tourism product development.

A matching HB was also approved for Coweta County during the 2019 General Assembly. City staff has been working very closely with the staff at Coweta County to develop the necessary articles to create a joint DMO for the purposes of promoting tourism county-wide. Such articles are being presented in a separate agenda item.

Recommendation: It is the recommendation of staff to adopt the ordinance as presented with an effective date of January 1, 2020.

Attachments: Ordinance

Previous Discussions with Council: N/A

AN ORDINANCE TO AMEND ARTICLE III EXCISE TAX ON HOTELS/MOTELS OF CHAPTER 19, TAXATION OF THE CODE OF ORDINANCES OF THE CITY OF NEWNAN, IMPLEMENT TITLE 48, CHAPTER 13, ARTICLE 3, SECTION 51 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED, - EXCISE TAX ON ROOMS, LODGINGS, AND ACCOMMODATIONS, AND TO PROVIDE FOR THE COLLECTION BY OPERATOR; TO PROVIDE FOR ADMINISTRATION; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the governing body of City of Newnan, a political subdivision of the State of Georgia, is authorized under Title 48, Chapter 13, Article 3, Section 51 of the Official Code of Georgia Annotated to levy certain excise taxes; and

WHEREAS, the City of Newnan, a political subdivision of the State of Georgia is designated as a “special district” pursuant to Title 48, Chapter 13, Article 50.1 of the Official Code of Georgia Annotated for the purpose of implementing an excise tax on rooms, lodging and accommodations; and

WHEREAS, in 1999, pursuant to Title 48, Chapter 13, Article 51.(a)(4.6)(A) of the Official Code of Georgia Annotated, the City of Newnan implemented an excise tax on rooms, lodging and accommodations in the amount of five percent (5%); and

WHEREAS, the City of Newnan and the Newnan Convention Center Authority entered into an Intergovernmental Agreement for the Authority to operate the City’s Conference Center (“Newnan Centre”) and pledged 2% of the 5% excise tax to operations of the Newnan Centre pursuant to the Intergovernmental Agreement’s terms; and

WHEREAS, the General Assembly of the State of Georgia enacted 2019 Ga. Laws, Page 3660 (Act 89 HB 626 of the 2019 Regular Session of the Georgia General Assembly) which authorizes imposition of an excise tax of up to eight percent 8% by the City of Newnan pursuant to O.C.G.A. § 48-13-51(b); and

WHEREAS, the governing body of the City of Newnan, a political subdivision of the State of Georgia, is required under Title 48, Chapter 13, Article 3, Section 51 of the Official Code of Georgia Annotated to make available a designated portion of funds so collected for the purpose of promoting, attracting, stimulating, and developing conventions and tourism by a destination marketing organization in the City of Newnan and Coweta County; and

WHEREAS, the City of Newnan, a political subdivision of the State of Georgia is authorized under Title 48, Chapter 13, Article 3, Section 51 of the Official Code of Georgia Annotated to make available a designated portion of funds so collected for the purpose of tourism product development in the City of Newnan and Coweta County, with any balance of the funds so designated for the purpose of promoting, attracting, stimulating, and development conventions and tourism by a destination marketing organization in the City of Newnan and Coweta County.

NOW THEREFORE, BE IT ORDAINED by the City Council of City of Newnan, Coweta County, Georgia and it is hereby ordained by the Authority of the same that upon the effective date of this amendment, Chapter 70, Taxation, Section 70-3 is deleted in its entirety and replaced with the following:

Sec. 19-51. – Hotel-Motel excise tax.

Sec. 19-51.1 - Intent, purpose, and authorization to levy excise tax.

- (a) The intent of this article is to levy an excise tax on rooms, lodgings, and accommodations to provide additional funding for the promotion of tourism, conventions, and trade shows in the City of Newnan and Coweta County, Georgia.
- (b) The purpose of this article is to enact an excise tax upon the furnishing for value to the public of any room or rooms, lodgings or accommodations furnished by any person or legal entity licensed by or required to pay business or occupational taxes to the City of Newnan for operating within the City a hotel, motel, inn, lodge, tourist camp, tourist cabin, rental cabin or any other place in which rooms, lodgings, or accommodations are regularly furnished for value.
- (c) This excise tax shall be imposed under the authorization of 2019 Ga. Laws, Page 3660 (Act 89 HB 626 of the 2019 Regular Session of the Georgia General Assembly) pursuant to O.C.G.A. § 48-13-51(b).

Sec.19-51.2. - Definitions.

The following terms, for the purposes of this article, shall be defined as follows:

- (a) *City*. The City of Newnan.
- (b) *City Manager*. The duly appointed City Manager or his/her designee.
- (c) *Destination marketing organization*. A private sector nonprofit organization or other private entity which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986 that is supported by the tax under this article, government budget allocations, private membership, or any combination thereof and the primary responsibilities of which are to encourage travelers to visit their destinations, encourage meetings and expositions in the area, and provide visitor assistance and support as needed.
- (d) *Due date*. The 20th day after the close of monthly period for which tax is to be computed.
- (e) *Estimated Tax Liability*. The lodging provider's prospective tax liability based upon the average monthly tax remittance in the prior fiscal year, as adjusted for change in tax rate or substantial change in circumstances due to damage to the hotel.
- (f) *Finance Director*. The duly appointed administrator of finances for the City of Newnan, Georgia.
- (g) *Folio*. The primary documentation produced by a hotel or other Facility that demonstrates interaction between the operator and the occupant, and which, at the minimum, reflects the name and address given by the occupant, the date(s) of

occupancy, the amount of rent charged for each date together with the amounts of applicable excise tax(es), and the method(s) of payment.

(h) *Guest room.* Accommodations occupied, or intended, arranged, or designated for transient occupancy of not more than 30 continuous days, by one or more occupants for the purpose of living quarters or residential use.

(i) *Hotel.* Includes any hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value and shall apply to the furnishing for value of any room, lodging, or accommodation.

(j) *Hotel/motel tax administrator.* The individual or office designated by the City Manager as the administrative entity to collect and administer the tax provided for in this section and to complete required annual reporting of the tax.

(k) *Innkeeper/lodging provider/operator.* Any person who is subject to taxation under this article for the furnishing for value to the public any rooms, lodgings, or accommodations or any person operating a hotel in the City of Newnan including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, lender in possession, licensee or any other such person operating such hotel.

(l) *Monthly period.* Any calendar month of any year.

(m) *Occupancy.* The use or possession, or the right to use or possession, of any room or apartment in a hotel or motel, or the right to use or possession of the furnishings or to the services and accommodations accompanying the use and possession of the room or apartment.

(n) *Occupant.* Any person (or persons utilizing as a single unit) who, for a consideration, uses, possesses, or has the right to use or possess, any room or hotel or motel under any lease, concession, permit, right of access, license, agreement or otherwise.

(o) *Permanent resident.* Any occupant who as of a given date shall have occupied, or has or shall have the right of occupancy, of any guest room in a hotel for more than 30 consecutive days.

(p) *Person.* An individual, firm partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, nonprofit corporation or cooperative nonprofit membership, estate, trust, business trust receiver, trustee, syndicate, business entity, or any other group or combination acting as a unit, to include the plural as well as the singular number, excepting, however, the United States of America, the State of Georgia, and any political subdivision of either thereof upon which the County is without power to impose the tax herein provided.

(q) *Private sector non-profit organization.* A chamber of commerce, a convention and visitors bureau, a regional travel association, or any other private group organized for similar purposes which is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986; provided, however, that a county or municipality which has prior to April 1, 1990, contracted for a required expenditure under this Code section with a private group which is exempt from federal income tax under provisions of Section 501(c) of the Internal Revenue Code other than Section 501(c)(6) may continue to contract for required expenditures with such a private group.

(r) *Promoting tourism, conventions, and trade shows.* Planning, conducting, or participating in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows.

(s) *Rent.* The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the lodging provider to the occupant, without any deduction therefrom whatsoever.

(t) *Return.* Any return filed or required to be filed as provided in this article.

(u) *State authority.* An authority created by state law which serves a state-wide function, including, but not limited to, the Georgia Agricultural Exposition Authority, Georgia Aviation Authority, Georgia Building Authority, Georgia Development Authority, Georgia Environmental Finance Authority, Jekyll Island Authority, Lake Allatoona Preservation Authority, Georgia Medical Center Authority, Georgia Ports Authority, Georgia Regional Transportation Authority, State Road and Tollway Authority, Sports Hall of Fame Authority, Georgia Technology Authority, and Georgia World Congress Center Authority, but shall not mean an authority created for support of a local government or a local purpose or function and shall not include authorities such as area planning and development commissions and any organizational entities they may create, regional commissions and any organizational entities they may create, or local water and sewer authorities.

(v) *Tax.* The excise tax of eight percent on occupants imposed by this article, as provided for by O.C.G.A. § 48-13-51(b).

(w) *Tourism product development.* The expenditure of funds for the creation or expansion of physical attractions which are available and open to the public and which improve destination appeal to visitors, support visitors' experience, and are used by visitors. Such expenditures may include capital costs and operating expenses. Tourism product development may include:

- (1) Lodging for the public for no longer than 30 consecutive days to the same customer;

- (2) Overnight or short-term sites for recreational vehicles, trailers, campers, or tents;
- (3) Meeting, convention, exhibit, and public assembly facilities;
- (4) Sports stadiums, arenas, and complexes;
- (5) Golf courses associated with a resort development that are open to the general public on a contract or fee basis;
- (6) Racing facilities, including dragstrips, motorcycle racetracks, and auto or stock car racetracks or speedways;
- (7) Amusement centers, amusement parks, theme parks, or amusement piers;
- (8) Hunting preserves, trapping preserves, or fishing preserves or lakes;
- (9) Visitor information and welcome centers;
- (10) Wayfinding signage;
- (11) Permanent, nonmigrating carnivals or fairs;
- (12) Airplanes, helicopters, buses, vans, or boats for excursions or sightseeing;
- (13) Boat rentals, boat party fishing services, rowboat or canoe rentals, horse shows, natural wonder attractions, picnic grounds, river-rafting services, scenic railroads for amusement, aerial tramways, rodeos, water slides, or wave pools;
- (14) Museums, planetariums, art galleries, botanical gardens, aquariums, or zoological gardens;
- (15) Parks, trails, and other recreational facilities; or
- (16) Performing arts facilities.

Sec.19-51.3. - Tax rate.

There is hereby set and levied on the occupant of a guest room of any hotel/motel/cabin/residence/lodge located within the City of Newnan a tax in the amount of eight percent (8%) of the gross rent for such occupancy.

Sec. 19-51.4. - Exemptions.

In accordance with O.C.G.A. § 48-13-51(h), the tax imposed by this article shall not apply to:

- (1) Charges made for any rooms, lodgings, or accommodations provided to any persons who certify that they are staying in such room, lodging, or accommodation as a result of the destruction of their home or residence by fire or other casualty;
- (2) The use of meeting rooms and other such facilities or any rooms, lodgings, or accommodations provided without charge;
- (3) Any rooms, lodgings, or accommodations furnished for a period of one or more days for use by Georgia state or local governmental officials or employees when traveling on official business. Notwithstanding the availability of any other means of identifying the person as a state or local government official or

employee, whenever a person pays for any rooms, lodgings, or accommodations with a state or local government credit or debit card, such rooms, lodgings, or accommodations shall be deemed to have been furnished for use by a Georgia state or local government official or employee traveling on official business for purposes of the exemption provided by this paragraph. For purpose of the exemption provided under this paragraph, a local government official or employee shall include officials or employees of counties, municipalities, consolidated governments, or county or independent school districts; or

- (4) Charges made for continuous use of any rooms, lodgings, or accommodations after the first 30 days of continuous occupancy. (O.C.G.A. § 48-13-51(h)).

Sec.19-51.5. - Use of revenue.

- (a) Pursuant to O.C.G.A. § 48-13-51(b)(5)(A), an amount equal to not less than 50 percent of the total amount of taxes collected that exceed the amount of taxes that would be collected at the rate of five percent (5%) shall be expended for promoting tourism, conventions, and trade shows by the destination marketing organization, as defined in this ordinance, designated by the City Council of the City of Newnan, Georgia; and

- (b) Pursuant to O.C.G.A. § 48-13-51(b)(5)(B), the remaining amount of taxes collected that exceed the amount of taxes that would be collected at the rate of five percent (5%) which are not otherwise expended under (a) of this Section shall be expended for tourism product development, as defined in this ordinance; and

- (c) Pursuant to O.C.G.A. § 48-13-51(a)(4.6)(A) and O.C.G.A. §48-13-51(a)(e)(2), the amount of taxes that would be collected at the rate of five percent, as referenced in (a) and (b) of this Section, an amount equal to the amount by which the total taxes collected under this Code section for a municipality within a county in which a convention center authority has been created by local Act of the General Assembly and which authority is in existence on or before July 1, 2001, for the purpose of owning or operating a facility may levy a tax under this Code section at a rate of five percent (5%). A county or municipality levying a tax pursuant to this paragraph shall expend (in each fiscal year during which the tax is collected under this paragraph) an amount equal to at least 40 percent (40%) of the total taxes collected at the rate of 5 percent (5%) for the purpose of:

- (i) Promoting tourism, conventions, and trade shows;
- (ii) Funding and supporting a facility owned or operated by such convention and visitors authority; or
- (iii) For some combination of such purposes.

- (d) Specifically, the allocations of the eight percent (8%) levy shall be as follows: 3% for general City operations; 2% for the purpose of promoting tourism, conventions

and trade shows such amount to be allocated to the Newnan Convention Center Authority; up to 3%, but a minimum of 1.5% through a contract with a destination marketing organization for the purpose of promoting tourism, trade shows, and conventions; and 1.5% for capital projects and operating costs for tourism product development as defined by O.C.G.A. §48-13-202(6). All such amounts shall be approved by the City in its annual budget process.

Sec.19-51.6. - Record keeping.

- (a) *Records required from operators; form.* Every operator renting guestrooms in this City of Newnan to a person shall keep such records, receipts, invoices, and other pertinent papers in such form as the hotel/motel tax administrator may require or may be required by O.C.G.A. § 48-13-53.4 and § 48-13-62.
- (b) *Examination of records; audits.* The hotel/motel tax administrator or any person authorized in writing by the hotel/motel tax administrator may examine the books, papers, records, financial reports, equipment and other facilities of any operator renting guestrooms to a person and any operator liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.
- (c) *Authority to require reports; contents.* In administration of the provisions of this article, the hotel/motel tax administrator may require the filing of reports by any persons or class of persons having in such person's possession or custody information relating to rentals of guestrooms which are subject to the tax. The reports shall be filed with the hotel/motel tax administrator, when required by the hotel/motel tax administrator, and shall set forth the rental charged for each occupancy, the date of occupancy, and such other information as the hotel/motel tax administrator may require.

Sec. 19-51.7. - Registration of operator; form and contents; execution; certificate of authority.

- (a) Every person engaging or about to engage in business as an operator of a hotel in this City of Newnan shall immediately register with the hotel/motel tax administrator, on a form provided by the hotel/motel tax administrator. Persons engaged in such business must so register not later than 30 days after the date of adoption of the ordinance from which this section derives, and the tax is imposed as set forth in section 19-51.3, but such privilege of registration after the imposition of such tax shall not relieve any person from the obligation of payment or collection of tax on and after the date of imposition thereof, regardless of registration.
- (b) Such registration shall set forth the name under which such person transacts business or intends to transact business, the location of this place of business and such other information which would facilitate the collection of the tax as the hotel/motel tax administrator may require. The registration shall be signed by the owner if a natural person; in case of ownership by an association or partnership, by a member or partner; and in the case of ownership by a corporation, by an

officer. The hotel/motel tax administrator shall, after such registration, issue, without charge, a certificate of authority to each operator to collect the tax from the occupant. A separate registration shall be required for each place of business of an operator. Each certificate shall state the name and location of the business to which it is applicable.

Sec.19-51.8. - Determination generally; returns; payments.

- (a) *Due date of taxes and returns.* All amount of such taxes shall be due and payable as provided for in O.C.G.A. § 48-13-53.2.
- (b) *Collection fee allowed operators.* Operators collecting the tax shall be allowed a percentage of the tax due and accounted for as provided for in O.C.G.A. § 48-13-52.

Sec.19-51.9. - Deficiency determinations.

- (a) *Recomputation of tax; authority to make; basis of recomputation.* If the hotel/motel tax administrator is not satisfied with the return of the tax or the amount of the tax required to be paid to the City of Newnan by any person, he/she may compute and determine the amount required to be paid upon the basis of any information within his/her possession or that may come into his/her possession. One or more deficiency determinations may be made of the amount due for one or more monthly period.
- (b) *Interest on deficiency.* The amount of the determination shall bear interest at the rate of three-fourths of one percent per month, or fraction thereof from the due date of taxes.
- (c) *Notice of determination; service.* The hotel/motel tax administrator or his/her designated representatives shall give to the operator written notice of his/her determination. The notice may be served personally or by mail; if by mail, such service shall be addressed to the operator at his address as it appears in the records of the hotel/motel tax administrator. Service by mail is complete when delivered by certified mail with a receipt signed by addressee.
- (d) *Time within which notice of deficiency determination to be mailed.* Except in the case of failure to make a return, every notice of a deficiency determination shall be mailed within three years after the 20th day of the calendar month following the monthly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period should last expire.

Sec. 19-51.10. - Determination if no return made.

- (a) *Estimate of gross receipts.* If any person fails to make a return, the hotel/motel tax administrator shall make an estimate of the amount of the gross receipts of the person, or as the case may be, of the amount of the total rentals in this City of Newnan which are subject to the tax. The estimate shall be made for the period in respect to which the person failed to make the return and shall be based upon any

information which is or may come into the possession of the hotel/motel tax administrator. Written notice shall be given in the manner prescribed in Section 19-51.9(c).

- (b) *Interest on amount found due.* The amount of the determination shall bear interest at the rate of three-fourths of one percent per month, or fraction thereof, from the 20th day of the month following the monthly period, for which the amount or any portion thereof should have been returned, until the date of payment.

Sec.19-51.11. - Collection of tax by City of Newnan.

- (a) *Unpaid tax.* Any tax due and payable under this article shall become delinquent for each month after the 20th day of each succeeding month during which it remains unpaid.
- (b) *Action for delinquent tax.* At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the hotel/motel tax administrator may bring an action in a court of competent jurisdiction in the name of the City of Newnan to collect the amount delinquent together with interest, court fees, filing fees, attorney's fees and other legal fees incident thereto.
- (c) *Extensions.* The governing authority may grant an extension for payment of the tax as provided for in O.C.G.A. § 48-13-53.3.
- (d) *Duty to withhold tax.* Duty of successors or assignees of operator to withhold tax from purchase money. Governed by O.C.G.A. § 48-13-53.1.
- (e) *Liability.* Liability for failure to withhold; certificate of notice of amount due; time to enforce successor's liability. Governed by O.C.G.A. § 48-13-53.1.
- (f) *Tax credit for interest paid more than once or erroneously or illegally collected.* Whenever the amount of any tax or interest has been paid more than once, or has been erroneously or illegally collected or received by the City of Newnan under this article, it may be offset by the hotel/motel tax administrator. If the operator or person determines that he/she has overpaid or paid more than once, which fact has not been determined by the hotel/motel tax administrator, he/she will have three years from the date of payment to file a claim, in writing, stating the specific grounds upon which the claim is founded. The claim shall be audited. If the claim is approved by the hotel/motel tax administrator, the excess amount paid the City of Newnan may be credited on any amounts then due and payable from the person by whom it was paid, or his/her administrators or executors.

Sec. 19-51.12. - Penalties and punishments for violation of this article.

- (a) *Penalties.* When any person fails to make a return or to pay the full amount of the tax, or when submitting a false or fraudulent return, penalties shall be imposed in accordance with O.C.G.A. § 48-13-58.

(b) *Punishments.* Any person violating any of the provisions of this article shall be deemed guilty of an offense and, upon conviction thereof, shall be punished as provided in Section 1-14 of the City of Newnan Code of Ordinances except that any person in violation of O.C.G.A. § 48-13-58.1, O.C.G.A. § 48-13-59, O.C.G.A. § 48-13-60, O.C.G.A. § 48-13-61, O.C.G.A. § 48-13-62 and O.C.G.A. § 48-13-63 shall be subject to the applicable penalties and punishments specified on those sections.

Sec. 19-51-13. - Effective date.

The ordinance from which this article derives shall take effect on the 1st day of _____, 2019.

SO ORDAINED in lawfully assembled open session this ____ day of _____, 2019.

ATTEST:

L. Keith Brady, Mayor

Della Hill, City Clerk

Cynthia E. Jenkins, Mayor Pro-Tem

REVIEWED AS TO FORM

George M. Alexander, Councilmember

C. Bradford Sears, Jr.

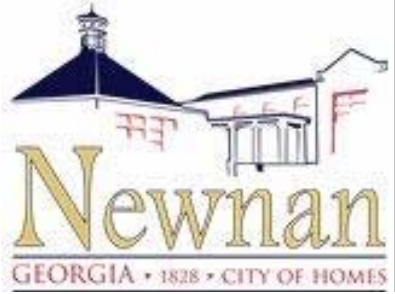
Raymond F. DuBose, Councilmember

Cleatus Phillips, City Manager

Rhodes H. Shell, Councilmember

Dustin Koritko, Councilmember

Paul Guillaume, Councilmember



City of Newnan, Georgia - Mayor and Council

Date: October 22, 2019

Agenda Item: 18 Berry Ave

Prepared and
Presented by: Matt Murray, Code Enforcement Officer

Submitted by: Bill Stephenson, Chief Building Official

Purpose: Owner to update council on his intention to sell the property located at 18 Berry Ave.

Background: Owner: Moten Estate (Dan Moten)

Date Sub-Standard housing file was opened: December 18, 2018

Does the cost to bring this structure into compliance by means of repair exceed 50% of the structure's assessed tax value? **YES**

On December 18, 2018 the Building Department conducted an inspection of the premises and found the structure to be unsafe, uninhabitable. The structure has been determined to be unsafe as set forth by City Ordinance Section 5-24. (a), Sub-sections (3, 5, 6, 7, 8, 9, 10).

Options:

1. To review the owners status update regarding the sale of the property.
2. Other direction from council.

Funding: Not Applicable

Recommendation: Staff is requesting Council's approval to proceed with Option1.

**Previous Discussions
With Council:**

April 19, 2019 – Info only provided to council.

June 18, 2019 – Public hearing was held and Resolution was adopted to repair or demolish (inform council of intent) within 30 days.

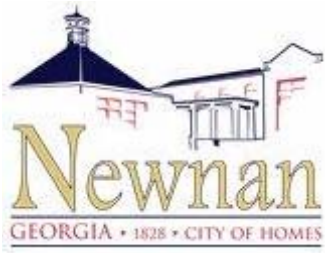
July 16, 2019 – Owner was given a 90 day resolution deadline to repair or demolish. Owner informed council he had decided to sell the property. Deadline expires October 15, 2019.

October 8, 2019 – Owner informed council he was selling property with a closing of 10/9/19. Will update council on October 22.





City of Newnan, Georgia - Mayor and Council



Date: October 22, 2019
Agenda Item: 100 Sprayberry Rd, Newnan, Ga 30263
Prepared and Presented by:
Matt Murray, Code Enforcement Officer
Submitted by: Bill Stephenson, Chief Building Official

Purpose: To review owner's request for an extension to repair the dilapidated structure located at 100 Sprayberry Rd, Newnan, Ga 30263

Background: Owner: Edwin Jean-Pierre
Date Sub-Standard housing file was opened: September 26, 2016.
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, 2018 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. To approve owner's request for an extension.
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 28, 2019 – Council informed of conditions.

July 16, 2019 – Public Hearing was requested.

August 27, 2019 – Public hearing was held on this property and a resolution deadline of 60 days was granted by council.





Foundation Christian Church
30-A East Washington St.
Newnan, GA 30263
Tel (770) 396-2220
Jason@FoundationNewnan.com
www.FoundationNewnan.com



OCTOBER 7, 2019

Libby Winn
c/o: Newnan City Council
25 LaGrange Street
Newnan, GA 30263

Dear Libby,

Foundation Christian Church has a request for an upcoming MainStreet Newnan event.

In keeping with City protocol, I am writing this letter to request three (3) parking spaces be reserved for our Free Ice Cream Truck for MainStreet's Munchkin Masquerade event on West Washington Street next to the Alamo from 8:30am to 11:30am on 10/31/19. We plan to speak to the surrounding business owners and get their approval as well.

Please let me know if you need anything else for these items. Thank you!

Warm regards,

Jason Walton

COMMUNITY OUTREACH PASTOR



GUIDELINES FOR USING DOWNTOWN NEWNAN SQUARE OR ANY CITY STREETS

NAME OF AGENCY	Troup-Coweta Alumnae Chapter of Delta Sigma Theta Sorority, Inc,
NAME OF PERSON IN CHARGE OF EVENT	Tracy Lewis
ADDRESS OF PERSON IN CHARGE	10 Springwater Way Newnan, Ga 30265
CELL PHONE NUMBER OF PERSON IN CHARGE	678-471-2033
TYPE OF EVENT	Setting up table on sidewalk for registration for 5k <i>ON NORTH COURT SQUARE</i>
PURPOSE OF EVENT	Raise scholarship funds for females who are high school seniors
DATE OF EVENT	March 28, 2020
TIME OF EVENT	7:00 registration begins 8:00 Race Starts

CONDITIONS OF PERMIT

If permit is for any type utilizing streets of the city other than just the square area, a map shall be submitted to indicate routes of the event. If road race, walk or similar event, a fee will be charged based on number of police officers required to provide safety for the event; and all events of this type should be scheduled to end by 10:00 AM. If officers are required for other events, a fee will be charged based on number of officers requested by agency sponsoring event.

Applicants for permits for the square area only which require the setting of booths or selling goods should be aware that homegrown or handmade goods are preferred and that other goods sold should not be in conflict with goods that merchants on the square have for sale, excluding restaurant style prepared food items. Personal information from those attending the event should not be solicited. Subscription based businesses, home improvement companies, insurance companies, etc., that approach those attending the event for solicitation for future services are not allowed. It is recommended that a 10x10 booth space be assigned to each participant with the participants name written in chalk at each sidewalk location. Permanent marking on the square is not allowed. You must provide your own tent, chairs and tables. If your event requires electricity, it must be requested in advance. If it is used from the light poles, then the cover must be put back on after the event. If a cover is lost the event coordinator and vendor are liable for the cost of replacing the lost cover. All cords must be duct taped down to the sidewalks to prevent accidents.

GUIDELINES FOR USING THE DOWNTOWN NEWNAN SQUARE OR ANY CITY STREETS – PAGE 2

EVENT STAFFING

The coordinator of the event on the square must remain on site throughout the set up and clean up of the event. The event coordinator must make sure that the square is returned to normal after the event is over.

GARBAGE

Additional rolling trash cans by the City of Newnan Sanitation Department need to be around the court square. Contact Sanitation Services at 770-253-0327 to coordinate and determine the number of cans needed for your event. We recommend that you cover the permanent cans surrounding the square and use the rolling cans. If the decorative cans are overflowing at the end of the event, they should be emptied into the rolling cans. Cost of Sanitation cans are \$10.00 per can during normal business hours and \$25.00 per can after hours. *(Costs are subject to change)*

PUBLIC NOTICE SIGNAGE

The coordinator of the event is responsible for obtaining and displaying Special Event Notice signs as provided by City staff. Public notice along/near the event location shall be provided at least 72 hours in advance of the event.

BATHROOMS

A portable restroom, or more depending on the size of the event, must be provided for the public to use. Downtown shops only allow restroom facilities to be used by paying customers. Main Street can assist with contact information on a Main Street member that provides port-a-potties for a fee. We recommend these be placed on the side of NuLink on West Washington Street.

PARKING

Vendors can park on the square to unload, but once unloaded they will need to move their vehicles to a city lot. Parking on the square or in front of stores is prohibited. This includes on side streets. Parking is for customers and event attendees.

AGREEMENT

I, Tracy Lewis, agree to these guidelines for use of the Newnan Square and/or city streets.

SIGNED Tracy Lewis

DATE October 1, 2019

EVENT - 100.00.34.2901 – Event Activity Fees

Form Updated February 8, 2019 / October 12, 2018



GUIDELINES FOR USING DOWNTOWN NEWNAN SQUARE OR ANY CITY STREETS

NAME OF AGENCY	
NAME OF PERSON IN CHARGE OF EVENT	Ricky Farrar
ADDRESS OF PERSON IN CHARGE	50 S York Dr Newnan, GA 30265
CELL PHONE NUMBER OF PERSON IN CHARGE	770-568-2889
TYPE OF EVENT	Neighborhood Block Party
PURPOSE OF EVENT	For the new neighborhood neighbors to meet and greet. Kids to play
DATE OF EVENT	2nd of November 2019
TIME OF EVENT	2pm - 10pm

CONDITIONS OF PERMIT

If permit is for any type utilizing streets of the city other than just the square area, a map shall be submitted to indicate routes of the event. If road race, walk or similar event, a fee will be charged based on number of police officers required to provide safety for the event; and all events of this type should be scheduled to end by 10:00 AM. If officers are required for other events, a fee will be charged based on number of officers requested by agency sponsoring event.

Applicants for permits for the square area only which require the setting of booths or selling goods should be aware that homegrown or handmade goods are preferred and that other goods sold should not be in conflict with goods that merchants on the square have for sale, excluding restaurant style prepared food items. Personal information from those attending the event should not be solicited. Subscription based businesses, home improvement companies, insurance companies, etc., that approach those attending the event for solicitation for future services are not allowed. It is recommended that a 10x10 booth space be assigned to each participant with the participants name written in chalk at each sidewalk location. Permanent marking on the square is not allowed. You must provide your own tent, chairs and tables. If your event requires electricity, it must be requested in advance. If it is used from the light poles, then the cover must be put back on after the event. If a cover is lost the event coordinator and vendor are liable for the cost of replacing the lost cover. All cords must be duct taped down to the sidewalks to prevent accidents.

EVENT STAFFING

The coordinator of the event on the square must remain on site throughout the set up and clean up of the event. The event coordinator must make sure that the square is returned to normal after the event is over.

GARBAGE

Additional rolling trash cans by the City of Newnan Sanitation Department need to be around the court square. Contact Sanitation Services at 770-253-0327 to coordinate and determine the number of cans needed for your event. We recommend that you cover the permanent cans surrounding the square and use the rolling cans. If the decorative cans are overflowing at the end of the event, they should be emptied into the rolling cans. Cost of Sanitation cans are \$10.00 per can during normal business hours and \$25.00 per can after hours. *(Costs are subject to change)*

PUBLIC NOTICE SIGNAGE

The coordinator of the event is responsible for obtaining and displaying Special Event Notice signs as provided by City staff. Public notice along/near the event location shall be provided at least 72 hours in advance of the event.

BATHROOMS

A portable restroom, or more depending on the size of the event, must be provided for the public to use. Downtown shops only allow restroom facilities to be used by paying customers. Main Street can assist with contact information on a Main Street member that provides port-a-potties for a fee. We recommend these be placed on the side of NuLink on West Washington Street.

PARKING

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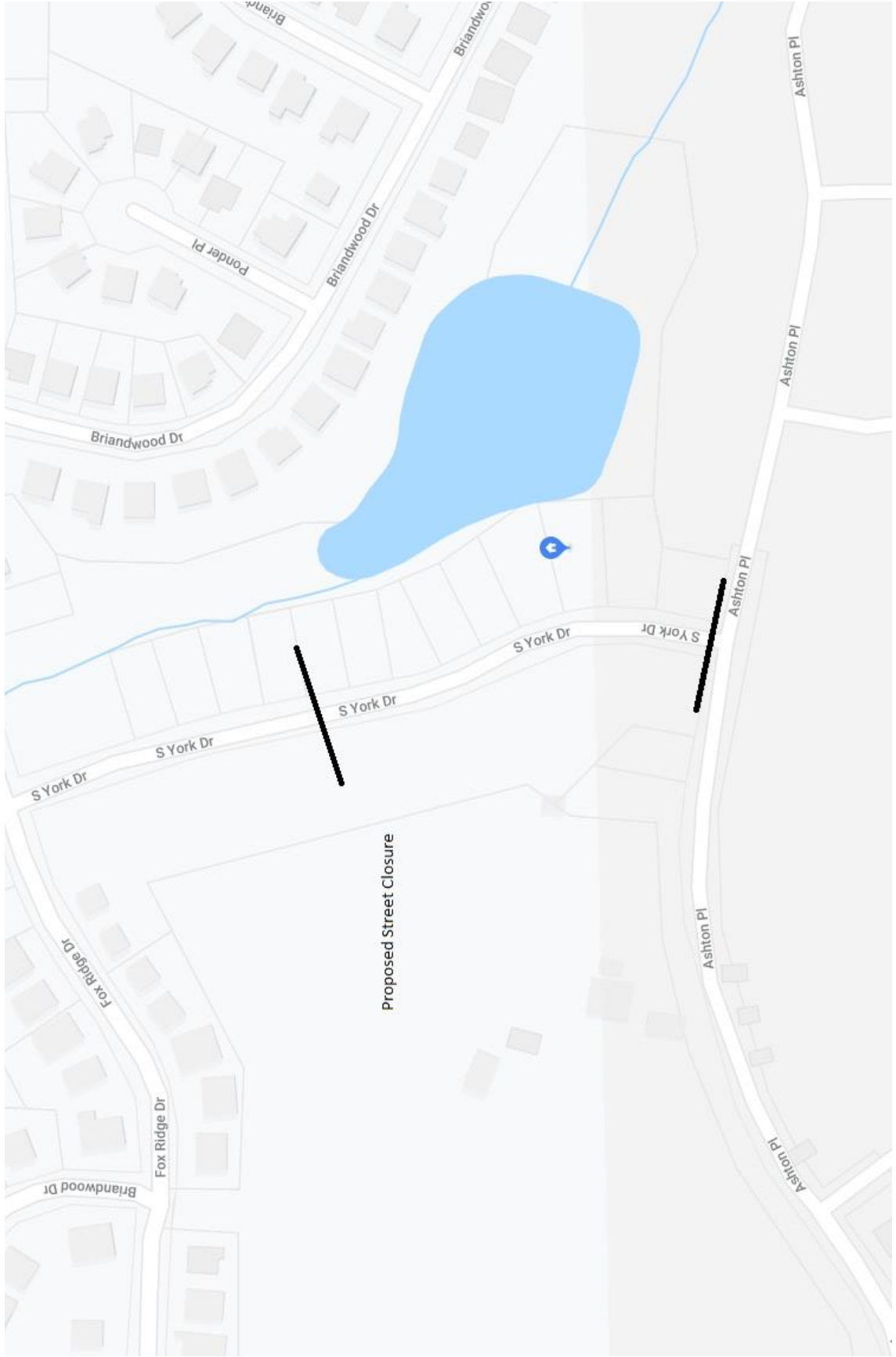
AGREEMENT

Richard Farrar
I, _____, agree to these guidelines for use of the Newnan Square and/or city streets.

SIGNED Richard Farrar

DATE Oct. 15 2019

EVENT - 100.00.34.2901 – Event Activity Fees



Proposed Street Closure

Newnan City Council,

We would love to host an event that supports local artist, and crafters. We have had great response for our October event and we would love to expand. In order to do so, we are asking if we can shut-down Madison Street - between Jackson Street and Jefferson Street.

We are hoping that this event will bring more tourist to the Newnan area!

Thank you for your time,
Ansley Murray



GUIDELINES FOR USING DOWNTOWN NEWNAN SQUARE OR ANY CITY STREETS

NAME OF AGENCY	RPM Craft + Brews
NAME OF PERSON IN CHARGE OF EVENT	Ansley Murray
ADDRESS OF PERSON IN CHARGE	138 Greison Trail Apt 6301
CELL PHONE NUMBER OF PERSON IN CHARGE	770-313-4143
TYPE OF EVENT	Makers Fair / Crafts Fair
PURPOSE OF EVENT	Supporting Local Artist
DATE OF EVENT	11/03/19
TIME OF EVENT	12pm - 7pm

CONDITIONS OF PERMIT

If permit is for any type utilizing streets of the city other than just the square area, a map shall be submitted to indicate routes of the event. If road race, walk or similar event, a fee will be charged based on number of police officers required to provide safety for the event; and all events of this type should be scheduled to end by 10:00 AM. If officers are required for other events, a fee will be charged based on number of officers requested by agency sponsoring event.

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PARKING

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AGREEMENT

I, Ansley Murray, agree to these guidelines for use of the Newnan Square and/or city streets.

SIGNED 

DATE 10/15/19

EVENT - 100.00.34.2901 – Event Activity Fees

The Cellar
20 Jefferson St, Newnan, GA 30263

Sunday	Closed
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The Bays
Jefferson St, Newnan, GA 30263

Sunday	Closed
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Newnan Times Harold
16 Jefferson St, Newnan, GA 30263

Sunday	Closed
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Newnan Magazine
16 Jefferson St, Newnan, GA 30263

Sunday	Closed
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Newnan Computers
13 Jackson St # C, Newnan, GA 30263

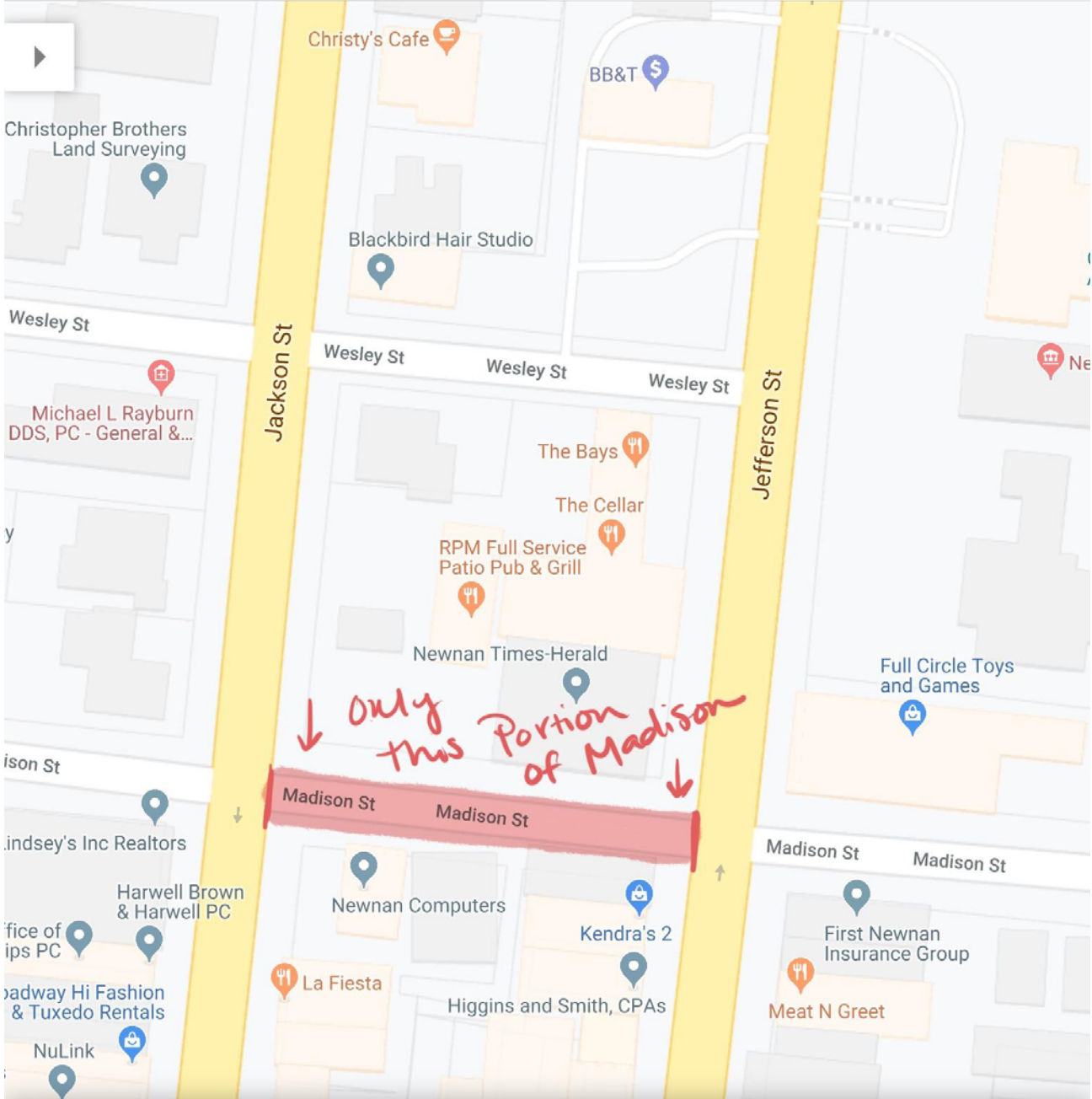
Sunday	Closed
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La Fiesta
7 Jackson St, Newnan, GA 30263

Sunday	Closed
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Kendra's 2
14 Jefferson St, Newnan, GA 30263

Sunday	12-5PM
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You're missing out

The Google Maps app isn't on your phone

NO THANKS

USE THE APP

NEWNAN CITY COUNCIL MEETING – OCTOBER 22, 2019 – 6:30 PM

From: jsull727@aol.com

Sent: Tuesday, October 15, 2019 1:03 PM

To: Keith Brady

Subject: GLOW RUN 2019

Good Afternoon - It is time for the 2019 glow run benefitting Bridging the Gap Community Outreach. We once again need permission to use Ashley Park Blvd, Ashley Park Drive as well as McIntosh Way. The race is set for Sunday, December 1st at 6:00pm. I have already spoken to OneLife Fitness and they are on board with the event as well. I hope you will come join us for the run this year. We had over 1300 runners last year. It is sure to be another great event.

Hope you and your family are doing great!

Brannan Pass

2019 BTG Glow Light Your World 5K

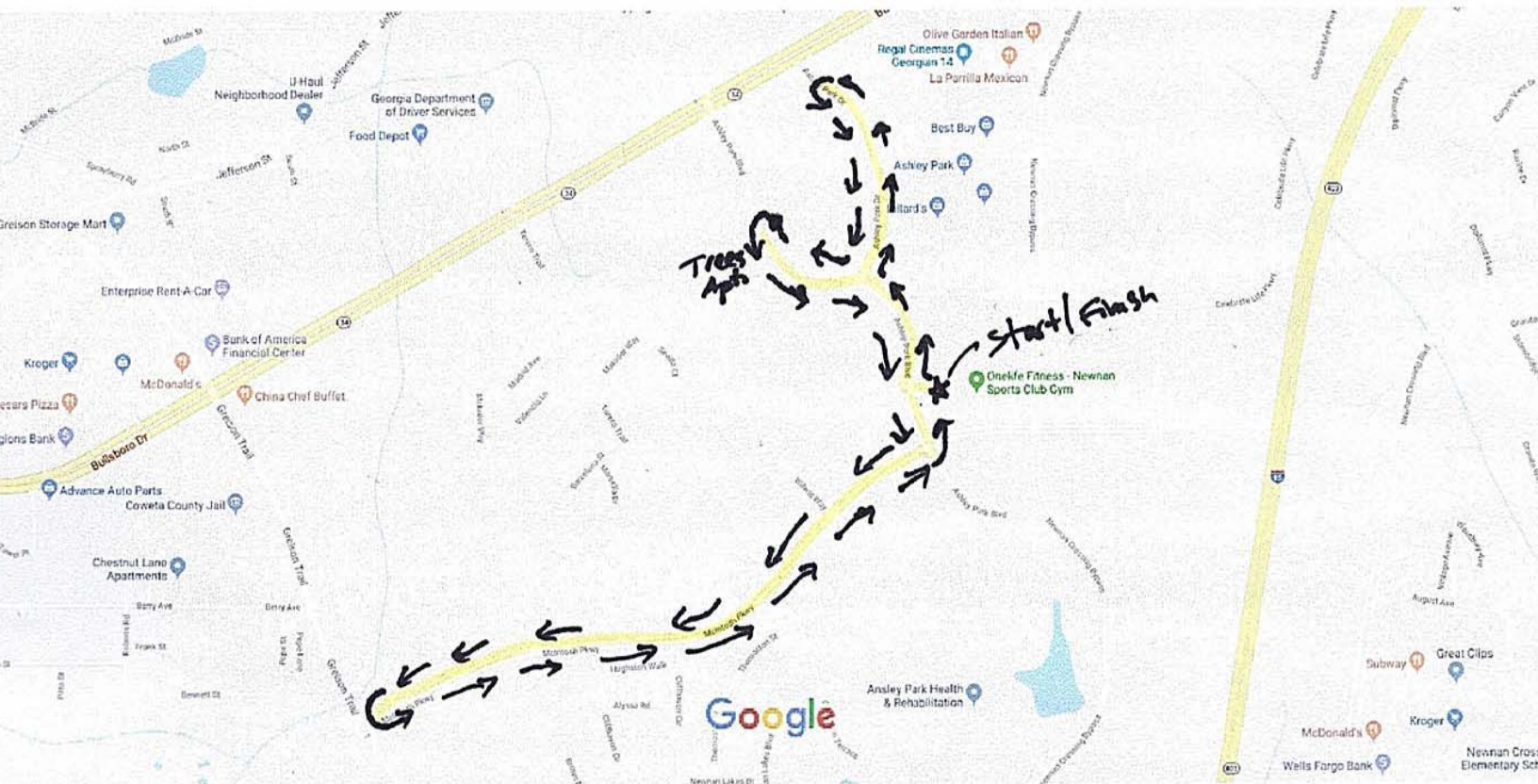
Race will start and finish behind Belk/Onelife Fitness

- Runners will exit and turn right onto Ashley Park Blvd.
- Runners will turn right and run up Ashley Park Drive to the BB&T. (Officer in place)
- The route will turn around and head back up Ashley Park Drive and turn right.
- Runners will turn around at the entrance to The Trees apartments. (Officer in place)
- The route will continue back up Ashley Park Blvd. and turn right on McIntosh Pkwy. (Officer in place)
- Runners will run down McIntosh Pkwy all the way to Grieson Trail and will turn around. (Officer in place)
- The route will return all the way back up McIntosh Pkwy and turn left onto Ashley Park Blvd. to finish in the parking lot behind Belk/Onelife Fitness where the race began.

1/17/2018

Google Maps

Google Maps 2019 Glow Light Your World Run



Map data ©2018 Google 500 ft

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

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).