Mayor
Derek Easterling
City Manager
Jeff Drobney, ICMA-CM
City Clerk
Lea Alvarez, CMC

Council
Madelyn Orochena
Tracey Viars
Pat Ferris
Antonio Jones
Anthony Gutierrez-Leon

City Council
Meeting Agenda
November 3, 2025 6:30 PM
Council Chambers
(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)

Livestream: www.kennesaw-ga.gov/publicmeetings/

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1. **Invocation**
2. **Pledge of Allegiance**
3. **Call to Order**
4. **Announcements**
5. **Presentations**
6. **Public Comment**
   This section is for comment on any item on the agenda.
7. **Old Business**
8. **New Business**
9. **Committee and Board Reports**
10. **Public Hearing(s)**
    A. **Ordinance: Chapter 22 Amendments**
    Consideration for approval an Ordinance to amend Chapter 22, entitled, "Businesses" of the Code of Ordinances of the City of Kennesaw, Georgia.
11. **Consent Agenda**
    A. **Minutes: October 13, 2025 Work Session**
    Approval of the October 13, 2025, City Council work session minutes.

    B. **Minutes: October 13, 2025 Executive Session**
    Approval of the October 13, 2025, City Council executive session minutes.

    C. **Minutes: October 20, 2025 Regular Meeting**

Approval of the October 20, 2025, City Council regular meeting minutes.

D. **Minutes: October 20, 2025 Executive Session**
Approval of the October 20, 2025, City Council executive session minutes.

E. **Resolution: Settlement Agreement with Lance Oil Company**
Consideration for approval of a Resolution authorizing a Settlement Agreement and Mutual Release of Claims between the City of Kennesaw and A.R. Brooks Enterprises, Inc. d/b/a Lance Oil Company.

F. **Resolution: Stormwater and Sewer Easements**
Consideration for approval of a Resolution authorizing stormwater and sewer easements with Delta Performance, LLC.

G. **Purchase Authorization: Vehicles and Equipment**
Consideration to authorize the purchase of vehicles and equipment approved in the FY26 Budget.

H. **Resolution: Chalker Park**
Consideration for approval of a Resolution to award a contract with Gay Construction as the Construction Manager at Risk (CMAR) for Chalker Park.

12. General and Administrative

13. Public Safety

A. **Crime Stats: September 2025**
Consideration to accept the September 2025 crime statistics.

14. Information Technology

15. Public Works and Building Maintenance

16. Recreation and Culture

17. Community Development

18. Public Comment

This section is for general comment.

19. City Manager's Report

A. Reports, Discussions, and Updates

20. Mayor's Report

A. Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve boards and commissions, as deemed necessary.

21. **Council Reports & Discussions**

22. **Executive Session**

    Pursuant to the provisions of O.C.G.A 50-14-3, the City Council could, at any time during the meeting, vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney; and/or personnel matters; and/or real estate matters.

23. **Adjourn**

Item Report

TO: The Honorable Mayor and City Council

FROM: Jennifer Gordy, Finance Director

DATE: November 3, 2025

TITLE: **Ordinance: Chapter 22 Amendments**
Consideration for approval an Ordinance to amend Chapter 22, entitled, "Businesses" of the Code of Ordinances of the City of Kennesaw, Georgia.

Summary:

The City is proposing amendments to Chapter 22, entitled "Businesses," of the Code of Ordinances of the City of Kennesaw, Georgia. The revisions aim to align our code with state and Federal Bureau of Investigation (FBI) requirements regarding fingerprinting for privileged licenses. In addition, staff is reviewing and updating outdated language throughout the chapter to ensure consistency and clarity.

The public hearing was advertised in the Marietta Daily Journal on Friday, October 24, 2025; however, this ordinance remains under review and requires additional edits. Therefore, consideration will need to be postponed at this time.

Recommendation:
Staff recommends postponing the item.

Fiscal Impact:

Attachments:
1. ORD 2025- Chapter 22 Businesses Ordinance Amendment
2. Exhibit A -CoK Code Section 22 Business Redline

CITY OF KENNESAW
GEORGIA

ORDINANCE NO. 2025-___, 2025

AN ORDINANCE TO AMEND CHAPTER 22, ENTITLED "BUSINESSES" OF THE CODE OF ORDINANCES OF THE CITY OF KENNESAW, GEORGIA

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

SECTION 1. Chapter 22 of the Code of Ordinances of the City of Kennesaw, Georgia, is hereby amended so as to repeal said Chapter and replace it in its entirety by striking and replacing the text as set forth in **"Exhibit A"**.

SECTION 2. BE IT FURTHER ORDAINED THAT this ordinance shall be effective on and after its adoption and execution by the mayor, pursuant to Section 2.11 of the City Charter of the City of Kennesaw.

PASSED AND ADOPTED by the Kennesaw City Council on this ___th day of November 2025.

ATTEST:	CITY OF KENNESAW:
___________________________	___________________________
Lea Alvarez, City Clerk	Derek Easterling, Mayor

EXHIBIT A

Chapter 22 BUSINESSES[1]

ARTICLE I. OCCUPATION TAXES AND REGULATORY FEES[2]

DIVISION 1. GENERALLY

Sec. 22-1. Definitions.

(a) Wherever the term "City of Kennesaw" is used herein, such term shall be construed to mean "City of Kennesaw, Georgia"; wherever the term "city" is used herein, it shall be construed to mean "City of Kennesaw, Georgia."

(b) Definitions provided in O.C.G.A. § 48-13-5 are incorporated in this article for the benefit of uniformity. The definitions of "business license" and "business registration certificate" have the same intent, with "business registration certificate" being the new and more proper name.

(c) As used in this article, the following terms shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative fee means a component of an occupational tax which approximates the reasonable cost of handling and processing the occupation tax.

Business shall mean any corporation, firm, partnership, person (other than an employee), or other business entity who within the corporate limits of the city engages in, causes to be engaged in, or represents himself or herself to be engaged in any occupation or activity with the object of gain, benefit, or advantage either directly or indirectly. Said term shall include independent contractors.

Any person advertising by any means, including but not limited to signs, cards, circulars, newspapers, etc., that ~~he or she~~they are ~~is~~ engaged in a business of any kind shall be liable for the appropriate occupation tax required under this chapter 22 and the payment of the approximate amount therefore.

No business required by this Code to secure an occupation tax certificate shall be exempt from the payment of an occupation tax on the grounds that the business is operated for a charitable purpose, unless 80 percent of the proceeds from the business are devoted to that purpose.

~~*Business license* means a business registration certificate as defined in this section for a business license as defined by ordinances prior to November 7, 1994, adopted by the city council.~~

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[1]Cross reference(s)—Alcoholic beverages, ch. 6; amusements and entertainments, ch. 14; cable communications, ch. 26; fire prevention and protection, ch. 50; streets, sidewalks and other public places, ch. 78; taxation, ch. 82; utilities, ch. 90; unified development code, app. A.

State law reference(s)—Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-370 et seq.; Fair Business Practices Act of 1975, O.C.G.A. § 10-1-390 et seq.; exemption from local licensing of disabled veterans and blind persons, O.C.G.A. § 43-12-1; exemption from taxation of agricultural products and livestock raised in state, O.C.G.A. § 48-5-356; local taxes and fees, Ga. Const. art. IX, § IV, ¶ I.

[2]Ord. No. 2019-09, § 5, adopted Oct. 21, 2019, repealed the former Art. I, §§ 22-1, 22-2, and enacted a new article as set out herein. The former Art. I pertained to businesses in general and derived from Code 1986, §§ 9-6-2, 9-6-4; and §§ 3-201—3-205 of an ord. adopted Aug. 18, 1986.

~~*Business registration certificate* means a certificate issued by the business license office evidencing registration of and payment of all required regulatory fees and occupation taxes by persons engaged in business in the city. For the purposes of compliance with other city ordinances referring to a "business license," the term shall be construed to mean a business registration certificate as defined in this section.~~

Classifications are the separate classifications provided for the determination of that part of the occupation tax to be levied as a fixed sum and measured by ranges of taxable gross receipts, the purpose of which is to recognize the ability of businesses to pay as determined by nationwide averages. Tax shall be classified on the entire gross receipts by dominant service or product. Person whose dominant business activity is legally exempted or otherwise limited by city ordinances or by state or federal law from the tax shall be classified according to ~~his/her~~their principal subsidiary business, if any, which is subject to the levy and assessment of an occupation tax.

Delivery of a copy means handing it to the person to be served or leaving it at the person to be served's office with a person in charge thereof or, if such office is closed or the person to be served has no office, leaving it at the person to be served's dwelling house or usual place of abode with some person of suitable age and discretion residing therein. "Delivery of a copy" also means transmitting copy via email in portable document format (PDF) to the person to be served using all email addresses provided and showing in the subject of the email message the words "STATUTORY ELECTRONIC SERVICE" in capital letters. Service by mail is completed upon mailing. Proof of service may be made by certificate of an attorney or of ~~his or her~~their employee, by written admission, by affidavit, or by other satisfactory proof. Failure to make proof of service shall not affect the validity of service.

Dominant line means the type of business within a multiple-line business from which the greatest amount of income is derived.

Employee means any individual who works for or provides services to a business holding an occupation tax certificate or regulatory license issued by the city, whether compensated by salary, wages, commission, or otherwise, and whether classified as full-time, part-time, temporary, or contract~~, or volunteer~~. The term includes, but is not limited to, managers, clerks, attendants, technicians, practitioners, and any person whose duties are directly related to the licensed activity regulated by this Code. Independent contractors engaged in providing regulated services on behalf of the business shall also be deemed employees for purposes of compliance, permitting, and background investigation requirements.

~~*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.~~

Engaged in business means any person who within the incorporated area of the city engages in any activity with the object of profit, gain, benefit or advantage, including but not limited to selling real or personal property or services; leasing or renting real or personal property; sales or services of the character as made by a wholesaler or retailer; or who is involved in any of the functions performed as a manufacturer; or who is involved in the development or construction of real property; the foregoing shall include but is not limited to owner, operator, representative or agent in any business, trade, profession or occupation who represents itself to be engaged in any occupation or activity with the object of gain, benefit or advantage either directly or indirectly.

Gross receipts means the total revenue of the business or practitioner for the period, including without limitation the following:

(1) Total income without deduction for the cost of goods sold or expenses incurred.

(2) Gain from trading in stocks, bonds, capital assets or instruments of indebtedness.

(3) Proceeds from commissions on the sale of property, goods or services.

(4) Proceeds from fees charged for services rendered.

(5) Proceeds from rent, interest, royalty or dividend income.

The term gross receipts shall not include the following:

(1) Sales, use, or excise taxes;

(2) Sales returns, allowance and discount;

(3) Inter-organizational sales or transfers between or among the units of a parent/subsidiary controlled group of corporations as defined by 26 USC § 1563(a)(1), or between or among the units of brother-sister controlled group of corporations as defined by 26 USC § 1563(a)(2), or between or among wholly owned partnerships or other wholly owned entities;

(4) Payments made to a subcontractor or an independent agent for services which contributed to the gross receipts in issue;

(5) Governmental and foundation grants, charitable contributions or the interest income derived from such funds received by a nonprofit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute 80 percent or more of the organization's receipts;

(6) Proceeds from sales of goods or services which are delivered to or received by customers who are outside the state at the time of delivery or receipt.

License means a regulatory authorization issued by the city pursuant to this Code which permits a person or entity to engage in a specific activity regulated under state law or this Code, including by not limited to alcohol license, massage therapy permits, bail bondsmen licenses, or similar regulatory licenses. The term *license* does not include an *occupation tax certificate* issued under this chapter.

Location of office includes any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary 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. The renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor. The site of real property which is rented or leased to another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor unless the real property's owner, lessor, or the agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site.

Municipal court is the court of the City of Kennesaw.

New business means any person, enterprise, partnership, corporation or other business entity which is engaged in business in the city who has not previously filed for ~~a business registration certificate~~an occupation tax certificate.

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.

Occupation tax certificate means the certificate issued by the city evidencing payment of the occupation tax required by the chapter. An occupation tax certificate is issued to a business location for the privilege of engaging in business within the city and is not transferable.

Person shall extend and be applied to associations, firms, partnerships and bodies politic and corporate, or any combination thereof, as well as to individuals.

Practitioner of profession or occupation is one who by state law requires state licensure regulating such profession or occupation as designated by O.C.G.A. § 48-13-9(c), but shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.

Regulatory fees means payments, whether designated as license fees, permit fees or by another name, which are required by a local government 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 or registration fee. An occupation tax may be required in connection with a regulatory fee. Development impact fees as defined by paragraph (8) of O.C.G.A. § 36-71-2 or other costs or conditions of zoning or land development are not regulatory fees.

Retailer is a person who sells to the consumer or any other person for any purpose other than for resale in the form of tangible personal property.

Services is the accommodating or performing a duty or work by person utilizing time or talents for direct or indirect remuneration.

Tax year shall be from January 1 to December 31.

Wholesaler is a person who sells to jobbers or to another person other than the consumer anything in the form of tangible personal property.

(Ord. No 2019-09, § 5, 10-21-19; Ord. No. 2023-05, § 1, 5-1-23)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 22-2. Scope and levy—Businesses with no location in Georgia.

(a) The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any such profession, trade or calling. The occupation tax only applies to those businesses and occupations which are covered by the provisions of O.C.G.A. §§ 48-13-5 to 48-13-26. All other applicable businesses and occupations are taxed by the local government pursuant to the pertinent general and/or local law and ordinance.

(b) Pursuant to O.C.G.A. §§ 36-1-22 and 48-13-6 et seq. and effective January 1, 1995 and succeeding years thereafter, each person engaged in any business, trade, profession, or occupation in the city, whether with a location in the city, or in the case of an out-of-state business with no location in the state, exerting substantial efforts within the state pursuant to O.C.G.A. § 48-13-7, shall pay an occupation tax for such business, trade, profession, or occupation, which tax and any applicable registration shall be displayed in a conspicuous place in the place of business, if the taxpayer has a permanent business location in the city, such business tax registration shall be shown to the ~~Business License Manager~~Business License Manager or ~~his~~ their designees or to any police officer of the city upon ~~his or~~ their request.

(c) Every person required to pay an occupation tax or license fee or a renewal of a license of occupation tax certificate under the provisions of this Code shall submit an application to the ~~supervisor~~ manager of the business license office, which application shall conform to the requirements of this section in addition to any other provisions of this Code.

(d) Registration and assessment of an occupation tax is imposed on those businesses and practitioners of professions with no location or office in the state if the business's largest dollar volume of business in the state 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) If the business or practitioner owns personal or real property which generates income and which is located within the jurisdiction of the city.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-3. Option to establish exemption or reduction in occupation tax.

The ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council may 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 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 public hearing of ~~mayor~~ Mayor and ~~city~~ City ~~council~~Council.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-4. Practitioners exclusively practicing for a government; tax exemption for state or local authority, or nonprofit organization; occupation tax inapplicable where prohibited by law or provided for pursuant to other existing law.

(a) 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, shall not be required to obtain a license or pay an occupation tax for that practice.

(b) Tax exempt organizations shall provide a federal tax exempt letter showing the section of the U.S. Code under which exemption is claimed. The city shall not levy an occupation tax, regulatory fee, or administrative fee on any state or local authority or nonprofit organization. Notwithstanding the free registration, such applicants are required to comply with the same laws and regulations as are other registered businesses within the city.

(c) An occupation tax shall not apply to the gross receipts of any part of a business where such levy is prohibited or exempted by the laws of Georgia or of the United States.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-5. Businesses not covered by this article.

The following businesses are not covered by the provisions of this part of the Code but may be assessed any occupation tax or other type of tax pursuant to the provisions of other general laws of the State of Georgia or by local law:

(1) Those businesses regulated by the Georgia Public Service Commission pursuant to O.C.G.A. Title 46;

(2) Those electrical service businesses organized under O.C.G.A. Title 46 Chapter 3;

(3) Any farm operation for the production from or on the land of agricultural products, but not including agribusiness;

(4) Cooperative marketing associations governed by O.C.G.A. § 2-10-105;

(5) Insurance companies governed by O.C.G.A. § 33-8-8, et seq.;

(6) Motor common carriers governed by O.C.G.A. § 46-7-15;

(7) Those businesses governed by O.C.G.A. § 48-5-355;

(8) Agricultural products and livestock raised in the State of Georgia governed by O.C.G.A. § 48-5-356;

(9) Depository financial institutions governed by O.C.G.A. § 48-6-93;

(10) Facilities operated by a charitable trust governed by O.C.G.A. § 48-13-55;

(11) Alcoholic beverages;

(12) Any other businesses not governed by this part of the Code.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-6. More than one place or line of business; each line of business to be identified on occupation tax certificate; separate businesses.

(a) 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 shall be entered on a separate occupation tax return and each different line of business shall be identified on a form to be furnished by the business license ~~and revenue division~~office.

(b) The business registration of each business operated in the city shall identify the line or lines of business that the business conducts. No business shall conduct any line of business without first having that line of business registered with the business license ~~and revenue division~~office and that line of business being noted by the business license ~~and revenue division~~office upon the occupation tax certificate which is to be displayed by the business owner.

(c) Where a person conducts a business at more than one store, location or place, each store, location or place shall be considered a separate business under the terms of this chapter and a separate tax shall be required. Should more than one business on which an occupation tax is levied by this Code be conducted in or in conjunction with one place or kind of business, each business shall be separately ~~licensed~~ issued an occupation tax certificate under this chapter.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-7. Basis for fees; classification of business; administrative and regulatory fee structure.

(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 or upon the applicable out-of-state businesses with no location or office in Georgia pursuant to O.C.G.A. § 48-13-7 based on the following criteria:

(1) 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.

(2) Ranking the classification codes according to nationwide averages of profitability ratios which will be updated from time to time by the city.

(3) Determining the profit class, tax class, and tax rate on gross receipts for each business, trade, profession or occupation as indicated in schedule A attached hereto and made a part herein by reference which will be updated from time to time by the city. The schedule of fees shall be as approved and adopted and may be amended in the future by the ~~city~~ City ~~council~~Council. The schedule of fees, including those that pertain to all sections of this article, shall be on file and available in the ~~city~~ City ~~clerk's~~ Clerk's office and/or the business license office.

(b) A nonprorated, nonrefundable administrative fee of $55.00 shall be required on all occupation tax accounts for the initial start-up, renewal, or reopening of those accounts.

(c) A nonprorated regulatory fee will be imposed as permitted under O.C.G.A. § 48-13-9 on those applicable businesses. A regulatory fee may not include an administrative fee.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-8. Application; review and approval or denial of applications.

(a) Each ~~business license~~occupation tax certificate application shall contain the following information:

(1) Name and home address of the applicant if an individual or home office address if a corporation or partnership;

(2) Address where the proposed business is to be located;

(3) Kind and class of business to be conducted;

(4) Current classification code, taxable gross revenues for the preceding 12 calendar months, and number of employees;

(5) Any information as may be required by the manager of the business license ~~department~~ office for the purpose of determining the amount of any occupation taxes to be collected under this Code; and

(6) Any additional information which the manager of the business license ~~department~~ office may find reasonably necessary for the fair administration of this part of the Code which may include: fingerprinting; a background check; a complete record of all arrests and convictions against the applicant and every partner, officer, director or stockholder of the applicant ~~or spouses, children or parents thereof~~ for violations of any and all laws and ordinances of the city, state or federal government other than minor traffic violations.

(b) Each application shall be signed and sworn to by the applicant if an individual, or by a partner if a partnership, or by an officer if a corporation.

(c) False statements on any application for a license or occupation tax certificate shall be grounds for immediate revocation of the license or occupation tax certificate or denial of the application.

(d) If any provision of this part of the Code provides for the review and approval of an application for a license or occupation tax certificate by the ~~Business License Manager~~Business License Manager designated therein, the ~~Business License Manager~~Business License Manager shall act, favorably or otherwise, on the application as required by this Code.

(e) The granting of a ~~business~~ license or occupation tax certificate under any provisions of this Code shall be deemed a privilege only, and nothing herein contained shall be construed as granting any person whose business is subject to municipal regulation any legal right to engage in that business.

(f) An application for ~~a business registration~~an occupation tax certificate shall be deemed complete at the discretion of the ~~Business License Manager~~Business License Manager. Once the ~~Business License Manager~~Business License Manager deems an application to be complete for purpose of processing, the ~~Business License Manager~~Business License Manager shall either deny the application or grant the certificate no later than 90 days after the date the application became complete for purposes of processing.

Except as hereafter provided, upon the decision of the ~~Business License Manager~~Business License Manager or ~~his~~ their designee to approve or deny a license or occupation tax certificate under this chapter, such decision being in writing and including notice of the decision and notice of the appeal procedures to the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council as provided hereafter, the applicant or any aggrieved citizen may appeal the decision of the ~~Business License Manager~~Business License Manager to the ~~mayor~~ Mayor and ~~council~~ Council by filing a written notice of appeal with the ~~city~~ City ~~clerk~~ Clerk within five calendar days of the decision by the ~~Business License Manager~~Business License Manager or ~~his~~ their designee. Every appeal shall be in writing and identify the basis for such appeal and upon receipt of the appeal, the city clerk shall forward same to the ~~city~~ City ~~council~~ Council which shall schedule a hearing within 45 days of receipt of such notice. The ~~city~~ City ~~council~~ Council may sustain or overrule the decision of the ~~Business License Manager~~Business License Manager. No license or occupation tax

~~Business License Manager~~Business License Manager or designee during the appeal notification period or while an appeal is pending before the ~~city~~ City ~~council~~Council. The action of the ~~mayor~~ Mayor and ~~council~~ Council shall be final and may be appealed to the Superior Court of Cobb County in the manner provided by law under O.C.G.A. tit. 5, ch. 3.

(Ord. No 2019-09, § 5, 10-21-19; Ord. No. 2023-14, § 3, 8-7-23)

Sec. 22-9. Criminal background check; fingerprinting.

(a) Pursuant to O.C.G.A. § 35-3-35 to regulate the issuance of licenses and employment of those engaged in certain businesses within the City of Kennesaw, the ~~Business License Manager~~Business License Manager shall not issue any city license or occupation tax certificate for any business that requires a criminal background check for ~~license~~ applicants until a formal fitness determination is conducted. These business types include: ~~Alcohol,~~ Bail Bondsmen, Flea Market, Massage Therapist.

The process is as follows:

(1) Following submittal of all required applications and payment of appropriate fees, each applicant, or employee~~, or volunteer~~ seeking to engage in such business shall provide ~~two sets of~~ fingerprints taken by the City of Kennesaw Police Department.

(2) Upon receipt, the City of Kennesaw Police Department will transmit ~~both sets of~~ fingerprints to the Georgia Bureau of Investigation/GCIC. The Georgia Bureau of Investigation/GCIC will compare the subject's fingerprints against its criminal file and submit the fingerprints to the Federal Bureau of Investigation for a comparison with nationwide records. The results of the Federal Bureau of Investigation check will be returned to the Georgia Bureau of Investigation/GCIC, which will disseminate the state and national results to the City of Kennesaw Police Department. The police department will then make a recommendation to the ~~Business License Manager~~Business License Manager based upon the criminal history response and any other evidence the police department possesses regarding the applicant.

(3) In rendering a fitness determination, the City of Kennesaw Business License ~~Department~~Office will decide whether the record subject has been convicted of or is under pending indictment for: (a) a crime which bears upon ~~his/her~~their ability or fitness to serve in that capacity; (b) any felony or a misdemeanor which involved force or threat of force, controlled substances, or was a sex-related offense; or (c) enumerated disqualifiers set forth in the Municipal Code of the City of Kennesaw, Georgia. Upon completion, the ~~Business License Manager~~Business License Manager will communicate the fitness determination to the applicant.

~~In compliance with Public Law 92-544, which provides for the rendering of a fitness determination, the City of Kennesaw Business License Department will render a fitness determination based upon the results of the criminal background check and recommendation made by the Kennesaw Police Department. In rendering a fitness determination, the City of Kennesaw Business License Department will decide whether the record subject has been convicted of (or is under pending indictment for: (a) any felony or a (b) misdemeanor which involved a crime of moral turpitude, force or threat of force, possession of weapons, controlled substances, or was a sex-related offense; or (c) enumerated disqualifiers set forth in the Municipal Code of the City of Kennesaw, Georgia. Upon completion, the business license manager~~Business License Manager ~~will communicate the fitness determination to the applicant.~~

(4) A record subject may request and receive a copy of ~~his/her~~their criminal history record information from the Kennesaw Police Department. Should the record subject seek to amend or correct ~~his/her~~their record, ~~he/she~~they must contact the Georgia Bureau of Investigation/GCIC for a Georgia state record or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-10. Allocation of gross receipts of business 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 occupation 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 pursuant to O.C.G.A. § 48-13-14(a)(2). Upon request the business or practitioner with a location or office situated in more than one jurisdiction shall provide the city the following:

(1) Financial information necessary to allocate the gross receipts of the business or practitioner;

(2) Information relating to the allocation of the business' or practitioner's gross receipts by other local governments.

Where the business has locations outside of 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 2019-09, § 5, 10-21-19)

Sec. 22-11. Occupation taxes levied on business to be transacted during calendar year; filing of returns showing gross receipts during preceding calendar year; procedure where taxes overpaid or underpaid.

(a) All occupation taxes levied by this article are levied on the amount of business to be transacted during the calendar year. However, for the convenience of both the city and the taxpayer, and the necessity of making numerous returns, those businesses subject to the occupation tax levied in section 22-2 shall, on or before the times set forth in this section, file with the ~~Business License Manager~~Business License Manager the returns specifically provided for, showing the gross receipts of that business during the preceding calendar year. This return shall be used as an estimate for making payments on the occupation tax for the current calendar year. The actual and final amount of tax levied for business transacted in a current calendar year shall be paid in accordance with a final return to be made after the termination of the year, in accordance with the procedure hereinafter set forth.

(b) The owner, proprietor, manager or secretary officer of the business subject to said occupation tax of the current calendar year shall, at the end of the preceding year, or by March 31 of the current calendar year, file with the ~~Business License Manager~~Business License Manager or the city, on a form furnished by said revenue collection officer, a signed return setting forth the amount of gross receipts of such business for the entire preceding calendar year, to be used as an estimate of the gross receipts 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 figure shall be used as the estimate of the gross receipts of the business for the current calendar year.

(d) If the amount of the occupation tax for the preceding year based on the return provided for in this section and on the rate of the tax provided for in this Code, exceeds the amount of occupation tax theretofore paid by the business based on the estimate filed pursuant to section 22-11(a), the difference in said amount shall be due and payable by the taxpayer to the city by March 31 of the current year and delinquent if not paid on or before such date.

(e) If the amount of the occupation tax for the preceding year based on the return provided for in this Code, is less than the amount of occupation tax theretofore paid by the business based on the estimate filed pursuant to section 22-11(a), the difference in such amount shall be refundable by the city to the taxpayer; or, if such business continues to be conducted in the city during the current year, such difference in amount may be credited by the city on the amount of occupation tax to be paid to the city by such business for the current year. This election is to be taken by the taxpayer and shall be submitted in writing to the ~~Business License Manager~~Business License Manager.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-12. Professionals as classified in O.C.G.A. § 48-13-9(c), paragraphs 1 through 22.

Practitioners of professions and occupations as described in O.C.G.A. § 48-13-9(c)(1) through (22) shall elect as their entire occupation tax one of the following:

(a) The occupation tax bases on gross receipts combined with profitability ratios as set forth in section 22-7.

(b) A fee of $400.00 per practitioner who is licensed to provide the service, such tax to be paid for 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 applies to each person in the business who qualifies as a practitioner under the state's regulatory guidelines and framework.

(c) This election is to be made on an annual basis and must be done by January 1 of each year.

(d) It being the intention of the ~~city~~ City ~~council~~ Council that no portion of the taxation scheme in this article be construed to be, or have the practical effect of, regulation of or a precondition on the practice of law, or other state regulated professions, if any provision of this article shall be construed by a court of competent jurisdiction to be unlawful regulation of such professions, then such provision shall be considered rescinded by the ~~city~~ City ~~council~~ Council as if such provision had not been adopted, and in such case, the remaining provisions of this article shall be applied to such practitioner.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-13. Temporary use certificates.

(a) Any person intending to utilize property for a temporary use must first obtain from the ~~mayor~~ Mayor and ~~council~~ Council a temporary use certificate. The requirements for obtaining a temporary use certificate are as follows:

(1) Temporary use must be a permitted use under the existing zoning classification; and

(2) The applicant must submit the request for a temporary use certificate on forms provided by the business license officer; and

(3) The applicant must submit a letter signed and notarized by the property owner granting express permission and consent to use the property for such temporary use; and

(4) The applicant must submit a drawing, sketch or plat of the property showing all intersections, parking, zoning, existing structures and location of such temporary use; and

(5) The temporary use must be in a state of good repair and aesthetically, structurally consistent with the surrounding area to which the applicant seeks to locate; and

(6) The applicant shall submit a regulatory fee of $100.00.

(b) The ~~mayor~~ Mayor and ~~council~~ Council may issue a temporary use certificate, at its sole discretion, and in their discretion may take into consideration, in addition to the requirements of this section, the affect that the temporary use would have on the public safety as well as the aesthetics of surrounding areas.

(c) The certificate may be issued for a period of time not to exceed 30 days and no extensions will be granted.

(d) The ~~city~~ City ~~manager~~ Manager or ~~his~~ their designee may suspend or revoke any temporary use certificate issued in accordance with this section on any one or more of the following bases:

(1) For any cause for which issuance of the license or occupational tax certificate

could have been refused had it then existed and been known to the city;

(2) Material misstatement, misrepresentation, omission or fraud in obtaining the certificate;

(3) Conviction of a felony;

(4) Fraudulent or dishonest practices in the conduct of the business under the certificate;

(5) Failure to comply with the provision of this section;

(6) Failure to maintain all the general qualifications and conditions applicable to the initial issuance of the certificate;

(7) Failure to pay all fees, taxes, penalties or other charges imposed by the provisions of this article or any other applicable city ordinance;

(8) For violation of any part of this article by the certificate holder, its agents, partners, officers, employees or contractors.

(e) A temporary use certificate granted under this section shall be subject to suspension or revocation. Whenever in the opinion of the business license ~~department~~office, there is cause to revoke or suspend such certificate, a written notice of intention to suspend or revoke and the grounds therefore shall be furnished the holder thereof at least three days before an administrative hearing before the ~~city~~ City ~~manager~~ Manager or ~~his~~ their designee, at which time the holder of the certificate may make such showing as ~~he or she~~they may deem appropriate relative to the grounds for suspension or revocation. After the administrative hearing, the ~~city~~ City ~~manager~~ Manager or ~~his~~ their designee may revoke or suspend said certificate if, in ~~his~~ their discretion, it is the best interest of the public health, safety and welfare of the city and its citizens.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-14. Penalty of ordinance violation.

Any person violating any provisions of this part of the Code shall, upon order of the municipal judge, be subject to a civil penalty in an amount not to exceed $500.00, in the discretion of the municipal judge. There shall be no criminal penalty imposed hereunder.

(Ord. No 2019-09, § 5, 10-21-19)

Secs. 22-15—22-20. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 22-21. Responsibility for enforcement; administration of chapter; appeals.

(a) The ~~Business License Manager~~Business License Manager shall administer and enforce the provisions of this chapter for the levy, assessment and collection of occupation taxes and penalties imposed herein.

(b) It is made the duty of the ~~Business License Manager~~Business License Manager and police department to see that the provisions of this part of the code relating to occupation taxes are observed; and to summon all violators of the same to appear before the municipal court. It is made the further duty of the ~~Business License Manager~~Business License Manager, members of the police department, and their assistants, to inspect all registrations issued by the city, as often as in their judgment it may seem necessary to determine whether the registration held is proper for the business sought to be transacted thereunder.

(c) Under the direction of the ~~Business License Manager~~Business License Manager, one or more city employees designated by the ~~Business License Manager~~Business License Manager shall seek out violations of the City Code, particularly the taxing and regulation portions thereof.

(d) Any person aggrieved by any action of the ~~Business License Manager~~Business License Manager or ~~his~~ their designees in the enforcement of this chapter 22 of the Code or rules and regulation adopted pursuant to this chapter 22 of the Code, including grievances over the amount of taxes assessed and classification of the business, may be appealed by the person as follows:

(1) The aggrieved person shall first submit in writing to the ~~Business License Manager~~Business License Manager a complaint which sets forth in reasonable detail the matters complained of. The complaint may take a letter form and it shall be the duty of the ~~Business License Manager~~Business License Manager to review it and to issue a written reply stating the ~~Business License Manager~~Business License Manager's position and opinion to the aggrieved person within 30 days from the receipt of the complaint. Such written reply shall include notice of the appeal procedures to the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council as provided hereafter.

(2) An appeal of the ~~Business License Manager~~Business License Manager's decision in the enforcement of this section by the aggrieved person to the ~~city~~ City ~~council~~ Council shall be allowed and perfected by filing with the ~~city~~ City C~~c~~lerk a notice of appeal for scheduling on the ~~city~~ City ~~council~~ Council agenda. The notice of appeal shall state in general terms the objections or exceptions taken to the action and opinion of the ~~business license manager~~Business License Manager. The notice of appeal must be filed with the ~~city~~ City ~~clerk~~ Clerk within 15 days following the date of the decision in subsection (d)(1) above complained of and it shall be the duty of the ~~business license manager~~Business License Manager upon receipt thereof to transmit to the ~~city~~ City ~~clerk~~ Clerk all the papers constituting the record upon which the action appealed from was taken. Thereafter, it shall be the duty of the ~~city~~ City ~~clerk~~ Clerk to place the appeal upon the agenda of the ~~city~~ City ~~council~~ Council meeting no later than 45 days after the date of appeal. Moreover, it shall be the duty of the ~~city~~ City ~~clerk~~ Clerk to so notify the appellant in writing of the date, time and place when the matter shall be heard.

(3) The ~~city~~ City ~~council~~ Council may, in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the opinion, requirement, decision or determination appealed from, and to that end shall have all the powers of the ~~business license manager~~Business License Manager. The ~~city~~ City ~~council~~ Council may direct any action as it may deem proper in conformity with this article and it shall be the

duty of the ~~business license manager~~Business License Manager to carry out the decisions of the ~~city~~ City ~~council~~ Council in conformity with this chapter.

(4) An appeal under this section shall stay all legal proceedings with regard to the collection of the occupation tax and penalties from the appellant. The appellant shall have the right to present before the ~~city~~ City ~~council~~ Council for their consideration any duly sworn witnesses or other evidence at the time such matter appealed from is heard. In the event the ~~business license manager~~Business License Manager fails to render a written opinion to the aggrieved person within the 30 days as required above, the aggrieved person shall, if desired, appeal to the ~~city~~ City ~~council~~ Council within the time limit state above as if the ~~business license manager~~Business License Manager had rendered an adverse opinion with regard to the complaint.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-22. Duties of ~~business license manager~~Business License Manager, generally; food establishments; zoning.

(a) The ~~business license manager~~Business License Manager shall have, among other, the following duties:

(1) To prepare and provide the necessary forms for the registration and application for a ~~business license~~license or occupational tax certificate, and for the submission of any required information as may be necessary to properly administer and enforce the provisions of this chapter.

(2) To issue to each person ~~a business license or~~a license or occupation tax certificate within a reasonable time after the payment of the license fee or occupation tax assessed and any personal property or other city taxes levied in this Code; provided however, where under other portions of this Code, permits, certifications, and compliance with enumerated conditions are required for the operation of the business, the ~~business license manager~~Business License Manager shall not issue a ~~business~~ license or occupation tax certificate until the applicant exhibits to the ~~city~~ City ~~manager~~ Manager the obtained permits, certification, and compliance.

(b) The ~~business license manager~~Business License Manager shall not issue any city license or occupation tax certificate for a restaurant, lunch wagon or other food preparation establishment unless a copy of a valid certificate issued by the county health department for the operation of the business has been filed with the ~~business license manager~~Business License Manager by the applicant.

(c) The ~~business license manager~~Business License Manager shall not issue any city license or occupation tax certificate for any business unless city personnel charged with the enforcement of the city's zoning regulations certify to the ~~city~~ City ~~manager's~~ Manager's satisfaction that the applicant's proposed location is not in violation of the city's zoning regulations.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-23. When occupation tax due and payable; effect of transacting business when tax delinquent; when renewal registration and tax due and payable; effect of transacting business when tax delinquent.

(a) Each such occupation tax shall be for the calendar year 1996 and succeeding calendar years thereafter unless otherwise specifically provided. The registration and occupation tax shall accrue on January 1 of each year and shall be due and payable no later than March 31 of each year, and be subject to a ten percent penalty plus one and one-half percent interest per month for delinquency. On any new professions, trades or callings begun in the city in 1996 or succeeding years thereafter, the registration shall be submitted and occupation taxes shall be paid within 30 days upon beginning business. If said registration is not submitted and occupation taxes are not paid within 30 days upon beginning business, a ten percent penalty per year plus one and one-half percent interest per month from the date the tax first became delinquent. For the purposes of this chapter any portion of a month shall be considered to be one month. The tax registration or occupation tax certificate herein provided for shall be issued by the ~~business license manager~~Business License Manager.

(b) Any ~~business~~ license or occupation tax certificate referred to in this part of the Code shall automatically expire on December 31 of the year of its issuance unless otherwise provided.

(c) If a business continues to transact or offer to transact in the city any of the kind of profession, trade or calling subject to this Code after notification by the office of the business license ~~and revenue division~~office that such registration tax or penalties are due, and if such registration, tax or penalties are not submitted as directed by the office of the business license ~~and revenue division~~office, then said business or its representative shall be subject to a citation. Such offender shall, upon conviction by the municipal judge, pay all fees and occupation taxes due and be subject to a civil fine not to exceed $500.00, which may be enforced by the contempt power of the municipal court.

(d) In addition to the above remedies, the ~~business license manager~~Business License Manager may proceed to collect in the same manner as provided by law for tax executions.

(e) The administrator may collect any delinquent ~~business~~ license or occupation taxes due the city for a period not to exceed seven years from the date such first became delinquent.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-24. Inspections of books and records.

(a) In any case the ~~business license manager~~Business License Manager of the city, or ~~his~~ their or her designee, may inspect the books of the business or profession for which the returns are made and such books or records for the business of which the return was made in the city shall be submitted for inspection by the office of the business license ~~and revenue division~~office of the city within 30 days. Failure of submission of such books or records within 30 days shall be grounds for revocation of the tax certificate currently existing to do business in the city. Adequate records shall be kept in the city for the examination by the ~~business license manager~~Business License Manager at ~~his or her~~their discretion. If, after examination of the books or records, it is determined that a deficiency occurs as a result of the under reporting, interest will be assessed for the period delinquent. If, after subsequent examinations of the books or records, it is determined that a deficiency occurs as a result of under-reporting, then a penalty of ten percent and interest shall be assessed as per O.C.G.A. § 48-2-40.

(b) In the event of a suspension or revocation by the ~~business license manager~~Business License Manager, the applicant may appeal the decision of the ~~business license manager~~Business License Manager to the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council for the city by filing a written notice of appeal within ten days from the date of the decision of the ~~business license manager~~Business License Manager. Thereafter, a hearing shall be scheduled before the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council for the city within 45 days after the date of the notice of appeal by the applicant. After hearing by the ~~mayor~~ Mayor and ~~city~~ City ~~council~~Council, ~~city~~ City ~~council~~ Council may take such action as it deems appropriate, including the upholding of the action of the ~~business license manager~~Business License Manager or the imposition of such action as the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council may deem appropriate under the facts. The decision of ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall be final. Appeals from the decision of the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall be to the Superior Court of Cobb County in the manner provided by law under O.C.G.A. tit. 5, ch. 3. In the event the applicant does not file an appeal from any decision of the ~~business license manager~~Business License Manager, as provided herein, the decision of the ~~business license manager~~Business License Manager shall be final.

(Ord. No 2019-09, § 5, 10-21-19; Ord. No. 2023-14, § 4, 8-7-23)

Sec. 22-25. Business or landlord required to provide names and addresses of tenant businesses.

Every person required to pay an occupation tax or license fee or a renewal of a license or occupation tax certificate under the provisions of this Code who leases or rents space to another business or businesses operating within the city shall submit a list of such businesses, upon request of the ~~business license manager~~Business License Manager, to the city as referenced in section 22-24 of the City Code.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-26. Returns confidential.

Except as provided in O.C.G.A. § 48-13-15(c), as amended, it shall be unlawful for any officer, employee, agent or ~~clerk~~ Clerk of the City of Kennesaw 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 chapter. All contents of the 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 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 the United States, and other local governments.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-27. Change of location; fee; taxes not transferable.

(a) Change of location and/or name fee. Any person or practitioner of profession or occupation taxable under this Code moving from one location to another shall notify the ~~business license manager~~Business License Manager of the move and the new address in writing on a form provided by the ~~business license manager~~Business License Manager no later than the day of moving and shall pay a ten-dollar fee.

(b) Any person or practitioner of profession or occupation taxable under this Code changing its business name from one name to another shall notify the ~~business license manager~~Business License Manager of the name change in writing on a form provided by the ~~business license manager~~Business License Manager no later than the day of the proposed name change and shall pay a ten-dollar fee.

(c) The transfer of ownership of a ~~business~~ license or occupation tax certificate shall be considered in the same manner as the termination of the business and the establishment of a new business. In the event that the owner of a ~~business~~ license or occupation tax certificate desires to transfer the same, or in the event that any interest in the business for which the license or certificate was issued is sold or otherwise transferred, then the purchaser or transferee of such license or tax certificate shall apply to the city as for an original license or tax certificate on or before the date on which such sale or transfer is made. Ownership of such ~~business~~ license or tax certificate shall remain unchanged until the application of such purchaser or transferee is approved by the city and all proper fees and taxes are paid. Notwithstanding the foregoing, in the case of a corporation, a new license or tax certificate shall not be required as herein provided unless a change in stock ownership in the corporation results in ownership of more than 50 percent of the outstanding corporate stock, voting or otherwise, by persons or combinations of persons not owners of such stock at the time the license or tax certificate was issued.

(d) In case of the death of any natural person holding a city ~~business~~ license or occupation tax certificate, or any interest therein, the license or certificate may be transferred to the administrator, executor of the lawful heir or devisee of the deceased person by filing a new application with the city for the change of ownership within 30 days of such death. The business involved may continue to operate until disposition of the application is determined as for an original license or certificate. No additional fees or occupation taxes shall be charged above what would be due if the business, or portion thereof, remained under the deceased person's ownership.

(e) The change of ownership of a business shall not affect the distance requirements previously approved by the city.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-28. Display of licenses and registrations; evidence of state registration required if applicable; state registration to be displayed; city registration effective; evidence of qualification if applicable.

(a) All persons shall exhibit and display all licenses and registrations issued to them under this Code in some conspicuous place in their business establishment at which address the license or registration was issued. Any nonresident person, firm or corporation doing business within the city shall carry the license or registration, or a copy of the license or registration, issued by another jurisdiction either upon ~~his or her~~their person or in any vehicle or other conveyance which is used in the business and the person shall exhibit the same to any authorized enforcement officer of the city when so requested.

(b) Each person who is licensed by the secretary of state pursuant to O.C.G.A. Title 43 shall provide evidence of proper and current state licensure before the city registration may be issued.

(c) Each person who is licensed by the state shall post the state license in a conspicuous place in the licensee's place of business and shall keep the license there at all times while the license remains valid.

(d) No city registration shall become effective until each person or business who is required to obtain a license from the State of Georgia has registered with the state and is in good standing with the state or has received such license.

(e) Any business required to obtain health permits, bonds, certificates 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.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-29. Revocation and appeal.

(a) The ~~supervisor~~ manager of the business license office shall be authorized to suspend or revoke a business registration certificate in accordance with the procedures set forth below. In the event the ~~supervisor~~ manager of the business license office seeks to suspend or revoke an occupation tax certificate, the ~~supervisor~~ manager of the business license office shall give written notification to the applicant of such action and such notice shall contain a specification of the violation or violations and shall be served upon the ~~licensee~~ certificate holder at least five days prior to the hearing. The applicant shall be given written notice of the time and place of the hearing.

(b) The ~~supervisor~~ manager of the business license office shall be authorized to deny, suspend or revoke an occupation tax certificate in the event of any one or more of the following:

(1) An applicant gave false or misleading information in the original or renewal application process;

(2) An applicant has knowingly allowed possession, use, or sale of controlled substances on the premises and/or knowingly allowed possession, use or sale of controlled substances to a minor on the premises;

(3) An applicant has knowingly allowed the violation of an ordinance of the city or a violation of any criminal law of the State of Georgia (a misdemeanor or a felony) to occur on the premises; and that such violation is materially related to the operation of said business;

(4) An applicant (or licensee) has been convicted of any drug related, alcohol-related or sex-related crime by the State of Georgia or the city regarding an offense which was committed on the premises or which would otherwise violate the provisions of this chapter;

(5) An applicant fails to pay any fee, occupation tax, fine or other amount of money due to the city under this chapter or any other taxing ordinance of the city;

(6) An applicant or the owner alters or allows to be altered, the ~~business license~~ occupation tax certificate (license document) or the applicant or the owner changes the information, defaces, destroys, misuses, abuses, or improperly alters or misrepresents the ~~business~~ license or occupation tax certificate; and

(7) An applicant has knowingly allowed the violation of any provision of O.C.G.A. § 16-12-171, as amended.

(c) The ~~city~~ City ~~manager~~ Manager shall approve any proposed action prior to proceeding toward any suspension or revocation of any occupation tax certificate and/or ~~business~~ license.

(d) In the event the ~~supervisor~~ manager of the business license office shall suspend or revoke any occupation tax certificate hereunder, the suspension or revocation shall be for a period of not less than one day nor more than 365 days, within the discretion of the ~~supervisor~~ manager of the business license office. Any suspension or revocation shall be sent by the city by certified mail, return receipt requested. For the first offense, the suspension shall be for a period of one to 90 days; second offense, suspension for one to 180 days and third offense, suspension for one to 365 days. Provided, however, that the applicant shall be authorized to continue its business operations until that date of the hearing scheduled in accordance with section 22-21(d). No applicant may apply for an occupation tax certificate during any period of suspension or revocation. In any hearing conducted, the ~~supervisor~~ manager of the business license office shall consider, among other things, the severity of the allegations, the evidence submitted and the testimony presented, in making any decision on suspension or revocation and the duration of either.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-30. Lien taken for delinquent occupation tax.

In addition to the other remedies provided for the collection of the occupation tax herein levied, the ~~business license manager~~Business License Manager of the city, upon any tax or installment of said tax becoming delinquent and remaining unpaid, shall issue execution for the correct amount of said tax against the person, partnership, or corporation liable for said tax, which said execution shall bear interest at the rate of one and one-half percent per month from the date when such tax or installment becomes delinquent, and the lien shall cover the property in the city of the person, partnership or corporation liable for said tax all as provided by the ordinances and Charter of said city and the laws of Georgia. The lien of said occupation tax shall become fixed on and date from the time when such tax or any installment thereof becomes delinquent. The execution shall be levied by the ~~sheriff's department of Cobb County~~Cobb County Sheriff's Office upon the property of defendant located in said city, and sufficient property shall be advertised and sold to pay the amount of said execution with interest and costs. All other proceedings in relation thereto shall be had as it is provided by ordinances and charter of said city and the laws of Georgia, and the defendant in said execution shall have rights of defense, by affidavit of illegality and otherwise, which are provided by the Charter of said city and the laws of Georgia in regard to tax executions. When a nulla bona entry has been entered by proper authority upon an execution issued by the ~~city~~

City ~~clerk~~ Clerk against any person defaulting on the occupation tax, the person against whom the entry was made shall not be allowed or entitled to have or collect any fees or charges whatsoever for services rendered after the entry of the nulla bona. If, at any time after the entry of nulla bona has been made, the person against whom the execution is issued pays the tax in full together with all interest and costs accrued on the tax, the person may collect any fees and charges due him or her as though ~~he or she~~they had never defaulted in the payment of taxes.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-31. Amendment; repeal of provision; applications of provisions to prior ordinance.

(a) The ordinance codified as chapter 22 of this Code 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 ~~council~~ Council to assess and collect any of the taxes or other charges prescribed. Such 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. No tax may be implemented hereunder prior to the date of its adoption and no tax may be retroactively assessed or collected.

(b) The ordinance codified as chapter 22 of this Code 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 2019-09, § 5, 10-21-19)

Sec. 22-32. Requirement of public hearing before tax increase.

(a) After April 11, 1995, the city shall conduct at least one public hearing before adopting any ordinance or resolution regarding the occupation tax.

(b) In any year when revenue from occupation taxes is greater than revenue from occupation taxes for the preceding year, the City of Kennesaw shall hold at least one public hearing as part of the process of determining how to use the additional revenue.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-33. Conflicts between specific and general provisions; severability; saving clause; repeal of conflicting provisions.

(a) Where there is an apparent conflict in the ordinance codified as chapter 22 of this Code between specific and general provisions, it is the intention hereof that the specific shall control.

(b) If any section, provision or clause of any part of the ordinance codified as chapter 22 of this Code shall be declared invalid or unconstitutional, or if the provisions of any part of the ordinance codified as chapter 22 of this Code as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such individuality shall not be construed to effect the portions of the ordinance codified as chapter 22 of this Code not so held to be invalid, or the application of the ordinance codified as chapter 22 of this Code to other circumstances not so held to be invalid. It is hereby declared as the intent that the ordinance codified as chapter 22 of this Code would have been adopted had such invalid portion not been included herein.

(c) The ordinance codified as chapter 22 of this Code does not repeal or affect the force of any part of any ordinance not included herein which shall remain in full force and effect until changed by amendment and adopted by ~~mayor~~ Mayor and ~~city~~ City ~~council~~Council. Nothing contained herein shall prevent or prohibit the city or any court or any board or authority of the city from enforcing any previous tax or obligation (including penalties and/or interest) incurred prior to the effective date of this Code. Any such enforcement of the prior Code is hereby authorized to continue after the effective date hereof.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-34. Annexation incentive.

As an incentive for occupations, businesses, and industries located adjacent to the corporate limits of the city to annex into the city, the following provisions shall apply:

(1) Occupations, businesses and industries located in areas annexed to the city, otherwise subject to the requirements of this article, shall be exempt from the requirements of this article for a period of five years from the effective date of the annexation.

(2) Occupations, businesses and industries located in areas annexed to the city, otherwise subject to the requirements of this article, shall be required to comply with the requirements of this article after the initial five-year exemption period outlined in subsection (1) above and shall pay occupation and ~~business~~ license fees to the city based on the following schedule:

a. Year six after the effective date of annexation—20 percent of the occupation or ~~business~~ license fee otherwise due.

b. Year seven after the effective date of annexation—40 percent of the occupation or ~~business~~ license fee otherwise due.

c. Year eight after the effective date of annexation—60 percent of the occupation or ~~business~~ license fee otherwise due.

d. Year nine after the effective date of annexation—80 percent of the occupation or ~~business~~ license fee otherwise due.

e. Year ten after the effective date of annexation—100 percent of the occupation or ~~business~~ license fee otherwise due.

The incentives outlined in this section shall apply only to businesses in existence within the annexation area upon the effective date of the annexation or established within 12 months after the effective date of the annexation.

(Ord. No 2019-09, § 5, 10-21-19)

Sec. 22-35. Reserved.

ARTICLE II. WRECKER AND TOWING SERVICES[3]

Sec. 22-36. Scope.

(a) All ~~licensees~~ licensees or certificate holders for wrecker or automobile or truck towing shall be subject to certain rules and regulations of the city, including but not limited to fingerprinting and background check as set forth in Sec. 22-9.

(b) All licensees for the towing of motor vehicles shall exercise due care for all vehicles in their care, custody and control, and shall not permit any private use thereof by the licensee or the licensee's family or employees, agents or servants.

(c) The ~~licensee~~ licensee or certificate holder for the towing of motor vehicles shall place the vehicles within an enclosure at least six feet in height and consisting of a chain-link fence or other comparable fencing, and no person shall be permitted within the enclosure other than the licensee, ~~his~~ their agents, servants and employees.

(d) In the event of the failure of the ~~licensee~~ licensee or certificate holder for the towing of motor vehicles to strictly observe the provisions of this section, a public hearing may be held pursuant to section 22-21 and the license may be suspended or revoked upon due cause being shown.

(e) In addition to the remedies set forth herein, the violation of this section shall also subject the ~~licensee~~ licensee or certificate holder to penalties as prescribed in section 1-11.

(Ord. No 2019-09, § 6, 10-21-19)

Secs. 22-37—22-45. Reserved.

ARTICLE III. BAIL BONDSMEN[4]

DIVISION 1. GENERALLY

Sec. 22-46. Definitions.

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:

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[3]Ord. No. 2019-09, § 6, adopted Oct. 21, 2019, repealed the former Art. II, §§ 22-11—22-23, 22-31—22-44, and enacted a new article as set out herein. The former Art. II pertained to occupation taxes and regulatory fees and derived from Ord. No. 2001-24, § 1, adopted Oct. 1, 2001; Ord. No. 2002-18, § 1, adopted June 3, 2002; Ord. No. 2009-09, § 1, adopted Oct. 5, 2009; and Ord. No. 2010-16, adopted July 6, 2010.

[4]State law reference(s)—Persons deemed professional bondsmen, O.C.G.A. § 17-6-50; certain persons prohibited from engaging in bail bond business, O.C.G.A. § 45-11-8.

Bondsmen, professional or surety means any persons who hold themselves out as signers or sureties of bail bonds for compensation, and who are licensed as provided in this article.

Applicant means any person, firm, partnership, corporation, or other legal entity who applies for the issuance, renewal or amendment of a bail bondsmen license within the city. When the applicant is not a person, the term shall include each owner, partner, officer, or director thereof. For purposes of background investigation, fingerprinting, and fitness determinations, applicant shall refer to each such individual person required under this chapter or state law to submit to review.

Employee means any individual who works for or provides services to a business holding an occupation tax certificate or regulatory license issued by the city, whether compensated by salary, wages, commission, or otherwise, and whether classified as full-time, part-time, temporary, or contract~~, or volunteer~~. The term includes, but is not limited to, managers, clerks, attendants, technicians, practitioners, and any person whose duties are directly related to the licensed activity regulated by this Code. Independent contractors engaged in providing regulated services on behalf of the business shall also be deemed employees for purposes of compliance, permitting, and background investigation requirements.

Bail bondsmen license means the regulatory license issued by the city authorizing a person or entity to engage in the business of bail bonding within the city. A bail bondsmen license is subject to the application, investigation, approval, and renewal requirements of this Code.

(Code 1986, § 9-4-1; Ord. No. 2000-19, 9-19-00)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 22-47. Persons prohibited from signing bonds.

No attorney at law and no official authorized to admit to bail, nor any city or county official, shall become surety on any bond.

(Code 1986, § 9-4-6; Ord. No. 2000-19, 9-19-00)

Sec. 22-48. Fees of sureties.

(a) Sureties on criminal bonds in any court shall not, when receiving compensation, charge or receive more than 12 percent of the principal amount of bonds set in the amount of $10,000.00 or less and shall not charge or receive more than 15 percent of the principal amount of bonds set in an amount in excess of $10,000.00 as compensation from defendants or from anyone acting for defendants.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor.

(Code 1986, § 9-4-7; Ord. of 6-19-89(2); Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

State law reference(s)—O.C.G.A. § 17-6-30

Sec. 22-49. Additional compensation prohibited.

No professional bondsman, becoming surety on a bond and receiving the compensation in the case for signing such bond as surety, shall thereafter receive any other sum in the case to the final disposition of such case.

(Code 1986, § 9-4-8; Ord. No. 2000-19, 9-19-00)

Sec. 22-50. Prenumbered receipt as evidence of payment.

(a) All professional bondsmen engaged in the bail bond business who accept money or any other consideration for any bail bond which they execute must, for payment received, give to the person paying the money or giving the consideration a prenumbered receipt as evidence of payment, which receipt shall state the date, name of the principal, amount of money or consideration received and purpose for which received, number of the power of attorney form attached to the bond, penal sum of the bond (amount of cash bond), and name of person making payment or giving consideration.

(b) All professional bondsmen must retain a duplicate copy of each receipt issued as part of their records.

(Code 1986, § 9-4-9; Ord. No. 2000-19, 9-19-00)

Sec. 22-51. Power of attorney.

All professional bondsmen must attach to each bail bond a duly executed power of attorney in an amount of at least the penal sum of the bond. This section shall not apply to any card or certificate of membership of any automobile club.

(Code 1986, § 9-4-10; Ord. No. 2000-19, 9-19-00)

Sec. 22-52. Bondsmen to have equal access to jail.

All professional bondsmen who hold a currently effective license issued by the business license ~~supervisor~~ manager shall be entitled to equal access to the jail of this city for the purpose of making bond.

(Code 1986, § 9-4-11; Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

Sec. 22-53. Unlawful inducements for benefit of bondsman; unlawful execution of bond.

No professional bondsman shall:

(1) Pay a fee or rebate or give or promise anything of value to a jailor, police officer, peace officer, municipal court judge or any other person who has power to arrest or to hold in custody; or to any city official or city employee in order to secure a settlement, compromise, remission or reduction of the amount of any bail bond.

(2) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond.

(3) Pay a fee or rebate or give or promise anything of value to the principal or anyone ~~in~~ on ~~his~~ their behalf.

(4) Sign or countersign in blank any bond, or give a power of attorney to, or otherwise authorize anyone to countersign ~~his~~ their name to bonds unless the person so authorized is directly employed by the bondsman giving such power of attorney.

(Code 1986, § 9-4-12; Ord. No. 2000-19, 9-19-00)

Sec. 22-54. Display of signs.

(a) Each professional bondsman duly licensed by the city shall be allowed to display a sign of ~~his~~ their own making or choosing in a place designated by the ~~chief~~ Chief of P~~p~~olice at or near the book-in, book-out section of the city jail.

(b) Two signs per licensed bondsman shall be permitted and shall be limited to lettering and numbering of no more than three inches high and one and one-half inches in width for each letter or numeral.

(c) Signs shall be limited to two lines to allow the name of the business licensed under this article at the top and the phone number at the bottom.

(d) The overall dimensions of the said signs shall be limited to four inches in height and 12 inches in width.

(Code 1986, § 9-4-13; Ord. of 6-19-89(2); Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

Sec. 22-55. Conditions of bond.

If a person is admitted to bail for ~~his~~ their appearance in municipal court, the condition of the bail bond shall be that he will appear for such hearing, at the time and date specified on the copy of charges, to answer the charge, and will submit himself to the orders and processes of the municipal court judge trying the case and will not depart without leave of the municipal court judge.

(Code 1986, § 9-4-21; Ord. No. 2000-19, 9-19-00)

Sec. 22-56. Forfeiture of bond; surrender of custody of defendant; procedure.

(a) The ~~clerk~~ Clerk of the ~~court~~ Court shall give the surety on all appearance bonds at least 72 hours written notice, exclusive of Saturdays, Sundays, and legal holidays, before the time of the required appearance of the principal. Such notice shall not be necessary if the time for appearance is within 72 hours from the time of arrest, provided the time for appearance is stated on the bond, or where the principal is given actual notice in open court.

(b) On the date required for appearance of the principal, the presiding municipal judge or designee shall call the case, and, if the accused is not in court and does not answer the call, and, if no good and sufficient reason is given for non-appearance, the judge shall, at the end of the court day, upon the failure of the principal to appear, enter on the docket where the case is stated "bond forfeited" or similar words thereby forfeiting the bond and order an execution hearing not sooner than 120 days but later than 150 days after such failure to appear. Notice of the execution hearing shall be served within ten days of such failure to appear by certified mail or statutory overnight delivery to the surety at the address listed on the bond or by personal service to the surety within ten days of such failure to appear at its home or office or to its designated registered agent. Service shall be considered complete upon the mailing of such certified notice.

(c) If at the execution hearing it is determined that judgment should be entered, the judge shall so order and a writ of fieri facis shall be filed in the office of the ~~clerk~~ Clerk of the ~~court~~ Court where such judgment is entered.

(Code 1986, § 9-4-22; Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

Cross reference(s)—O.C.G.A. § 17-6-70(b); O.C.G.A. § 17-6-71(a); O.C.G.A. § 17-6-71(b).

State law reference(s)—O.C.G.A. § 17-6-71(a).

Sec. 22-57. Conditions not warranting forfeiture of bond for failure to appear; remission of forfeiture.

(a) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court by the written statement of a licensed physician that the principal on the bond was prevented from attending by some mental or physical disability.

(b) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court that the principal on the bond was prevented from attending because ~~he or she~~they ~~was~~ were detained by reason of arrest, sentence, or confinement in a penal institution or jail in the State of Georgia, or so detained in another jurisdiction, or because ~~he or she~~they ~~was~~ were involuntarily confined or detained pursuant to court order in a mental institution in the State of Georgia or another jurisdiction. An official written notice of the holding institution in which the principal is being detained or confined shall be considered proof of the principal's detention or confinement and such notice may be sent from the holding institution by mail or delivered by hand or by facsimile machine. Upon the presentation of such written notice to clerk of the proper court, the prosecuting attorney, and the sheriff or other law enforcement officer having jurisdiction over the case, along with a letter of intent to pay all costs of returning the principal to the jurisdiction of court, such notice and letter shall serve as the surety's request for a detainer or hold to be placed upon the principal. Should there be a failure to place a detainer or hold within 15 days, excluding Saturdays, Sundays, and legal holidays, and after such presentation of such notice and letter of intent to pay costs, the surety shall then be relieved of liability for the appearance bond without further order of the court.

(c) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court that prior to the entry of the judgment on the forfeiture the principal on the bond is in the custody of the sheriff or other responsible law enforcement agency. An official written notice of the holding institution in which the principal is being detained or confined shall be proof of the principal's detention or confinement and such notice may be sent from the holding institution by mail or delivered by hand or by facsimile machine. Upon presentation of such written notice to the clerk of the proper court, the prosecuting attorney, and the sheriff or other law enforcement officer having jurisdiction over the case along with a letter of intent to pay all of the costs of returning the principal to the jurisdiction of the court, such notice and letter shall serve as the surety's request for a detainer or hold to be placed upon the principal. Should there be a failure to place a detainer or hold within 15 days, excluding Saturdays, Sundays, and legal holidays, and after such presentation of such notice and letter of intent to pay costs, the surety shall then be relieved of liability for the appearance bond without further order of the court.

(d) In cases in which paragraph (3) of this subsection is not applicable, on application filed within 120 days from the payment of the judgment, the court shall order remission under the following conditions:

(1) Provided the bond amount has been paid within 120 days after judgment and the delay has not prevented prosecution of the principal and upon application to the court with prior notice to the prosecuting attorney of such application, said court shall direct remission of 95 percent of the bond amount remitted to the surety if the surety located the principal in the custody of the sheriff in the jurisdiction where the bond was made, apprehends, surrenders, or produces the principal, if the apprehension or surrender of the principal was substantially procured or caused by the surety, or if the location of the principal caused the adjudication of the principal in the jurisdiction where the bond was made. Should the surety, within two years of the principal's failure to appear, locate the principal in the custody of the sheriff in the jurisdiction where the bond was made or another jurisdiction causing the return of the principal to the jurisdiction where the bond was made or in another jurisdiction causing the return of the principal to the jurisdiction where the bond was made, apprehend, surrender, or produce the principal, if the apprehension or surrender of the principal is substantially procured or caused by the surety, or if the location of the principal by the surety causes the adjudication of the

principal in the jurisdiction in which the bond was made, the surety shall be entitled to a refund of 50 percent of the bond amount. The application for 50 percent remission shall be made no later than 30 days following the expiration of the two-year period following the date of judgment.

(2) Remission shall be granted upon condition of the payment of court costs and of the expenses of returning the principal to the jurisdiction of the surety; or

(3) If, within 120 days after judgment, the surety surrenders the principal to the sheriff or responsible law enforcement officer, or said surrender has been denied by the sheriff or responsible law enforcement officer, surety locates the principal in custody of another jurisdiction, the surety shall only be required to pay costs and five percent of the face amount of the bond, which amount includes all surcharges. If it is shown to the satisfaction of the court, by presentation of competent evidence from the sheriff or the holding institution, that said surrender has been made or denied or that the principal is in custody in another jurisdiction or that said surrender has been made and that five percent of the face amount of the bond and all costs have been tendered to the sheriff, the court shall direct that the judgment be marked satisfied and that the writ of execution, fi. fa., be cancelled.

(Code 1986, § 9-4-23; Ord. No. 2000-19, 9-19-00)

Cross reference(s)—O.C.G.A. § 17-6-72.

Sec. 22-58. Cancelling bond.

When the condition of the bond is satisfied or the forfeiture of the bond has been discharged or remitted, the municipal court judge shall make an order canceling the bond. Conviction or acquittal of the defendant shall satisfy the terms of the bond written by any bail bondsman.

(Code 1986, § 9-4-24; Ord. No. 2000-19, 9-19-00)

Sec. 22-59. Officer taking insufficient bail or accepting unqualified surety.

Any person authorized to take bail, who takes bail which he knows to be insufficient, or accepts as surety any professional bondsman who is not qualified to act as surety, shall be guilty of an act of misconduct and shall be subject to disciplinary action by the ~~department head~~department head or their designee in accordance with existing rules and regulations for same.

(Code 1986, § 9-4-25; Ord. No. 2000-19, 9-19-00)

Sec. 22-60. Employee termination.

Any professional bondsman who terminates the appointment of any employee authorized to sign bonds shall immediately file written notice thereof with the ~~chief~~ Chief of P~~p~~olice and Business License ~~Supervisor~~ Manager, together with a statement that he has given or mailed notice to the employee. Such filed notice shall state the reasons, if any, for such termination. Information so furnished shall be privileged and shall not be used as evidence in any action against the professional bondsman.

(Code 1986, § 9-4-5; Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01)

Secs. 22-61—22-70. Reserved.

DIVISION 2. LICENSE

Sec. 22-71. Required; qualifications; application; guidelines.

(a) No person shall act as a bail or professional bondsman in the city without having a license therefore from the city as provided in this article.

(b) To qualify for a license under this article, the following certified information must affirmatively appear on, or be annexed to, the application that:

(1) The applicant is a citizen of the United States, and has been a bona fide resident of this state for one year last past.

(2) The applicant is a natural person who has reached the age of 21 years.

(3) The place of business of the applicant shall be located in this state and that such applicant will be actively engaged in the bail bond business and maintain a place of business or residential address accessible to the public.

(4) Complete documentation showing the composition of the company for which applicant is applying to be an individual, a trust, or group of individuals, whether or not formed as a partnership or other legal entity, or a corporation or a combination of individuals, trusts, or corporations and setting forth the names and addresses of each partner, officer, director, shareholder, trust, member or other entity composing the company.

(5) The employee applicants qualified to sign bonds, are persons of high character and provable integrity and each shall be vouched for by two other reputable citizens who are residents of the county.

(6) A complete set of fingerprints and a recent credential-size, full face photograph of the applicant. Each application shall require a background investigation as set forth in the Kennesaw Code of Ordinances, section 22-76~~9~~ and certify the applicant to be free of any record of any crime or any violation of law applicable to the bail bonding business within previous five years.

(7) A complete set of fingerprints and a recent credential-size, full face photograph of each individual authorized to execute bonds on behalf of the company. Such application shall request and provide personal information sufficient to perform a background investigation on the employee applicant as set forth in the Kennesaw Code of Ordinances, section 22-~~9~~76 and certify the employee applicant to be free of any record of any crime or any violation of law applicable to the bail bonding business. Any person who will have power of attorney extended for the purpose of writing bonds must submit the above described application.

(8) An affidavit listing all real property in which the applicant has an interest, stating the ownership of such real property, any liens or encumbrances thereon and describing such property in detail, including but not limited to the true market value of such property. Such affidavit is to be submitted according to the standards promulgated by the ~~chief~~ Chief of ~~police~~Police.

(9) The applicant has, or has applied for ~~a business license~~an occupation tax certificate with the city and has or will pay that rate which is specified in the ~~business license~~master fee schedule.

(c) A fee as set forth in the schedule of fees and charges shall be submitted with each application to the ~~mayor~~ Mayor and ~~council~~Council, such fee to defray the cost of conducting a character investigation required by this section.

(d) No person shall be permitted to sign professional bonds or act as an agent or representative of a bonding company if such person:

   (1) Has been convicted of a felony offense;

   (2) Has been convicted of a crime involving moral turpitude;

   (3) Has failed to meet bonding obligations in the city or any other city or county in the state of Georgia or elsewhere. This provision shall apply to all persons who have an ownership interest in a bonding business in another jurisdiction regardless of the name of the entity; or

   (4) Fails to qualify as a bondsman under applicable state statutes governing who may act in such capacity.

(e) No person shall be permitted to write professional bonds which are prohibited as a matter of law.

(f) Persons employed by the city will not be permitted to operate, own an interest in, or act in any capacity as an agent for a professional bonding company. In the event this provision is violated, the approved bonding company's privileges shall be suspended and/or revoked until such time as the conflict is remedied and such persons are no longer affiliated with the bonding company.

(g) These provisions in no way prohibit the city or its authorized agents from establishing additional standards with which bonding companies must comply, nor does it an any way limit the city's legal right to regulate the privilege of writing bail bonds.

(h) Applicants seeking permission to act as professional bondsmen in the city must qualify as follows:

   (1) Applicants must sign an agreement with the city providing for an escrow account in any one or more financial institutions designated as city depositories. This escrow shall be ten percent of that company's bonding capacity and shall not be less than $2,500.00. If this escrow is encroached upon for any reason or if the ~~city's~~ City's ~~chief~~ Chief of P~~p~~olice otherwise determines that additional escrow is required to ensure the solvency or reliability of the professional bonding business, the ~~city's~~ City's C~~c~~hief of ~~police~~ Police may amend the escrow through written notice to the professional bonding business.

   (2) The president of a corporation operating a professional bonding business in the city shall provide the C~~c~~hief of ~~police~~ Police with the names of all partners, officers, stockholders, and any other person(s) or corporation(s) having an interest in or involved with the business of the corporation. This information shall be provided prior to the bonding company initiating business or upon the renewal of its license. The bonding company shall immediately notify the C~~c~~hief of P~~p~~olice of any changes of ownership or direction. Failure of the corporation to comply with these provisions shall result in the immediate suspension of bonding privileges.

   (3) All employees and/or owners of a professional bonding company must be fingerprinted and photographed by the identification division of the city police department.

   (4) Each employee of a bonding company must file a properly executed power of attorney from that bonding company.

   (5) Professional bonding companies must receive the approval of the ~~chief~~ Chief of ~~police~~ Police prior to posting a bond or any combination of bonds which total $25,000.00 or more for any one individual.

(i) No professional bonding company may sign a bond in which another bonding company or third party receives compensation to arrange the release of an inmate from the city jail.

(j) All bonding companies shall file with the C~~c~~hief of ~~police~~ Police a monthly report. These reports will include the following information and shall be filed in the form of an affidavit:

(1) List by name, in alphabetical order, amount, and date of bonds signed during each month.

(2) List by name, in alphabetical order, case or indictment number and date of all bonds officially settled during each month.

(3) List by name, amount, and date of bond, all judgments rendered by the city, state and/or Superior Court of Cobb County and/or any other counties, subject to collection in the city.

(4) List by name, amount, and date of bond all forfeitures pending in Kennesaw and/or other cities or counties, subject to collection in the city.

(5) List personnel in the employment of submitting bonding company.

(Code 1986, § 9-4-2; Ord. of 6-19-89(2); Ord. No. 2000-19, 9-19-00; Ord. No. 2001-08, 3-19-01; Ord. No. 2019-09, § 7, 10-21-19)

Sec. 22-71.1. Renewal of licenses.

(a) Any professional bonding company licensed under this chapter shall be required to renew its license before December 31 of each consecutive year. Failure to pay the license fee by January 31 shall automatically revoke the license.

(b) Each application for renewal of such license shall be accompanied by a certified statement from the professional bonding company that it is in compliance with all requirements of any agreements with the city and the provisions of this Code section, along with copies of the monthly reports filed each month with the ~~chief~~ Chief of ~~police~~ Police as required by section 22-71(j) of this section for the previous year.

(Ord. No. 2001-08, 3-19-01)

Sec. 22-72. Denial; suspension; revocation; nonrenewal.

Each year upon application for a license under this article, the applicant shall comply with the requirements of this article, and the license shall be granted, renewed or denied in accordance with this article. The ~~mayor~~ Mayor and ~~council~~ Council may deny, suspend, revoke or refuse to renew any license issued in accordance with the requirements of this article for any of the following causes:

(1) For any cause for which issuance of the license could have been refused had it then existed and been known to the ~~mayor~~ Mayor and ~~council~~Council.

(2) Material misstatement, misrepresentation or fraud in obtaining the license.

(3) Misappropriation, conversion or unlawful withholding of money belonging to others and received in the conduct of business under the license.

(4) Conviction of a felony.

(5) Fraudulent or dishonest practices in the conduct of business under the license.

(6) Failure to comply with the provisions of this article.

(7) Failure to return collateral security to the principal when the principal is entitled thereto.

(8) When in judgment of the ~~mayor~~ Mayor and ~~council~~Council, the licensee has, in the conduct of affairs under the license, demonstrated incompetency or untrustworthiness, or conduct or practices rendering him unfit to carry on the bail bond business, or making ~~his~~ their continuance in such business detrimental to the public interest, or that he is no longer in good faith carrying on the bail bond business, or that he is guilty of rebating, or offering to rebate, or offering to divide ~~his~~ their

compensation, and for any or all such reasons, is found by the ~~mayor~~ Mayor and ~~council~~ Council to be a source of detriment, injury or loss to the public.

(Code 1986, § 9-4-4; Ord. of 6-19-89(2); Ord. No. 2000-19, 9-19-00)

Sec. 22-73. Return of license upon termination of business.

Any professional bondsman who discontinues writing bail bonds during the period for which he is licensed shall notify the ~~chief~~ Chief of ~~police~~ Police and the ~~city~~ City ~~clerk~~ Clerk and immediately return ~~his~~ their license.

(Code 1986, § 9-4-3; Ord. No. 2000-19, 9-19-00)

Sec. 22-74. State statutes governing professional bondsmen.

Bondsmen shall comply with all applicable state statutes which control bonding procedures within the State of Georgia.

(Ord. No. 2000-19, 9-19-00)

Sec. 22-75. Individuals other than professional bondsmen.

The ~~chief~~ Chief of ~~police~~ Police may allow an individual property owner to sign a bail bond under the following conditions:

(1) The individual must own real property in Kennesaw or Cobb County.

(2) The individual must prove ownership of said real property by either:

a. A current tax receipt; or

b. A copy of warranty deed transferring full interest in described piece of property.

c. The individual must sign an affidavit that ~~he/she~~they ha~~s~~ves equity in said property of at least twice the amount of said bail bond, excluding homestead exemption on each bond written.

d. Individual bondsmen shall not receive any compensation, gift or collateral for making or signing a defendant's bond and must sign an affidavit affirming such.

(Ord. No. 2000-19, 9-19-00)

Sec. 22-76. State and national criminal backgrounding of persons engaged in the bail bond business.

1. This ordinance is enacted pursuant to Pursuant to O.C.G.A. § 35-3-35 to regulate the issuance of licenses and employment of those engaged in the bail bond business within the City of Kennesaw.

2. An applicant or employee seeking to engage in bail bonding shall submit all required applications and payment of appropriate fees to the City of Kennesaw Business License Manager and provide fingerprints taken by the City of Kennesaw Police Department.

3. Upon receipt of the fingerprints and the appropriate fees, the City of Kennesaw Police Department will transmit fingerprints to the Georgia Bureau of Investigation/GCIC. The Georgia Bureau of Investigation/GCIC will compare

the subject's fingerprints against its criminal file, and if no disqualifying conduct is found therein, they will submit the fingerprints to the Federal Bureau of Investigation for a comparison with nationwide records. The results of the Federal Bureau of Investigation check will be returned to the Georgia Bureau of Investigation/GCIC, which will disseminate the state and national results to the City of Kennesaw Police Department.

4. The City of Kennesaw Business License Manager shall render a fitness determination based upon the results of the criminal background check. In rendering a fitness determination, the City of Kennesaw Business License Manager will decide whether the record subject has been convicted of or is under pending indictment for (a) a crime which bears upon their ability or fitness to serve in that capacity; (b) any felony or a misdemeanor which involved force or threat of force, controlled substances, or was a sex-related offense; or (c) enumerated disqualifiers set forth in the Municipal Code of the City of Kennesaw, Georgia. Upon completion, the Business License Manager will communicate the fitness determination to the applicant.

6. A record subject may request and receive a copy of their criminal history record information from the Kennesaw Police Department. Should the record subject seek to amend or correct their record, they must contact the Georgia Bureau of Investigation/GCIC for a Georgia state record or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

(Ord. No. ####)

Secs. 22-7~~6~~7—22-95. Reserved.

ARTICLE IV. CHARITABLE SOLICITATIONS[5]

Sec. 22-96. Provisions incorporated by reference.

The Georgia Charitable Solicitations Act of 1988 as set forth in O.C.G.A. § 43-17-1 et seq. is by this reference incorporated herein and made a part of this Code in as full and complete a manner and with like effect as though set out in full in this article.

Secs. 22-97—22-115. Reserved.

ARTICLE V. SOLICITATIONS[6]

Sec. 22-116. Legislative findings.

In enacting this article, the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council of the City of Kennesaw make the following legislative findings:

[5]State law reference(s)—Georgia Charitable Solicitations Act of 1988, O.C.G.A. § 43-17-1 et seq.

[6]Editor's note(s)—Ord. No. 2011-02, adopted Feb. 28, 2011, amended the former Art. V, §§ 22-116—22-131, and enacted a new Art. V as set out herein. The former Art. V pertained to commercial solicitations and derived from Code 1986, §§ 9-3-1—9-3-6; Ord. No. 2010-20, adopted Oct. 10, 2010.

State law reference(s)—Peddlers and itinerant traders, O.C.G.A. §§ 40-6-97; 43-32-1 et seq.

(a) The orderly flow of motorized traffic is a major concern in congested urban areas, particularly because an obstruction or delay in traffic at one point along a traffic artery results in delays and backups far down the roadway.

(b) There exists a substantial disruption in crowd and traffic control caused by the solicitation of contributions.

(c) Solicitation and selling requires "stopping [individuals] momentarily or for longer periods of time as money is given or exchanged for literature." Heffron v. International Society of Krishna Consciousness, Inc., 452 U.S. 640, 653 (1981).

(d) Restrictions on the solicitation of contributions or sale of items on public streets and highways is necessary to assure the free movement of vehicle traffic on those streets and highways.

(e) Unlike oral advocacy of ideas or the distribution of literature, successful solicitation of contributions or sales requires the individual to respond by searching for currency and passing it to the solicitor.

(f) After the solicitor has departed, the driver must then secure any change returned, replace a wallet, or close a purse, and then return proper attention to ~~his or her~~their full responsibilities as motor vehicle driver.

(g) The direct personal solicitation from drivers and occupants of motor vehicles distracts the driver from ~~his or her~~their primary duty to watch the traffic and potential hazards in the road, observe all traffic control signals or warnings, and prepare to move through the intersection.

(h) The distraction of motorists occasioned by solicitation not only threatens to impede the orderly flow of traffic, but also raises concerns of traffic and public safety.

(i) Evident dangers of physical injury and traffic disruption are present when individuals stand in the center of busy streets trying to engage drivers and solicit contributions from them. United States Labor Party v. Oremus, 619 F.2d 683, 688 (7th Cir. 1980).

(Ord. No. 2011-02, 2-18-11)

Sec. 22-117. Definitions.

The following terms, as used in this article whether or not capitalized, shall have the meanings set forth in this section:

(a) *Charitable organization.*

(1) The term "charitable organization" means either of the following:

a. Any entity that is determined by the Internal Revenue Service to be a tax exempt entity pursuant to Section 501(c)(3) of the Internal Revenue Code;

b. Any entity that is or holds itself out to be established for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety, or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation.

(2) The term "charitable organization" is not limited to only those entities to which contributions are tax deductible under Section 170 of the Internal Revenue Code.

(3) The term "charitable organization" does not include an employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions but who incidentally solicits contributions for a charitable entity or purpose; or a compensated employee

of an employer not engaged in the business of soliciting contributions or conducting charitable sales promotions, when the employee solicits contributions or conducts charitable sales promotions at the direction of the employee's employer.

(b) *Charitable purpose.*

(1) The term "charitable purpose" means either of the following:

a. Any purpose described in section 501(c)(3) of the Internal Revenue Code, as amended.

b. Any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary objective or any objective that benefits law enforcement personnel, firefighters, or other persons who protect the public safety.

(2) The term "charitable purpose" is not limited to only those purposes for which contributions are tax deductible under Section 170 of the Internal Revenue Code.

(c) *City* means the City of Kennesaw.

(d) *Commercial co-venturer* means any person and/or entity who for profit regularly and primarily is engaged in trade or commerce other than in connection with soliciting for charitable entities or charitable purposes and who conducts a charitable sales promotion.

(e) *Contribution* means the promise, pledge, or grant of any money or property, financial assistance, or any other thing of value in response to a solicitation or received as part of or in response to a charitable sales promotion. The term "contribution" does not include any bona fide fees, or any dues or assessments paid by members, provided that membership is not conferred solely as a consideration for making a contribution in response to a solicitation.

(f) *Business solicitor* means a person and/or entity who is soliciting the purchase of goods or services from business owners within the city. A business solicitor shall be exempt from then registration requirements contained in section 22-120 of this article.

(g) *Door-to-door* means the visiting of residential dwellings for the purpose of offering goods, wares, merchandise, services, or other things of value for sale.

(h) *Fund-raising counsel* means any person and/or entity who, for compensation, plans, manages, advises, consults, or prepares material for or with respect to the solicitation in the city of contributions for any charitable organization or at any time has custody of contributions from such a solicitation, but does not solicit contributions and does not employ, procure, or otherwise engage any compensated person to solicit contributions. The term "fund-raising counsel" does not include the following:

(1) An attorney, investment counselor, or banker who in the conduct of the attorney's, investment counselor's, or banker's profession advises a client;

(2) A charitable organization or a bona fide officer, employee, or volunteer of a charitable organization, when the charitable organization has full knowledge of the services being performed on its behalf and either of the following applies:

a. The services performed by the charitable organization, bona fide officer, employee, or volunteer are performed on behalf of the charitable organization that employs the bona fide officer or employee or engages the services of the bona fide volunteer;

b. The charitable organization on whose behalf the services are performed shares some element of common control or an historic or continuing relationship with the charitable organization that performs the services or employs the bona fide officer or employee or engages the services of the bona fide volunteer.

(3) An employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions but who incidentally solicits contributions for a charitable organization or purpose without compensation;

(4) A compensated employee of an employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions, when the employee solicits contributions or conducts charitable sales promotions at the direction of the employee's employer.

(i) *Internal Revenue Code* means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. § 1 et seq., as amended.

(j) *Police department* means the Kennesaw Police Department.

(k) *Professional solicitor* means any person and/or entity who, for compensation, performs on behalf of or for the benefit of a charitable organization any service in connection with which contributions are or will be solicited in the city by the compensated person or by any person it employs, procures, or otherwise engages directly or indirectly to solicit contributions. The term "professional solicitor" does not include the following:

(1) An attorney, investment counselor, or banker who in the conduct of the attorney's, investment counselor's, or banker's profession advises a client;

(2) A charitable organization or a bona fide officer, employee, or volunteer of a charitable organization, when the charitable organization has full knowledge of the services being performed on its behalf and either of the following applies:

a. The services performed by the charitable organization, bona fide officer, employee, or volunteer are performed on behalf of the charitable organization that employs the bona fide officer or employee or engages the services of the bona fide volunteer;

b. The charitable organization on whose behalf the services are performed shares some element of common control or an historic or continuing relationship with the charitable organization that performs the services or employs the bona fide officer or employee or engages the services of the bona fide volunteer.

(3) An employer who is not engaged in the business of soliciting contributions or conducting charitable sales promotions but who incidentally solicits contributions for a charitable organization or purpose without compensation;

(l) *Solicitor* means a person and/or entity who is soliciting the sale of goods, wares, merchandise, services, or other things of value by doing so door-to-door. Unless otherwise indicated in this article, the term "solicitor" shall not include business solicitor. Any person and/or entity who is soliciting orders for goods, wares, merchandise or other things of value from any person by going door-to-door on behalf of: a charitable organization: or, any religious organizations; or , any political organization, or any political candidate as described in O.C.G.A. § 43-17-9, as amended, is not a solicitor as defined in this article and shall not be subject to the provisions of this article, with the exception of section 22-124 of this article. All persons and/or entities offering for sale any goods, wares, merchandise, services, or other things of value shall be subject to section 22-124 of this article.

(Ord. No. 2011-02, 2-18-11)

Sec. 22-118. Penalty for violation of article.

Any person and/or entity violating any provisions of this article shall, upon conviction thereof, be punished as provided in section 1-11 of the city ordinances of the City of Kennesaw.

(Ord. No. 2011-02, 2-18-11)

Sec. 22-119. Applicability of article to business solicitors.

(a) This article shall be inapplicable to any person and/or entity who is solely a business solicitor and does not engage in any door-to-door solicitation.

(b) A business solicitor shall not engage in any door-to-door solicitation without first complying with all of the requirements of this article.

(Ord. No. 2011-02, 2-18-11)

Sec. 22-120. Registration required—Solicitor.

Any person desiring to be a solicitor within the city shall register with and obtain a solicitor permit from the business license ~~department~~ office of the city.

(Ord. No. 2011-02, 2-18-11)

Sec. 22-121. Application for permit.

(a) No solicitor shall be authorized to solicit orders until ~~he or she~~they file~~s~~ an application with the business license ~~department~~ office and is issued a solicitor permit from the city. It is the applicant's responsibility to assure that ~~his or her~~their application is complete as any incomplete application will not be processed by the city.

(b) Once the completed application is filed, the business license ~~department~~ office shall conduct an investigation which includes, but is not limited to, an investigation of the applicant's police record and moral character. Once the business license ~~department~~ office deems an application to be complete for purposes of processing, the business license ~~department~~ office shall either grant or deny the permit no later than ten business days after the date the application became complete for purposes of processing. The business license ~~department~~ office shall furnish the police department with a duplicate of the application for a soliciting permit.

(c) The police department, within five business days, shall furnish a report to the business license ~~department~~ office of the police records, if any, of the applicant. For purposes of this section, the business license ~~department's~~ office's investigation into the applicant's moral character shall be limited to and no permit shall be given to any applicant who shall have either a pending charge or a conviction for a crime of moral turpitude or an offense involving unethical or improper business actions or any felony or any civil judgments involving unethical or improper business actions, including but not limited to actions which would constitute fraud and deceit under the law of this state.

(d) No application for a permit under this section shall be received or acted upon if the applicant has submitted the same or a similar application for a permit within the preceding 12 months, which prior application has been dismissed, denied, or abandoned.

(e) No ~~license~~ permit shall be granted if the applicant is in violation of any portion of this article or has within 12 months preceding the filing of an application under this section been in violation of this article or other law or ordinance regulating the activities for which that permit is sought.

(f) A solicitor or the entity or organization shall have the right to file an appeal from the denial of a permit by the business license ~~department~~ office to the ~~city~~ City ~~manager~~Manager. Appeal requests must be made in writing and submitted to the ~~city~~ City ~~manager~~ Manager within ten calendar days of the denial of the permit or permits of the solicitors.

(Ord. No. 2011-02, 2-18-11; Ord. No. 2021-08, § 1, 8-2-21)

Sec. 22-122. Issuance of permit~~; identity card.~~

(a) Upon proper registration as provided in this article with the business license ~~department~~office, a written permit shall issue, to be valid for a period of 30 calendar days from and after the date of issuance. The permit may be renewed by filing a renewal application with the business license ~~department~~ office upon forms prescribed by the office and paying a renewal fee. Such renewal is within the discretion of the business license ~~department~~ office taking into account the number of such permits issued within the 30 calendar days preceding the request for such renewal.

~~(b) In addition, identity cards shall be issued by the business license department that must be carried by all solicitors in the city. The permit holder shall wear the identity card on his or her left or right shoulder of his or her outer garment so that such badge can be readily seen by the owner or occupant of the premises.~~

(Ord. No. 2011-02, 2-18-11; Ord. No. 2021-08, § 1, 8-2-21)

Sec. 22-123. Requirements of solicitors.

Soliciting or canvassing door-to-door in the city shall be subject to the following regulations:

(a) All soliciting or canvassing in the city shall only occur between the hours of 9:00 a.m. and sunset.

(b) The number of solicitors in the city from or representing any single firm, corporation or entity shall not exceed 25 in number at any one time.

(Ord. No. 2011-02, 2-18-11; Ord. No. 2021-08, § 1, 8-2-21)

Sec. 22-124. Prohibited acts.

(a) It shall be unlawful for any person who is soliciting, canvassing, or calling on any business or residence to do any of the following:

(1) Falsely represent, directly or by implication that funds are being solicited on behalf of any person and/or entity other than as registered with the business license ~~department~~office.

(2) Without the express prior permission of an occupant or property owner, solicit at any residence, address, apartment complex or business establishment where there is posted a sign forbidding any solicitation.

(3) Remain on private premises after being asked to leave the premises or continue solicitation after being refused; such action shall constitute trespass or harassment, respectively.

(4) Enter any residential dwelling except at the express invitation of the occupant.

(b) A solicitor shall, at all times, maintain a courteous decorum and shall not use opprobrious words to any homeowner or occupant.

(c) No solicitor shall remain upon the premises of an occupant or owner after such occupant or owner has requested that the solicitor leave the premises.

(d) No solicitor shall remain upon the premises of an occupant or owner after such occupant or owner has indicated that ~~he or she~~they ~~is~~ are not interested in purchasing the good or service being represented by that solicitor.

(Ord. No. 2011-02, 2-18-11)

Sec. 12-125. Records of license office, complaints.

(a) The business license ~~department~~ office shall maintain true and accurate records of the name and identification number of each solicitor, together with other requirements of this article, and shall maintain a log of all complaints made against each solicitor or entity represented by such solicitor. If the license office shall receive any ordinance violation complaints concerning a particular solicitor, or three violation complaints concerning an entity, the business license office shall notify the solicitor and the entity that the solicitor represents of the complaints, and the business license ~~supervisor~~ manager may suspend the permit of either the solicitor or of all solicitors representing that entity until such time as the solicitor or entity can show cause that ~~he, she or it~~they are~~is~~ in compliance with the rules and regulations of this article.

(b) The license office shall maintain a true and accurate log of each complaint showing the name of the complainant, the address of the complainant, and the substance of the complaint. Such records shall be available to the solicitor, or ~~his or her~~their entity, and shall be deemed a public record.

(c) A hearing shall be set before the ~~supervisor~~ manager of the license office within five business days after notification of the solicitor of the complaint, at which time the license office shall investigate the nature of the complaints and the solicitor may use witnesses or other evidence to show ~~his or her~~their compliance with this article.

(d) If the ~~supervisor~~ manager of the license office shall determine a violation on the part of the solicitor of the ordinances of the city has occurred, ~~he or she~~they shall revoke the permit of that solicitor.

(e) If the ~~supervisor~~ manager of the license office shall determine three or more violations have occurred on the part of one or more solicitors representing a single organization or entity, the ~~supervisor~~ manager shall revoke all of the permits then held by the solicitors associated with or representing that organization or entity.

(f) A solicitor or the entity or organization shall have the right to file an appeal from the ruling of the business license office to the ~~city~~ City ~~manager~~Manager. Appeal requests must be made in writing and submitted within ten calendar days of revocation of the permit or permits of the solicitors.

(Ord. No. 2011-02, 2-18-11)

Sec. 22-126. Registration of charitable organizations.

(a) Every charitable organization, except those exempted under section 22-127 of this article, that intends to solicit contributions in the city by any means or have contributions solicited in the city on its behalf by any other person, charitable organization, commercial co-venturer, or professional solicitor, or that participates in a charitable sales promotion, prior to engaging in any of these activities and annually thereafter, shall file a registration statement with the city upon a form prescribed by the city prior to any charitable solicitation in the city. No charitable organization that is required to register under this article prior to registration, shall solicit contributions in the city by any means, have contributions solicited in the city on its behalf by any other person, charitable organization, commercial co-venturer, or professional solicitor, or participate in a charitable sales promotion.

(b) The registration statement shall be signed and sworn to, under penalty of perjury, by the chief executive officer, treasurer, or chief financial officer of the charitable organization and shall contain the following information:

(1) The name of the charitable organization, the purpose for which it is organized, and the name or names under which it intends to solicit contributions;

(2) The address and telephone number of the principal place of business of the charitable organization or, if the charitable organization does not maintain an office in this state, the name, address, and telephone number of the person that has custody of its financial records;

(3) The names and addresses of the officers, directors, trustees, and executive personnel of the charitable organization;

(4) A statement of whether the charitable organization is registered with or otherwise authorized by any other governmental authority in this state or another state to solicit contributions;

(5) A statement of whether the charitable organization has had its registration or authority denied, suspended, revoked, or enjoined by any court or other governmental authority in this state or another state;

(6) A statement of whether the charitable organization intends to solicit contributions from the public directly by using its own resources or to have solicitations made on its behalf through the use of another charitable organization, fund-raising counsel, professional solicitor, or commercial co-venturer;

(7) The names, addresses, and the telephone numbers of any other charitable organization, fund-raising counsel, professional solicitor, and commercial co-venturer who act or will act on behalf of the charitable organization, together with a statement setting forth the specific terms of the arrangements for salaries, bonuses, commissions, expenses, or other remunerations to be paid the other charitable organization, fund-raising counsel, professional solicitor, and commercial co-venturers;

(8) The charitable purpose or purposes for which the contributions to be solicited will be used;

(9) The names, addresses, and telephone numbers of the persons within the charitable organization who will have final responsibility for the custody of the contributions;

(10) The names of the persons within the charitable organization that will be responsible for the final distribution of the contributions.

(c) With the annual registration form, the charitable organization shall file with the city the following:

(1) A copy of the current charter, articles of incorporation, articles of organization, instrument of trust, constitution, or other organizational instruction, and a copy of the by-laws or operating agreement of the charitable organization;

(2) A certificate of insurance indicating that the charitable organization has insurance coverage during the time period it is going to engage in the solicitation of contributions.

(d) The charitable organization shall pay the annual registration fee prescribed by the city.

(Ord. No. 2011-02, 2-18-11)

Sec. 22-127. Organizations not required to file annual registration.

The following shall not be required to file a registration statement as provided in section 22-126 of this article:

(a) Any religious agencies and organizations, and charities, agencies, entities, and organizations operated, supervised, or controlled by a religious entity or organization;

(b) Any charitable organization that meets all of the following requirements:

(1) It has been in continuous existence in this state for a period of at least two years;

(2) It has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the charitable organization is exempt from federal income taxation under Subsection 501(a) and described in Subsection 501(c)(3) of the Internal Revenue Code.

(c) Any educational institution, when solicitation of contributions is confined to alumni, faculty, trustees, or the student membership and their families;

(d) Every person other than an individual, when solicitation of contributions for a charitable purpose or on behalf of a charitable organization is confined to its existing membership, present or former employees, or present or former trustees, and their families;

(e) Any public primary or secondary school, when solicitation of contributions is confined to alumni, faculty, or the general population of the local school district;

(f) Any booster club that is organized and operated in conjunction with and for the benefit of students of public primary or secondary schools.

(Ord. No. 2011-02, 2-18-11)

Sec. 22-128. Fund-raising counsel requirements.

(a) No person or entity shall act as a fund-raising counsel unless the person first has complied with the requirements of this article and any rules adopted under this article.

(b) Any fund-raising counsel that, at any time, has custody of contributions from a solicitation shall do all of the following:

(1) Register with the city. Applications for registration or renewal of registration shall be in writing, under oath, and in the form prescribed by the city, and shall be accompanied by a fee in the amount of $200.00. Any corporation, general partnership, limited partnership, limited liability company, association, joint venture, sole proprietorship, or other business entity that intends to act as a fund-raising counsel may register for and pay a single fee of $200.00 on behalf of all its members, officers, employees, and agents. In that case, the names and addresses of all the officers, employees, and agents of the fund-raising counsel and all other persons with whom the fund-raising counsel has contracted to work under its direction shall be listed in the application. The registration or renewal of registration shall be for a period of one year or part of one year. All such registrations shall expire on December 31 of each year.

(2) At the time of making an application for registration or renewal of registration, file with and have approved by the city a bond in which the fund-raising counsel shall be the principal obligor, in the sum of $25,000.00, with one or more sureties authorized to do business in this state. The fund-raising counsel shall maintain the bond in effect as long as the registration is in effect; however, the liability of the surety under the bond shall not exceed an all-time aggregate liability of $25,000.00. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the city and to any person who may have a cause of action against the principal obligor of the bond for any liability arising out of a violation by the fund-raising counsel of any provision of this article or any rule adopted pursuant to this article.

(c) No person or entity shall serve as fund-raising counsel, or be a member, officer, employee, or agent of any fund-raising counsel, who has been convicted in the last five years of either of the following:

(1) Any violation of this article or any rule adopted under this article, or of any charitable solicitation legislation or regulation of a political subdivision of this state or charitable solicitation law of any other jurisdiction that is similar to this article;

(2) A felony in this or another state.

(Ord. No. 2011-02, 2-18-11)

Sec. 22-129. Professional solicitors.

(a) No professional solicitor shall engage in any solicitation unless it has complied with the requirements of this article and any rules adopted under this article.

(b) Every professional solicitor, before engaging in any solicitation, shall register with the city. Applications for registration or renewal of registration shall be in writing, under oath, and in the form prescribed by the city, and shall be accompanied by a fee in the amount of $200.00. Any corporation, general partnership, limited partnership, limited liability company, association, joint venture, sole proprietorship or other business entity that intends to act as a professional solicitor may register for and pay a single fee of $200.00 on behalf of all its members, officers, employees, agents, and solicitors. In that case, the names and addresses of all the officers, employees, and agents of the professional solicitor and all other persons with whom the professional solicitor has contracted to work under its direction, including solicitors, shall be listed in the application or furnished to the city within five days of the date of employment or contractual arrangement. The registration shall be for a period of one year or part of one year. All such registrations shall expire on December 31 of each year.

(c) At the time of making an application for registration or renewal of registration, the professional solicitor shall file with and have approved by the city a bond in which the professional solicitor shall be the principal obligor, in the sum of $25,000.00, with one or more sureties authorized to do business in this state. The professional solicitor shall maintain the bond in effect as long as the registration is in effect; however, the liability of the surety under the bond shall not exceed an all-time aggregate liability of $25,000.00. The bond, which may be in the form of a rider to a larger blanket liability bond, shall run to the city and to any person who may have a cause of action against the principal obligor of the bond for any liability arising out of a violation by the professional solicitor of any provision of this article or any rule adopted pursuant to this article.

(d) No person or entity shall serve as a professional solicitor, or be a member, officer, employee, or agent of any professional solicitor, who has been convicted in the last five years of either of the following:

(1) Any violation of this article or any rule adopted under this article, or of any charitable solicitation legislation or regulation of a political subdivision of this state or charitable solicitation law of any other jurisdiction that is similar to this article;

(2) A felony in this or another state.

(Ord. No. 2011-02, 2-18-11)

Sec. 22-130. Distribution of literature and soliciting upon city streets, roadways.

(a) Individuals, entities, and/or organizations may distribute literature on a street or highway if they comply with all of the following conditions:

(1) The person, entity, or organization engaging in the distribution of literature shall apply for and receive a permit to do so. The permit shall specify the days on which the distribution of literature shall occur.

(2) The distribution of literature shall occur only at the intersections designated in writing by the police department. The police department shall maintain a list of intersections at which distribution of literature may occur. When obtaining a permit, the individual, entity, or organization shall select the intersection or intersections at which ~~he, she, or it~~they want~~s~~ to distribute literature, unless another individual, entity, or organization has already selected that intersection for either the distribution of

literature or solicitation of contributions. Only one entity or organization shall solicit at each such intersection at any given time. If an entity or organization selects an intersection from the list approved by the police department and no other entity or organization has previously selected that intersection for the distribution of literature or solicitation of contributions during the same time period, the police department shall have no discretion in precluding that entity or organization from distributing literature at that intersection.

(3) If the distribution is occurring by or on behalf of an entity or organization, that entity or organization shall provide the city with a certificate of insurance indicating insurance coverage for the activities.

(4) Each and every person engaging in the distribution of literature activities is older than 18 years of age.

(5) Each and every person engaging in the distribution of literature activities must wear a high visibility vest approved by the police department. The police department shall promulgate written standards for such vests.

(6) There shall be a maximum of four persons distributing literature or soliciting contributions at each intersection assigned to the entity or organization.

(7) Each such individual must return to a neutral area when the traffic signal changes to yellow for the cross traffic.

(8) The distribution of literature shall be limited to the time period that commences one hour after sunrise and ends one hour prior to sunset, local time.

(b) Charitable organizations, persons or entities operating on behalf of charitable organizations, and political parties and candidates may solicit contributions on a street or highway and solicit contributions, but may not sell any items, if they comply with the following conditions:

(1) The entity engaging in the solicitation shall apply for and receive a permit to do so. The permit shall specify the days on which such solicitation shall occur. Solicitation at intersections shall be limited to the following days: Friday, Saturday, Sunday, and any federal holiday.

(2) The entity soliciting the money or funds has received a permit from the city and paid the required fee to the city for that permit. The maximum duration of each such permit shall be 30 calendar days. A charitable organization shall receive no more than six such permits during any 52-week period of time.

(3) The solicitation shall occur only at the intersections designated in writing by the police department. The police department shall maintain a list of intersections at which solicitation may occur. When obtaining a permit, the entity or organization shall select the intersection or intersections at which it wants to solicit, unless another entity or organization has already selected that intersection for the distribution of literature or solicitation of contributions. Only one entity shall solicit at each such intersection at any given time. If an entity selects an intersection from the list approved by the police department and no other entity has previously selected that intersection for the distribution of literature or solicitation of contributions, the police department shall have no discretion in precluding that entity from soliciting funds literature at that intersection.

(4) The entity soliciting contributions has provided the city with a certificate of insurance indicating insurance coverage for the solicitation activities.

(5) Each and every person engaging in solicitation activities is older than 18 years of age.

(6) Each and every person engaging in solicitation activities must wear a high visibility vest approved by the police department. The police department shall promulgate written standards for such vests.

(7) There shall be a maximum of four persons soliciting at each intersection assigned to the entity.

(8) Each such individual must return to a neutral area when the traffic signal changes to yellow for the cross traffic.

(9) The solicitation shall be limited to the time period that commences one hour after sunrise and ends one hour prior to sunset, local time.

(Ord. No. 2011-02, 2-18-11)

Sec. 22-131. Violation of safety rules governing distribution and solicitation of contributions on streets or highways.

(a) Should any officer of the Kennesaw Police Department observe any person violating any of the safety provisions contained in subsections 22-130(a) or 22-130(b) or engaging in disorderly conduct in the distribution of literature or solicitation of contributions, he may direct such persons to immediately discontinue the distribution of literature or the solicitation of contributions, as the case may be. No further distribution of literature or the solicitation of contributions shall then occur until the person or persons distributing the literature or soliciting the contributions come into full compliance with safety regulations and/or discontinue the disorderly conduct.

(b) If the person or persons fail to adhere to the directions of the police officer on the scene requiring them to come into compliance with the safety regulations or to discontinue the disorderly conduct, the permit under which those persons are operating can be immediately suspended by any supervising officer of the Kennesaw Police Department.

(c) Once the permit is so suspended, no further distribution of literature or solicitation of contributions shall occur. Any further distribution of literature or solicitation of contributions after the suspension of the permit by a supervising officer of the City of Kennesaw shall be a violation of this article and punishable as set forth in section 1-11 of the Code of Ordinances, Kennesaw, Georgia.

(d) The permit shall remain suspended unless and until the permit is reinstated by the ~~business license manager~~Business License Manager. The permit holder may appeal the suspension, in writing, to the manager of the business license office. Within five business days of the receipt of the request from the permit holder that the suspension be lifted, the ~~business license manager~~Business License Manager shall either uphold the suspension and permanently revoke the permit; or, reinstate the permit.

(e) Any appeal of the revocation of the permit shall be made to the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council of the City of Kennesaw. That appeal must be in writing, and must be filed with the ~~clerk~~ Clerk of the City of Kennesaw and the ~~city~~ City ~~manager~~ Manager within five business days from and after the date on which the permit holder receives the decision of the ~~business license manager~~Business License Manager. The ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall issue a decision on the appeal within 30 days from and after receipt of the appeal.

(Ord. No. 2011-02, 2-18-11)

Secs. 22-132—22-140. Reserved.

ARTICLE VI. DEALERS IN PRECIOUS METALS AND GEMS[7]

[7]State law reference(s)—Duties of purchasers of gold bullion, gold dust, etc., O.C.G.A. § 12-4-120 et seq.; dealers in precious metals and gems, O.C.G.A. § 43-37-1 et seq.; dealers in used watches, O.C.G.A. § 43-49-1 et seq.

Sec. 22-141. Provisions incorporated by reference.

The provisions of O.C.G.A. §§ 43-37-1 through 43-37-7 on the subject of dealers in precious metals and gems are by this reference incorporated herein and made a part of this Code in as full and complete a manner and with like effect as if set out in full in this article.

Secs. 22-142—22-160. Reserved.

ARTICLE VII. FLEA MARKETS

Sec. 22-161. Findings.

The ~~mayor~~ Mayor and ~~council~~ Council finds and determines as follows:

(1) The city believes that flea markets are a special type of business which requires specific approval of operations from the ~~mayor~~ Mayor and ~~council~~Council.

(2) The general appearance of the city and specifically areas surrounding flea market locations is marred when operations are unsightly, inappropriate and poorly maintained, and when, in some instances, unsafe structures, sheds and sales areas exist and debris and refuse accumulate. Failure to properly construct and maintain improvements upon the premises further detracts from the general appearance of the area and presents safety hazards.

(3) The aesthetic quality and economic value of both commercial and residential areas surrounding the flea markets as well as the economy of the city are adversely affected by the unregulated operation of flea markets.

(4) Lives and property are endangered by traffic created by the flea markets which have been unregulated and uncontrolled and by vehicles for which no provisions for parking and safe ingress and egress have been made by flea market operators.

(5) Flea markets create difficulty in police supervision because of lack of any controls over the number, identification and types of vendors and merchandise sold, and may become targets for sale or dealing in stolen merchandise.

(6) Most flea markets fail to provide even minimum facilities for the protection of the health or comfort of persons on the premises in the nature of plumbing, electrical and bathroom facilities.

(7) The public health, safety and welfare of the city can be detrimentally and adversely affected by the unregulated operation of flea markets.

(Ord. of 11-7-94(1), § 3-2-24(A))

Sec. 22-162. Purpose.

The purpose of this article is to prevent future problems and those foreseen to occur in the future through reasonable regulation, it being determined that the regulations contained in this article are minimum requirements needed to attempt to rectify identified problems.

(Ord. of 11-7-94(1), § 3-2-24(B))

Sec. 22-163. Scope.

This article shall apply to all businesses and locations in the city which meet the definition of flea market and all flea market vendors, promoters, owners and operators as defined in this article. This article shall not apply to developed and operating shopping centers, antique shops, jewelry stores, coin shops, salvage operations, clothing stores or special sales events not to exceed 14 days in duration or other businesses dealing in merchandise common to that dealt in by flea markets, where vendors therein are not operating among a collection of vendors renting or securing individual spaces within an overall operation.

(Ord. of 11-7-94(1), § 3-2-24(C))

Sec. 22-164. Definitions.

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:

Flea market means any business whereby there is operated a center for shopping among collected flea market vendors marketing merchandise to the public from booths, stalls, tables, benches, individual rooms or display areas, and similar display and marketing configurations and arrangements, for the sale of new and used merchandise. Flea markets shall not include developed and operating shopping centers, antique stores, jewelry stores, coin shops, salvage operations, clothing stores or special sales events as accessory uses not to exceed 14 days in duration, or other businesses of merchandise in common with flea markets where the vendor therein is not operating among a collection of vendors or renting or securing individual space within an overall operation.

Flea market promoter, operator, or owner means any person, firm, corporation, or other legal entity that has been issued an occupation tax certificate by the city for the operation of a flea market. The flea market promoter, operator, or owner shall be responsible for the management and control of the premises, for the compliance with all applicable provisions of this Code, and for maintaining and reporting to the city a current list of all vendors or tenant businesses conducting sales on the premises.

~~*Flea market promoter, operator or owner* means all persons or other forms of business entities operating, maintaining, managing and promoting flea markets.~~

Vendor or *flea market vendor* means all persons or other forms of business entities of every type and character operating among collections of other flea market vendors for sales to the public of new and used merchandise in collected marketing centers for sales from stalls, booths, tables, benches, rooms and other similar displays or marketing configurations and arrangements, excluding those operations defined under this section.

Applicant means any person, firm, corporation, or other legal entity seeking issuance, renewal, or amendment of an occupation tax certificate for the operation of a flea market within the city. Where the applicant is not a person, the term shall include each owner, partner, member, officer, or director thereof.

Employee means any individual who works for or provides services to a business holding an occupation tax certificate or regulatory license issued by the city, whether compensated by salary, wages, commission, or otherwise, and whether classified as full-time, part-time, temporary, or contract. The term includes, but is not limited to, managers, clerks, attendants, technicians, practitioners, and any person whose duties are directly related to the licensed activity regulated by this Code. Independent contractors engaged in providing regulated services on behalf of the business shall also be deemed employees for purposes of compliance, permitting, and background investigation requirements.

(Ord. of 11-7-94(1), § 3-2-24(D))

Cross reference(s)—Definitions generally, § 1-2.

Sec. 22-165. Violations and penalties.

(a) Any person violating any of the provisions of this article shall, upon conviction, be punished as provided in section 1-11.

(b) In addition to the penalty provided in subsection (a) of this section, every violation of the terms of this article by any person shall be termed a nuisance and a continuing nuisance so long as such violation may be continued; and such violation is subject to abatement as a nuisance as provided by the laws of this state.

(c) Any violation of this article shall be subject to injunction. Violations shall also be punished by revocation, suspension or probation of the license or permit.

(d) The remedies provided for in this section are cumulative. Pursuance of any one remedy shall not be deemed an election of remedies and shall not prohibit pursuance of more than one remedy simultaneously.

(Ord. of 11-7-94(1), § 3-2-24(K))

Sec. 22-166. ~~Business~~ Occupation Tax certificate requirements.

(a) It shall be unlawful for any person or entity to conduct a flea market business or for any flea market promoter, operator or owner to operate or allow to be operated such a business, or for any flea market vendor to display or sell wares of any kind at a flea market without ~~a business license~~a occupation tax certificate from the city. ~~Business licenses~~Occupation tax certificates issued for a flea market or any flea market promoter, operator or owner shall be valid only for the ~~licensed~~ registered location. ~~A business license~~An occupation tax certificate issued for a flea market vendor shall be valid when the vendor is operating from any duly licensed flea market in the city. It shall be unlawful for any flea market promoter, owner, operator or agent providing or renting space for flea market vendors to rent any sales area to any vendor or to provide space free of rent or to allow any vendor to use any sales area within a flea market unless the vendor has a valid ~~business license~~occupation tax certificate from the city. It shall be the duty of the flea market promoter, operator, owner or agent renting or providing space to verify that such ~~license~~ certificate is in effect for each vendor. Failure to verify that each vendor has a valid ~~business license~~occupation tax certificate, or the renting or provision of space for any ~~unlicensed~~ unregistered vendor to display or sell wares, shall subject the ~~business license~~occupation tax certificate of the flea market operator, owner or promoter to revocation.

(b) All persons desiring to obtain ~~a business license~~ an occupation tax certificate as a vendor or for a flea market as a flea market promoter, operator or owner shall make written application to the city through the business license office on forms to be prepared and approved by the city. Applicants shall supply such reasonable information as may be required by the city. If the ~~license~~ certificate is for a flea market operation, the information shall include the square footage of sales area within the flea market. An application fee, which is nonrefundable if a ~~permit~~ certificate is not issued, shall be submitted with each application to operate a flea market.

(c) All applicants for ~~a license~~an occupational tax certificate under this article shall furnish all data, information and records reasonably related to the evaluation of an application, as may be requested by the city or any interested city department. An applicant, by filing an application for ~~a license~~an occupational tax certificate under this article, agrees to produce for oral interrogatories any person under the applicant's supervision or control who might have information pertinent to the application, upon the request of the city to do so. Failure to furnish such information or produce persons within 30 days of the request shall automatically serve to dismiss the application.

(d) No application for any ~~license~~ certificate under this article shall be granted where the application or investigation shows any of the following to exist:

(1) The applicant is of bad moral character or has a bad reputation in the community or does not have sufficient mental capacity to conduct the business for which application is made.

(2) The applicant has had any license issued under the police power of any city or other governmental entity previously suspended or revoked.

(3) The location, if applicable, is not properly zoned.

(4) The applicant, as a previous holder of a license or occupational tax certificate as a flea market promoter, operator, owner or vendor, has violated any law, including this article, relating to such business within a ten-year period immediately preceding the date of application.

(5) No flea market use permit is in effect for the location, if applicable.

(6) The applicant has supplied false information either upon ~~his~~ their application or in any communication with any official of the city relative to ~~his~~ their application.

(7) The applicant has failed to pay any fee required under this article or has otherwise failed to comply with the provisions of this article.

(8) The application, during the 12-month period next preceding the filing of ~~his~~ their application, has engaged in any deceptive business practice as defined by this article.

(9) No original license under this article shall be issued to any person for pecuniary gain where any individual having an interest either as owner, partner, stockholder owning at least 25 percent of the stock of the corporation, such interest being direct or indirect, beneficial or absolute, ~~or his spouse~~ or manager of the operation, shall have been convicted or shall have taken a plea of nolo contendere within ten years immediately prior to the filing of such application for any felony or misdemeanor of any state or of the United States or any municipal or city ordinance except traffic violations. The term "conviction" shall include an adjudication of guilt or plea of guilty or nolo contendere, or the forfeiture of a bond when charged with a crime. Where the violation is for a misdemeanor, forfeiture of bond, violation of a municipal or city ordinance or where there is a plea of nolo contendere, the ~~council~~ Council may, after investigation, if appealed by the applicant, waive such violation as a disqualification.

(10) In addition to the provisions of subsections (d)(1) through (d)(9) of this section and in determining whether or not any license applied for under this article shall be granted, the following shall be considered in the public interest and welfare:

a. If the applicant is a previous holder of a license or occupational tax certificate, the manner in which he conducted business thereunder, and particularly as to the necessity for unusual police observation and inspection in order to prevent the violation of any law, regulation or ordinance relating to such business.

b. The location for which the license or occupational tax certificate is sought, if applicable, as to traffic congestion, general character of the neighborhood and the effect such an establishment would have on the adjacent and surrounding property values.

c. If it appears that the applicant's spouse or another person is using the applicant as a guise or dummy to obtain a license or occupational tax certificate.

(e) All applications for ~~business licenses~~ occupation tax certificates for a flea market owner or operator required by this article shall be subject to fingerprinting and a background check as set forth in section 22-~~9~~169.

(f) ~~License~~ Occupation tax and regulatory fees for flea market owners, promoters, or operators and for flea market vendors shall be as established in the schedule of fees and charges.

(g) Any ~~license~~ occupation tax certificate issued under this article shall be posted conspicuously at the place of doing business of the licensee.

(h) No ~~license~~ occupation tax certificate issued under this article shall be transferable.

(i) Each ~~license~~ occupation tax certificate for a flea market or flea market promoter, operator or owner shall be for one location only. Flea markets or flea market promoters, operators or owners shall obtain a separate ~~license~~occupation tax certificate, paying a separate fee, for each place of business.

(j) Those vendors operating in the city a maximum of three consecutive days selling merchandise as a part of a show, festival, fair, or promotion shall be required to obtain a ~~business~~ license or occupational tax certificate that shall be valid only for the period of time that special show, fair, or promotion is being held. This temporary license or certificate shall not apply to flea market vendors, special tent sales, peddlers or any business not connected with a show, festival, fair, or promotion. The fee for this ~~license~~ certificate shall be as set forth in the schedule of fees and charges.

(Ord. of 11-7-94(1), § 3-2-24(E); Ord. No. 2019-09, § 8, 10-21-19)

Sec. 22-167. Use permit required.

(a) No flea market shall be operated upon any realty or in or upon any personal property located on any realty unless and until a special use permit for a flea market is granted by the ~~council~~Council. This special use permit for a flea market, referred to in this section as a "flea market use permit" or "permit," shall be in addition to all other requirements of the city.

(b) Applications for flea market use permits shall be applied for and advertised in the same manner as applications for rezoning, and public hearings will be held thereon in the same manner as applications for rezoning are conducted, as may be amended from time to time. Fees for filing and processing of applications shall be in an amount determined from time to time by resolution of the ~~mayor~~ Mayor and ~~council~~Council. A schedule of such fees shall be maintained on file in the planning and zoning department and in the ~~office~~ Office of the ~~clerk~~ Clerk of the ~~council~~Council.

(c) Flea market use permits may be issued for such period of time as the ~~council~~ Council deems appropriate under the circumstances of each application.

(d) Flea market use permits shall be granted only if the ~~council~~ Council determines that there will be no significant adverse effect on the surrounding neighborhood or area in which the proposed use will be located; that no nuisance as defined by state law would result to the general area; that the quiet enjoyment of surrounding property would not be adversely affected; and that property values of surrounding property would not be adversely affected. No permit shall be issued where the application or any investigation shows the existence of any of the conditions enumerated in this article under section 22-166(d).

(Ord. of 11-7-94(1), § 3-2-24(E))

Sec. 22-168. Use regulations.

The following regulations shall apply to all flea markets ~~licensed~~ permitted under this article:

(1) There shall be no on-street parking at any flea market. Each flea market shall provide on-site paved parking at the rate of one space per 100 square feet of sales area. No parking or parking spaces shall be located on or within any road right-of-way. It shall be the responsibility of the promoter, operator or owner to assure at all times that no vehicle of any vendor, customer, patron, visitor, guest, invitee or other person frequenting the flea market is parked on any street or road or street or road right-of-way or off the site of the flea market, but is parked in a space acceptable under the city parking regulations and this article.

(2) The flea market owner or operator shall do whatever is necessary, based upon the circumstances of ~~his~~ their individual property, to ensure ingress and egress only at curb cuts and locations approved by the public works department.

(3) There shall be no outside storage of any kind whatsoever. There shall be no outside sales of any kind whatsoever from any space, stall, shed or area which is not permanently covered by a roof and completely floored by a concrete floor of a minimum thickness of four inches, except at locations designated as such and approved at the time of the granting of the use permit. However, no sales or displays shall occur within required parking areas or interfere with general traffic flow.

(4) No sales of any kind whatsoever shall be made from any shed, structure or building of any kind unless such structure meets or exceeds the minimum requirements of all the city codes (for example, building code, fire code, plumbing code, electrical code, etc.). Structures shall require building permits and inspections by the city the same as for other construction. Flea markets shall be classified as group M, mercantile occupancy, under the city building code and shall meet all such requirements except that applications for permits for all open structures shall require plans to be submitted which are signed and sealed by an architect or engineer along with design calculations to substantiate compliance with code wind uplift requirements.

(5) All plumbing shall meet minimum code requirements, except that each flea market shall provide, at a minimum, for use by the public, facilities based on occupant loads as follows:

a. For flea markets located within enclosed structures, the occupant load shall be determined in the same manner as mercantile occupancy and exit capacity.

b. For a flea market located in the open air, the occupant load shall be determined as two people for each table, counter, or booth of no more than 20 square feet.

c. After the occupant load is identified, toilet facilities will be provided in the same manner as for commercial buildings of multiple tenants.

d. No temporary bathroom facilities shall be permitted.

(6) Notwithstanding any other provisions of this Code, no person, including but not limited to a flea market promoter, operator, owner, employee, manager, vendor or invitee, shall be allowed to camp or reside overnight with or without a recreational vehicle, tent, sleeping bag, vehicle or other structure at a flea market, except that the owner may allow a reasonable number of overnight security personnel who may be either the owner or agents or employees of the owner.

(7) No animal, fish, fowl or insect of any kind shall be sold, traded, housed, caged, bartered, swapped or given away at any flea market.

(Ord. of 11-7-94(1), § 3-2-24(F))

Sec. 22-169. State and national criminal backgrounding of persons engaged in a flea market business.

1. This ordinance is enacted pursuant to Pursuant to O.C.G.A. § 35-3-35 to regulate the issuance of licenses or occupational tax certificates and employment of those engaged in the flea market business within the City of Kennesaw.

2. An applicant or employee seeking to engage in the flea market business shall submit all required applications and payment of appropriate fees to the City of Kennesaw Business License Manager and provide fingerprints taken by the City of Kennesaw Police Department.

3. Upon receipt of the fingerprints and the appropriate fees, the City of Kennesaw Police Department will transmit fingerprints to the Georgia Bureau of Investigation/GCIC. The Georgia Bureau of Investigation/GCIC will compare the subject's fingerprints against its criminal file, and if no disqualifying conduct is found therein, they will submit the fingerprints to the Federal Bureau of Investigation for a comparison with nationwide records. The results of the Federal Bureau of Investigation check will be returned to the Georgia Bureau of Investigation/GCIC, which will disseminate the state and national results to the City of Kennesaw Police Department.

4. The City of Kennesaw Business License Manager shall render a fitness determination based upon the results of the criminal background check and communicate its fitness determination to the applicant or employee.

5. In rendering a fitness determination, the City of Kennesaw Business License Manager will decide whether the record subject has been convicted of or is under pending indictment for (a) a crime which bears upon their ability or fitness to serve in that capacity; (b) any felony or a misdemeanor which involved force or threat of force, controlled substances, or was a sex-related offense; or (c) enumerated disqualifiers set forth in the Municipal Code of the City of Kennesaw, Georgia. Upon completion, the Business License Manager will communicate the fitness determination to the applicant.

6. A record subject may request and receive a copy of their criminal history record information from the Kennesaw Police Department. Should the record subject seek to amend or correct their record, they must contact the Georgia Bureau of Investigation/GCIC for a Georgia state record or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

(Ord. No. ####)

Secs. 22-170~~69~~—22-190. Reserved.

ARTICLE VIII. INSURERS[8]

Sec. 22-191. Insurers license fees.

(a) There is hereby levied for the year 2012 and for each year thereafter an annual license fee upon each insurer doing business within the City of Kennesaw, Georgia in an amount of $100.00. For each separate business location in excess of one not covered by section 22-192, which is operating on behalf of such insurers within the City of Kennesaw, Georgia, there is hereby levied a license fee in the amount of $100.00. For the purposes of this ordinance, the term "insurer" means a company which is authorized to transact business in any of the classes of insurance designated in O.C.G.A. § 33-3-5.

(b) The license fee amounts levied under this section are derived from the population fee schedule contained in O.C.G.A. § 33-8-8(b)(1). The exact dollar amount levied is based on the 2010 official census report for the City of Kennesaw, Georgia (29,783 citizens). Fees for subsequent years may change in accordance with subsequent population census reports for the City of Kennesaw, Georgia in order to properly reflect the statutory fee owed.

(Ord. No. 90-289, § 1, 12-17-90; Ord. No. 2001-20, 9-17-01; Ord. No. 2011-25, 10-3-11; Ord. No. 2011-26, 11-21-11)

Sec. 22-192. License fees for insurers insuring certain risks at additional business locations.

(a) For each separate business location, not otherwise subject to a license fee hereunder, operated and maintained by a business organization which is engaged in the business of lending money or transacting sales involving term financing and in connection with such loans or sales offers, solicits or takes application for insurance through a licensed agent of an insurer for insurance said insurer shall pay an additional license fee of $35.00 per location for the year 2012 and for each year thereafter.

(b) The additional license fee levied under this section is derived from O.C.G.A. § 33-8-8(b)(2); the greater of $10.00 or 35 percent of the amount due under O.C.G.A. § 33-8-8(b)(1). Such additional fees for subsequent

[8]State law reference(s)—Local tax on life insurance companies, O.C.G.A. § 33-8-8.1; local tax on other than life insurance companies, O.C.G.A. § 33-8-8.2.

years may change with subsequent population census reports for the City of Kennesaw, Georgia in order to properly reflect the statutory amount owed under O.C.G.A. § 33-8-8(b)(2).

(Ord. No. 90-289, § 2, 12-17-90; Ord. No. 2001-20, 9-17-01; Ord. No. 2011-26, 11-21-11)

Sec. 22-193. Insurers agency license fees; independent insurance agencies, brokers, etc., not otherwise licensed.

There is hereby levied for the year 2012 and for each year thereafter an annual license fee upon independent agencies and brokers for each separate business location from which an insurance business is conducted and which is not subject to the company license fee imposed by section 22-191 hereof in the amount of $100.00 for each such location within the City of Kennesaw, Georgia.

(Ord. No. 90-289, § 3, 12-17-90; Ord. No. 2001-20, 9-17-01; Ord. No. 2011-25, 10-3-11; Ord. No. 2011-26, 11-21-11)

Sec. 22-194. Gross premiums tax imposed on life insurers.

There is hereby levied for the year 2012 and for each year thereafter an annual tax based solely upon gross direct premiums upon each insurer writing life, accident and sickness insurance within the State of Georgia in an amount equal to the one percent of the gross direct premiums received during the preceding calendar year in accordance with O.C.G.A. § 33-8-8.1. Gross direct premiums as used in this section shall mean gross direct premiums as used in O.C.G.A. § 33-8-4. The premium tax levied by this section is in addition to the license fees imposed by section 22-191 of this article.

(Ord. No. 90-289, § 4, 12-17-90; Ord. No. 2011-26, 11-21-11)

Sec. 22-195. Gross premiums, all other insurers.

There is hereby levied for the year 2012 and for each year thereafter an annual tax based solely upon gross direct premiums upon each insurer, other than an insurer transacting business in the class of insurance designated in subsection 1 of O.C.G.A. § 33-8-5, doing business within the State of Georgia in an amount equal to two and one-half percent of the gross direct premiums received during the preceding calendar year in accordance with O.C.G.A. § 33-8-2. Gross direct premiums as used in the section shall mean gross direct premiums as used in O.C.G.A. § 33-8-4. The premium tax levied by this section is in addition to the license fees imposed by section 22-191 of this article.

(Ord. No. 90-289, § 5, 12-17-90; Ord. No. 2011-26, 11-21-11)

Sec. 22-196. Due date for license fees.

License fees imposed in sections 22-191, 22-192 and 22-193 of this article shall be due and payable on the first day of January 2012 and on the first date of each subsequent year.

(Ord. No. 90-289, § 6, 12-17-90; Ord. No. 2011-26, 11-21-11)

Secs. 22-197—22-215. Reserved.

ARTICLE IX. MASSAGE THERAPY BUSINESSES[9]

Sec. 22-216. Applicability/Definitions.

(a) ~~(a)~~ This article shall apply to all businesses employing massage therapists.

(b) ~~(b)~~ Nothing in this article shall be construed to affect, restrict, or prevent the practice, services, or activities of those individuals and/or entities specifically delineated in O.C.G.A § 42-24A-19, as amended.

(c) *Massage Therapy Business* means a business establishment, whether doing business as or otherwise identified as a "massage therapy business," "health spa," or other similar name, that derives its primary source of income from massage therapy as defined in Georgia state law, or any other hands-on therapy including foot massage and the practice of reiki, to help customers, reduce stress, provide therapy, enhance appearance, enhance or restore health and well-being, or experience sensory pleasure.

(d) *Massage Therapy Business License* means the occupation tax certificate issued by the city for the operation of a massage therapy business establishment. Such certificate authorizes the business location to operate subject to compliance with the Code and state law.

(e) *Massage Therapist* means a person licensed by the State of Georgia as a massage therapist.

(f) *Massage Therapy* or *Massage* means the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body by a Georgia state licensed massage therapist in which the primary intent is to enhance or restore health and well-being. Such term includes complementary methods including without limitation, lubricants, salt scrubs, or other topical preparations.

(g) *Massage therapy work permit* means the authorization issued by the city to an individual employee or practitioner of a massage therapy business after completion of the required application, background investigation, and approvals as provided in this Code. A massage therapy work permit is personal to the individual and is not transferable.

(h) *Applicant* means any person, firm, corporation, or other legal entity applying for a license to operate a massage establishment or spa establishment, as defined herein, or a person applying for a work permit, as provided for herein.

(i) *Employee* means any person who performs any service on the premises of a massage establishment or spa establishment, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, apprentice, trainee, or otherwise.

(Ord. No. 2007-32, Att. A, 11-5-07; Ord. No. 2012-02, 3-19-12)

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[9]Editor's note(s)—Ord. No. 2007-32, Att. A, adopted Nov. 5, 2007, amended the former Art. IX, §§ 22-216—22-230, and enacted a new Art. IX as set out herein. The former Art. IX pertained to similar subject matter and derived from Code 1986, §§ 9-7-1—9-7-11, 9-7-13—9-7-15; Ord. of Nov. 4, 1991(1), §§ 9-7-16—9-7-18); Ord. No. 2007-17, adopted May 21, 2007 (rescinded Nov. 5, 2007).

State law reference(s)—Giving massages in places used for lewdness, prostitution, assignation or masturbation for hire, O.C.G.A. § 16-6-17; Georgia Massage Therapy Practice Act, O.C.G.A. § 43-24A et seq.

Sec. 22-217. Penalty for violation; enforcement.

(a) Any person who shall violate any provisions, requirements, terms or conditions of this article shall, upon conviction, be punished as provided in section 1-11.

(b) Revocation or suspension of license. Any person violating any of the provisions of this article governing massage therapy business subjects any license under this article to revocation or suspension as provided in this article.

(c) Abatement of violations as nuisance. Every violation of the terms of this article governing massage therapy businesses shall be termed a nuisance and a continuing nuisance so long as such violation may be continued, and such violation may be subject to abatement as a nuisance as provided by the laws of this state.

(d) Injunction. The violation of any provisions of this article as they pertain to massage therapy businesses may be enjoined by proceedings in courts of competent jurisdiction in this state. Such actions may be maintained notwithstanding that other adequate remedies at law exist.

(e) Remedies cumulative. Each of the remedies set out in subsections (a) through (d) of this section is cumulative and is not to be construed as curtailing the right of any resident, property owner, or other person from bringing any proper action for enforcement of this article as it pertains to massage therapy businesses.

(f) Reporting. The violation of any provision, requirement, term or condition of this article shall be reported by the business license ~~department~~ office to the following:

  (1) Georgia Board of Massage Therapy;

  (2) Better Business Bureau; and

  (3) Owner of the property where violation occurred.

(Ord. No. 2016-34, Att. A, 12-5-16)

Editor's note(s)—Ord. No. 2016-34, Att. A, adopted Dec. 5, 2016, amended § 22-217 in its entirety to read as herein set out. Former § 22-217 pertained to penalty for violation and derived from Ord. No. 2007-32, Att. A, adopted Nov. 5, 2007.

Sec. 22-218. License required; application.

(a) Any person desiring to engage in the business that will employ one or more massage therapists shall, before engaging in such business, file an application for a massage therapy business license addressed to the ~~mayor~~ Mayor and ~~city~~ City ~~council~~Council. Such application shall be in writing and shall set forth or show compliance with the following:

  (1) Pursuant to O.C.G.A. § 36-60-6, as amended, the applicant must provide evidence that each massage therapist to be employed by the business has the license required under the Massage Therapy Practice Act, O.C.G.A. § 43-24A-1 et seq. No massage therapy business license shall be issued to any applicant without such licensure being presented.

  (2) Each application shall require fingerprinting and a background investigation of the applicant as set forth in the Kennesaw Code of Ordinances, section 22-232~~9~~. The applicant shall also submit a list of all persons who ~~he or she~~they intend~~s~~ to hire as employees for the business. A background investigation as set forth in the Kennesaw Code of Ordinances, section 22-232~~9~~, shall be completed for all persons who will be employed by the business. It is the applicant's responsibility to provide the names of all such prospective employees and the forms required to complete the background investigations on those prospective employees. Additionally, any person hired as an employee after the application is

submitted and after the business opens must also have a background investigation as set forth in the Kennesaw Code of Ordinances, section 22-232~~9~~, with the exception of persons exempted by O.C.G.A. § 43-24A-31. Fingerprints must be submitted to the business license ~~department~~ office no less than 15 days prior to issuance of a license to allow for investigation of the applicant and the employees. The fingerprints submitted shall be taken no earlier than 30 days prior to the submission of the application. If the applicant, licensee, or employee is a duly licensed massage therapist by the State of Georgia, no fingerprints or background check are ~~required~~ allowed in accordance with O.C.G.A. § 43-24A-31. No employee shall be allowed to work at the business until such time as a work permit has been issued pursuant to section 22-231.

(3) If the applicant is an individual, ~~his or her~~their name and home or business address (P.O. boxes or their equivalent are not sufficient), telephone number, fax number, and email address must be provided. If the applicant is a corporate entity (which shall include a corporation, limited liability company, limited partnership, limited liability partnership, professional corporation, professional association, and/or any other such similar entity), the corporate entity shall provide: the name of the corporate entity; the name of the person completing the application; ~~his or her~~their position or title with the corporate entity; the address of the principal place of business of the corporate entity; the telephone number of the corporate entity; the fax number of the corporate entity; the email address of the person completing the application; and, the names and addresses of all persons who have served in as an officer, manager, managing member, or general partner of the corporate entity during the two years immediately preceding the date shown on the application.

(4) If the applicant is an individual, the name and address of any person having previously employed the applicant for a period of two years or longer.

(5) If such applicant is a corporate entity, a certificate of good standing from the Georgia Secretary of State must be attached to the application.

(6) Qualifications must be plainly stated together with required exhibits annexed to such application.

(7) Three letters of reference for the applicant must accompany the application. Such letters shall not be required for annual renewals of licenses issued under this article.

(8) Should the applicant be a corporate entity, such corporation shall also submit with such application a certificate, executed as described in subsection (6) of this section, certifying as to the good moral character of the employees and agents of the corporation who are actually engaged in such business for the corporation.

(b) After the massage therapy business license is issued, the applicant shall have a continuing obligation to maintain copies of and submit the necessary documentation for reference checks of all new employees and to provide and maintain on the licensed premises for each massage therapist or employee a true and accurate copy of the license issued to such massage therapist under the Massage Therapy Practice Act or work permit issued by the city business license ~~department~~ office prior to such person engaging in and during the entirety of such massage therapist's employment or contract to administer massage therapy at the business, O.C.G.A. § 43-24A-1 et seq.

(Ord. No. 2007-32, Att. A, 11-5-07; Ord. No. 2012-02, 3-19-12; Ord. No. 2016-34, Att. A, 12-5-16; Ord. No. 2019-09, § 9, 10-21-19; Ord. No. 2023-05, §§ 2, 3, 5-1-23)

Sec. 22-219. Qualifications of applicant.

(a) In accordance with, and in addition to, all state requirements for licensure of massage therapists any applicant under this article, prior to making application for a license, must have the following qualifications:

(1) The applicant and licensee must be a U.S. Citizen or a legal alien for at least one year prior to making application.

(2) The licensee is required to be a resident of the State of Georgia and a Georgia State Licensed Massage Therapist.

(b) A massage therapist shall provide massage for physical therapy and health only and shall be entitled to engage in such profession within and between the hours of 7:00 a.m. and 10:00 p.m., Eastern Standard Time.

(Ord. No. 2007-32, Att. A, 11-5-07; Ord. No. 2012-02, 3-19-12; Ord. No. 2016-34, Att. A, 12-5-16; Ord. No. 2023-05, § 5, 5-1-23)

Sec. 22-220. Issuance of license; fee; change of location of business; transfer.

(a) If the application for a massage therapy business license under this article is submitted in proper form and is approved by the ~~mayor~~ Mayor and ~~council~~Council, then the business license ~~department~~ office is authorized to issue a massage therapy business license to such applicant upon the payment of an annual license fee as set forth in the schedule of fees on file in the ~~office~~ Office of the ~~mayor~~ Mayor and ~~council~~ Council and/or business license bureau.

(b) No licensee under this article shall change the location of the business without applying for and receiving a new license for such location from the business license ~~department~~office.

(c) No license under this article shall be transferable.

(Ord. No. 2016-34, Att. A, 12-5-16)

Editor's note(s)—Ord. No. 2016-34, Att. A, adopted Dec. 5, 2016, amended § 22-220 in its entirety to read as herein set out. Former § 22-220 pertained to issuance of license; fee and derived from Ord. No. 2007-32, Att. A, adopted Nov. 5, 2007.

Sec. 22-221. Grounds for denial, suspension, or revocation of license; hearing.

(a) A massage therapy business license under this article shall be subject to denial, suspension, or revocation for cause. Whenever in the opinion of the ~~business license manager~~Business License Manager there is cause to suspend or revoke such massage therapy business license, delivery of a copy of the written decision, showing that any one or more of the conditions outlined in subsection (b), to suspend or revoke shall be delivered to the licensee or licensee's attorney at least five business days before a called meeting of the license review board, at which time the licensee shall have the right to appear, be heard, and introduce evidence. After a hearing, the license review board may suspend or revoke such license if such cause is determined to exist. The ~~business license manager~~Business License Manager shall have authority to deny an application for a new license under this article upon a finding that any one or more of the conditions for application have been violated. Upon such a denial, the applicant shall have the right to an appeal to the license review board within ten business days of written notice to the applicant of the decision to deny on such basis. The appeal must be made in writing to the Kennesaw City Manager and the appeal shall set forth all reason(s) that the applicant believes the license should be issued. If the licensee or applicant is dissatisfied with the ruling of the license review board, the licensee or applicant may appeal that decision to the ~~mayor~~ Mayor and ~~council~~ Council within ten business days of written notice to the licensee or applicant of the license review board's decision. The license review board appeal must be made in writing to the Kennesaw City Manager and the appeal shall set forth all reason(s) that the applicant believes the license should be issued.

(b) In addition to the standards stated elsewhere in this article, due cause for denial, suspension, or revocation of a license for a massage therapy practitioner or licensee shall include the following:

(1) The applicant or licensee has been convicted of fraud.

(2) The applicant or licensee is or has been engaged in business under a false or assumed name, or is impersonating another person of a like or different name.

(3) There is evidence that the application or license is a guise or dummy application or license for another person who cannot or does not meet the qualifications of this chapter for issuance or retention of a massage therapy license.

(4) The applicant or licensee has violated or is guilty of criminal attempt or conspiracy to violate any laws relating to racketeer-influenced and corrupt organizations as defined in the Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act (O.C.G.A. § 16-14-1 et seq.), crimes against the person as defined in O.C.G.A. tit. 16, ch. 5 (O.C.G.A. § 16-5-1 et seq.), sexual offenses as defined in O.C.G.A. tit. 16, ch. 6 (O.C.G.A. § 16-6-1 et seq.), gambling offenses as defined in O.C.G.A. tit. 16, ch. 12, art. 2 (O.C.G.A. § 16-12-20 et seq.), obscenity and related offenses as defined in O.C.G.A. tit. 16, ch. 12, art. 3 (O.C.G.A. § 16-12-80 et seq.), or contributing to the delinquency of a minor, all as defined by state law as it presently exists or may be hereafter amended.

(5) Failure of the applicant or licensee to have or maintain initial qualifications for obtaining the license.

(6) Failure of the applicant or licensee to provide or maintain any of the documentation required for the application for or retention of the license.

(7) The applicant or licensee employs any person who is not a licensed massage practitioner and allows or permits such person to administer massage in the establishment except as may be otherwise allowed by state law. The applicant or licensee allows any other employee to work prior to compliance with section 22-231.

(8) The premises in which the business is located are in violation of any of the federal, state, county or municipal laws designed for the health, protection and safety of the occupants.

(9) There is evidence that the applicant or licensee or any corporation or partnership of which the applicant or licensee is or was an officer, director, principal shareholder, general partner, or managing agent is delinquent in the payment of any property tax or other tax or license fee payable to the city, the county, or the state.

(10) Failure of the applicant or licensee to actively supervise and monitor the conduct of the employees, customers and others on the premises in order to protect the health, safety and well-being of the general public and the customers.

(c) Any applicant or licensee under this article who has ~~his or her~~their license application denied or license revoked shall be disqualified from reapplying for such a license for 12 months immediately following the revocation or denial.

(Ord. No. 2016-34, Att. A, 12-5-16; Ord. No. 2023-05, §§ 5, 6, 5-1-23)

Editor's note(s)—Ord. No. 2016-34, Att. A, adopted Dec. 5, 2016, amended § 22-221 in its entirety to read as herein set out. Former § 22-221 pertained to revocation of license; hearing and derived from Ord. No. 2007-32, Att. A, adopted Nov. 5, 2007.

Sec. 22-222. Signed copy of regulations to be filed with license application.

A signed copy of this article or the ordinance from which this article is derived will be filed with any business license application by the business license ~~department~~office.

(Ord. No. 2007-32, Att. A, 11-5-07)

Sec. 22-223. Authority to train personnel.

Any applicant granted a massage therapy business license under this article shall have the authority to employ those individuals granted provisional massage therapists license by the Georgia Board of Massage Therapy in accordance with the Massage Therapy Practice Act, O.C.G.A. § 43-24A-1 et seq., provided that the massage therapy business licensee shall furnish to the business license ~~department~~office, there to be kept by such ~~department~~office, a health certificate of each such employee from a medical doctor.

(Ord. No. 2007-32, Att. A, 11-5-07; Ord. No. 2012-02, 3-19-12)

Sec. 22-224. Information concerning employees to be filed with business license ~~department~~office.

Within three business days of commencement of operations of the business, the applicant shall file with the business license ~~department~~ office an affidavit stating the names of all employees. After hiring each new employee and prior to that employee's commencement of employment, the applicant shall provide the name of each such prospective employee and the documentation, to the business license ~~department~~ office for a background investigation as set forth in the Kennesaw Code of Ordinances, section 22-232~~9~~. If the employee is a massage therapist, the applicant shall provide a copy of the employee's license issued by the Georgia Board of Massage Therapy.

(Ord. No. 2007-32, Att. A, 11-5-07; Ord. No. 2012-02, 3-19-12; Ord. No. 2019-09, § 10, 10-21-19)

Sec. 22-225. Record of treatments to be maintained; inspections.

It shall be the duty of any person granted a massage therapy business license under this article to maintain correct and accurate records of the first and last name, date of birth, and address of the persons receiving treatment at such establishment, type of service received, and the first and last name of the person at the establishment administering such treatment, and the date and time of the treatment. The city, through the employees of the business license ~~department~~ office or the city police department, shall have the right to inspect the place of business and records of any licensee under this article during the hours authorized under this article for the conducting of business to ensure compliance with the requirements of this article.

(Ord. No. 2016-34, Att. A, 12-5-16; Ord. No. 2023-05, § 7, 5-1-23)

Editor's note(s)—Ord. No. 2016-34, Att. A, adopted Dec. 5, 2016, amended § 22-225 in its entirety to read as herein set out. Former § 22-225 pertained to record of treatments to be maintained and derived from Ord. No. 2007-32, Att. A, adopted Nov. 5, 2007.

Sec. 22-226. Exceptions.

Each client or customer of a massage therapist shall have the unfettered right to select ~~his or her~~their massage therapist. The requirements of this section shall not apply to treatments given at the office of a licensed chiropractor, licensed physician, osteopath or registered physical therapist, or in a regularly established and licensed hospital or sanitarium.

(Ord. No. 2016-34, Att. A, 12-5-16)

Editor's note(s)—Ord. No. 2016-34, Att. A, adopted Dec. 5, 2016, amended § 22-226 in its entirety to read as herein set out. Former § 22-226 pertained to maintenance of patient log and derived from Ord. No. 2007-32, Att. A, adopted Nov. 5, 2007; and Ord. No. 2012-02, adopted March 19, 2012.

Sec. 22-227. Patronage of massage therapy businesses.

(a) *Restricted.* It shall be unlawful for any person under the age of 18 years to patronize any massage therapy business unless such person carries with him at the time of such patronage a written order directing the treatment to be given signed by a regularly licensed physician.

(b) *Duty of operator.* It shall be the duty of the operator of a massage therapy business to determine the age of the persons patronizing such massage therapy business, and a violation of this section shall be grounds for revocation of the license of such massage therapy business.

(Ord. No. 2007-32, Att. A, 11-5-07; Ord. No. 2012-02, 3-19-12)

Sec. 22-228. Massages by unlicensed persons.

(a) It shall be unlawful for a massage to be given within the City of Kennesaw by any person not duly licensed as a massage therapist by the State of Georgia or as allowed in accordance with O.C.G.A. § 43-24A-9, as may be amended from time to time.

(b) It shall be unlawful for an owner of any establishment licensed as a massage therapy business to employ, contract with, or otherwise allow any person to give massages in or at such licensed establishment unless that person is duly licensed as a massage therapist by the State of Georgia or is allowed to give massages in accordance with O.C.G.A. § 43-24A-9, as may be amended from time to time.

(Ord. No. 2007-32, Att. A, 11-5-07; Ord. No. 2023-05, § 8, 5-1-23)

Sec. 22-229. Prohibited contact.

No massage therapist shall manipulate, fondle or handle the sexual organs of any person.

(Ord. No. 2007-32, Att. A, 11-5-07)

Sec. 22-230. Licensed massage therapist.

Any person licensed pursuant to the Massage Therapy Practice Act, O.C.G.A. § 43-24A-1, as amended, shall be entitled to practice as a massage therapist as required by the State of Georgia.

(Ord. No. 2007-32, Att. A, 11-5-07; Ord. No. 2012-02, 3-19-12)

Sec. 22-231. Employee work permits required.

(a) Massage/spa establishment work permit required. It shall be unlawful for any person to be an employee, as defined in Chapter 22, of a massage establishment or spa establishment in the city without a valid massage/spa establishment work permit issued under the terms of this article, except that a person who holds a valid massage/spa establishment license pursuant to O.C.G.A. § 43-24A-31 shall not be required to also obtain a massage/spa establishment work permit to be an employee at that particular licensed establishment. A person who works at more than one establishment shall obtain a separate work permit for each establishment. No applicant for a massage/spa establishment work permit shall work at a massage establishment or a spa establishment in the city until the applicant receives, and the establishment posts, the employee's work permit as required by this article. A receipt issued by the city is not a valid massage/spa establishment work permit and does not authorize the person to work in a massage establishment or spa establishment.

(b) A person duly licensed as a massage therapist by the State of Georgia or as allowed in accordance with O.C.G.A. § 43-24[A]-9 will provide the business license ~~department~~ office with evidence of license to practice massage therapy pursuant to O.C.G.A. § 43-24A-30(a)(9).

(c) Application. An applicant for a massage/spa establishment work permit shall file in person at the city business license ~~department~~ office a completed application made on a form provided by the city. The application must be signed and notarized. Applicants shall make themselves available for photographing. An application shall be considered complete when it contains the information and/or items required in this subsection (b), accompanied by the work permit fee:

(1) The applicant's full legal name and any other names used by the applicant in the preceding five years.

(2) Current mailing address for the applicant.

(3) Written proof of age, in the form of a driver's license or a picture identification document containing the applicant's date of birth issued by an agency of a state or of the federal government.

(4) A signed and sworn affidavit verifying the applicant's lawful presence in the United States as required by O.C.G.A. § 50-36-1.

(5) The name and address of the massage establishment or spa establishment for which the applicant seeks to obtain the work permit.

(6) A statement of whether the applicant has been an owner, director, officer, partner, member, or shareholder of a massage establishment or spa establishment that has, in the previous five years (and at a time during which the person was so related to the establishment):

a. Been declared by a court of law to be a nuisance; or

b. Had its license to operate a massage establishment or a spa establishment revoked.

(7) A statement of whether the applicant has within the previous five years been arrested for, convicted of, or pleaded guilty or entered a plea of nolo contendere to any offense set forth in section 22-221(b)(4), and if so, each offense involved, including the date, place, and jurisdiction of each such arrest and/or conviction.

(8) An applicant who is also a massage therapist licensed by the State of Georgia shall not be required to obtain a work permit from the City of Kennesaw.

The information provided pursuant to subsection (b) of this section shall be supplemented in writing by certified mail, return receipt requested, to the city business license ~~department~~ office within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) The information provided by an applicant in connection with an application for a work permit under this article shall be maintained by the city business license ~~department~~ office on a confidential basis, and such information may be disclosed to the public only as required under governing law. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to any required disclosure under the Georgia Open Records Act or other applicable law.

(e) Issuance of work permit. Upon the filing of a completed massage/spa establishment work permit application, the city shall cause to be conducted a criminal background investigation of the applicant and shall transmit a summary of the investigation results to the city business license ~~department~~office. Within 30 days of the filing of a completed massage/spa establishment work permit application, the city business license ~~department~~ office shall either issue a work permit to the applicant or issue a written notice of intent to deny the work permit to the applicant. The city business license ~~department~~ office shall issue the work permit unless:

(1) The applicant is less than 18 years of age.

(2) The applicant has failed to provide information required by this article for issuance of a work permit or has falsely answered a question or request for information on the application form.

(3) The work permit fee required by this article has not been paid.

(4) The establishment for which the applicant seeks a work permit does not have a valid massage/spa establishment license from the city.

(5) The applicant has been an owner, director, officer, partner, member, or shareholder of a massage establishment or spa establishment that has, in the previous five years (and at a time during which the person was so related to the establishment):

a. Been declared by a court of law to be a nuisance; or

b. Had its license to operate a massage establishment or a spa establishment revoked.

(6) The applicant has within the previous five years been convicted of, pled guilty to, or entered a plea of nolo contendere to any offense set forth in section 22-221(b)(4).

(f) The work permit, if issued, will be valid for a period of one year from the date it is issued. A massage establishment or spa establishment employee shall provide the employee's work permit to the establishment for which it was issued to be posted on the premises pursuant to this article.

(g) The city business license ~~department~~ office shall issue a written notice of intent to revoke an employee's work permit, following notice and hearing pursuant to this article, and demand its return if the employee has violated the provisions of this article, any state law, or applicable local ordinance.

(h) It shall be unlawful for an employee whose work permit has been revoked to refuse to return the work permit to the city business license ~~department~~office, or to alter, conceal, deface, or destroy the work permit.

(i) The permit fee for a massage/spa establishment work permit shall be established by the city business license ~~department~~office.

(Ord. No. 2023-05, § 9, 5-1-23)

Sec. 22-232. State and national criminal backgrounding of persons engaged in massage therapy business.

1. This ordinance is enacted pursuant to Pursuant to O.C.G.A. § 35-3-35 to regulate the issuance of licenses and employment of those engaged in the massage therapy business within the City of Kennesaw.

2. An applicant or employee seeking to engage as a massage therapist shall submit all required applications and payment of appropriate fees to the City of Kennesaw Business License Manager and provide fingerprints taken by the City of Kennesaw Police Department.

3. Upon receipt of the fingerprints and the appropriate fees, the City of Kennesaw Police Department will transmit fingerprints to the Georgia Bureau of Investigation/GCIC. The Georgia Bureau of Investigation/GCIC will compare the subject's fingerprints against its criminal file, and if no disqualifying conduct is found therein, they will submit the fingerprints to the Federal Bureau of Investigation for a comparison with nationwide records. The results of the Federal Bureau of Investigation check will be returned to the Georgia Bureau of Investigation/GCIC, which will disseminate the state and national results to the City of Kennesaw Police Department.

4. The City of Kennesaw Business License Manager shall render a fitness determination based upon the results of the criminal background check. In rendering a fitness determination, the City of Kennesaw Business License Manager will decide whether the record subject has been convicted of or is under pending indictment for (a) a

crime which bears upon their ability or fitness to serve in that capacity; (b) any felony or a misdemeanor which involved force or threat of force, controlled substances, or was a sex-related offense; or (c) enumerated disqualifiers set forth in the Municipal Code of the City of Kennesaw, Georgia. Upon completion, the Business License Manager will communicate the fitness determination to the applicant.

6. A record subject may request and receive a copy of their criminal history record information from the Kennesaw Police Department. Should the record subject seek to amend or correct their record, they must contact the Georgia Bureau of Investigation/GCIC for a Georgia state record or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.

(Ord. No. ####)

Secs. 22-233~~2~~—22-250. Reserved.

ARTICLE X. FINANCIAL INSTITUTIONS BUSINESS LICENSE TAX[10]

Sec. 22-251. Levied.

In accordance with O.C.G.A. § 48-6-93, there is hereby levied an annual business license tax upon all depository financial institutions located within the city at a rate of 0.25 percent of the gross receipts of such depository financial institutions. "Gross receipts" shall mean gross receipts as defined in O.C.G.A. § 48-6-93. "Depository financial institutions" shall mean state and national banks, state building and loan associations, and federal savings and loan associations.

(Ord. of 11-7-94(1), § 3-2-23(A))

Sec. 22-252. Minimum amount of tax.

The minimum annual amount of business license tax due from any depository financial institution pursuant to section 22-251 shall be $1,000.00.

(Ord. of 11-7-94(1), § 3-2-23(B))

Sec. 22-253. Filing of return.

Pursuant to O.C.G.A. § 48-6-93(c), each depository financial institution subject to the tax levied under this article shall file a return of its gross receipts with the business license office on March 1 of the year following the year in which such gross receipts are measured. Such return shall be in the manner and in the form prescribed by the commissioners of the department of revenue based on the allocation method set forth in O.C.G.A. § 48-6-93(d). The city business license office shall assess and collect the tax levied pursuant to this article based upon the information provided in such return.

(Ord. of 11-7-94(1), § 3-2-23(C))

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[10]State law reference(s)—Local depository financial institutions business license tax, O.C.G.A. § 48-6-93.

Sec. 22-254. Due date.

Taxes levied pursuant to this article shall be due no later than 30 days after filing of the return prescribed by section 22-253, unless extended by the ~~mayor~~ Mayor and ~~council~~Council.

(Ord. of 11-7-94(1), § 3-2-23(D))

Sec. 22-255. Copies of article to be provided.

The ~~city~~ City ~~clerk~~ Clerk is hereby directed to forward a copy of this article to each depository financial institution in the city and to the home office of each such depository financial institution if located outside the city.

(Ord. of 11-7-94(1), § 3-2-23(E))

Sec. 22-256. Reserved.

Editor's note(s)—Ord. No. 1999-15, adopted December 6, 1999, deleted in its entirety former section 22-256, which pertained to temporary certificates, and derived from Ord. of 11-7-94(1), § 3-2-25.

Secs. 22-257—22-275. Reserved.

ARTICLE XI. PAWNBROKERS[11]

Sec. 22-276. Issuance of license.

Licenses may be issued by the ~~mayor~~ Mayor and ~~council~~ Council to applicants desiring to operate as pawnbrokers, subject to the following terms and conditions:

(1) No license shall be issued to any applicant who has been convicted of a felony or a crime involving moral turpitude as defined by the laws of the state unless a full and complete pardon has been granted.

(2) No license shall be issued to any applicant under the terms of this article if any false information is furnished upon the application by the applicant to the appropriate authorities of the city.

(3) No license shall be issued under the terms of this article if the applicant has ever been convicted of usury under the laws of this state or of any other state.

(4) No license shall be issued until the applicant has been investigated by the ~~police~~ Police ~~department~~ Department of the ~~city~~City, and a favorable report received from the police department as to ~~his~~ their general reputation in the business community.

(5) No license shall be issued to any applicant who is not a resident of this county.

(6) No license shall be issued to any applicant who does not provide proof of financial responsibility.

(7) No license shall be issued unless the names and addresses of all persons holding any interest in the business are listed and those persons have signed the application.

[11]State law reference(s)—Pawnbrokers, O.C.G.A. § 44-12-130 et seq.

(8) No license shall be issued to any applicant who is engaged in any finance or lending business unless this requirement is expressly waived by the ~~mayor~~ Mayor and ~~council~~Council.

(Code 1986, § 9-2-1)

Sec. 22-277. Entry and examination by police.

Upon making application for and receiving a license from the city to operate as a pawnbroker, the holder of the license expressly authorizes the police department of the city to enter upon ~~his~~ their premises and to inspect and examine any articles in the business for the purpose of determining whether or not they have been stolen or otherwise illegally obtained by the applicant or the pawnor, and the applicant expressly agrees that no search warrant shall be necessary, but consents to such examination and inspection at any time upon request by any police officer of the city.

(Code 1986, § 9-2-2)

Sec. 22-278. Persons from whom articles may not be received.

No holder of a pawnbroker's license shall accept any article of pawn from:

(1) Any person under the age of 21 years;

(2) Any person who is intoxicated; or

(3) Any person who is not a resident of the state.

(Code 1986, § 9-2-3)

Sec. 22-279. Record of pawned articles.

The pawnbroker shall keep available for inspection by the appropriate authorities of the city, including but not limited to the police department, an itemized list of all articles pawned, together with a full and complete description thereof, the amount loaned on each article, the due date of the loan, the name and address of the pawnor, the age of the pawnor, and the place of employment of the pawnor.

(Code 1986, § 9-2-4)

Sec. 22-280. Evidence of loan.

The pawnbroker shall make a loan only by written, negotiable instrument or by receiving a receipt for the amount of the loan by the pawnor.

(Code 1986, § 9-2-5)

Sec. 22-281. Compliance with lending laws.

The pawnbroker shall comply with all the laws of the state as to the rate of interest and all provisions of the Uniform Commercial Code of the state applicable to lending.

(Code 1986, § 9-2-6)

Sec. 22-282. Suspension and revocation of license.

A violation of any of the provisions of this article shall be good cause for suspension and/or revocation of the license. If the ~~city~~ City C~~c~~lerk or any police officer should determine that a probable violation has occurred, he shall place the issue before the ~~mayor~~ Mayor and ~~council~~ Council at its next regularly scheduled meeting or at a special meeting called for the purpose of determining whether a violation has occurred. At least ten days' notice of the hearing before the ~~mayor~~ Mayor and ~~council~~ Council shall be provided the licensee. At the conclusion of the hearing the ~~mayor~~ Mayor and council may issue a warning, suspend the license for a definite period of time, revoke the license or take no action if the ~~council~~ Council finds no violation by the licensee. In the event of a revocation or suspension, no portion of the annual license fee shall be returned to the licensee.

(Code 1986, § 9-2-7)

Sec. 22-283. Additional restrictions authorized.

The ~~mayor~~ Mayor and ~~council~~ Council shall have the power to impose additional restrictions on the pawnbroker, and the pawnbroker shall be required to comply therewith upon 30 days' notice.

(Code 1986, § 9-2-8)

Secs. 22-284—22-300. Reserved.

ARTICLE XII. GARAGE AND YARD SALES

Sec. 22-301. Definitions.

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:

Garage or yard sale means a sale by a private property owner of personal property used by the homeowner's family or neighbors, either in the garage area of the house, basement, interior of the house or on the lawn of the house. No new or additional personalty shall be sold in such sales.

(Code 1986, § 8-5-231)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 22-302. Restrictions.

Garage or yard sales shall be permitted only under the following rules and regulations:

(1) Only homeowners may apply to the ~~city~~ City Clerk~~clerk~~ for a permit for a garage or yard sale.

(2) No sale shall be held on property in any residentially zoned district more than three days in succession, and no more than three weekends per calendar year.

(Code 1986, § 8-5-232; Ord. No. 2003-13, § 1, 4-21-03)

Sec. 22-303. Parking; signs.

A garage or yard sale shall be conducted in a neat and orderly fashion, and automobile traffic and parking shall be controlled. All signs shall be removed within 24 hours.

(Code 1986, § 8-5-233)

Sec. 22-304. Exemptions from article.

Nothing in this article shall be interpreted to govern sales conducted by nonprofit organizations.

(Code 1986, § 8-5-234)

Secs. 22-305—22-349. Reserved.

ARTICLE XIII. RESERVED[12]

Secs. 22-350—22-392. Reserved.

ARTICLE XIV. SEXUALLY ORIENTED BUSINESSES

Sec. 22-393. Definitions.

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:

Adult bookstore or *adult video store* means a commercial establishment which, as one of its substantial business activities, offers for sale or rental for any form of consideration any one or more of the following items: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas. A "substantial business activity" exits where the commercial establishment meets any one or more of the following criteria:

(1) At least 25 percent of the establishment's displayed merchandise consists of the foregoing items; or

(2) At least 25 percent of the wholesale value of the establishment's displayed merchandise consists of the foregoing items; or

(3) At least 25 percent of the retail value of the establishment's displayed merchandise consists of the foregoing items; or

(4) At least 25 percent of the establishment's revenues derive from the sale or rental, for any form of consideration, of the foregoing items; or

[12]Ord. No. 2019-09, § 11, adopted Oct. 21, 2019, repealed Art. XIII, §§ 22-350—22-366, 22-381—22-384, 22-391, 22-392, which pertained to taxicabs and limousines and derived from Ord. No. 2003-44, § 1, adopted Sep. 15, 2003.

(5) The establishment devotes at least 25 percent of its interior business space or, if less than 25 percent, devotes at least 500 square feet of its interior business space to the display, sale, and/or rental of the foregoing items (aisles and walkways used to access said items shall be included in the term "interior business space"); or

(6) The establishment regularly offers for sale or rental at least 1,000 of the foregoing items and limits access to the premises or to the portion of the premises occupied by said items to adults only; or

(7) The establishment regularly advertises itself or holds itself out, using "adult," "XXX," "sex," "erotic," or substantially similar language, as an establishment that caters to adult sexual interests; or

(8) Maintains an adult arcade, which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

Adult cabaret means a commercial establishment or facility which regularly features live dancers, performers or other persons who appear nude.

Adult motion picture theater means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five persons for any form of consideration.

Adult movie house means any movie theater which on a regular, continuing basis shows films rated "X" by the Motion Picture Coding Association of America or any movie theater which presents for public viewing on a regular, continuing basis so-called "adult films" depicting sexual conduct.

Characterized by means describing the essential character or quality of an item. As applied in this article, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Employ, employee, and employment describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a fulltime, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. The term "employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Establish or *establishment* mean and include any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or

(3) The addition of any sexually oriented business to any other existing sexually oriented business.

Explicit media outlet means any commercial establishment which has an inventory of goods that is composed of at least 50 percent of books, pamphlets, magazines, or other printed publications, films or other media which depict sexually explicit nudity or sexual conduct.

Hospital. A building or portion thereof designated or used for therapeutic treatment of bed patients who are physically or mentally ill.

Influential interest means any of the following:

(1) The actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business; or

(2) Holding an office (e.g., president, vice-president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, it shall mean the person in whose name the sexually oriented business employee license has been issued.

Nudity or *a state of nudity* means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

Operate or *cause to operate* means to cause to function or to put or keep in a state of doing business. The term "operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

Park means any lands or facility owned, operated, controlled or managed by any county, city or federal government or any governmental entity in and upon which recreational activities or places are provided for recreation and enjoyment to the general public.

Person means individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

Regular or *regularly* means and refers to the consistent and repeated doing of the act so described.

Religious assembly: A site or facility maintained by a bona fide religious group for the primary purpose of religious worship. Religious assemblies include but are not limited to churches, mosques, synagogues and temples.

Residence means a house, apartment, boardinghouse or rooming house, duplex, or other multifamily housing, for human dwelling, or any property zoned therefore.

School means only such state, county, city, church or other schools as teach the subjects commonly taught in the common schools and colleges and universities of this state and which are public schools or private schools as defined in subsection (b) of O.C.G.A. § 20-2-690, or as may be amended from time to time, including any public or private location that teaches the Georgia Pre-kindergarten Program and shall not include private schools where only specialized subjects such as law, stenography, business, music, art, medicine, dentistry, vocational occupations and other special subjects are taught and shall not include residences where home study programs are located.

Sexual conduct means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breast, which, to the average person, applying contemporary community standards, taken as a whole, lacks serious literary, artistic, political, or scientific value and predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

Sexual device means any three-dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, cock rings, anal beads, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment:

(1) Where more than 100 sexual devices are regularly made available for sale or rental; or

(2) Where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, positioning sexual devices near cash registers or similar points of sale, hosting events focused on sexual devices, or holding itself out to the public as a place that focuses on sexual devices).

This definition shall not be construed to include an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises or an establishment primarily dedicated to providing durable medical equipment.

Sexually oriented business means an adult bookstore or adult video store, an adult cabaret, an adult motion picture theater, an explicit media outlet, or a sexual device shop.

Sexually oriented business license means the occupation tax certificate issued by the city for the operation of a sexually oriented business establishment. Such certificate authorizes the business location to operate subject to compliance with the Code and state law.

Specified anatomical areas means and includes:

(1) Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified criminal activity means:

(1) Any of the following specified offenses for which less than five years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

a. Rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;

b. Prostitution, keeping a place of prostitution, pimping, or pandering;

c. Obscenity, disseminating or displaying matter harmful to a minor, or use of child in sexual performance;

d. Any offense related to any sexually-oriented business, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity; or

(2) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses.

Specified sexual activity means any of the following:

(1) Intercourse, oral copulation, masturbation, sodomy, bestiality, flagellation or torture in the context of sexual relations, or excretory functions in the context of sexual relations, anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism or zooerasty; or

(2) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence.

Transfer of ownership or control of a sexually oriented business means any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing room means the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

(Ord. No. 2010-10, § 1, 5-17-10; Ord. No. 2018-24, § 5(Exh. D), 10-15-18; Ord. No. 2021-04, § 2(Exh. B), 2-15-21)

Sec. 22-394. Penalties and enforcement.

(a) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this article shall, upon conviction, be punished by fines not to exceed $1,000.00 per violation, or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be punished as such.

(b) The city's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this article to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the city, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this article, or any of the laws in force in the city or to exempt anyone violating this Code or any part of the said laws from any penalty which may be incurred.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-395. Rationale and findings.

(a) *Purpose.* It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

(b) *Rationale and findings.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the ~~mayor~~ Mayor and ~~city~~ City ~~council~~Council, including the following documents and reports and transcripts and minutes from public hearings from other jurisdictions detailing first-hand accounts of secondary effects occurring in and around sexually oriented businesses, including, but not limited to: A Digest of Research: The Evidence of Relationships Between Adult-Oriented Businesses and Community Crime and Disorder prepared for The Mayor and Council of the City of St. Marys, Georgia July 1996; Adams County, Colorado Nude Entertainment Study 1987; Adult Entertainment Businesses in Indianapolis 1984; Adult Entertainment Business Study for Manatee County 1987; Adult

Entertainment Zoning in New York City; An Analysis of the Effects of SOBs on the surrounding neighborhoods in Dallas, Texas prepared for Assistant City of Dallas, April 1987; Community Protection Committee's Final Report on Vice in Hamilton County with Recommendations to Hamilton County Executive Board of Commissioners, the Mayor and Members of the Chattanoooga City Council, May 1997; *Do "Off-Site" Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence*, Richard McCleary and Alan C. Weinstein, 218 Law and Policy, April 2009; Survey of Appraisers Fort Worth and Dallas, Effects of Land Uses on Surrounding Property Values prepared for City of Fort Worth, Texas, September 2004; Final Report to the City of Garden Grove, The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard, October 23, 1991; December 20, 2005 Transcript of the Regular City Council meeting, City of Sandy Springs, Georgia; December 27, 2005 Transcript of the Regular City Council meeting, City of Sandy Springs, Georgia; National Law Center Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually Oriented Businesses, March 31, 1996; Adult Entertainment Businesses in Oklahoma City, A Survey or Real Estate Appraisers, March 3, 1986; Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, June 6, 1989; Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area, April 1994; Report on Adult Oriented Businesses in Austin, Texas prepared for the Mayor and City Council of Austin, May 19, 1986; March 6, 1985 meeting minutes of the Rome City Commission; Sexually Oriented Business Ordinance Revision Committee Legislative Report to the Houston City Council, January 7, 1997; Staff Report amendments to Zoning Regulations Adult Businesses in C-2 zone with conditional use permit, January 9, 1978; Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles, Department of City Planning City of Los Angeles, June 1977; Summary of Review and Conclusions Regarding the City of St. Cloud's Regulation of Adult Businesses, December 1994; August 7, 2001 Transcript of the Gwinnett County Board of Commissioners meeting; August 3, 2011 Deposition of Robert J. Stevens, Flanigan's Enterprises v. City of Sandy Springs, Georgia, Civil Action File No. 1:09-CV-2747, U.S. District Court for the Northern District of Georgia, Atlanta Division; August 3, 2011 Deposition of Terry Sult, Flanigan's Enterprises v. City of Sandy Springs, Georgia, Civil Action File No. 1:09-CV-2747, U.S. District Court for the Northern District of Georgia, Atlanta Division; Deposition of Corazalla, Flanigan's Enterprises v. City of Sandy Springs, Georgia, Civil Action File No. 1:09-CV-2747, U.S. District Court for the Northern District of Georgia, Atlanta Division Quality of Life: A Look at Successful Abatement of Adult Oriented Businesses in Oklahoma City, Oklahoma, 1984-1989; City of Littleton, Colorado v. Z.J. Gifts D-4, LLC, 541 U.S. 774, 124 S.Ct. 2219, 159 L.Ed. 84 (2004); California v. LaRue, 410 U.S. 948, 93 S.Ct. 1351 (1973); City of Renton v. Playtime Theatres, Inc., 475 U.S. 1132, 106 S.Ct. 1663 (1986); New York State Liquor Authority v. Bellanca, No. 80-813, Supreme Court of the United States, June 22, 1981; City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); City of Erie v. Pap's A.M., 529 U.S. 277 (2000); Young v. American Mini Theatres, 427 U.S. 50 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); Artistic Entertainment, Inc. v. City of Warner Robins, 331 F.3d 1196 (11th Cir. 2003); Artistic Entertainment, Inc. v. City of Warner Robins, 223 F.3d 1306 (11th Cir. 2000); Williams v. Pryor, 240 F.3d 944 (11th Cir. 2001);Daytona Grand, Inc. v. City of Daytona Beach, Florida, 490 F. 3d 860 (11thCir. 2007); Flanigan's Enterprises, Inc. of Georgia v. City of Sandy Springs, Georgia, 703 Fed. Appx. 929 (11^{th} Cir. 2017); Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, Florida, 630 F. 3d 1346 (11^{th} Cir. 2011); Sammys of Mobile, LTD v. City of Mobile, 140 F. 3d 993 (11^{th} Cir. 1998); Wise Interprises, Inc. v. Unified Government of Athens-Clarke County, Georgia, 217 F. 3d 1360 (11^{th} Cir. 2000); Zibtluda, LLC v. Gwinnett County, Georgia, 411 F. 3d 1278 (11^{th} Cir. 2005); Flanigan's Enterprises, Inc. of Georgia v. Fulton County, 2010 WL 520542 (11^{th} Cir.); Flanigan's Enterprises, Inc. of Georgia v. Fulton County, 242 F. 3d 976 (11^{th} Cir. 2001); 5634 East Hillsborough Avenue, Inc. v. Hillsborough County, Florida, 2008 WL 4276370 (C.A. 11 Fla.);Williams v. A.G. of Alabama, 378 F.3d 1232 (11th Cir. 2004); Gary v. City of Warner Robins, 311 F.3d 1334 (11th Cir. 2002); Ward v. County of Orange, 217 F.3d 1350 (11th Cir. 2002); David Vincent, Inc. v. Broward County, 200 F.3d 1325 (11th Cir. 2000); Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993 (11th Cir. 1998); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999); This That And The Other Gift and Tobacco, Inc. v. Cobb County, 285 F.3d 1319 (11th Cir. 2002); Grand Faloon Tavern, Inc. v. Wicker, 670 F.2d 943 (11th Cir. 1982); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997; International Food & Beverage Systems v. Ft.

Lauderdale, 794 F.2d 1520 (11th Cir. 1986); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); Sensations, Inc. v. City of Grand Rapids, 526 F. 3d 291 (6th Cir. 2008); Richland Bookmart, Inc. et al. v. Knox County, Tennessee, 555 F. 3d 512 (6th Cir. 2009); 10950 Retail, LLC, d/b/a Love Shack v. City of Johns Creek, A09A0374, July 9, 2009; Fairfax MKI, Inc. v. City of Clarkston, 274 Ga. 520 (2001); Morrison v. State, 272 Ga. 129 (2000); Sewell v. Georgia, 233 S.E.2d 187 (Ga. 1977), dismissed for want of a substantial federal question, 435 U.S. 982 (1978) (sexual devices); Flippen Alliance for Community Empowerment, Inc. v. Brannan, 601 S.E.2d 106 (Ga. Ct. App. 2004); Oasis Goodtime Emporium I, Inc. v. DeKalb County, 272 Ga. 887 (2000); Chamblee Visuals, LLC v. City of Chamblee, 270 Ga. 33 (1998): World Famous Dudley's Food & Spirits, Inc. v. City of College Park, 265 Ga. 618 (1995); Airport Bookstore, Inc. v. Jackson, 242 Ga. 214 (1978); Maxim Cabaret, Inc. v. City of Sandy Springs, Georgia, 816 S.E. 2d 31 (Ga. 2018); Modified Permanent Injunction Order, People of the State of Illinois et al. v. The Lion's Den, Inc., Civil Action File No. 04-CH-26, Fourth Judicial Circuit Effingham County, Illinois, July 13, 2005; Order Upholding Constitutionality of Chapter 807 of the Revised Code of the Consolidated City and County of Indianapolis, Annex Books, Inc. et al. v. City of Indianapolis, Civil Action File No. 1:03-cv-00918, U. S. District Court Southern District of Indiana, Indianapolis Division; Blue Movies, Inc. v. Louisville/Jefferson County Metro Government, 317 S.W. 3d 23 (Ky. 2010); Cami, Inc. et al. v. Louisville/Jefferson County Metro Government, 2007 WL 2893435 (Ky. App.);Foster v. City of El Paso, 2013 WL 632962 (2013); Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, Florida, 2009 WL 4349319 (M.D. Fla.); Plaza Group Properties, LLC v. Spencer County Plan Commission, 877 N.E.2d 877 (Indiana Court of Appeals 2007); Plaza Group Properties, LLC v. Spencer County Plan Commission, 911 N.E. 2d 1264 (Indiana Court of Appeals 2009); Order granting motion for judgment on the pleadings, Enlightened Reading, Inc. v. Jackson County, Missouri, Civil Action File No. 08-0209-CV-W, U.S. District Court for the Western District of Missouri Western Division; Order granting summary judgment, High Five Investments, LLC et al v. Floyd County, Georgia, Civil Action File No. 4:06-CV-0190, U.S. District Court Northern District of Georgia, Rome Division; Richland Bookmart, Inc. et al. v. Knox County, Tennessee, 2007 WL 4480138 (E.D. Tenn); Sensations, Inc. v. City of Grand Rapids, 2006 WL 5779504 (W.D. Mich.); 5634 East Hillsborough Avenue, Inc. v. Hillsborough County, Florida, 2007 WL 2936211 (M.D. Fla.), the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council find:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects, including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

(2) Based upon the experience of other urban counties and municipalities, which experiences the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council finds are relevant to the problems faced by the city, and which do not vary greatly among generally comparable communities within this country, the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council finds that public nudity, under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages in adult cabarets begets criminal behavior and tends to create undesirable community conditions. The ~~mayor~~ Mayor and ~~city~~ City C~~c~~ouncil find that nudity and the depiction thereof, coupled with alcohol in public places, encourages undesirable behavior and is not in the interest of public health, safety, and welfare. The ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council have chosen to avoid the disturbances associated with mixing alcohol and nude dancing by means of a reasonable restriction upon sexually oriented businesses in relation to the consumption of alcohol on premise.

(3) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

(4) Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing

secondary effects, which is the city's rationale for this article, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city. The city finds that the cases and documentation relied on in this article are reasonably believed to be relevant to said secondary effects.

(Ord. No. 2010-10, § 1, 5-17-10; Ord. No. 2018-24, § 5(Exh. D), 10-15-18)

Sec. 22-396. Severability.

This article and each section and provision of said article hereunder, are hereby declared to be independent divisions and subdivisions and, not withstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said article, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this article be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this article.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-397. Classification.

The classifications for sexually oriented businesses shall be as follows:

(1) Adult bookstore;

(2) Adult video store;

(3) Adult cabaret;

(4) Adult motion picture theater;

(5) Sexual device shop.

(6) Explicit media outlet.

(Ord. No. 2010-10, § 1, 5-17-10; Ord. No. 2018-24, § 5(Exh. D), 10-15-18)

Sec. 22-398. License required.

(a) *Business license.* It shall be unlawful for any person to operate a sexually oriented business in the city without a valid sexually oriented business license.

(b) *Employee license.* It shall be unlawful for any person to be an employee of a sexually oriented business in the city without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.

(c) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the business license ~~division~~ office a completed application made on a form provided by the business license ~~division~~ manager or ~~his or her~~their designee. The application shall be signed as required by subsection (d) of this section and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:

(1) The applicant's full legal name and any other names used by the applicant in the preceding five years.

(2) Current business address or another mailing address for the applicant.

(3) Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

(4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

(7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):

a. Been declared by a court of law to be a nuisance; or

b. Been subject to a court order of closure or padlocking.

(8) An application for a sexually oriented business license shall be accompanied by:

a. A blue line copy of a surveyor's plat, 8½ inches by 11 inches in size, with a scale of one inch per 200 feet. The surveyor's plat shall show the proposed location and the location of all customer entries in relation to distance, measured as provided in this ordinance, to all real property and buildings on such real property which fall within the distance requirements as provided in this article, together with the zoning district and present uses of all such real property and the proposed location.

b. A legal description of the property where the business is located; and

c. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this article shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations.

(9) The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the business license ~~division~~ office within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a license is granted.

(e) The information provided by an applicant in connection with an application for a license under this article shall be maintained by the office of the business license ~~division~~ office on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by state law or court order.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-399. Issuance of license.

(a) *Business license.* Within 30 days of the filing of a completed sexually oriented business license application, the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall either issue a license to the applicant or deny a license to the applicant. Any denial of an application for a license by the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council may be appealed to the Cobb County Superior Court as set forth in O.C.G.A. tit. 5, ch. 3. The ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall issue a sexually oriented business license unless:

(1) An applicant is less than 18 years of age.

(2) An applicant has failed to provide information required by this article for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this article has not been paid.

(4) The sexually oriented business is not in compliance with the interior configuration requirements of this article or is not in compliance with locational requirements of this article or the locational requirements of any other part of this Code or state law. If the license application is for a renewal of an existing license that, at the time issued, was in compliance with the location requirements of this article, the ~~mayor~~ Mayor and ~~council~~ Council may waive compliance with the location requirements on the renewal application.

(5) Any sexually oriented business in which the applicant has had an influential interest in the previous five years (and at a time during which the applicant had the influential interest):

a. Been declared by a court of law to be a nuisance; or

b. Been subject to an order of closure or padlocking.

(6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity.

(b) *Employee license.* Within 30 days of the filing of a completed sexually oriented business employee license application, the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall either issue an employee license to the applicant or deny an employee license to the applicant. Any denial of an application for an employee license by the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council may be appealed to the Cobb County Superior Court as set forth in O.C.G.A. tit. 5, ch. 3. The ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall issue a license unless:

(1) The applicant is less than 18 years of age.

(2) The applicant has failed to provide information as required by this article for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this article has not been paid.

(4) Any sexually oriented business in which the applicant has had an influential interest in the previous five years (and at a time during which the applicant had the influential interest):

a. Been declared by a court of law to be a nuisance; or

b. Been subject to an order of closure or padlocking.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity.

(c) The license, if granted, shall state on its face the name of the person to whom it is granted, the number of the license issued to the licensee, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on ~~his or her~~their person or on the premises where the licensee is then working or performing.

(Ord. No. 2010-10, § 1, 5-17-10; Ord. No. 2023-14, § 5, 8-7-23)

Sec. 22-400. Fees.

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows:

(1) For the initial fee for a sexually oriented business license, $100.00; and for annual renewal, $50.00;

(2) For the initial sexually oriented business employee license, $50.00; and for annual renewal, $25.00.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-401. Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the city, through its agents and officials, to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this article, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-402. Expiration and renewal of license.

(a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this article.

(b) Application for renewal of an annual license should be made at least 60 days before the expiration date of the current annual license.

(c) If a completed application and fee submitted for an existing license indicates, on its face, that the applicant is entitled to an annual sexually oriented business license or sexually oriented business employee license, the ~~city~~ City ~~clerk~~ Clerk shall immediately issue a temporary license to the applicant. The temporary license shall expire upon the final decision of the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council to renew or deny the existing annual license.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-403. Suspension and revocation.

(a) The ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall issue a written notice of intent to suspend or revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

(1) The sexually oriented business licensee has knowingly violated this article or has knowingly allowed an employee to violate this article;

(2) The sexually oriented business employee has knowingly violated this article;

(3) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;

(4) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;

(5) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;

(6) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or

(7) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the premises of the sexually oriented business.

(b) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(c) When, after the notice and hearing procedure described in this article, the ~~city~~ City ~~council~~ Council revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one year from the date revocation becomes effective.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-404. Hearing; revocation, and suspension; appeal.

(a) When the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council issues a written notice of intent to suspend or revoke a license, the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the ~~city~~ City ~~clerk~~ Clerk for the respondent. The notice shall specify a date, not less than ten days nor more than 20 days after the date the notice is issued, on which the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall conduct a hearing on the written notice of intent to suspend or revoke the license.

(1) At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on ~~his~~ their behalf, and cross examine any of the ~~city's~~ City's witnesses. The ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall also be represented by counsel, and shall bear the burden of proving the grounds for suspending or revoking the license. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall issue a written decision, including specific reasons for the decision pursuant to this article, to the respondent within five days after the hearing.

(2) If the decision is to suspend or revoke the license, the decision shall not become effective until the tenth day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to the Cobb County Superior Court as set forth in O.C.G.A. § 40-13-28 and O.C.G.A. tit. 5, ch. 3. If the ~~mayor~~ Mayor and ~~city~~ City ~~council's~~ Council's decision finds that no grounds exist for suspension, or revocation of the license, the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council shall,

contemporaneously with the issuance of the decision, immediately withdraw the intent to suspend or revoke the license and to notify the respondent in writing by certified mail of such action.

(b) If any court action challenging the decision of the ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council is initiated, the city shall prepare and transmit to the court a transcript of the hearing within 30 days after receiving written notice of the filing of the court action. The city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings.

(Ord. No. 2010-10, § 1, 5-17-10; Ord. No. 2023-14, § 6, 8-7-23)

Sec. 22-405. Transfer of license.

A licensee shall not transfer ~~his~~ their license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-406. Hours of operation.

No sexually oriented business shall be or remain open for business between 2:00 a.m. and 8:00 a.m. on any day.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-407. Regulations pertaining to exhibition of sexually explicit films or videos.

(a) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The ~~city~~ City ~~clerk~~ Clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 5.0 foot-candles as measured at the floor level. It shall be the duty of the operator, and of any employees

present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

a. That the occupancy of viewing rooms less than 150 square feet is limited to one person.

b. That sexual activity on the premises is prohibited.

c. That the making of openings between viewing rooms is prohibited.

d. That violators will be required to leave the premises.

e. That violations of these regulations are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in subsections (5)a through (5)d of this section.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed 32 square feet of floor area. If the premises has two or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this subsection (a)(7) remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-408. Loitering, interior and exterior lighting, visibility, and monitoring requirements.

(a) It shall be the duty of the operator of a sexually oriented business to:

(1) Post conspicuous signs stating that no loitering is permitted on such property;

(2) Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every 90 minutes or inspecting such property by use of video cameras and monitors; and

(3) Provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering.

(b) If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(c) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(d) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot for the establishment from being visible from a public right-of-way.

(e) All premises licensed under this article shall be fully lighted on the interior, except during hours when the licensee is closed for business. Unless otherwise regulated elsewhere in this article, interior lighting shall be at least 3.5 foot candles per square foot.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-409. Prohibited conduct.

(a) It is unlawful for a sexually oriented business licensee to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(1) It shall be a violation of this article for a person to knowingly or intentionally, in a sexually oriented business, appear in a nude condition unless the person is an employee who, while nude, remains at least ten feet from any patron or customer and on a stage at least 24 inches from the floor in a room of at least 1,000 square feet.

(2) It shall be a violation of this article for any employee who appears nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(3) It shall be a violation of this article for any employee who appears nude in a sexually oriented business to solicit or personally receive any pay or gratuity from any patron.

(4) It shall be a violation of this article for a patron to directly pay or give any gratuity to any employee who appears nude in a sexually oriented business.

(5) It shall be a violation of this article for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(6) It shall be a violation of this article for any person to knowingly allow a person under the age of 18 years on the premises of a sexually oriented business.

(7) It shall be a violation of this article for any person to use, possess, sell or distribute drugs, illegal or controlled substances of any kind on the premises of a sexually oriented business.

(8) It shall be a violation of this article for any person to gamble on the premises of a sexually oriented business.

(9) It shall be a violation of this article for any employee of a sexually oriented business or any other person on the premises of a sexually oriented business to engage in specified sexual activities as defined herein.

(b) A sign in a form to be prescribed by the ~~city~~ City ~~clerk~~Clerk, and summarizing the provisions of subsections (a)(1) through (a)(5) shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-410. Scienter required to prove violation or business licensee liability.

This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-411. Failure of city to meet deadline not to risk applicant/licensee rights.

In the event that a city official or ~~council~~ Council is required to act or to do a thing pursuant to this article within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the city official or ~~council~~ Council under this article, and not completed in the time prescribed, includes approval of conditions necessary for approval by the city of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the city's action has passed, provided all fees have been paid. This provision shall not affect the ~~mayor~~ Mayor and ~~city~~ City ~~council's~~ Council's right to revoke or suspend any license pursuant to this article.

(Ord. No. 2010-10, § 1, 5-17-10)

Sec. 22-412. Location of sexually oriented businesses.

(a) Measurement. For the purpose of measuring the distance required under this subparagraph, measurement shall be made in a straight line in all directions without regard to intervening structures or objects, from the primary point of pedestrian entry of the structure in which the applicant is located to the primary point of pedestrian entry of the structure of the sensitive use. If there is no structure on the parcel comprising the sensitive use, then the point of measurement is to the closest point on a boundary line of any parcel comprising the sensitive use.

(b) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city, unless said sexually oriented business is at least 250 feet from another sexually oriented business.

(c) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city, unless same is at least 500 feet from a religious assembly building, school building, governmentally owned and operated building, library building, civic center building, public park, hospital building, community club building, prison building or any residence (sensitive uses).

(d) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city, unless said sexually oriented business is at least 500 feet from a business licensed to sell alcohol on the premises (sensitive use).

(Ord. No. 2010-10, § 1, 5-17-10; Ord. No. 2018-24, § 5(Exh. D), 10-15-18)

Secs. 22-413—22-439. Reserved.

ARTICLE XV. REGULATION OF TOBACCO PRODUCTS AND TOBACCO PARAPHERNALIA

Sec. 22-440. Legislative findings, purpose and intent.

The City of Kennesaw finds as follows:

(1) Approximately 438,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death.

(2) The World Health Organization ("WHO") estimates that by 2030, tobacco will account for 8.3 million deaths per year, killing 50 percent more people in 2015 than HIV/AIDS, and will be responsible for ten percent of all deaths worldwide.

(3) Each day, nearly 4,000 children under 18 years of age smoke their first cigarette, and almost 1,500 children under 18 years of age begin smoking daily.

(4) More than 75 percent of all current smokers in 2001 began smoking before the age of 18.

(5) Among middle school students who were current cigarette users in 2004, 70.6 percent were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and 66.4 percent were not refused purchase because of their age.

(6) In 2002, youth smoked approximately 540,000,000 packs of cigarettes, generating nearly $1.2 billion in tobacco industry revenue.

(7) Cigarette smoking remains a leading preventable cause of illness and death within the State of Georgia, with over 10,000 Georgians dying each year from smoking-related diseases.

(8) The City of Kennesaw also finds that approximately 36,000 middle school students and 113,000 of high school students in Georgia use some form of tobacco product.

(9) Approximately 23,000 middle school students and 81,000 high school students smoke cigarettes; and, 15,000 middle school students and 39,000 high school students used smokeless tobacco products.

(10) Approximately 1,400 of the middle school smokers and 24,000 of the high school smokers purchase their cigarettes at gas stations or convenience stores.

(11) A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85 percent in 1994 to 43 percent in 1998.

(12) A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8 percent to 4.9 percent in the number of youth able to purchase tobacco.

(13) This article is designed to assist the Kennesaw Police Department in stemming the sale of tobacco products to minors.

(14) The ~~city~~ City ~~council~~ Council and ~~mayor~~ Mayor also find that a violation of this article would constitute a violation that is materially related to the operation of a retail business violating this article.

(Ord. No. 2010-15, § 1, 7-6-10)

Sec. 22-441. Definitions.

City means, for the purposes of this article only, the City of Kennesaw or a person or entity designated by the City of Kennesaw.

Minor means any person who at the time of the sale has not attained the age of 18 years.

Person means any natural person, partnership, cooperative association, corporation, limited liability company, limited partnership, general partnership, personal representative, receiver, trustee, assignee, or any other legal entity.

Sale means the providing of tobacco products by any person or business entity in exchange for money, goods, or services. The term "sale" shall include, for purposes of this article, providing tobacco products for free by a tobacco retailer.

Self-service display means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or an employee of the retailer. A vending machine is a form of self-service display.

Tobacco paraphernalia means cigarette papers or wrappers, blunt wraps, pipes, holders, cigarette rolling machines or other instruments or things designed for the preparation, smoking, storing, consumption, storing or ingestion of tobacco products.

Tobacco product.

(1) The term means:

a. Any substance containing tobacco leaf in any form, including, but not limited to, the following items: bidis, chewing tobacco, dipping tobacco, cigarettes, cigars, dipping smoking, smokeless tobacco of any type and in any form, pipe tobacco, hookah tobacco, snus, snuff, and/or tobacco used to prepare cigarettes.

b. Smokeless, electronic cigarettes which do not contain tobacco but are designed to appear to be a cigarette and which delivers nicotine to the user, and/or any papers, wrappers, or other products that are used for the purpose of making cigarettes or cigars.

c. Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(2) Tobacco products shall not include items made of candy or gum products in the form of a cigarette or cigar.

Tobacco retailer means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Tobacco retailing means the sale of either tobacco paraphernalia or a tobacco product to any person of any age.

(Ord. No. 2010-15, § 1, 7-6-10)

Sec. 22-442. Requirements.

(a) *Positive identification required.* It shall be the responsibility of any person engaged in tobacco retailing to ascertain, through the review of an identification issued by a state, commonwealth, territory or other governmental unit that states the person purchasing a tobacco product or tobacco paraphernalia is more than the minimum age established by state law to purchase tobacco products. An identification issued by a private company shall not be sufficient to prove the age of the person attempting to purchase a tobacco product or tobacco paraphernalia.

(b) *Minimum age for persons selling tobacco.* No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in sale of any tobacco paraphernalia or any tobacco product to any person.

(Ord. No. 2010-15, § 1, 7-6-10)

Sec. 22-443. Prohibitions.

The following is prohibited:

(1) *Offer to sell to minor.* An offer by a tobacco retailer to engage in the sale of tobacco paraphernalia or tobacco products to any minor within the city limits. That the person to whom the offer is made appears to be over the age of 18 years shall not be a defense to a charge brought under this subsection.

(2) *Sale to minor.* The sale of tobacco paraphernalia or tobacco products by a tobacco retailer to any minor within the city limits. That a person to whom such a sale is made appears to be over the age of 18 years shall not be a defense to a charge brought under this subsection.

(3) *Operation of self service display in public place.* The operation by a tobacco retailer in a public place of a self service display. Notwithstanding this subsection, a bar that limits admission to the business to persons who are 18 years of age or older may install and operate one or more vending machines that dispense tobacco products and tobacco paraphernalia.

(4) *Distribution of tobacco products for free.* No person or business entity in the business of selling or otherwise distributing tobacco products or tobacco paraphernalia for commercial purposes, or any agent or employee of any such person or business entity, shall, in the course such business, distribute any tobacco product or tobacco paraphernalia to any person for free or at a rate that is less than average retail price for the same or a similar product taking into consideration the price charged by all retailers within the City of Kennesaw. In any case alleging a violation of this subsection of this article, it shall be the responsibility of the person attempting to distribute a tobacco product or tobacco paraphernalia at a reduced rate to prove the average retail price of that product or a product similar to that product within the city.

(5) *Violation of state or federal law.* In the course of tobacco retailing, it shall be a violation of this article for a tobacco retailer to violate any local, state, or federal law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing.

(Ord. No. 2010-15, § 1, 7-6-10)

Sec. 22-444. Penalties.

Enforcement for violations of this article shall be carried out in accordance with this section.

(1) *Remedies cumulative.* The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.

(2) *Fines.* Any violation of the prohibited acts set forth in this article will be enforced through the assessment fines for which the Ordinances of the City of Kennesaw provide. If the maximum fine allowable under state law for a criminal offense is less than the fines for which the ordinances of the City of Kennesaw provide, the fine assessed shall be the maximum allowable under state law. Upon a violation of the prohibited acts set forth in this article, both the individual who engaged in the prohibited act and the retailer employing him or her may be assessed the fines for the violation.

(3) *Affect on ~~business license~~occupation tax certificate.* A violation of the prohibited acts set forth in this article:

a. May result in the revocation of the ~~business license~~ occupation tax certificate of the retailer that violated this article under the procedures set forth section 22-39 of the Ordinances of the City of Kennesaw;

b. Shall be a factor used by the city in assessing whether the ~~business license~~occupation tax certificate will be renewed for any retailer who offered to sell or sold tobacco paraphernalia or tobacco products to any minor.

(4) *Payment of fines.* All fines shall be paid within 30 days from and after the date the fine is assessed. Should a retailer who has been fined fail to pay the fine within that time period, the city shall suspend that retailer's ~~business license~~occupation tax certificate until such time as the fine is paid. Reinstatement of the ~~business license~~occupation tax certificate shall not precluded the city from seeking revocation of that retailer's ~~business license~~occupation tax certificate or preclude the city from refusing to renew that ~~business license~~occupation tax certificate.

(5) *Criminal offense.* A violation of any of the provisions of this article XV, section 22-443 prohibition of the sale of tobacco products to minors, shall be a criminal offense.

(Ord. No. 2010-15, § 1, 7-6-10)

Sec. 22-445. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this article, or its application to any other person or circumstance. The City Council of the City of Kennesaw declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

(Ord. No. 2010-15, § 1, 7-6-10)

ARTICLE XVI. REGULATION OF PAIN MANAGEMENT CLINICS

Sec. 22-446. Legislative findings of the ~~city~~ City ~~council~~ Council and ~~mayor~~Mayor.

The ~~mayor~~ Mayor and ~~city~~ City ~~council~~ Council of the City of Kennesaw find as follows:

(a) Information received from law enforcement officials in several states indicate that criminal activity increases in areas where pain management clinics operating as no more than "pill mills" are located.

(b) The Grand Jury in Broward County, Florida, heard testimony and considered evidence concerning the proliferation of such pain clinics in Broward County and South Florida.

(c) The Broward County, Florida, Grand Jury issued its Interim Report on November 19, 2009, concerning The Proliferation of Pain Clinics in South Florida ("Broward County Grand Jury Report").

(d) The Broward County Grand Jury Report found that, "In 2007 there were 4 pain clinics operating in Broward County. From those 4 pain clinics in Broward County the number swelled to 66 pain clinics operating in South Florida in 2008. From August 2008 to November 2009 the number of pain clinics opening and operating in South Florida exploded in number from 66 to 176, and the number of pain clinics opening and operating in Broward County increased from 47 to 115. Pain clinics, which dispense prescription drugs on site, dispensed almost 9 million doses units of Oxycodone in South Florida during the last months of 2008. 6.5 million dose units of the 9 million dose units were dispensed in Broward County alone." Broward County Grand Jury Report at page 6.

(e) The Broward County Grand Jury Report reported that the Florida Medical Examiners Commission reported as follows:

Calendar Year	Number of Deaths Detected that were Caused by Lethal Doses of Prescription Drugs	Average Number of Deaths Detected that were Caused by Lethal Doses of Prescription Drugs
2006	2,780	7 deaths/day
2007	3,317	9 deaths/day
2008	3,750	10 deaths/day

Broward County Grand Jury Report at pages 9-10.

(f) The Broward County Grand Jury Report reported as follows: "The National Survey on Drug Use and Health conducted annually by the Substance Abuse Mental Health Services Administration estimates that in the last 30 days over 5 million Americans used non-medical prescription ~~opoids~~opioids or narcotic analgesics or pain relievers. In 2005, 11,300,000 Americans age 12 and above had used prescription pain medication in a non-medical use. In 2007, the number increased almost 50% to 16,280,000 Americans. One of the age groups that have shown the highest levels of prescription non-medical use has been young adults age 18 to 25. In 2007, 2,147,000 Americans were first time non-medical users of prescription pain medication." Broward County Grand Jury Report, at pages 11-12.

(g) The City of Kennesaw has great respect for reputable medical practitioners who are attempting to diagnose and treat pain being experienced by their patients.

(h) The typical pain clinic which is operating as no more than a "pill mill" has little or no interest in treating pain or the symptom of the pain but is interested in only dispensing prescription pain medication with little or no diagnosis of the "patient". See Broward County Grand Jury Report at pages 19-20.

(i) The Broward County Grand Jury Report found that "[a] couple of cities in Broward County have attempted to restrict the growing number of clinics in their cities by enacting ordinances to prohibit the location of pain management clinics that dispense narcotic drugs on site." Broward County Grand Jury Report at page 33.

(j) The typical "pill mill" prescribes and dispenses the pain medications on-site.

(k) The City of Kennesaw has been made aware of numerous news reports describing a "pipeline" of trafficking drugs from pain management clinics in South Florida to users in states such as Kentucky, West Virginia and Ohio.

(l) Prescription drug abuse is becoming a major problem in Georgia and according to the Georgia Drug and Narcotics Agency deaths due to prescription drug overdoses have surpassed those of all other illicit drugs.

(m) Some pain clinics have no interest in the diagnosis and treatment of medical issues or problems that are resulting in pain being experienced by the patients, but are operated solely to write prescriptions for highly addictive pain medications which are then sold by the clinic to the "patient" making such a clinic as no more than a "pill mill".

(Ord. No. 2011-05, 4-4-11)

Sec. 22-447. Definitions.

As used within this article, the following terms shall have the meanings set forth here:

(a) *Business entityor business entities* shall mean one or more persons engaging in activities for a profitable either individually or through the use of any of the following: company or corporation; general partnership; joint venture; limited liability company; limited liability partnership; limited partnership; sole proprietorship; a trust; or, any other corporate entity similar in nature or function to any of those listed above in this subparagraph (a) of this section 22-447.

(b) *CARF International* shall mean the commission on accreditation of rehabilitation facilities, an Arizona non-profit corporation, or its successor.

(c) *Central Business District* shall have the same meaning as stated in Title II, Appendix A—"Zoning"—of the Kennesaw City Ordinances, as amended.

(d) *Church* shall have the same meaning as set forth in section 22-393 of the Kennesaw City Ordinances.

(e) *Drug addiction treatment center* shall mean a clinic, facility, office, or business that satisfies all of the following requirements:

    (1) It is established for the purpose of treating addiction to illegal drugs or pain medications by administering ~~opoids~~opioids or other controlled substances; and,

    (2) All persons administering ~~opoids~~opioids or any controlled substance has a current certification issued to him or her by the administrator, Substance Abuse and Mental Health Services Administration (SAMHSA); and,

    (3) The clinic, facility, office, or business has a current certification issued to it by CARF International.

(f) *Hospital* shall have the same meaning as set forth in section 22-393 of the Kennesaw City Ordinances.

(g) *Hospital authority* shall have the same meaning as set forth in O.C.G.A. § 31-7-72, as amended.

(h) *Pain management clinic* shall mean either:

    (1) Any entity, location, or business regardless of the name of the entity and regardless of the name displayed for the general public which fulfills all of the following criteria:

        a. A privately owned clinic, medical practice, business, entity, or office;

        b. Which is owned by one or more persons or other business entity;

        c. The intention of which is for it to be operated for a profit;

        d. That is not affiliated with any of the following:

            (i) Any facility for the treatment of the terminally ill; or,

            (ii) A hospital authority; or,

            (iii) A non-profit health organization; or,

            (iv) Any hospice; or any hospital; and,

        e. Which employs one or more physicians who are primarily engaged in the treatment of pain by prescribing pain medications; or,

    (2) Any entity, location, or business regardless of the name of the entity and regardless of the name displayed for the general public which fulfills all of the following criteria:

        a. Any clinic, medical practice, business, entity or office;

b. Which dispenses Schedule II, III, or IV drugs. Excluded from this definition is a an entity engaged in the practice of pharmacy which derives less than 25 percent of its gross revenue from the sales of Schedule II, III, or IV drugs; hospitals; physician groups owned or operated by a health care system; surgery centers; in-patient care facilities; assisted living facilities; outpatient facilities owned or operated by a hospital system; any facility owned or operated by a hospital authority; any rehabilitation center where a portion of the patients reside at the center; any nursing home where a portion of the patients reside at the nursing home, and drug addiction treatment centers.

(i) *Pain management business license* shall mean the ~~business license~~occupation tax certificate issued under or pursuant to this article.

(j) *Pain medicine* shall mean:

(1) Any medicine requiring a prescription and which contains narcotic analgesics or ~~opoids~~opioids, including, but not limited to, fentanyl, hydrocodone, morphine, or ~~oxcycodone~~oxycodone; and,

(2) Any Schedule II, III, or IV drugs.

(k) *Park* shall have the same meaning as set forth in section 22-393 of the Kennesaw City Ordinances.

(l) *Person* shall mean a naturally born person or a business entity.

(m) *Physician* shall mean a person licensed to practice medicine under or pursuant to O.C.G.A. § 43-34-21.

(n) *Physician primarily engaged in treatment of pain* shall mean a physician who provides a majority of ~~his or her~~their patients with a written prescription for one or more pain medications.

(o) *Practice of pharmacy* shall interpretation, evaluation, or dispensing of prescription drug orders in the patient's best interest; participation in drug and device selection, drug administration, drug regimen reviews, and drug or drug related research; provision of patient counseling and the provision of those acts or services necessary to provide pharmacy care; performing capillary blood tests and interpreting the results as a means to screen for or monitor disease risk factors and facilitate patient education, and a pharmacist performing such functions shall report the results obtained from such blood tests to the patient's physician of choice; and the responsibility for compounding and labeling of drugs and devices, as defined in O.C.G.A. § 26-4-4, as amended.

(p) *Residence* shall have the same meaning as set forth in section 22-393 of the Kennesaw City Ordinances.

(q) *Schedule II, III, or IV drugs* shall mean the drugs defined in O.C.G.A. § 16-13-26 through and including 16-13-29, as amended.

(r) *School* shall have the same meaning as set forth in section 22-393 of the Kennesaw City Ordinances.

(s) *Sensitive use structure* shall mean any structure in the Central Business District, a church, building owned or leased by a school (public or private), governmentally owned and operated building, library building, civic center building, park, hospital building, community club building, prison building, jail building, building owned or leased by a hospital authority, or any residence.

(t) *Sexually oriented business* shall have the same meaning as set forth in section 22-393 of the Kennesaw City Ordinances.

(Ord. No. 2011-05, 4-4-11)

Sec. 22-448. ~~Business license~~Occupation tax certificate required—Application.

(a) *Business license.* Any pain management clinic operating within the City of Kennesaw must obtain a valid pain management business license from the city.

(b) *Filing requirements.* An applicant for a pain management business license shall file in person at the office of the city's business license ~~division~~ office a completed application made on a form provided by the city's ~~business license manager~~Business License Manager or ~~his or her~~their designee.

(c) *Requirements of application.* The applicant for a pain management business license must provide the following information:

(1) The applicant's full legal name and any other names used by the applicant in the preceding five years.

(2) If the license is to be held in the name of a business entity, the full legal name of that business entity and the names of persons who have any ownership interest (whether legal or equitable) in that business entity including, but not limited to, the all of that business entity's shareholders, partners (general and limited), members, managers, directors, and officers.

(3) The current business address for both the individual applying for the license and for the business entity, if any, that ~~he or she~~they represent~~s~~.

(4) A statement of whether any of the following persons has been convicted of a felony, or has plead guilty to a felony, or has plead nolo ~~contendre~~contendere to a felony in any state with the five years preceding the date of the application for a pain management business license:

a. The applicant;

b. Any person who has an ownership interest in the business entity that will operate under the pain management business license whether such ownership interest is legal or equitable;

c. Any of the partners (general or limited), shareholders, or members of the business entity that will operate under the pain management business license;

d. Any of the directors of the business entity that will operate under the pain management clinic business license; and,

e. Any of the officers or managers of the business entity that will operate under the pain management business license.

(5) If any of the persons name in subparagraph (4) of this section has been convicted of a felony, plead guilty to a felony, or plead nolo ~~contendre~~contendere to a felony within the five years preceding the date of the application for a pain management business license:

a. Set forth the name of the person who was so convicted, plead guilty, or plead nolo ~~contendre~~contendere:

b. Provide a complete description of the crime including the date of the plea or conviction, the name of the court where it occurred, the name under which the plea or conviction occurred, and the penalty assessed.

(6) If any of the persons named in subsection 22-448(c)(4) of this article has been convicted of a felony, plead guilty to a felony, or plead nolo ~~contendre~~contendere to a felony, all such felonies shall be listed on the application.

(7) The names of all other business entities in which any of the following persons own any interest shall be listed on the application:

a. The applicant;

b. Any of the partners (general or limited), shareholders, or members of the business entity that will operate under the pain management business license;

c. Any of the directors of the business entity that will operate under the pain management business license; and,

d. Any of the officers or managers of the business entity that will operate under the pain management business license.

(8) The names of all physicians who will be writing any prescriptions for any pain medicine at the pain management clinic.

(d) *Items accompanying application.* The applicant shall submit, with the application for a pain management business license, the following items:

(1) A driver's license or government-issued identification showing that the applicant is more than 18 years of age;

(2) A copy of the articles of incorporation and bylaws, or articles of organization and operating agreement, or partnership agreement of the business entity that will be operating under the pain management business license;

(3) Signed, notarized authorizations from the following persons authorizing the city to conduct a GCIC/NCIC criminal records background check:

a. The applicant;

b. All of the partners, shareholders, or members of the business entity that will operate under the pain management business license;

c. All of the directors of the business entity that will operate under the pain management business license;

d. All of the officers of the business entity that will operate under the pain management business license;

e. All of the physicians that will be writing prescriptions at the pain management clinic.

(4) The name and DEA number of every physician who:

a. Is to practice at the pain management clinic;

b. Is employed in any capacity at the pain management clinic;

c. Is an independent contractor or consultant retained by the pain management clinic; or

d. Who has a financial or ownership interest in the pain management clinic.

(5) A statement concerning whether the pain management clinic will dispense Schedule II, III, or IV drugs.

(6) A blue line copy of a surveyor's plat, 8½ inches by 11 inches in size, with a scale of one inch per 200 feet. The surveyor's plat shall show the proposed location and the location of all customer or patient entries in relation to distance, measured as provided in this article, to all real property and buildings on such real property which fall within the distance requirements as provided in this article, together with zoning district and present uses of all such real property and the proposed location.

(7) A legal description of the property where the pain management clinic is either currently located or at which it will be located upon issuance of a pain management business license.

(e) *Application to be signed and notarized.* The application shall be signed under oath and all information contained in the application and all attachments is to be verified as true and accurate by:

(1) If the applicant is an individual, the individual;

(2) If a partnership, a general partner;

(3) If a corporation, the president of the corporation;

(4) If a limited liability company, either the manager or the managing member;

(5) If any other type of business entity, the chief executive officer or chief administrative officer of the business entity.

(f) *Pain management business license application fee.* The pain management business license fee as set by the City of Kennesaw and published in the application for a pain management business license. Should the application fail to set forth a fee, the fee shall be $250.00 as the initial application fee. The fee to renew a pain management business license shall be $250.00, unless a different rate is published on the application issued by the city.

(g) *Applicant to assure application complete.* It shall be the responsibility of the applicant to assure that the application for a pain management business license is complete. No employee of the City of Kennesaw shall have any responsibility to notify the applicant of any deficiency in the application. The fact that the city accepts the application from the applicant is not an indication that the application is either correct or complete.

(Ord. No. 2011-05, 4-4-11)

Sec. 22-449. Issuance of pain management business license.

(a) *Issuance or denial of application.* Within 45 days from and after the filing of a completed application for a pain management business license, the ~~business license manager~~Business License Manager of the City of Kennesaw shall either issue a license to the applicant or deny a license to the applicant. Any denial of an application for a pain management business license may be appealed under the appeal provisions contained in subsection 22-31(d) of the Kennesaw City Ordinances. Notwithstanding anything contained in that section, no pain management business license shall be issued during the pendency of any such appeal.

(b) *Grant of license.* The pain management business license may be granted if:

(1) The application is complete and conforms to all of the provisions of this article.

(2) The required fee has been paid.

(3) The application does not contain a material misrepresentation of fact.

(4) The applicant has fully cooperated in the review of that application.

(5) The following persons have plead not guilty to a felony, have not plead nolo ~~contendre~~contendere to a felony, and have not been convicted of a felony:

a. If the applicant is an individual, the applicant;

b. If the applicant is a business entity, any of the persons holding a financial or ownership interest in that business entity whether such interest is legal or equitable;

c. If the applicant is a corporation, any of the officers;

d. If the applicant is a limited liability company, any of the managers.

(6) The applicant, if a business entity, is in good standing with the Georgia Secretary of State.

(7) All criminal background checks have been completed by the Kennesaw Police Department.

(c) *Expiration.* Each and every pain management business license issued to a pain management clinic shall expire one year from and after the date it is issued.

(d) *Completion date of application.* The application for a pain management business license is completed on the date that the city receives the last piece of information or document for such application as required by section 22-448 of this article.

(Ord. No. 2011-05, 4-4-11)

Sec. 22-450. Renewal of pain management business license.

Any person seeking to renew a pain management business license must provide all of the information required by section 22-448 of this article. Each renewal shall expire one year from and after the date on which it issued.

(Ord. No. 2011-05, 4-4-11)

Sec. 22-451. Prohibited acts.

(a) It shall be unlawful to establish, operate, or cause to be operated a pain management clinic in the city, unless said pain management clinic is at least 500 feet from another pain management clinic. For purposes of measuring the distance imposed by this subparagraph, the measurement hall be made in a straight line in all directions without regard to intervening structures or objects, from the primary point of pedestrian entry of the structure in which the applicant is located to the primary point of pedestrian entry of structure of the other pain management clinic.

(b) It shall be unlawful to establish, operate or cause to be operated a pain management clinic in the city, unless the same is at least 500 feet any sensitive use structure. For purposes of measuring the distance imposed by this subparagraph, the measurement shall be made in a straight line in all directions without regard to intervening structures or objects, from the primary point of pedestrian entry of the structure in which the applicant is located to the primary point of pedestrian entry of sensitive use structure. If the sensitive use structure is a park, the measurement shall be to the public entry point to the park closest the pain management clinic.

(c) It shall be unlawful to establish, operate, or cause to be operated a pain management clinic in the city, unless said pain management clinic is at least 500 feet from a business licensed to sell alcohol on the premises. For purposes of measuring the distance imposed by this subparagraph, the measurement shall be in a straight line in all directions without regard to intervening structures or objects, from the primary point of pedestrian entry to the structure in which the applicant is located to the primary point of pedestrian entry of the alcohol licensee.

(d) It shall be unlawful to establish, operate, or cause to be operated a pain management clinic in the city, unless said pain management clinic is at least 500 feet from any sexually oriented business. For purposes of measuring the distance imposed by this subparagraph, the measurement shall be in a straight line in all directions without regard to intervening structures or objects, from the primary point of pedestrian entry to the structure in which the applicant is located to the primary point of pedestrian entry of the sexually oriented business.

(e) It shall be unlawful for any pain management clinic to employ, in any capacity, a physician who is on probation for issues relating to dispensing controlled substances.

(f) It shall be unlawful for any pain management clinic to employ, in any capacity, a physician who has had ~~his or her~~their license to practice medicine suspended or revoked by any medical board.

(g) It shall be unlawful for a physician who is on probation or whose license to practice medicine has been suspended or revoked for issues relating to dispensing controlled substances to own any type of financial interest, legal or equitable, in a pain management clinic.

(h) It shall be unlawful to operate a pain management clinic without a pain management business license issued under the requirements of this article.

(Ord. No. 2011-05, 4-4-11)

Sec. 22-452. Penalties for prohibited acts.

Enforcement for violations of this article shall be carried out in accordance with this section:

(a) *Remedies cumulative.* The remedies provided in this article are cumulative and in addition to any other remedies available at law or in equity.

(b) *Effect on pain management business license.*

(1) Upon a violation of subparagraphs (a) through and including (d) of sections 22-451 of this article, the pain management business license shall be revoked.

(2) Upon a violation of subparagraphs (e) through and including (h) of section 22-451 of this article, the pain management business license shall be suspended as follows:

a. On the first such violation, the pain management business license shall be suspended for a time period not to exceed 90 days;

b. On the second such violation, the pain management business license shall be suspended for a time period not to exceed 180 days;

c. On the third such violation, the pain management business license shall be suspended for a time period not to exceed 360 days; and,

d. On the fourth such violation, the pain management business license shall be revoked and neither the applicant nor the business entity under which it was operating may apply for a pain management business license in the City of Kennesaw for a period of five years.

(Ord. No. 2011-05, 4-4-11)

Sec. 22-453. Conflict between this article and other city ordinances.

This article is to be read in such a manner as to be consistent with the other ordinances of the City of Kennesaw. Should there arise an unavoidable conflict between the provisions of this article and any other ordinance, the provisions of this article shall control.

(Ord. No. 2011-05, 4-4-11)

Secs. 22-454—22-480. Reserved.

ARTICLE XVII. EATING AND DRINKING ESTABLISHMENTS ENCROACHMENT PERMITS[13]

Sec. 22-481. Purpose.

This chapter shall apply to the establishment, operation and maintenance of all eating and drinking establishments within the downtown development authority metes and bounds area. The purpose of this chapter

[13]Editor's note(s)—Ord. No. 2016-22, adopted Sep. 19, 2016, set out provisions intended for use as Art. XVII, §§ 22-454—22-463. To preserve the style of this Code, and at the editor's discretion, these provisions have been included as Art. XVII, §§ 22-481—22-490.

is to promote the general economic development and atmosphere of the downtown development authority metes and bounds area for the benefit of all businesses and citizens located there, and no right of individuals or individual businesses are created therein, and to create an aesthetic ambiance which will attract tourists to the downtown development authority metes and bounds area. Further, this chapter is designed to allow an array of cafe tables adjacent to an eating and drinking establishment allowing pedestrians to stroll by while customers dine undisturbed and shall not impede the efficiency of the pedestrian path. The chapter shall not permit single or multiple tables or displays by organizations, establishments or businesses for vending goods, for distributing information or for displaying goods, as these activities encourage people to stop, loiter, perhaps bargain, engage in dialogue or obtain correct change, all of which potentially impedes the efficiency of the pedestrian path, and conflicts with the city's style and ambience which the city seeks to preserve in the downtown development authority metes and bounds area. The ~~city~~ City ~~manager~~Manager, ~~finance~~ Finance ~~director~~ Director and ~~his or her~~their designee shall have broad discretion to grant, modify, or revoke permits pursuant to this chapter in the interests of improving the public health, safety, and welfare.

(Ord. No. 2016-22, 9-19-16)

Sec. 22-482. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building official means the building official or the person authorized by the ~~city~~ City ~~manager~~ Manager to enforce this chapter.

Design requirements means the standards adopted with this chapter that guide design and materials in encroachment areas.

Eating and drinking establishment means the placing, locating, or permitting of the placing or locating of chairs and tables on the right-of-way, such as sidewalks, adjacent to a business licensed to operate as an eating and drinking establishment where food and other refreshments are served or upon public property within designated areas.

Encroachment means tables, umbrellas, chairs, or objects related to the business on the public right-of-way, sidewalk or common area on public property.

Finance director means the finance director or the person authorized by the ~~city~~ City ~~manager~~ Manager to enforce this chapter.

Permittee means the recipient of an encroachment permit under this chapter.

Planning and zoning administrator means the planning and zoning administrator or the person authorized by the ~~city~~ City ~~manager~~ Manager to enforce this chapter.

Sidewalk means that area of public right-of-way between the curb lines or the lateral lines of a roadway and the adjacent property lines reserved for pedestrian traffic, not including street crossings.

(Ord. No. 2016-22, 9-19-16)

Sec. 22-483. Prohibited conduct.

(a) Under this chapter, no merchant, vendor, business or property owner shall:

(1) Place any tables, or chairs on any portion of the public property other than that directly in front of ~~his~~ their existing place of business without the written consent of adjacent landowners and businesses. In no event shall such items be placed in the landscaped areas or extend beyond 25 feet from each side of the owner's business.

(2) Block or restrict the passageway on the sidewalk to less than five feet in width or block the ingress/egress to any building. Also, no items shall be placed so as to block any driveway, crosswalk, counter service window or public parking.

(3) Arrange the cafe tables and chairs so as to impede the efficiency of the pedestrian path. In areas of congested pedestrian activity, the building official is authorized to require a wider pedestrian path for the protection and welfare of the public.

(4) Place or allow single or multiple tables or displays by organizations, establishments or businesses for vending goods, for distributing information or for displaying goods in the permitted encroachment, as these activities encourage people to stop, loiter, perhaps bargain, engage in dialogue or obtain correct change, all of which potentially impedes the efficiency of the pedestrian path, and conflicts with the city's style and ambience which the city seeks to preserve on the downtown development authority metes and bounds area, unless sidewalk sale, festival or other appropriate permits have been granted.

(5) Sublicense, sublet, assign, or otherwise convey the encroachment area separately to non-occupants of the premises.

(6) Place objects around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier.

(7) Use tables, chairs, umbrellas and any other objects of such quality, design, materials, and workmanship that are not approved or otherwise authorized by the planning and zoning administrator.

(8) Use umbrellas or other decorative material which are not fire retardant, pressure treated, or manufactured of fire resistive material.

(9) Fail to secure permission of the landlord where a building has multiple occupants.

(10) Vend or display without the insurance coverage specified.

(11) Sound or permit the sounding of any device on the public property which produces a loud noise or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device. The city reserves the right to decrease noise levels of businesses if interfering with public activities of the downtown development authority metes and bounds area.

(12) Fail to daily pick up, remove and dispose of all trash or refuse left by the business on the public right-of-way.

(13) Store, park, or leave any stand or items overnight on any street or sidewalk except for tables and chairs which may be kept in the permitted area at the permittee's risk.

(14) Store, park, or leave any vehicle, truck, or trailer within the encroachment area.

(15) Use the encroachment area to place, display, or sell non-food or non-beverage merchandise.

(16) Use the encroachment area to stock or store tables, chairs, or other items not in use.

(17) Fail to daily remove from the public right-of-way all grease, stains, food spots, etc. caused by the operation of the eating and drinking establishment.

(b) The encroachment permit is a temporary license which may be denied, suspended or revoked for any conduct that is contrary to this section or for conduct of the business that creates or may create a public nuisance or constitute a danger to the operator's or public's health, safety, or welfare.

(Ord. No. 2016-22, 9-19-16)

Sec. 22-484. Permit required.

(a) It shall be unlawful for any person to create, establish, operate, maintain or otherwise be engaged in the business of running an eating and drinking establishment or place eating and drinking establishment items upon the sidewalks or public property in the zoned downtown development authority metes and bounds area in the city unless (s)he shall hold a currently valid permit issued under the terms of this chapter.

(b) A permit shall be issued only to a validly licensed business that wishes to provide cafe tables and chairs on the public property directly adjacent to the business for an outdoor eating and drinking establishment to be used by the general public.

(c) A permit shall only be issued for the operation of an eating and drinking establishment directly adjacent to and by a restaurant which receives over 50 percent of its annual revenue from the sale of prepared food items, including soft drinks and coffee, or for the operation of a duly licensed brew pub, wine specialty shop, growler shop or event space.

(Ord. No. 2016-22, 9-19-16)

Sec. 22-485. Application.

(a) Application for a permit required by this division shall be made at the business license office in a form prepared and deemed appropriate by the finance director. Such application shall include but is not limited to the following information:

(1) The name, home and business address, and telephone number of the applicant, and the name and address of the owner, if other than the applicant, of the business.

(2) The name, home address and telephone number of a responsible person whom the city may notify or contact at any time concerning the applicant's encroachment.

(3) A copy of a valid ~~business license~~occupation tax certificate to operate a business establishment adjacent to the public property, which is the subject of the application.

(4) Proof of current liability insurance, issued by an insurance company licensed to do business in the state, protecting the licensee and the city from all claims for damage to property and bodily injury, including death, which may arise from operation under or in connection with the encroachment permit. The policy shall be reviewed by the finance director or ~~his or her~~their designee for verification the insurance adequately protects the city and meets the intent of this section. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advanced written notice to the city. The policy shall be a minimum of $1,000,000.00 or higher, if deemed necessary by the ~~city~~ City ~~attorney~~Attorney.

(5) A sketch to scale of the proposed location showing the layout and dimensions of the existing public area and adjacent private property.

(6) Proof of any required alcohol license, health permits or other state permits for the business involved.

(7) Photographs, drawings, or manufacturer's brochures fully describing the appearance of all proposed tables, chairs, umbrellas, or other objects related to the business. Umbrellas shall not have advertising on them and shall be placed so that they do not pose a hazard to pedestrians. Plastic tables and chairs shall not be allowed.

(b) Not later than 15 days after the filing of a complete application for a temporary encroachment permit, the applicant shall be notified by the business license office of the decision on the issuance or denial of the permit. Upon issuance of the permit, an annual fee shall be due and payable as follows:

The encroachment area will be charged at a rate of $2.00 per square foot with a minimum annual charge of $100.00.

This fee is in addition to the ~~business license~~occupation tax -required for operation within the city. Only new permits shall be prorated on a quarterly basis. No fees shall be charged for encroachments solely for the purpose of beautification, but all other provisions of this section shall apply.

(c) In the event that a business is found to be operating in or on public rights-of-way in without a permit as required under this section, application for a permit shall be made at the business license office within 48 hours of written notice for failure to obtain a permit. Where the same owner, occupant, or person responsible has been given notice for the same violation at the same location within the previous 180 days, such requirements of written notice may be waived and legal proceedings commenced immediately.

(Ord. No. 2016-22, 9-19-16)

Sec. 22-486. Form and conditions of permit.

The permit required by this chapter shall be issued on a form prepared and deemed suitable by the finance director. In addition to naming the permittee and any other information deemed appropriate by the finance director, the permit shall contain the following conditions:

(a) Each permit shall be effective for one year, from January 1 to December 31, subject to annual renewal, unless revoked or suspended prior to expiration. No fees will be refunded.

(1) The permit issued shall be personal to the permittee, only, and shall not be transferable in any manner.

(2) The permit may be suspended by the finance director or ~~his or her~~their designee when necessary to clear the public property for public safety or for a community or special event authorized by a permit issued by the city.

(3) The finance director or ~~his or her~~their designee may require the temporary removal of items within the encroachment area when street, sidewalk, common areas or utility repairs necessitate such action.

(4) The permit shall be specifically limited to the area shown on the site plan attached to and made part of the permit.

(5) The encroachment area covered by the permit shall be maintained in a neat and orderly appearance at all times, and the area shall be cleared of all debris on a periodic basis during the day and again at the close of each business day.

(6) No advertising is allowed in the encroachment area except for the posting of menu items or prices on approved equipment or objects.

(7) No tables and chairs or any other parts of the business shall be attached, chained, or in any manner affixed to any tree, post, sign, other fixture, curb or sidewalk within or near the permitted area. No additional outdoor seating authorized in this article shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of an alcohol license for any establishment or be used as the basis for computing required seating for restaurants and dining rooms or as grounds for claiming exemption from such requirements under the provisions of any city ordinance or state law.

(8) The issuance of a permit does not grant or infer vested rights to use of the area by the permittee. The city retains the right to deny the issuance of a permit or the renewal of a permit for any reason.

(9) Tables, chairs, umbrellas, and any other objects provided shall be maintained with a clean and attractive appearance and shall be kept safe and in good repair at all times.

(10) The city retains the right to suspend the privilege of using glass containers within the encroachment area during major festivals and events and when streets are closed. The use of glass containers will be revoked if an incident jeopardizes the health, safety and welfare of customers or the general public. Any violation of state or local laws will also result in a revocation of this privilege. Repeated offenses may result in revocation or denial of the encroachment permit.

(11) The permittee may serve alcohol by the drink to customers in the encroachment area only if the permittee is otherwise fully licensed by the state and city to serve alcohol and observes all rules and regulations governing the sales and service of alcohol. The permittee shall not allow any customer to be served alcohol or to take open containers of alcohol of any kind outside of the encroachment area, except inside the permitted establishment itself, under any circumstances, except when allowed by festival or other event permits issued by the city.

(Ord. No. 2016-22, 9-19-16)

Sec. 22-487. Denial, revocation or suspension; removal and storage fees; emergencies.

(a) Under this chapter, the finance director or ~~his or her~~their designee may deny, revoke, or suspend a permit at any time for any business authorized in the city if it is found that:

(1) Any necessary business or health permit has been suspended, revoked or canceled.

(2) The permittee does not have insurance in force which is correct and effective in the minimum amount described herein.

(3) Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of the encroachment. Such decision shall be based upon findings of the building official that the minimum five-foot pedestrian path is insufficient under existing circumstances and represents a danger to the health, safety, or general welfare of pedestrians or vehicular traffic.

(4) The permittee has failed to correct violations of this chapter or conditions of ~~his~~ their permit upon receipt of the building official's notice of violations delivered in writing to the permittee. The permittee shall have ten days from the date of receipt of such notice to correct such violations. In the event that such violations are not corrected within ten days from the receipt of such notice, the finance director or ~~his or her~~their designee may suspend or revoke the encroachment permit. The permittee may appeal said suspension or revocation by filing such appeal in writing to the ~~city~~ City ~~clerk~~ Clerk within ten business days. The ~~city~~ City ~~clerk~~ Clerk shall then set down the matter for a hearing before the Kennesaw License Review Board within 30 days from receipt of the written appeal. In the event that the license review board recommends the permit be suspended or revoked, the permittee of the encroachment permit may file an appeal with the ~~city~~ City ~~manager~~ Manager of such recommendation within five business days of the date of the license review board's decision to the ~~city~~ City ~~council~~Council. If the finance director or ~~his or her~~their designee suspends or revokes the permit as provided above and the permittee of the encroachment permit should fail to appeal such decision, then the decision shall become effective at 12:01 a.m. on the first day following the end of the appeal period following the date of the finance director's decision, and the permittee of the encroachment permit shall be deemed to have acquiesced to such decision.

(5) The permittee has failed to take positive actions to prohibit violations from recurring.

(b) Tables, chairs and other vestiges of the business may be removed by the public works office, and a reasonable fee shall be charged for labor, transportation, and storage; if the permittee fails to remove the items within 36 hours of receipt of the finance director or ~~his or her~~their designee's final notice to do so for any reason provided for under this chapter.

(c) Upon denial or revocation, the finance director or ~~his or her~~their designee shall give notice of such action to the applicant or the permittee in writing stating the action which has been taken and the reason thereof. The action shall be effective at 12:01 a.m. on the first day following the end of the appeal period following the date of the finance director's decision.

(Ord. No. 2016-22, 9-19-16)

Sec. 22-488. Indemnity.

As part of the permitting process set forth herein, any person or entity receiving a permit set forth herein shall execute an indemnity agreement indemnifying and releasing the city, its agents, employees and elected officials from any and all liability against any and all claims, actions and suits of any type whatsoever.

(Ord. No. 2016-22, 9-19-16)

Sec. 22-489. Americans with Disabilities Act.

Any person or entity receiving a permit hereunder agrees to fully comply with all requirements of the Americans With Disabilities Act as currently existing or as may be hereafter amended.

(Ord. No. 2016-22, 9-19-16)

Sec. 22-490. Liability.

The city shall not be liable to any permittee or any license holder for any damage, loss, inconvenience, business interruption, demolition, loss of business, loss of property or any other loss as a result of any public safety emergency vehicle responding to an emergency call which must encroach upon the public right-of-way of the city.

(Ord. No. 2016-22, 9-19-16)

Item Report

TO: The Honorable Mayor and City Council

FROM: Lea Alvarez, City Clerk

DATE: November 3, 2025

TITLE: **Minutes: October 13, 2025 Work Session**
Approval of the October 13, 2025, City Council work session minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:
1. 2025-10-13 City Council Work Session Draft Minutes

MINUTES OF CITY COUNCIL WORK SESSION MEETING
CITY OF KENNESAW
Council Chambers
(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)

Livestream: www.kennesaw-ga.gov/publicmeetings/
October 13, 2025
6:30 PM

Present	Mayor Derek Easterling Mayor Pro Tem Pat Ferris Councilmember Madelyn Orochena Councilmember Tracey Viars Councilmember Antonio Jones Councilmember Anthony Gutierrez-Leon City Clerk Lea Alvarez City Manager Jeff Drobney City Attorney Sam Hensley, Jr.

1. Invocation

2. Pledge of Allegiance

3. Call to Order

Mayor Easterling called the meeting to order at 6:30 p.m.

4. Announcements

5. Presentations

6. Old Business

7. New Business

A. **Resolution: Meeting Procedures**
Consideration for approval of a Resolution updating the Mayor and City Council Meeting Procedures Document.

City Clerk Lea Alvarez presented a resolution to update the Mayor and City Council Meeting Procedures document. During the September 29, 2025, City Council work session, the Council directed staff to revise the document to specify that any vetoed item must be placed on the agenda for the next regular City Council meeting for consideration of a veto override, requiring a four-fifths (4/5) vote of the Council pursuant to Section 2.06 of the City of Kennesaw Charter.

Councilmember Viars clarified that the regular City Council meeting referenced was the voting meeting. Ms. Alvarez confirmed.

With Council consensus, Mayor Easterling recommended placing the item on the

Consent Agenda for the regular meeting.

B. **Resolution: Friendship Agreement with Montepulciano, Italy**
Consideration for approval of a Resolution authorizing a Memorandum of Understanding which establishes a collaborative relationship with Montepulciano, Italy.

Assistant to the City Manager Anna Trapp presented a resolution authorizing a Memorandum of Understanding (MOU) to establish a collaborative relationship with Montepulciano, Italy. Ms. Trapp explained that the City of Kennesaw created the Kennesaw Sister Cities Commission (KSSC) in August 2021 to pursue international Sister City relationships. Montepulciano was selected due to its existing partnership with Kennesaw State University (KSU) through KSU's study abroad program.

Following several virtual meetings and correspondence, the cities of Kennesaw and Montepulciano developed a Friendship Agreement in the form of an MOU to formalize a structured partnership promoting cultural exchange, economic cooperation, educational collaboration, and friendship between the two communities. The KSSC, City staff, and leadership from Montepulciano have reviewed and recommend approval of the agreement.

Ms. Trapp noted that one collaboration is already underway between Kennesaw, Montepulciano, and KSU. To commemorate the signing of the MOU, KSU Marketing and Graphic Design students are designing a commemorative wine label for a wine produced in a Montepulciano winery. The students are currently in the design phase and will next develop marketing strategies for the label, while the City of Kennesaw explores local distribution opportunities.

Councilmember Jones jokingly asked if the Council could soon travel to Montepulciano.

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the regular meeting.

8. Committee and Board Reports

9. Public Hearing(s)

A. **Land Use Permit: 2800 Dominion Lane**
Consideration for approval of a Land Use Permit application for the property located at 2800 Dominion Lane as submitted by applicant Ali Jackson. Case #LU2025-06

Assistant Zoning Administrator and Planner Chanelle Campbell presented a land use permit request for property located at 2800 Dominion Lane, submitted by Ali Jackson. The request seeks to renew a land use permit originally approved on October 16, 2023, for a home-based cottage food business specializing in baking and selling cookies. The business will remain confined to the existing kitchen and preparation area, utilizing standard household appliances, with no signage or external display. The request was properly advertised, and on October 1, 2025, the Planning Commission recommended approval with conditions as outlined by staff. Staff also recommends approval of the renewal with conditions consistent with the original 2023 approval, including limiting the permit to the current applicant and use, prohibiting clients and visible business activities, and granting approval for a 24-month period.

Mayor Pro Tem Ferris noted that the Council has recently discussed potential changes to the land use permit process and asked for an update on those efforts. Ms. Campbell reported that the Planning and Zoning Department has been coordinating with the Business License Department and expects to present a draft for Council review by December. Zoning Administrator Darryl Simmons added that the proposed changes would allow for an administrative renewal process, reducing the need for applicants to go through the public hearing process.

10. Consent Agenda

A. **Minutes: September 29, 2025 Work Session**
Approval of the September 29, 2025, City Council work session minutes.

B. **Minutes: September 29, 2025 Executive Session**
Approval of the September 29, 2025, City Council executive session minutes.

C. **Minutes: October 6, 2025 Regular Meeting**
Approval of the October 6, 2025, City Council regular meeting minutes.

D. **Minutes: October 6, 2025 Executive Session**
Approval of the October 6, 2025, City Council executive session minutes.

11. General and Administrative

A. **Resolution: Vehicle Lease Supplement with Georgia Municipal Association**
Consideration for approval of a Resolution authorizing the Mayor to execute the Lease Supplement with Georgia Municipal Association (GMA) for the direct leasing program for thirteen vehicles.

Finance Director Jennifer Gordy presented a resolution authorizing the Mayor to execute a lease supplement with the Georgia Municipal Association (GMA) for the direct leasing program of thirteen vehicles. Ten of the vehicles are designated for police use and three for administrative use. The City will finance the vehicles through GMA's direct leasing program over a five-year term, with annual payments of $219,302.22 at an interest rate of 4.49%, for a total cost of $963,000.

Mayor Pro Tem Ferris inquired about the current cost of vehicles. Ms. Gordy noted that police vehicles cost approximately $90,000 each to purchase and outfit.

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the regular meeting.

12. Public Safety

13. Information Technology

14. Public Works and Building Maintenance

15. Recreation and Culture

A. **Road Closure: Holiday Parade, Holiday Concert, and Drone Show**
Consideration to approve road closures on December 6, 2025, and December 7, 2025, for the Holiday Parade, Concert, and Drone Show.

Parks and Recreation Director Bill McNair presented a request for road closures on December 6 and 7, 2025, in support of the City's Holiday Parade, Concert, and Drone Show. The proposed closures are as follows:

Road Closures for Holiday Parade and Drone Show

Parade Details
Saturday, December 6, 2025

- Parade Line-Up*:* Park Drive closed from 8:30 a.m. to 12:30 p.m.

- Parade Route Closures*:* 10:30 a.m. to 12:30 p.m.
  - Main Street from Park Drive to Watts Drive
  - All of Watts Drive
  - All of Park Drive
  - Dallas Street, J.O. Stephenson Avenue, and Lewis Street

Drone Show and Concert Details
Sunday, December 7, 2025

- Concert begins at 6:00 p.m.; Drone Show begins at 7:30 p.m.

- Cherokee Street closed from 3:00 p.m. to 9:00 p.m

Councilmember Jones asked for clarification on the extent of the Cherokee Street closure. Mr. McNair responded that the closure will extend from Big Shanty Drive to Main Street.

Mayor Pro Tem Ferris asked who would be performing at the concert. Mr. McNair stated that the performers would be local artists focusing on Christmas music.

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the regular meeting.

16. Community Development

A. **Final Plat Application: Townes at South Main (2652 S Main Street)** Consideration for approval of the final plat application submitted by Kennesaw Townhome Owner, LLC for Townes at South Main (parcel #20016700020); this plat revises the size of lot 44 by increasing it by 20 sq. ft. Case #FP2025-04

Assistant Zoning Administrator and Planner Chanelle Campbell presented a final plat application submitted by Kennesaw Townhome Owner, LLC for Townes at South Main. The plat revises Lot 44 by increasing its size by 20 square feet. The original plat was reviewed and approved by the Mayor and Council on September 18, 2023, and recorded with Cobb Superior Court. The revised plat has been reviewed for compliance by the Plan Review Committee, as well as Cobb Fire and Cobb Water, all of whom recommend approval.

With Council consensus, Mayor Easterling recommended placing the item on the Consent Agenda for the regular meeting.

17. Public Comments

6:39 p.m. Floor Open for Public Comments

HOLLY LACOUR [City Resident]: Ms. Lacour addressed the Council regarding an incident on October 4, 2025, at Adams Park during a Kennesaw Baseball Association game, in which her four-year-old son was bitten in the face by a dog. Although dogs are prohibited in the park, she noted they are frequently present. She has been unable to file a report with Animal Control because the dog owner's information has not been provided by the Baseball Association. Ms. Lacour requested the City's assistance in encouraging the Association to provide the information so she can file a report to prevent future incidents.

6:40 p.m. Floor Closed for Public Comments

18. City Manager's Report

A. Reports, Discussions, and Updates

Dr. Drobney reported that there were no updates to provide at this meeting.

19. Mayor's Report

A. Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve boards and commissions, as deemed necessary.

20. Council Reports & Discussions

A. **Discussion Items: Facility Names and Fallen Officer Memorial**
Discussion item requested by Councilmember Jones regarding the naming of the Kennesaw Recreation Center and the Kennesaw Public Safety facility, as well as the creation of a fallen officer memorial at the Kennesaw Public Safety Facility.

[Mayor Pro Tem Ferris recused himself from the discussion.]

Councilmember Jones expressed a desire to recognize Councilmember Ferris and Chief Westenberger for their years of service to the community, suggesting naming the Recreation Center after Mayor Pro Tem Ferris, the Public Safety Facility after Chief Westenberger. He also wanted to discuss creating a Kennesaw fallen officer memorial at the Public Safety Facility.

Following discussion, the Council agreed they would like to honor these individuals' service but are not comfortable naming facilities after people. They decided to explore alternative ways to recognize their contributions.

Regarding the fallen officer memorial, Assistant City Manager Marty Hughes reported that the Police Department has already been discussing its creation and is working to determine the most appropriate location.

21. Executive Session

Pursuant to the provisions of O.C.G.A 50-14-3, the City Council could, at any time during the meeting, vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney; and/or personnel matters; and/or real estate matters.

Motion by Councilmember Gutierrez-Leon to enter into Executive Session as allowed by O.C.G.A. Sec. 50-14-3 for the purpose of discussing legal. Motion seconded by Councilmember Viars.

Vote taken: motion unanimously approved, 5-0. Motion passed.

7:02 p.m. Recess to Executive Session

Mayor, City Council, City Manager, Assistant City Manager, City Clerk, and City Attorney attended Executive Session.

7:09 p.m. Reconvene to Open Session

Councilmember Gutierrez-Leon read the Board back into Open Session and directed the Mayor and City Council to execute an affidavit in compliance with O.C.G.A. Sec. 50-14-4. Motion seconded by Mayor Pro Tem Ferris. See **Exhibit A**.

Vote taken: motion unanimously approved, 5-0. Motion passed.

22. Adjourn

Mayor Easterling adjourned the meeting at 7:10 p.m. The regular meeting will be held on Monday, October 20, 2025, at 6:30 p.m. in the Council Chambers. The public is encouraged to attend.

____
Lea Alvarez, City Clerk

State of Georgia
County of Cobb

AFFIDAVIT

1.

Mayor Derek Easterling was the presiding officer of a meeting of the Kennesaw City Council held on the 13th day of Oct, 2025.

2.

That it is my understanding that O.C.G.A.§ 50-14-4(b) provides as follows: When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code Section, the chairperson or other person presiding over such meeting shall execute and file with the officials minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting of the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

3.

The subject matter of the closed meeting or closed portion of the meeting held on the 13th day of October, 2025 which was closed for the purpose(s) of legal as allowed by O.C.G.A. Title 50, Chapter 14 was devoted to matters within those exceptions and as provided by law.

DRAFT

4.

This affidavit is being executed for the purpose of complying with the mandate of O.C.G.A.§ 50-14-4(b) that such an affidavit be executed.

This the 13th day of Oct, 2025.

Mayor/Presiding Officer

Paul M. Ferris
Councilmember

Councilmember

Councilmember

Councilmember

Councilmember

Sworn to and subscribed before me this the

13th day of October, 2025.

Notary Public

LEA ALVAREZ
NOTARY
EXPIRES
GEORGIA
February 21, 2027
PUBLIC
PAULDING COUNTY

Names and Addresses will be disclosed in the Permanent Minutes of the City of Kennesaw

PLEASE MAKE SURE YOUR NAME IS LEGIBLE AND CLEAR

City Council Work Session
10/13/2025
Public Comment Sign-in

	Name	Address	Topic
1	Holly Lacour	Prichard Park	Dog bite
2			
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19			

Item Report

TO: The Honorable Mayor and City Council

FROM: Lea Alvarez, City Clerk

DATE: November 3, 2025

TITLE: **Minutes: October 13, 2025 Executive Session**
Approval of the October 13, 2025, City Council executive session minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:
1. 10-13 ES Affidavit

State of Georgia
County of Cobb

AFFIDAVIT

1.

Mayor Derek Easterling was the presiding officer of a meeting of the Kennesaw City Council held on the 13th day of Oct, 2025.

2.

That it is my understanding that O.C.G.A.§ 50-14-4(b) provides as follows: When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code Section, the chairperson or other person presiding over such meeting shall execute and file with the officials minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting of the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

3.

The subject matter of the closed meeting or closed portion of the meeting held on the 13th day of October, 2025 which was closed for the purpose(s) of legal as allowed by O.C.G.A. Title 50, Chapter 14 was devoted to matters within those exceptions and as provided by law.

4.

This affidavit is being executed for the purpose of complying with the mandate of O.C.G.A.§ 50-14-4(b) that such an affidavit be executed.

This the 13th day of Oct, 2025.

Mayor/Presiding Officer

Councilmember

Councilmember

Councilmember

Councilmember

Councilmember

Sworn to and subscribed before me this the

13th day of October, 2025.

LEA ALVAREZ
NOTARY
EXPIRES
GEORGIA
February 21, 2027
PUBLIC
PAULDING COUNTY

Notary Public

Item Report

TO: The Honorable Mayor and City Council

FROM: Lea Alvarez, City Clerk

DATE: November 3, 2025

TITLE: **Minutes: October 20, 2025 Regular Meeting**
Approval of the October 20, 2025, City Council regular meeting minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:
1. 2025-10-20 City Council Meeting Draft Minutes

MINUTES OF CITY COUNCIL MEETING
CITY OF KENNESAW
Council Chambers
(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)

Livestream: www.kennesaw-ga.gov/publicmeetings/
October 20, 2025
6:30 PM

Present	Mayor Derek Easterling Mayor Pro Tem Pat Ferris Councilmember Madelyn Orochena Councilmember Tracey Viars Councilmember Antonio Jones Councilmember Anthony Gutierrez-Leon City Clerk Lea Alvarez City Manager Jeff Drobney City Attorney Sam Hensley, Jr.

1. Invocation

City Resident Carlene Fregeolle led the Invocation.

2. Pledge of Allegiance

City Resident Andrew Bramlett led the Pledge of Allegiance.

3. Call to Order

Mayor Easterling called the meeting to order at 6:30 p.m.

4. Announcements

5. Presentations

6. Public Comment

This section is for comment on any item on the agenda.

6:30 p.m. Floor Open for Public Comments

No comments.

6:31 p.m. Floor Closed for Public Comments

7. Old Business

8. New Business

9. Committee and Board Reports

10. Public Hearing(s)

A. **Land Use Permit: 2800 Dominion Lane**
Consideration for approval of a Land Use Permit application for the property located at 2800 Dominion Lane as submitted by applicant Ali Jackson. Case #LU2025-06

Assistant Zoning Administrator and Planner Chanelle Campbell presented a land use permit application for the property located at 2800 Dominion Lane, submitted by applicant Ali Jackson. The request is to renew a land use permit originally approved on October 16, 2023, for a home-based cottage food business specializing in baking and selling cookies.

Ms. Campbell noted that the applicant has been operating the business from her home without any complaints from neighboring properties. The business will continue to be confined to the existing kitchen and preparation area, utilizing standard household appliances, with no signage or external display. All cookies are custom-made and delivered directly to customers.

The request was properly advertised, and on October 1, 2025, the Planning Commission recommended approval with conditions as outlined by staff.

Staff recommends approval with the following conditions:

1. The land use permit is limited to, exclusive for and only valid for the current applicant and the life of this home-based and use, and it is not transferrable. Any changes would require additional review and approval.
2. There shall be no clients, customers or additional outside employees at this location. Nor shall there be any evidence of a home-based business visible from the public right-of-way including no signs and no more than one commercial vehicle dedicated to this business.
3. The land use permit is valid for 24-months starting from the date of final approval.

Motion by Councilmember Viars to approve a land use permit application for the property located at 2800 Dominion Lane as submitted by applicant Ali Jackson as conditioned. Seconded by Councilmember Orochena.

6:34 p.m. Floor Open for Public Comments

No comments.

6:35 p.m. Floor Closed for Public Comments

Vote taken: motion unanimously approved, 5-0. Motion passed.

11. Consent Agenda

A. **Minutes: September 29, 2025 Work Session**
Approval of the September 29, 2025, City Council work session minutes.

B. **Minutes: September 29, 2025 Executive Session**
Approval of the September 29, 2025, City Council executive session minutes.

C. **Minutes: October 6, 2025 Regular Meeting**
Approval of the October 6, 2025, City Council regular meeting minutes.

D. **Minutes: October 6, 2025 Executive Session**
Approval of the October 6, 2025, City Council executive session minutes.

E. **Resolution: Meeting Procedures**
Consideration for approval of a Resolution updating the Mayor and City Council Meeting Procedures Document.

Resolution No. 2025-67

F. **Resolution: Friendship Agreement with Montepulciano, Italy**
Consideration for approval of a Resolution authorizing a Memorandum of Understanding which establishes a collaborative relationship with Montepulciano, Italy.

Resolution No. 2025-68

G. **Resolution: Vehicle Lease Supplement with Georgia Municipal Association**
Consideration for approval of a Resolution authorizing the Mayor to execute the Lease Supplement with Georgia Municipal Association (GMA) for the direct leasing program for thirteen vehicles.

Resolution No. 2025-69

H. **Road Closure: Holiday Parade, Holiday Concert, and Drone Show**
Consideration to approve road closures on December 6, 2025, and December 7, 2025, for the Holiday Parade, Concert, and Drone Show.

I. **Final Plat Application: Townes at South Main (2652 S Main Street)**
Consideration for approval of the final plat application submitted by Kennesaw Townhome Owner, LLC for Townes at South Main (parcel #20016700020); this plat revises the size of lot 44 by increasing it by 20 sq. ft. Case #FP2025-04

Motion by Councilmember Gutierrez-Leon to approve the Consent Agenda engross. Seconded by Mayor Pro Tem Ferris.

Vote taken: motion unanimously approved, 5-0. Motion passed.

12. General and Administrative

13. Public Safety

14. Information Technology

15. Public Works and Building Maintenance

16. Recreation and Culture

17. Community Development

18. Public Comment

This section is for general comment.

6:37 p.m. Floor Open for Public Comments

ANDREW BRAMLETT (City Resident): Mr. Bramlett noted that the Life in the Cemetery tours are approaching and shared that this year's focus is on the namesakes of local streets, buildings, and facilities. He provided historical background on the namesake of Adams Park — the Adams Family. See **Exhibit A**.

DONOVAN GIARDINA (City Council Post 3 Candidate): Mr. Giardina reminded the public of his upcoming town hall on Thursday, October 23, 2025, at 6:00 p.m. at the Outdoor Classroom beside the Pedestrian Tunnel in Depot Park. He stated he would be answering any and all questions from the public. Mr. Giardina mentioned that the land use permit approved earlier in the meeting is in his neighborhood, and that residents are fully supportive of the applicant's home-based business. He also expressed interest in seeing the renewal process for such permits revised.

6:39 p.m. Floor Closed for Public Comments

19. City Manager's Report

A. Reports, Discussions, and Updates

Dr. Drobney did not have anything to report tonight.

20. Mayor's Report

A. Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve boards and commissions, as deemed necessary.

21. Council Reports & Discussions

Councilmember Gutierrez-Leon shared that Halloween is his and his wife's favorite time of year. They recently returned from Orlando after attending Halloween Horror Nights at Universal Studios and are looking forward to taking their niece to the Candy Crawl this weekend.

Councilmember Jones had nothing to add this evening.

Mayor Pro Tem Ferris noted that there is a lot happening in the City over the next two weeks and that it looks like great weather is ahead for the season. He joked that he even turned on the heat this morning.

Councilmember Orochena mentioned the many events taking place on this Saturday, October 25.

Councilmember Viars reminded everyone to purchase tickets for Life in the Cemetery and highlighted the upcoming Harvest Gathering at Smith-Gilbert Gardens on November 2, 2025. She noted that Chef Lauren McCormick of 1885 would be preparing a garden-to-table dinner with wine pairings, with all proceeds benefiting the Smith-Gilbert Gardens Foundation.

22. Executive Session

Pursuant to the provisions of O.C.G.A 50-14-3, the City Council could, at any time during the meeting, vote to close the public meeting and move to executive session to discuss matters relating to litigation, legal actions and/or communications from the City Attorney; and/or personnel matters; and/or real estate matters.

Motion by Councilmember Orochena to enter into Executive Session as allowed by O.C.G.A. Sec. 50-14-3 for the purpose of discussing land. Motion seconded by Councilmember Viars.

Vote taken: motion unanimously approved, 5-0. Motion passed.

6:41 p.m. Recess to Executive Session

Mayor, City Council, City Manager, Assistant City Manager, City Clerk, and City Attorney attended Executive Session.

7:01 p.m. Reconvene to Open Session

Councilmember Orochena read the Board back into Open Session and directed the Mayor and City Council to execute an affidavit in compliance with O.C.G.A. Sec.50-14-4. Motion seconded by Councilmember Viars. See **Exhibit B**.

Vote taken: motion unanimously approved, 5-0. Motion passed.

23. Adjourn

Mayor Easterling adjourned the meeting at 7:02 p.m. The next work session will be held on Monday, October 27, 2025, at 6:30 p.m. in the Council Chambers. The public is encouraged to attend.

____

Lea Alvarez, City Clerk

KENNESAW HISTORY

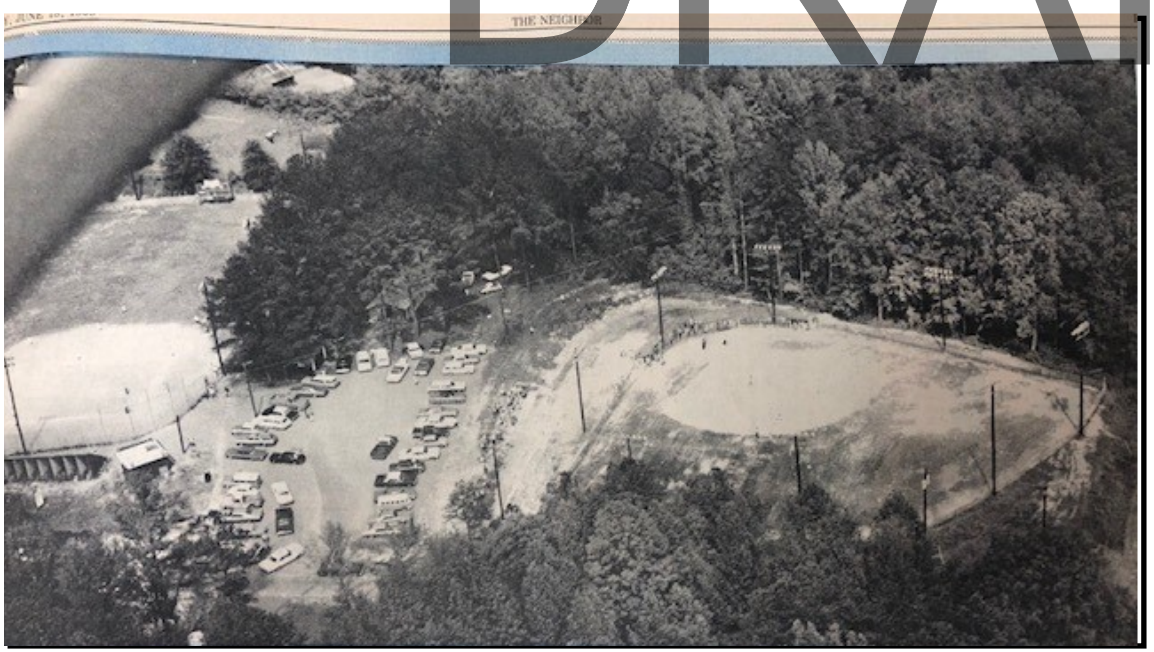
Adams Park

The Kennesaw Life in the Cemetery tours are just around the corner. This year's tour focuses on the namesakes of local streets, schools, buildings, and parks. Given that Halloween is next week, it seems especially appropriate to talk about the Adams Family of Adams Park.

The park is named after the family of former mayor James K. "Johnny" Adams. The Adams Family had been in Cobb County as far back as the 1850s, and their family farm was to the west of Kennesaw. In 1955, it became the Kennesaw Recreation Area.

Johnny Adams was born in Kennesaw in 1920, was mayor from 1963 to 1968, and 1974 to 1977. Early in his career, one of Adams campaign platforms was the expansion of the city's recreation facilities. At that time, the Kennesaw Recreation Area only had a ball park and scout hut. In the early 1960s, picnic tables, a "barbeque shelter," and restrooms would be added. In 1966, the park would be renamed Adams Park, in honor of both the Adams Farm and the mayor.

Johnny Adams passed away in 1987. While he is not laid to rest in our cemetery, many of his family members who used the farm can be found there.



Adams Park, 1969

Presented by Andrew J. Bramlett at the October 20, 2025, City of Kennesaw Mayor & Council Meeting

State of Georgia
County of Cobb

AFFIDAVIT

1.

Mayor Derek Easterling was the presiding officer of a meeting of the Kennesaw City Council held on the 20 day of Oct, 2025.

2.

That it is my understanding that O.C.G.A.§ 50-14-4(b) provides as follows: When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code Section, the chairperson or other person presiding over such meeting shall execute and file with the officials minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting of the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

3.

The subject matter of the closed meeting or closed portion of the meeting held on the 20th day of October, 2025 which was closed for the purpose(s) of land as allowed by O.C.G.A. Title 50, Chapter 14 was devoted to matters within those exceptions and as provided by law.

DRAFT

4.

This affidavit is being executed for the purpose of complying with the mandate of O.C.G.A.§ 50-14-4(b) that such an affidavit be executed.

This the 20th day of Oct, 2025.

Mayor/Presiding Officer

Councilmember

Councilmember

Councilmember

Councilmember

Councilmember

Sworn to and subscribed before me this the

20th day of October, 2025.

Notary Public

LEA ALVAREZ
NOTARY
EXPIRES
GEORGIA
February 21, 2027
PUBLIC
PAULDING COUNTY

Names and Addresses will be disclosed in the Permanent Minutes of the City of Kennesaw

PLEASE MAKE SURE YOUR NAME IS LEGIBLE AND CLEAR

City Council Meeting
10/20/2025
Public Comment Sign-in

	Name	Address	Topic
1	Andrew Bramlett	2990 Summerfield Ct.	Local history
2			
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DRAFT

Item Report

TO: The Honorable Mayor and City Council

FROM: Lea Alvarez, City Clerk

DATE: November 3, 2025

TITLE: **Minutes: October 20, 2025 Executive Session**
Approval of the October 20, 2025, City Council executive session minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:
1. 10-20 ES Affidavit

State of Georgia
County of Cobb

AFFIDAVIT

1.

Mayor Derek Easterling was the presiding officer of a meeting of the Kennesaw City Council held on the 20 day of Oct, 2025.

2.

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3.

The subject matter of the closed meeting or closed portion of the meeting held on the 20th day of October, 2025 which was closed for the purpose(s) of land as allowed by O.C.G.A. Title 50, Chapter 14 was devoted to matters within those exceptions and as provided by law.

4.

This affidavit is being executed for the purpose of complying with the mandate of O.C.G.A.§ 50-14-4(b) that such an affidavit be executed.

This the 20th day of Oct, 2025.

Mayor/Presiding Officer

Councilmember

Councilmember

Councilmember

Councilmember

Councilmember

Sworn to and subscribed before me this the

20th day of October, 2025.

Notary Public

LEA ALVAREZ
NOTARY
EXPIRES
GEORGIA
February 21, 2027
PUBLIC
PAULDING COUNTY

Item Report

TO: The Honorable Mayor and City Council

FROM: Lea Alvarez, City Clerk

DATE: November 3, 2025

TITLE: **Resolution: Settlement Agreement with Lance Oil Company**
Consideration for approval of a Resolution authorizing a Settlement Agreement and Mutual Release of Claims between the City of Kennesaw and A.R. Brooks Enterprises, Inc. d/b/a Lance Oil Company.

Summary:
Lance Oil Company, a wholesale fuel distributor, located at 3090 Moon Station Road, NE, Kennesaw, Georgia 30144, has paid the City of Kennesaw's occupational tax for years based on its gross receipts from fuel transported from its facility. The company, regulated by the Georgia Department of Public Safety, claims exemption from this tax under O.C.G.A. § 48-13-16(a)(1), which excludes businesses regulated by that department. Lance Oil Company has requested a refund of $67,351.14 for taxes paid over the past five years on fuel transported by its own fleet. The City and Lance Oil Company intend to enter into an agreement to refund this amount according to a set schedule as outlined in Attachment A.

Recommendation:
City Clerk recommends approval and to authorize the Mayor to execute the Settlement Agreement and Mutual Release of All Claims.

Fiscal Impact:

Attachments:
1. RES 2025 - Lance Oil Company
2. Attachment A - Settlement Agreement and Mutual Release of all Claims - AR Brooks Enterprises, Inc.

CITY OF KENNESAW
GEORGIA

RESOLUTION NO. 2025-__

RESOLUTION TO AUTHORIZE THE MAYOR TO EXECUTE A SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS WITH A.R. BROOKS ENTERPRISES, INC. D/B/A LANCE OIL COMPANY

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

WHEREAS, Lance Oil Company is a wholesale distributor of retail motor fuel and distributes retail motor fuel to branded gas outlets throughout metro Atlanta and North Georgia from its facility located at 3090 Moon Station Road, NE, Kennesaw, GA 30144; and

WHEREAS, Lance Oil Company transports most of these retail motor fuels via its own fleet of vehicles and some by other trucking companies known as "common carriers" on the public highways and roadways of Georgia; and

WHEREAS, Kennesaw regulates and issues occupational tax certificates to businesses operating within its city limits and charges a tax according to provisions in the Kennesaw Charter and Code of Ordinances; and

WHEREAS, Kennesaw has imposed an occupational tax on Lance Oil Company for many years based on the total amount of Lance Oil Company's gross receipts transported from its facility in Kennesaw, which tax Lance Oil Company paid; and

WHEREAS, Lance Oil Company is a company regulated by the Georgia Department of Public Safety due to Lance Oil Company's transporting of retail motor fuels on public highways and roadways of Georgia; and

WHEREAS, O.C.G.A § 48-13-16(a)(1) states that, "The following businesses or practitioners shall be excluded from occupation tax ... (1) Those businesses regulated by ... the Department of Public Safety;" and

WHEREAS, on June 25, 2025, Lance Oil Company, by and through its legal counsel, Mr. Les A. Schneider, sent the City a request for a refund of the occupational tax imposed on Lance Oil Company over the past five years on that portion of Lance Oil

Company's product transported by its own vehicles, said amount of occupational tax fees totaling $67,351.14 (Sixty-Seven Thousand Three Hundred Fifty-One and 14/100 Dollars); and

WHEREAS, the parties desire to enter into an agreement to refund said amount of occupational tax based on the schedule provided in Attachment A.

NOW THEREFORE, BE IT RESOLVED, the Kennesaw City Council authorizes the Mayor to execute a Settlement Agreement and Mutual Release of All Claims with A.R. Brooks Enterprises, Inc. d/b/a Lance Oil Company as described in Attachment A.

PASSED AND ADOPTED by the Kennesaw City Council on this ___ day of November 2025.

ATTEST:

____
Lea Alvarez, City Clerk

CITY OF KENNESAW:

____
Derek Easterling, Mayor

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release of All Claims (hereinafter the "Agreement") is made and entered into as of the _______ day of ______________, 2025 (the "Effective Date"), by and among THE CITY OF KENNESAW, GEORGIA, a municipality duly organized under the laws of the State of Georgia (hereinafter "City" or "Kennesaw") and A. R. BROOKS ENTERPRISES, INC. d/b/a LANCE OIL COMPANY, a corporation duly organized under the laws of the State of Georgia (hereinafter "Lance Oil Company"), being collectively referred to herein as "the Parties."

RECITALS

WHEREAS, Lance Oil Company is a wholesale distributor of retail motor fuels and distributes retail motor fuel to branded gas outlets throughout metro Atlanta and North Georgia from its facility located at 3090 Moon Station Road, NE, Kennesaw, Georgia, 30144-2711; and

WHEREAS, Lance Oil Company transports most of these retail motor fuels via its own fleet of vehicles and some by other trucking companies known as "common carriers" on the public highways and roadways of Georgia; and

WHEREAS, Kennesaw regulates and issues occupational tax certificates (otherwise known as "business licenses") to businesses operating within its city limits and charges a tax according to provisions in the Kennesaw Charter and Code of Ordinances; and

WHEREAS, Kennesaw has imposed an occupational tax on Lance Oil Company for many years based on the total amount of Lance Oil Company's gross receipts transported from its facility in Kennesaw, which tax Lance Oil Company paid; and

WHEREAS, Lance Oil Company is a company regulated by the Georgia Department of Public Safety due to Lance Oil Company's transporting of retail motor fuels on the public highways and roadways of Georgia; and

WHEREAS, O.C.G.A §48-13-16(a)(1) states that, "The following businesses or practitioners shall be excluded from occupation tax…(1) Those businesses regulated by…the Department of Public Safety"; and

WHEREAS, on June 25, 2025, Lance Oil Company, by and through its legal counsel Mr. Les A. Schneider, sent the City a request for a refund of the occupational tax imposed on Lance Oil Company over the past five years on that portion of Lance Oil Company's product transported by its own vehicles, said amount of occupational tax fees totaling $67,351.14 (Sixty-Seven Thousand Three Hundred Fifty-One and 14/100 Dollars); and

WHEREAS, the Parties desire to enter into this Agreement to refund said amount of occupational tax based on the schedule provided herein (hereinafter the "Settlement Payment");

NOW, THEREFORE, in consideration of the agreements and undertakings described herein and other good and valuable consideration, the Parties hereby agree as follows:

1. <u>Mutual Releases by the Parties</u>. In consideration of the Settlement Payment and the mutual promises and covenants set forth herein, the City of Kennesaw, including its employees,

representatives, agents, attorneys, and elected officials, and Lance Oil Company, including its owners, officers, directors, managers, members, successors, representatives, heirs, agents, executors, administrators, assigns, and insurers, do each hereby fully release, remise, relinquish, acquit, and forever discharge each other from any and all claims, demands, actions, or causes of action, or suits in law or in equity, of whatsoever kind or nature, whether known or unknown at the present time, and whether based on alleged tort or alleged contract or any other legal or equitable theory of recovery, for any and all damages, losses, obligations, executions, set-offs, penalties, expenses, attorneys' fees, litigation costs, interest, punitive damages, and any and all liabilities or damages of any kind or nature whatsoever, arising out of or relating in any way to any past payment of occupational tax imposed by the City and paid by Lance Oil Company.

2. Settlement Payment. The Settlement Payment shall be paid in the following manner: (1) One-Half of the total refund amount of $67,351.14 due shall be paid by the City to A. R. Brooks Enterprises, Inc. d/b/a Lance Oil Company c/o Wimberly, Lawson, Steckel, Schneider & Stine, P.C., at 3400 Peachtree Rd. NE, Lenox Towers, Suite 400, Atlanta, GA 30326, within five (5) business days of the full execution of this Agreement, said One-Half being $33,675.57 (Thirty-Three Thousand Six Hundred Seventy-Five and 57/100 Dollars) but no later than November 27, 2025. The remaining One-Half shall be credited by a waiver of the annual occupational tax owed by Lance Oil Company on that portion of its product transported by common carriers or product which is sold and delivered to the customer at Lance Oil Company's facility in Kennesaw over the next five (5) years following the Effective Date of this Agreement. Any portion of the total amount of the refund still due and outstanding at the end of five (5) years shall be paid by the City in one balloon payment, payable by December 31, 2030. It shall be the responsibility of Lance Oil Company to report and document annually to the City the portion of its product transported via common carriers or picked up at Lance Oil Company's Kennesaw facility by Lance Oil Company's customers in order for the City to credit the appropriate amount to the refund still outstanding. Said report shall be due to the City each year on or before March 31st with Lance Oil Company's business license renewal application.

3. Accord and Satisfaction. Effective upon the full and final payment of the Settlement Payment, the Parties agree and acknowledge that the Settlement Payment constitute full accord, satisfaction, and settlement of any and all claims, actions, causes of action, damages or claims of damage or injury of any type or nature that each of the Parties has, might have, or claims to have, arising out of and/or relating to the collection of occupational tax by the City from Lance Oil Company.

4. Warranty of Ownership of Claims. Each of the Parties represents and warrants that it presently owns all of the claims asserted against the other Party, that it has not assigned or transferred any of those claims, or portions thereof, and that there are no insurers or other entities known to have an interest in those claims or the proceeds thereof.

5. Disclaimer of Liability. This Agreement is the result of the Parties' desire to avoid the time, cost, and uncertainties of litigation, and the execution of this Agreement and the consideration given are not and shall not be construed as admissions of liability or wrongdoing by any of the undersigned Parties, or an admission of the truth of any fact, nor a declaration against interest on the part of any of the undersigned Parties. Notwithstanding this provision, unless there is a change in the state law governing the payment of occupation

tax, any subsequent occupation tax obligation of Lance Oil Company's shall be treated in the same manner as outlined in this settlement between the parties.

6. Binding Upon Successors. The Parties agree that this Agreement shall inure to the benefit of and be binding upon each of their respective agents, representatives, employees, assigns, executors, administrators, related entities, and predecessors or successors.

7. Counterparts. This Agreement may be executed in counterparts, and such signed counterparts may be exchanged in PDF format via email. Such signed counterparts, collected, shall represent the fully executed and enforceable Agreement. Copies of the executed Agreement transmitted via facsimile or email shall constitute originals.

8. Governing Law. This Agreement shall be interpreted in accordance with, and governed by, the laws of the State of Georgia.

9. Entire Agreement. This Agreement constitutes the entire agreement on this subject matter, and it supersedes any and all prior agreements, oral and written. The undersigned Parties acknowledge that they have executed this Agreement voluntarily, knowingly, and with the benefit of advice from legal counsel of their own choosing.

10. No Party Deemed Drafter. As this Agreement is negotiated between the undersigned Parties to settle the dispute, and has been circulated for comments and edits among the Parties and their counsel, no party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against any party as the drafter of this Agreement. Each party had the opportunity to be represented by counsel of their choosing in drafting this document and each party shall bear their own costs and attorneys' fees incurred in drafting this Agreement.

11. Modification of the Agreement. This Agreement may not be changed, modified, amended, or altered except by a further written agreement signed by the undersigned Parties thereto.

12. Attorneys' Fees. The undersigned parties shall bear their own costs, expenses, and attorneys' fees in or arising out of or in any way related to the matters released herein. However, if legal action is required to enforce the terms of this settlement agreement, the prevailing party shall be entitled to reasonable attorney's fees from the breaching party.

13. Power to Enter into Agreement. The undersigned Parties represent to one another that they have the express and full authority and power and are duly authorized to enter into this Agreement with regard to all matters described herein upon the terms set forth and the persons executing this Agreement are the individuals or are the authorized agents of the respective undersigned parties for the purpose of executing this Agreement.

14. Severability. The undersigned Parties agree that the terms of this Agreement are contractual and not merely a recital. Should any portion be found by a court of law to be invalid, void, illegal, contrary to law or public policy, or otherwise unenforceable, it is expressly agreed by the undersigned Parties that only such portion will be affected, and the remainder of the Agreement will stand in full force and effect as if such unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the dates indicated below.

THE CITY OF KENNESAW, GEORGIA

By: ______________________________

Its: ______________________________

Dated: ______________________________

Sworn to and subscribed before me

this ____ day of ________, 2025.

____
Notary Public

My commission expires: __________

A.R. BROOKS ENTERPRISES, INC d/b/a LANCE OIL COMPANY

By: - Greg Brooks

Its: V.P.

Dated: 10/22/25

Sworn to and subscribed before me

this 22 day of Oct, 2025.

____
Notary Public

My commission expires: 3/3/27

TINA W. PAUL
MY COMMISSION EXPIRES
NOTARY
PUBLIC
MARCH 03, 2027
BARTOW COUNTY, GEORGIA

Item Report

TO: The Honorable Mayor and City Council

FROM: Ricky Stewart, Public Works Director

DATE: November 3, 2025

TITLE: **Resolution: Stormwater and Sewer Easements**
Consideration for approval of a Resolution authorizing stormwater and sewer easements with Delta Performance, LLC.

Summary:
In order to provide discharge points for stormwater and sewer for a proposed development, Delta Performance, on Cobb Parkway, parcel number 20016605030, the developer, Delta Performance, LLC, has requested the City provide two easements going through City owned property of the regional detention pond, parcel number 20016605040. There is an existing Cobb County Water System (CCWS) easement on the property.

The first requested easement would allow the developer to tie in sewer service to the CCWS line. The proposed easement will be a 20’ wide sewer easement.

The second requested easement would allow the developer to extend the proposed stormwater line beyond the existing sewer line and further into the regional detention pond. The extension of the stormwater line will prevent the possible exposure of the sewer line due to erosion, as well as decrease the possible impact of sediment in the regional detention pond. The proposed easement will be a 20’ wide stormwater easement.

Recommendation:
The Public Works Director recommends approval of the agreements.

Fiscal Impact:

Attachments:
1. RES 2025 - Stormwater and Sewer Easement
2. Exhibit A1 - Storm Legal

3. Exhibit A2 - Storm Plan
4. Exhibit B1 - Sewer Legal
5. Exhibit B2 - Sewer Plan

CITY OF KENNESAW
GEORGIA

RESOLUTION NO. 2025-___

RESOLUTION TO GRANT STORMWATER AND SEWER EASEMENTS TO DELTA PERFORMANCE, LLC.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

WHEREAS, in order to provide discharge points for stormwater and sewer for a proposed development known as Delta Performance, located on Cobb Parkway, parcel number 20016605030, the developer, Delta Performance, LLC, has requested the City provide two easements through City-owned property containing the regional detention pond, parcel number 20016605040; and

WHEREAS, there is an existing Cobb County Water System easement located on the property; and

WHEREAS, the first requested easement will allow the developer to connect sewer service to the existing Cobb County Water System line, and the proposed easement will be a twenty-foot (20’) wide sewer easement; and

WHEREAS, the second requested easement will allow the developer to extend the proposed stormwater line beyond the existing sewer line and further into the regional detention pond, thereby preventing potential exposure of the sewer line due to erosion and reducing the possible impact of sediment in the regional detention pond; and

WHEREAS, the proposed stormwater easement will also be twenty feet (20’) wide.

BE IT RESOLVED, the Kennesaw City Council authorizes the Mayor to execute the easement agreements with Delta Performance, LLC, as shown in Exhibit A and Exhibit B.

BE IT FURTHER RESOLVED this Resolution shall become effective from and after its adoption and execution by the mayor.

PASSED AND ADOPTED by the Kennesaw City Council on this ____day of November 2025.

ATTEST: CITY OF KENNESAW:

______________________ ______________________
Lea Alvarez, City Clerk Derek Easterling, Mayor

FRONTLINE
SURVEYING & MAPPING, INC.
3595 Canton Road
Suite 116, PMB 272
Marietta, GA 30066
Ph. (678) 355-9905
Fax (678) 355-9805
www.frontlinesurveying.com

LEGAL DESCRIPTION – Storm Easement 2,573 SQ. FT.

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 166 of the 20th District, 2nd Section, of Cobb County, Georgia and being more particularly described as follows:

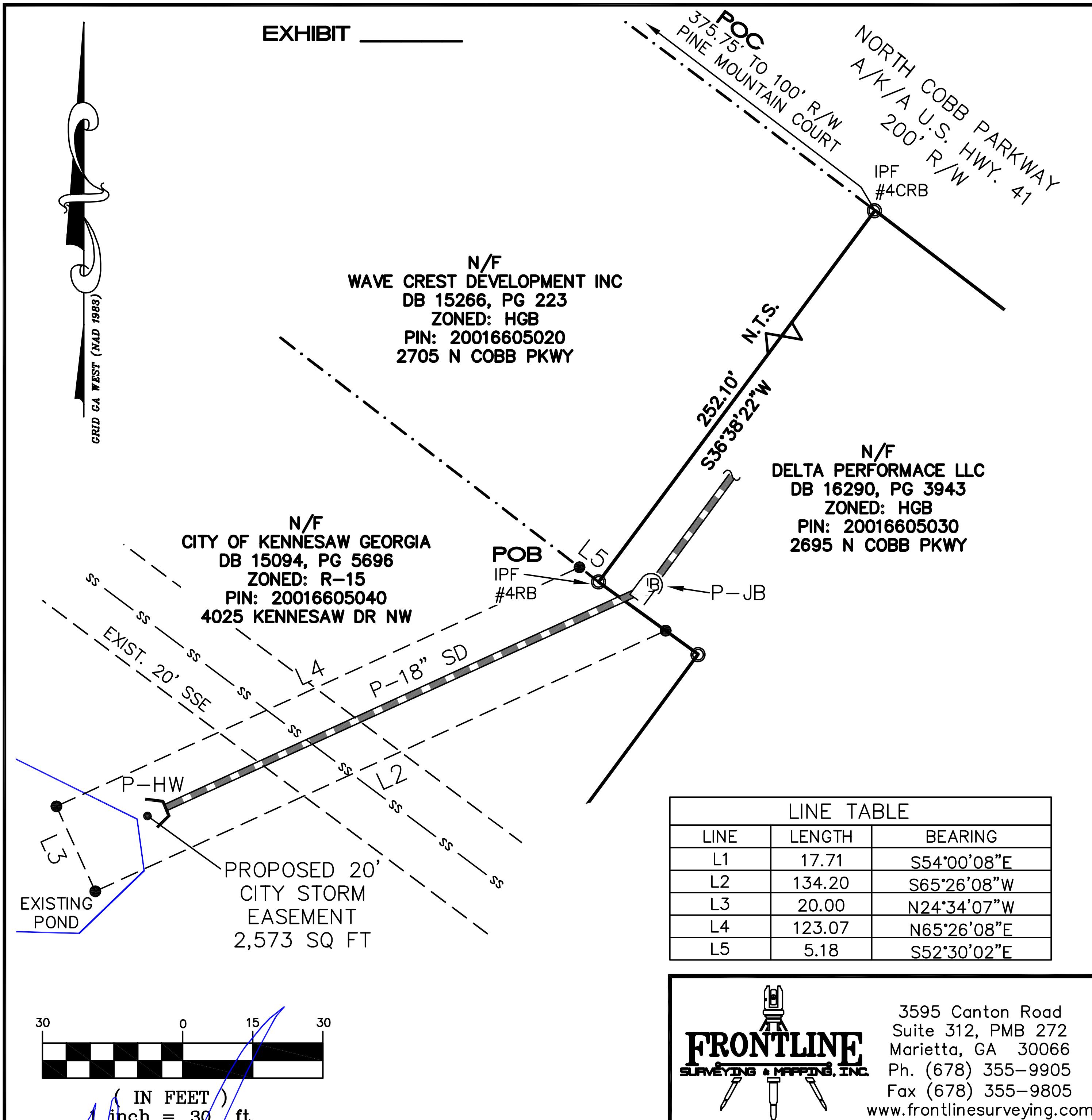
TO FIND THE POINT OF BEGINNING, COMMENCE at a point (Iron Pin Found, #4 Capped Re-Bar) on the southwestern right-of-way of North Cobb Parkway (a/k/a U.S. Hwy. 41) (200’ R/W), which point is located 375.75 feet southeasterly as measured along the easterly right-of-way of North Cobb Parkway from the intersection formed by the easterly right-of-way of North Cobb Parkway and the southeasterly right-of-way of Pine Mountain Court (100’ R/W); Thence leaving said right-of-way proceed South 36º38’22” West a distance of 252.10 feet to a point (Iron Pin Found, #4 Re-Bar), said point being the POINT OF BEGINNING.

THENCE, from said Point of Beginning thus established, proceed South 54º00’08” East a distance of 17.71 feet to a point; Thence proceed South 65º26’08” West a distance of 134.20 feet to a point; Thence proceed North 24º34’07” West a distance of 20.00 feet to a point; Thence proceed North 65º26’08” East a distance of 123.07 feet to a point; Thence proceed South 52º30’02” East a distance of 5.18 feet to a point, said point being the POINT OF BEGINNING.

Easement described herein containing 0.06 acres of land (2,573 Square Feet), more or less, described on a Storm Easement Exhibit by Frontline Surveying & Mapping, Inc., job number 86152-2 dated 9/08/2025.

Thomas E. Peay, Jr. Ga. RLS 2402
For the Firm of Frontline Surveying & Mapping, Inc.

EXHIBIT ________



LINE TABLE

LINE	LENGTH	BEARING
L1	17.71	S54°00'08"E
L2	134.20	S65°26'08"W
L3	20.00	N24°34'07"W
L4	123.07	N65°26'08"E
L5	5.18	S52°30'02"E

FRONTLINE
SURVEYING & MAPPING, INC.
3595 Canton Road
Suite 312, PMB 272
Marietta, GA 30066
Ph. (678) 355-9905
Fax (678) 355-9805
www.frontlinesurveying.com

GEORGIA REGISTERED No. 2402 PROFESSIONAL LAND SURVEYOR
THOMAS EDWARD PEAY, Jr.
09-08-25

FOR THE FIRM FRONTLINE SURVEYING & MAPPING, INC.
LSF#000631

STORM EASEMENT EXHIBIT FOR:

DELTA PERFORMANCE

DATE 9/05/2025

SCALE 1" = 30'

LAND LOT 166 20th DISTRICT 2nd SECTION COBB COUNTY, GEORGIA

SUBDIVISION PHASE: DB PG PB PG

REVISION:	BY:	DATE:

JOB #: 86152-2

REF: 84669

FRONTLINE
SURVEYING & MAPPING, INC.
3595 Canton Road
Suite 116, PMB 272
Marietta, GA 30066
Ph. (678) 355-9905
Fax (678) 355-9805
www.frontlinesurveying.com

LEGAL DESCRIPTION – Sewer Easement 1,098 SQ. FT.

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 166 of the 20th District, 2nd Section, of Cobb County, Georgia and being more particularly described as follows:

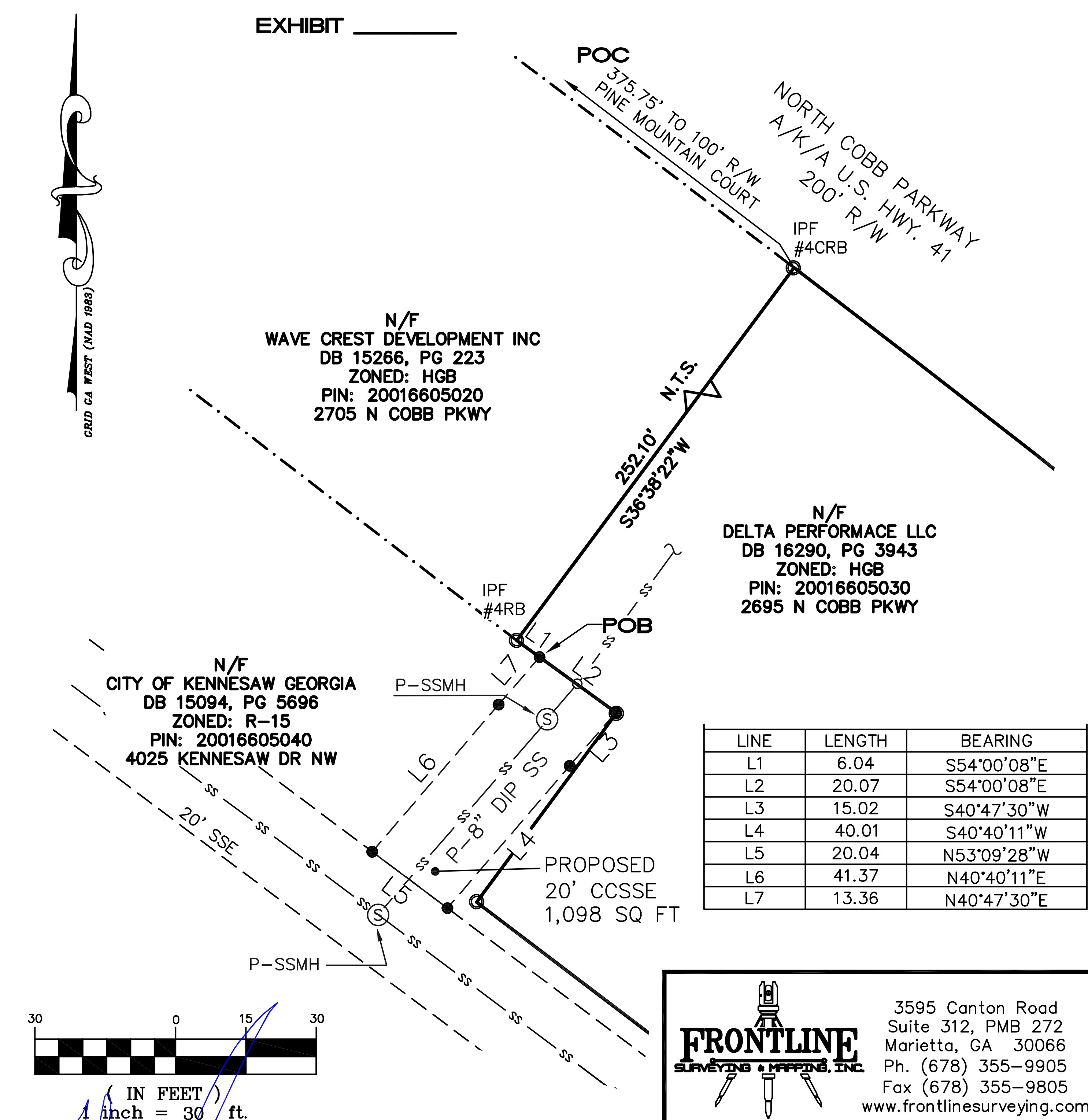
TO FIND THE POINT OF BEGINNING, COMMENCE at a point (Iron Pin Found, #4 Capped Re-Bar) on the southwestern right-of-way of North Cobb Parkway (a/k/a U.S. Hwy. 41) (200' R/W), which point is located 375.75 feet southeasterly as measured along the easterly right-of-way of North Cobb Parkway from the intersection formed by the easterly right-of-way of North Cobb Parkway and the southeasterly right-of-way of Pine Mountain Court (100' R/W); Thence leaving said right-of-way proceed South 36º38'22" West a distance of 252.10 feet to a point (Iron Pin Found, #4 Re-Bar); Thence proceed South 54º00'08" East a distance of 6.04 feet to a point, said point being the POINT OF BEGINNING.

THENCE, from said Point of Beginning thus established, proceed South 54º00'08" East a distance of 20.07 feet to a point; Thence proceed South 40º47'30" West a distance of 15.02 feet to a point; Thence proceed South 40º40'11" West a distance of 40.01 feet to a point; Thence proceed North 53º09'28" West a distance of 20.04 feet to a point; Thence proceed North 40º40'11" East a distance of 41.37 feet to a point; Thence proceed North 40º47'30" East a distance of 13.36 feet to a point, said point being the POINT OF BEGINNING.

Easement described herein containing 0.03 acres of land (1,098 Square Feet), more or less, described on a Sewer Easement Exhibit by Frontline Surveying & Mapping, Inc., job number 86152-1 dated 9/08/2025.

Thomas E. Peay, Jr. Ga. RLS 2402
For the Firm of Frontline Surveying & Mapping, Inc.

EXHIBIT ________



LINE	LENGTH	BEARING
L1	6.04	S54°00'08"E
L2	20.07	S54°00'08"E
L3	15.02	S40°47'30"W
L4	40.01	S40°40'11"W
L5	20.04	N53°09'28"W
L6	41.37	N40°40'11"E
L7	13.36	N40°47'30"E

FRONTLINE SURVEYING & MAPPING, INC.
3595 Canton Road
Suite 312, PMB 272
Marietta, GA 30066
Ph. (678) 355-9905
Fax (678) 355-9805
www.frontlinesurveying.com

GEORGIA REGISTERED No. 2402 PROFESSIONAL LAND SURVEYOR THOMAS EDWARD PEAY, Jr.
09-08-25

FOR THE FIRM FRONTLINE SURVEYING & MAPPING, INC. LSF#000631

JOB #: 86152-1

SEWER EASEMENT EXHIBIT FOR:

DELTA PERFORMANCE

DATE 9/05/2025

SCALE 1" = 30'

LAND LOT 166 20th DISTRICT 2nd SECTION COBB COUNTY, GEORGIA

SUBDIVISION PHASE: DB PG PB PG

REVISION:	BY:	DATE:

REF: 84669

Item Report

TO: The Honorable Mayor and City Council

FROM: Ricky Stewart, Public Works Director

DATE: November 3, 2025

TITLE: **Purchase Authorization: Vehicles and Equipment**
Consideration to authorize the purchase of vehicles and equipment approved in the FY26 Budget.

Summary:
Council approved the purchase of vehicles and equipment for Public Works Stormwater and Parks and Recreation in the FY26 Budget. The City is able to purchase the following using the State contracts available through the Georgia Department of Administration:

2026 Explorer 4X4 (SW) …………………. $39,770.00
2026 Ford Escape (SW) ………………….. $29,955.00
2025 Trac Vac 288 Leaf Vacuum ……….. $26,000.00

Recommendation:
The Public Works Director recommends authorization to purchase the vehicles and equipment.

Fiscal Impact:
Public Works Stormwater: 560-0000-39-400000-00000
Park and Recreation: 100-1065-54-149000-00000

Attachments:
None

Item Report

TO: The Honorable Mayor and City Council

FROM: Bill McNair, Parks & Recreation Director

DATE: November 3, 2025

TITLE: **Resolution: Chalker Park**
Consideration for approval of a Resolution to award a contract with Gay Construction as the Construction Manager at Risk (CMAR) for Chalker Park.

Summary:
A Request for Qualifications was advertised in the Marietta Daily Journal for a Construction Manager at Risk (CMAR) for the Pre-construction and Construction Services for Chalker Park. Two qualification packages were received on September 19, 2025. Each package was reviewed and ranked by a Selection Committee. Attachment A was reviewed by Legal.

Recommendation:
The Parks and Recreation Director recommends approval.

Fiscal Impact:

Attachments:
1. RES 2025 - Chalker Park
2. GCC_CM-GC Fee Proposal Form
3. A133-2019 - Working Draft - 001
4. A201-2017 - Working Draft - 001
5. A133ExhibitB-2019 - Working Draft - 001
6. 2025-08-22 Legal Ad - Chalker Park RFQ
7. 2025-09-05 Legal Ad - Chalker Park RFQ

CITY OF KENNESAW
GEORGIA
RESOLUTION NO. 2025-__

RESOLUTION TO AWARD A CONTRACT WITH
GAY CONSTRUCTION COMPANY AS THE
CONSTRUCTION MANAGER AT RISK (CMAR) FOR CHALKER PARK

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW, COBB COUNTY, GEORGIA, AS FOLLOWS:

WHEREAS, the City desires to engage a qualified and experienced Contractor to serve as the Construction Manager at Risk (CMAR) for Chalker Park; and

WHEREAS, Gay Construction Company has represented to the City they are experienced and qualified to perform those services; and

WHEREAS, Gay Construction Company has offered to provide the required CMAR services for an amount of $246,025.

NOW THEREFORE, BE IT RESOLVED, the Kennesaw City Council authorizes the Mayor to execute a contract with Gay Construction Company to perform described work as shown as Attachment A.

PASSED AND ADOPTED by the Kennesaw City Council on this ___ day of November 2025.

ATTEST:

____
Lea Alvarez, City Clerk

CITY OF KENNESAW:

____
Derek Easterling, Mayor

EXHIBIT A
CM/GC's GENERAL CONDITIONS & FEE PROPOSAL
City of Kennesaw - Chalker Park
(Submit Proposal Fee Schedule in Separate Sealed Envelope)

GAY CONSTRUCTION COMPANY

CM/GC'S PRE-CONSTRUCTION PHASE COSTS		$10,000
CM/GC'S CONSTRUCTION FEE		
	FEE AS PERCENTAGE	5.0%
	FEE AMOUNT	$55,000
CM/GC'S CONSTRUCTION PHASE GENERAL CONDITIONS		
	LABOR	$133,500
	GENERAL CONDITIONS	$47,525
	CONSTRUCTION PHASE TOTAL	**$181,025**
The CMAR's Overhead Costs. The maximum amount for the CMAR's overhead cost is inclusive of all direct and incidental expenses including but not limited to travel, sustenance, reproduction, salaries, wages, design and field office expenses, and those costs listed in the General Requirements. If authorized by the Owner to proceed with Construction Phase Services, the CMAR will execute the work and be reimbursed for the actual costs as defined in the Contract Documents.		
TOTALS		
	STATED COST LIMITATION	$1,100,000
	TOTAL - PRE-CONSTRUCTION FEE, CONSTRUCTION FEE AND GC'S	$246,025
	PERCENTAGE OF PROJECT	22.37%

EXHIBIT A

GENERAL CONDITIONS BREAKDOWN

City of Kennesaw - Chalker Park

Submit with Proposal Fee Schedule in Separate Sealed Envelope)

GAY CONSTRUCTION COMPANY

CONSTRUCTION PHASE LABOR COSTS

	Job Title	Hourly Rate**	Est. % on Project	Monthly Rate**	Duration (Months)	Total	Notes
1	Project Manager	104	100%	17,800	15	267,000	
2	Superintendent	77	100%	13,200	15	198,000	
3	Project Engineer	60	50%	10,300	15	77,250	
4							
5							
6							
7							
8							
9							
10							

** Construction Manager shall attach a detailed itemization of the components of the labor burden.

CONSTRUCTION PHASE GENERAL CONDITION COSTS

	Description	Number of Units	Unit (Lump Sum, Day, Month, etc.)	Cost per Unit	Total	Notes
1	Field Office Trailer	15	Mo	1,200		*Note line items 1-13 will be waived if
2	Field Office Set-Up					the construction schedule remains as
3	Temp Toilet/Holding Tank for Trailer	15	Mo	1,000		outlined in the RFP and overlaps with
4	Temp Power for Trailer	15	Mo	150		our current project schedule for the
5	Temp Power Installation for Trailer					Public Safety Building.
6	Temp Water for Trailer	15	Mo	150		
7	Temp Water Installation for Trailer					
8	Telephone/Internet for Trailer					
9	Telephone/Internet Installation for Trailer					
10	Cleaning for Trailer					
11	Furniture for Trailer	1	LS	250		
12	Machines & Equipment for Trailer					
13	Supplies for Trailer	15	Mo	100		
14	Water for Consumption for Trailer	15	Mo	150	2,250	
15	Postage & Shipping	1	LS	1,000	1,000	
16	Reproduction of Plans and Specs	1	LS	2,000	2,000	
17	Progress Photos	1	LS	5,000	5,000	
18	Owner Project Identification Signs	1	LS	1,000	1,000	
19	Mobile Phones					
20	Project Vehicles	15	Mo	4,125	61,875	
21	Fuel for Project Vehicles					
22	Travel					
23	Computers	1	LS	1,000	1,000	
24	Payment & Performance Bond	1	LS	55,000	55,000	
25	Builder's Risk Insurance	1	LS	25,000	25,000	
26	Liability Insurance	1	LS	90,000	90,000	
27	Safety & First Aid Supplies	1	LS	500	500	
28						
29						
30						
31						
32						

DRAFT **AIA® Document A133® – 2019**

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the « Third » day of « November » in the year « 2025 »
(In words, indicate day, month, and year.)

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

« City of Kennesaw, Georgia »« »
« 2529 J.O. Stephenson Avenue »
« Kennesaw, GA 30144 »
« »

and the Construction Manager:
(Name, legal status, address, and other information)

«Gay Construction Company »« »
« 2907 Log Cabin Drive »
« Atlanta, GA 30339 »
« »

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

« Chalker Park »
« 3419 Cherokee Street -»
« Kennesaw, GA 30144 »

The ~~Architect~~Program Manager:
(Name, legal status, address, and other information)

« Patterson & Dewar Engineers »« »
« 850 Center Way »
« Norcross, GA 30071 »
« »

The Owner and Construction Manager 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.

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« »

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

« »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

« »

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

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

« Construction Manager agrees to commence Construction on a date to be specified in a written Notice to Proceed (NTP) from the Owner »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

« »

§ **1.1.5** The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

« »

§ **1.1.6** The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« »

§ **1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ **1.1.7** Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

« »

§ **1.1.8** The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

« Robbie Balenger, Building & Facilities Manager »
« City of Kennesaw »
« 2529 J.O. Stephenson Avenue »
« Kennesaw, GA 30144 »
« »
« »

§ **1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

« »

§ **1.1.10** The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« GeoHydro »« »
« 400 Chastain Center Boulevard, Suite 430 »
« Kennesaw, GA 30144 »
« »
« »

.2 Civil Engineer:

« Patterson & Dewar Engineers »« »
« 850 Center Way »
« Norcross, GA 30071 »
« »
« »

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

« »

§ **1.1.11** The ~~Architect~~Program Manager's representative:
(List name, address, and other contact information.)

« Zach Buffington »
« Patterson & Dewar Engineers »
« 850 Center Way »
« Norcross, GA 30071 »
« zbuffington@pdengineers.com »
« 770-891-5036 »

§ **1.1.12** The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

« Mark Whitney »
« Gay Construction Company »
« 2907 Log Cabin Road »
« Atlanta, GA 30339 »
« mwhitney@gayconstruction.com »
« 404-557-1552 »

§ **1.1.13** The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

« »

§ **1.1.14** The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

« »

§ **1.1.15** Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the ~~Architect~~Program Manager and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the ~~Architect~~Program Manager and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the ~~Architect~~Program Manager, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and ~~Architect~~Program Manager shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the ~~Architect~~Program Manager and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the ~~Architect~~Program Manager may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the ~~Architect~~Program Manager and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and ~~Architect~~Program Manager on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and ~~Architect~~Program Manager, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; 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. The Construction Manager shall consult with the ~~Architect~~Program Manager regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and ~~Architect~~Program Manager in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the ~~Architect~~Program Manager's review and the Owner's acceptance. The Construction Manager shall obtain the ~~Architect~~Program Manager's approval for the portion of the Project schedule relating to the performance of the ~~Architect~~Program Manager's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the ~~Architect~~Program Manager's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the ~~Architect~~Program Manager, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the ~~Architect~~Program Manager, the Construction Manager shall prepare, for the ~~Architect~~Program Manager's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the ~~Architect~~Program Manager or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the ~~Architect~~Program Manager progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and ~~Architect~~Program Manager, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the ~~Architect~~Program Manager's review and the Owner's approval. The Construction Manager shall inform the Owner and ~~Architect~~Program Manager in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the ~~Architect~~Program Manager is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the ~~Architect~~Program Manager's cost estimates, the Construction Manager and the ~~Architect~~Program Manager shall work together to reconcile the cost estimates.

§ 3.1.7 As the ~~Architect~~Program Manager progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and ~~Architect~~Program Manager and make recommendations regarding constructability and schedules, for the ~~Architect~~Program Manager's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and ~~Architect~~Program Manager regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the ~~Architect~~Program Manager's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

« »

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and ~~Architect~~Program Manager's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- **.1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- **.2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- **.3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- **.4** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- **.5** A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and ~~Architect~~Program Manager to review the Guaranteed Maximum Price proposal. In the event that the Owner or ~~Architect~~Program Manager discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the ~~Architect~~Program Manager. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and ~~Architect~~Program Manager of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and ~~Architect~~Program Manager.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and ~~Architect~~Program Manager a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and ~~Architect~~Program Manager, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and ~~Architect~~Program Manager, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and ~~Architect~~Program Manager, and shall provide this information in its monthly reports to the Owner and ~~Architect~~Program Manager, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager 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 Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and ~~Architect~~Program Manager. The Owner and the ~~Architect~~Program Manager, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ **4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ **4.1.4.1** The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ **4.1.4.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.2.1 The Owner and/or operators of private or public utilities shall have access to such utility at all times, for the installation, maintenance, adjustment, repair and operation of said utility. No extra compensation will be allowed because of the delay or interference caused by such work.
§ 4.1.4.2.2 In preparing the plan drawings there has not been an all-inclusive search for identifying existing underground utilities. Therefore, any information pertaining to existing utilities is provided only for preliminary purposes and implies no guarantee as to accuracy or completeness. Prior to blasting or excavation, the Contractor is responsible for contacting all utility owners in the area. Specifically, the Contractor shall contact the "one-call notification center" SEVENTY-TWO (72) hours in advance of blasting or excavation as required by Georgia Law.
§ 4.1.4.2.4 Wherever existing utilities are encountered which conflict in actual position and location with the proposed work, the Contractor shall promptly notify the Program Manager for resolution of the conflict.
§ 4.1.4.2.5 Temporary supports, beams or bridging for utilities shall be left in place during backfill operations unless otherwise directed by the Program Manager.
§ 4.1.4.2.6 All costs in connection with supporting, protecting, relocating, removal, repair of damage, restoration, and other work on affected existing utilities and other existing underground structures whether or not they are shown on the plans, not borne by the Owner or owners of the utilities, shall be borne by the Contractor. No separate payment will be made for any work performed as herein above specified unless otherwise stated in the proposal as a separate payment item. All costs in connection therewith shall be included in the Contract price for the item to which the work pertains.
§ 4.1.4.2.7 The Contractor shall be solely and directly responsible to the Owner and/or other operator of such utility properties for any damage, injury, expense, loss, inconvenience or delay, or for any suits, actions, claims of any character brought on account of any injuries or damages which may result from the carrying out of the work.

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

§ **4.1.5** During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative
The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the ~~Architect~~Program Manager does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 4.3 ~~Architect~~Program Manager
The Owner shall retain an ~~Architect~~Program Manager to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and ~~Architect~~Program Manager, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the ~~Architect~~Program Manager, and any further modifications to the ~~Architect~~Program Manager's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation
§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« $10,000 »

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« »

Individual or Position	Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « six » (« 6 ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments
§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager'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 Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

« » % « »

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« 5.0% »

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« 5.0% of the Cost of the changes in the Work »

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed « One Hundred » percent (« 100 » %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

« Construction Manager agrees to pay as liquidated damages the sum of $1,000 per each consecutive calendar day that the Construction Manager shall be in default starting thirty (30) days ("Grace Period") after the Completion Date stipulated in the Contract for completing work. »

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

« Construction Manager general conditions to be billed as lump sum $181,025 in equal monthly installments »

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The ~~Architect~~Program Manager may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

« »

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs
§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 Reserved~~The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA~~

~~Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Reserved~~Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

§ 7.6.9 Reserved~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, with Owner's prior approval.~~.~~

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, Subcontractors, or suppliers, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
.3 Expenses of the Construction Manager's principal office and offices other than the site office;
.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
.6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
.9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the ~~Architect~~Program Manager and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the ~~Architect~~Program Manager and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the ~~Architect~~Program Manager, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the ~~Architect~~Program Manager by the Construction Manager, and Certificates for Payment issued by the ~~Architect~~Program Manager, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 11.1.3 Provided that an Application for Payment is received by the ~~Architect~~Program Manager not later than the « » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « » day of the « » month. If an Application for Payment is received by the ~~Architect~~Program Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « » (« ») days after the ~~Architect~~Program Manager receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or ~~Architect~~Program Manager to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect~~Program Manager may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the ~~Architect~~Program Manager.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the ~~Architect~~Program Manager determines, in the ~~Architect~~Program Manager's professional judgment, to be reasonably justified; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the ~~Architect~~Program Manager has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the ~~Architect~~Program Manager may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

« Five Percent (5%) »

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

« »

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

« »

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the ~~Architect~~Program Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the ~~Architect~~Program Manager has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the ~~Architect~~Program Manager has made exhaustive or continuous on-site inspections; or (3) that the ~~Architect~~Program Manager has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the ~~Architect~~Program Manager in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the ~~Architect~~Program Manager that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the ~~Architect~~Program Manager.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the ~~Architect~~Program Manager will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the ~~Architect~~Program Manager's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The ~~Architect~~Program Manager is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the ~~Architect~~Program Manager's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the ~~Architect~~Program Manager's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the ~~Architect~~Program Manager's final Certificate for Payment, or as follows:

« »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Reserved~~Interest~~
~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~
~~*(Insert rate of interest agreed upon, if any.)*~~

~~« » % « »~~

ARTICLE 12 DISPUTE RESOLUTION
§ 12.1 Initial Decision Maker
§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The ~~Architect~~Program Manager will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the ~~Architect~~Program Manager.)

« »
« »
« »
« »

§ 12.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[**« »**] Arbitration pursuant to Article 15 of AIA Document A201–2017

[**« »**] Litigation in a court of competent jurisdiction

[**« X »**] Other: *(Specify)*

« Jurisdiction and venue of all claims not resolved or covered by General Conditions as set forth in AIA Document A201 - 2017, shall lie exclusively in the Superior Court of Cobb County, Georgia. »

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager in the same manner as set forth in § 13.2.2 Termination by the Owner for Cause. ~~a termination fee as follows:~~

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

« »

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, the Construction Manager shall not assign the Contract as a whole or in part without written consent of the Owner ~~neither party to the Contract shall assign the Contract as a whole without written consent of the other~~. If ~~either party~~ the Construction Manager attempts to make an assignment without such consent, ~~that party~~ the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than « One Million Dollars » ($ « 1,000,000 ») for each occurrence and « Two Million Dollars » ($ « 2,000,000 ») in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than « One Million Dollars » ($ « 1,000,000 ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than « One Million Dollars » ($ « 1,000,000 ») each accident, « One Million Dollars » ($ « 1,000,000 ») each employee, and « One Million Dollars » ($ « 1,000,000 ») policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « Five Million Dollars » ($ « 5,000,000 ») per claim and « Five Million Dollars » ($ « 5,000,000 ») in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

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

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 14.5 Other provisions:

« »

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

.5 ~~Building Information Modeling Exhibit, if completed:~~

« »

.6 Other Exhibits:
(Check all boxes that apply.)

[**« »**] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

« »

[**« »**] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

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

OWNER *(Signature)*

« C. Derek Easterling »« Mayor »
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

« Mark Whitney »« Vice President »
(Printed name and title)

ATTEST:

Lea Alvarez, City Clerk ~~Secretary~~

ATTEST:

(Printed Name)

DRAFT **AIA® Document A201® – 2017**

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

« Chalker Park »
« 3419 Cherokee Street
Kennesaw, GA 30144 »

THE OWNER:
(Name, legal status and address)

« City of Kennesaw, Georgia »« »
« 2529 J.O. Stephenson Avenue
Kennesaw, GA 30144 »

THE ~~ARCHITECT~~PROGRAM MANAGER:
(Name, legal status and address)

« Gay Construction Company »« »
« 2907 Log Cabin Drive
Atlanta, GA 30339 »

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.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

TABLE OF ARTICLES

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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(Topics and numbers in bold are Section headings.)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the ~~Architect~~Program Manager. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the ~~Architect~~Program Manager or the ~~Architect~~Program Manager's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the ~~Architect~~Program Manager or the ~~Architect~~Program Manager's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The ~~Architect~~Program Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the ~~Architect~~Program Manager's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 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 ~~Architect~~Program Manager and the ~~Architect~~Program Manager's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization
Terms capitalized in these General Conditions 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 ~~Architect~~Program Managers.

§ 1.4 Interpretation
In the interest of brevity the Contract 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.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service
§ 1.5.1 The ~~Architect~~Program Manager and the ~~Architect~~Program Manager's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect~~Program Manager's or ~~Architect~~Program Manager's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, ~~Architect~~Program Manager, and the ~~Architect~~Program Manager's consultants.

§ 1.6 Notice
§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission
The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.8 Building Information Models Use and Reliance
Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's

sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the ~~Architect~~Program Manager does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor 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.

§ 2.2 Reserved.~~Evidence of the Owner's Financial Arrangements~~

~~**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

~~**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

~~**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

~~**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an ~~architect~~Program Manager lawfully licensed to practice engineering ~~architecture~~, or an entity lawfully practicing ~~architecture~~engineering, in the jurisdiction where the Project is located. That person or entity is identified as the ~~Architect~~Program Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the ~~Architect~~Program Manager terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the ~~Architect~~Program Manager.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.4.1 The Owner and/or operators of private or public utilities shall have access to such utility at all times, for the installation, maintenance, adjustment, repair and operation of said utility. No extra compensation will be allowed because of the delay or interference caused by such work.
§ 2.3.4.2 In preparing the plan drawings there has not been an all-inclusive search for identifying existing underground utilities. Therefore, any information pertaining to existing utilities is provided only for preliminary purposes and implies no guarantee as to accuracy or completeness. Prior to blasting or excavation, the Contractor is responsible for contacting all utility owners in the area. Specifically, the Contractor shall contact the "one-call notification center" SEVENTY-TWO (72) hours in advance of blasting or excavation as required by Georgia Law.
§ 2.3.4.3 Wherever existing utilities are encountered which conflict in actual position and location with the proposed work, the Contractor shall promptly notify the Program Manager for resolution of the conflict.
§ 2.3.4.4 Temporary supports, beams or bridging for utilities shall be left in place during backfill operations unless otherwise directed by the Program Manager.
§ 2.3.4.5 All costs in connection with supporting, protecting, relocating, removal, repair of damage, restoration, and other work on affected existing utilities and other existing underground structures whether or not they are shown on the plans, not borne by the Owner or owners of the utilities, shall be borne by the Contractor. No separate payment will be made for any work performed as herein above specified unless otherwise stated in the proposal as a separate payment item. All costs in connection therewith shall be included in the Contract price for the item to which the work pertains.
§ 2.3.4.6 The Contractor shall be solely and directly responsible to the Owner and/or other operator of such utility properties for any damage, injury, expense, loss, inconvenience or delay, or for any suits, actions, claims of any character brought on account of any injuries or damages which may result from the carrying out of the work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work
If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor 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 Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work
If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the ~~Architect~~Program Manager and the ~~Architect~~Program Manager may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the

Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the ~~Architect~~Program Manager's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the ~~Architect~~Program Manager, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the ~~Architect~~Program Manager in the ~~Architect~~Program Manager's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the ~~Architect~~Program Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~Program Manager may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the ~~Architect~~Program Manager any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~Program Manager may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the ~~Architect~~Program Manager issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or ~~Architect~~Program Manager for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and ~~Architect~~Program Manager, and shall propose alternative means, methods, techniques, sequences, or procedures. The ~~Architect~~Program Manager shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the ~~Architect~~Program Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials
§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor 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.

§ 3.4.2 Except in the case of minor changes in the Work approved by the ~~Architect~~Program Manager in accordance with Section 3.12.8 or ordered by the ~~Architect~~Program Manager in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the ~~Architect~~Program Manager and in accordance with a Change Order or Construction Change Directive.

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

§ 3.5 Warranty
§ 3.5.1 The Contractor warrants to the Owner and ~~Architect~~Program Manager that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the ~~Architect~~Program Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes
The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws
§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor 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.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions
If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract 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 Contract Documents, the Contractor shall promptly provide notice to the Owner and the ~~Architect~~Program Manager before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The ~~Architect~~Program Manager will promptly investigate such conditions and, if the ~~Architect~~Program Manager determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the ~~Architect~~Program Manager determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the ~~Architect~~Program Manager shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the ~~Architect~~Program Manager's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and ~~Architect~~Program Manager. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor 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. 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 15.

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor'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 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent
§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and ~~Architect~~Program Manager of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the ~~Architect~~Program Manager may notify the Contractor, stating whether the Owner or the ~~Architect~~Program Manager (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the ~~Architect~~Program Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or ~~Architect~~Program Manager has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and ~~Architect~~Program Manager's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the ~~Architect~~Program Manager's approval. The ~~Architect~~Program Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the ~~Architect~~Program Manager reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect~~Program Manager.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the ~~Architect~~Program Manager and Owner, and delivered to the ~~Architect~~Program Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the ~~Architect~~Program Manager is subject to the limitations of Section 4.2.7. Informational submittals upon which the ~~Architect~~Program Manager is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the ~~Architect~~Program Manager without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the ~~Architect~~Program Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the ~~Architect~~Program Manager or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and ~~Architect~~Program Manager that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the ~~Architect~~Program Manager.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the ~~Architect~~Program Manager's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the ~~Architect~~Program Manager of such deviation at the time of submittal and (1) the ~~Architect~~Program Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the ~~Architect~~Program Manager's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the ~~Architect~~Program Manager on previous submittals. In the absence of such notice, the ~~Architect~~Program Manager's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the ~~Architect~~Program Manager will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the ~~Architect~~Program Manager. The Owner and the ~~Architect~~Program Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and ~~Architect~~Program Manager have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the ~~Architect~~Program Manager will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the ~~Architect~~Program Manager at the time and in the form specified by the ~~Architect~~Program Manager.

§ 3.13 Use of Site

The Contractor 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 Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and ~~Architect~~Program Manager with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and ~~Architect~~Program Manager harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or ~~Architect~~Program Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ~~Architect~~Program Manager.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect~~Program Manager, ~~Architect~~Program Manager's consultants, and agents 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, 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), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. 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 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ~~ARCHITECT~~PROGRAM MANAGER

§ 4.1 General

§ 4.1.1 The ~~Architect~~Program Manager is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the ~~Architect~~Program Manager as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and ~~Architect~~Program Manager. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The ~~Architect~~Program Manager will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the ~~Architect~~Program Manager issues the final Certificate for Payment. The ~~Architect~~Program Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The ~~Architect~~Program Manager will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the ~~Architect~~Program Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~Program Manager will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the ~~Architect~~Program Manager will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The ~~Architect~~Program Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect~~Program Manager will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the ~~Architect~~Program Manager in all communications that relate to or affect the ~~Architect~~Program Manager's services or professional responsibilities. The Owner shall promptly notify the ~~Architect~~Program Manager of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the ~~Architect~~Program Manager's consultants shall be through the ~~Architect~~Program Manager. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the ~~Architect~~Program Manager's evaluations of the Contractor's Applications for Payment, the ~~Architect~~Program Manager will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The ~~Architect~~Program Manager has authority to reject Work that does not conform to the Contract Documents. Whenever the ~~Architect~~Program Manager considers it necessary or advisable, the ~~Architect~~Program Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the ~~Architect~~Program Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the ~~Architect~~Program Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The ~~Architect~~Program Manager will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The ~~Architect~~Program Manager's action will be taken in accordance with the submittal schedule approved by the ~~Architect~~Program Manager or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the ~~Architect~~Program Manager's professional judgment to permit adequate review. Review of such 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, all of which remain the responsibility of the Contractor as required by the Contract Documents. The ~~Architect~~Program Manager's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The ~~Architect~~Program Manager's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The ~~Architect~~Program Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The ~~Architect~~Program Manager will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The ~~Architect~~Program Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The ~~Architect~~Program Manager will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and ~~Architect~~Program Manager agree, the ~~Architect~~Program Manager will provide one or more Project representatives to assist in carrying out the ~~Architect~~Program Manager's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

§ 4.2.12 Interpretations and decisions of the ~~Architect~~Program Manager will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the ~~Architect~~Program Manager will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The ~~Architect~~Program Manager's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The ~~Architect~~Program Manager will review and respond to requests for information about the Contract Documents. The ~~Architect~~Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the ~~Architect~~Program Manager will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and ~~Architect~~Program Manager of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the ~~Architect~~Program Manager may notify the Contractor whether the Owner or the ~~Architect~~Program Manager (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the ~~Architect~~Program Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or ~~Architect~~Program Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or ~~Architect~~Program Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or ~~Architect~~Program Manager has no reasonable objection. If the proposed but rejected Subcontractor 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 Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or ~~Architect~~Program Manager makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and ~~Architect~~Program Manager. Each subcontract agreement shall preserve and protect the rights of the Owner and ~~Architect~~Program Manager under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- **.1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; 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 a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 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 Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor 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 Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the ~~Architect~~Program Manager of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the ~~Architect~~Program Manager of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, 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 the ~~Architect~~Program Manager will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and ~~Architect~~Program Manager. A Construction Change Directive requires agreement by the Owner and ~~Architect~~Program Manager and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the ~~Architect~~Program Manager alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the ~~Architect~~Program Manager and signed by the Owner, Contractor, and ~~Architect~~Program Manager 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; and
- **.3** The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Architect~~Program Manager and signed by the Owner and ~~Architect~~Program Manager, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction 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 and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, 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 Contract 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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect~~Program Manager shall determine 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 in the Contract Sum, 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 7.3.3.3, the Contractor shall keep and present, in such form as the ~~Architect~~Program Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- **.1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the ~~Architect~~Program Manager;
- **.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- **.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the ~~Architect~~Program Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect~~Program Manager. 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.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The ~~Architect~~Program Manager will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the ~~Architect~~Program Manager determines, in the ~~Architect~~Program Manager's professional judgment, to be reasonably justified. The ~~Architect~~Program Manager's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the ~~Architect~~Program Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the ~~Architect~~Program Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The ~~Architect~~Program Manager may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The ~~Architect~~Program Manager's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the ~~Architect~~Program Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the ~~Architect~~Program Manager's order for a minor change without prior notice to the ~~Architect~~Program Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the ~~Architect~~Program Manager in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion
§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time
§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or ~~Architect~~Program Manager, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the ~~Architect~~Program Manager determines, justify delay, then the Contract Time shall be extended for such reasonable time as the ~~Architect~~Program Manager may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION
§ 9.1 Contract Sum
§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values
Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the ~~Architect~~Program Manager before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the ~~Architect~~Program Manager. This schedule, unless objected to by the ~~Architect~~Program Manager, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the ~~Architect~~Program Manager and supported by such data to substantiate its accuracy as the ~~Architect~~Program Manager may require, and unless objected to by the ~~Architect~~Program Manager, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment
§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the ~~Architect~~Program Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or ~~Architect~~Program Manager require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the ~~Architect~~Program Manager, 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 Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of 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 Contractor 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 Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor 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 Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment
§ 9.4.1 The ~~Architect~~Program Manager will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the ~~Architect~~Program Manager determines is properly due, and notify the Contractor and Owner of the ~~Architect~~Program Manager's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the ~~Architect~~Program Manager's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the ~~Architect~~Program Manager to the Owner, based on the ~~Architect~~Program Manager's evaluation of the Work and the data in the Application for Payment, that, to the best of the ~~Architect~~Program Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the ~~Architect~~Program Manager. However, the issuance of a Certificate for Payment will not be a representation that the ~~Architect~~Program Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification
§ 9.5.1 The ~~Architect~~Program Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the ~~Architect~~Program Manager's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the ~~Architect~~Program Manager is unable to certify payment in the amount of the Application, the ~~Architect~~Program Manager will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and ~~Architect~~Program Manager cannot agree on a revised amount, the ~~Architect~~Program Manager will promptly issue a Certificate for Payment for the amount for which the ~~Architect~~Program Manager is able to make such representations to the Owner. The ~~Architect~~Program Manager 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 in the ~~Architect~~Program Manager's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;
.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.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; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the ~~Architect~~Program Manager's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the ~~Architect~~Program Manager withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the ~~Architect~~Program Manager and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments
§ 9.6.1 After the ~~Architect~~Program Manager has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the ~~Architect~~Program Manager.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The ~~Architect~~Program Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the ~~Architect~~Program Manager and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor ~~Architect~~Program Manager shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 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 Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor 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 Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment
If the ~~Architect~~Program Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the ~~Architect~~Program Manager or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and ~~Architect~~Program Manager, 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 Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract 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 Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the ~~Architect~~Program Manager 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 Contractor to complete all Work in accordance with the Contract Documents.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the ~~Architect~~Program Manager will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract 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.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract 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 Contractor, provided such occupancy or use is consented to by the insurer 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 Contractor 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 Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the ~~Architect~~Program Manager as provided under Section 9.8.2. Consent of the Contractor 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 Contractor or, if no agreement is reached, by decision of the ~~Architect~~Program Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and ~~Architect~~Program Manager 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 Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect~~Program Manager will promptly make such inspection. When the ~~Architect~~Program Manager finds the Work acceptable under the Contract Documents and the Contract fully performed, the ~~Architect~~Program Manager will promptly issue a final Certificate for Payment stating that to the best of the ~~Architect~~Program Manager's knowledge, information and belief, and on the basis of the ~~Architect~~Program Manager's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The ~~Architect~~Program Manager's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the ~~Architect~~Program Manager (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 Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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 a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, 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 Contractor or by issuance of Change Orders affecting final completion, and the ~~Architect~~Program Manager so confirms, the Owner shall, upon application by the Contractor and certification by the ~~Architect~~Program Manager, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the ~~Architect~~Program Manager prior to certification of such 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

.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 Contract Documents;
.3 terms of special warranties required by the Contract Documents; or
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs
The Contractor 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 Contractor shall take reasonable precautions for safety of, and shall provide 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 Contractor, a Subcontractor, or a Sub-subcontractor; and
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor 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 Contractor 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 notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 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 Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or ~~Architect~~Program Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and ~~Architect~~Program Manager.

§ 10.2.7 The Contractor 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 either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, 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 and Substances
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract 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 Contractor, the Contractor shall, upon recognizing the

condition, immediately stop Work in the affected area and notify the Owner and ~~Architect~~Program Manager of the condition.

§ 10.3.2 Upon receipt of the Contractor's 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 Contractor 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 Contract Documents, the Owner shall furnish in writing to the Contractor and ~~Architect~~Program Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the ~~Architect~~Program Manager will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or ~~Architect~~Program Manager has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the ~~Architect~~Program Manager have 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 Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, ~~Architect~~Program Manager, ~~Architect~~Program Manager's consultants, and agents 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 negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor 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 negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor 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 Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, ~~Architect~~Program Manager, and ~~Architect~~Program Manager's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the ~~Architect~~Program Manager and ~~Architect~~Program Manager's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the ~~Architect~~Program Manager, ~~Architect~~Program Manager's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance
The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and ~~Architect~~Program Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss
§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the ~~Architect~~Program Manager and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the ~~Architect~~Program Manager and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK
§ 12.1 Uncovering of Work
§ 12.1.1 If a portion of the Work is covered contrary to the ~~Architect~~Program Manager's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the ~~Architect~~Program Manager, be uncovered for the ~~Architect~~Program Manager's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the ~~Architect~~Program Manager has not specifically requested to examine prior to its being covered, the ~~Architect~~Program Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work
§ 12.2.1 Before Substantial Completion
The Contractor shall promptly correct Work rejected by the ~~Architect~~Program Manager or failing to conform to the requirements of the Contract Documents, discovered before 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 the ~~Architect~~Program Manager's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, 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 any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor 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 Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or ~~Architect~~Program Manager, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 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.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract 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.

§ 13.3.2 No action or failure to act by the Owner, ~~Architect~~Program Manager, or Contractor 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 upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor 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 Contractor shall give the ~~Architect~~Program Manager timely notice of when and where tests and inspections are to be made so that the ~~Architect~~Program Manager may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the ~~Architect~~Program Manager, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the ~~Architect~~Program Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the ~~Architect~~Program Manager of when and where tests and inspections are to be made so that the ~~Architect~~Program Manager may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the ~~Architect~~Program Manager's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the ~~Architect~~Program Manager.

§ 13.4.5 If the ~~Architect~~Program Manager is to observe tests, inspections, or approvals required by the Contract Documents, the ~~Architect~~Program Manager will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 ~~Architect~~Program Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and ~~Architect~~Program Manager, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the ~~Architect~~Program Manager, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor
.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the ~~Architect~~Program Manager that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
.2 Accept assignment of subcontracts pursuant to Section 5.4; and
.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the ~~Architect~~Program Manager's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience
§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. 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 Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience
§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor 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 subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES
§ 15.1 Claims
§ 15.1.1 Definition
A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, 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 Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims
The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims
§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the ~~Architect~~Program Manager, if the ~~Architect~~Program Manager is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated 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.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The ~~Architect~~Program Manager will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 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.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, 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 Contractor 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 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The ~~Architect~~Program Manager will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision

Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the ~~Architect~~Program Manager, if the ~~Architect~~Program Manager is not serving as the Initial Decision Maker, of 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.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

§ 15.2.7 In the event of a Claim against the Contractor, 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 Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

§ 15.3 Mediation

§ 15.3.1 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 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 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. 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 is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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.

§ 15.4.1.1 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. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 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 thereof.

§ 15.4.3 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.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

DRAFT **AIA® Document A133® – 2019 Exhibit B**

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the « Third » day of « November » in the year « 2025 »
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

« Chalker Park »
« 3419 Cherokee Street
Kennesaw, GA 30144 »

THE OWNER:
(Name, legal status, and address)

« City of Kennesaw, Georgia »« »
« 2529 J.O. Stephenson Avenue
Kennesaw, GA 30144 »

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

« Gay Construction Company »« »
« 2907 Log Cabin Drive
Atlanta, GA 30339 »

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.

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

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

TABLE OF ARTICLES

ARTICLE B.1 GENERAL

The ~~Owner and~~ Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE B.2 Reserved.~~OWNER'S INSURANCE~~

~~§ B.2.1 General~~

~~Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~

~~**§ B.2.2 Liability Insurance**~~
~~**The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.**~~

~~**§ B.2.3 Required Property Insurance**~~
~~**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.~~

~~**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:~~
~~*(Indicate below the cause of loss and any applicable sub-limit.)*~~

~~**Cause of Loss**~~	~~**Sub-Limit**~~

~~**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect~~Program Manager~~'s and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:~~
~~*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*~~

~~**Coverage**~~	~~**Sub-Limit**~~

~~**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.~~

~~**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.~~

~~**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.~~

~~**§ B.2.3.3 Insurance for Existing Structures**~~
~~If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure~~

~~against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.~~

~~**§ B.2.4 Optional Extended Property Insurance.**~~
~~The Owner shall purchase and maintain the insurance selected and described below.~~
~~*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*~~

~~[« »] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.~~

~~« »~~

~~[« »] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.~~

~~« »~~

~~[« »] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.~~

~~« »~~

~~[« »] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.~~

~~« »~~

~~[« »] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.~~

~~« »~~

~~[« »] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.~~

~~« »~~

~~[« »] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architect~~Program Managers~~, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.~~

~~« »~~

~~**§ B.2.5 Other Optional Insurance.**~~
~~The Owner shall purchase and maintain the insurance selected below.~~
~~*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*~~

~~[« »] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.~~
~~*(Indicate applicable limits of coverage or other conditions in the fill point below.)*~~

~~« »~~

~~[« »] **§ B.2.5.2 Other Insurance**~~
~~*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*~~

~~**Coverage**~~	~~**Limits**~~

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the ~~Architect~~Program Manager, and the ~~Architect~~Program Manager's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the ~~Architect~~Program Manager and the ~~Architect~~Program Manager's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « One Million Dollars » ($ « 1,000,000 ») each occurrence, « Two Million Dollars » ($ « 2,000,000 ») general aggregate, and « One Million Dollars » ($ « 1,000,000 ») aggregate for products-completed operations hazard, providing coverage for claims including

- **.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- **.2** personal injury and advertising injury;
- **.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- **.4** bodily injury or property damage arising out of completed operations; and
- **.5** the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- **.1** Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- **.2** Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- **.3** Claims for bodily injury other than to employees of the insured.
- **.4** Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- **.5** Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- **.6** Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- **.7** Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- **.8** Claims related to roofing, if the Work involves roofing.
- **.9** Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- **.10** Claims related to earth subsidence or movement, where the Work involves such hazards.
- **.11** Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than « One Million Dollars » ($ « 1,000,000 ») per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than « One Million Dollars » ($ « 1,000,000 ») each accident, « One Million Dollars » ($ « 1,000,000 ») each employee, and « One Million Dollars » ($ « 1,000,000 ») policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « Five Million Dollars » ($ « 5,000,000 ») per claim and « Five Million Dollars » ($ « 5,000,000 ») in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than « Five Million Dollars » ($ « 5,000,000 ») per claim and « Five Million Dollars » ($ « 5,000,000 ») in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « Five Million Dollars » ($ « 5,000,000 ») per claim and « Five Million Dollars » ($ « 5,000,000 ») in the aggregate.

§ B.3.2.11 **Reserved.**~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate.~~

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.
(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[**« »**] **§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

« »

[**« »**] **§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate, for Work within fifty (50) feet of railroad property.

[« »] **§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[« »] **§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[« »] **§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[« »] **§ B.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

§ B.3.4 Performance Bond and Payment Bond
The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum ($0.00)
Payment Bond	Contract Sum
Performance Bond	Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« »

8020 Service/Construction Bids

The City reservesthe right to reject any or all bids, to waive formalities and re-advertise; and to reduce or add to the contract from time to time.
Prior to Bid Opening, all Bidders are REQUIRED to visit the project site and become familiar with the existing conditions and understand the implications of the proposed improvements.
Purchasing Division
City of Marietta/Board of Lights and Water
purchasing@mariettaga.gov
8:15,22-2025

MDJ-6112
GPN-5
City of Acworth
Invitation for Bid Number 2025-05
Sealed bids will be accepted at the City of Acworth, Office of the City Clerk, located at 4415 Center Street, Acworth, GA, 30101, no later than 2:30 p.m., on Wednesday, September 17, 2025 at which time said sealed bids will be publicly opened and read aloud. Bids are being received for the:
Blue Springs Mill & Repave Project
A Mandatory pre-bid meeting will be held at 4402 Acworth Industrial Drive, Acworth GA, 30101 on Wednesday, August 27, 2025, at 2:30 p.m.
All bidders must comply with all general and special instructions. All information pertaining to bid number, bid description, bidder and opening date must be listed on the sealed envelope.
All sealed bids must be delivered to the address listed above no later than the time and date indicated. The City of Acworth reserves the right to waive any or all informalities, accept or reject any or all bids, to re-advertise and award in the best interest of the City.
For additional information, contact Greg Rust at (678) 251-8198. Refer to IFB Number 2025-05. Request for bidder information packets may be made at the Acworth Power & Public Works Department, located at 4402 Acworth Industrial Dr NW, Acworth, GA, 30101, Monday through Friday, 8 a.m. to 5 p.m., by calling at the above number or by emailing a request to grust@acworth-ga.gov.
8:22,29; 9:5,12-2025

MDJ-6161
GPN-5
REQUEST FOR QUALIFICATIONS (RFQ)
CHALKER PARK
CONSTRUCTION MANAGER AT RISK (CMAR)
FOR PRE-CONSTRUCTION AND CONSTRUCTION SERVICES CONTRACT
The City of Kennesaw, Georgia (Owner) is seeking qualifications from Construction Managers at Risk (CMAR) for preconstruction and construction services for Chalker Park.
The project site is located at 3419 Cherokee Street, Kennesaw, GA 30144.
The principal items of this project include grading, drainage improvements, construction of a parking lot, sidewalks, and site preparation for a prefabricated restroom building and inclusive playground equipment. The total project budget is $1.1 million, inclusive of pre-construction, construction, FF&E, contingency, and other owner associated costs. The construction manager at risk will be evaluated and selected through a qualification-based selection process.
A full RFQ Package stating the full Response requirements can be obtained from the Kennesaw City Clerks Office, upon request to Lea Alvarez, City Clerk, via email at alvarez@kennesaw-ga.gov. Only a Response submitted by a Firm on record with the City Clerk's Office as having received the RFQ Package from the Issuing Office will be opened.
Responses must be submitted in a sealed envelope bearing on the outside the name of the Firm, the Firms address, and the name of the Project for which the Response is submitted. If forwarded by mail, the sealed envelope containing the Response must be enclosed in another envelope addressed as specified above.
Responses will be received by the City of Kennesaw, Georgia at the office of the City Clerk located in Kennesaw City Hall at 2529 J.O. Stephenson Avenue, Kennesaw, Georgia, 30144 until: Friday, September 19, 2025, 3:00 pm Local Time. Responses will be opened at that time, and the names of the responding firms will be read aloud.
The Owner reserves the right to reject any or all Responses, to waive formalities, and re-advertise.
City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, Georgia, 30144
8:22; 9:5-2025

MDJ-6172
GPN-05
City of Powder Springs
Request for Qualifications (RFQ)
Feasibility Study for Consolidation and Elimination of At-Grade Railroad Crossings
The City of Powder Springs is seeking Statements of Qualifications from experienced and qualified firms to assist in evaluating the feasibility of consolidating and eliminating three existing at-grade railroad crossings. The goal of this initiative is to improve mobility and safety for motorists and pedestrians, while enhancing the fluidity and efficiency of the regional freight rail network.
Scope of Work Includes:
Feasibility analysis of crossing consolidation/elimination
Conceptual engineering and environmental assessment support
Coordination with freight rail operators and relevant agencies
Development of a comprehensive public engagement strategy
Identification of potential funding sources and implementation pathways
This study will inform future infrastructure planning and investment decisions and must reflect a balanced approach to transportation safety, community impact, and freight mobility.
Pre-Submittal Meeting: Sept 15, 2025 at 1PM
Questions Due: Sept 16, 2025, 12PM
Submission Deadline: Sept 23, 2025 12 PM
RFQ Documents Available At: www.powderspringsga.gov
Interested firms must demonstrate expertise in transportation planning, rail infrastructure, environmental analysis, and public engagement. Minority and women-owned businesses are encouraged to apply.
8:22,29;9:5,12-2025

8025 Debtors and Creditors

MDJ-5670
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Ellen M. Wilkinson**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 1 day of August, 2025.
James Westby Slade
Executor/Administrator
c/o The Ammari Firm, LLC
3535 Roswell Road, Suite 47
Marietta, GA 30062
8:1,8,15,22-2025

MDJ-5684
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **Douglas Randolph Padgett** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 25th day of July, 2025
Name: Randall Carter
Title: Executor
Address: 160 Saint Andrews Court
Jackson, GA 30233
8:1,8,15,22-2025

MDJ-5690
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Linda Bowers Agee**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 25th day of July, 2025.
Heather Shyer
Executor/Administrator
1690 Stone Village Ln. NW, Ste. 322
Kennesaw, Georgia 30152
8:1,8,15,22-2025

MDJ-5691
GPN-7
NOTICE TO DEBTORS AND CREDITORS
STATE OF GEORGIA
COUNTY OF COBB
IN RE: ESTATE OF MEREDITH LEE KING, SR.
ESTATE NO. 25-P-1395
All creditors of the Estate of **Meredith Lee King, Sr.**, Deceased, late of Cobb County, Georgia, are hereby notified to render their demands against said estate to the undersigned according to law and all persons indebted to said estate are required to make immediate payments to the undersigned.
This 25th day of July, 2025.
MEREDITH LEE KING, JR.,
EXECUTOR
301 CREEKSTONE RIDGE
WOODSTOCK, GA 30188
8:1,8,15,22-2025

MDJ-5707
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **Anita Dorene Jones** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 28th day of July, 2025
Name: Kimberly Jones Schoates
c/o Scott B. Fields, Esq.
Title: Administrator
Address: 1215 Highway Trail, C-100,
Atlanta, GA 30350
8:1,8,15,22-2025

MDJ-5711
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Betty Joyce McCurdy**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment.
This 23rd day of July, 2025.
Mary Beth Saylor
Administrator
c/o Shandra J. Pruitt, Esq.,
AL Johnson Attorney at Law
261 Washington Avenue
Marietta, GA 30060
8:1,8,15,22-2025

MDJ-5712
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Marna L. Steger**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 28th day of July, 2025.
Michael DeWitt
Executor/Administrator
759 Chelsea Park Lane
Marietta, GA 30068
8:1,8,15,22-2025

MDJ-5715
GPN-07
NOTICE TO DEBTORS AND CREDITORS
STATE OF GEORGIA
COUNTY OF COBB
IN RE: ESTATE OF JAMES ROBERT HERD,
All creditors of the estate of **JAMES ROBERT HERD**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 22nd day of July, 2025.
Elizabeth L. Guerra, Esq.
Attorney for the Estate of
James Robert Herd,
Deceased
166 Anderson St. Ste. 118
Marietta, GA 30060
8:1,8,15,22-2025

MDJ-5780
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **BRUCE CARL WEISS**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 1 day of August, 2025.
LAURA CORINNE SOUTHERN
Executor/Administrator
455 CAMPBELL TRAIL SE
WHITE, GEORGIA 30184
8:1,8,15,22-2025

MDJ-5790
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Declan Holstead**, late of Cobb County, deceased, are hereby notified to render their demands to the undersigned according to law and all person indebted to the said estate are required to make immediate payments.
Rhonda Jackson
Executor
451 Ridgetop Drive
Acworth, GA 30102
8:1,8,15,22-2025

MDJ-5792
GPN-07
NOTICE TO DEBTORS AND CREDITORS
STATE OF GORGIA
COUNTY OF COBB
IN RE: Dalbert George Fitch
All creditors of the estate of **Dalbert George Fitch**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment to me.
Lon Thomas Fitch
Executor of the estate
c/o George C. Childs, Jr.,
Attorney at Law
250 Lawrence Street
Marietta, GA 30060
8:1,8,15,22-2025

MDJ-5796
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **Fred Zamin, a/k/a Farzenah Rooshanzamin**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 29th day of July 2025
Nazila Rooshanzamin, Executor,
c/o J. Christopher Miller, Esq.
11800 Amber Park Drive, Ste 130,
Alpharetta, Georgia 30009
8:8,15,22,29-2025

MDJ-5797
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **Kyun Hwa Muh** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 30th day of July, 2025
Name: Kyun Y. Muh and
Kyun Yeun Ho
Title: Co-Administrators
Address: Grissom Law,
10475 Medlock Bridge Road #215,
Johns Creek, GA 30097
8:8,15,22,29-2025

MDJ-5807
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **PHILLIP LEE PERREN**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 8th day of August, 2025
MELINDA PERREN
Executor/Administrator
4672 Light Way
AUSTELL, GEORGIA
8:8,15,22,29-2025

MDJ-5825
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Inchiang Lieu**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 1st day of August, 2025.
Shawn Lieu
Executor/Administrator
4496 Meadow Green Ln.
Acworth, GA 30101
8:8,15,22,29-2025

MDJ-5827
GPN-7
NOTICE TO DEBTORS AND CREDITORS
All creditors of the Estate of **Sean C. Weidman**, late of Cobb County, deceased, are hereby notified to render their demands to stop undersigned according to law, and all persons indebted to said Estate are required to make immediate payment.
This 31 st day of August, 2025.
/s/ Autumn Ritter
Autumn Ritter,
Executor of the Estate of
Sean C. Weidman, Deceased
c/o Eleni Bafas, Esq.
3225 Shallowford Road, Suite 220 B
Marietta, GA 30062
8:8,15,22,29-2025

MDJ-5833
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **Judson Gregory Black** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 8th day of August, 2025
Name: Christina Rae Black
Title: Executor
Address: 3379 Old Kemp Rd.,
Acworth, GA 30101
8:8,15,22,29-2025

MDJ-5834
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **K.C. Gazi Kasikci** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 31st day of July, 2025
Name: deAndrade Law Firm
Address: 2 Ravinia Drive, Suite 1530,
Atlanta, Georgia 30346
8:8,15,22,29-2025

MDJ-5838
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Thomas Joseph Nelis**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 28th day of July, 2025.
Wayne Robert Nelis
Executor/Administrator
c/o Melissa P. Walker
1418 Dresden Drive Suite 240
Atlanta, Georgia 30339
8:8,15,22,29-2025

MDJ-5840
GPN-7
STATE OF GEORGIA
COUNTY OF COBB
NOTICE TO DEBTORS AND CREDITORS
IN RE:ESTATE OF BILLY EUGENE AKINS
All Creditors of the estate of **Billy Eugene Akins**, late of Cobb County, Georgia, are hereby notified to render to their demands to the below named person according to law, and all persons indebted to said estate are required to make immediate payment to the undersigned.
This the 1st day of August 2025.
Martha Barnett Akins
Executor of the Estate of
Billy Eugene Akins
Prepared by:
COCHRAN & EDWARDS, LLC
Attorneys At Law
2950 Atlanta Road, S.E.
Smyrna, Georgia 30080
8:8,15,22,29-2025

MDJ-5843
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **Carmen Borrero Tullio** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 4th day of August, 2025
Name: Estela Payne
c/o Scott B. Fields, Esq.
Title: Administrator
Address: 1215 Highway Trail, C-100,
Atlanta, GA 30350
8:8,15,22,29-2025

MDJ-5844
GPN-7
NOTICE TO DEBTORS AND CREDITORS
STATE OF GEORGIA
COUNTY OF COBB
All creditors of the estate of **PEGGY SUE SPRUILL**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment, this 4th day of August, 2025.
TIFFANY M. PORCELLI, Executor
Arun Gupta, Esq.
AG Law, LLC
2020 Howell Mill Rd., Ste. D #297
Atlanta, GA 30318
(404) 594-1611
8:8,15,22,29-2025

MDJ-5845
GPN-7
NOTICE TO DEBTORS AND CREDITORS
IN RE: ESTATE OF Maureen Ann O'Shea
ALL CREDITORS of the Estate of **Maureen Ann O'Shea**, deceased, late of DeKalb County, Georgia are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment to the undersigned. This notice is given this 4th of August 2025 in accordance with the provisions of O.C.G.A. § 53-7-41.
Joel S. Arogeti, Attorney for Executor
Ruda Hirschfeld Papera & Hoffman LLP
5555 Glenridge Connector, Suite 800
Atlanta, Georgia 30342
404-237-4100
8:8,15,22,29-2025

MDJ-5847
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **Mark Christopher Querry** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 4th day of August, 2025
Name: Martin D. Marshall
Title: Attorney for Administrator,
Jimmy Leon Cox
Address: 331 N Marietta Parkway,
NE, Marietta, GA 30060
8:8,15,22,29-2025

MDJ-5855
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Carol Brent Fincher**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 5th day of August 2025.
Executors / Administrators Name:
Russell Fincher
Street Address: 1894 Trumbull Drive
City: Dunwoody State: Georgia
Zip: 30338
8:8,15,22,29-2025

MDJ-5870
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **BRENDA J. OWENBY**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment.
This 8th day of July, 2025.
BEVERLY ABERNATHY LEE
Executor
4977 ORR ROAD NW
ACWORTH, GA 30101-9318
3:28;4:4,11,18-2025

MDJ-5914
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **Gregory Martin Head** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 5th day of August, 2025
Name: Michelle T. LaLonde
Title: Attorney
Address: 2827 Peachtree Road NE,
Suite 300,
Atlanta, Georgia 30305
8:15,22,29; 9:5-2025

MDJ-5916
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **LYNN A. MACDONALD**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 6th day of August, 2025.
Julianna Burrall
Executor/Administrator
3535 Roswell Road, Suite 34
Marietta, GA 30062
8:15,22,29; 9:5-2025

MDJ-5918
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the Estate of **Shirley E. Kalb**, late of Cobb County, Georgia, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment to the undersigned.
This 29th day of July, 2025.
Lisa K. Allen
Executor
c/o W. Allen Separk, Esq.
Attorney at Law
P.O. Box 3475
Marietta, GA 30061-3475
8:8,15,22,29-2025

MDJ-5926
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Patrick Lynn Shipley**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 6th day of August, 2025.
William H. Wheeler, III, and
Gregory Collingwood
Co-Executors
c/o Gregory Collingwood,
5828 Riverstone Circle
Atlanta, Georgia 30339
8:8,15,22,29-2025

MDJ-5928
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Mary Katherine McClain Hudson**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 6th day of August, 2025.
John Hudson
Executor/Administrator
2733 Vinings Oak Dr SE
Atlanta, GA 30339
8:8,15,22,29-2025

MDJ-5929
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Mary Alice Wilson** deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 6th day of August 2025.
Terri Duncan Nelson
Executor/Administrator
981 Sam Nelson Road
Canton, GA 30114
8:15,22,29; 9:5-2025

MDJ-5930
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Melanie Lyle Sarris** deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 6th day of August 2025.
John Bruce Sarris
Executor/Administrator
4044 Silver Fir Court
Marietta GA 30066
8:15,22,29; 9:5-2025

MDJ-5948
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **KIMBERLY ANN HUTCHESON**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 6th day of August, 2025.
Jeffrey Hunter Hutcheson
Executor/Administrator
c/o The Beck Law Firm, LLC,
2090 Sugarloaf Parkway, Suite 135
Lawrenceville, GA 30045.
8:15,22,29; 9:5-2025

MDJ-5959
GPN-07
NOTICE TO DEBTORS AND CREDITORS
All creditors of the estate of **Richard Morris Prater, Jr.** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 8th day of August, 2025
Crystal Lane Cook
Administrator
574 Strawberry Rd.,
Reidsville, NC 27320
8:15,22,29;9:5-2025

MDJ-5961
GPN-7
NOTICE TO DEBTORS AND CREDITORS
All creditors of the Estate of **Henry Gene Cooper, Jr.**, deceased, of Cobb County, Georgia, are hereby notified to render their demand to the undersigned, according to law, and all persons indebted to said Estate are required to make immediate payment to the undersigned.
This 7th day of August, 2025
Tiarra Cooper
2525 Cherrywood Lane
Marietta, GA 30060
8:22,29; 9:5,12-2025

MDJ-5964
GPN-7
NOTICE TO DEBTORS AND CREDITORS
All creditors of the Estate of **Mickey A. Frazier**, late of Cobb County, Georgia, deceased, are hereby notified to render in their demands to the undersigned according to law; and all persons indebted to said estate are required to make immediate payment.
This 7 th day of August, 2025.
Sherman Willis, Attorney for
Martha Lee Frazier Esoda and LaRue Frazier, Puglisi,
Co-Executors of the Estate of
Mickey A. Frazier
GARDNER WILLIS PLAIRE & WILSON, LLP
P.O. Drawer 71788
Albany, Georgia 31708-1788
229-883-2441
8:22,29; 9:5,12-2025

MDJ-5974
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Russell B. Allison, Sr.** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 7th day of August 2025
Becky Mitchell Allison
Executor/Administrator
4259 Springdale Circle
Powder Springs, GA 30127
8:15,22,29; 9:5-2025

MDJ-5976
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Jason Scott Stewart** deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 7th day of August, 2025.
Michael Strobel
Executor/Administrator
1960 Lochlomond Lane SE
Smyrna, GA 30080
8:15,22,29; 9:5-2025

MDJ-5979
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **DONALD STEVEN RICHARDS**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
Sarah Richards
2405 Tammeron Dr SW
Marietta, GA 30064
8:15,22,29;9:5-2025

MDJ-5980
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **WALLAH JEAN GILLES**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
Germide Nord
3106 Stoglin Drive
Powder Springs, GA 30127
8:15,22,29;9:5-2025

MDJ-5981
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **BETTY GRACE GREEN**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
Carl Walker
4469 Timber Hollow Way
Jacksonville, FL 32224
8:15,22,29;9:5-2025

MDJ-5982
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **TODD JAMES HUSTON**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
Erica Huston
1273 Segar St
Johns Island, SC 29455
8:15,22,29;9:5-2025

MDJ-5983
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **PAUL DOUGLAS RICHARDS, JR**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
Justina Yu Richards
2983 Carrie Farm Rd NW
Kennesaw, GA 30144
8:15,22,29;9:5-2025

MDJ-5984
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **PAVAN K PILLALAMARRI**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
Lakshmi A Pillalamarri
164 Parkstone Way
Marietta, GA 30066
8:15,22,29;9:5-2025

MDJ-5986
GPN-07
NOTICE TO DEBTORS AND CREDITORS
All creditors of the estate of **Carrie Elizabeth Wilson (a/k/a Elizabeth McLeod Wilson)**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 5th day of August, 2025
James Dale Wilson, Executor
c/o William A. Turner, Esq.
Cohen Pollock Merlin Turner, P.C.
3350 Riverwood Parkway, Suite 1600
Atlanta, Georgia 30339
8:15,22,29;9:5-2025

MDJ-5987
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Ronald David Stevens Jr.**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 8 day of August, 2025
Brennen Stevens
Executor/Administrator
3854 Heartleaf Drive
Acworth, Georgia 30101
8:15,22,29; 9:5-2025

MDJ-5989
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **William P. Thomas, Estate No. 25-P-1374**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 8 day of August, 2025.
Anthony Iorillo
Executor/Administrator
289 Cherokee Street NE
Marietta, GA 30060
8:15,22,29; 9:5-2025

MDJ-5990
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate **GARRY PHILIPS FAIN**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 11th day of AUGUST, 2025.
CYNTHIA O. FAIN
Executor/Administrator
5719 HILL RD
POWDER SPRINGS, GA 30127
8:15,22,29; 9:5-2025

MDJ-6001
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Shelby Jean Childers**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 11th day of August, 2025.
Rodney Allen Turner
Executor
305 Chickering Lake Court
Roswell, Ga 30075
8:15,22,29; 9:5-2025

MDJ-6002
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the Estate of **EVA WALKER BRYAN**, deceased, late of Cobb County, Georgia, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 11th day August, 2025.
/s/ H. Brian Sams
Ga. Bar No. 624112
Attorney for the Estate
2809 Lassiter Road, Suite 100
Marietta, Georgia 30062
(770) 552-4727
8:15,22,29; 9:5-2025

MDJ-6004
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
RE: Estate of Amanda Ann LeFevers
All creditors of the estate of **Amanda Ann LeFevers**, late of Cobb County, deceased, are hereby notified to render their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment.
Wayne Shannon LeFevers
Executor
913 Bendleton Drive
Woodstock, GA 30188
8:15,22,29;9:5-2025

MDJ-6005
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
RE: Estate of Loretta Hall
All creditors of the estate of **Loretta Hall**, late of Cobb County, deceased, are hereby notified to render their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment.
Victoria Hall
Administrator
4435 Hiram Lithia Springs Road
Powder Springs, GA 30127
8:15,22,29;9:5-2025

MDJ-6015
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **ANDREW L. BISHOP**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 11TH day of AUGUST, 2025.
WENDY SHEREE JACKSON
Executor/Administrator
1330 TEMPLE DRAKETOWN RD
TEMPLE GA 30179
8:15,22,29; 9:5-2025

MDJ-6016
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Glenda Huggins Davis**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment.
This 1st day of August, 2025.
Ellen Barski
Executor
3439 Smoke Hollow Place
Roswell, GA 30075
8:15,22,29;9:5-2025

MDJ-6017
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Robert Raymond Mullins, Sr.**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment.
This 1st day of August, 2025.
Frances Mullins McArdie
Executor
33 Lakeshore Drive, NE
Marietta, GA 30067
8:15,22,29;9:5-2025

MDJ-6025
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Patricia Seward Hood**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 12th day of August, 2025.
William Seward
Executor/Administrator
1040 Knox Ridge
Athens, GA 30606
8:15,22,29; 9:5-2025

MDJ-6030
GPN-07
NOTICE TO DEBTORS AND CREDITORS
GEORGIA, COBB COUNTY
All creditors of the estate of **STEVEN FLOYD HAMES**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment.
This 30th day of August, 2025.
KANDICE NICOLE HAMES
Administratrix of:
STEVEN FLOYD HAMES
843 Wexford Drive
Douglasville, GA 30134
8:15,22,29;9:5-2025

MDJ-6032
GPN-07
NOTICE TO DEBTORS AND CREDITORS
Georgia, Cobb County
All creditors of the Estate of **John Webster Carver a/k/a John Carver**, deceased, of Cobb County, Georgia, are hereby notified to render in their demands against said estate to the undersigned, and all persons indebted to said estate are required to make immediate payment to the Executors.
This 29th day of July, 2025.
Mr. James Anthony Howell
Executor
Mr. Bobby Anthony Gilbert
Executor
PO Box 8
Ball Ground, GA 30107
8:15,22,29;9:5-2025

MDJ-6034
GPN-07
NOTICE TO DEBTORS AND CREDITORS
STATE OF GEORGIA
COUNTY OF COBB
IN RE: ESTATE OF CHARLIE TINSLEY, JR.
All Creditors of the Estate of **CHARLIE TINSLEY, JR.**, deceased on June 26, 2023, late of Cobb County, are hereby notified to render in their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment.
This 30th day of July, 2025.
Lauren Beasley, Esq.
Administrator for the Estate of
Charlie Tinsley, Jr.
244 Roswell Street
Suite 700
Marietta, GA 30060
8:15,22,29;9:5-2025

MDJ-6035
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Ann Daniel McLean**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment.
This 31st day of July, 2025.
Elizabeth Ann Street
Executor
774 Gordon Combs Road, NW
Marietta, GA 30064
8:15,22,29;9:5-2025

MDJ-6067
GPN-07
NOTICE TO DEBTORS AND CREDITORS
STATE OF GORGIA
COUNTY OF COBB
IN RE: Bernard Joseph Joy
All creditors of the estate of **Bernard Joseph Joy**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment to me.
Marianne Stubbs Joy
Executor of the estate
c/o George C. Childs, Jr.,
Attorney at Law
250 Lawrence Street
Marietta, GA 30060
8:15,22,29;9:5-2025

MDJ-6070
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Reid McAlister, Jr.**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned accordingly to law, and all persons indebted to said estate are required to make immediate payment.
This 11th day of August, 2025.
Melinda McAlister
Executor
2805 Brookwest Drive
Marietta, GA 30064
8:15,22,29;9:5-2025

MDJ-6097
GPN-07
NOTICE TO DEBTORS AND CREDITORS
All creditors of the estate of **Edwin Barrayo Pio**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 12th day of August, 2025
William D. Carter, Jr.
Attorney
45 Technology Parkway S,
Suite 240,
Peachtree Corners, GA 30092
8:15,22,29;9:5-2025

MDJ-6101
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Katharyn Otis Pelych**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 13th day of August, 2025.
William Pelych
Executor/Administrator
c/o Sarah White,
2501 E. Piedmont Road, Suite 106
Marietta, GA 30066
8:22,29; 9:5,12-2025

MDJ-6105
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **Hazel Ann Milam** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 13th day of August, 2025
Name: Cohen & Caproni
Title: Attorney
Address: 750 Hammond Drive,
Building 7, Suite 200,
Atlanta, Georgia 30328
8:22,29; 9:5,12-2025

MDJ-6110
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Donald Christopher Biggs**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 4th day of August, 2025.
Lillie Biggs
Executor
415 Ansley Dr
Roswell, GA 30076
8:22,29;9:5,12-2025

MDJ-6113
GPN-07
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **PAUL SANDIDGE**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
Althea Caces
Administrator
240 Cherokee Street,
Suite 301
Marietta, GA 30060
(770)424-9141
8:22,29;9:5,12-2025

MDJ-6119
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Maria Sprie**, O.C.G.A. §§ 53-7-41; 53-11-4, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate pay-

8004 Public Sales/Auctions

sures.com and a high bidder will be selected on September 18th, 2025, at 10AM
Unit/ Name of Occupant/ Description of Property
114 Xavier M Rosa Boxes, Air Conditioner, Microwave
116 Bianca Mayes Boxes, Exercise Bike, Totes
123 Jennifer Mitchell Totes, Clothing, Mattress
203 Annika McCray Coolers, Tables, Shelves
266 Alexus L Chisolm Totes, Boxes, Bags
313 Lesly Loredo Dresser, Mattress, Toys
329 Shannon Wisener Chairs, Bags, Boxes
359 Kashia Williams Sofa, Mattress, Coffee Table
578 James Sanders Mattress, Boxes, Suitcases
760 Naijlah H Barksdale Tv, Dresser, Mattress
810 Ambra Elise Albury Bike, Washer, Dryer
813 Fabin Collier Washer, Dryer, Mattress
8:29; 9:5-2025

MDJ-6117
GPN-17
NOTICE OF PUBLIC SALE: The following self-storage Cube contents containing household and other goods will be sold for cash by CubeSmart Asset Management, LLC as Agent for Owner, CubeSmart #4659, 4444 N Shallowford Rd Dunwoody, GA 30338, to satisfy a lien on **September 13th 2025 at approx. 2pm** at www.storagetreasures.com:
Cube # 1023 Mercedes Lewis;
Cube # 1068A Brittany Gittens;
Cube # 1103 Aaliyah Williams;
Cube # 1170 Adrian Dunn;
Cube # 1181 Trel Williams;
Cube # 1188 Lavon Zanders;
Cube # 1193 Damian Salvatto;
Cube # 2009 Sandra Willingham;
Cube # 3049 Tarik McCloud;
Cube # 3239 Chantel Williams;
Cube # 3259 Kendra Waters;
Cube # 3331 Briyante King;
Cube # 3344 Gregory E McFadden Jr.
8:29; 9:5-2025

MDJ-6154
Extra Space Storage, on behalf of itself or its affiliates, Life Storage or Storage Express, will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated: 1987 Canton Road Marietta, GA 30066 on **September 24th, 2025 at 11:00 am**
Eria Barnett Unit 3071
Household Goods/Furniture, TV/Stereo Equipment
Katrina Whiting Unit 103
House hold goods
Ryan Roe Unit 419
Household Goods/Furniture, TV/Stereo Equipment
Mark Sweeting Unit 2069
Household Goods/Furniture
The auction will be listed and advertised on www.storagetreasures.com. Purchases must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase up until the winning bidder takes possession of the personal property.
9:5,12-2025

MDJ-6164
GPN-17
Storage Treasures Auction
Extra Space Storage, on behalf of itself or its affiliates, Life Storage or Storage Express, will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated: 2090 Clay Rd. Austell, GA 30106 on **09/24/2025 @12:00p.m.**
023 Hideko Burns Household goods
045 Catherine Merritt Household goods
105 Michael Tollison Household goods
122 Michelle Jenkins Household goods
144 Maya Franklin Household goods
152 Simone Thomson Household goods
199 Frankie Croker Household goods
226 Natalie Elliot Household goods
232 Tamika Renea Household goods
309 Clarence Carter Household goods
309 Connie Connor-Harris Household goods
324 Takeyshia McKeller Household goods
329 Wayne Beavers Household goods
345 Ikoro Nkwokocha Household goods
377 Terria Smith Household goods
382 Kerisha Black Household goods
431 Ramona Burke Household goods
A181 Jeff White Household goods
A188 Bashamaus Carithers Household goods
A209 Cherise Spruill Household goods
A248 Deborah House Household goods
A262 KeTeira Goodman Household goods
A37 Zoie Rone Household goods
A49 Miguel Arevalo Household goods
A8 Danyeal Craig Household goods
The auction will be listed and advertised on www.Storagetreasures.com. Purchased must be made with Cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase until the winning bidder takes possession of the personal property.
9:5,12-2025

MDJ-6283
GPN-17
Extra Space Storage will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated. **Wednesday, 09/24,2025 at 1:30 pm** 1587 Tibarron Pkwy SE Smyrna GA 30082
1096 Darius Stone House hold Items
1102 Sharon Ndiga House Hold Items
1118 Jasmine Davidson House Hold Items
1155 Antoney Hogan House Hold Items
2016 Aiala Burke House Hold Items
2107 Corry Matthews House Hold Items
2142 Geneva Stevenson House Hold Items
3047 Sylas Harrell House hold Items
3082 Johnny Bethea House Hold Items
4004 Alexis Flores House Hold Items
4017 Janelle Burriss House Hold Items
4153 Xavier Clay House Hold Items
The auction will be listed and advertised on www.storagetreasures.com. Purchases must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase up until the winning bidder takes possession of the personal property.
9:5,12-2025

MDJ-6284
GPN-17
Extra Space Storage will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated: 1195 Gresham Rd Marietta, GA 30062 **09.24.25 at 2:30 pm**
Monique Levescon B020 bed set boxes desks
Marcell Henry C031 picture, clothes, shoes, chairs, personal effects
Walker Carter B069 Household Goods/Furniture
John Wotoaka F049 House hold items
Khary Hudson F005 household items.
The auction will be listed and advertised on www.storagetreasures.com. Purchases must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase up until the winning bidder takes possession of the personal property.
9:5,12-2025

MDJ-6285
GPN-17
ARK SELF STORAGE, pursuant to the Georgia Self Storage Facilities Act, shall conduct a public auction of the contents of the following units to the highest bidder, at 1744 COBB PARKWAY MARIETTA, GA 30060 (770)-955-5128. The sale will be on **THURSDAY, September 25, 2025 at 1:00 P.M.,** in front of each unit. Management reserves the right to withdraw units, items, and reject bids. All sales are final and must be paid for in cash. All units must be emptied and swept clean within 48 hours. The contents of each unit will be available for inspection at the time of the auction. If for any reason any unit is not sold on the above date, it will be sold at the next scheduled auction. Units contain household goods, furniture, tools and other miscellaneous items, unless noted otherwise. Any vehicles that are auctioned will be sold as parts only; no titles are involved.
NAME- UNIT # -
Nicholas Kostas F13
Grace Love D40
Charlene Benjamin FC01
9:5-2025

MDJ-6317
GPN-17
GEORGIA Newspaper Advertisement
STORAGE TREASURES AUCTION
Extra Space Storage, on behalf of itself or its affiliates, Life Storage or Storage Express, will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated: **2890 Cobb Parkway Nw, Kennesaw, GA 30152 for September 23, 2025 at 4pm.**
Mark Fair Jr. Unit# A004
Household items
The auction will be listed and advertised on www.storagetreasures.com.

8004 Public Sales/Auctions

Purchases must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase up until the winning bidder takes possession of the personal property.
9:5,12-2025

MDJ-6318
GPN-17
STORAGE TREASURES AUCTION
Extra Space Storage, on behalf of itself or its affiliates, Life Storage or Storage Express, will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated: **Extra Space Storage 331 Chastain Rd NW Kennesaw, GA 30144 September 24, 2025 @3:30pm**
Jalen Uboh Unit:1032
Items:Household items
Moriah Dandridge Unit:1103
Items:Appliances,boxes,furniture
Tina Williams Unit:1118
Items:Clothes, shoes, books, totes and boxes
Lorraine Bell Unit:1122
Items:furniture,clothing,boxes
Aisha Wrighter Unit:2017
Items:Clothes,household items
Antoinette Bryant Unit:3080
Items:Speaker,boxes,bags,toys,bed
Jahmichael Key Unit:4011
Items:Mattresses,bags,boxes,mirrors, pictures,household items
Yvonne Combs Unit:5029
Items:Furniture
The auction will be listed and advertised on www.storagetreasures.com. Purchases must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase up until the winning bidder takes possession of the personal property.
9:5,12-2025

MDJ-6319
GPN-17
Extra Space Storage will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated: **1725 Roswell Rd. Marietta, GA 30062 on September 23rd, 2025 at 2:00 PM:**
203 Charlene Simpson - Hsld gds/Furn
430 Chavon Pope - Hsld gds/Furn
516 Godfrey Street - Hsld gds/Furn
620 Charlie Smith - Hsld gds/Furn
801 Katrina Buckley - Hsld gds/Furn
811 Darrell Kelly - Hsld gds/Furn
836 Mary Ann Posey - Hsld gds/Furn
899 Aieenah Mcshan - Hsld gds/Furn
The auction will be listed and advertised on www.storagetreasures.com. Purchases must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase up until theinning bidder takes possession of the personal property.
9:5,12-2025

MDJ-6433
GPN-17
STORAGE TREASURES AUCTION
Extra Space Storage will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated at **3950 Jiles Road, Kennesaw, GA, 30144 at 12:00pm on 9/24/25**
Unit #- 3810
Name- Andre Bullock
Description- Houses good/furniture
Unit #- 3600
Name- Malik Ali
Description-Clothing and bins
Unit #- 3403
Name- Cheryl Rivers
Description-furniture living room set tvs bedroom set dryer bags of clothes lamps dishes
Unit #- 2931
Name- Zachary King
Description-Totes with clothing/Tools
Unit #- 2616
Name- Amber Walls
Description-Storing boxes, photo books, sentimental items and misc. household items
Unit #- 2119
Name- Jorien Robinson
Description-Clothes, boxes
Unit #- 1414
Name- Elicia Robinson
Description-Furniture cloth ,kitchen items ,totes Boxes.
Unit #- 1100
Name- Robyn Jones
Description-4 bedroom home furnishings
The auction will be listed and advertised on www.storagetreasures.com. Purchases must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase up until the winning bidder takes possession of the personal property.
9:5,12-2025

MDJ-6472
GPN-17
Extra Space Storage will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated: **2141 POWERS FERRY RD MARIETTA GA 30067, 09-25-2025 at 10:20am**
Maryum Aziz Unit: 1045
Household Items
Panomphet Phonthibsvads Unit: 1062
Household Items
Deanna Strongs Unit: 2023
Household Items
Brittany Adams Unit: 2028
Household Items
Kalynn Terrell Unit: 2305
Household Items
Jasmin Goldstein Unit: 3086
Household Items
Patrice Burkes Unit: 3115
Household Items
The auction will be listed and advertised on www.storagetreasures.com. Purchases must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase up until the winning bidder takes possession of the personal property.
9:5,12-2025

MDJ-6474
GPN-17
CITY OF POWDER SPRINGS GOVERNMENT
GOVERNMENT AUCTION ON-LINE
Property advertised and auctioned by PropertyRoom.com
www.PropertyRoom.com
Items: Black & Green Huffy Nightwalk Bike, Rockland Pink children's suitcase, Rick Owens Geobaskets Size 43, Black Prada sneakers size 41, Amiri sneakers size 9, Airforce Ones with Jewels size 10.5, Gucci pants size 44, Chromeheart graphic jeans size 44, Givenchy size 30 ,Gallery Dept pants size 30, Paint spalt brown Gallery Dept jeans size 29, Black Amiri distressed jeans size 30, denim distressed Amiri jeans size 29, Louis Vuitton graphic jeans size small, denim Amiri distressed jeans with Black leather patches size 29
Auction Start Date:
Start Time: 9:00am
If you feel that you are the owner of any of the listed property, please contact Delethia Morris 770-943-1616 ext216. Otherwise, items will be auctioned on the listed dates according to O.C.G.A. 17-5-54 (e)
9:5,12,19,26-2025

MDJ-6499
GPN-17
NOTICE OF PUBLIC SALE:
The following self-storage Cube contents containing household and other goods will be sold for cash by CubeSmart Management, LLC 1820 Marietta Blvd Nw Atlanta, GA 30318 to satisfy a lien on **September 23rd at approx. 1:00pm** at www.storagetreasures.com.
Cube #1079, Marissa Hayes,
Cube #1112, Toinette Jackson;
Cube#1212, Deborah Isong;
Cube #2069, Robert Maher ;
Cube #2071, Tyesha Appleberry;
Cube #2220, Muneer Aziz;
Cube #2221, Olivia Fortson;
Cube #2305, Hoosan Smith;
Cube #2337, Antonio Walker;
Cube #3145, April Benton;
Cube #4034, KAYLA MCCASLIN;
Cube #4068, Shyanne Benjamin;
Cube #4211, Mike Blum.
9:5,12-2025

MDJ-6500
GPN-17
STORAGE TREASURES AUCTION
Extra Space Storage will hold a public auction to sell personal property described below belonging to those individuals listed below at the location indicated:
1419 Cobb Parkway N Marietta Ga 30062 September 23, 2025 at 3pm.
2060 Rochelle Orise Household items
3069 Wanda Little Household items
B105 Theresa Wilson Household items
The auction will be listed and advertised on www.storagetreasures.com. Purchases must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and may rescind any purchase up until the winning bidder takes possession of the personal property.
9:5,12-2025

8004 Public Sales/Auctions

MDJ-6501
GPN-17
NOTICE OF PUBLIC SALE
The undersigned pursuant to the Georgia Self-Storage Facility Act, Georgia Code Sections 10-4-210 to 10-4-215 will sell at a Public Sale in Cobb County, State of Georgia at **Hwy 5 Self Storage, 4945 Canton Road NE, Marietta, GA 30066, 770-924-0064 on Tuesday OCTOBER 07 2025 11:00 am sharp** for the following units.
UNIT 065 PALACIOS GILBERTO GUTTER CHAIRS MISC FURNITURE ROOF SHINGLES
UNIT 054 DANIELLE FRANKLIN BEDROOM FURNITURE AND RECLINER
UNIT 366 BARBARA GREER TOTES
UNIT 367 KENAN BATES SOFA TELESCOPE GLASS TABLES
9:5,12-2025

MDJ-6513
GPN-17
PUBLIC SALE
Pursuant to the Georgia Storage Facility Act, Alpha Omega Stor-All shall conduct a public sale on the following spaces at 4905 Oglesby Road, Powder Springs, GA 30127 on **SEPTEMBER 22 TH 2025 @ 1:30pm.** Alpha Omega Stor-All reserves the right to exclude any item for such sale and reject any bids.
232 BARRY SANGSTER HOUSEHOLD GOODS
281 LEOLA BRUNDIDGE HOUSEHOLD GOODS
284 DENNIS TUFTS HOUSEHOLD GOODS
312 CHRIS HILL HOUSEHOLD GOODS
323 REEBEE GILLARD HOUSEHOLD GOODS
339 ANTHONY PINES HOUSEHOLD GOODS
455 VYRONA MILLER HOUSEHOLD GOODS
912 ETHEL DORESTANT HOUSEHOLD GOODS
1102 ALISON LAW HOUSEHOLD GOODS
1135 STEPHANIE FUREY HOUSEHOLD GOODS
9:5,12-2025

MDJ-6515
GPN-17
NOTICE OF PUBLIC SALE
STATE OF GEORGIA
COUNTY OF COBB
Pursuant to the Georgia Self Storage Facility Act (GA Code 10-4-213 to 10-4-215) for non-payment of storage, a public auction of the contents of the units listed below will be held at 10:00 AM on **Wednesday, September 24th, 2025** at Go Minis, 281 Veterans Memorial Highway, SE, Suite 100 (AKA Suite D), Mableton, GA 30126. Phone (770) 977-7767. We reserve the right to withdraw units and reject any/all bids. All funds to be paid in cash and all items must be removed from the facility within 24 hours.
Unit #30059 Dixie Sisco Misc HH Goods
Unit #42045 Jafar Scott Misc HH Goods
Unit #30008 Danyelle Smalls Misc HH Goods
Unit #32022 Greg Davis Misc HH Goods
Unit #34019 Mirsad Smajilovic Misc HH Goods
Unit #30074 Maud Parker Misc HH Goods
Unit #33037 Maud Parker Misc HH Goods
Unit #30117 MM Construction, LLC - Mario Melendez Commercial, Construction Goods
Unit #33098 MM Construction, LLC Mario Melendez - Commercial, Construction Goods
9:5,12,19-2025

MDJ5700
gpn17
NOTICE OF SALE
NOTICE IS HEREBY GIVEN that the undersigned intends to sell the personal property described below to enforce a lien imposed on said property under The Georgia Storage Facility Act. The undersigned will sell at public sale by competitive bidding on **Thursday the 18th day of September, 2025 at 10:00 AM** with bidding to take place on Lockerfox.com. Said property is **SecurCare Self Storage, 1880 Veterans Memorial Highway Southwest, Austell, GA, 30168**
Lawanda Joseph 432 Vase, Yard Equipment, Wet Vac, Lawn Furniture, Ladder, Luggage, Rugs, Chair, Back Pack, Boxes, and Pictures. Audrey Taylor 364 Furniture, Mattress, Totes , Boxes, Microwave, Vacuum, Bed (Headboard), Bar Stool. Anthony Warren 537 Tools, Power saw, carpet extractor, bed, pillars, portable air blower, gumball machine, totes, bags, mini fridge, bedroom furniture, bicycle. Purchases must be paid for at the time of purchase per facility policy. All purchased items are sold as is, where is, and must be removed within 48 hours of the sale. Sale is subject to cancellation in the event of settlement between owner and obligated party.
9:5,12 2025

MDJ6312
gpn17
Extra Space Storage will hold a public auction to sell personal property described below belonging to those individuals listed below at the location 2095 Attic Pkwy NW Kennesaw, GA on **09/23/2025 at 4:30pm**
3063/3065
Barbie Jones
Household Items
3024
Janice Clemmons
Household Items
P005/P014
Pam Carlisle
Household Items
5032/5035
Darnecia Lester
Household Items
2006
Shawn Cook
Household Items
6039
Nichole Sharpe
Household Items
5045
Milton Young
Household Items
E017
Winifred Harmon
Household Items
The auction will be listed and advertised on www.storagetreasures.com. Purchase must be made with cash only and paid at the above referenced facility in order to complete the transaction. Extra Space Storage may refuse any bid and rescind any purchase up until the winning bidder takes possession of the personal property.
9:5,12 2025

8005 Adoptions

MDJ-6335
GPN-1
IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA
In the interest of:
MADALYNN ARAMINTA EPPERS,
A child.
ADOPTION FILE NUMBER, 25-A-040-KAC
NOTICE OF SERVICE BY PUBLICATION
Petitioners, Deborah Battaglia and John Battaglia, pursuant to O.C.G.A. § 19-8-12, request that the following be run once a week for three weeks in the Reno Gazette-Journal and the Marietta Daily Journal:
Petitioners are requesting that the Court terminate Jason Eppers parental rights to this adoption because Mr. Eppers, for a period of one year or longer immediately prior to the filing of the petition for adoption, without justifiable cause, has significantly failed: (1) To communicate or to make a bona fide attempt to communicate with the child in a meaningful, supportive, parental manner; or (2) To provide for the care and support of the child as required by law or judicial decree.
Mr. Eppers shall not be a party to the adoption and shall have no obligation to file an answer but shall have the right to appear in the pending adoption proceeding and show cause why his rights to the child should not be terminated by that adoption. Said hearing is scheduled for October 30, 2025, at 9:00 a.m., in Courtroom 7400 at the Cobb County Superior Courthouse, 70 Haynes Street, Marietta, Georgia 30090.
This day, August 26, 2025.
BRADLEY J. WEIDEMANN
Georgia State Bar Number 483569
Attorney for Petitioners
GENTRY LAW FIRM LLC
254 Roswell Street SE
Marietta, GA 30060-2064
Tel 770.425.5573
Fax 770.422.1347
bradley.weidemann@gentrylawfirm.law
8:29; 9:5,12-2025

8007 Clerk of Superior Court

MDJ-6063
GPN-14
IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA
Petitioner: Fantasya Carter
and
Respondent: Loshauin Coleman
To: Loshauin Coleman
5005 Hawthorne Ct. Unit 1
Smyrna, GA 30080
Civil Action File No.: 25CV3470
NOTICE OF PUBLICATION
By Order of Publication dated the 1st day of August, 2025, you are hereby notified that on the 9th day of May, 2025, Fantasya Carter filed suit against you for Petition for sole custody

8007 Clerk of Superior Court

You are required to file with the Clerk of Superior Court, and to serve upon the petitioner, Fantasya Carter 2213 McQuiston Dr. SW Marietta, GA 30064 an answer in writing within sixty (60) days of the date of the Order of Publication.
WITNESS, the Honorable
Henry R. Thompson
Judge of this Superior Court
This 6th day of August, 2025
DEPUTY CLERK,
Superior Court of Cobb County
Fantasya Carter
2213 McQuiston Dr. SW
Marietta, GA 30064
8:15,22,29; 9:5-2025

MDJ-6383
GPN-14
IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA
Petitioner: Rhonda Hamilton
and
Respondent: Mark Hamilton
To: 6423 Quivira Rd.
Shawnee Kansas 66216
Civil Action File No.: 24DR08027
Former Civil Action No: 24-1-00169
NOTICE OF PUBLICATION
By Order of Publication dated the 4th day of August, 2025, you are hereby notified that on the 29 day of October, 2024, Rhonda Hamilton filed suit against you for contempt of court
You are required to file with the Clerk of Superior Court, and to serve upon the petitioner, Rhonda Hamilton 1952 Lightwood Way NW Acworth, GA 30102 an answer in writing within sixty (60) days of the date of the Order of Publication.
WITNESS, the Honorable
Henry Thompson
Judge of this Superior Court
This 19th day of August, 2025
DEPUTY CLERK,
Superior Court of Cobb County
Rhonda Hamilton
1952 Lightwood Way NW
Acworth, GA 30102
8:29; 9:5,12,19-2025

MDJ-6397
GPN-14
IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA
Petitioner: Jalicia DaShae Neely
and
Respondent: Brian Gerald Clarke
Civil Action File No.: 25CV03677
NOTICE OF PUBLICATION
By Order of Publication dated the 26th day of August, 2025, you are hereby notified that on the 26th day of August, 2025, Jalicia Neely filed suit against you for petition for declaration of sole custody
You are required to file with the Clerk of Superior Court, and to serve upon the petitioner, Jalicia Neely P.O. Box 153, Marietta, GA 30061 an answer in writing within sixty (60) days of the date of the Order of Publication.
WITNESS, the Honorable Kellie S. Hill
Judge of this Superior Court
This 26th day of August, 2025
DEPUTY CLERK,
Superior Court of Cobb County
Jalicia Neely
P.O. Box 153
Marietta, GA 30061
8:29; 9:5,12,19-2025

MDJ-6546
GPN-14
IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA
Petitioner: Luana de Oliveira Scari
and
Respondent: Manoel Pedro Neto
To: 1697 Crestridge Dr. SE
Marietta, GA 30067
Civil Action File No.: 25CV06263
NOTICE OF PUBLICATION
By Order of Publication dated the 19th day of August, 2025, you are hereby notified that on the 26th day of August, 2025, Luana De Oliveira Scari filed suit against you for sole custody
You are required to file with the Clerk of Superior Court, and to serve upon the petitioner, Luana De Oliveira Scari 5595 Karingway Ct. NW Kennesaw, GA 30152 an answer in writing within sixty (60) days of the date of the Order of Publication.
WITNESS, the Honorable
Sonja N. Brown
Judge of this Superior Court
This 26th day of August, 2025
DEPUTY CLERK,
Superior Court of Cobb County
Luana De Oliveira Scari
5595 Karingway Ct. NW
Kennesaw, GA 30152
9:5,12,19,26-2025

MDJ-6547
GPN-14
IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA
BOOTH'S FARM CONDOMINIUM ASSOCIATION, INC.
Plaintiff,
V.
SEAN M. DESOUZA,
Defendant
To: Sean M. Desouza
104 Grampian Court,
Marietta, GA, 30008
Civil Action File No. 25CV03734
NOTICE OF PUBLICATION
YOU ARE HEREBY NOTIFIED that the above-styled action seeking damages for non-payment of assessments and other charges and Judicial Foreclosure of Lien was filed against you in said Court on May 19, 2025 and that by reason of an order for service of summons and complaint by publication signed by the Court on August 21, 2025, you are hereby commanded and required to file with the Clerk of said Court and serve upon Plaintiff's attorney, which is the firm of Pankey & Horlock, LLC, 1441 Dunwoody Village Parkway, Suite 200, Atlanta, Ga 30338, an Answer to the Complaint within sixty (60) days of the date of the Order by Publication.
WITNESS The Honorable Kimberly A. Childs, Judge of Said Court.
This 22 day of August 2025.
Clerk of Superior Court
Cobb County Superior Court
State of Georgia
9:5,12,19,26-2025

8020 Service/Construction Bids

MDJ-6112
GPN-5
City of Acworth
Invitation for Bid Number 2025-05
Sealed bids will be accepted at the City of Acworth, Office of the City Clerk, located at 4415 Center Street, Acworth, GA, 30101, no later than 2:30 p.m., on Wednesday, September 17, 2025 at which time said sealed bids will be publicly opened and read aloud. Bids are being received for the:
Blue Springs Mill & Repave Project
A Mandatory pre-bid meeting will be held at 4402 Acworth Industrial Drive, Acworth GA, 30101 on Wednesday, August 27, 2025, at 2:30 p.m.
All bidders must comply with all general and special instructions. All information pertaining to bid number, bid description, bidder and opening date must be listed on the sealed envelope.
All sealed bids must be delivered to the address listed above no later than the time and date indicated. The City of Acworth reserves the right to waive any or all informalities, accept or reject any or all bids, to re-advertise and award in the best interest of the City.
For additional information, contact Greg Rust at (678) 251-8198. Refer to IFB Number 2025-05. Request for bidder information packets may be made at the Acworth Power & Public Works Department, located at 4402 Acworth Industrial Dr NW, Acworth, GA, 30101, Monday through Friday, 8 a.m. to 5 p.m., by calling at the above number or by emailing a request to grust@acworth-ga.gov.
8:22,29; 9:5,12-2025

MDJ-6161
GPN-5
REQUEST FOR QUALIFICATIONS (RFQ)
CHALKER PARK CONSTRUCTION MANAGER AT RISK (CMAR)
FOR PRE-CONSTRUCTION AND CONSTRUCTION SERVICES CONTRACT
The City of Kennesaw, Georgia (Owner) is seeking qualifications from Construction Managers at Risk (CMAR) for preconstruction and construction services for Chalker Park.
The project site is located at 3419 Cherokee Street, Kennesaw, GA 30144. The principal items of this project include grading, drainage improvements, construction of a parking lot, sidewalks, and site preparation for a prefabricated restroom building and inclusive playground equipment. The total project budget is $1.1 million, inclusive of pre-construction, construction, FF&E, contingency, and other owner associated costs. The construction manager at risk will be evaluated and selected through a qualification-based selection process.
A full RFQ Package stating the full Response requirements can be obtained from the Kennesaw City Clerks Office, upon request to Lea Alvarez, City Clerk, via email at **lalvarez@kennesaw-ga.gov**. Only a Response submitted by a Firm on record with the City Clerk's Office as having received the RFQ Package from the Issuing Office will be opened.
Responses must be submitted in a sealed envelope bearing on the outside the name of the Firm, the Firms address, and the name of the Project for

8020 Service/Construction Bids

which the Response is submitted. If forwarded by mail, the sealed envelope containing the Response must be enclosed in another envelope addressed as specified above.
Responses will be received by the City of Kennesaw, Georgia at the office of the City Clerk located in Kennesaw City Hall at 2529 J.O. Stephenson Avenue, Kennesaw, Georgia, 30144 until: Friday, September 19, 2025, 3:00 pm Local Time. Responses will be opened at that time, and the names of the responding firms will be read aloud.
The Owner reserves the right to reject any or all Responses, to waive formalities, and re-advertise.
City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, Georgia, 30144
8:22; 9:5-2025

MDJ-6172
GPN-05
City of Powder Springs
Request for Qualifications (RFQ)
Feasibility Study for Consolidation and Elimination of At-Grade Railroad Crossings
The City of Powder Springs is seeking Statements of Qualifications from experienced and qualified firms to assist in evaluating the feasibility of consolidating and eliminating three existing at-grade railroad crossings. The goal of this initiative is to improve mobility and safety for motorists and pedestrians, while enhancing the fluidity and efficiency of the regional freight rail network.
Scope of Work Includes:
Feasibility analysis of crossing consolidation/elimination
Conceptual engineering and environmental assessment support
Coordination with freight rail operators and relevant agencies
Development of a comprehensive public engagement strategy
Identification of potential funding sources and implementation pathways
This study will inform future infrastructure planning and investment decisions and must reflect a balanced approach to transportation safety, community impact, and freight mobility.
Pre-Submittal Meeting: Sept 15, 2025 at 1PM
Questions Due: Sept 16, 2025, 12PM
Submission Deadline: Sept 23, 2025 12 PM
RFQ Documents Available At: www.powderspringsga.gov
Interested firms must demonstrate expertise in transportation planning, rail infrastructure, environmental analysis, and public engagement. Minority and women-owned businesses are encouraged to apply.
8:22,29;9:5,12-2025

MDJ-6297
GPN-5
Advertisement for Bids
Cobb County will receive sealed bids before **12:00 noon (local time), September 25, 2025,**
through the County's eProcurement Portal at
(https://procurement.opengov.com/portal/cobbcoga),
No bids will be accepted after the 12:00 noon deadline
Sealed Bid S5040
Request for Bids
Proctor Creek Lift Station FY26 Variable Frequency Drive Replacement (Replacement of existing variable frequency drive and transformer)
Cobb County Water System
To access the full text for this solicitation, visit the Cobb County Procurement Services Web Portal for Sealed Bids at **https://procurement.opengov.com/portal/cobbcoga** The Cobb County Procurement Services uses an e-procurement system for electronic solicitation through OpenGov. The solicitation, Instructions to Bidders, form of Bid, form of Contract, Drawings, Specifications, forms of the Bid Bond, Performance Bond, Payment Bond, other Contract Documents and addenda are available on OpenGov website. Users must register to access the documents. There is a no charge option available.
8:29; 9:5,12,19-2025

MDJ-6303
GPN-5
ADVERTISEMENT FOR BIDS
2022 TRANSPORTATION IMPROVEMENTS PROGRAM
COBB COUNTY, GEORGIA
COBB COUNTY DOT
FOR
COBB COUNTY BOARD OF COMMISSIONERS
Electronic bids will be received via Bid Express at **www.bidexpress.com** on behalf of the **Cobb County Board of Commissioners until 12:00 noon on October 9, 2025,** for furnishing all labor, material, equipment and other things necessary for the complete construction of:
Project Name: Transportation Management Center (TMC) Upgrades
Cobb DOT Project No. B2583
GDOT No. P.I. 0019687
Project Description: The Project consists of capital improvements to enhance the effectiveness of the TMC through technology and facility upgrades. Upgrades will include video wall hardware, software and monitors, audio-video equipment, electronic equipment, and operator console furniture, as well as facility upgrades including mechanical, electrical, fire suppression, structural, flooring and wall treatments.
Project Duration: The following milestones have been set for this project: Substantial Completion on or before November 15, 2026; Final Completion on or before December 31, 2026.
Prebid Conference Date / September 16, 2025
Time / Location: 9:30 a.m., Cobb County DOT / Virtual Teleconference
Bid Opening Date / October 9, 2025
Time / Location: 2:00 p.m.,
Cobb County Procurement Services
1828 West Oak Parkway
Marietta, GA 30062
Bid Document Cost: Can be purchased through Bid Express at
www.bidexpress.com
Plan Sets may be downloaded from:
http://docs.cobbegov.org/B2583_TM-CUpgrades.pdf.
This project is funded by Federal, State and local funds. Accordingly, the successful bidder will be required to comply with all applicable Federal and State rules and regulations, as well as those of Cobb County. Project must also conform to all Americans with Disabilities Act (ADA) regulations.
Proposers are not required to be prequalified or registered with Georgia Department of Transportation (GDOT) for this project. The County encourages prospective Proposers to seek prequalification in advance of possible contract award.
Davis Bacon wage rates for Cobb County, Georgia will also apply.
A Disadvantaged Business Enterprise (DBE) PARTICIPATION GOAL OF 18% has been established for this project. Bidders are subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. Contractors must submit a DBE Participation Schedule to the County with this bid and a final DBE report must be submitted at the end of a project. Any subsequent changes and/or substitutions of DBE firms from the original DBE Participation Schedule must be submitted and approved by the County in advance. Monthly DBE reports must be submitted with each monthly invoice. Bidders shall be required to document sufficient DBE participation to meet this goal, or alternatively document good faith efforts to do so.
DBE firms must be certified with the Georgia Department of Transportation's Equal Employment Opportunity (EEO) office.
ALL NEW PROSPECTIVE BIDDERS ARE STRONGLY ENCOURAGED TO PRE-REGISTER WITH COBB COUNTY FINANCE PRIOR TO BID CLOSING.
The Complete Advertisement for Bids may be found at
https://www.cobbcounty.gov/transportation/projects/bids-and-rfps and
https://www.cobbcounty.gov/procurement-services/bidding-opportunities
Contractor and their subcontractors are required to be in compliance with the "Georgia Security and Immigration Compliance Act."
Cobb County will affirmatively comply with Title VI of the Civil Rights Act of 1964 and 78 Stat. 252, 42 USC 2000d-42 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, part 21 Nondiscrimination Act(s).
The Cobb County Board of Commissioners reserves the right to reject all Bids and waive any formalities.
8:29; 9:5,12,19,26; 10:3-2025

MDJ-6510
GPN-05
THE CITY OF SMYRNA
2800 KING STREET
SMYRNA, GEORGIA 30080
ADVERTISEMENT
RFP 26-002 -
Tolleson Park Aquatics Center
The City of Smyrna is requesting sealed proposals for construction of an aquatic center building, an auxiliary restroom building, one competition pool, one leisure pool, one splash pad, one water slide, pool features, pool deck, landscaping, additional parking lot construction and resurfacing of existing parking lot areas, pavement striping, curb and gutter, sidewalk, fencing, storm sewer, sanitary sewer,

8020 Service/Construction Bids

utility installation and retaining walls.
One (1) original, one (1) copy and one (1) digital copy via thumb drive of the proposal must be submitted to the Purchasing Division located at Smyrna City Hall, 2800 King Street SE, Smyrna, GA 30080 no later than **2:00 PM, Monday, November 3rd, 2025.** Proposals received will be read in the HR Training Room.
Proposals should be submitted to: Kelly Brown, Purchasing Manager, City of Smyrna, 2800 King Street, Smyrna, Georgia 30080, prior to bid opening. The Purchasing Department office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Bids should be submitted no later than the time and date indicated in the Request for Proposal.
Bid packages will be provided via email download link from CROY ENGINEERING and can be requested from the City of Smyrna. Requests can be made via email to **kbrown@smyrnaga.gov** or by calling 678-631-5406.
A Mandatory Pre-Bid Conference and Site Visit has been scheduled for **10:00 AM, Tuesday, October 14th, 2025,** 3530 King Springs Rd, Smyrna, GA 30080.
PROGRAM MANAGER: CROY Engineering
QUESTIONS: All questions or requests for additional information must reference RFP 26-002 Tolleson Park Aquatics Center and must be submitted in writing to kbrown@smyrnaga.gov before **5:00 PM, Tuesday, October 21st, 2025.** Addenda will be emailed to all plan holders with notification on City of Smyrna website.
The City of Smyrna reserves the right to accept or reject any or all Bids and award in the best interest of the City.
9:5,12,19,26-2025

8025 Debtors and Creditors

MDJ-5914
GPN-7
Notice to Debtors and Creditors
All creditors of the estate of **Gregory Martin Head** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 5th day of August, 2025
Name: Michelle T. LaLonde
Title: Attorney
Address: 2827 Peachtree Road NE, Suite 300,
Atlanta, Georgia 30305
8:15,22,29; 9:5-2025

MDJ-5916
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **LYNN A. MACDONALD**, late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 6th day of August, 2025.
Julianna Burrall
Executor/Administrator
3535 Roswell Road, Suite 34
Marietta, GA 30062
8:15,22,29; 9:5-2025

MDJ-5929
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Mary Alice Wilson** deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 6th day of August 2025.
Terri Duncan Nelson
Executor/Administrator
981 Sam Nelson Road
Canton, GA 30114
8:15,22,29; 9:5-2025

MDJ-5930
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Melanie Lyle Sarris** deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 6th day of August 2025.
John Bruce Sarris
Executor/Administrator
4044 Silver Fir Court
Marietta GA 30066
8:15,22,29; 9:5-2025

MDJ-5948
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **KIMBERLY ANN HUTCHESON**, deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 6th day of August, 2025.
Jeffrey Hunter Hutcheson
Executor/Administrator
c/o The Beck Law Firm, LLC,
2090 Sugarloaf Parkway, Suite 135
Lawrenceville, GA 30045.
8:15,22,29; 9:5-2025

MDJ-5959
GPN-07
NOTICE TO DEBTORS AND CREDITORS
All creditors of the estate of **Richard Morris Prater, Jr.** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 8th day of August, 2025
Crystal Lane Cook
Administrator
574 Strawberry Rd.,
Reidsville, NC 27320
8:15,22,29;9:5-2025

MDJ-5961
GPN-7
NOTICE TO DEBTORS AND CREDITORS
All creditors of the Estate of **Henry Gene Cooper. Jr.**, deceased, of Cobb County, Georgia, are hereby notified to render their demand to the undersigned, according to law, and all persons indebted to said Estate are required to make immediate payment to the undersigned.
This 7th day of August, 2025
Tiarra Cooper
2525 Cherrywood Lane
Marietta, GA 30060
8:22,29; 9:5,12-2025

MDJ-5964
GPN-7
NOTICE TO DEBTORS AND CREDITORS
All creditors of the Estate of **Mickey A. Frazier**, late of Cobb County, Georgia, deceased, are hereby notified to render in their demands to the undersigned according to law; and all persons indebted to said estate are required to make immediate payment.
This 7 th day of August, 2025.
Sherman Willis, Attorney for Martha Lee Frazier Esoda and LaRue Frazier, Puglisi,
Co-Executors of the Estate of Mickey A. Frazier
GARDNER WILLIS PLAIRE & WILSON, LLP
P.O. Drawer 71788
Albany, Georgia 31708-1788
229-883-2441
8:22,29; 9:5,12-2025

MDJ-5974
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Russell B. Allison, Sr.** late of Cobb County, deceased, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 7th day of August 2025
Becky Mitchell Allison
Executor/Administrator
4259 Springdale Circle
Powder Springs, GA 30127
8:15,22,29; 9:5-2025

MDJ-5976
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **Jason Scott Stewart** deceased, late of Cobb County, are hereby notified to render in their demands to the undersigned according to law, and all persons indebted to said estate are required to make immediate payment.
This 7th day of August, 2025.
Michael Strobel
Executor/Administrator
1960 Lochlomand Lane SE
Smyrna, GA 30080
8:15,22,29; 9:5-2025

MDJ-5979
GPN-7
NOTICE TO DEBTORS AND CREDITORS
COUNTY OF COBB
All creditors of the estate of **DONALD STEVEN RICHARDS**, deceased, late of Cobb County, are hereby notified to render in their demands to the under-

Item Report

TO: The Honorable Mayor and City Council

FROM: Bill Westenberger, Chief of Police

DATE: November 3, 2025

TITLE: **Crime Stats: September 2025**
Consideration to accept the September 2025 crime statistics.

Summary:

Recommendation:

Fiscal Impact:

Attachments:
1. September 2025 - Crime Report

September 2025 Crime Statistics

Group A Crimes	Sep 2025	Sep 2024	YTD 2025	YTD 2024
AGGRAVATED ASSAULT	6 (+3)	3	39 (+7)	32
ANIMAL CRUELTY	0 (+0)	0	0 (+0)	0
ARSON	0 (+0)	0	1 (+1)	0
BRIBERY	0 (+0)	0	0 (+0)	0
BURGLARY	2 (-4)	6	25 (-3)	28
DRUG/ NARCOTICS OFFENSES	32 (+8)	24	273 (-4)	277
EMBEZZLEMENT	0 (+0)	0	3 (+1)	2
EXTORTION	0 (-4)	4	9 (-7)	16
FORGERY	1 (+1)	0	12 (-3)	15
FRAUD OFFENSES	14 (+3)	11	128 (+12)	116
HOMICIDE OFFENSES	0 (+0)	0	0 (-2)	2
INTIMIDATION	7 (+1)	6	92 (+44)	48
KIDNAPPING	1 (-1)	2	10 (-2)	12
LARCENY/ THEFT OFFENSES	16 (+3)	13	126 (+20)	106
MOTOR VEHICLE THEFT	2 (+0)	2	25 (+4)	21
PORNOGRAPHY OBSCENE MATERIAL	0 (-1)	1	2 (-6)	8
ROBBERY	0 (+0)	0	4 (+2)	2
SEX OFFENSES	4 (-3)	7	25 (-3)	28
SIMPLE ASSAULT	16 (+5)	11	123 (-37)	160
STOLEN PROPERTY OFFENSES	0 (-2)	2	11 (-5)	16
VANDALISM	3 (-3)	6	52 (-6)	58
WEAPONS LAW VIOLATIONS	3 (+1)	2	39 (+9)	30
Totals	**107**	**100**	**999**	**977**

	Sep 2025	Sep 2024	YTD 2025	YTD 2024
Dispatched Calls for Service	823 (+69)	754	6,871 (+734)	6,137
Self-Initiated Activity	1,690 (+578)	1,112	12,993 (+3,305)	9,688
Traffic Citations	777 (+326)	451	5,687 (+725)	4,962
Traffic Warnings*	930 (+277)	653	7,174 (+1,761)	5,413
Arrests**	85 (+26)	59	733 (+7)	726

	Sep 2025	Sep 2024	YTD 2025	YTD 2024
Auto Accidents	104 (-1)	105	934 (+100)	834
Accident w/ Injury	8 (-4)	12	86 (+15)	71
Hit and Run	16 (+5)	11	117 (+33)	84
Hit and Run w/ Injury	0 (+0)	0	3 (+0)	3
Person Hit by Auto w/ Injury	2 (+2)	0	5 (+2)	3

* Warnings do not include verbal warnings **
Arrests do not include juvenuile arrests

Item Report

TO: The Honorable Mayor and City Council

FROM:

DATE: November 3, 2025

TITLE: Reports, Discussions, and Updates

Summary:

Recommendation:

Fiscal Impact:

Attachments:
None

Item Report

TO: The Honorable Mayor and City Council

FROM:

DATE: November 3, 2025

TITLE: Mayor and Council (re)appointments to Boards and Commissions. This item is for (re)appointments made by the Mayor to any Board, Committee, Authority, or Commission requiring an appointment to fill any vacancies, resignations, and to create or dissolve boards and commissions, as deemed necessary.

Summary:

Recommendation:

Fiscal Impact:

Attachments:
None