

Mayor

Derek Easterling

City Manager

Jeff Drobney, ICMA-CM

City Clerk

Lea Alvarez, CMC

**Council**

Mayor Pro-Tem Tracey Viars

Lynette Burnette

Pat Ferris

Antonio Jones

Trey Sinclair

**City Council
Meeting Agenda
October 2, 2023 6:30 PM
Council Chambers**

1. Invocation**2. Pledge of Allegiance****3. Call to Order****4. Announcements**

- A. This public meeting is being conducted via the use of real-time telephonic technology allowing the public simultaneous access to the public meeting. You may also attend in person with limited seating available at both the Council Chambers and the Ben Robertson Community Center, if needed. Mayor and Council will be conducting their meeting via real-time telephonic technology using Zoom Meeting and Facebook Live. You can access the meeting via the following link: <https://www.facebook.com/CityofKennesaw/>
- B. If you are not able to attend a meeting in-person and would like to provide public comment on a specific agenda item, you can email kennesawcouncil@kennesaw-ga.gov no later than 6:00 PM the night of the regular meeting. Your comments on a specific agenda item will be read aloud or grouped into categories for the record. **Facebook Live is not monitored for public comment.**

5. Presentations**6. Public Comment/Business from the Floor****7. Old Business****8. New Business**

- A. **DISCUSSION ONLY:** Quarterly Update from Developers, including: the Duncan Drive/Tugg Property- Drew Cunningham with Highpoint Development;

the Duncan Drive Townhome development across from the Post Office- Chris Olson & John Wieland with JW Collection Atlanta; and the Town Center Kennesaw - Summer Street development with H. Parke Lammert.

9. Committee and Board Reports

10. Public Hearing(s)

11. Consent Agenda

- A. Approval of the September 11, 2023 City Council work session minutes.
- B. Approval of the September 11, 2023 City Council executive session minutes.
- C. Approval of the September 18, 2023 City Council regular meeting minutes.
- D. Approval of RESOLUTION to Award bid and Contract for Community Development Block Grant (CDBG) Woodland Acres Sidewalk Improvements Phase VII.
- E. Consideration for approval of a final plat application submitted by Beazer Gain, LLC for 2438-2460 Hidden Creek Rd, 4020 Oleander Ct. Case #FP2023-06
- F. On September 28, 2023, Michele Sorkin purchased one (1) cemetery lot in Kennesaw City Cemetery. This lot is located in Section III, Plot 35, Lot A. Requesting authorization for the Mayor to sign a supporting deed for purchase of this lot. The City Clerk recommends approval.

12. General and Administrative

13. Public Safety

14. Information Technology

15. Public Works

16. Recreation and Culture

17. Community Development

18. Public Comment/Business from the Floor

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: Darryl Simmons, Zoning Administrator

DATE: October 2, 2023

TITLE: DISCUSSION ONLY: Quarterly Update from Developers, including: the Duncan Drive/Tugg Property- Drew Cunningham with Highpoint Development; the Duncan Drive Townhome development across from the Post Office- Chris Olson & John Wieland with JW Collection Atlanta; and the Town Center Kennesaw - Summer Street development with H. Parke Lammert.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. Traditions of Kennesaw - JW Collection Presentation



TRADITIONS *of* KENNESAW

JW COLLECTION



The Wentworth | 2,205 Sq. Ft. | 3 BD, 3.5 BA





The Cambridge | 2,599 Sq. Ft. | 3 BD, 3.5 BA





The Andrews | 2,633 Sq. Ft. | 3 BD, 3.5 BA







BUILDING BETTER HOMES



Item Report

TO: The Honorable Mayor and City Council
FROM: Lea Alvarez, City Clerk
DATE: October 2, 2023
TITLE: Approval of the September 11, 2023 City Council work session minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. 09-11-23 City Council Work Session Draft Minutes

**MINUTES OF CITY COUNCIL WORK SESSION MEETING
CITY OF KENNESAW
Council Chambers
September 11, 2023
6:30 PM**

Present	Mayor Derek Easterling Mayor Pro Tem Tracey Viars Councilmember Lynette Burnette Councilmember Pat Ferris Councilmember Antonio Jones Councilmember Trey Sinclair City Clerk Lea Alvarez City Manager Jeff Drobney City Attorney Randall Bentley, Sr.
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1. Invocation

2. Pledge of Allegiance

3. Call to Order

Mayor Easterling called the meeting to order at 6:30 p.m.

4. Announcements

- A. This public meeting is being conducted via the use of real-time telephonic technology allowing the public simultaneous access to the public meeting. You may also attend in person with limited seating available at both the Council Chambers and the Ben Robertson Community Center, if needed. Mayor and Council will be conducting their meeting via real-time telephonic technology using Zoom Meeting and Facebook Live. You can access the meeting via the following link: <https://www.facebook.com/CityofKennesaw/>
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5. Presentations

6. Public Comment/Business from the Floor

7. Old Business

8. New Business

A. Approval of RESOLUTION to update various portions of the Master Fee Schedule

Deputy City Clerk Lily Smith presented a resolution to update various portions of the Master Fee Schedule. Amendments include the following: Parks and Recreation changed its field rental fees; the Kennesaw Police Department increased its pouring license, criminal history, and fingerprinting fees; Building Services created an after-hours inspection fee and removed its convenience fee and trenching/excavation fee; the Southern Museum made changes to various special event and venue fees as well as to their printing, replication, and distribution fees; Smith-Gilbert Gardens increased their venue rental fees and clarified some admission and group ticket fees; the Kennesaw Downtown Development Authority added a fee for the Scarecrows on Main event; Events Committee increased their custodial and event staffing fees as well as barricade replacement fees; and the Cemetery Preservation Commission increased the prices on cemetery lots and the scattering garden permit.

After receiving confirmation from the Council, Mayor Easterling suggested moving the item to the Consent Agenda.

B. Authorization to remove the crush and run road in Section III of the Kennesaw City Cemetery and to reclaim the lots removed to create the road for burial purposes.

City Clerk Lea Alvarez requested final authorization to remove the crush and run road in Section III of the Kennesaw City Cemetery and to reclaim the lots removed to create the road. Ms. Alvarez explained that in 2003, the newly formed Cemetery Preservation Commission voted to create an access road at the back of Section III. The Commission removed approximately 93 lots from sale and converted it to a crush and run rock road, which was the cheaper of the options presented to them at the time. Earlier this year, while working on a surveying project in this section of the cemetery, staff determined that the access road is encroaching on the lots along its left side by about a foot, as well as cutting the corners of lots along its right side at its bend. Unfortunately, the road is already too narrow to try and reduce its width to accommodate vehicular access. Ms. Alvarez stated it is in the staff's opinion that to protect the integrity of the gravesites along either side of the crush and run access road, the road must be closed to vehicles.

At a special meeting called meeting on Thursday, August 31, 2023, the Cemetery Preservation Commission was presented with two options to close the access road. The first option was to chain off the entrance and exit to the road and only allow funeral access. The second option would be for Public Works to remove the crush and run, lay down sod, and revert the road back to the approximately 93 lots that were originally removed to create the road. The Cemetery Preservation Commission unanimously voted to approve and recommend option two.

The cost to revert the road to the lots will be included in the overall total to survey that section of the cemetery, which is \$13,080, and will be paid for out of the Cemetery

Trust Fund.

Councilmember Pat Ferris commented that by doing what staff is recommending, there will be potentially \$93,000 in revenue coming into the Cemetery Trust Fund over the next few years. One of his greatest worries regarding the Kennesaw City Cemetery is that we were going to be running out of lots in the next few years. Doing this will extend sales for the next 10-15 years. He thanked Public Works and the City Clerk's office for their efforts in trying to find a solution to this issue.

Mayor Pro Tem Viars asked if the funeral homes would still need access despite this road being removed. Ms. Alvarez stated there are five-foot walking paths that have been created throughout the cemetery that will allow funeral homes to get their equipment through.

After receiving confirmation from the Council, Mayor Easterling suggested moving the item to the Consent Agenda.

9. Committee and Board Reports

10. Public Hearing(s)

- A. FINAL PUBLIC HEARING: Consideration of RESOLUTION to adopt the Fiscal Year 2023-2024 Operating Budget for the City of Kennesaw and adopt the organizational chart.

[Items 10. A and 10. B were presented concurrently].

Assistant Finance Director Jennifer Gordy stated she would be presenting these items at the regular meeting on Monday, September 18, 2023 at 6:30 p.m.

- B. FINAL PUBLIC HEARING: Consideration of RESOLUTION to adopt the Fiscal Year 2023-2024 Capital Improvement (SPLOST) Budget for the City of Kennesaw.
- C. Consideration for approval of a variance application submitted by Jose Gomez for the property located at 2407 Pine Drive (Parcel Number 20016600640). Case #ZV2023-02.

Zoning Administrator Darryl Simmons presented a variance application submitted by Jose Gomez for the property located at 2407 Pine Drive (parcel number 20016600640). Mr. Simmons stated this property is located in the Woodland Acres area. All the properties in this area are zoned R-15 and over the years, it was determined the areas are substandard lots per R-15. The property in question is vacant, and Mr. Gomez wishes to construct a new residential home that meets the criteria and the architectural standards of the area. The variance is because the size of the lot does not meet the 15,000 square foot R-15 requirement. It is a legally non-conforming use, there are no other variances requested, and it is a buildable lot.

Councilmember Ferris stated this neighborhood was built in the 1950s or 1960s. He

asked what the original zoning was when this neighborhood was originally platted. Mr. Simmons said the staff went as far back as they could and as far as he understood it, the zoning was R-15 or something close to that. Over the years, as zoning ordinances were updated, there were not any zoning changes. The neighborhood remained R-15. Councilmember Ferris said the reason he was asking was because one of the key things he has seen in this development is that by in large they have 12,000 square foot lots. It sounds to him, other than maybe one-square foot, it is in compliance with the original plat and its original zoning. He was wondering why Mr. Simmons is now saying it is zoned R-15. Mr. Simmons responded that the area is currently zoned R-15. Councilmember Ferris asked if the city had a comprehensive zoning sometime that made this area R-15. Mr. Simmons said Councilmember Ferris was correct and at the time this neighborhood was developed, there was not a Zoning Administrator in place, so it is hard to connect the dots; however, because this application is for a new building, instead of spot zoning it for R-15, he is going to reduce the lot size because it matches the other lots in the area.

Councilmember Ferris said he was assuming that the lot was considered compliant when the neighborhood was done. He doesn't understand that if the lot was considered legal and valid, why Mr. Simmons is bringing it before the Council tonight. Mr. Simmons said that in building new construction, you have to determine if it meets the current zoning, which would be not. The variance will protect the property owner and the city by acknowledging that this is a legally nonconforming lot and the variance gives them the authority to do new construction on the property.

Councilmember Ferris questioned the condition of a minimum 20-foot driveway when the required front setback is 35 feet. Mr. Simmons stated 20-feet is the minimum, but the driveway will be continuous to the structure. Councilmember Ferris requested the condition be removed.

11. Consent Agenda

- A. Approval of the August 28, 2023 City Council work session minutes.
- B. Approval of the September 5, 2023 City Council regular meeting minutes.

12. General and Administrative

13. Public Safety

- A. Receipt of the August 2023 Crime Statistics.

Kennesaw Police Captain Kevin Mitchell presented the August 2023 crime statistics.

14. Information Technology

15. Public Works

16. Recreation and Culture

17. Community Development

A. Presentation/Update on Martha Moore site development.

Economic Development Director Luke Howe introduced Steve Sirang, Chair of Concord Wilshire Companies, who gave a presentation on the company's proposed mixed-use development of the Martha Moore site, which would be in the vein of Town Brookhaven and Avalon (See **Exhibit A**).

Mayor Pro Tem Viars asked where the majority of residents would be parking to which Mr. Sirang responded that most of the resident parking would be in the proposed parking deck. The parking deck will hold 1,400 spaces. Councilmember Ferris mentioned the site is beside the Kennesaw City Cemetery. One of his goals was to get 10 to 20 more feet of right of way for the cemetery. He was wondering what Mr. Sirang thinks about working with the city to accomplish that. Mr. Sirang stated this was a partnership, and he would be happy to work with the city on any issues. Councilmember Ferris asked what the views from the cemetery would be regarding the proposed development. Mr. Sirang stated the view would be at the back of the parking garage, but the company could work with the city to place some art on the garage, so the views from the cemetery are not just concrete. Councilmember Ferris asked about the residential component to the plan and whether it would be rent-only or some for-sale options as well. Mr. Sirang said he is open to both. Councilmember Sinclair asked if the development would be executed in phases. Mr. Sirang said this project would not be done in phases because of the nature of the development. Everything would need to be activated at one time.

The Council is supportive of the efforts of staff to keep pursuing the concept with Concord Wilshire Companies.

B. Consideration for approval of a final plat application submitted by Kennesaw Townhome Owner, LLC for 1885 & 1945 Duncan Dr. Case #FP2023-04.

Zoning Administrator Darryl Simmons presented a final plat application submitted by Kennesaw Townhome Owner, LLC for 1885 and 1945 Duncan Drive. Mr. Simmons stated this is the townhome component to the TUG mixed-use development on South Main Street. The final plat must be approved and executed so they can begin developing the 44 units which were part of the master plan approved by the Council. Traton Homes will build the townhomes. The Plan Review Committee reviewed the plat and it met all standards.

After receiving confirmation from the Council, Mayor Easterling suggested moving the item to the Consent Agenda.

18. Public Comment/Business from the Floor

19. City Manager's Report

- A. Reports, Discussions, and Updates
- B. Recommendation of the City Manager to ratify the appointment of Dave Simpson as the Smith-Gilbert Gardens Executive Director.

This item will be presented at the regular meeting on Monday, September 18, 2023 at 6:30 p.m.

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.

Motion by Councilmember Burnette to enter into Executive Session as allowed by O.C.G.A. Sec. 50-14-3 for the purpose of discussing land and legal by the City, motion seconded by Mayor Pro Tem Viars.

Vote taken, motion approved unanimously, 5-0. Motion carried.

7:24 p.m. Recess to Executive Session

The Mayor, City Council, City Manager, Assistant City Manager, City Clerk, City Attorney, Economic Development Director and Public Works Director attended the Executive Session.

7:36 p.m. Reconvene to Open Session

Councilmember Burnette 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 Viars.

Vote taken, motion approved unanimously, 5-0. Motion carried.

23. Adjourn

Mayor Easterling adjourned the meeting at 7:36 p.m. The regular meeting will be held on Monday, September 18, 2023 at 6:30 p.m. in the Council Chambers. The public is encouraged to attend or view via Facebook Live.

DRAFT

MARCH 31, 2022

METRO CENTER REDEVELOPMENT

HINES • CONCORD WILSHIRE • TLG INVESTMENT PARTNERS

RSP ARCHITECTS

MASTERPLAN

BIRDS EYE



- AMENITY
- COMMERCIAL
- RESIDENTIAL
- RESIDENTIAL ABOVE RETAIL / AMENITY

METRO CENTER REDEVELOPMENT HINES | CONCORD WILSHIRE | TLG INVESTMENT PARTNERS

RSP ARCHITECTS







THANK YOU

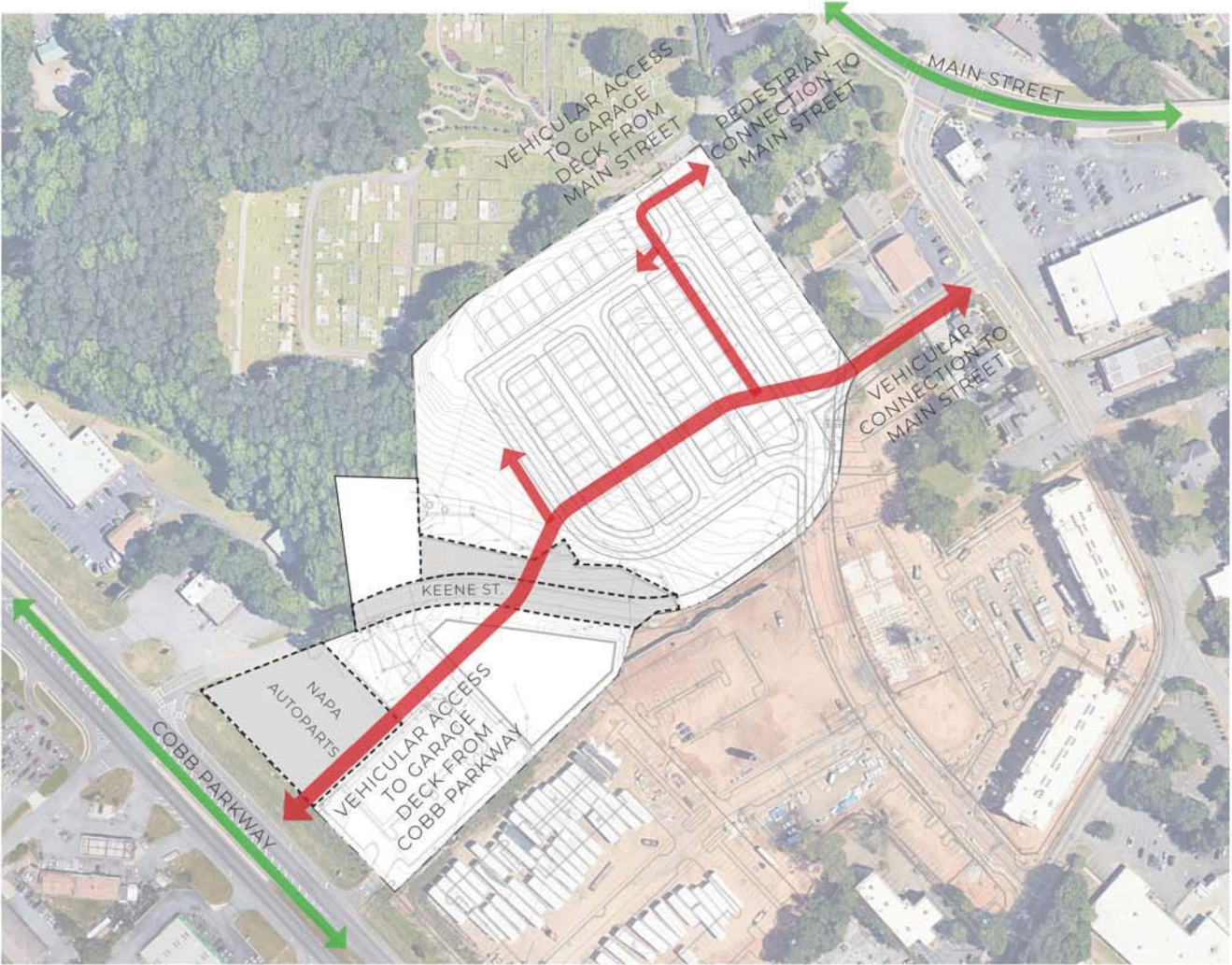
RSP

SEPTEMBER 11, 2023

KENNESAW SQUARE

MASTERPLAN

RSP ARCHITECTS



DESIGN CHARACTER



CONCORD WILSHIRE



RSP ARCHITECTS

DESIGN CHARACTER



CONCORD WILSHIRE



RSP ARCHITECTS

MASTER PLAN

BUILDING	USE	RETAIL GSF	RESI GSF	UNITS
1	retail	7,300 GSF		
2	retail	7,400 GSF		
3	retail	6,800 GSF		
4	retail	7,400 GSF		
5	mixed	10,000 GSF	30,000 GSF	34
6	mixed	19,400 GSF	77,600 GSF	87
7	mixed	12,000 GSF	48,000 GSF	54
8	mixed	21,800 GSF	82,800 GSF	93
9	mixed	23,500 GSF	129,650 GSF	142
10	retail	15,000 GSF		
Garage			1110 spaces	

129,700 GSF - TOTAL RETAIL

365,400 GSF - TOTAL RESIDENTIAL

495,100 GSF - TOTAL BUILDING AREA

409 UNITS - TOTAL UNIT COUNT

1,110 SPACES - TOTAL STRUCTURE PARKING

275 SPACES - TOTAL SURFACE PARKING

1,385 SPACES - TOTAL PARKING SPACES

CONCORD WILSHIRE



RSP ARCHITECTS

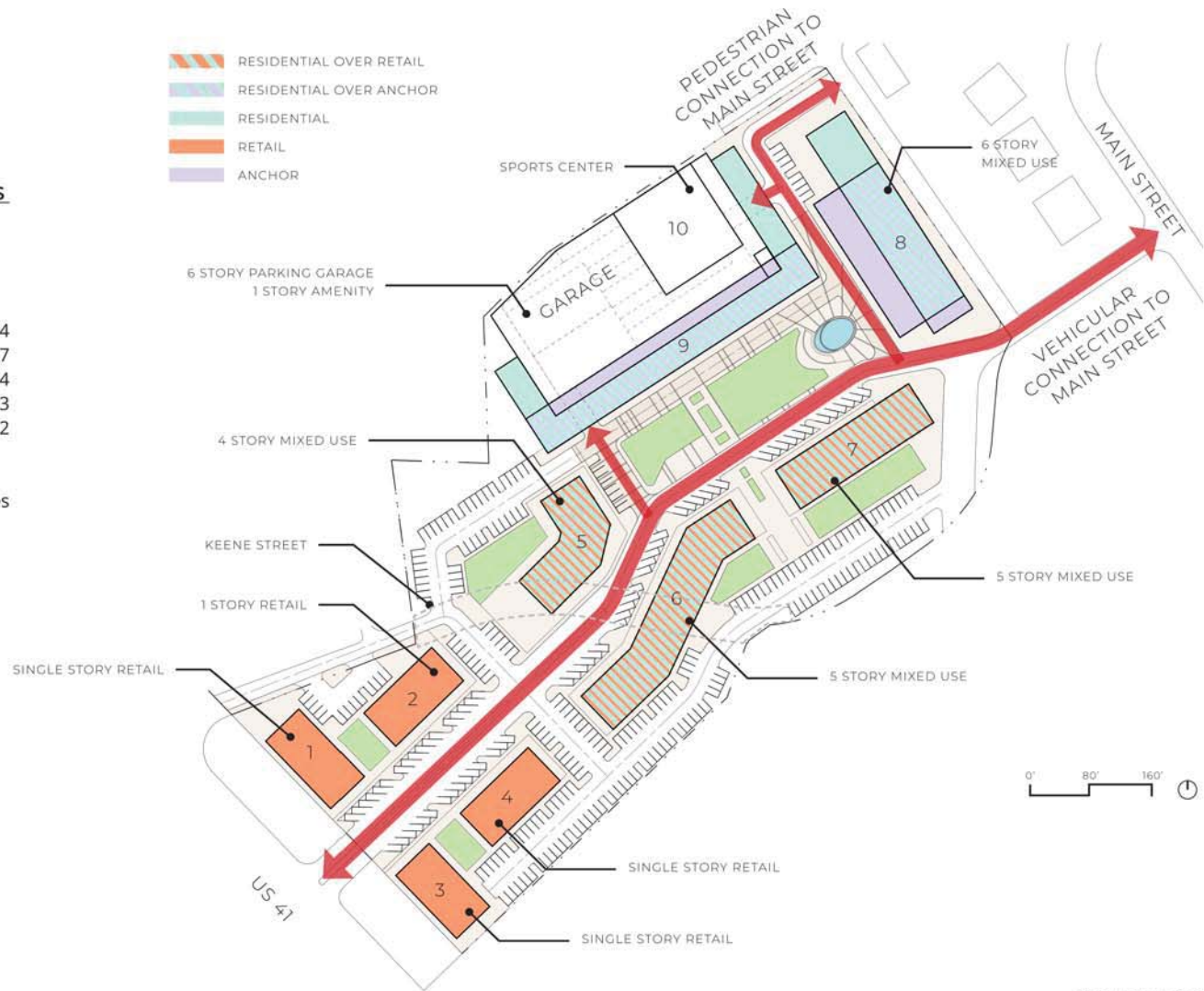
MASTER PLAN

BUILDING	USE	RETAIL GSF	RESI GSF	UNITS
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9	mixed	23,500 GSF	129,650 GSF	142
10	retail	15,000 GSF		

Garage 1110 spaces

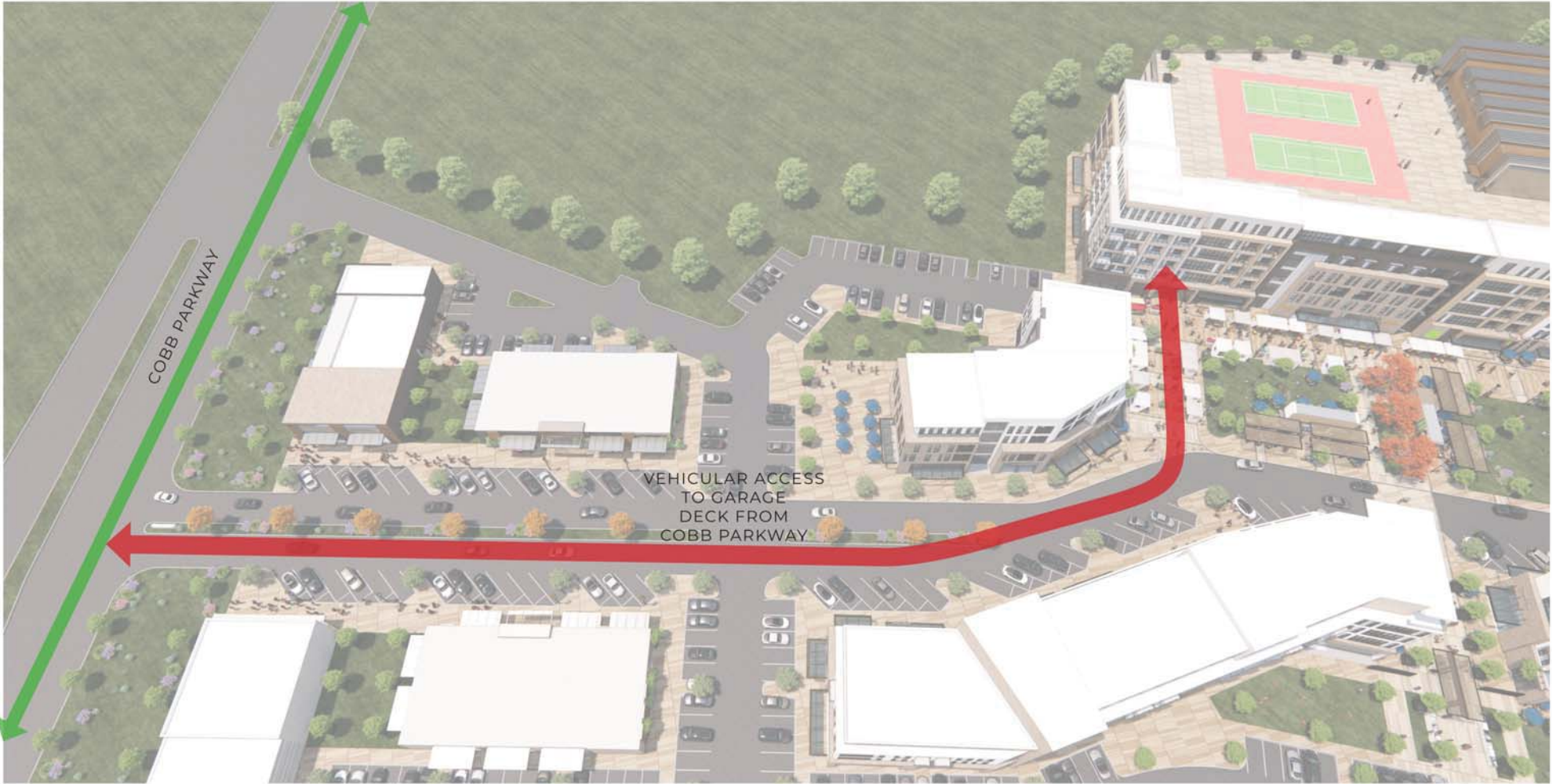
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CONCORD WILSHIRE



RSP ARCHITECTS

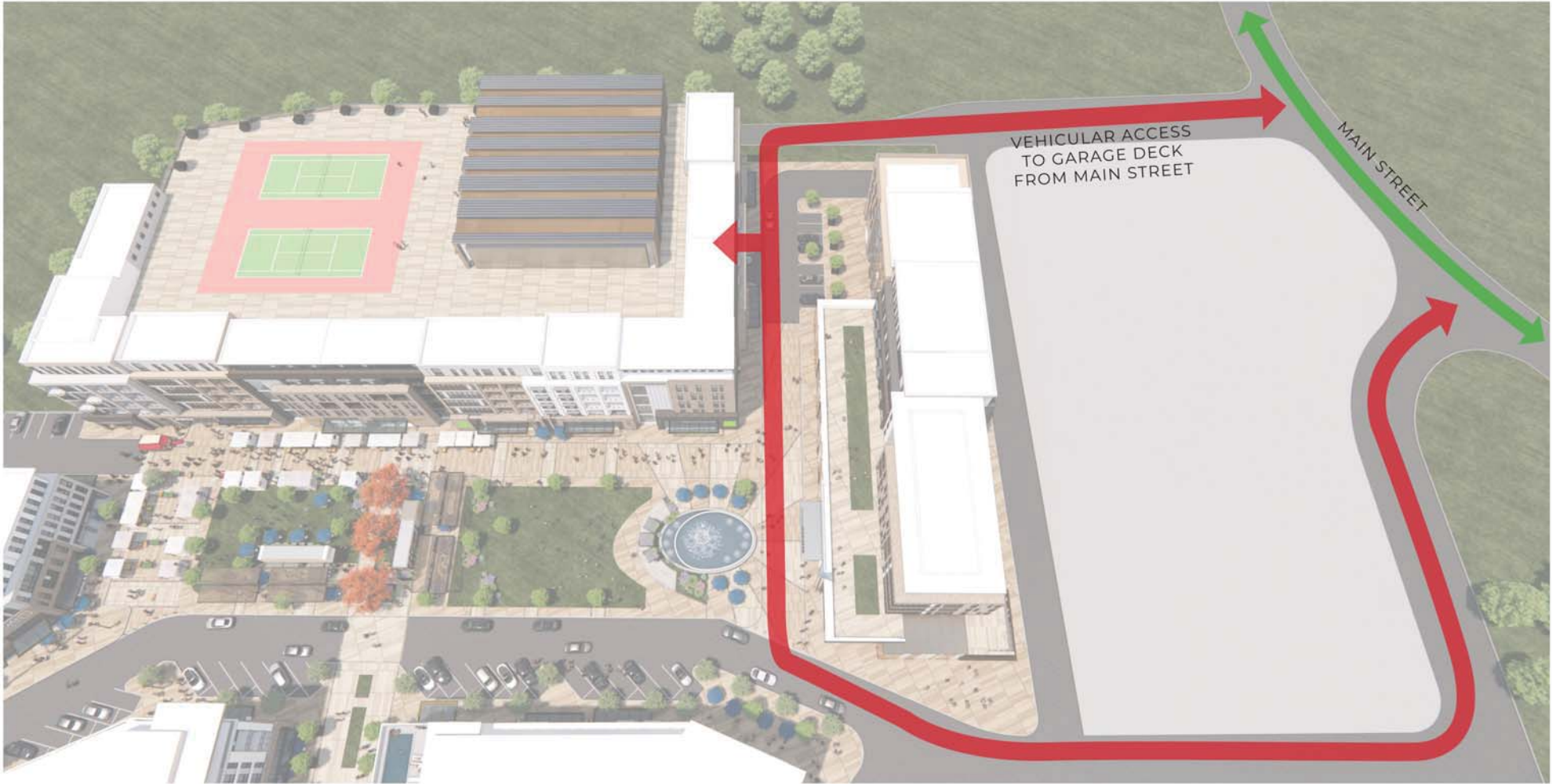
VIEW - GARAGE DECK ACCESS FROM COBB PARKWAY



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - GARAGE DECK ACCESS FROM MAIN STREET



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - BIRDS EYE



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - PARK VIEW



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - PARK VIEW



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - SOUTHERN ENTRY



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - SOUTHERN ENTRY



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - MAIN PARK



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - PARK STAGE



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - FOUNTAIN VIEW



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - FARMERS MARKET



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - PARK CENTER



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - ROOFTOP POOL



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - SPORTS CENTER



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - SPORTS CENTER



CONCORD WILSHIRE

RSP ARCHITECTS

DEVELOPMENT COLLAGE - VIEW FROM MAIN STREET



CONCORD WILSHIRE

RSP ARCHITECTS

DEVELOPMENT COLLAGE - VIEW FROM CEMETERY STREET



CONCORD WILSHIRE

RSP ARCHITECTS

DEVELOPMENT COLLAGE - VIEW FROM SUMMER STREET



CONCORD WILSHIRE

RSP ARCHITECTS

DEVELOPMENT COLLAGE - VIEW FROM COBB PKWY



CONCORD WILSHIRE

RSP ARCHITECTS

THANK YOU

MASTER PLAN - SKETCH

RESIDENTIAL:

424 UNITS X 750 SF = 318,000 SF

66 CONDOS X 1,000 SF = 66,000 SF

RETAIL : 111,000

SPORTS COMPLEX: 25,000

TOTAL SF: 522,000 SF

41.8 DU / AC

1,350 PARKING SHOWN

THREE STORY MULTIFAMILY OVER RETAIL

FOUR STORY MULTIFAMILY OVER RETAIL

SINGLE STORY RETAIL



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - COBB PARKWAY RETAIL



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - COBB PARKWAY RETAIL



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - COBB PARKWAY RETAIL



CONCORD WILSHIRE

RSP ARCHITECTS

VIEW - COBB PARKWAY RETAIL



CONCORD WILSHIRE

RSP ARCHITECTS



Item Report

TO: The Honorable Mayor and City Council
FROM: Lea Alvarez, City Clerk
DATE: October 2, 2023
TITLE: Approval of the September 11, 2023 City Council executive session minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. Executive Session Affidavit

AFFIDAVIT

1.

Mayor Derek Easterling was the presiding officer of a meeting of the Kennesaw City Council held on the 11 day of September 2023.

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 11^m day of September, 2023 which was closed for the purpose(s) of land & 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.

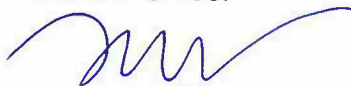
This the 11^m day of Sept, 2023.



Mayor/Presiding Officer



Councilmember



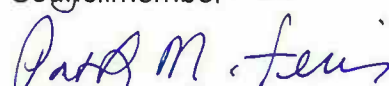
Councilmember



Councilmember



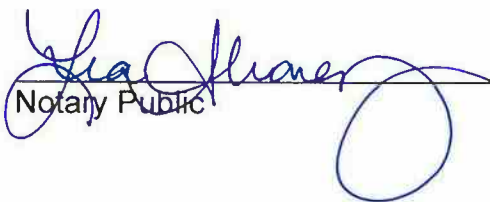
Councilmember



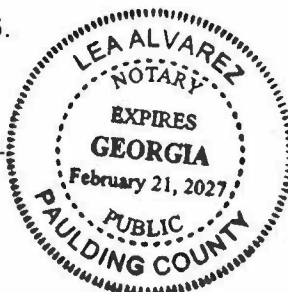
Councilmember

Sworn to and subscribed before me this the

11^m day of September, 2023.



Notary Public





Item Report

TO: The Honorable Mayor and City Council
FROM: Lily Smith, Deputy City Clerk
DATE: October 2, 2023
TITLE: Approval of the September 18, 2023 City Council regular meeting minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. 09-18-23 City Council Meeting Draft Minutes

**MINUTES OF CITY COUNCIL MEETING
CITY OF KENNESAW
Council Chambers
September 18, 2023
6:30 PM**

Present	Mayor Derek Easterling Mayor Pro Tem Tracey Viars Councilmember Lynette Burnette Councilmember Pat Ferris Councilmember Antonio Jones City Clerk Lea Alvarez City Manager Jeff Drobney City Attorney Randall Bentley, Sr.
Absent	Councilmember Trey Sinclair

1. Invocation

City Attorney Randall Bentley, Sr. led the invocation.

2. Pledge of Allegiance

City resident Andrew Bramlett led the Pledge of Allegiance.

3. Call to Order

Mayor Derek Easterling called the meeting to order at 6:30 p.m.

4. Announcements

- A. This public meeting is being conducted via the use of real-time telephonic technology allowing the public simultaneous access to the public meeting. You may also attend in person with limited seating available at both the Council Chambers and the Ben Robertson Community Center, if needed. Mayor and Council will be conducting their meeting via real-time telephonic technology using Zoom Meeting and Facebook Live. You can access the meeting via the following link: <https://www.facebook.com/CityofKennesaw/>
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5. Presentations

6. Public Comment/Business from the Floor

6:31 p.m. Floor Open for Public Comments

ANTHONY GUTIERREZ [City Council candidate, Post 2]: Mr. Gutierrez encouraged everyone to check out his website, anthony4kennesaw.com, to learn more about his campaign. He can also be reached by email at anthony4kennesaw@gmail.com. Today, Mr. Gutierrez wanted to highlight a key position within his platform, which is run-off elections. He explained run-off elections were created to ensure whichever candidate wins does so by receiving 50% of the vote plus one. A study done by the Congressional Research Service (CRS) found that 80% of Americans have a favorable view on run-offs and believe they have a positive impact on our elections. Mr. Gutierrez stated that here in Georgia, we already practice run-off elections at the state level, so he wonders why our local elections should be any different. A common critique of run-off elections is that they are expensive. To this, Mr. Gutierrez asks if we can ethically put a price tag on democracy and true representation. Another critique is the reduced participation from the general election to the run-off, which he states is a valid argument. He shared that there is a popular solution growing throughout our country: instant run-off voting. Instant run-off voting is an instantaneous run-off election where voters rank their preferred candidates rather than only selecting one. If no candidate receives the majority, the candidate with the least number of votes is eliminated and the voters' second choice number is selected, and so on. Mr. Gutierrez stated run-offs are popular, effective, and when done the right way, a free way to ensure candidates win the backing of the majority.

MADELYN OROCHENA [City Council candidate, Post 1]: Ms. Orochena shared she is running in support of the arts and culture, walkable and bikeable streets, affordable housing options, downtown development that reflects the needs of the community, as well as an inclusive community. She is a firm believer in her role as a candidate to stay accessible to voters and to be engaged with the residents of Kennesaw. Ms. Orochena is at the Lazy Labrador every Friday morning from 8:00 a.m. to 10:00 a.m. She is available to answer any questions about her platform or herself, and to address any concerns or needs. Ms. Orochena reminded everyone that early voting starts in 27 days on October 16, 2023.

6:36 p.m. Floor Closed for Public Comments

7. Old Business

8. New Business

A. Settlement of Litigation - City of Kennesaw v. 2933 Moon Station Road CAFN 2022 1 8617 65 Cobb County Superior Court

1. to approve the terms of the agreement as presented;
2. to authorize the Mayor to execute the agreement before the City Clerk and with City seal;

3. to authorize a disbursement via wire transfer to the Bentley law firm IOLTA trust account in the amount of \$435,000 to satisfy the “Additional Funds” payment to Luxaryan under paragraphs 1.3 and 1.4 of the agreement; and
4. to authorize the City Attorney to file final disposition forms to close out the litigation

City Attorney Randall Bentley, Sr. stated the Mayor and the City Council would be voting tonight to approve a settlement agreement which both parties have agreed to resolve the condemnation of the property located at 2933 Moon Station Road. The total settlement is in the amount of \$550,000, of which \$115,00 has already been paid to the court. The terms of settlement are the amount difference. The City of Kennesaw is to pay \$435,000 through the Bentley escrow account to be paid directly to the property owner's attorney in exchange for the dismissal of the appeal of the value of condemnation by the property owner.

Motion by Mayor Pro Tem Viars to approve the settlement of litigation between the City of Kennesaw and 2933 Moon Station Road, as presented and listed. Seconded by Councilmember Ferris.

Vote taken, motion approved 4-0 (Councilmember Sinclair absent). Motion passed.

9. Committee and Board Reports

10. Public Hearing(s)

- A. FINAL PUBLIC HEARING: Consideration of RESOLUTION to adopt the Fiscal Year 2023-2024 Operating Budget for the City of Kennesaw and adopt the organizational chart.

[Items 10. A and 10.B were presented concurrently, but voted upon separately].

Assistant Finance Director Jennifer Gordy presented a resolution to adopt the Fiscal Year 2023-2024 Operating Budget for the City of Kennesaw and to adopt the organizational chart. Ms. Gordy went over a brief presentation highlighting both the operating budget and the capital improvement budget (See **Exhibit A**).

Motion by Councilmember Jones to approve [RESOLUTION NO. 2023-42, 2023](#) to adopt the Fiscal Year 2023-2024 Operating Budget for the City of Kennesaw and to adopt the organizational chart, as presented. Seconded by Mayor Pro Tem Viars.

6:42 p.m. Floor Open for Public Comments

No comments.

6:43 p.m. Floor Closed for Public Comments

Vote taken, motion approved 4-0 (Councilmember Sinclair absent). Motion passed.

- B. FINAL PUBLIC HEARING: Consideration of RESOLUTION to adopt the Fiscal Year 2023-2024 Capital Improvement (SPLOST) Budget for the City of Kennesaw.

Motion by Councilmember Jones to approve [RESOLUTION NO. 2023-43, 2023](#) to adopt the Fiscal Year 2023-2024 Capital Improvement (SPLOST) Budget for the City of Kennesaw, as presented. Seconded by Councilmember Burnette.

6:44 p.m. Floor Open for Public Comments

No comments.

6:45 p.m. Floor Closed for Public Comments

Vote taken, motion approved 4-0 (Councilmember Sinclair absent). Motion passed.

- C. Consideration for approval of a variance application submitted by Jose Gomez for the property located at 2407 Pine Drive (Parcel Number 20016600640). Case #ZV2023-02.

Planning and Zoning Administrator Darryl Simmons presented a variance application submitted by Jose Gomez for the property located at 2407 Pine Drive (parcel number 20016600640). Mr. Simmons stated the property is within the Woodland Acres Subdivision and is zoned R-15. The current development standards for R-15 require a minimum of 15,000 square foot lot. The lot in question is 11,999 square feet. At their regularly scheduled meeting on September 6, 2023, the Planning Commission recommended approval of the variance to reduce the lot size requirement for this property location. Mr. Simmons stated a legal ad was run in the Marietta Daily Journal on August 18, 2023. All public notifications and postings were completed per code.

Motion by Councilmember Ferris to approve the variance application submitted by Jose Gomez for the property located at 2407 Pine Drive (parcel number 20016600640), as presented. Seconded by Mayor Pro Tem Viars.

Councilmember Ferris thanked Dr. Drobney, Mr. Simmons, and Ms. Alvarez for their due diligence in researching the concerns he expressed during the work session. He was concerned about grandfathering, but a 1996 action removed any grandfathering. The staff satisfied his requests.

6:48 p.m. Floor Open for Public Comments

No comments.

6:49 p.m. Floor Closed for Public Comments

Vote taken, motion approved 4-0 (Councilmember Sinclair absent). Motion passed.

11. Consent Agenda

Motion by Councilmember Ferris to approve the Consent Agenda, engross. Seconded by Councilmember Burnette.

Vote taken, motion approved 4-0 (Councilmember Sinclair absent). Motion passed.

- A. Approval of the August 28, 2023 City Council work session minutes.
- B. Approval of the September 5, 2023 City Council regular meeting minutes.
- C. Approval of RESOLUTION to update various portions fo the Master Fee Schedule

RESOLUTION NO. 2023-44, 2023

- D. Authorization to remove the crush and run road in Section III of the Kennesaw City Cemetery and to reclaim the lots removed to create the road for burial purposes.
- E. Consideration for approval of a final plat application submitted by Kennesaw Townhome Owner, LLC for 1885 & 1945 Duncan Dr. Case #FP2023-04.

12. General and Administrative

13. Public Safety

- A. Receipt of the August 2023 Crime Statistics.

Kennesaw Police Captain Ricky Shumpert presented the August 2023 crime statistics.

Motion by Councilmember Jones to receive the August 2023 crime statistics, as presented. Seconded by Mayor Pro Tem Viars.

Vote taken, motion approved 4-0 (Councilmember Sinclair absent). Motion passed.

14. Information Technology

15. Public Works

16. Recreation and Culture

17. Community Development

18. Public Comment/Business from the Floor

6:50 p.m. Floor Open for Public Comments

JAMES STEWART [City Resident]: Mr. Stewart wanted to make the City Council aware of a situation that affected him and his family last Monday night. His family went to the farmers' market and parked by Revival. They went to the crosswalk, pressed the button to activate the flashing lights, and despite traffic stopping on both sides, a car entered

the middle lane and almost hit them at a high speed. He asked for an increase in police presence on Main Street. He asked the Council to please help the public have a safer time getting to the establishments downtown.

ANDREW BRAMLETT [City Resident]: Mr. Bramlett shared some local history of the Battle-Rama (**See Exhibit B**).

MILLIE SIMPSON [City Resident]: Ms. Simpson said her comments were in response to comments on the Nextdoor Neighbor application. Last Thursday, traffic on Cherokee Street was incredibly backed up. Many people were complaining about the traffic on the app, with one person stating that it would only get worse when all the apartments are filled on Cherokee Street. Ms. Simpson read various comments that were made on the post. She doesn't know who has the ultimate authority to approve all the building going on in the city, but she thought she would start with the City Council about how to reduce some of this development. Ms. Simpson was afraid of how dangerous it would be with so many people living on Cherokee Street.

6:56 p.m. Floor Closed for Public Comments

19. City Manager's Report

- A. Reports, Discussions, and Updates
- B. Recommendation of the City Manager to ratify the appointment of Dave Simpson as the Smith-Gilbert Gardens Executive Director.

City Manager Jeff Drobney mentioned the city conducted a national search for the new Executive Director for the Smith-Gilbert Gardens. Mr. Simpson brings a wealth of experience from public gardens, including in-depth knowledge of horticulture and plant biology. Dr. Drobney is excited to have Mr. Simpson here tonight and to recommend the City Council ratify his appointment.

Motion by Mayor Pro Tem Viars to ratify the appointment of Dave Simpson as the Smith-Gilbert Gardens Executive Director. Seconded by Councilmember Jones.

Vote taken, motion approved 4-0 (Councilmember Sinclair absent). Motion passed.

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 Burnette shared she loves this touch of fall weather. She is running for re-election and is looking forward to continuing working for this city.

Councilmember Jones had the privilege of doing jury duty today.

Councilmember Ferris mentioned the Life in the Cemetery event hosted by the Cemetery Preservation Foundation is coming up in October. Tickets are available for purchase at kennesawcemetery.org.

Mayor Pro Tem Viars stated she is running for re-election for City Council Post 2. In thinking about how she has got here, her journey has been very organic and transparent. In 2011, Mayor Pro Tem Viars shared that she first served on the Kennesaw Citizens Advisory Committee and then, in 2012, she served on the Kennesaw Downtown Development Authority. She served as chair for three years. In 2018, Mayor Pro Tem Viars ran in a special election to serve as a councilmember for Post 2. Since then, she has served as a liaison for the downtown merchants, worked on Smith-Gilber Gardens' Garden Gala, has been a 5k run director, spearheaded the first Kennesaw Beer and Wine Festival, and reorganized and ran the Farmers Market and Dinner at the Depot for years. She said all of that to say that she got in and rolled up her sleeves, worked to get to know the people and the businesses, and has served to foster relationships so we can be the best Kennesaw we can be. Mayor Pro Tem Viars stated she has worked to earn this position and hopes she has worked to earn the people's trust. She exclaimed #VoteViars!

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

Mayor Easterling adjourned the meeting at 7:04 p.m. The next regular meeting will be held Monday, October 2, 2023 at 6:30 p.m. in the Council Chambers. The public is encouraged to attend or view via Facebook Live.

Lea Alvarez, City Clerk



DRAFT

City of Kennesaw, GA

September 5, 2023

FY 2024 PROPOSED BUDGET



FY 2024 BUDGET SCHEDULE

Public Hearing

- September 5, 2023 (6:30 p.m.)

Public Hearing

- September 18, 2023 (6:30 p.m.)

Adoption

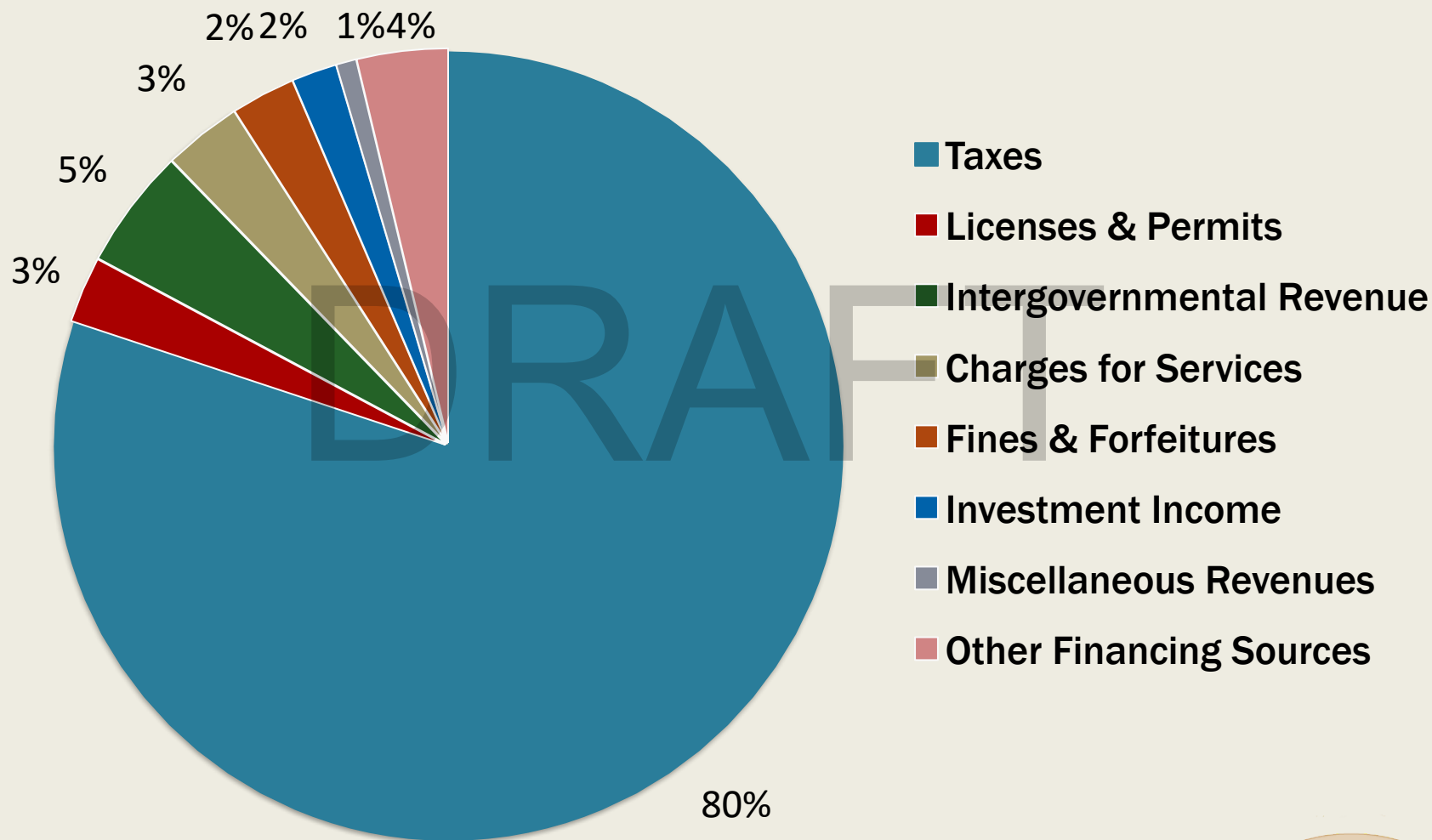
- September 18, 2023 (6:30 p.m.)



FY 2024 PROPOSED GENERAL FUND OPERATING REVENUES & OTHER SOURCES

CATEGORY	AMOUNT	PERCENTAGE
Taxes	\$23,540,715	80%
Licenses and Permits	\$799,750	3%
Intergovernmental	\$1,452,500	5%
Charges for Services	\$940,696	3%
Fines & Forfeitures	\$775,000	2%
Investment Income	\$545,000	2%
Miscellaneous Revenue	\$243,952	1%
Other Financing Sources	\$1,098,130	4%
TOTAL REVENUES	\$29,395,743	100%

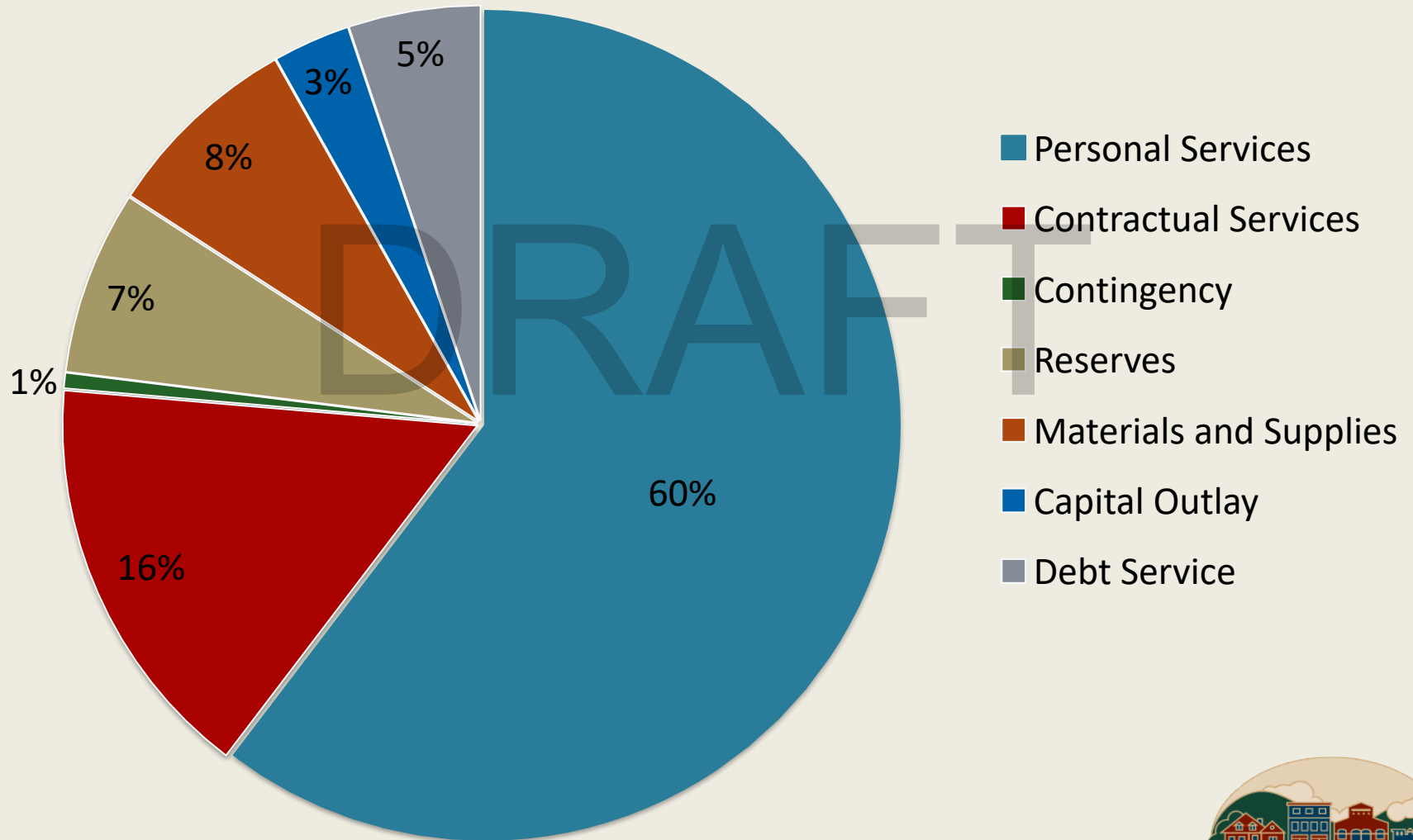
FY 2024 PROPOSED GENERAL FUND OPERATING REVENUES & OTHER SOURCES



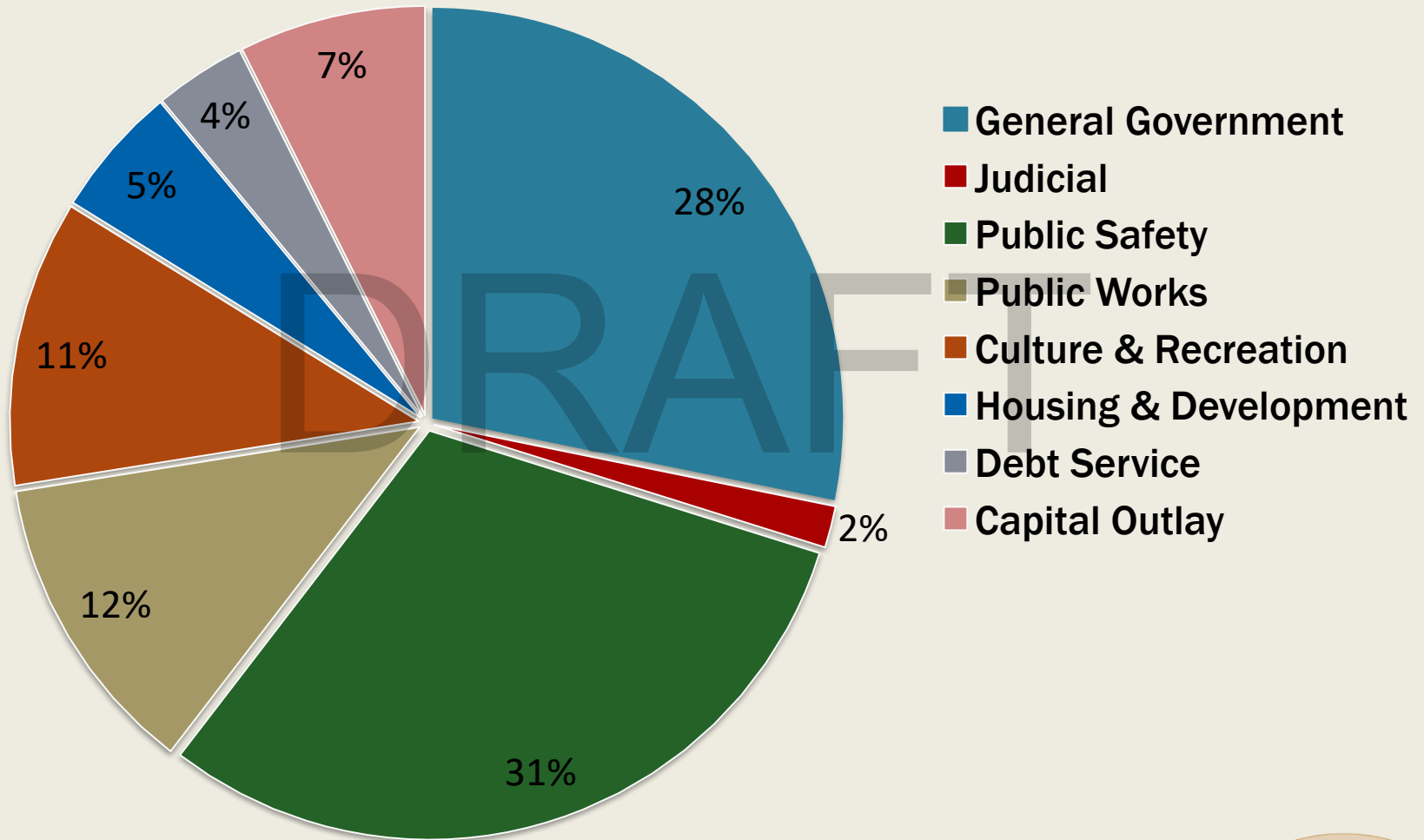
FY 2024 PROPOSED GENERAL FUND EXPENDITURES

CATEGORY	AMOUNT	PERCENTAGE
Personal Services	\$17,077,965	60%
Contractual Services	\$4,526,501	16%
Contingency	\$170,000	1%
Materials and Supplies	\$2,178,812	8%
Reserves	\$2,033,591	7%
Debt Service	\$1,454,334	5%
Capital Outlay	\$852,300	3%
TOTAL DEPT EXPENDITURES	\$28,293,503	
Transfers to Other Funds	\$1,102,240	
TOTAL EXPENDITURES	\$29,395,743	

FY 2024 PROPOSED GENERAL FUND EXPENDITURES (CATEGORIES)



FY 2024 PROPOSED GENERAL FUND EXPENDITURES (BY FUNCTION)



FY 2024 PROPOSED OPERATING BUDGET

Operating Budgets:	FY 23 Adopted	FY 24 Proposed	% Change
Governmental Fund Types			
General Fund	\$27,634,105	\$29,395,743	6%
Asset Forfeiture	\$21,085	\$21,200	1%
Treasury Equitable	\$120,006	\$20,500	-83%
Emergency 911	\$1,533,200	\$1,534,400	1%
American Rescue Plan Act	\$3,188,610	\$1,997,154	-37%
Hotel Motel	\$67,170	\$110,920	65%
Impact Fee	\$100,000	\$232,412	132%
Cemetery	\$27,616	\$57,865	110%
Debt Service	\$1,493,251	\$1,454,334	-3%
Subtotal	\$34,185,043	\$34,824,528	2%

FY 2024 PROPOSED OPERATING BUDGET

Operating Budgets:	FY 23 Adopted	FY 24 Proposed	% Change
Business - Type Funds			
Sanitation	\$3,497,194	\$3,665,500	5%
Museum	\$974,969	\$1,030,716	6%
Smith Gilbert Gardens	\$662,332	\$770,049	16%
Storm Water	\$1,234,185	\$1,450,395	18%
Streetlights	\$363,585	\$393,900	8%
Subtotal	\$6,732,265	\$7,310,560	9%
Total Operating Funds	\$40,917,308	\$42,135,088	3%

FY 2024 PROPOSED BUDGET

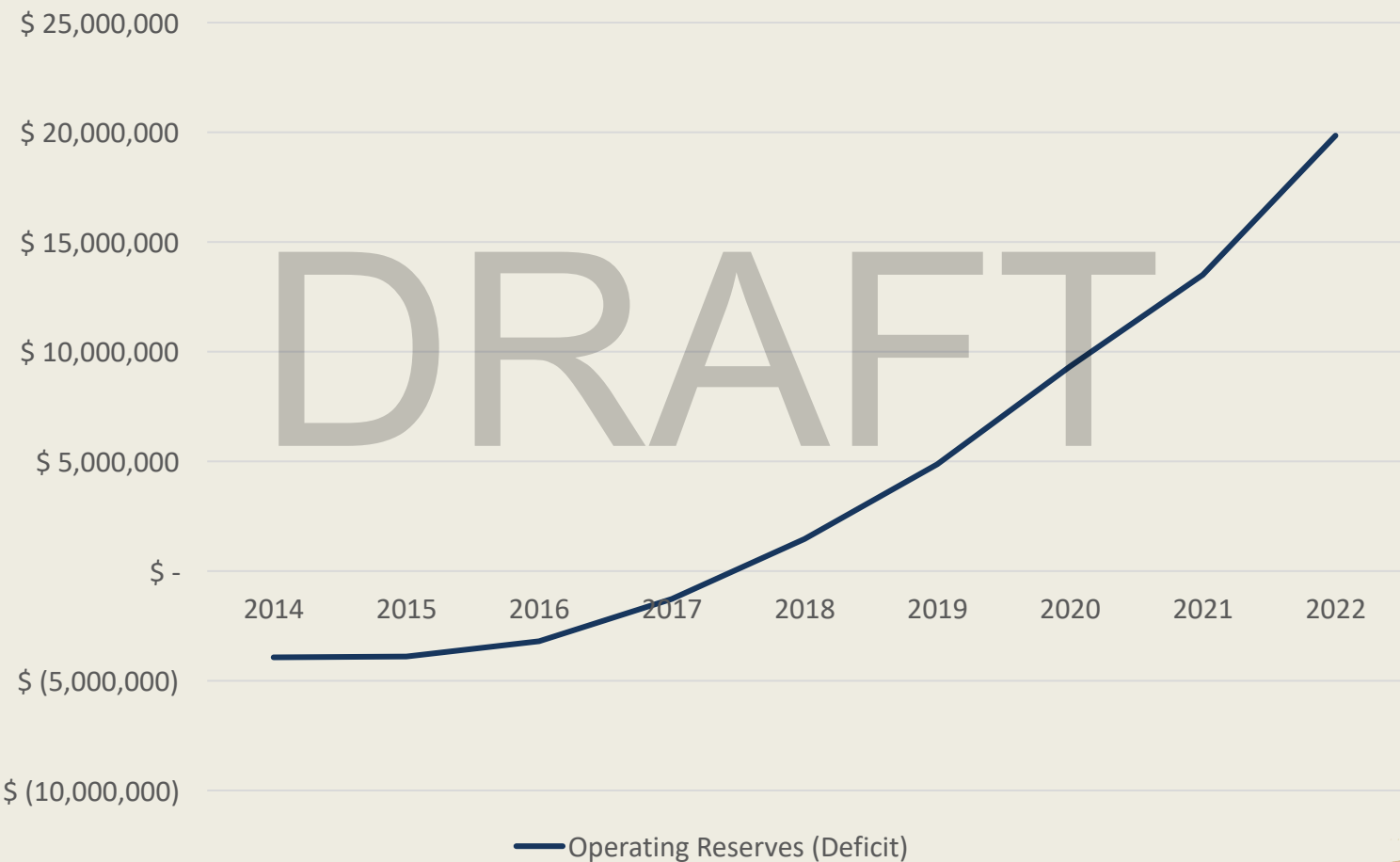
SPLOST FUND

SPLOST BY YEAR	
Remaining Dollars to be Spent	
2011 SPLOST	\$3,700,000
2016 SPLOST	\$4,600,000
2022 SPLOST	\$32,000,000
TOTAL	\$40,300,000

FY 2024 PROPOSED INTERNAL SERVICE FUND BUDGET

PARTIALLY SELF-INSURED HEALTH INSURANCE FUND	FY 23 Adopted	FY 24 Proposed	% Change
Fixed Cost	\$500,132	\$702,487	40%
Claims	\$2,618,652	\$2,730,200	4%
Total	\$3,118,784	\$3,432,687	10%

Operating Reserves



FY 2024 PERSONNEL RECOMMENDATIONS

New Full-time Positions (4)

Parks and Recreation

- Assistant Special Events Coordinator

Police

- Crime Analyst

Building Services

- Code Enforcement Inspector

Smith-Gilbert Gardens

- Horticulture Technician



FY 2024 PERSONNEL RECOMMENDATIONS

Unfreeze Positions (1)

Information Technology

- IT Director

DRAFT

FY 2024 PERSONNEL RECOMMENDATIONS

Reclassifications

- Accounting Manager to Senior Accountant
- Payroll Specialist to Payroll Specialist/Utility Billing Supervisor
- Garden and Education Manager to Garden Manager
- Facilities Manager to Facilities Director
- IT Systems Administrative Specialist to IT Network Manager
- Shift Supervisor to Assistant 911 Director
- Shift Supervisor to 911 Emergency Communications Officer
- Building Services Coordinator to Building Services Supervisor
- Community Development Administrative Assistant transferred to Building Services from Planning and Zoning
- Guest Services Manager to Education and Exhibits Manager



FY 2024 PROPOSED CAPITAL EXPENDITURES

- Police –Seven (7) vehicles, Flock Camera, Finger Printing Machine, Curaplex Active Assailant Kit, Gun Safe, O-light Weapon Lights, Ballistic Shields, Camera and Equipment for Evidence Tech, Crime Analyst equipment, Vehicle Radars
- Parks & Recreation – Three (3) vehicles, Baseball and Softball Scoreboards, Zero Turn Mower, Terry Lane Neighborhood Park upgrades, Additional fitness station as Swift-Cantrell Park
- IT – Cell Hawk CID, Remote UP's, Data Center Hard Drive Replacement, Replacement Computers, Office 365 upgrade City Wide



FY 2024 PROPOSED CAPITAL EXPENDITURES CONTINUED

- City Clerk- Just FOIA Pro
- Building Services – One (1) Vehicle
- Smith-Gilbert Gardens – Irrigation System
- Public Works – Vinyl Plotter
- Streets- Two (2) Zero Turn mowers
- Stormwater- One (1) vehicle, Inventory of stormwater system, MS4 report
- Cemetery – Tree Removal



QUESTIONS?

DRAFT

City of Kennesaw, GA

FY 2024 PROPOSED BUDGET



KENNESAW HISTORY

The Battle-Rama

Perhaps the most unique attraction to ever be found on Cobb Parkway was the Battle-Rama, a diorama replica of the Battle of Kennesaw Mountain. The attraction was opened around the time of the Civil War centennial in 1961. It was described in brochure's as the "World's Finest Civil War Diorama and Museum."

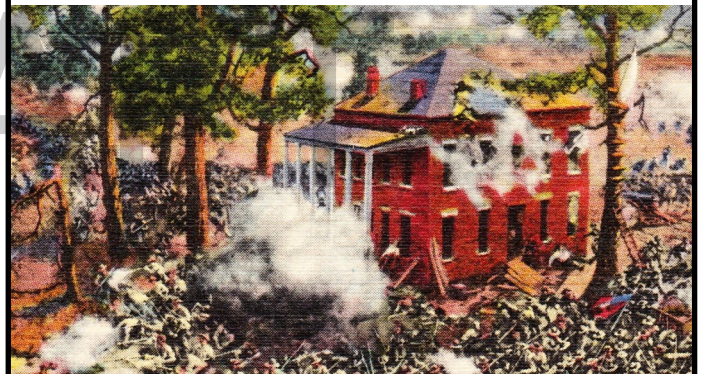
The building itself was also designed to connect to the Civil War. The design was based on the Troop-Hurt House, a home that survived the Battle of Atlanta and is depicted in the Atlanta Cyclorama.

The entire diorama display was the brainchild of brothers Don and Vince Pfab. Vince made the miniature soldiers, while Don served as the business manager.

By 1966, the Pfabs had closed the diorama and the building became the home of a miniature circus display. It later became an antique store, and is today the Uniform Source store just south of Ellison Lakes Drive. The Pfabs moved to Virginia where Vince adapted the display to depict the Battle of Petersburg. As of 2016, the diorama was no longer on display but still owned by the family.



A postcard of the Battle-Rama



The Troop-Hurt House in the Cyclorama



The exterior of the Battle-Rama Building

Presented by Andrew J. Bramlett
at the September 18, 2023,
City of Kennesaw Mayor &
Council Meeting

KENNESAW
HISTORICAL
SOCIETY

Names and Addresses will be disclosed in the Permanent Minutes of the
City of Kennesaw

PLEASE MAKE SURE YOUR NAME IS LEGIBLE AND CLEAR

Mayor & Council Regular Meeting

9/18/2023

Public Comment Sign-in

	Name	Address	Topic
1	Archene J. Brantlett	2940 Armand St.	Local history
2	Millie Simpson	2078 Randolph Cir	Traffic & Developments
3	James Stewart	2975 North Main St NW	Downtown Traffic
4	Anthony Cutler/K2		
5	Madelyn Orochena	2981 N Main Street	
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19			



Item Report

TO: The Honorable Mayor and City Council

FROM: Ricky Stewart, Public Works Director

DATE: October 2, 2023

TITLE: Approval of RESOLUTION to Award bid and Contract for Community Development Block Grant (CDBG) Woodland Acres Sidewalk Improvements Phase VII.

Summary:

Staff solicited bids from qualified contractors to install sidewalk in association with the Community Development Block Grant (CDBG) program. The project will consist of installing a sidewalk on Sycamore Drive from Woodland Drive to Kennesaw Due West Road and along Woodland Drive from White Oak Court to Sycamore Drive. The bid announcement was advertised in the Marietta Daily Journal pursuant to City procurement policy. Two bids were received: S. H. Creel Contracting - \$153,121.45; Curb Atlanta, Inc. - \$168,020.00.

Recommendation:

The Public Works Director recommends approval of the bid and award of the contract to S. H. Creel Contracting for the amount of \$153,121.45 and requests the Mayor to sign the attached resolution and contract.

Fiscal Impact:

Fund Line: 100.1050.54.142000.00000 CDBG Projects

Attachments:

1. RESOLUTION CDBG 2023 S.H. Creel Contract Award
2. S. H. Creel Bid
3. CONTRACTOR AGREEMENT v20220105

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2023-____, 2023

**RESOLUTION TO APPROVE A CONTRACT WITH S. H. CREEL CONTRACTING
FOR SIDEWALK CONSTRUCTION PROJECT ON SYCAMORE DRIVE AND
WOODLAND DRIVE AS A PART OF THE COMMUNITY DEVELOPMENT BLOCK
GRANT PROGRAM**

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

WHEREAS, the City of Kennesaw received funding from a Community Development Block Grant (CDBG) for sidewalk construction along Sycamore Dr and Woodland Dr; and

WHEREAS, S. H. Creel Contracting has offered to perform the work associated with this project which includes construction of a 5' wide sidewalk along Sycamore Dr from Woodland Dr to Kennesaw Due West Rd and along Woodland Dr from White Oak Ct to Sycamore Dr; and

BE IT RESOLVED the Kennesaw City Council authorizes the Mayor to execute a contract with S. H. Creel Contracting for an amount not to exceed \$153,121.45 to perform this project.

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 October, 2023.

ATTEST:

CITY OF KENNESAW

Lea Alvarez, City Clerk

Derek Easterling, Mayor

CITY OF KENNESAW
PUBLIC WORKS DEPARTMENT
REQUEST FOR BIDS

BID FORM

COPY

Community Development Block Grant (CDBG) Sidewalk Improvement Project

TO: CITY OF KENNESAW

FROM: S.H. Creel Contracting

(Contractor)

THE UNDERSIGNED BIDDER, having familiarized themselves with the work required by the bid documents, the site where the work is to be performed, all laws, regulations, and other factors affecting performance of the work, and having satisfied itself/himself/herself of the expense and difficulties attending performance of the work;

HEREBY agrees if selected to enter into a contract and perform all work necessary to the successful completion of the contract as indicated and specified in the RFB for the total contract price of:

\$ 153,121.45

Bidder must also complete the unit price information in the Specification section.

Name of Firm: S.H. Creel Contracting

Firm Address:

756 White Blossom Court Powder Springs, GA 30127

Federal Identification No: 85-2978300

Email: screel@shcreel.com

Telephone No: 404-630-1349

Fax No: _____

By: Scott Creel

09-20-2023

(Typed or Printed)

(Date)

Signature: 

(Signature)

President

(Title)

**CITY OF KENNESAW
REQUEST FOR BIDS**

ATTACHMENT 1

	Quantity	Unit	Unit Price	Total
Grading Complete	1	LS	<u>\$42,661.90</u>	<u>\$42,661.90</u>
5' Sidewalk	1280	SY	<u>\$56.04</u>	<u>\$71,731.20</u>
Sign Reset	6	EA	<u>\$184.74</u>	<u>\$1,108.44</u>
Fence Remove/Reset	200	LF	<u>\$30.79</u>	<u>\$6,158.00</u>
Grassing	1	LS	<u>\$6,157.90</u>	<u>\$6,157.90</u>
Tree Removal	6	EA	<u>\$1,847.37</u>	<u>\$11,084.22</u>
ADA Ramps	6	EA	<u>\$1,477.90</u>	<u>\$8,867.40</u>
Traffic Control	1	LS	<u>\$5,352.39</u>	<u>\$5,352.39</u>
			TOTAL	<u>\$153,121.45</u>

**CITY OF KENNESAW
REQUEST FOR BIDS**

ATTACHMENT 1

FEDERAL WORK AUTHORIZATION PROGRAM

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual firm, or corporation which is contracting with the City of Kennesaw, has registered with and is participating in a federal work authorization program[any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), in P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Kennesaw, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Kennesaw at the time the subcontractor(s) is retained to perform such service.

196892

EEV/Basic Pilot Program* User Identification Number

S.H. Creel Contracting

BY: Authorized Officer or Agent

09/20/2023

Date

President

Title of Authorized Officer or Agent of Contractor

Scott Creel

Printed Name of Authorized Officer Agent

*As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA)

CITY OF KENNESAW
REQUEST FOR BIDS

ATTACHMENT 1

PRIME CONTRACTOR'S WORK AUTHORIZATION CERTIFICATION

Pursuant to O.C.G.A. § 13-10-91, all qualifying contractors and sub-contractors performing work within the State of Georgia on a contract with a public employer must register and participate in a federal work authorization program. Prime contractors may participate in any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent Federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 ("IRCA").

Certify compliance with O.C.G.A. § 13-10-91 by checking the appropriate line below:

 X The undersigned has registered for and is participating in a qualifying federal work authorization program.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services within this state pursuant to this contract with a public employer, the undersigned will secure from such subcontractor(s) a verification of compliance with O.C.G.A. § 131-10-91 using the form "Subcontractor's Work Authorization Certification" or a substantially similar form. The undersigned will maintain records of compliance and provide a copy of each subcontractor's verification to the public employer at the time the sub-contractor is retained to perform such service.


By: Authorized Officer or Agent

09/20/2023
Date

President
Title of Authorized Officer or Agent of Contractor

196892
Basic Pilot User Identification Number
(if applicable)

Scott Creel
Printed Name of Authorized Officer or Agent

With express authority on behalf of:

S.H. Creel Contracting
Printed Name of Prime Contractor

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

20 DAY OF September, 2023


Notary Public Sharon Mccrum

My Commission Expires: 10/11/2025



AIA[®] Document A310[™] – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

SH Creel Contracting

1331 Allgood Road

Marietta, GA 30062

OWNER:

(Name, legal status and address)

City of Kennesaw, GA

2529 J.O. Stephenson Ave.

Kennesaw, GA 30144

BOND AMOUNT:

---Five Percent (5%) of Amount Bid---

PROJECT:

(Name, location or address, and Project number, if any)

Woodland Acres Sidewalk Improvements Phase VII

SURETY:

(Name, legal status and principal place

of business)

Great Midwest Insurance Company

800 Gessner, Suite 600

Houston, TX 77024

ADDITIONS AND DELETIONS:

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

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Init.

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User Notes:

(1177639241)

1

Signed and sealed this 20th day of September 2023.

Theresa Rivera
(Witness)

Cynthia Troxel
(Witness) Cynthia Troxel

SH Creel Contracting

SH Creel
(Contractor as Principal)
President
(Title)



Great Midwest Insurance Company

(Surety) Marvala Erinkitola (Seal)
(Title) Marvala Erinkitola, Attorney-In-Fact

Init.

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User Notes:

(1177639241)

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POWER OF ATTORNEY
Great Midwest Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **GREAT MIDWEST INSURANCE COMPANY**, a Texas Corporation, with its principal office in Houston, TX, does hereby constitute and appoint:

John David Potts, Melissa R. Potts, Marvala Erinkitola, Cynthia Troxel

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **GREAT MIDWEST INSURANCE COMPANY**, on the 1st day of October, 2018 as follows:

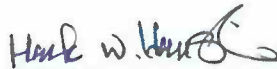
Resolved, that the President, or any officer, be and hereby is, authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed Ten Million dollars (\$10,000,000.00), which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed in the Company's sole discretion and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **GREAT MIDWEST INSURANCE COMPANY**, has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 11th day of February, 2021.

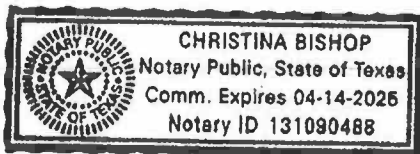


GREAT MIDWEST INSURANCE COMPANY

BY 
Mark W. Haushill
President

ACKNOWLEDGEMENT

On this 11th day of February, 2021, before me, personally came Mark W. Haushill to me known, who being duly sworn, did depose and say that he is the President of **GREAT MIDWEST INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



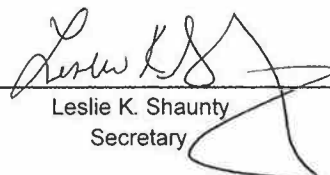
BY 
Christina Bishop
Notary Public

CERTIFICATE

I, the undersigned, Secretary of **GREAT MIDWEST INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Houston, TX this 20th Day of September, 2023.



BY 
Leslie K. Shaunty
Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

CONTRACTOR AGREEMENT
CITY OF KENNESAW
WOODLAND ACRES SIDEWALK IMPROVEMENTS, PHASE VII

This Agreement is executed this ____ day of October 2023 by and between the City of Kennesaw, a political subdivision of the State of Georgia, hereinafter referred to as the “City”, and S. H. Creel Contracting, hereinafter designated as the “Contractor.” The Contractor hereby agrees to deliver to and perform for the City, and the City agrees to pay for those items and services described in the special provisions to this Agreement, which are attached hereto by Exhibit “A” (hereinafter the “Project”) and by this reference made a part hereof. The parties hereby agree to each and every general condition and special provision contained herein as follows:

1. Adequate Personnel; Conditions.

The Contractor hereby warrants that it possesses adequate personnel, equipment, and financial strength to perform each and every obligation contained in the Contract Documents. The Contractor further warrants that it does not have preexisting business commitments which would prevent it from successfully completing each and every term of this Agreement. Contractor warrants that it is professionally and fully qualified to act as the general contractor for the work designated herein and is and will remain licensed to practice engineering and architecture and general contracting by all public entities having jurisdiction over Contractor or the work designated herein.

2. Duration.

This Agreement shall be deemed in effect on the date of execution. Contractor shall commence performing the services herein described upon receipt of the letter to proceed delivered by the City. Contractor shall complete the services herein described within 90 days, unless sooner terminated pursuant to the provisions contained herein.

3. Price.

The parties have stated the contract price in the special provisions attached hereto as Exhibit “A” and by this reference made a part hereof. The contract price for the Project is one hundred fifty three thousand, one hundred twenty one dollars and forty five cents (\$153,121.45).

4. Time of Essence.

Time is of the essence for the completion of all work pursuant to this Agreement. It is hereby understood and mutually agreed by the parties that the beginning date, rate of progress, and time for completion of the work designated herein are essential conditions of this Agreement. The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood that the time for completion of the work described herein is a reasonable time for the completion of the same.

5. Governing Law.

Each and every provision of this Agreement shall be construed in accordance with and governed by Georgia law. The parties acknowledge that this Agreement is executed in Cobb County, Georgia and that the Agreement is to be performed in the City of Kennesaw, Georgia. Each party hereby consents to the Cobb County Superior Court’s sole jurisdiction over any dispute, which arises as a result of the execution or performance of this Agreement, and each party hereto waives any and all objections to venue in the Cobb County Superior Court.

6. Assignments.

The Contractor shall not assign or subcontract, in whole or on part, its rights, or obligations pursuant to this Agreement, or any moneys due or to become due hereunder, without the prior written consent of the City.

7. Modification.

This Agreement shall not be modified verbally. Any modification of the terms of this Agreement shall be reduced to writing and signed by the duly authorized representative of each party hereto.

8. Due Diligence.

The Contractor shall perform all authorized work pursuant to this Agreement promptly and diligently in a good, proper, and workmanlike manner in accordance with the terms of this Agreement.

9. Risk of Loss.

The Contractor shall be responsible for, and bear the expense of, any damage to or destruction of the goods and supplies furnished pursuant to this Agreement until such goods or supplies are delivered to, and accepted by, the City at 2529 J.O. Stephenson Avenue, Kennesaw, Cobb County, Georgia or such other destination as is indicated in the special provisions attached hereto.

10. Invoices.

The City shall have no obligation to pay for the materials furnished pursuant to this Agreement until the Contractor has submitted proper invoices or vouchers describing with specificity the nature of the supplies furnished, the quantity of supplies furnished, and a statement that the supplies are furnished free from any lien or encumbrance.

11. Taxes.

The Contractor shall pay all applicable taxes assessed against the supplies, which form the subject of this Agreement.

12. Permits and Licenses; Inspection; Tests.

The Contractor shall procure all permits and licenses or other authorization necessary, pay all charges and fees, and give all notices necessary and incidental to the performance of the terms of this Agreement. Contractor has visited and inspected the work site and local conditions under which the work is to be performed and Contractor has performed such tests, if any, as are necessary to determine the conditions under which the work will be performed, and Contractor accepts the conditions of the work site and taken those conditions into account in entering into this Agreement.

13. Termination for Cause.

If the Contractor shall be adjudged as bankrupt, or if it shall make a general assignment for the benefit of its creditors, or if a receiver shall be appointed for the Contractor, or if it shall consistently or repeatedly refuse or fail to supply the products designated herein, or if it should refuse or fail to make payment to persons supplying labor or materials for the products pursuant to the Agreement, or if the Contractor fails to observe or perform the provisions of this Agreement or is guilty of a substantial violation of any provision of the Contract Documents, then the City, after serving at least ten (10) days prior written notice to the Contractor of its intent to terminate this Agreement pursuant to such default, may terminate this Agreement without prejudice to any other rights or remedies provided by law and may take possession of the supplies delivered to the City prior to such termination. The Contractor shall be liable to the City for any damage resulting from the Contractor's default.

14. Inspection and Testing.

The Contractor shall make the materials or supplies, which are the subject of this Agreement available to the City for inspection and testing by the City at the Contractor's expense prior to the Contractor's delivery of the materials or supplies to the City. All supplies (which term throughout this Agreement includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and testing by the City, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

15. Liquidated Damages.

In the event that the materials or services which form the subject of this Agreement are not delivered as set forth in this Agreement, the City may terminate this Agreement and recover liquidated damages in an amount set forth in the special provisions to this Agreement. The liquidated damages enumerated herein are not intended to penalize the Contractor, but the parties agree that due to each party's difficulty in specifically quantifying the damages which would be occasioned due to the breach of this Agreement, the parties deem it advisable to stipulate a specific sum per day as damages as a result of the Contractor's failure to deliver the supplies or services which form the subject of this Agreement in a timely manner. The Contractor shall not be liable for liquidated damages due to a delay occasioned by unforeseeable causes beyond the control of the Contractor if such causes do not result from the default or negligence of the Contractor. The Contractor shall not be liable for damages due to delay in the performance of this Agreement if such delay is caused by acts of God or of the public enemy, acts of the government, fires, epidemics, quarantine restrictions, strikes or freight embargoes. Such liquidated damages enumerated herein shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects on Contractors performance hereunder for other matters other than delays in completion. When the City believes that completion may be delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due Contractor and amount then believed by City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving completion, or any part thereof, for which City has withheld payment, the City shall promptly release to Contractor those funds withheld, but no longer applicable as liquidated damages.

16. Contract Documents.

Copies of the Contractor's proposal to furnish the labor, materials, and supplies which form the subject of this Agreement and all drawings and specifications submitted during the bidding process are attached hereto and incorporated herein by reference. The Contractor shall list each such document and describe each original document's location as a part of the special provisions to this Agreement. In the event of conflicting terms or ambiguity between this Agreement and the Contractor's proposal, the Contractor's proposal shall control.

17. Additional Security.

The Contractor shall provide additional bond security in the event that the City deems additional security necessary to insure performance of the Agreement.

18. Accounting and Records Retention.

Contractor shall maintain accounts and records, including books, records, documents, personal property, financial records and other evidence adequate to identify and account for all costs and expenses pertaining to this Agreement and such other records as may be requested by the City to

assure proper accounting for all funds, both public and private. Said records shall be made available for audit purposes to the City or its representative(s) upon request and without additional charge to the City and shall be retained for at least six (6) years after expiration of this Agreement, termination or completion of this project unless permission to destroy them is granted by the City. Contractor's records and accounts shall at all times meet or exceed the applicable requirements of Federal, State and City law, rules and regulations.

19. Indemnification.

To the fullest extent permitted by law, the Contractor shall, at its sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless the City, its agents, officers, elected officials, attorneys, and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses including, but not limited to, attorney's fees arising out of or resulting from the performance of this Agreement, provided that any such claim, damage, action, judgment, cost, penalty, liability, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting there from, and is caused in whole or in part by any act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless whether such injury is caused in whole or in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any of the rights or obligations of indemnity which would otherwise exist as to any party or person described herein.

20. Severability.

In the event that any provision of this Agreement is determined to be invalid or unenforceable by a Court of competent jurisdiction, such provision shall be deemed severed from this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.

21. New Materials.

The Contractor hereby represents and warrants to the City that any and all materials will be new unless otherwise specified, and the Contractor further represents that all work will be of good and workmanlike quality and free from defects in accordance with the specifications.

22. Set-off.

In the event that the City accepts supplies with minor defects, the Contractor shall deduct the proportionate cost of such defects from its invoice to the City concerning such supplies.

23. Defective Materials.

The Contractor agrees to remedy promptly, and without cost to the City, any defective materials or workmanship which appear within the warranty period stated in the special provisions attached to this Agreement.

24. Defective Materials-Liability.

No provision contained in this Agreement shall be held to limit the Contractor's liability to the City for defects in the supplies furnished to an amount less than the legal limit of liability in accordance with law.

25. Manufacturer's Warranties.

No provision contained in this Agreement shall be construed to limit the terms and conditions of any manufacturer's warranty concerning the supplies furnished pursuant to this Agreement.

26. Notices.

Any and all notices pursuant to this Agreement shall be deemed to have been properly delivered when deposited in the United States mail for delivery to the Contractor at the address provided on the Contractor's proposal. Notices to the City shall be deemed to have been properly delivered when mailed to the City Manager, City of Kennesaw, 2529 J.O. Stephenson Avenue, Kennesaw, Georgia 30144-2797.

27. Bid Bond.

If a bid bond is required pursuant to the City's specifications, such bond must be in an amount of not less than five percent of the bid submitted by the Contractor. The bid bond will be forfeited if the Contractor fails to execute an agreement with the City substantially similar to this Agreement within fifteen days after notification of the award of the Project.

28. Performance and Payment Bonds.

The Contractor shall furnish the City a performance bond in the form enclosed in the City's request for bids in an amount of one hundred percent (100%) of the lump sum amount bid for the full and complete performance of this Agreement. The Contractor shall also furnish a payment bond on the form enclosed in the City's request for bids insuring the payment of all persons performing labor and furnishing materials or equipment in connection with this Agreement in an amount of one hundred and ten percent (110%) of the lump sum amount bid for the full and complete performance of this Agreement. Accordingly, the Contractor warrants and agrees that, for any Change Order increasing the Contract Sum by five percent or more or when the total cost of the work has increased by five percent (5%) or more, it shall obtain a written amendment to the performance bond increasing the penal amounts of the bond to one hundred percent (100%) of the new Contract Sum and it shall obtain a written amendment to the payment bond increasing the penal amounts of the bond to one hundred and ten percent (110%) of the new Contract Sum effective as of the date of the Change Order. The premium increase, if any, may be properly included in the cost of the Change Order. The City shall approve no payment for the work provided by the Change Order until the Contractor has provided the written amendment to the City. The Contractor shall furnish in writing both a performance bond and a payment bond executed by a duly authorized representative within (30) days of the execution of this Agreement. The Contractor's failure to provide said bonds shall authorize the City to terminate this Agreement and pursue all remedies available to the City at law or in equity. All bonds at the time of issuance must be issued by a company authorized by the Georgia Insurance Commissioner to transact the business of suretyship in the State of Georgia, and shall have a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.

29. Change Orders.

The City may at any time, by written order, and without notice to the sureties, make changes, within the general scope of this Agreement, in any one or more of, but not limited to, the following: (a) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the City in accordance therewith; (b) method of shipment or packing; (c) construction materials; (d) construction design; (e) construction specifications; and (f) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of this Agreement, an equitable adjustment shall be made in the contract price of delivery schedule, or both, and the Agreement shall be modified in writing

accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, that the City, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment pursuant to this Agreement. Where the cost of property made obsolete or rendered unnecessary as a result of a change is included in the Contractor's claim for adjustment, the City shall have the right to prescribe the manner of disposition of such property. However, nothing in this clause shall excuse the Contractor from proceeding with the Project as changed.

30. Variation in Quantity.

No variation in the quantity of any item or materials called for by this Agreement shall be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in the manufacturing or construction processes, and then only to the extent, if any, specified elsewhere in this Agreement.

31. Rejection of Nonconforming Materials.

In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this Agreement, the City shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed, or, if permitted or required by the City, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies/materials or lots of supplies/materials which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the City either: (a) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned to the City thereby, or (b) may terminate this Agreement for default. Unless the Contractor corrects or replaces such supplies within the delivery schedule, the City may require the delivery of such supplies at a reduction in price, which is equitable under the circumstances.

32. Inspection Facilities.

If any inspection or test is made by the City on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the City inspectors in the performance of their duties. If City inspections or tests are made at a point other than the premises of the Contractor or a subcontractor, said inspections or tests shall be at the expense of the City except as otherwise provided in this Agreement; provided that in case of rejection, the City shall not be liable for any reduction in value of samples used in connection with such inspections or tests. All inspections and tests by the City shall be performed in such a manner as not to unduly delay the work. The City reserves the right to charge to the Contractor any additional costs of City inspections and tests when supplies are not ready at the time such inspections and tests are requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Agreement; but failure to inspect and accept or reject the supplies shall neither relieve the Contractor from responsibility for such supplies which are not in accordance with the Project requirements nor impose liability on the City therefore.

33. Testing-Liability.

The inspection and testing by the City of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Project requirements which

may be discovered prior to acceptance. Except as otherwise provided, in this Agreement, acceptance shall be conclusive except as regards to latent defects, fraud, or such gross mistake as amounts to fraud.

34. Inspections-Records.

The Contractor shall provide and maintain an inspection system acceptable to the City covering the supplies/materials and construction hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the City during the performance of this Agreement and for such longer period as may be specified elsewhere in this Agreement.

35. Payments.

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies/materials delivered and accepted or services or labor rendered and accepted, less deductions, if any, as herein provided.

- (a) The Contractor shall submit to the City an itemized Invoice for Payment in an AIA format. The invoice shall include backup material including, but not limited to, receipts or other vouchers, showing the payments for materials and labor, including payments previously made to Subcontractors.
- (b) The City may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect the City from loss because of the following conditions:
 - (i) Defective work not remedied;
 - (ii) Claims or liens filed;
 - (iii) Failure of the Contractor to make payments properly to Subcontractor or Supplier for materials or labor;
 - (iv) A reasonable doubt that the Contract can be completed for the balance then unpaid;
 - (v) Damage to a Separate Contractor or to the City or a third party;
 - (vi) Failure to maintain a rate of progress consistent with the schedule; or
 - (vii) Failure to supply enough skilled workers or proper materials.

When the above grounds are removed, payment shall be made for amounts withheld because of them. With regard to cases (ii) and (iii) above, the City may agree to payment upon receipt of a satisfactory Bond to Discharge Claim in the amount of double the claim. At the option of the City, adherence to the Overall Project Schedule shall be a condition precedent to the right of the Contractor to demand payment of an application for payment or certificate. No omission on the part of the City to exercise the aforesaid option shall be construed to be a waiver of breach of the Overall Project Schedule or acquiescence therein, and the City may exercise its option from time to time and as often as may be expedient.

36. Termination for Cause.

The City may, in addition to the provisions of Paragraph 13 herein, and subject to the provisions of Paragraph 46, by written notice of default to the Contractor, terminate the whole or any part of this Agreement in any one of the following circumstances:

- (a) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
- (b) If the Contractor fails to perform any of the other provisions of this Agreement, or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the City may authorize in writing) after receipt of notice from the City specifying such failure.

37. Costs to Cure.

In the event the City terminates this Agreement in whole or in part as provided in Paragraph 13, Paragraph 36, or Paragraph 46, the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the City for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Agreement to the extent not terminated pursuant to the provisions of Paragraph 13, Paragraph 36, and/or Paragraph 40.

38. Force Majeure.

Except with respect to defaults of subcontractor, the Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises out of causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or to the public enemy, acts of the City, acts of the City, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather exceeding the average climatic conditions in the area of the Work. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule. The Contractor shall, within seven (7) days from the beginning of such delay, notify the City, in writing, of the causes of the delay, who shall ascertain the facts and the extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

39. Title to Materials Upon Termination.

If this Agreement is terminated for any reason, the City, in addition to any other rights provided in this Agreement, may require the Contractor to transfer title and deliver to the City: (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and agreement rights (hereinafter called "construction materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this Agreement as has been terminated. The Contractor shall, upon direction of the City, protect and preserve property in possession of the Contractor in which the City has an interest. Payment for completed supplies delivered to and accepted by the City shall be at the contract price. Payment for construction materials delivered to and accepted by the City and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and the City. The City may withhold from amounts otherwise due the Contractor for such completed supplies, construction services, or construction materials such sum as the City determines to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders.

40. Review of Termination.

If, after notice of termination of this Agreement, it is determined for any reason that the Contractor was not in default under the provisions of this Agreement, or that the default was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued as a Termination for Convenience of the City.

41. Additional Remedies.

The rights and remedies of the City provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

42. Subcontractors.

As used in this Agreement, the terms “subcontractor” and “subcontractors” mean subcontractor(s) at any tier. Contractor assumes full responsibility for the improper acts and omissions of its subcontractors or others employed or retained by Contractor in connection with the work designated herein.

43. Solicitation of Contract.

The Contractor, in accordance with Title 13 of the Code of Georgia, warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

44. Termination for Convenience.

The performance of work under this Agreement may be terminated by the City in accordance with this clause in whole, or in part, whenever the City shall determine that such termination is in the best interest of the City. Any such termination shall become effective by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Agreement is terminated, and the date upon which such termination becomes effective. Upon termination for convenience by the City, the provisions of Paragraphs 13, 36, 37, 39, and 41 herein shall apply to the extent applicable.

45. Contractor’s Duties upon Termination.

After receipt of a Notice of Termination pursuant to any of the applicable Paragraphs herein, and except as otherwise directed by the City, the Contractor shall:

- (a) Stop work under the Agreement on the date and to the extent specified in the Notice of Termination;
- (b) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (d) Assign to the City, in the manner, at the time, and to the extent directed by the City, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the City, to the extent it may require, which approval or ratification shall be final for all the purposes of this clause;
- (f) Transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
 - (i) the fabricated or unfabricated parts, work in process, completed work, supplies and other materials produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and
 - (ii) The completed or partially completed plans, drawings, information, and other property, which, if the Agreement had been completed, would have been required to be furnished to the City.

- (g) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the City, any property of the types referred to in (f), above; provided, however, that the City:
 - (i) Shall not be required to extend credit to any purchaser, and
 - (ii) May acquire any such property under the conditions prescribed by and at a price or prices approved by the City; provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to the Contractor under this Agreement or shall otherwise be credited to the price or cost of the work covered by this Agreement or paid in such other manner as the City may direct;
- (h) Complete performance of such part of the work as shall not have been terminated by the Notices of Termination; and
- (i) Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Agreement, which is in the possession of the Contractor, and in which the City has or may acquire an interest.

46. Termination-Claims.

After receipt of a Notice of Termination pursuant to any of the applicable Paragraphs herein, the Contractor shall submit to the City its termination claim, in the form and with the certification prescribed by the City. Such claim shall be submitted promptly but in no event later than one (1) month from the effective date of termination, unless one or more extensions in writing are granted by the City upon request of the Contractor made in writing within such one-month period or authorized extension thereof. However, if the City determines that the facts justify such action it may receive and act upon any termination claim at any time after such one-month period of any extensions thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the City may, subject to any review required by the City's procedures in effect as of the date of execution of this Agreement, determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

47. Settlement of Claims.

Subject to the provisions of Paragraph 48, the Contractor and the City may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work, which amount or amounts may include a reasonable allowance for profit on work done; provided, however, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Agreement shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in Paragraph 50 prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the City to agree upon the whole amount to be paid to the Contractor by reason of the termination of work shall be deemed to limit, restrict, or otherwise determine or affect the amount which may be agreed upon to be paid to the Contractor.

48. Payment of Claims.

In the event of the failure of the Contractor and the City to agree upon the amount to be paid to the Contractor by reason of the termination of work, the City shall determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

- (a) For completed work, services, or materials accepted by the City (or sold or acquired as provided above) and not previously paid for, a sum equivalent to the aggregate price for

such supplies computed in accordance with the price specified in the Agreement, appropriately adjusted for any saving of freight or other charges;

(b) The total of:

- (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies/materials paid or to be paid for under Subparagraph (a) hereof;
- (ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, which are properly chargeable to the terminated portion of the Agreement (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable above).

The total sum to be paid to the Contractor under (a) and (b) of this Paragraph shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the City shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, the fair market value, as determined by the City, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the City or to a buyer.

49. Set-Offs from Payment.

In arriving at the amount due the Contractor there shall be deducted:

- (a) all unliquidated advance or other payments on account heretofore made to the Contractor, applicable to the terminated portion of this Agreement;
- (b) any claim which the City may have against the Contractor in connection with this Agreement; and
- (c) the agreed price for, or the proceeds for, any work, services, materials, supplies or other things not provided or performed by the Contractor or sold pursuant to the provisions of this Agreement, and not otherwise recovered by or credited to the City.

50. Partial Termination.

If the termination hereunder is partial, prior to the settlement of the terminated portion of this Agreement, the Contractor may file with the City a request in writing for an equitable adjustment of the price or prices specified in the Agreement relating to the continued portion of the Agreement (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price.

51. Partial Price.

The City may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this Agreement whenever in the opinion of the City the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due such excess shall be payable by the Contractor to the City upon demand, together with interest computed at the rate of seven (7) percent per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the City; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the City by reason of the circumstances.

52. Records Inspection.

Unless otherwise provided for in this Agreement, or by applicable statute, the Contractor, from the effective date of termination and for a period of six (6) years after final settlement under this Agreement, shall preserve and make available to the City at all reasonable times at the office of the Contractor but without direct charge to the City, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this Agreement and relating to the work terminated hereunder, or, to the extent approved by the City, photographs, microphotographs or other authentic reproductions thereof.

53. Compliance

This Contract shall be governed by the law of Georgia. The Contractor shall comply with all laws, rules, regulations, ordinances, and orders of any government agency having jurisdiction in the performance of the Work and shall ensure the compliance of its Subcontractors. Without limiting the generality of the foregoing Paragraph, the following laws are specifically referenced:

- (a) Contractor agrees that any payments made by it to any subcontractor, agent, or representative in performance of the obligations hereunder shall fully comply with the terms and requirements of the Federal enacted Davis-Bacon Act as applicable.
- (b) Contractor agrees to comply with Federal Buy America regulations as applicable.
- (c) Contractor agrees to comply with Department of Transportation Seismic Safety Regulations as applicable.
- (d) Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act as applicable.
- (e) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act.
- (f) Contractor agrees to comply with all applicable standards, orders or regulations related to lobbying, including the Byrd Anti-Lobbying Amendment. The undersigned Contractor certifies, to the best of his or her knowledge and belief that:
 - (i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].
 - (iii) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

- (iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (g) Contractor agrees to comply with all applicable standards, orders or regulations related to access to records and reports under state and federal law.
- (h) Contractor agrees to comply with all applicable standards, orders or regulations related to Federal Changes.
- (i) Contractor agrees to comply with all applicable standards, orders or regulations related to bonding requirements.
- (j) Contractor agrees to comply with all applicable standards, orders or regulations related to the Clean Air Act.
- (k) The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligation or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the underlying contract.
- (l) Contractor agrees to comply with all applicable standards, orders or regulations related to Program Fraud and False or Fraudulent Statements and Related Acts.
- (m) Contractor agrees to comply with all applicable standards, orders or regulations related to Civil Rights, including Nondiscrimination, Equal Employment Opportunity, Race, Color, Creed, National Origin, Sex, Age or Disabilities.
- (n) Contractor agrees to comply with all applicable standards, orders or regulations related to Disadvantaged Business Enterprise.

54. Insurance.

The Contractor shall be responsible to the City from the time of the signing of the Agreement or the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the Work by the Contractor, or any of its Subcontractors, its agents, employees or others working at the direction of the Contractor or on its behalf. The Contractor shall procure the insurance coverage identified below at the Contractor's expense and shall furnish the City an insurance certificate listing the City of Kennesaw as the certificate holder and as an additional insured and should read "The City of Kennesaw, Georgia, 2529 J.O. Stephenson Ave., Kennesaw, GA 30144". Occurrence coverage is required. Claims-made coverage is not acceptable. The insurance certificate must provide the following:

- (a) Name and address of authorized agent;
- (b) Name and address of insured;
- (c) Name of insurance company(ies);
- (d) Description of policies;
- (e) Policy Number(s);
- (f) Policy Period(s);
- (g) Limits of liability;
- (h) Name and address of City as certificate holder;
- (i) Project Name and Number;
- (j) Signature of authorized agent;
- (k) Telephone number of authorized agent; and

- (l) Mandatory thirty-day notice of cancellation or non-renewal.

The insurance coverage required below shall be issued by a company licensed by the Georgia Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance and shall be an insurer with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:

- (a) The insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire until sixty days after the City has received written notice thereof, as evidenced by return receipt of certified mail or statutory mail, or until such time as other insurance coverage providing protection equal to protection called for in this Contract shall have been received, accepted and acknowledged by the City.
- (b) The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives.
- (c) All deductibles shall be paid for by the Contractor.
- (d) These policies shall be primary, noncontributing with any applicable insurance carried by the City of Kennesaw and shall contain a severability of interests clause in respect to cross liability, protecting each additional insured as though a separate policy had been issued to each.
- (e) Certification of each policy shall be furnished, in duplicate, to the City, at least fifteen (15) days prior to commencement of services under the signed Agreement.

The Contractor also agrees to purchase insurance and have the authorized agent state on the insurance certificate that the Contractor has purchased the following types of insurance coverage, consistent with the policies and requirements of O.C.G.A. § 50-21-37. The minimum required coverage and liability limits are as follows:

- (a) The Contractor agrees to provide Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. The Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the Contractor in the following language: *This is to certify that all Subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the Contractor's workers' compensation insurance.*

State of Georgia statutory limits required:

- (i) \$1,000,000.00;
 - (ii) \$1,000,000.00 each accident;
 - (iii) \$1,000,000.00 disease policy limit; and
 - (iv) \$1,000,000.00 disease each employee.
- (b) The Contractor shall provide Commercial General Liability Insurance that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The CGL policy must include separate aggregate limits per Project and shall provide at a minimum the following limits:
 - (i) Premises and Operations \$ 1,000,000.00 per Occurrence;

- (ii) Products and Completed Operations \$ 1,000,000.00 per Occurrence;
 - (iii) Personal Injury \$ 1,000,000.00 per Occurrence;
 - (iv) Contractual \$ 1,000,000.00 per Occurrence; and
 - (v) General Aggregate \$ 2,000,000.00.
- (c) The Contractor shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limit Bodily Injury, Property Damage for each occurrence.

55. Georgia Security and Immigration Compliance Act Requirements.

The Contractor hereby certifies its compliance with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act OCGA 13-10-90 *et seq.*, by registering and verifying information of all new employees; and by executing any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 *et seq.* Contractor warrants that Contractor has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services under this Contract.

56. Dispute Resolution.

- (a) If a dispute arises out of or relates to this Contract or its breach, the parties shall endeavor to settle the dispute first through direct discussions between the parties' representatives who have the authority to settle the dispute. If the parties' representatives are not able to promptly settle the dispute, they shall refer the dispute to the City Manager who shall have the authority to settle the dispute. If the dispute is not settled by the City Manager, the parties may submit the dispute to mediation.
- (b) If the dispute cannot be settled pursuant to Section (a) above, the parties may elect to submit the dispute to mediation. The parties agree to conclude such mediation within sixty days of electing mediation. The parties shall select a mutually agreeable mediator and shall share the cost of the mediator equally. Either party may terminate the mediation at any time after the first session, but the decision to terminate shall be communicated in writing directly by the party's representative to the other party's representative and the mediator.
- (c) No litigation may be commenced without first following the process in paragraphs (a) and (b) above. Litigation may be filed in the Superior Court of Cobb County, Georgia, after the filing party provides thirty days written notice to the opposing party. The parties hereby agree that the Superior Court of Cobb County, Georgia shall have exclusive jurisdiction and venue in all matters concerning this Agreement.
- (d) Unless otherwise directed by the City, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

IN WITNESS WHEREOF, the parties hereby execute this Agreement on the date first above written.

ATTEST:

CITY OF KENNESAW, GEORGIA

Lea Addington, City Clerk

Derek Easterling, Mayor
City of Kennesaw

CONTRACTOR: _____

By: _____

Title: _____

ATTEST:

Corporate Secretary (Seal)

Sworn and subscribed before me this
____ day of _____, 202__.

WITNESS

Notary Public
Commission Expires:

EXHIBIT "A"
SPECIAL STIPULATIONS

1. 1. GENERAL

- 1.1 It is the intention of this specification to establish and define the work to be performed and, in addition, to determine the capability and experience of the contractor desiring to provide such services.
- 1.2 The project includes furnishing all labor, material, equipment for construction and related improvements as stated in the Scope of Work for subject project.

2. SCOPE OF WORK

- 2.1 2300 l.f. of 5' sidewalk, 4" thick, and ADA ramps along the northern side of Sycamore Dr from Woodland Dr to Kennesaw Due West Rd and along Woodland Dr from White Oak Ct to Sycamore Dr
- 2.2 The removal of trees in the path of the sidewalks will be necessary and will be the responsibility of the contractor.
- 2.3 The contractor shall be responsible for all excavation, sub-grade compaction, forming, pouring and finishing the concrete, and cleaning up the site including installing necessary topsoil and grassing to restore the disturbed area to its original condition.
- 2.4 All major utilities: electric, water, communications, gas and sewer are present within the project corridor. Contractor will be responsible for coordinating and obtaining the necessary approvals and permits associated with this project.
- 2.5 The quantities shown on the Unit Price Sheet are approximate only. The Bidder is solely responsible for verifying all quantities, means and methods for the work. The contract sum will only increase or decrease by a change in the project scope and change order approved by the City prior to the work being done.

CITY OF KENNESAW
PUBLIC WORKS DEPARTMENT
REQUEST FOR BIDS

BID FORM

COPY

Community Development Block Grant (CDBG) Sidewalk Improvement Project

TO: CITY OF KENNESAW

FROM: S.H. Creel Contracting

(Contractor)

THE UNDERSIGNED BIDDER, having familiarized themselves with the work required by the bid documents, the site where the work is to be performed, all laws, regulations, and other factors affecting performance of the work, and having satisfied itself/himself/herself of the expense and difficulties attending performance of the work;

HEREBY agrees if selected to enter into a contract and perform all work necessary to the successful completion of the contract as indicated and specified in the RFB for the total contract price of:

\$ 153,121.45

Bidder must also complete the unit price information in the Specification section.

Name of Firm: S.H. Creel Contracting

Firm Address:

756 White Blossom Court Powder Springs, GA 30127

Federal Identification No: 85-2978300

Email: screel@shcreel.com

Telephone No: 404-630-1349

Fax No: _____

By: Scott Creel

09-20-2023

(Typed or Printed)

(Date)

Signature: 

(Signature)

President

(Title)

**CITY OF KENNESAW
REQUEST FOR BIDS**

ATTACHMENT 1

	Quantity	Unit	Unit Price	Total
Grading Complete	1	LS	<u>\$42,661.90</u>	<u>\$42,661.90</u>
5' Sidewalk	1280	SY	<u>\$56.04</u>	<u>\$71,731.20</u>
Sign Reset	6	EA	<u>\$184.74</u>	<u>\$1,108.44</u>
Fence Remove/Reset	200	LF	<u>\$30.79</u>	<u>\$6,158.00</u>
Grassing	1	LS	<u>\$6,157.90</u>	<u>\$6,157.90</u>
Tree Removal	6	EA	<u>\$1,847.37</u>	<u>\$11,084.22</u>
ADA Ramps	6	EA	<u>\$1,477.90</u>	<u>\$8,867.40</u>
Traffic Control	1	LS	<u>\$5,352.39</u>	<u>\$5,352.39</u>
			TOTAL	<u>\$153,121.45</u>

3. The contract price for such materials and construction services shall not exceed the amount of \$ 153,121.45.
4. Pursuant to Paragraph 16 of this Agreement, the Contractor shall provide copies of its proposal and all drawings and specifications submitted during the bidding process. Each such document and the location of the original is listed as follows:
 - 1) Description of Specifications
 - 2) Proposal and Contract
 - 3) Bid quotation
 - 4) E-Verify Forms for All Contracts
 - 5) _____
 - 6) _____
 - 7) _____
 - 8) _____
 - 9) _____
 - 10) _____
5. Pursuant to Paragraphs 23, 24 and 25 of this Agreement, the Contractor agrees to remedy promptly, and without cost to the City, any defective materials or workmanship which appear within two (2) years of the date of completion of the services outlined in this Agreement.
6. Pursuant to Paragraph 15 of this Agreement, the Contractor agrees to pay liquidated damages in the amount of \$250.00 per day for each day the Contractor fails to complete its duties and obligations under this Agreement beyond the time period set forth within.

PRIME CONTRACTOR'S WORK AUTHORIZATION CERTIFICATION

Pursuant to O.C.G.A. § 13-10-91, all qualifying contractors and sub-contractors performing work within the State of Georgia on a contract with a public employer must register and participate in a federal work authorization program. Prime contractors may participate in any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent Federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 ("IRCA").

Certify compliance with O.C.G.A. § 13-10-91 by checking the appropriate line below:

_____ The undersigned has registered for and is participating in a qualifying federal work authorization program.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services within this state pursuant to this contract with a public employer, the undersigned will secure from such subcontractor(s) a verification of compliance with O.C.G.A. § 13-10-91 using the form "Subcontractor's Work Authorization Certification" or a substantially similar form. The undersigned will maintain records of compliance and provide a copy of each subcontractor's verification to the public employer at the time the sub-contractor is retained to perform such service.

By: Authorized Officer or Agent

Date

Title of Authorized Officer or Agent of Contractor

Basic Pilot User Identification Number
(if applicable)

Printed Name of Authorized Officer or Agent

With express authority on behalf of:

Printed Name of Prime Contractor

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

_____ DAY OF _____, 20__

Notary Public

My Commission Expires: _____

300-10-1-.08 Subcontractor Affidavit (Georgia Administrative Code)
O.C.G.A. § 13-10-91 (2007), TITLE 13. CONTRACTS
CHAPTER 10. CONTRACTS FOR PUBLIC WORKS
ARTICLE 3. SECURITY AND IMMIGRATION COMPLIANCE

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services under a contract with the City of Kennesaw has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Kennesaw, contractor will secure from each subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Kennesaw at the time the subcontractor(s) is retained to perform such service.

EEV/Basic Pilot Program* User Identification Number

By: Authorized Officer or Agent
(Subcontractor Name)

Date

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

_____ DAY OF _____, 202__

Notary Public

My Commission Expires: _____

SUBMITTAL REQUIREMENTS

Specific Requirements

Georgia Security and Immigration Compliance Act

Complete Section I. Contractor Affidavit

Contractor agrees to comply with all of the contractor requirements of the:

“Georgia Security and Immigration Compliance Act of 2006,” as codified on O.C.G.A. sections 13-10-90 and 13-10-91 and regulated and regulated in chapter 300-10-1 of the Rules and Regulations of the State of Georgia, “Public Employers, Their Contractor and Sub-Contractors Required to Verify New Employee Work Eligibility Through a Federal Work Authorization Program,” Accessed at <http://www.dol.state.ga.us> as further set forth below.

- A. Contractor Agreement to Verify the Work Eligibility of its New Hires through the U. S. Department of Homeland Security’s “Employment Eligibility Verification(EEV)/Basic Pilot Program.”
 - **Contractor** agrees to verify the work eligibility of all of **Contractor’s** newly hired employees through the U. S. Department of Homeland Security’s **Employment Eligibility Verification(EEV)/Basic Pilot Program**, accessed through the Internet at <https://www.vis-dhs.com/EmployerRegistration>, in accordance with the provisions and timeline found in O.C.G.A. 13-10-91 and Rule 300-10-1-02 of the Rules and Regulations of the State of Georgia.
- B. Contracts Affected by the “Georgia Security and Immigration Compliance Act.”
 - **Contractor** agrees that the contractor and subcontractor requirements of the “Georgia Security and Immigration Compliance Act of 2006” apply to contracts for, or in connection with, the physical performance of services within the State of Georgia.
- C. Contractor’s Agreement to Require “Georgia Security Immigration Compliance Act” Compliance of its Subcontractors connected with this Contract.
 1. **Contractor** agrees to require O.C.G.A. Sections 13-10-90 and 13-10-91 compliance in all written agreements with any subcontractor employed by **Contractor** to provide services connected with this Agreement, as required pursuant to O.C.G.A. 13-10-91.
 2. **Contractor** agrees to obtain from any subcontractor that is employed by **Contractor** to provide services connected with this Agreement, the subcontractor’s indication of the employee-number category applicable to the subcontractor.
 3. **Contractor** agrees to secure from any subcontractor engaged to perform services under this Agreement an executed “Subcontractor Affidavit,” as required pursuant to O.C.G.A. 13-10-91 and Rule 300-10-1-.08 of the Rules and Regulations of the State of Georgia, which rule can be accessed at <http://www.dol.state.ga.us>.

4. **Contractor** agrees to maintain all records of the subcontractor's compliance with O.C.G.A. 13-10-91 and Rule 300-10-1 of the Rules and Regulations of the State of Georgia.
5. **Contractor** must have and maintain telephone, fax and email contacts for all subcontractors.



Item Report

TO: The Honorable Mayor and City Council

FROM: Darryl Simmons, Zoning Administrator

DATE: October 2, 2023

TITLE: Consideration for approval of a final plat application submitted by Beazer Gain, LLC for 2438-2460 Hidden Creek Rd, 4020 Oleander Ct. Case #FP2023-06

Summary:

This final plat is for Unit 2, Phase 1B of the proposed residential subdivision located along Pine Mountain Road NW. This plat phase depicts 26 detached single family lots. The overall area of the site for this phase is 15.756 acres. The property is zoned as Planned Urban Development - Residential District and lies on land lot 165. The Plan Review Committee including Cobb Fire and Cobb Water have all reviewed said plat for compliance and recommend approval.

Recommendation:

The Zoning Administrator recommends approval of final plat as presented.

Fiscal Impact:

Attachments:

1. final plat pine mountain phas 1B application
2. 19-0207 Pine Mt Phase2B_Final Plat



Date Received _____
Staff's Initials _____

PRELIMINARY, FINAL AND REVISE PLAT APPLICATION

Required Fee \$250.00

Preliminary Plat _____ Final Plat X Revised Plat _____ Parcel Combination _____ Parcel Split _____

Is this property located within the Kennesaw Historic District (yes) _____ (no) X

A MINIMUM OF ONE CONSULTATION WITH PLANNING AND ZONING ADMINISTRATOR AND PLANNING REVIEW STAFF PRIOR TO THE SUBMISSION OF THE APPLICATION IS MANDATORY.

Date of Consultation _____ Staff Initials _____

DEVELOPMENT NAME _____ Number of Units _____

PURPOSE OF DEVELOPMENT PINE MOUNTAIN PARK (UNIT 2, PHASE 1B)
Residential Subdivision

WHAT IS THE REVISION BEING MADE _____

ADDRESS OF PROPERTY 2438 - 2460 Hidden Creek Rd, 4010 4020 OCEANVIEW CT.

Parcel ID 20016500050 Lot Size 12,700 SF (TYP) Present Zoning PUD-R
20016500060 2016500040

Current Use Residential Subdivision Proposed Use Residential Subdivision

APPLICANT BEAZER GAIN, LLC

Applicant address 2002 Summit Blvd NE, 15th Floor, Atlanta GA 30319

(Phone #) _____ Email Address _____

Applicant Signature [Signature] AUTHORIZED SIGNATORY

Signed, sealed and delivered in presence of: [Signature] Notary _____ Date 7-18-2023

REPRESENTATIVE _____ (Phone #) _____ Email Address _____

Representative Signature _____

Signed, sealed and delivered in presence of: _____ Notary _____ Date _____

TITLEHOLDER _____ (Phone #) _____

Titleholder Signature _____ Address _____

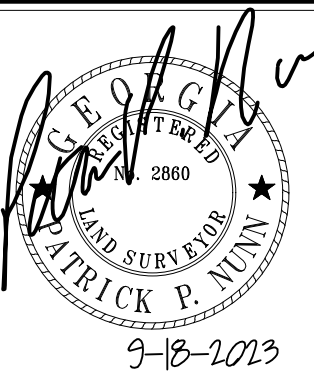
Signed, sealed and delivered in presence of Notary _____ Date _____

P:\2019\0207\SURVEY\CADD\FINAL PLAT\19-0207-FP-COVER-ZONING-PHASE 2B.dwg Sep 18, 2023 - 3:04pm

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- ABBREVIATIONS**
- INV INVERT ELEVATION
 - CMP CORRUGATED METAL PIPE
 - AST-2 ALLUMINIZED STEEL PIPE TYPE 2
 - RCP REINFORCED CONCRETE PIPE
 - HDPE HIGH-DENSITY POLYETHYLENE PIPE
 - DIP DUCTILE IRON PIPE
 - FFE FINISHED FLOOR ELEVATION
 - TBM TEMPORARY BENCHMARK
 - GV GAS VALVE
 - UGCM UNDERGROUND CABLE MARKER
 - GLM GAS LINE MARKER
 - WLM WATER LINE MARKER
 - PB PLAT BOOK
 - DB DEED BOOK
 - N/F NOW OR FORMERLY
 - SSMH SANITARY SEWER MANHOLE
 - DWCB DOUBLE WING CATCH BASIN
 - SWCB SINGLE WING CATCH BASIN
 - FES FLARED END SECTION
 - CONC CONCRETE
- LEGEND**
- UTILITY POLE (PP)
 - GUY WIRE
 - LIGHT POLE (LP)
 - FLAG POLE (FP)
 - FIRE HYDRANT (FH)
 - SIGN
 - JUNCTION BOX (JB)
 - DROP INLET (DI)
 - WATER VALVE (WV)
 - ROOF DRAIN (RD)
 - CLEAN OUT (CO)
 - GAS METER (GM)
 - WATER METER (WM)
 - SANITARY MANHOLE
 - IRON PIN SET AT LOT CORNERS
 - CONCRETE
 - WALL
 - HEAD WALL (HW)
 - FENCE LINE
 - TREE LINE
 - HANDICAP RAMP
 - CURB AND GUTTER



Bowman
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4774 Silver Peak Parkway
Suwanee, Georgia 30024
Phone 770.932.6550
Fax 770.932.6551
www.bowman.com

THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE OF 0.00' PER ANGLE POINT, AND WAS ADJUSTED USING LEAST SQUARES RULE.
- THIS MAP OR PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 82795 FEET.
- A TRIANGLE METHOD TOTAL STATION WAS USED TO DETERMINE THE PLAT.
- THIS PLAT AND ALL ANGULAR MEASUREMENTS USED IN THE PREPARATION OF THIS PLAT WERE OBTAINED ON 08/23/2023 TO 2:22:24.
- FIELD DATA WAS OBTAINED ON 08/23/2023 TO 2:22:24.

DATE	DESCRIPTION
9/8/2023	FINAL PLAT
JOB NO. 19-0207	
DRAWN BY: JH	
CHECKED BY: JAW	
SURVEYED BY: JAW	
COPYRIGHT 2023	
BOWMAN CONSULTING	
GROUP, LTD.	

FINAL PLAT FOR:
**PINE MOUNTAIN PARK
(UNIT 2, PHASE 1B)**
LL 065.20TH DISTRICT
CITY OF KENNESAW
COBB COUNTY, GEORGIA

FINAL PLAT
SHEET 5 OF 6

THIS SURVEY WAS PREPARED IN CONFORMITY WITH THE TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN CHAPTER 180-7 OF THE RULES OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN THE GEORGIA PLAT ACT O.C.G.A. 15-6-67, AUTHORITY O.C.G.A. SECS. 15-6-67, 43-15-4, 43-15-6, 43-15-19, 43-15-22.



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This plat was prepared for the exclusive use of the person, persons, or entity named hereon. This plat does not extend to any unnamed person, persons, or entity without the express recertification of the surveyor naming such person, persons, or entity.

NO STREET PARKING HAS BEEN
APPROVED FOR THIS DEVELOPMENT

Deed Number: 2023-12

City of Kennesaw Cemetery Deed Cobb County, Georgia

This Indenture, made the 28 day of September, 2023 between the City of Kennesaw, a political subdivision of Cobb County existing under the Laws of the State of Georgia, hereinafter called Grantor, and:

Name	Address	City, ST ZipCode
SORKIN, MICHELE	1612 Vinebrook Terrace NW	Kennesaw, GA 30144

Hereinafter called Grantee.

WITNESSETH that: Grantor, for and in consideration of the sum of ONE THOUSAND FIVE HUNDRED DOLLARS AND 0 CENTS (\$1,500.00) and other valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, by these presents does hereby transfer remise and convey unto the said grantee that certain lot or tract located in the Kennesaw City Cemetery in Land Plot 74 of the 20th District, Cobb County, Georgia, said cemetery lot being more particularly described as follows:

SECTION	PLOT	LOT	PRICE
III	35	G	\$1,500.00

To have and to hold the said premises to grantee. By acceptance of this Deed the grantee herein, his heirs, administrators, successor, and assigns acknowledge that said conveyance is for the purpose of interment of human remains, and for no other purpose; and the grantee herein further does hereby agree to maintain the above demised premises in a neat and orderly condition and abide by the rules and regulations concerning said cemetery as they may from time to time be promulgated by the grantor herein.

Chapter 30- CEMETERIES Code of Ordinance, Kennesaw, Georgia Regulations and Non-Liability of City: Section 30-8 states:

(a) *The Mayor and Council reserve to themselves and their successor in the office the right to alter, amend, modify or add to the rules, regulations, conditions, and restrictions set for in this chapter and any time it is deemed advisable to do so in order to carry out the purpose of this chapter.*

(b) *There shall be no liability whatsoever, either tort or contractual, on the part of the city, or its officials or officers, or their successors in office, or its agents or employees, to any purchasers of any lots in the cemetery, or to any person holding under then, or to the family or relatives of any person buried in the cemetery, or to any person or the family of such person who has erected any monument, marker, or mausoleum therein, by reason of any act, thing, omission, negligence, or otherwise relating to the cemetery. In accepting any conveyance of any burial lot, each purchaser agrees that all provisions of this chapter are valid and that he and his heirs and assigns shall hold such lot subject to all provisions of this chapter and subject to all amendments to this chapter made by the Mayor and Council.*

This deed is given by virtue of and under authority granted by the City Council of the City of Kennesaw at its regular meeting on the 02 day of October, 2023.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed the day and year first above written.

This deed hereby accepted subject to the conditions herein set forth.

Purchaser

Mayor

Purchaser

City Clerk

Assignment of Burial Permit

Deed No. 2023-12

The undersigned hereby transfers and assigns the following burial space listed on the first sheet hereof, to the person or persons set forth opposite each space, and requests the Clerk of **City of Kennesaw** located in **Cobb County** to accept and record the same in accordance with the rules and regulations of said Board.

Description

Burial Space(s):

Name

Date

Signature

Transfer approved and recorded, on _____

City Clerk