

Mayor

Derek Easterling

City Manager

Jeff Drobney, ICMA-CM

City Clerk

Lea Alvarez, CMC

**Council**

Mayor Pro Tem Antonio

Jones

Madelyn Orochena

Tracey Viars

Pat Ferris

Trey Sinclair

City Council Work Session**Meeting Agenda**

February 12, 2024 6:30 PM

Council Chambers

(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)

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**A. Proclamation: Government Communicators Day**

Presentation of a proclamation at the February 19, 2024, regular City Council meeting declaring February 24, 2024, as Government Communicators Day in the City of Kennesaw.

6. Public Comment/Business from the Floor**7. Old Business**

8. New Business

9. Committee and Board Reports

10. Public Hearing(s)

A. Land Use Permit: 2358 Whispering Drive

Consideration for approval of a Land Use Permit application for the property located at 2358 Whispering Drive as submitted by applicant Marzia Minns. Case #LU2023-03.

B. Ordinance: Unified Development Code Text Amendment

Consideration for approval of an Ordinance to amend the Unified Development Code, Appendix A, Chapter 2 "Zoning Districts," Section 2.01.03.06 of said chapter regarding the regulation for the R-10 single-family residential district as submitted by the City of Kennesaw. Case #MISC2024-01.

C. Ordinance: 2024 Zoning Map

Consideration for approval of an Ordinance to adopt the 2024 Official Zoning Map for the City of Kennesaw. Case #MISC2024-02.

11. Consent Agenda

A. January 29, 2024, City Council Work Session Minutes

Approval the January 29, 2024, City Council work session minutes.

B. February 5, 2024, City Council Meeting Minutes

Approval of the February 5, 2024, City Council regular meeting minutes.

12. General and Administrative

A. Fiscal Year 2023 Budget Adjustments

Authorization for Council to approve Budget Adjustments for Fiscal Year Ended September 30, 2023. These budget adjustments are necessary to record year-end budget realignments for Annual Comprehensive Financial Reporting (ACFR) purposes.

13. Public Safety

A. January 2024 Crime Statistics

Receipt of the January 2024 Crime Statistics.

14. Information Technology

15. Public Works

16. Recreation and Culture

17. Community Development

A. Public Arts Exhibit: 2871 North Main Street

Consideration of approval for the renewal of a public arts exhibit application submitted by Sean Mills for property located at 2871 North Main Street. Case #PA2023-01.

B. Final Plat Application: 1994 Smith Street

Final plat application submitted by Watts & Broning Engineers, Inc. for 1994 Smith Street (parcel number 20009901250); this plat depicts Phase 3 of the East Park Village consisting of a 56 lot townhome development. Case# FP2023-08.

18. Public Comment/Business from the Floor

19. City Manager's Report

A. Award Bid and Contract: Gay Construction for the Public Safety Facility

Consideration for approval of a Resolution to award the bid and contract for the Public Safety Facility to Gay Construction Company.

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:

DATE: February 12, 2024

TITLE: **Proclamation: Government Communicators Day**
Presentation of a proclamation at the February 19, 2024, regular City Council meeting declaring February 24, 2024, as Government Communicators Day in the City of Kennesaw.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. Proclamation - Government Communicators Day



PROCLAMATION

DECLARING FEBRUARY 24, 2024, AS GOVERNMENT COMMUNICATORS DAY IN THE CITY OF KENNESAW

WHEREAS: The role of government communications professions is to inform, educate and engage their communities; and

WHEREAS: Robust communication in government creates trust and inspires residents to take action and be involved; and

WHEREAS: Government communications create relationships and calls to action, build awareness and understanding through storytelling, engage and foster engagement on civic issues and use all channels to include people in critical decisions; and

WHEREAS: It is essential to have strong communications in government because it is a foundational element of living in a democracy where citizens have the freedom to make their voice heard; and

WHEREAS: the City of Kennesaw has deep gratitude and recognition for government communicators' professionalism, dedication, hard work, commitment, and enthusiasm.

NOW THEREFORE, I, Derek Easterling, by the authority vested in me as Mayor of the City of Kennesaw do hereby proclaim February 24, 2024, as "Government Communicators Day," in the City of Kennesaw, and encourage all residents to thank Becca Graham, Rachel Mikell, and Morgan Huntington, who have dedicated their careers to ensure the City of Kennesaw has effective, impactful, and successful communication strategies that resonate and are relevant.

IN WITNESS THEREOF, I have hereunto set my hand and caused the official seal of the City of Kennesaw, Georgia, to be affixed this 19th day of February 2024.

ATTEST:

CITY OF KENNESAW:

Lea Alvarez, City Clerk

Derek Easterling, Mayor



Item Report

TO: The Honorable Mayor and City Council

FROM: Darryl Simmons, Zoning Administrator

DATE: February 12, 2024

TITLE: **Land Use Permit: 2358 Whispering Drive**
 Consideration for approval of a Land Use Permit application for the property located at 2358 Whispering Drive as submitted by applicant Marzia Minns. Case #LU2023-03.

Summary:

Said request is for the purpose of obtaining a home occupation business license to become a cottage food operator that would allow for baking and selling of pastries. Property is zoned RM-8 (Multi-Family Residential) and consists of 0.05 +/- acres, lies in Land Lot 128 Tax Parcel 335. This public hearing was advertised in the Marietta Daily Journal on January 19 & 26, 2024 and a public notice sign has been posted on-site. At their February 7, 2024, meeting, the Planning Commission voted to approve the Land Use Application with the conditions as outlined by staff.

Recommendation: The Zoning Administrator recommends to approve the Land Use Application with the following conditions:

1. The land use permit is limited to, exclusive for and only valid for the current applicant and the life of this particular business and use, and it is not transferrable. Any changes would require additional review and approval.
2. There shall be no clients, customers or employees at this location. Nor shall there be any evidence of a home based business visible from the public right-of-way.
3. The land use permit is valid for 24-months after date of approval.

Fiscal Impact:

Attachments:

1. LU2023-03_2358 Whispering Dr NW_StaffAnalysis
2. LU2023-03_2358 Whispering Dr_ApplicationPacket_Redacted (1)
3. 2024.01.19 Land Use Permit Legal Ad for 2358 Whispering Drive

4. 02-07-2024 PC Action Minutes

ZONING ADMINISTRATOR
DARRYL SIMMONS

**ASSISTANT ZONING
ADMINISTRATOR/PLANNER**
CHANELLE CAMPBELL

CONTACT US

OFFICE: (770) 590-8268
WEBSITE: www.kennesaw-ga.gov
EMAIL: zoningdept@kennesaw-ga.gov



2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

MAYOR AND COUNCIL
FEBRUARY 19, 2024

PLANNING COMMISSION
FEBRUARY 7, 2024

LEGAL ADVERTISEMENTS
JANUARY 16, 2024

PUBLIC NOTICE SIGN
JANUARY 23, 2024

APPLICATION SUBMITTED
NOVEMBER 29, 2023

STAFF ANALYSIS REPORT

ZONING CASE #: LU2023-03

Property Addresses

2358 Whispering Drive NW

Applicant

Marzia Minns

Representative

N/A

Property Owner

Same as applicant

Current Zoning

RM-8 (Multi-Family - 8 Units/Acre)

Current Future Land Use Category

Park/Recreation/Conservation (PRC)

Project Request: Land use permit to acquire a business license for home occupation.

[Please see page 4 for project request description.](#)



Street view of subject property (Cobb Tax Assessor)

PROPERTY DETAILS

Within 1/2 mi from Unincorporated Cobb Co: No

Historic District: No

Cemetery: No **Floodplain:** No **Stream:** No

Parcel ID #: 20012803350

Land Lot #: 128 **Tax Parcel #:** 335

Land Area: 0.05+/- acres or 2,089 SQFT

Existing Building Total SQFT: 2,342 SQFT

Proposed Building SQFT: N/A

Proposed Streets: N/A

RECOMMENDATION

Staff Recommendation

Approval with conditions

Planning Commission Recommendation

To be determined on February 7, 2024

[Please see page 16 for basis for recommendation.](#)

ADJACENT PROPERTY DETAILS

Surrounding Zoning Dist. and Future Land Use

North: Matlock Dr

Zoning: Light Industrial (LI)

Future Land Use: Industrial (I)

South: No Street

Zoning: Office/Institutional (OI)

Future Land Use: Public Service /Institutional (PI)

East: No Street

Zoning: Light Industrial (LI)

Future Land Use: Community Activity Center (CAC)

West: Knightsridge Rd

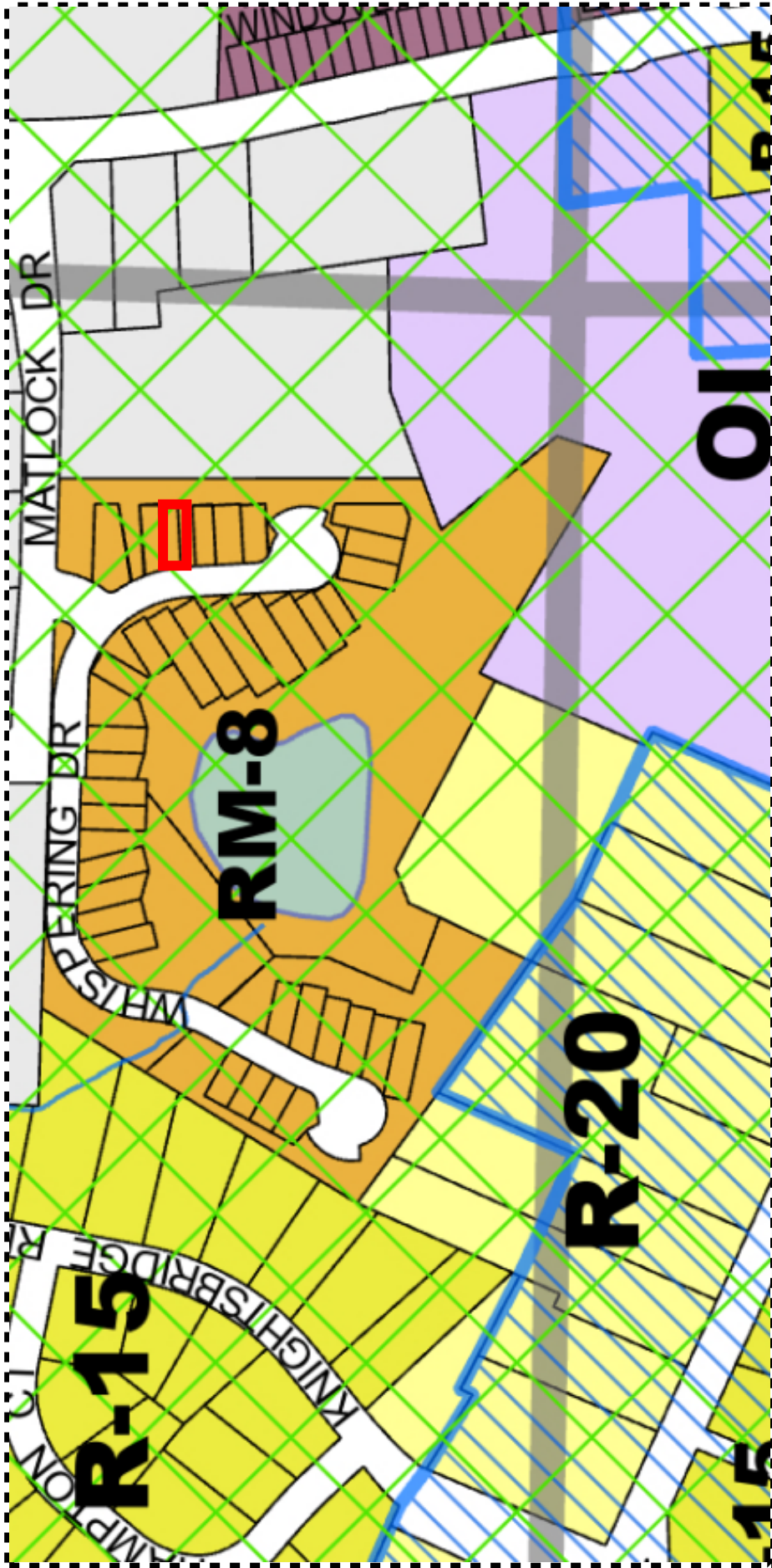
Zoning: R-15 Single Family Residential

Future Land Use: Residential Low/Medium (RL)

[Please see pages 2 for zoning map.](#)

ZONING MAP

ZONING CASE #: LU2023-03



Zoning Districts

CBD	HGB
CRC	HI
FST	LI
GC	MHP
NRC	NS

OI	R-12	RA-5
PBSH	R-15	RA-6
PSC	R-20	RM-8
PUD-R	R-30	RM-12
PVC	R-40	RM-16
R-10	RA-4	UVC

Zoning Overlays

Airport Hazard District
Historic Districts
Historic Preservation Village
Senior Living

Acworth City Limits	Kennesaw City Limits	Kennesaw Mtn Nat'l Battlefield	Land Lots	Marietta City Limits
139				

GOOGLE EARTH AERIAL VIEW

ZONING CASE #: LU2023-03



 = Approximate project location

STAFF ANALYSIS REPORT



ZONING CASE #: LU2023-03

DESCRIPTION OF ZONING REQUEST: **LAND USE PERMIT**

This is a land use permit request for a home occupational business license.

PROJECT INTENT

The applicant is requesting to obtain a home business license to bake and sell pastries. This activity is known as a "cottage food operator."

[Please see page 5 for photos of cookies](#)

[Please see page 6 for photos of equipment used](#)

[Please see page 7 for sketch of work space in home](#)

QUESTIONS TO APPLICANT BY STAFF

How do you market or get the word out about your products?

I will be applying for a stand at either the Woodstock or Marietta Farmers Market, word of mouth and social media.

How will the desserts get to the consumer or customer? Do they get delivered or picked-up?

No customers will pick up cookies at the house as products will be sold at a farmer's market.

Pre-Application Meeting

October 18, 2023

Application Submitted

November 29, 2023

Fees Paid

\$250.00

Certified Letters Mailed

January 08, 2024

COTTAGE FOODS DEFINITIONS

- "Cottage food operator" means a person who produces cottage food products only in the home kitchen of that person's primary domestic residence and only for sale directly to the consumer.
- "Cottage food products" means non-potentially hazardous baked goods, jams, jellies, preserves, and other non-potentially hazardous foods produced in the home kitchen of a domestic residence.

[State of Georgia - Subject 40-7-19 COTTAGE FOOD REGULATIONS](#)

GOOGLE STREET VIEW OF THE RESIDENCE



STAFF ANALYSIS REPORT

ZONING CASE #: LU2023-03

TYPES OF PASTRIES - PHOTOS PROVIDED BY THE APPLICANT



SAUSAGE ROLL



KOEKSISTER



MEAT PIES



RUSKS



MILK TART



BANANA BREAD



FUDGE



CUSTARD SLIES



FRUIT CAKE

STAFF ANALYSIS REPORT

ZONING CASE #: LU2023-03

TYPE OF EQUIPMENT USED - PHOTOS PROVIDED BY THE APPLICANT



INGREDIENT LIST AND QUANTITY

Ingredient	Rusks 6 bags	Sub total	Banana Bread 3 baby breads	Sub total	Meat Pies 20 pieces	Sub total	Milk Tart 8 slices	Sub total	Total	Measurable Units
Ground Beef		0		0	1	3		0		3 Pound
Onion		0		0	1	3		0		3 Onion
Bananas		0	5	25		0		0		25 Banana
Whole Milk	750	3750		0		0	1000	3000		6750 ML
Butter	375	1875	115	575	500	1500	150	450		4400 Gram
White Sugar	1	5	1	5		0	0.75	2.25		12.25 Cup
Flour	12.5	62.5	1.5	7.5	4	12	1.5	4.5		86.5 Cup
Baking Powder	10	50	5	25	20	60		0		135 ML
Salt	5	25	5	25		0		0		50 ML
Tartar Cream	2	10		0		0		0		10 ML
Eggs	2	10	1	5	3	9	5	15		39 Egg
Pecans		0	1	5		0		0		5 Cup
Vanilla Essence		0		0		0	2	6		6 TSP
Confectioners Sugar		0		0		0	0.33	0.99		0.99 Cup

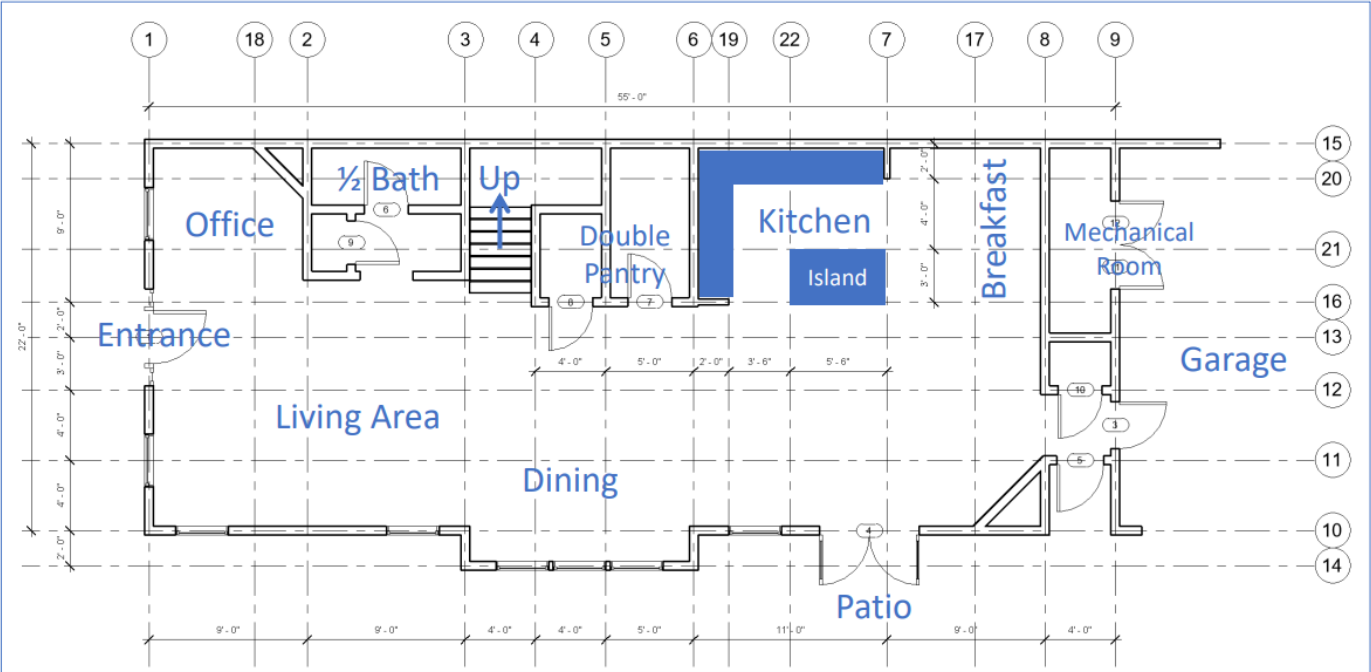
STAFF ANALYSIS REPORT



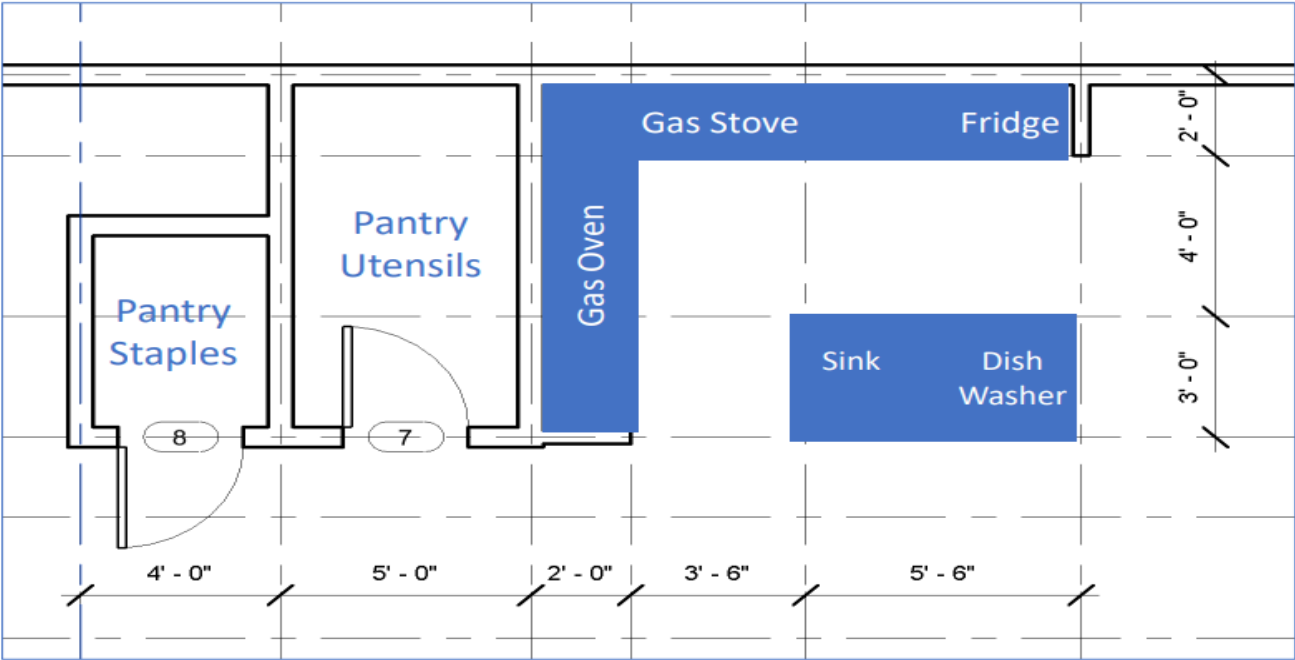
ZONING CASE #: LU2023-03

PROPOSED FLOOR PLAN OF WORKSPACE LOCATED IN THE KITCHEN

1st Floor Plan



Kitchen Layout



STAFF ANALYSIS REPORT



ZONING CASE #: LU2023-03

HOA MANAGEMENT APPROVAL LETTER

11/13/23, 12:18 PM

Gmail - Cottage License



Marzie [REDACTED]

Cottage License

5 messages

Marzie [REDACTED] >

Tue, Oct 24, 2023 at 1:29 PM

To: "Mike R. Hammel" [REDACTED]

, Shakey [REDACTED]

[REDACTED] Helen Johnson [REDACTED]

Dear Board,

I trust this communication finds you well.

I am reaching out as I am applying for a Cottage License with the City of Kennesaw and Cobb County, which would allow me to bake goods from home and sell them at some of the Farmer's Markets in the area like Marietta and Kennesaw. As part of the application process, I am required to have a letter from the HOA stating that they have no concerns. I plan on baking South African pastries, pies, and cakes to sell at various locations as a way of testing the market and hoping that they will be well received! If things move as planned I will be transitioning my kitchen operation to a brick-and-mortar location, in approximately 6 – 12 months. As you might be aware businesses of this kind start with a Cottage License and the reason why the city supports and promotes it.

I appreciate your consideration in this matter and if you need additional information, please feel free to reach out via email

[REDACTED] or call directly at my mobile [REDACTED]

I take the opportunity to Thank You for your contributions to the betterment of our community.

Best regards,
Marzia Minns
2358 Whispering Drive NW

Marzie [REDACTED]

Fri, Oct 27, 2023 at 8:31 AM

To: "Mike R. Hammel" [REDACTED]

, Shakey Webster [REDACTED]

< [REDACTED] , Helen Johnson [REDACTED]

Good morning,

Just confirming that you had received my email and if you had any questions. I would appreciate an acknowledgment of receipt of the previous email I sent pertaining to a Cottage License application.

Best regards,
Marzia

----- Forwarded message -----

From: Marzie [REDACTED] >

Date: Tue, Oct 24, 2023 at 1:29 PM

Subject: Cottage License

To: Mike R. Hammel [REDACTED]

Shakey Webster [REDACTED]

< [REDACTED] >, Helen Johnson < [REDACTED] >

Dear Board,

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STAFF ANALYSIS REPORT



ZONING CASE #: LU2023-03

HOA MANAGEMENT APPROVAL LETTER

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Best regards,
Marzia Minns
2358 Whispering Drive NW

Mike Hammel [REDACTED]

Fri, Oct 27, 2023 at 8:46 AM

To: Marzie [REDACTED]

Cc: Shakey Webster [REDACTED]

Helen Johnson [REDACTED]

Marzia,

We received your email and will be in touch shortly.

Thanks!

Mike

On Fri, Oct 27, 2023 at 8:31 AM Marzie <[REDACTED]> wrote:
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<[REDACTED]>, Helen Johnson <[REDACTED]>

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I take the opportunity to Thank You for your contributions to the betterment of our community.

Best regards,
Marzia Minns
2358 Whispering Drive NW

Marzia Minns-Perez [REDACTED]

Fri, Oct 27, 2023 at 9:12 AM

To: Mike Hammel [REDACTED]

Cc: Shakey Webster [REDACTED]

Helen Johnson [REDACTED]

Thank you

STAFF ANALYSIS REPORT



ZONING CASE #: LU2023-03

HOA MANAGEMENT APPROVAL LETTER

11/13/23, 12:18 PM

Gmail - Cottage License

On Oct 27, 2023, at 8:46 AM, Mike Hammel [REDACTED] wrote:

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Best regards,
Marzia Minns
2358 Whispering Drive NW

Shakey Webster [REDACTED]

To: Mike Hammel [REDACTED]

Cc: Marzie [REDACTED], [REDACTED] Helen Johnson [REDACTED]

Mon, Oct 30, 2023 at 10:16 AM

Good evening,

The board has approved your request.

On Fri, Oct 27, 2023 at 8:46 AM Mike Hammel [REDACTED] wrote:

Marzia,

We received your email and will be in touch shortly.

STAFF ANALYSIS REPORT



ZONING CASE #: LU2023-03

UNIFIED DEVELOPMENT CODE– SECTION 2.01.03.11

2.01.03.11 The regulations for the Multi-family district (eight units per acres) RM-8 residential district (80,000-square-foot lot size) are as follows:

A. *Purpose and intent.* The RM-8 multiple-family residential district is established to provide locations for multifamily residential uses or residentially compatible institutional and recreational uses at high densities as defined under the City of Kennesaw Comprehensive Land Use Plan, and as may be amended from time to time, with access to both public water and sewer.

B. *Uses.* Any use not permitted as of right, or not permitted by Special Exception, or not permitted by land use permit is prohibited. To the extent there is a conflict between the permitted use table and this subsection, this section shall control for purposes of determining whether the use is allowed. See Section 4.04.01 for standards associated with Special Exception uses. Any conflict between the standards set forth in this district and those set forth in Section 4.04.01, the standards in Section 4.04.01 shall control for purposes of developing a Special Exception use.

The following uses are permitted:

Community Fairs, Condominiums, Designated Recycling collection locations, Executive golf courses, Fraternity and sorority houses/residence halls, Golf courses (Par 3), Golf courses (18-hole regulation; private and public), Limited Home Occupations, Multi-family dwelling units, Nonprofit riding stables, Nonprofit (seasonal use) fishing lakes, Private parks, Recreation grounds other than tennis courts and golf courses, Religious assemblies, Single family dwelling units (attached), Single family dwelling units (detached) Temporary uses, Two family dwelling units.

The following uses are permitted by special exception (refer to section 4.04.01):

Cemeteries, Private community centers, Private schools of general and special education

The following uses are permitted by land use permit or special land use permit:

Home occupation (refer to section 4.04.05), Radio, television and other communication towers and antennas (refer to section 4.04.06)

C. *Requirements for certain uses.* The following uses shall have the requirements as ascribed to them in this subsection.

1. Limited Home Occupations:

- a. There shall be no exterior evidence of the home occupation, including but not limited to any type of identifying signs.
- b. No article, product or service used or sold in connection with such activity shall be other than those normally found on the premises.
- c. No mechanical equipment shall be used for such occupation except such equipment as is customary for purely household and hobby purposes.
- d. Such use shall be conducted entirely within the dwelling unit, and only persons living in the dwelling unit shall be employed in such occupation.
- e. No more than 25 percent of the dwelling unit may be used for the operation.

STAFF ANALYSIS REPORT



ZONING CASE #: LU2023-03

UNIFIED DEVELOPMENT CODE– SECTION 2.01.03.11

- f. No materials, equipment or business vehicles may be stored or parked on the premises, except that one business vehicle, used exclusively by the resident may be parked in a carport, garage, or rear or side yard.
- g. The off-site employees of the resident shall not congregate on the premises for any purpose concerning the business of the home occupation.
- h. There shall be no deliveries of supplies for use in the home occupation or pickups of the items produced by the occupant by commercial carriers.
- i. No clients or customers are allowed on the premises on a regular basis.
- j. The limited home occupation shall not create a nuisance.

2. *Designated Recycling Collection Locations:*

- a) Must be maintained in a safe, clean, neat, and sanitary fashion;
- b) Such location shall be visually screened and maintained;
- c) Such location shall be within the building setbacks unless otherwise approved by the zoning administrator or his/her designee due to topography, safety, internal traffic flow, site distance, or for other site-related circumstances not created by the property owner.

3. *Temporary Uses:*

- a) An approved temporary use shall not exceed 30 days and may be renewed for not more than one additional 30-day period.
- b) Adequate off-street parking shall be provided.
- c) Application for a temporary use shall be made with the City Business License division.

D. *Dimensional standards for Development.* Setback shall be measured from the property line of the parcel. The property with shortest amount of road frontage shall be the front setback for determining other setbacks (major side, side, rear).

- 1. Minimum lot size: 80,000 square feet.
- 2. Maximum density: 8 units per acre.
- 3. Minimum floor area:
 - (a) 450 square feet: efficiency.
 - (b) 600 square feet: one bedroom.
 - (c) 750 square feet: two bedroom.
 - (d) 900 square feet: three bedroom.
- 4. Minimum lot width at front setback line: 75 feet.
- 5. Minimum public road frontage: 75 feet.
- 6. Maximum cover: 25%.
- 7. Maximum building height: 35 feet.
- 8. Minimum width between buildings: 15 feet.
- 9. Basement: A basement shall be counted as a story if the ceiling is six feet or more above the grade and is either subdivided or used for dwelling or business purposes. A basement is a portion of the building partly underground which has more than one-half of its height measured from finished floor to finished ceiling above the average grade of the adjoining ground.

STAFF ANALYSIS REPORT

ZONING CASE #: LU2023-03

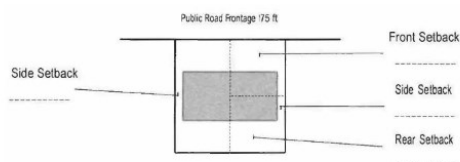
UNIFIED DEVELOPMENT CODE– SECTION 2.01.03.11

10. Minimum building setbacks:

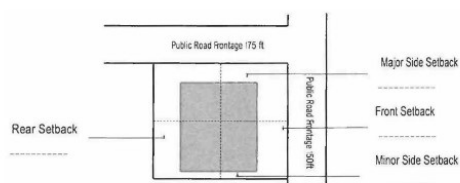
- (a) Front yard as measured from arterial: 75 feet.
- (b) Front yard as measured from collector: 50 feet.
- (c) Front yard as measured from local: feet.
- (d) Side yard (aka minor side yard): 35 feet (if not interior portion of development); 15 feet (if interior portion of development).
- (e) Rear yard: 40 feet.
- (f) Major side: 35.

11. Measuring building setbacks: The number and type of setbacks is determined based on the number and type of public road frontages for the lot as follows and as shown on the following diagram:

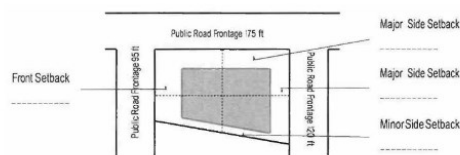
- (a) *One public road frontage*: The front yard setback is measured from the one public road frontage (arterial, collector, or local). The yard opposite the front yard is the rear yard and the other two yards are side yards.
- (b) *Two public road frontages*: The front yard setback is measured from the road with the shortest frontage (arterial, collector, or local). The major side yard setback is measured from the road with the longer frontage (arterial, collector, or local). The yard opposite the front yard is the rear yard and the yard opposite the major side yard is the minor side yard.
- (c) *Three public road frontages*: The front yard setback is measured from the road with the shortest frontage (arterial, collector, or local). The two major side yard setbacks are measured from the other two road frontages (arterial, collector, or local). The remaining yard is a minor side yard.
- (d) Building setbacks apply to both principal and accessory buildings and structure except where it explicitly states otherwise.
- (e) *Irregular shaped lots*: The Planning and Zoning Administrator will determine setbacks for irregular shaped lots adhering to the spirit and intent of this section.
- (f) Interior shall be considered the portion which does not abut an exterior property boundary.



Example for Property with one (1) Public Road Frontage

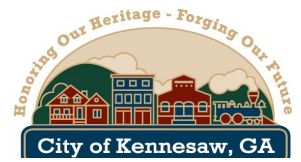


Example for Property with two (2) Public Road Frontages



Example for Property with three (3) Public Road Frontages

STAFF ANALYSIS REPORT



ZONING CASE #: LU2023-03

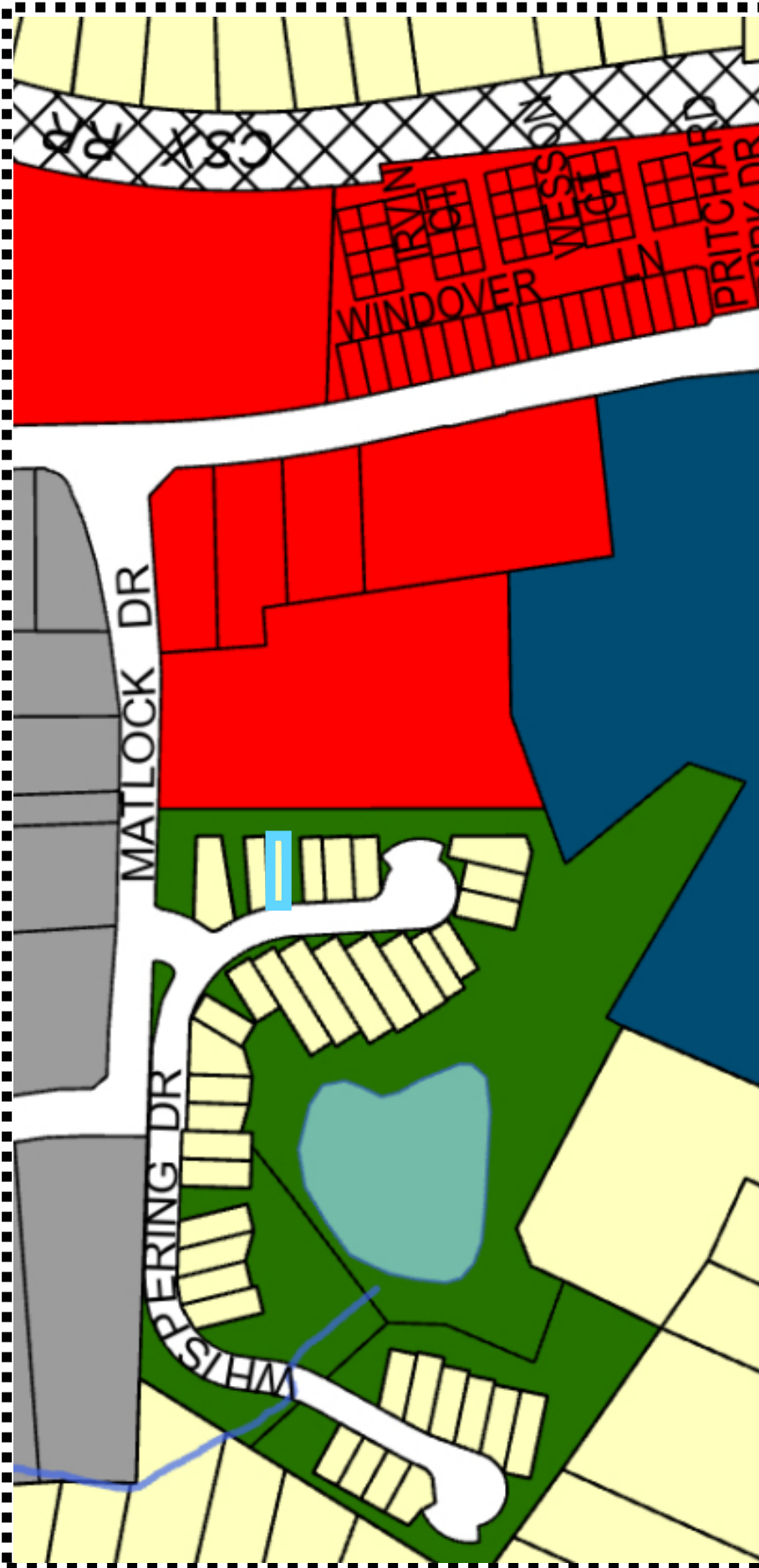
UNIFIED DEVELOPMENT CODE - SECTION 4.04.05

4.04.05 - Standards for Home Occupations

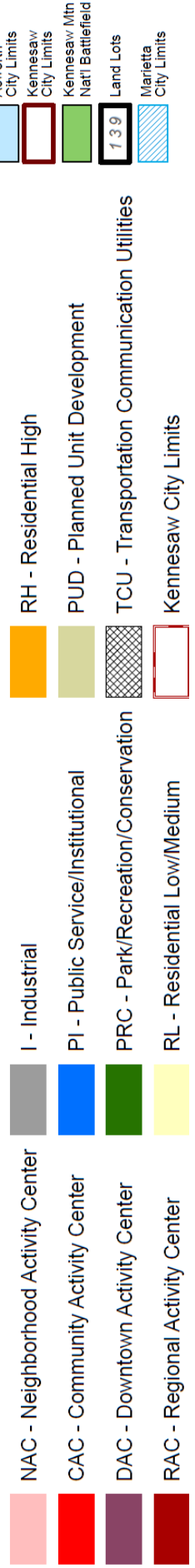
- A. The Mayor and City Council may permit land use permits for the operations of home occupations or professions in areas and districts where the zoning regulations would otherwise prohibit such operations. "Home occupation" is hereby defined as being those occupations which can ordinarily be carried on out of a residence or other structure without having any significant effect on the neighborhood or area from which such home occupation is carried on.
- B. In addition thereto, the Mayor and City Council is hereby authorized to grant land use permits for occupations or businesses compatible with the neighborhood from which such business or occupation is operated and where no nuisance as defined in Georgia law or other significant adverse effect would result to the area or district zoned.
- C. All applications for land use permits shall require all applicable information for processing as per Chapter 10 of the UDC and be advertised in the same manner as applications for rezoning and that public hearings will be held thereon in the same manner as applications for rezoning are so conducted.
- D. In no event shall the Mayor and City Council grant a land use permit for a period of time in excess of 24 months except on re-application, re-advertisement, and public hearing.
- E. Standards for decision. The Mayor and City Council shall consider, at a minimum, the following in its determination of whether or not to grant a land use permit:
 - 1. Safety, health, welfare, and moral concerns involving the surrounding neighborhood;
 - 2. Parking and traffic considerations;
 - 3. Number of nonrelated employees;
 - 4. Number of commercial and business deliveries;
 - 5. The city's general presumption that residential neighborhoods should not allow non-compatible business uses;
 - 6. Compatibility of the business use to the neighborhood;
 - 7. Hours of operation;
 - 8. Existing business uses in the vicinity;
 - 9. Effect on property values of surrounding property;
 - 10. Circumstances surrounding neighborhood complaints;
 - 11. Intensity of the proposed business use; and
 - 12. Location of use within the neighborhood.
- F. A land use permit is a privilege permit and may be revoked by the Mayor and City Council following notice and hearing should the use be deemed to be a nuisance or create a safety hazard.

FUTURE LAND USE MAP

ZONING CASE #: LU2023-03



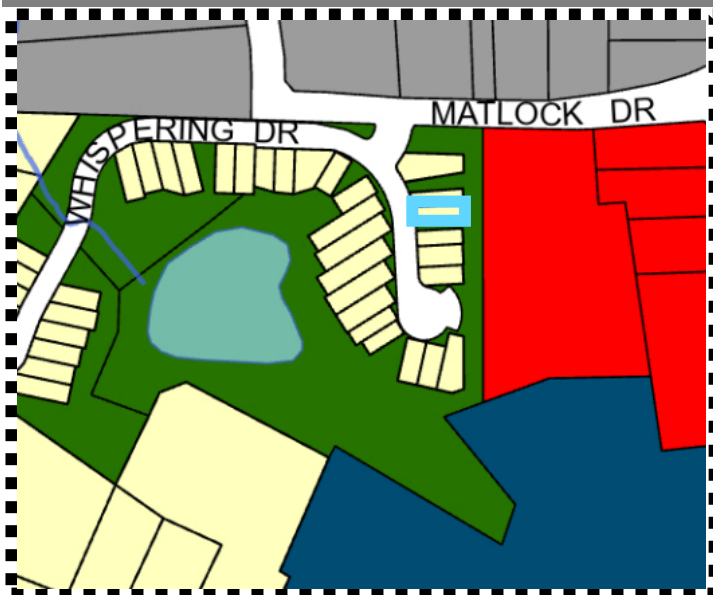
Future Land Use



STAFF ANALYSIS REPORT

ZONING CASE #: LU2023-03

2022 COMPREHENSIVE PLAN UPDATE



LEGEND

- CAC - Community Activity Center
- I - Industrial
- PI - Public Service/Institutional
- PRC - Park/Recreation/Conservation
- RL - Residential Low/Medium

The Future Land Use Map is a general guide for the character of development within the City. A description of the identified category is provided below. New development should be monitored for its impact on water quality within the City and region.

As a built-out city, any new growth within the City of Kennesaw will be redevelopment. Currently, within the city, 86% of the city's parcels are residential which is a challenge for any new development. The Future Land Use Map is a general guide for character of development within the city.

FUTURE LAND USE CATEGORY

PRC - Park/Recreation/Conservation

This category is for land dedicated to active or passive recreational uses. These areas may be either publicly or privately owned and may include playgrounds, public parks, nature preserves, wildlife management areas, national forests, golf courses, recreation centers or similar uses.

Examples:

- Community parks
- Community trails
- Neighborhood parks

COMPREHENSIVE PLAN AREAS MAP

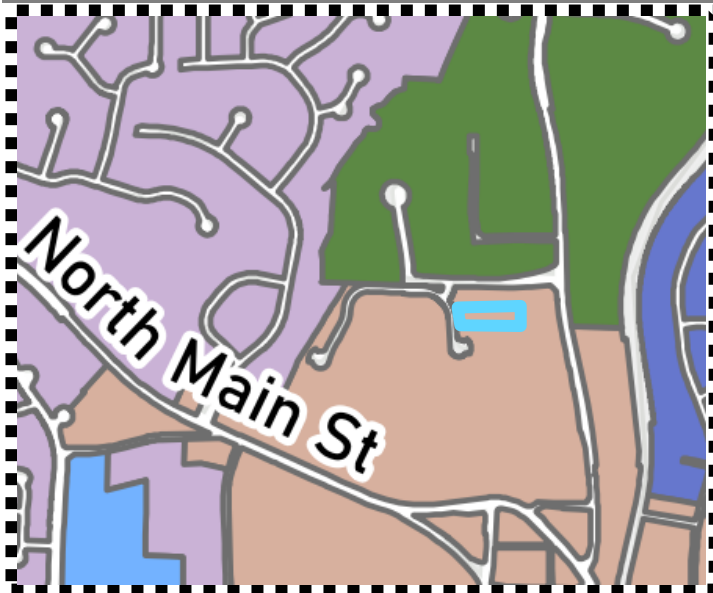
ZONING CASE #: LU2023-03



STAFF ANALYSIS REPORT

ZONING CASE #: LU2023-03

COMPREHENSIVE PLAN - AREAS



LEGEND

-  Jiles and Baker
-  Historic Central Business District
-  Cobb Parkway Commercial Corridor

COMPATIBLE FUTURE LAND USE

- Downtown Activity Center (DAC)
- Public Service/Institutional (PI)
- Park/Recreation/Conservation (PRC)
- Residential High (RH)
- Residential Low (RL)

In addition to the established Future Land Use Map, the City would like to further define an appropriate development atmosphere to ensure compatible and unified development within specified areas of the City.

Furthermore, please refer to the Policy Matrix which should be used for new development within each of the described areas.

HISTORICAL CENTRAL BUSINESS DIST.

The Historical CBD area includes the Central Business District, the five historic districts and the study area of the City's Livable Centers Initiative (LCI). The area spans a distance along the northern edge of the Cobb Parkway Commercial Corridor from McCollum Parkway to near Jiles Road, northward to Matlock Drive on Moon Station Road, also northward to Pine Hill Drive on Cherokee Street and to South Main Street at McCollum Parkway.

Currently, this area is composed of a mix of land uses, historical and cultural resources, businesses, homes and neighborhoods and architectural styles and elements. Overall, this area is in the process of revitalization and reinvestment.

STAFF ANALYSIS REPORT

ZONING CASE #: LU2023-03

TRANSPORTATION DATA

ROAD #1	AERIAL OF ROAD #1
Roadway Name Whispering Dr Roadway Classification Local Speed Limit 25-MPH Jurisdictional Control Inside City Limits - Privately Owned Street Minimum Right-of-Way Requirement 50-feet minimum	
ROAD #2	AERIAL OF ROAD #2
Roadway Name N/A Roadway Classification N/A Speed Limit N/A Jurisdictional Control N/A Minimum Right-of-Way Requirement N/A	

STAFF ANALYSIS REPORT

ZONING CASE #: LU2023-03

ENVIRONMENTAL

Floodplain:

- ☐ Yes
☒ No
☐ Not Verified

Wetlands:

- ☐ Yes
☒ No
☐ Not Verified

Drainage Basin:

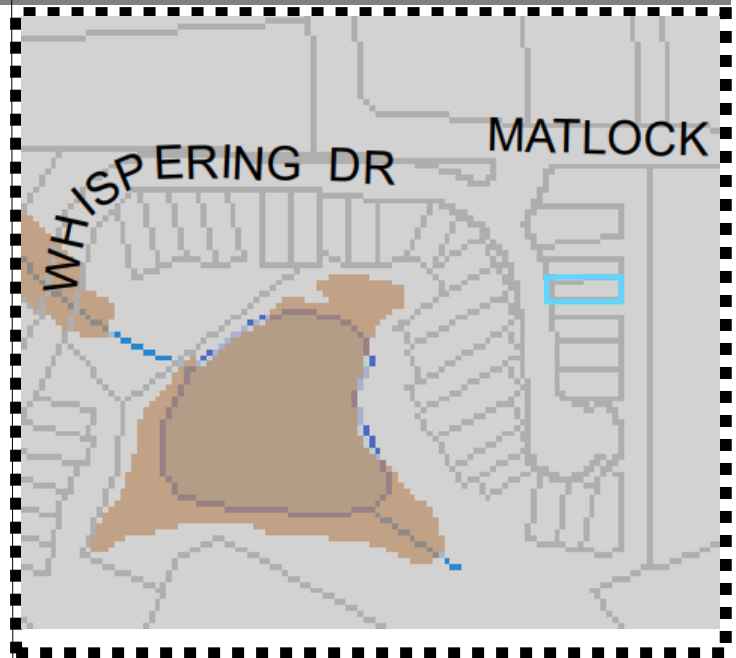
- ☒ None
☐ FEMA 100-year floodplain area
☐ Flood Damage Prevention Ordinance¹
☐ Project subject to Cobb County Damage Prevention Requirements
☐ Dam Breach Zone (Upstream)²
☐ Owner/Developer is responsible for obtaining any required wetland permits from the United States Army Corps of Engineers

Streams and Creeks:

- ☐ Metropolitan River Protection Area³
☐ Chattahoochee River Corridor Tributary Area⁴
☐ Georgia Erosion-Sediment Control Law and County Ordinance⁵
☐ Georgia DNR Variance for work being done in 25-foot stream bank buffers (may be required)
☐ City Stream Buffer Required
☒ No Stream Buffer Required

Public Works Comments: N/A

FEMA FLOOD ZONE MAP



Special Flood Hazard Areas

2018 Flood Zones

- AE
- AE, FLOODWAY
- X, 0.2 Pct Annual Chance
- Land Lots
- Kennesaw City Limits
- Subject Property

ADDITIONAL COMMENTS REGARDING PROJECT:

- Developer may be required to install/upgrade water mains based on fire flow test results or Fire Department code. This will be resolved in the plan review process.
- Developer will be responsible for connecting to the existing County water and sewer systems, installing and/or upgrading all outfalls and water mains and obtaining on and/or off site easements, dedication of on and/or off site water and sewer to Cobb County, as may be required. Rezoning does not guarantee water/sewer availability/capacity unless so stated in writing by the Cobb County Water System. Permit issuances subject to continued treatment plant compliance with EPD discharge requirements.
- Applicant will be responsible to meet all City of Kennesaw Development & Zoning Ordinance Standards, State, County and applicable Federal regulations as part of the plan review approval process. All conceptual representations submitted with the application and acted on by Mayor and Council does not relieve applicant and property owners from meeting all development standards.

1. Designated flood hazard
2. Need to keep residential buildings out of hazard.
3. Within 2000-feet of the Chattahoochee River. ARC review 35-foot undisturbed buffer each side of waterway.
4. Cobb County review (___-feet undisturbed buffer on each side)
5. State of Georgia and Cobb County review.

STAFF ANALYSIS REPORT



ZONING CASE #: LU2023-03

PLANNING AND ZONING

Site Visit:

☐ Yes
☒ No

Staff Member:

Name: N/A
Date of Visit: N/A

Land Use Recommendation:

Home occupational use is compatible

Historic Preservation:

Not in a historic district

Cemetery Preservation:

No cemeteries on site

Required Parking:

1.75 spaces per dwelling unit

DENSITY ANALYSIS

COMMERCIAL: Home kitchen square-footage only

RESIDENTIAL: None proposed

Proposed Parking:

Existing parking spaces

ZONING ADMINISTRATOR'S RECOMMENDATION: **APPROVAL WITH CONDITIONS**

The Zoning Administrator, Darryl Simmons, recommends **approval with conditions** of case #LU2023-03.

Conditions:

1. The land use permit is limited to, exclusive for and only valid for the current applicant and the life of this particular business and use, and it is not transferrable. Any changes would require additional review and approval.
2. There shall be no clients, customers or employees at this location. Nor shall there be any evidence of a home based business visible from the public right-of-way.
3. The land use permit is valid for 24-months after date of approval.

BASIS FOR ZONING ADMINISTRATOR'S RECOMMENDATION

This land use permit request is for an in-home business to bake cookies and sell and distribute them to customers off-site including farmers markets and coffee shops. The proposed activity would be performed entirely in the applicant's kitchen and they will use normal household equipment such as mixers, blenders and a kitchen oven. There will be no commercial equipment used. The intensity of this use is very low and would be compatible to the surrounding zoning districts of RM-8. The applicant shall follow all rules related to cottage food operators as defined within the Unified Development Code in Chapter 1, Section 1.09.02 and home occupational licenses found within Chapter 4, Section 4.04.05.

PLANNING COMMISSION RECOMMENDATION:

To be determined on February 7, 2024

MAYOR AND COUNCIL DECISION:

To be determined on February 19, 2024



CASE NUMBER

AV
AX
DX
HBR
SLUP
ZV

LU 2023-03

RZ
 AV – Administrative Variance
 AX – Annexation
 DX – De-annexation
 HBR – Historic Board Review
 LU – Land Use
 RZ – Re-zoning
 SLUP – Special Land Use
 ZV – Variance

LAND USE OR ZONING

FROM RM-8 TO



ZONING



KENNESAW CITY LIMITS



COBB COUNTY



LAND LOT

2358 Whispering Drive
Land Lot 128, Tax Parcel 335



Subject Property

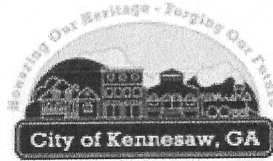


CITY OF KENNESAW
PLANNING & ZONING DEPT.
770-590-8268

Doris Esterling
MAYOR
Lee Murray
CITY CLERK



Scale: 1" = 200'
 Print Date: 12/26/2023
 LU2023_000



LU2023-03

LAND USE & SPECIAL LAND USE APPLICATION

Required Fee \$250.00

Date Received 11/29/2023

Staff's Initials NF

☐ LAND USE APPLICATION

☒ SPECIAL LAND USE APPLICATION

Is this property located within the Kennesaw Historic District (yes) ☒ (no) ☐

A MINIMUM OF ONE CONSULTATION WITH PLANNING AND ZONING ADMINISTRATOR AND STAFF PRIOR TO THE SUBMISSION OF THE REQUESTED APPLICATION IS MANDATORY.
(Applicant or agent must be present at all public hearings)

Date of Consultation 10/18/2023

Staff's Initials NF

PURPOSE OF LAND USE REQUEST COOKING AND BAKING TO
SELL I.E. FARMERS MARKETS, COFFEE STOPS

LAND USE PROPERTY ADDRESS 2358 WHISPERING DR. NW KENNESAW
GA 30144

Land Lot 128 Tax Parcel 335 Lot Size Current Zoning

APPLICANT MARZIA MINNS

APPLICANT EMAIL [REDACTED]

Applicant address 2358 WHISPERING DRIVE NW KENNESAW GA
30144

(Home#) (Fax#) (Work#)

(Cell# [REDACTED])

Applicant Signature [Signature]

Signed, sealed and delivered in presence of: [Signature]

Notary Date 11/14/23

REPRESENTATIVE [Signature]

(Fax #) (Work#) (Cell#)

Representative Signature [Signature]

Signed, sealed and delivered in presence of: [Signature]

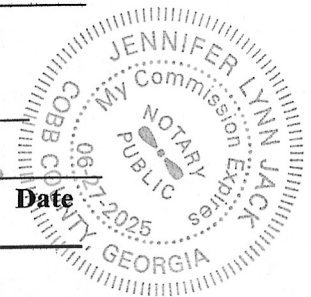
Notary Date

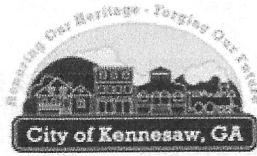
TITLEHOLDER: MARZIA MINNS Telephone: [REDACTED]

Signature: [Signature] Address: 2358 WHISPERING DR NW

Signed, sealed and delivered in presence of: [Signature]

Notary Date 11/14/23





CERTIFICATION AUTHORIZATION

I hereby attest to the fact that a certified mailing to property owners within 200 feet was sent out

on or before November 17, 2023 in accordance with the application requirements.

DECEMBER 15, 2023

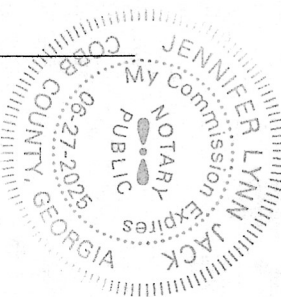
11.14.2023

Date

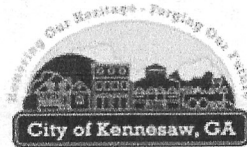
Applicant or Authorized Agent Signature

Sworn and subscribed before me this 14 day of Nov. 20 23

Notary Public



20500 additional page for explanation.



Section 2100, Part 5 Standards for Decisions – Only Land Use Permits

Land Use Permits may be granted in such individual cases based on the standards for decisions as follows, please comment using additional pages if necessary.

COMMENTS:

(1) Safety, health, welfare, and moral concerns involving the surrounding neighborhoods.	minimal - see Impact
(2) Parking and traffic considerations.	None - see additional page
(3) Number of non-related employees.	NONE
(4) Number of commercial and business deliveries.	None - minimal
(5) The City's general presumption that residential neighborhoods should not allow non-compatible business uses.	
(6) Compatibility of the business use to the neighborhood.	Very compatible
(7) Hours of operation.	Variable, depends on the demand.
(8) Existing business uses in the vicinity.	Yes, my friend has a "B" business license.
(9) Effect on property valued of surrounding property.	None
(10) Circumstances surrounding neighborhood complaints.	None thus far.
(11) Intensity of the proposed business use; and	Variable, I want to make small batches.
(12) Location of use within the neighborhood.	Indicated on survey attached.

* I do not plan on mass baking.

1. Minimal to No Impact: I plan on baking small amounts of baked goods to sell at markets i.e., Farmers Markets - Woodstock, Marietta.
2. None: All the goods made by me in my home will be transported by me to the location where it will be sold. No customers or vendors will be coming to my home.
3. None
4. Minimal to None: As I will be purchasing most supplies in person, there will be few orders coming straight to my home. If I do place an online order, it will be from Amazon and only if I am unable to locate it in a store.
5. Unsure of the question.
6. Most Compatible: As mentioned in prior questions, I will be baking to sell at other locations therefore, there will be no disruption to the community in which I reside. I am using my kitchen to bake goods which I will sell at other locations.
7. Variable: It all depends on which markets I will sell at and how much baking I would have to do to meet the demand. As I am just starting this business, I do not have an exact number.
8. Yes: My fiancée who lives at this address has a license which references this home as its business address. He uses this address for administrative purposes & receiving his business mail.
9. Home Values will be Unaffected: I will be operating within my home and there will be nothing to allude to my baking business i.e., no signage outside, no customers coming to my home to purchase the baked goods. If it was not for part of the application process requiring that my neighbors need to be notified of my application, then they would never know I am baking from home.
10. None
11. Variable: Since I will be the only person baking in a home kitchen and using equipment designed for home use (referenced in the pictures accompanying the application), my baking will be a small operation. This space is conducive to small batches.
12. Survey: I have highlighted the area on the survey attached.

Please Type or Print

**APPLICATION TO REGISTER A BUSINESS
TO BE CONDUCTED UNDER A TRADE NAME**


Condra Taylor
Clerk of Superior Court Cobb Cty. Ga.

STATE OF GEORGIA
COUNTY OF COBB

The undersigned hereby certifies that (they are) (he, she is) (it is) conducting a business
in the City of Kennesaw, County of Cobb, in the State of Georgia, under the
trade name:

Sugarbush Peach

TRADE NAME
(PLEASE PRINT EXACTLY AS ASSIGNED)

and that the nature of said business is: food industry

and that said business is composed of the following (person) (corporation) or (partnership)

NAME (S)

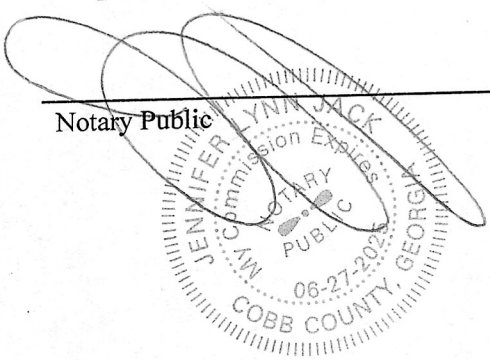
ADDRESS(ES)

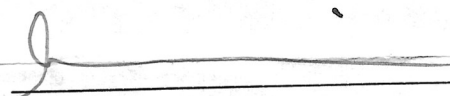
MarziaMinns, LLC

2358 Whispering Dr. NW, Kennesaw, GA 30144

This affidavit is made in compliance with Ga. code annotated, Title 10, Chapter 1, and section 490.
Sworn and subscribed before me.

This 5 day of Oct 2023


Notary Public


Signature

Marzia Minns

Print Name

Signature

Print Name

*Publication is required by law. If you have any questions about publication, contact the Marietta Daily Journal at 770-428-9411

LEGEND:	
IPS	IRON PIN SET
IPF	IRON PIN FOUND
OT	OPEN TOP PIN
CR	CRIMP TOP PIN
RE-BAR	REINFORCING BAR
CRB	CAPPED RE-BAR
CL	CENTERLINE
R/W	RIGHT-OF-WAY
LL	LAND LOT
CONC	CONCRETE
PP	POWER POLE
LP	LAMP POLE
SS	SEWER
FC	FENCE CORNER
W	WATER VALVE
WM	WATER METER
CO	CORRODED PLASTIC PIPE
CP	CORRUGATED METAL PIPE
RE	REINFORCED CONCRETE PIPE
SE	SANITARY SEWER EASEMENT
DE	DRAINAGE EASEMENT
FW	FIRE HYDRANT
SW	SANITARY SEWER CLEANOUT
POB	POINT OF BEGINNING
SWCB	SINGLE WING CATCH BASIN
UE	UTILITY EASEMENT
AD	ACCESS EASEMENT
PRO	PROPOSED
NTS	NOT TO SCALE

SHEET KEY
SHEET 1 - PLAN VIEW
SHEET 2 - ZONING NOTES

This plat is subject to the covenants set forth in the Declaration of Covenants, Restrictions, and Easements for Whispering Lake, dated April 24, 2007, recorded in Deed Book 14481, page 6054, Cobb County, Georgia and the stipulations approved by the Mayor and Council of Kennesaw, Georgia on June 5, 2008.

THE WATER AND SEWER SYSTEMS ARE PRIVATE AND ARE TO BE MAINTAINED BY THE PROPERTY OWNER OR HOA, NOT COBB COUNTY.

TOTAL PHASE 1 AREA
336,814 SQ FT
7.73 ACRES

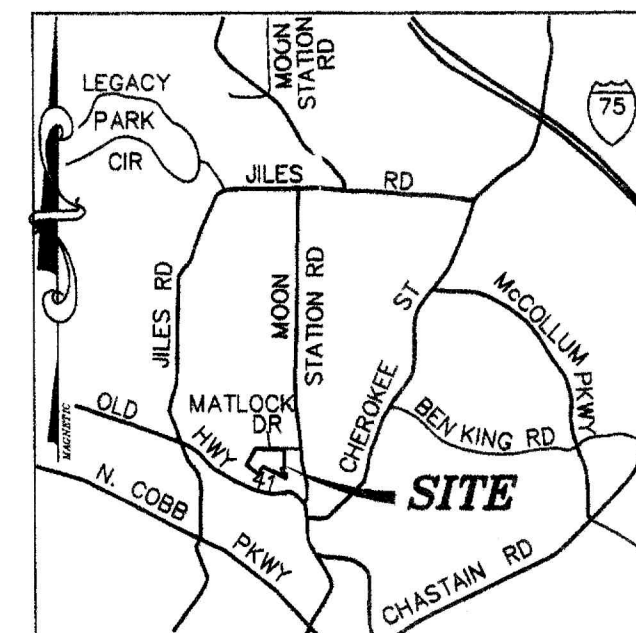
PHASE 1 COMMON AREA
264,949 SQ FT
6.08 ACRES

FINAL PLAT OF: **WHISPERING LAKE AT KENNESAW** **PHASE 1** **A RESIDENTIAL SUBDIVISION** LAND LOT 128 20th DISTRICT, 2nd SECTION COBB COUNTY, GEORGIA CITY OF KENNESAW **EXISTING ZONING: RM-8**

OWNER/DEVELOPER:
PITTSFORD DEVELOPMENT, LLC
6399 POLO CLUB DRIVE
CUMMING, GA 30040
24 HOUR CONTACT
VIC YOUNG 404-433-4113

ROAD CENTERLINE LINE TABLE		
LINE	LENGTH	BEARING
CL1	21.31	S01°38'07"W
CL2	18.40	S40°07'56"W
CL3	180.81	S03°10'18"E
CL4	27.00	S88°05'59"E
CL5	100.15	S88°05'59"E
CL6	188.90	S88°05'59"E
CL7	28.53	N08°32'48"E
CL8	128.42	N28°57'00"E
CL9	63.30	N19°52'22"E
CL10	27.00	S70°07'38"E

ROAD CENTERLINE CURVE TABLE			
CURVE	LENGTH	RADIUS	CHORD
C1	67.25	100.00	65.99
C2	130.69	175.00	127.87
C3	128.71	175.00	125.83
C4	178.75	120.00	162.89
C5	78.20	200.00	77.71
C6	31.89	200.00	31.65



FLOOD STATEMENT:
PER THE "FIA OFFICIAL FLOOD HAZARD MAP" A PORTION OF THE REFERENCED PARCEL IS IN AN AREA HAVING SPECIAL FLOOD HAZARD. ZONE: X

MAP ID: 1306700380 EFFECTIVE DATE: 12/16/08

OWNERS ACKNOWLEDGEMENT:

Developer hereby certifies and acknowledges as the owner of the land shown on this plat and whose name is subscribed hereon, that this plat was made from an actual survey, and covenants and agrees to convey the private roadway, public areas, recreational and amenity areas and utility and drainage facilities and easements to the Whispering Lake Homeowners Association, Inc., a Georgia nonprofit corporation (the "Association") for their maintenance and upkeep and the purposes expressed herein or in any supplemental documentation. Until such conveyance, their maintenance and upkeep shall remain the responsibility of Developer, its successors, successors-in-title, and assigns. In consideration of the approval of this development plan/plat and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer releases and holds harmless the City of Kennesaw from any and all claims, damages, or demands arising on account of the design, construction and maintenance of the property or improvements shown hereon; on account of the roads, fills, embankments, ditches, cross drains, culverts, water mains, sewer lines, and bridges within the proposed private roadway and easements shown; and on account of bodywater, the collection and discharge of surface water, or the changing of courses of streams. All detention/stormwater ponds or storage facilities and related infrastructure are to be owned and maintained by the Developer, or its successors, successors-in-title, and assigns in accordance with Sec. 46-224 of the Kennesaw City Code unless otherwise indicated or accepted by the City of Kennesaw, Georgia. Developer warrants that it owns fee simple title to the property shown hereon and for valuable consideration agrees that the City of Kennesaw shall not be liable to Developer, or its successors, successors-in-title, or assigns, for any claims or damages resulting from the construction or maintenance of cross drain extensions, drives, structures, streets, culverts, curbs, or sidewalks, the changing courses of streams and rivers, flooding from natural creeks and rivers, surface waters and any other matter whatsoever. Developer further warrants that it has the right to sell and/or convey the land and improvements shown on and according to this plat and does hereby bind itself, its successors, successors-in-title, and assigns, and all subsequent owners to defend these undertakings by virtue of these presents.

STOCK LOAN SERVICES, LLC (OWNER OF LOT 4)

FOR ORIGINAL SIGNATURES, SEE PLAT BOOK 272, PAGE 532-533. SIGNATURES

PITTSFORD DEVELOPMENT, LLC (OWNERS OF LOTS 1, 5-11 & 15-37)

SIGNATURE PRINTED NAME DATE

SURVEYORS CERTIFICATION:

I HEREBY CERTIFY THAT THE PLAN SHOWN AND DESCRIBED HEREON IS A TRUE AND CORRECT SURVEY MADE ON THE GROUND UNDER MY SUPERVISION, THAT THE MONUMENTS HAVE BEEN PLACED AS SHOWN HEREON, AND IS TO THE ACCURACY AND SPECIFICATIONS REQUIRED BY THE KENNESAW DEVELOPMENT STANDARDS.

THOMAS E. PEAY, JR. 66 RLS 802 2402 DATE 10-21-13

KENNESAW DEVELOPMENT CERTIFICATION
THIS PLAT, HAVING BEEN SUBMITTED TO KENNESAW AND HAVING BEEN FOUND TO COMPLY WITH THE KENNESAW DEVELOPMENT STANDARDS AND THE KENNESAW ZONING ORDINANCE, IS APPROVED SUBJECT TO THE INSTALLATION AND DEDICATION OF ALL STREETS, UTILITIES, EASEMENTS AND OTHER IMPROVEMENTS IN ACCORDANCE WITH THE STANDARD DESIGN SPECIFICATIONS AND THE POSTING OF A ONE YEAR MAINTENANCE BOND.

FOR ORIGINAL SIGNATURES, SEE PLAT BOOK 272, PAGE 532-533. KENNESAW PUBLIC WORKS DIVISION

FOR ORIGINAL SIGNATURES, SEE PLAT BOOK 272, PAGE 532-533. PLANNING AND ZONING DIVISION

FOR ORIGINAL SIGNATURES, SEE PLAT BOOK 272, PAGE 532-533. CITY ENGINEER

CONSTRUCTION AND DEVELOPMENT DIVISION

FOR ORIGINAL SIGNATURES, SEE PLAT BOOK 272, PAGE 532-533. COBB COUNTY DEPT OF TRANSPORTATION

FOR ORIGINAL SIGNATURES, SEE PLAT BOOK 272, PAGE 532-533. COBB COUNTY WATER SYSTEM

FOR ORIGINAL SIGNATURES, SEE PLAT BOOK 272, PAGE 532-533. MAYNARD AND CITY ENGINEER

REVISION APPROVED DATE

REVISION No. 3 SEPTEMBER 26, 2013

THIS PLAT SUPERSEDES THE PLAT RECORDED IN PLAT BOOK 272, PAGE 532-533. THE PURPOSE OF THIS REVISION IS TO REVISE THE REAR PROPERTY LINES FOR LOTS 5, 6, 19, 20 AND, 21.

PLAT FILED IN OFFICE:

RECORDED IN PLAT BOOK _____ PAGE: _____

CLERK, COBB COUNTY SUPERIOR COURT DATE

REBECCA KEATON CLERK OF SUPERIOR COURT Cobb Co. GA.

PLAT BK: 273 PG: 380-381

Filed and Recorded Oct-22-2013 01:09 PM

DQCR: P2013-000205

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

DATE

GENERAL NOTES:

1. INFORMATION REGARDING THE REPORTED PRESENCE, SIZE, CHARACTER, AND LOCATION OF EXISTING UNDERGROUND UTILITIES AND STRUCTURES IS SHOWN HEREON. THERE IS NO CERTAINTY OF THE ACCURACY OF THIS INFORMATION AND IT SHALL BE CONSIDERED IN THAT LIGHT BY THOSE USING THIS DRAWING AND AVOIDANCE OF UNDERGROUND UTILITIES AND STRUCTURES SHOWN HEREON MAY BE INACCURATE AND UTILITIES AND STRUCTURES NOT SHOWN MAY BE ENCOUNTERED. THE OWNER, HIS EMPLOYEES, HIS CONSULTANTS, HIS CONTRACTORS, AND/OR HIS AGENTS SHALL HEREBY DISTINGUISH THAT THE SURVEYOR IS NOT RESPONSIBLE FOR THE CORRECTNESS OR SUFFICIENCY OF THIS INFORMATION SHOWN HEREON AS TO SUCH UNDERGROUND INFORMATION.
2. RIGHT-OF-WAYS ARE BASED ON CENTERLINES OF EXISTING PATHS OF TRAVEL, UNLESS NOTED OTHERWISE.
3. ALL MATTERS PERTAINING TO TITLE ARE EXCEPTED.

PLAT BK: 273 PG: 380-381
Filed and Recorded Oct-22-2013 01:09 PM
DQCR: P2013-000205
REBECCA KEATON
CLERK OF SUPERIOR COURT Cobb Co. GA.

FINAL PLAT OF:

WHISPERING LAKE AT KENNESAW **PHASE 1**

LAND LOT 128 20th DISTRICT 2nd SECTION COBB COUNTY, GEORGIA

LOT BLOCK UNIT REVISION BY: DATE:

SUBDIVISION PHASE 3

PB 272 PG 532 DB PG 532

MAP ID 1306700380 EFFECTIVE DATE: 12/16/08

DATE 09/26/13

SCALE 1" = 50'

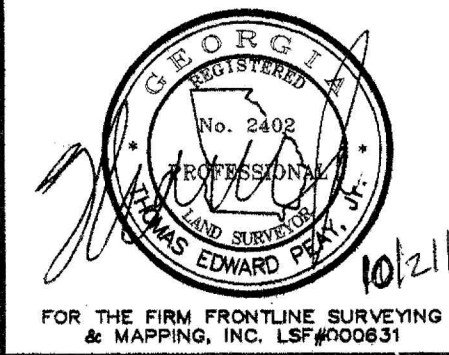


3595 Canton Road
Suite 116, PMB 272
Marietta, GA 30066
Ph. (678) 355-9905
Fax (678) 355-9805

www.frontlinesurveying.com

THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE OF 1 FOOT IN 10,000 FEET, AN ANGULAR ERROR OF .03 SECONDS PER ANGLE POINT AND WAS ADJUSTED USING THE LEAST SQUARES METHOD. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND FOUND TO BE ACCURATE TO 1 FOOT IN 100,000 FEET. AN ELECTRONIC TOTAL STATION AND A 100' CHAIN WERE USED TO GATHER THE INFORMATION USED IN THE PREPARATION OF THIS PLAT.

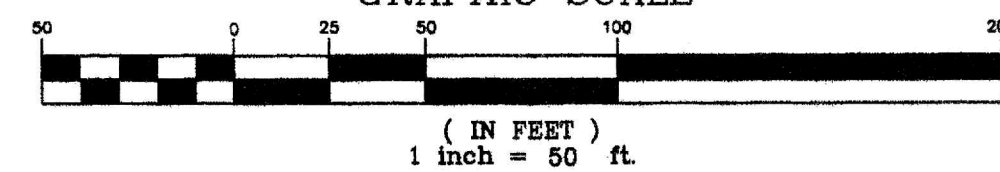
NO N.G.S. MONUMENT WAS FOUND WITHIN 500 FEET OF THIS PROPERTY. THIS PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON, PERSONS OR ENTITY NAMED HEREON. THIS PLAT DOES NOT EXTEND TO ANY UNNAMED PERSON, PERSONS, OR ENTITY WITHOUT EXPRESS REPERCUSSION BY THE SURVEYOR NAMING SAID PERSONS OR ENTITY. THESE DOCUMENTS, AS INSTRUMENTS OF SERVICE, REMAIN THE PROPERTY OF FRONTLINE SURVEYING & MAPPING, INC. AND NO PART THEREOF MAY BE USED, COPIED OR REPRODUCED IN ANY FORM WITHOUT WRITTEN PERMISSION. COPYRIGHT © 2012 FRONTLINE SURVEYING AND MAPPING, INC. *** ALL MATTERS PERTAINING TO TITLE ARE EXCEPTED ***



FOR THE FIRM FRONTLINE SURVEYING & MAPPING, INC. LSP#00831

JOB # 47815 PH1 FP

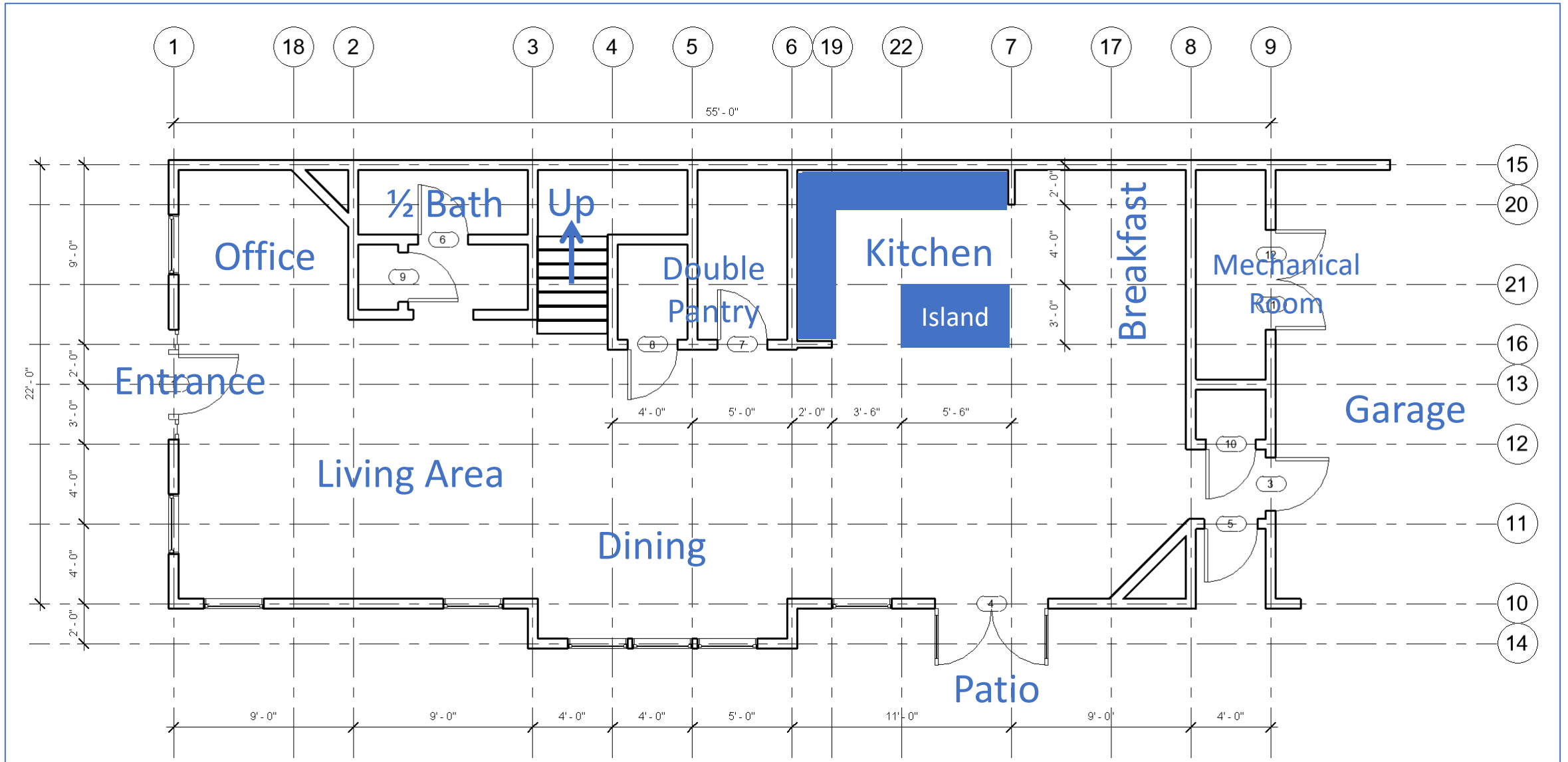
GRAPHIC SCALE



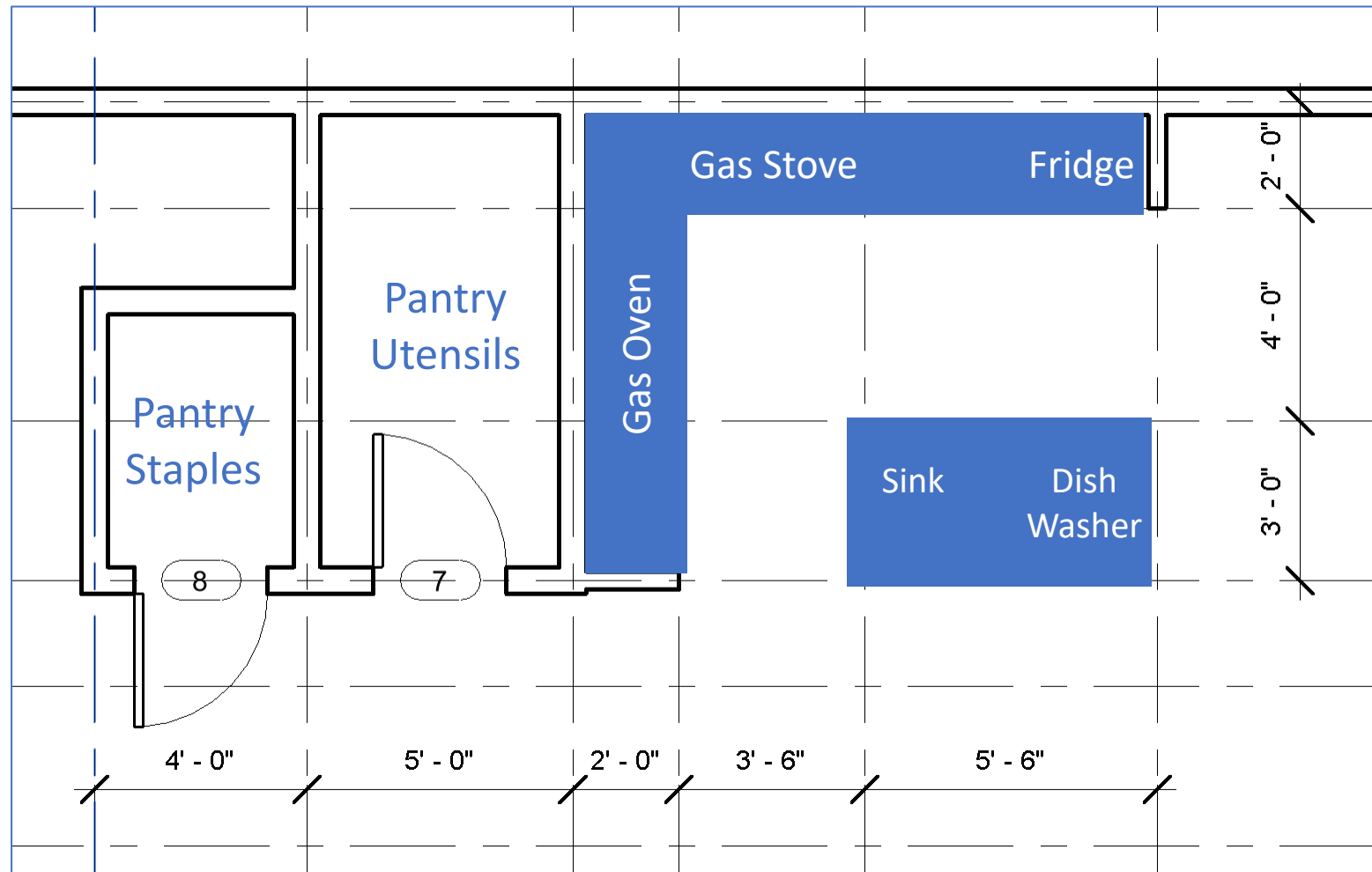
(IN FEET)
1 inch = 50 ft.

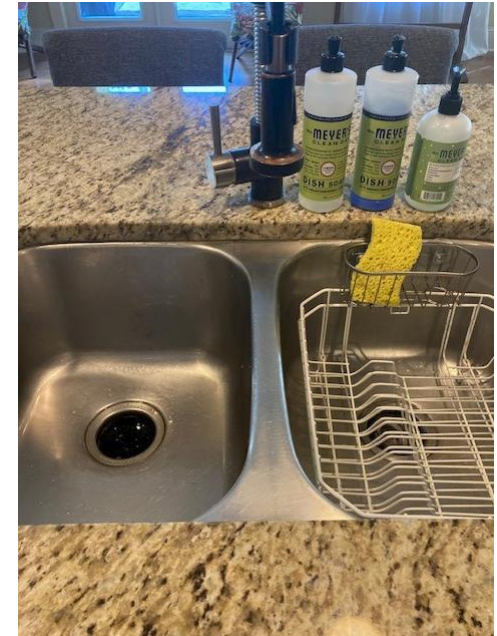
SHEET 1 OF 2

1st Floor Plan



Kitchen Layout





Kitchen



Appliances



Pantry and Storage





Equipment



Sausage Rolls



Meat Pies



Koeksisters



Rusks



Milk Tart



Banana Bread



Fudge



Custard Slices



Fruit Cake



Marzie [REDACTED]

Cottage License

5 messages

Marzie [REDACTED] Tue, Oct 24, 2023 at 1:29 PM

To: "Mike R. Hammel" [REDACTED], Shakey Webster [REDACTED], Helen Johnson [REDACTED], [REDACTED]

Dear Board,

I trust this communication finds you well.

I am reaching out as I am applying for a Cottage License with the City of Kennesaw and Cobb County, which would allow me to bake goods from home and sell them at some of the Farmer's Markets in the area like Marietta and Kennesaw. As part of the application process, I am required to have a letter from the HOA stating that they have no concerns. I plan on baking South African pastries, pies, and cakes to sell at various locations as a way of testing the market and hoping that they will be well received! If things move as planned I will be transitioning my kitchen operation to a brick-and-mortar location, in approximately 6 – 12 months. As you might be aware businesses of this kind start with a Cottage License and the reason why the city supports and promotes it.

I appreciate your consideration in this matter and if you need additional information, please feel free to reach out via email [REDACTED] or call directly at my mobile [REDACTED]

I take the opportunity to Thank You for your contributions to the betterment of our community,

Best regards,
Marzia Minns
2358 Whispering Drive NW

Marzie [REDACTED] Fri, Oct 27, 2023 at 8:31 AM

To: "Mike R. Hammel" [REDACTED], Shakey Webster [REDACTED], Helen Johnson [REDACTED]

Good morning,

Just confirming that you had received my email and if you had any questions. I would appreciate an acknowledgment of receipt of the previous email I sent pertaining to a Cottage License application.

Best regards,
Marzia

----- Forwarded message -----

From: Marzie [REDACTED]
Date: Tue, Oct 24, 2023 at 1:29 PM
Subject: Cottage License
To: Mike R. Hammel [REDACTED], Shakey Webster [REDACTED], Helen Johnson [REDACTED]

Dear Board,

I trust this communication finds you well.

I am reaching out as I am applying for a Cottage License with the City of Kennesaw and Cobb County, which would allow me to bake goods from home and sell them at some of the Farmer's Markets in the area like Marietta and Kennesaw. As part of the application process, I am required to have a letter from the HOA stating that they have no concerns. I plan on baking South African pastries, pies, and cakes to sell at various locations as a way of testing the market and hoping that they will be well received! If things move as planned I will be transitioning my kitchen operation to a brick-and-mortar location, in approximately 6 – 12 months. As you might be aware businesses of this kind start with a Cottage License and the reason why the city supports and promotes it.

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I take the opportunity to Thank You for your contributions to the betterment of our community,

Best regards,
Marzia Minns
2358 Whispering Drive NW

Mike Hammel [REDACTED] >

Fri, Oct 27, 2023 at 8:46 AM

To: Marzie [REDACTED]

Cc: Shakey Webster [REDACTED] Helen Johnson [REDACTED]

Marzia,

We received your email and will be in touch shortly.

Thanks!

Mike

On Fri, Oct 27, 2023 at 8:31 AM Marzie [REDACTED] wrote:

Good morning,

Just confirming that you had received my email and if you had any questions. I would appreciate an acknowledgment of receipt of the previous email I sent pertaining to a Cottage License application.

Best regards,
Marzia

----- Forwarded message -----

From: **Marzie** [REDACTED]

Date: Tue, Oct 24, 2023 at 1:29 PM

Subject: Cottage License

To: Mike R. Hammel [REDACTED] Shakey Webster

[REDACTED] Helen Johnson [REDACTED]

Dear Board,

I trust this communication finds you well.

I am reaching out as I am applying for a Cottage License with the City of Kennesaw and Cobb County, which would allow me to bake goods from home and sell them at some of the Farmer's Markets in the area like Marietta and Kennesaw. As part of the application process, I am required to have a letter from the HOA stating that they have no concerns. I plan on baking South African pastries, pies, and cakes to sell at various locations as a way of testing the market and hoping that they will be well received! If things move as planned I will be transitioning my kitchen operation to a brick-and-mortar location, in approximately 6 – 12 months. As you might be aware businesses of this kind start with a Cottage License and the reason why the city supports and promotes it.

I appreciate your consideration in this matter and if you need additional information, please feel free to reach out via email [REDACTED] or call directly at my mobile [REDACTED]

I take the opportunity to Thank You for your contributions to the betterment of our community,

Best regards,
Marzia Minns
2358 Whispering Drive NW

Marzia Minns-Perez [REDACTED]

Fri, Oct 27, 2023 at 9:12 AM

To: Mike Hammel [REDACTED]

Cc: Shakey Webster [REDACTED], Helen Johnson [REDACTED]

Thank you

Sent from my iPhone

On Oct 27, 2023, at 8:46 AM, Mike Hammel [REDACTED] wrote:

Marzia,

We received your email and will be in touch shortly.

Thanks!

Mike

On Fri, Oct 27, 2023 at 8:31 AM Marzie [REDACTED] wrote:

Good morning,

Just confirming that you had received my email and if you had any questions. I would appreciate an acknowledgment of receipt of the previous email I sent pertaining to a Cottage License application.

Best regards,
Marzia

----- Forwarded message -----

From: **Marzie** [REDACTED]
Date: Tue, Oct 24, 2023 at 1:29 PM
Subject: Cottage License
To: Mike R. Hammel [REDACTED], Shakey Webster [REDACTED]
[REDACTED] Helen Johnson [REDACTED]

Dear Board,

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I am reaching out as I am applying for a Cottage License with the City of Kennesaw and Cobb County, which would allow me to bake goods from home and sell them at some of the Farmer's Markets in the area like Marietta and Kennesaw. As part of the application process, I am required to have a letter from the HOA stating that they have no concerns. I plan on baking South African pastries, pies, and cakes to sell at various locations as a way of testing the market and hoping that they will be well received! If things move as planned I will be transitioning my kitchen operation to a brick-and-mortar location, in approximately 6 – 12 months. As you might be aware businesses of this kind start with a Cottage License and the reason why the city supports and promotes it.

I appreciate your consideration in this matter and if you need additional information, please feel free to reach out via email [REDACTED] or call directly at my mobile [REDACTED]. I take the opportunity to Thank You for your contributions to the betterment of our community,

Best regards,
Marzia Minns
2358 Whispering Drive NW

Shakey Webster [REDACTED]

Mon, Oct 30, 2023 at 10:16 AM

To: Mike Hammel [REDACTED]

Cc: Marzie [REDACTED] Helen Johnson [REDACTED]

Good evening,

The board has approved your request.

On Fri, Oct 27, 2023 at 8:46 AM Mike Hammel [REDACTED] wrote:

Marzia,

We received your email and will be in touch shortly.

Thanks!

Mike

On Fri, Oct 27, 2023 at 8:31 AM Marzia [REDACTED] wrote:

Good morning,

Just confirming that you had received my email and if you had any questions. I would appreciate an acknowledgment of receipt of the previous email I sent pertaining to a Cottage License application.

Best regards,
Marzia

----- Forwarded message -----

From: **Marzia** [REDACTED]
Date: Tue, Oct 24, 2023 at 1:29 PM
Subject: Cottage License
To: Mike R. Hammel [REDACTED] Shakey Webster
[REDACTED] Helen Johnson [REDACTED]

Dear Board,

I trust this communication finds you well.

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I appreciate your consideration in this matter and if you need additional information, please feel free to reach out via email [REDACTED] or call directly at my mobile [REDACTED]

I take the opportunity to Thank You for your contributions to the betterment of our community,

Best regards,
Marzia Minns
2358 Whispering Drive NW

--
Shakey Webster



EXHIBIT A

All that tract or parcel of land lying and being in Land Lot 128 of the 20th District, 2nd Section, Cobb County, Georgia, being Lot 3, Whispering Lake at Kennesaw. Phase I, as per plat recorded in Plat Book 262, Page 15, Cobb County, Georgia Records, said plat being incorporated herein by this reference and made a part hereof.

Rebecca Keaton

Rebecca Keaton
Clerk of Superior Court Cobb Cty. Ga.

When recorded, return to:
HomeServices Lending, LLC
Attn: Final Document Department
7601 Office Plaza Drive North, Suite 125
West Des Moines, IA 50266
855-738-3326

TC160345J
CAMPBELL & BRANNON, L.L.C.
ATTORNEYS AT LAW
1000 JOHNSON FERRY ROAD
BLDG. 400, SUITE 404
MARIETTA, GA 30068

mail

Title Order No.: TC160345J
Escrow No.: TC160345J
LOAN #: 16024571

[Space Above This Line For Recording Data]

14/36

SECURITY DEED

MIN 1012742-0000034704-8
MERS PHONE #: 1-888-679-6377

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **March 24, 2016**, together with all Riders to this document.

(B) "Borrower" is **MARZIA MINNS-PEREZ, AN UNMARRIED WOMAN.**

Borrower is the grantor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the grantee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is **HomeServices Lending, LLC.**

Lender is a **Limited Liability Company,**
Delaware.
Suite 125, West Des Moines, IA 50266

organized and existing under the laws of
Lender's address is **7601 Office Plaza Drive North,**

(E) "Note" means the promissory note signed by Borrower and dated **March 24, 2016.** The Note states that Borrower owes Lender **ONE HUNDRED EIGHTY SEVEN THOUSAND TWO HUNDRED AND NO/100* * * * *** Dollars (U.S. **\$187,200.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **April 1, 2046.**

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.



LOAN #: 16024571

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- ☐ Adjustable Rate Rider
- ☐ Condominium Rider
- ☐ Second Home Rider
- ☐ Balloon Rider
- ☒ Planned Unit Development Rider
- ☒ Other(s) [specify]
- ☐ 1-4 Family Rider
- ☐ Biweekly Payment Rider
- Waiver of Borrower's Rights Rider**
- ☐ V.A. Rider

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS, with power of sale, the following described property located in the **County** [Type of Recording Jurisdiction] Of **Cobb**

[Name of Recording Jurisdiction]:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS "EXHIBIT A".

APN #: 20-0128-0-335-0

which currently has the address of **2358 Whispering Drive NW, Kennesaw,**

[Street] [City]

Georgia **30144**

("Property Address"):

[Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.



LOAN #: 16024571

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items,



LOAN #: 16024571

unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to



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settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property (as set forth below). Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, making repairs, replacing doors and windows, draining water from pipes, and eliminating building or other code violations or dangerous conditions. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.



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Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.



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13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the



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Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale granted by Borrower and any other remedies permitted by Applicable Law. Borrower appoints Lender the agent and attorney-in-fact for Borrower to exercise the power of sale. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give a copy of a notice of sale by public advertisement for the time and in the manner prescribed by Applicable Law. Lender, without further demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Lender determines. Lender or its designee may purchase the Property at any sale.

Lender shall convey to the purchaser indefeasible title to the Property, and Borrower hereby appoints Lender Borrower's agent and attorney-in-fact to make such conveyance. The recitals in the Lender's deed shall be prima facie evidence of the truth of the statements made therein. Borrower covenants and agrees that Lender shall apply the



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proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. The power and agency granted are coupled with an interest, are irrevocable by death or otherwise and are cumulative to the remedies for collection of debt as provided by Applicable Law.

If the Property is sold pursuant to this Section 22, Borrower, or any person holding possession of the Property through Borrower, shall immediately surrender possession of the Property to the purchaser at the sale. If possession is not surrendered, Borrower or such person shall be a tenant holding over and may be dispossessed in accordance with Applicable Law.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall cancel this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waiver of Homestead. Borrower waives all rights of homestead exemption in the Property.

25. Assumption Not a Novation. Lender's acceptance of an assumption of the obligations of this Security Instrument and the Note, and any release of Borrower in connection therewith, shall not constitute a novation.

26. Security Deed. This conveyance is to be construed under the existing laws of the State of Georgia as a deed passing title, and not as a mortgage, and is intended to secure the payment of all sums secured hereby.

BORROWER ACCEPTS AND AGREES to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

IN WITNESS WHEREOF, Borrower has signed and sealed this Security Instrument.

Signed, sealed and delivered in the presence of:

MARZIA MINNS-PEREZ
MARZIA MINNS-PEREZ

8.24.16
(Seal)
DATE

[Signature]
Unofficial Witness

[Signature]
Notary Public, Cobb
County

Lender: HomeServices Lending,
NMLS ID: 490883
Loan Originator: Justine Harper
NMLS ID: 546357

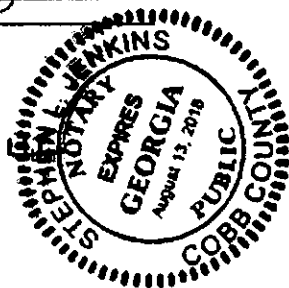


EXHIBIT A

All that tract or parcel of land lying and being in Land Lot 128 of the 20th District, 2nd Section, Cobb County, Georgia, being Lot 3, Whispering Lake at Kennesaw, Phase I, as per plat recorded in Plat Book 262, Page 15, Cobb County, Georgia Records, said plat being incorporated herein by this reference and made a part hereof.

LOAN #: 16024571
MIN: 1012742-0000034704-8

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 24th day of March, 2016 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to HomeServices Lending, LLC, a Limited Liability Company

(the "Lender")
of the same date and covering the Property described in the Security Instrument and located at: 2358 Whispering Drive NW, Kennesaw, GA 30144.

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in COVENANTS, CONDITIONS AND RESTRICTIONS

(the "Declaration").
The Property is a part of a planned unit development known as Whispering Lake S/D

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to ensure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

Initials: *mmp*

MULTISTATE PUD RIDER--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3150 1/01
Ellie Mae, Inc.

Page 1 of 2

F3150RDU 0115
F3150RLU (CLS)
03/22/2016 01:55 PM PST



LOAN #: 16024571

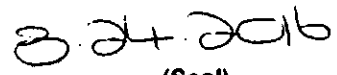
D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

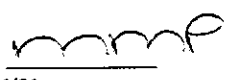
E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.


MARZIA MINNS-PEREZ


(Seal)
DATE

Initials: 

MULTISTATE PUD RIDER--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3150 1/01
Ellie Mae, Inc.

Page 2 of 2

F3150RDU 0115
F3150RLU (CLS)
03/22/2016 01:55 PM PST



LOAN #: 16024571

MIN: 1012742-0000034704-8

WAIVER OF BORROWER'S RIGHTS RIDER

BY EXECUTION OF THIS PARAGRAPH, GRANTOR EXPRESSLY: (1) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE DEBT AND THE **POWER OF ATTORNEY** GIVEN HEREIN TO LENDER TO SELL THE PREMISES BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY GRANTOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE AS IS REQUIRED TO BE GIVEN UNDER THE PROVISIONS HEREOF; (2) **WAIVES** ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES, THE VARIOUS PROVISIONS OF THE CONSTITUTION FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY LENDER OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO LENDER, EXCEPT SUCH NOTICE AS IS SPECIFICALLY REQUIRED TO BE PROVIDED HEREOF; (3) ACKNOWLEDGES THAT GRANTOR HAS READ THIS DEED AND SPECIFICALLY THIS PARAGRAPH AND ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF SAID DEED AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO GRANTOR AND GRANTOR HAS BEEN AFFORDED AN OPPORTUNITY TO CONSULT WITH COUNSEL OF GRANTOR'S CHOICE PRIOR TO EXECUTING THIS DEED; (4) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF GRANTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY GRANTOR AS PART OF A BARGAINED FOR LOAN TRANSACTION; AND (5) AGREES THAT THE PROVISIONS HEREOF ARE INCORPORATED INTO AND MADE A PART OF THE SECURITY DEED.

READ AND AGREED BY GRANTOR:

3.24.16

MARZIA MINNS-PEREZ
MARZIA MINNS-PEREZ

(Seal)

DATE



March 24, 2016

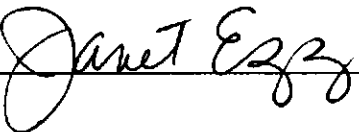
CLOSING ATTORNEY'S AFFIDAVIT

Before the undersigned attesting officer personally appeared the undersigned closing attorney, who, having been first duly sworn according to law, states under oath as follows:

In closing the above loan, but prior to the execution of the Deed to Secure Debt and "Waiver of the Borrower's Rights" by the Borrower(s), I reviewed with and explained to the Borrower(s) the terms and provisions of the Deed to Secure Debt and particularly the provisions thereof authorizing the Lender to sell the secured property by a nonjudicial foreclosure under a power of sale, together with the "Waiver of Borrower's Rights" and informed the Borrower(s) of Borrower's rights under the Constitution of the State of Georgia and the Constitution of the United States to notice and a judicial hearing prior to such foreclosure in the absence of a knowing, intentional and willing contractual waiver by Borrower(s) of Borrower's rights. After said review with and explanation to Borrower(s), Borrower(s) executed the Deed to Secure Debt and "Waiver of Borrower's Rights."

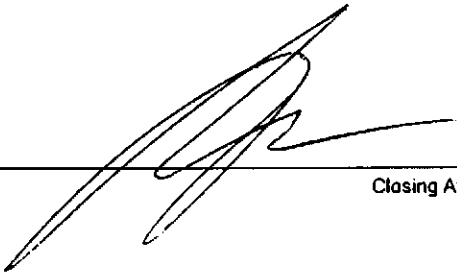
Based on said review with and explanation to the Borrower(s), it is my opinion that Borrower(s) knowingly, intentionally and willingly executed the waiver of Borrower's constitutional rights to notice and judicial hearing prior to any such nonjudicial foreclosure.

Sworn to and subscribed before me on the date set forth above.



Notary Public

Janet Espy
NOTARY PUBLIC
Cobb County, GEORGIA
My Commission Expires
08/28/2016



Closing Attorney





Printed: 10/27/2023

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
HEATHER WALKER CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Payer:
WELLS FARGO REAL ESTATE TAX SERVICE

MINNS PEREZ MARZIA

Payment Date: 9/30/2023

Tax Year	Parcel ID	Due Date	Appeal Amount		Taxes Due
2023	20012803350	10/15/2023	Pay:	N/A or	\$0.00
Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$3,130.12	\$0.00



Scan this code with your
mobile phone to view
this bill!!



City of Kennesaw
PROPERTY TAX DIVISION
2529 J. O. STEPHENSON AVE
KENNESAW, GA 30144-2780
(770) 429-4542

2023 Property Tax Bill

Parcel ID	Tax District		Bill #						
20012803350	3/3-BOND - KENNESAW CITY		233830						
Property Owner/Location/Description			Fair Market Value	Taxable Value					
MINNS PEREZ MARZIA 2358 WHISPERING DR			366,310	146,524					
Levies	Taxable Value	-	Exemptions	=	Net Assessment	X	Tax Rate	=	Net Tax
CITY OF KENNESAW	146,524		55,944		90,580		7.7500000000		\$702.00
HTRG	18,000		0		18,000		(7.7500000000)		(\$139.50)
BOND	146,524		0		146,524		1.5000000000		\$219.79

Exemptions: 111 - Floating Exemption >Per House Bill 960 calculation, interest will accrue at .875%. Penalty will accrue at 5% after 120 days with an additional 5% assessed after each successive 120 days to a maximum of 20% of the principle amount due (House Bill 960). >Payments can be made online at www.municipalonlinepayments.com/kennesawga, in person, by mail or via our dropbox. Tax bills are mailed annually on October 1, with a due date of December 1. >Any questions concerning ownership changes or change of address should be directed to Cobb County Tax Commissioner's Office. For all other questions or concerns regarding this statement, give us a call at 770-429-4542. The 'HTRG Credit' reduction shown on your bill is the result of homeowner tax relief enacted by the Governor and the General Assembly of the State of Georgia.	Current Year Tax	\$782.29
	Interest	\$0.00
	Penalty	\$0.00
	Other Fees	\$0.00
	Payments Received	\$782.29
	Other Amounts Due	\$0.00
	Total Due	\$0.00
	Due Date	12/01/2023



City of Kennesaw
PROPERTY TAX DIVISION
2529 J. O. STEPHENSON AVE
KENNESAW, GA 30144-2780

Please make check or Money Order Payable to :
City of Kennesaw Property Tax Division and
include the Parcel ID on your check.

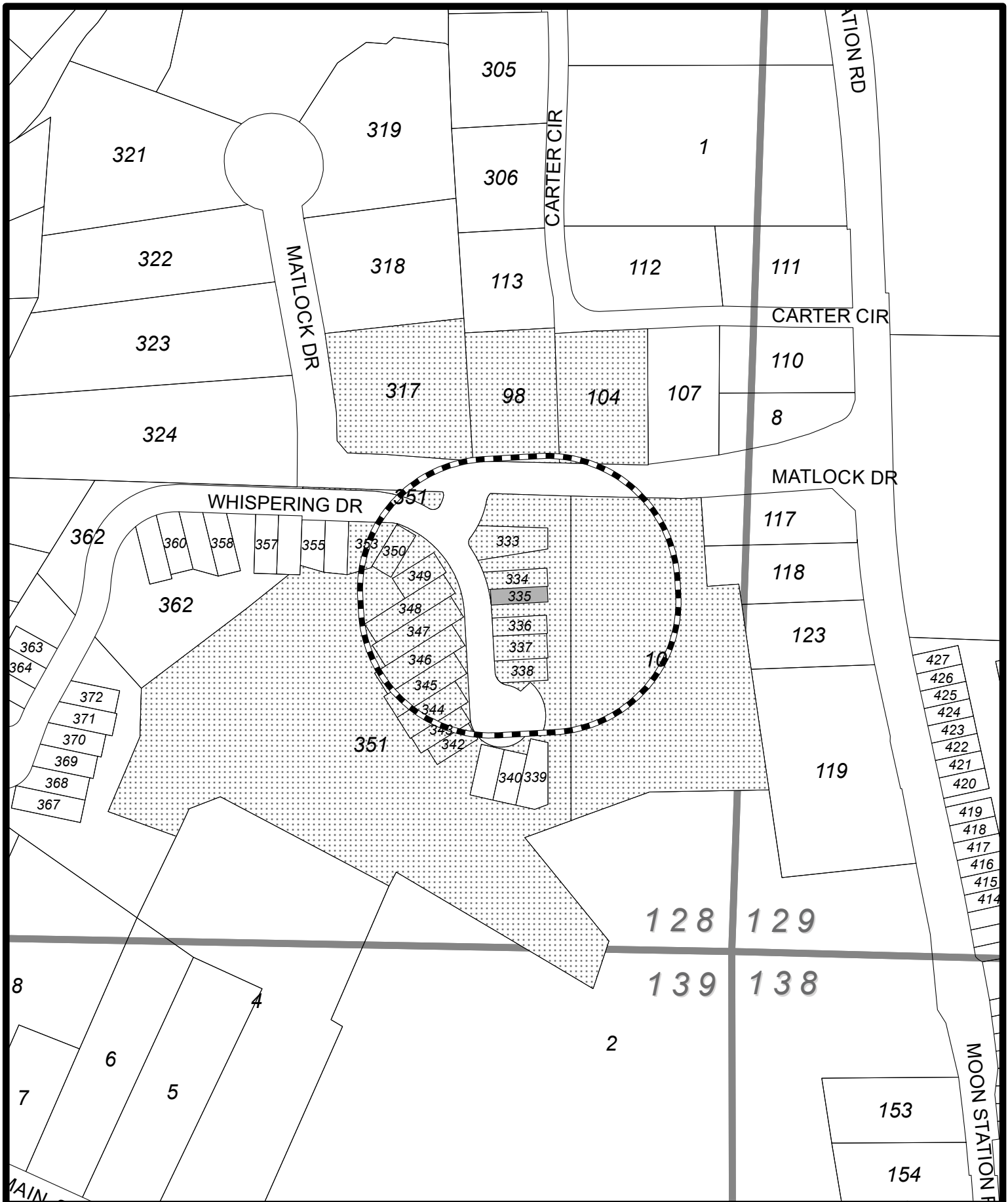
For your convenience, you may pay by check,
money order, Discover, Mastercard, AMEX,
VISA.
3% fee and \$3.50 per transaction fee added to
debit/credit card payments. \$1.25 fee per
ECheck transaction paid online.

Parcel ID: 20012803350
Amount Due: \$0.00
Bill#: 233830
Due Date: 12/01/2023

AMOUNT PAID

MINNS PEREZ MARZIA
2358 WHISPERING DR NW
KENNESAW, GA 30144

City of Kennesaw
PROPERTY TAX DIVISION
2529 J. O. STEPHENSON AVE
KENNESAW, GA 30144-2780



-  Subject Parcel
-  200' Radius
-  Properties Notified

2358 Whispering Drive
Land Lot 128
Tax Parcel 335

LU2023-03
200' PROPERTY NOTIFICATION



CITY OF KENNESAW
 PLANNING & ZONING DEPT.
 770-590-8268

Derek Easton
 Mayor
Lee Moore
 City Clerk

Date: 12/26/2023

LU2023-000



Tax Parcel - 20012803420

NISTOR HARRY & ALEXANDRA
2347 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012803470

WEBSTER WALTER & WEBSTER SHAKEISHA C
2357 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012801040

NLW LLC
3099 CARTER CIR NW
KENNESAW GA 30144

Tax Parcel - 20012803370

GOODRICH KARINA PARANADA & PATRICK
EARLE
2354 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012803360

JACK JENNIFER L
2356 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012803510

WHISPERING LAKE HOMEOWNERS
ASSOCIATION INC
C/O SMG MANAGEMENT OF ATLANTA PO BOX
76697
ATLANTA GA 30358

Tax Parcel - 20012803380

ORTIZ DONNA A
2352 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012803170

3042 MATLOCK HOLDINGS LLC
3042 MATLOCK DR
KENNESAW GA 30144

Tax Parcel - 20012803500

TRAILLE ETHEL K
2363 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012803440

PALMER GERRIE R
2351 WHISPERING DR
KENNESAW GA 30144

Tax Parcel - 20012803530

KOZEE ELLEN A & GATIEN STEVEN TYLER
2367 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012803450

FLETCHER YUL F
2353 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012800980

NLW LLC
5000 BURNT HICKORY RD
KENNESAW GA 30152

Tax Parcel - 20012803460

GLANZ MAY
2355 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012803480

BETHI SANTOSH
2359 WHISPERING DR
KENNESAW GA 30144

Tax Parcel - 20012800100

MILLER NORMAN N
3071 MOON STATION RD
KENNESAW GA 30144-2710

Tax Parcel - 20012803490

KERPICS STEVEN
2361 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012803340

JOHNSON DUSTIN
2360 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012803430

ANDREW PETER
2349 WHISPERING DR NW
KENNESAW GA 30144

Tax Parcel - 20012803330

ROBINETTE CLAY C & EMILY M .
2362 WHISPERING DR NW
KENNESAW GA 30144



2358

**CITY OF KENNESAW
LAND USE NOTICE**

APPLICATION # **LU2023-03**

PURPOSE Home based business license to be a food cottage
operator to create and sell baked goods

DATE OF PUBLIC MEETING: **2/7/2024** TIME: **6:30PM**

DATE OF PUBLIC MEETING: **2/19/2024** TIME: **6:30PM**

PLACE: **CITY HALL KENNESAW, GA**

Due to the priority for public health and safety,
the City of Kennesaw will implement a public meeting
protocol / system for community participation
in compliance to social distancing protocol.
For specific public meeting guidelines and access to all
application information please visit our website

[HTTP://WWW.KENNESAW-GA.GOV](http://www.kennesaw-ga.gov)

FOR FURTHER INFORMATION PLEASE CALL :
PLANNING AND ZONING DEPARTMENT 770-590-8268

2358

01.23.2024 09:50

USPS TRACKING#



ATLANTA METRO 301

16 JAN 2024 PM 8 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 8531 3186 5505 04

2023-03-03

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

CITY OF KENNEDY
Housing + Zoning
2529 JO STEPHENS
AVE.
KENNESAW GA
30144

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WHISPERING LAKE
HGT
C/O ENG MGMT &
ATLANTA
PO Box 76697
ATLANTA GA 30358



9590 9402 8531 3186 5505 04

2. Article Number (Transfer from service label)

9589 0710 5270 0560 8684 06

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

STEPHEN J. HUS

C. Date of Delivery

1/16/27

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Mail

Mail Restricted Delivery

(over \$500)

USPS TRACKING #



ATLANTA METRO 301
ATLANTA METRO 301
18 JAN 2024 PM 6 L
18 JAN 2024 PM 11 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

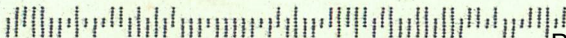
9590 9402 8531 3186 5503 44

Zoning Case
2023-03

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

City of Kennesaw
Planning + Zoning
2529 Jo Jefferson
Ave.
Kennesaw GA 30144



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

AUSTIN WILCOX
2359 WHISPERING
PR. RD
KENNESAW GA
30144



9590 9402 8531 3186 5503 44

2. Article Number (Transfer from service label)

9589 0710 5270 0560 8684 51

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

Austin Wilcox

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted DeliveryMail Restricted Delivery
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Page 73 of 269

Domestic Return Receipt

USPS TRACKING #



ATLANTA METRO 301

18 JAN 2024 PM 11L

9590 9402 8531 3186 5502 90

7
2023-03

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

City of Kennebec
Planning + Zoning
2029 J O Stephenson
Ave.
Kennebec Co 01444



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JENNIFER JACK
2356 WHISPERING
DR. NW
KENNESAW GA
30144



9590 9402 8531 3186 5502 90

2. Article Number (Transfer from service label)

9589 0710 5270 0560 8683 14

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☒ Addressee

B. Received by (Printed Name)

Jennifer Jack

C. Date of Delivery

1/14/24

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery
(0)

Page 75 of 269

Domestic Return Receipt

MDJ-1121
GPN-16
City of Kennesaw
Land Use Permit Request

Notice is hereby given that the City of Kennesaw shall hold a public hearing to give consideration for a land use permit request submitted by Marzia Minns. Said request is to obtain a home occupational business license to allow for the baking and selling of pastries at 2358 Whispering Drive NW. Property consists of 0.05 +/- acres, lies in Land Lot 128, Tax Parcel 335 and is zoned RM-8 (Multi-Family Residential - 8 Units per Acre).
Said meetings shall be held before the Planning Commission on February 7, 2024 at 6:30 P.M. and the Mayor and Council will hold a public hearing on February 19, 2024, at 6:30 P.M. both meetings to be held at 2529 J.O. Stephenson Avenue, Kennesaw, Georgia. Any interested persons may attend and be heard relative thereto.
Mayor and Council will be conducting their meeting in person and you can access the meeting via the following link: <https://www.facebook.com/CityofKennesaw/>
Any interested citizens are invited to email kennesawcouncil@kennesaw-ga.gov.
1:19-2024

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**MINUTES OF PLANNING COMMISSION MEETING
CITY OF KENNESAW
Council Chambers
February 7, 2024
6:30 PM**

1. Call to Order / Roll Call

The meeting was called to order by Commissioner Jackson at 6:30 p.m.

Roll Call: Commissioner Jackson, Commissioner Ragus, Commissioner Bodenhamer, Commissioner Vande Zande, Commissioner Greenall and Commissioner Trim

Absent: Commissioner Patterson

Staff Present: Darryl Simmons (Planning & Zoning Administrator), Chanelle Campbell (Assistant Zoning Administrator & City Planner) and Natalie Faustine (Community Development Administrative Assistant)

Speakers: Marzia Minns (Applicant) and John Powell (3410 Jiles Rd)

2. Election of Officers

Commissioner Vande Zande nominated Commissioner Phillip Jackson as Chair. Vote taken, Commissioner Phillip Jackson was declared elected by majority of votes, as Chairman.

Commissioner Greenall nominated Commissioner Trey Bodenhamer as Vice Chair. Vote taken, Commissioner Trey Bodenhamer was declared elected by majority of votes, as Vice Chairman.

3. 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. The meeting may be accessed using Facebook Live via the following link: www.Facebook.com/City of Kennesaw/. However, comments made on Facebook Live will not be visible by City staff. If you would like to provide public comment on a specific agenda item, you can email kennesawcouncil@kennesaw-ga.gov no later than 6:00 p.m. the night of the regular meeting. Your comment will be read aloud or grouped into categories for the record. All interested parties may attend the meeting in person with limited seating available at the City Hall Council Chambers and the Ben Robertson Community Center, if needed. Please note that the Planning Commission serves as an advisory board that makes recommendations to the

Mayor and Council unless otherwise noted.

- B. Pending zoning applications may be viewed on an interactive map via the Planning & Zoning webpage or using the following link:
<https://arcg.is/1q1ubX0>.
- C. New business items on this agenda will be heard by the Mayor and Council on February 19, 2024.

4. Approval of the Meeting Minutes

- A. Approval of Meeting Minutes from December 6, 2023.

Chairman Jackson calls for a motion to approve the meeting minutes from December 6, 2023 as submitted.

Motion by Commissioner Bodenhamer to approve

Seconded by Commissioner Greenall

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

5. New Business

- A. **LU2023-03** - Consideration for approval of a land use permit request located at 2358 Whispering Drive as submitted by applicant Marzia Minns. Said request is for obtaining a home occupation business license for baking pastries. Property is zoned RM-8 (Multi-Family Residential), consists of 0.05 +/- acres and lies in land lot 128 tax parcel 335.

Chairman Jackson called for a motion regarding the land use permit application with staff conditions as outlined in the staff analysis.

Motion by Commissioner Greenall to approve with conditions as outlined by staff.

Seconded by Commissioner Bodenhamer.

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

- B. **MISC2024-01** - Consideration for approval of a text amendment request as submitted by the City of Kennesaw. Said request is to amend the Unified Development Code, Appendix A, "Unified Development Code" Section 2.01.03.06 of said chapter regarding the regulation for the R-10 single-family residential district as submitted by the City of Kennesaw.

Chairman Jackson called for a motion regarding the proposed Unified Development Code text amendment.

Motion by Commissioner Vande Zande to approve with the condition that verbiage is added to the code to specify the neighborhood this amendment will apply to.

Seconded by Commissioner Bodenhamer.

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

- C. **MISC2024-02** - Consideration for approval to adopt the 2024 Official Zoning Map for the City of Kennesaw.

Chairman Jackson called for a motion regarding the 2024 Official Zoning Map for the City of Kennesaw.

Motion by Commissioner Vande Zande to approve
Seconded by Commissioner Bodenhamer
Vote taken, motion unanimously approve 5-0. Motion carried.

6. Staff Comment

7. Adjourn

Chairman Jackson called for a request for dismissal.
Motion by Commissioner Bodenhamer to adjourn
Seconded by Commissioner
Chairman Jackson adjourned the meeting at 7:10 p.m.



Item Report

TO: The Honorable Mayor and City Council

FROM: Darryl Simmons, Zoning Administrator

DATE: February 12, 2024

TITLE: **Ordinance: Unified Development Code Text Amendment**
 Consideration for approval of an Ordinance to amend the Unified Development Code, Appendix A, Chapter 2 "Zoning Districts," Section 2.01.03.06 of said chapter regarding the regulation for the R-10 single-family residential district as submitted by the City of Kennesaw. Case #MISC2024-01.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. MISC2024-01_ZoningMapAmendment_Ordinance
2. MISC2024-01_WoodlandAcres_Packet_FINAL
3. MISC2024-01_WoodlandAcres_Public Notice
4. MISC2024-01_WoodlandAcres_Public Notice (2)
5. 02-07-2024 PC Action Minutes

CITY OF KENNESAW

ORDINANCE NO. 2024-, 2024

**AN ORDINANCE TO ADOPT THE OFFICIAL ZONING MAP OF THE
CITY OF KENNESAW**

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

WHEREAS, prior to 1994, the City of Kennesaw allowed residential development of subdivisions within the City which were developed to R-10 zoning standards; and

WHEREAS, in 1994, the City of Kennesaw created a hybrid rezoning classification that authorized such previously existing developed lots to be classified as R-15 zoning but provided for separate uses in order to bring the City classifications more in line with the zoning classifications of Cobb County, Ga.; and

WHEREAS, on March 18, 1996, the City of Kennesaw adopted a comprehensive amendment to the Zoning Ordinance which separated out the two zoning categories into R-15 and R-10 but apparently failed to amend the zoning map to recognize the use of those lots previously developed as R-10 and thus creating a situation whereby many homes were left in a nonconforming use; and

WHEREAS, the City of Kennesaw desires to adopt a text and map amendment to properly reflect the 289 lots of Woodland Acres subdivision as referenced on the Zoning Map in land lot 166 of the 20th district consisting of approximately 91.14 +/- acres which were developed R-10 to address and rectify this oversight;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City of Kennesaw hereby amends Section 2.01.03.06 by deleting the existing provisions of Section 2.01.03.06 and replacing same as follows:

2.01.03.06 The regulations for the R-10 Single-Family residential district (10,000-square-foot lot size) are as follows:

- A. *Purpose and intent.* The R-10 single-family residential district is intended to provide suitable areas for single-family, detached dwellings at medium densities as defined by the City of Kennesaw Comprehensive Land Use Plan, and as may be amended from time to time, with access to both public water and sewerage. The 289 parcels developed as a 10,000 square foot lot within the Woodland Acres subdivision which met the conditions of the Ordinance prior to 1994, shall be deemed to a lawful conforming use and the Official Zoning Map of the City of Kennesaw, shall be amended to reflect that these lots and homes thereon shall be rezoned as lawful and conforming and subject to the regulations contained herein.
- B. *Uses.* Any use not permitted as of right, or not permitted by Special Exception, or not permitted by land use permit is prohibited. To the extent there is a conflict between the permitted use table and this subsection, this section shall control for purposes of determining whether the use is allowed. See Section 4.04.01 for standards associated with Special Exception uses. Any conflict between the standards set forth in this district and

those set forth in Section 4.04.01, the standards in Section 4.04.01 shall control for purposes of developing a Special Exception use.

The following uses are permitted:

- Clubs or lodges
- Community Fairs
- Designated recycling collection locations
- Executive golf courses
- Golf courses (Par 3)
- Golf courses (18-hole regulation; private and public)
- Group homes
- Limited home occupation
- Nonprofit riding stables
- Nonprofit (seasonal use) fishing lakes
- Private parks
- Recreation grounds other than tennis courts and golf courses
- Religious assemblies
- Single family dwelling units (detached)
- Temporary uses

The following uses are permitted by special exception (refer to section 4.04.01):

- Cemeteries
- Mausoleums
- Private community centers
- Private schools of general and special education

The following uses are permitted by land use permit or special land use permit:

- Cottage food operators (refer to section 4.04.05 Standards for Home Occupation)
- Family child care learning home (refer to section 4.04.05 Standards for Home Occupation)
- Home occupation (refer to section 4.04.05)
- Manufactured Homes
- Radio, television and other communication towers and antennas (refer to section 4.04.06)

C. *Requirements for certain uses.* The following uses shall have the requirements as ascribed to them in this subsection.

1. *Cottage Food Operators:*

- (a) Cottage food operators shall adhere to all rules and regulations imposed by the Georgia Department of Agriculture.
- (b) There shall be no signage or other exterior evidence of the cottage food operator.
- (c) Deliveries of specialty ingredients such as herbs and spices, etc., limited to those made by the United States Postal Service or other carrier (FedEx, United Parcel Service, etc.) that routinely deliver mail/internet order products to residents.
- (d) No cottage food products prepared by the cottage food operator may be picked up by a commercial carrier.
- (e) There shall be no employees parking on the site unless approved by the Mayor and City Council in accordance with Section 4.04.05.
- (f) A home occupation land use permit shall be required.

2. *Limited Home Occupations:*

- (a) There shall be no exterior evidence of the home occupation, including but not limited to any type of identifying signs.
- (b) No article, product or service used or sold in connection with such activity shall be other than those normally found on the premises.
- (c) No mechanical equipment shall be used for such occupation except such equipment as is customary for purely household and hobby purposes.
- (d) Such use shall be conducted entirely within the dwelling unit, and only persons living in the dwelling unit shall be employed in such occupation.
- (e) No more than 25 percent of the dwelling unit may be used for the operation.
- (f) No materials, equipment or business vehicles may be stored or parked on the premises, except that one business vehicle, used exclusively by the resident may be parked in a carport, garage, or rear or side yard.
- (g) The off-site employees of the resident shall not congregate on the premises for any purpose concerning the business of the home occupation.
- (h) There shall be no deliveries of supplies for use in the home occupation or pickups of the items produced by the occupant by commercial carriers.
- (i) No clients or customers are allowed on the premises on a regular basis.
- (j) The limited home occupation shall not create a nuisance.

3. *Designated Recycling Collection Locations:*

- (a) Must be maintained in a safe, clean, neat, and sanitary fashion;
- (b) Such location shall be visually screened and maintained;
- (c) Such location shall be within the building setbacks unless otherwise approved by the zoning administrator or his/her designee due to topography, safety, internal traffic flow, site distance, or for other site-related circumstances not created by the property owner.

4. *Group Home:*

- (a) A group home shall be shared by four or fewer persons, excluding resident staff;
- (b) The group home must provide the City of Kennesaw with a copy of its scheduled activity plan, a copy of the group home rules, and, if applicable, evidence of active enforcement under the Georgia Association of Recovery Residence standards;
- (c) The group home must be under the direction and guidance of a designated managing caregiver that resides at the group home;
- (d) The designated managing caregiver or his or her designee shall be available on a 24-hour basis in the event of emergencies or complaints; and
- (e) A group home must submit to random inspections by the City Code Enforcement.
- (f) A group home shall comply with all applicable regulations by the Board of Behavioral Health and Developmental Disabilities and the Department of Behavioral Health and Developmental Disabilities.

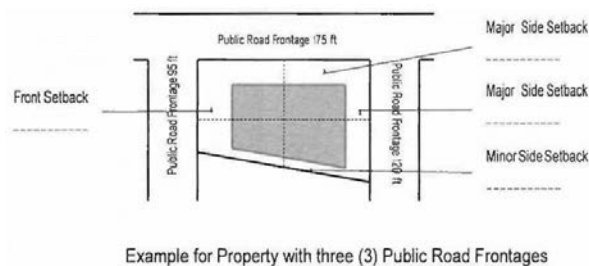
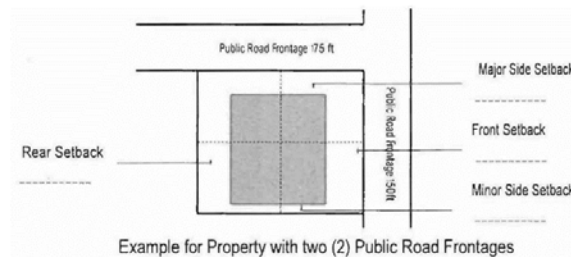
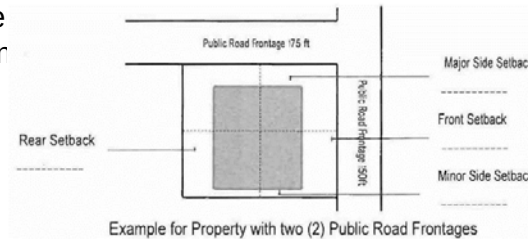
5. *Family childcare learning home:*

- (a) Maximum of six children under 13 years of age at one time for pay or not for pay;
 - (b) For purpose of this section only, children who are related by direct blood kin or adoption to the childcare provider shall not be included in the calculation of the six children limitation;
 - (c) The childcare shall not create a nuisance to immediately adjacent property owners;
 - (d) Off-street parking must be provided for childcare pick-up and drop-off; and
 - (e) No employees;
 - (f) Proof of a Family child care learning home license under O.C.G.A. § 20-1A-10(v), or as amended from time to time, by the Department of Early Care and Learning or its successor agency;
 - (g) A home occupation land use permit shall be required.
6. *Temporary Uses:*
- (a) An approved temporary use shall not exceed 30 days and may be renewed for not more than one additional 30-day period.
 - (b) Adequate off-street parking shall be provided.
 - (c) Application for a temporary use shall be made with the City Business License division.

D. *Dimensional standards for Development.* Setback shall be measured from the property line of the parcel. The property with shortest amount of road frontage shall be the front setback for determining other setbacks (major side, side, rear).

- 1. *Minimum lot size:* 10,000 square feet. The Zoning Administrator shall not be authorized to recommend a variance for more than 25 percent of the minimum lot size.
- 2. *Minimum floor area:* 1,050 square feet.
- 3. *Minimum lot width at front setback line:* 75 feet; cul-de-sac, 60 feet.
- 4. *Minimum public road frontage:* 75 feet; cul-de-sac, 50 feet.
- 5. *Maximum cover:* 30%
- 6. *Maximum building height:* 35 feet.
- 7. A basement shall be counted as a story if the ceiling is six feet or more above the grade and is either subdivided or used for dwelling or business purposes. A basement is a portion of the building partly underground which has more than one-half of its height measured from finished floor to finished ceiling above the average grade of the adjoining ground.
- 8. *Minimum building setbacks:*
 - (a) Front yard as measured from arterial: 40 feet.
 - (b) Front yard as measured from collector: 40 feet.
 - (c) Front yard as measured from local: 35 feet.
 - (d) Side yard (aka minor side yard): 10 feet.
 - (e) Rear yard: 20 feet.
 - (f) Major side: 25 feet.
- 9. *Measuring building setbacks:* The number and type of setbacks is determined based on the number and type of public road frontages for the lot as follows and as shown on the following diagram:

- (a) *One public road frontage*: The front yard setback is measured from the one public road frontage (arterial, collector, or local). The yard opposite the front yard is the rear yard and the other two yards are side yards.
- (b) *Two public road frontages*: The front yard setback is measured from the road with the shortest frontage (arterial, collector, or local). The major side yard setback is measured from the road with the longer frontage (arterial, collector, or local). The yard opposite the front yard is the rear yard and the yard opposite the major side yard is the minor side yard.
- (c) *Three public road frontages*: The front yard setback is measured from the road with the shortest frontage (arterial, collector, or local). The two major side yard setbacks are measured from the other two road frontages (arterial, collector, or local). The remaining yard is a minor side yard.
- (d) Building setbacks apply to both principal and accessory buildings and structure except where it explicitly states otherwise.
- (e) Irregular shaped lots: The Planning and Zoning Administrator will determine setbacks adhering to the spirit and intent of the Ordinance.



PASSED AND ADOPTED by the Kennesaw City Council on this day of February 19, 2024.

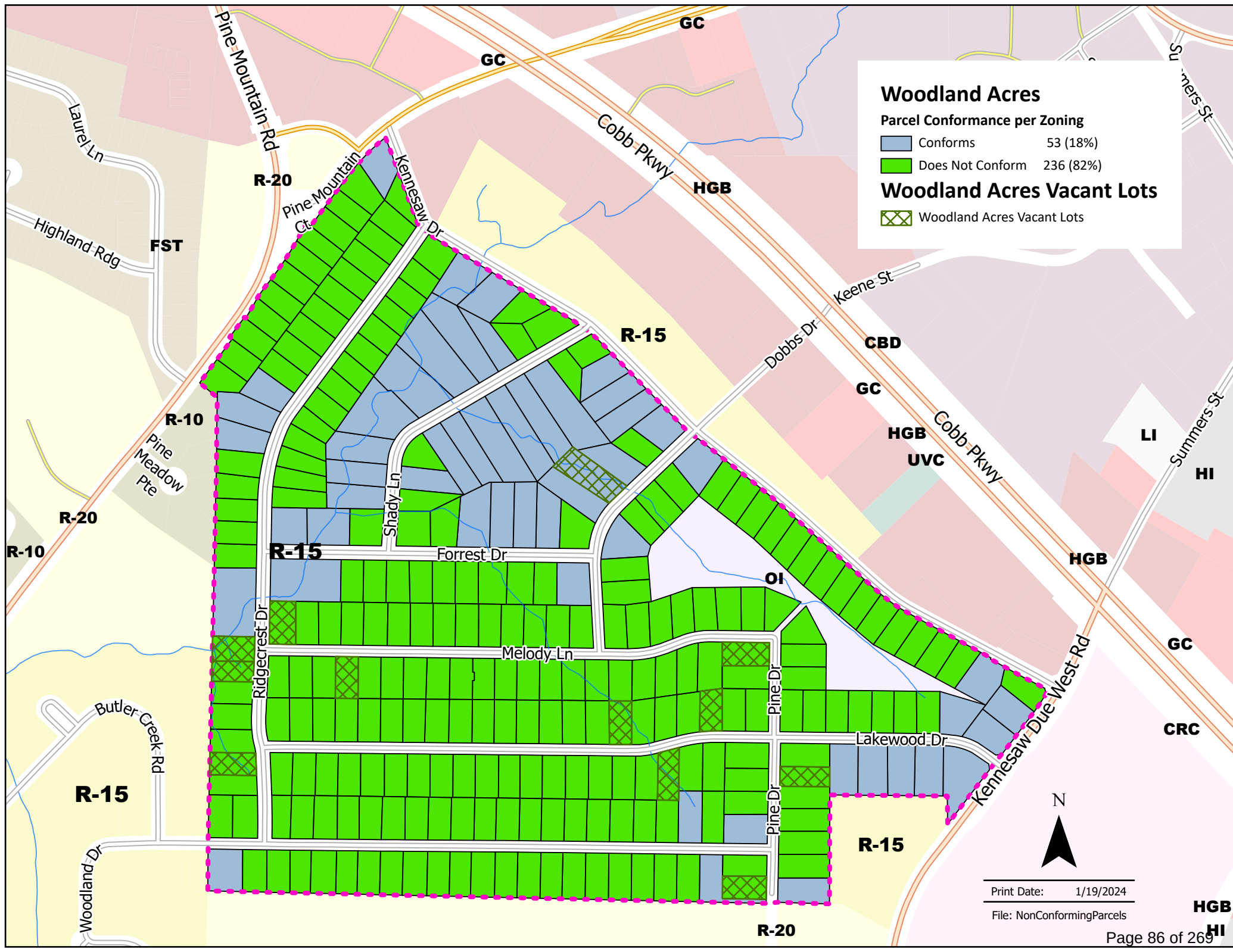
Attest:

City of Kennesaw

Lea Alvarez, City Clerk

Derek Easterling, Mayor

CITY OF KENNESAW
ORDINANCE NO. 2024



Woodland Acres

Parcel Conformance per Zoning

	Conforms	53 (18%)
	Does Not Conform	236 (82%)

Woodland Acres Vacant Lots

	Woodland Acres Vacant Lots
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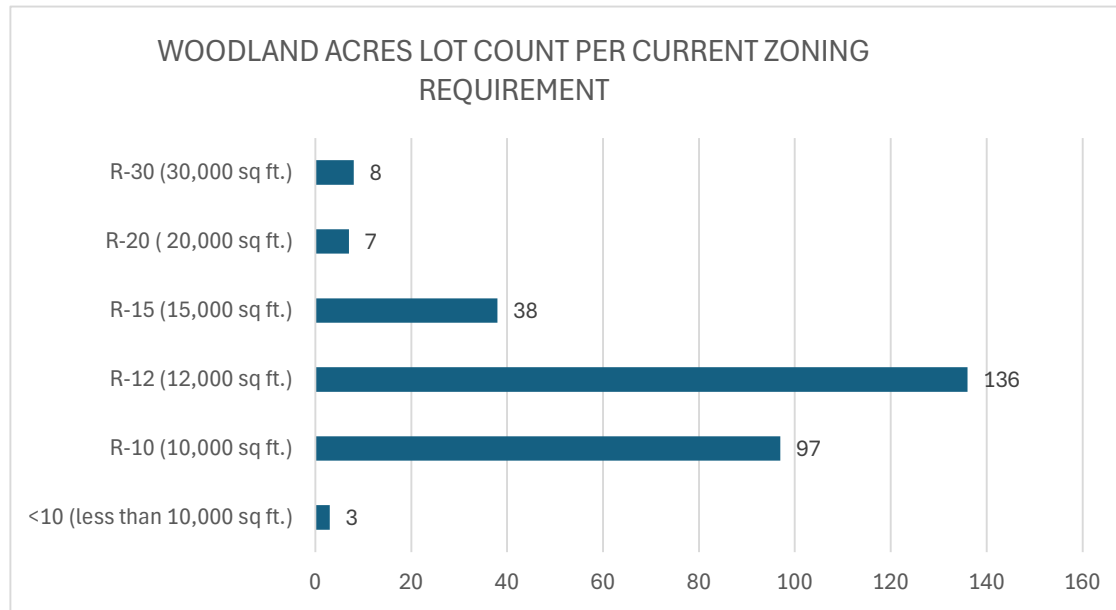
Print Date: 1/19/2024

File: NonConformingParcels

HGB
HI

Woodland Acres Data

- Total number of lots – 289
- Number of nonconforming lots – 236
- Number of conforming lots - 53
- Average lot size (sq. ft.) – 13,737.4 sq. ft.



Vacant Lot Data

- Vacant lots – 12

Parcel ID	NonConforming	Acres	Lot Size (Sq ft.)
20016603270	Yes	0.24	10414.01383
20016600500	Yes	0.26	11329.75738
20016601340	Yes	0.27	11671.44927
20016601690	Yes	0.28	11995.95994
20016600570	Yes	0.28	12026.72118
20016600640	Yes	0.28	12264.69444
20016603310	Yes	0.29	12705.35917
20016603260	Yes	0.3	12857.71105
20016601630	Yes	0.3	12887.23478
20016601170	Yes	0.31	13549.50336
20016600200	Yes	0.32	13793.79726
20016602410	No	0.49	21188.47545

Average lot size (Vacant Lots in sq ft.): 13057.06

Minimum Lot size (Vacant lot in sq ft.): 10414.01

CITY OF KENNESAW

ORDINANCE NO. 2024-, 2024

**AN ORDINANCE TO ADOPT THE OFFICIAL ZONING MAP OF THE
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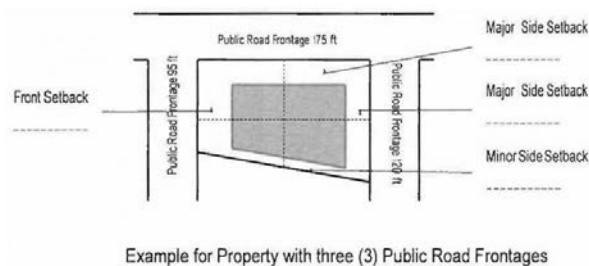
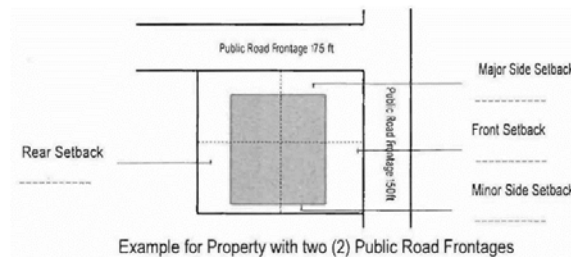
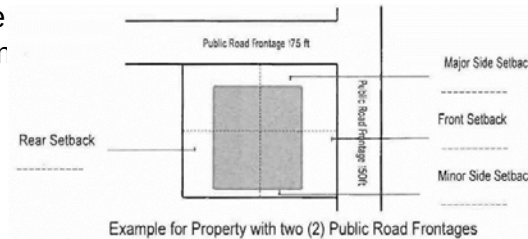
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- (e) Irregular shaped lots: The Planning and Zoning Administrator will determine setbacks adhering to the spirit and intent of the Ordinance.



PASSED AND ADOPTED by the Kennesaw City Council on this day of February 19, 2024.

Attest:

City of Kennesaw

Lea Alvarez, City Clerk

Derek Easterling, Mayor

CITY OF KENNESAW
ORDINANCE NO. 2024

**CITY OF KENNESAW
PUBLIC NOTICE**

Notice is hereby given that the City of Kennesaw shall hold public hearings to amend the Unified Development Code. The proposed amendment is to amend Section 2.01.03.06 regarding the regulations for the R-10 single-family residential district.

A copy of the amendment to the Unified Development Code is on file in the Office of Planning and Zoning during normal business hours, Monday-Friday from 8 a.m. to 5 p.m. for public viewing. The Planning Commission shall hold a meeting on February 7, 2024 at 6:30 p.m. with a final scheduled hearing and adoption by the Mayor and Council to be considered on February 19, 2024 at 6:30 p.m. Meetings will be held in the Kennesaw City Council Chambers, 2529 J.O. Stephenson Avenue, Kennesaw, GA. All interested persons may attend and be heard relative there to.

Mayor and Council will be conducting their meeting in person and you can access the meeting via the following link: <https://www.facebook.com/CityofKennesaw/>

Any interested citizens are invited to email kennesawcouncil@kennesaw-ga.gov.

Legal ad to run on January 26, 2024 and February 2, 2024.

MDJ-1254
GPN-16
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Any interested citizens are invited to email

kennesawcouncil@kennesaw-ga.gov.

1:26, 2:2-2024

MDJ-1255

Room, Cobb County Building, 100 Cherokee Street, Marietta, Georgia, at 9:00 a.m.

1:19,26; 2:2,9-2024

MDJ-1254
GPN-16
CITY OF KENNESAW
PUBLIC NOTICE

Notice is hereby given that the City of Kennesaw shall hold public hearings to amend the Unified Development Code. The proposed amendment is to amend Section 2.01.03.06 regarding the regulations for the R-10 single-family residential district.

A copy of the amendment to the Unified Development Code is on file in the Office of Planning and Zoning during normal business hours, Monday-Friday from 8 a.m. to 5 p.m. for public viewing. The Planning Commission shall hold a meeting on February 7, 2024 at 6:30 p.m. with a final scheduled hearing and adoption by the Mayor and

8003	Public Hearing	8004
Council to be considered on February 19, 2024 at 6:30 p.m. Meetings will be held in the Kennesaw City Council Chambers, 2529 J.O. Stephenson Avenue, Kennesaw, GA. All interested persons may attend and be heard relative there to. Mayor and Council will be conducting their meeting in person and you can access the meeting via the following link: https://www.facebook.com/CityofKennesaw/ Any interested citizens are invited to email kennesawcouncil@kennesaw-ga.gov. 1:26; 2:2-2024		Al The fc aband trate i be sol 10:00 Maxir vehicl pair, l NC Extra auctio scribe
MDJ-1255 GPN-16 CITY OF KENNESAW		

**MINUTES OF PLANNING COMMISSION MEETING
CITY OF KENNESAW
Council Chambers
February 7, 2024
6:30 PM**

1. Call to Order / Roll Call

The meeting was called to order by Commissioner Jackson at 6:30 p.m.

Roll Call: Commissioner Jackson, Commissioner Ragus, Commissioner Bodenhamer, Commissioner Vande Zande, Commissioner Greenall and Commissioner Trim

Absent: Commissioner Patterson

Staff Present: Darryl Simmons (Planning & Zoning Administrator), Chanelle Campbell (Assistant Zoning Administrator & City Planner) and Natalie Faustine (Community Development Administrative Assistant)

Speakers: Marzia Minns (Applicant) and John Powell (3410 Jiles Rd)

2. Election of Officers

Commissioner Vande Zande nominated Commissioner Phillip Jackson as Chair. Vote taken, Commissioner Phillip Jackson was declared elected by majority of votes, as Chairman.

Commissioner Greenall nominated Commissioner Trey Bodenhamer as Vice Chair. Vote taken, Commissioner Trey Bodenhamer was declared elected by majority of votes, as Vice Chairman.

3. 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. The meeting may be accessed using Facebook Live via the following link: www.Facebook.com/City of Kennesaw/. However, comments made on Facebook Live will not be visible by City staff. If you would like to provide public comment on a specific agenda item, you can email kennesawcouncil@kennesaw-ga.gov no later than 6:00 p.m. the night of the regular meeting. Your comment will be read aloud or grouped into categories for the record. All interested parties may attend the meeting in person with limited seating available at the City Hall Council Chambers and the Ben Robertson Community Center, if needed. Please note that the Planning Commission serves as an advisory board that makes recommendations to the

Mayor and Council unless otherwise noted.

- B. Pending zoning applications may be viewed on an interactive map via the Planning & Zoning webpage or using the following link:
<https://arcg.is/1q1ubX0>.
- C. New business items on this agenda will be heard by the Mayor and Council on February 19, 2024.

4. Approval of the Meeting Minutes

- A. Approval of Meeting Minutes from December 6, 2023.

Chairman Jackson calls for a motion to approve the meeting minutes from December 6, 2023 as submitted.

Motion by Commissioner Bodenhamer to approve

Seconded by Commissioner Greenall

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

5. New Business

- A. **LU2023-03** - Consideration for approval of a land use permit request located at 2358 Whispering Drive as submitted by applicant Marzia Minns. Said request is for obtaining a home occupation business license for baking pastries. Property is zoned RM-8 (Multi-Family Residential), consists of 0.05 +/- acres and lies in land lot 128 tax parcel 335.

Chairman Jackson called for a motion regarding the land use permit application with staff conditions as outlined in the staff analysis.

Motion by Commissioner Greenall to approve with conditions as outlined by staff.

Seconded by Commissioner Bodenhamer.

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

- B. **MISC2024-01** - Consideration for approval of a text amendment request as submitted by the City of Kennesaw. Said request is to amend the Unified Development Code, Appendix A, "Unified Development Code" Section 2.01.03.06 of said chapter regarding the regulation for the R-10 single-family residential district as submitted by the City of Kennesaw.

Chairman Jackson called for a motion regarding the proposed Unified Development Code text amendment.

Motion by Commissioner Vande Zande to approve with the condition that verbiage is added to the code to specify the neighborhood this amendment will apply to.

Seconded by Commissioner Bodenhamer.

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

- C. **MISC2024-02** - Consideration for approval to adopt the 2024 Official Zoning Map for the City of Kennesaw.

Chairman Jackson called for a motion regarding the 2024 Official Zoning Map for the City of Kennesaw.

Motion by Commissioner Vande Zande to approve
Seconded by Commissioner Bodenhamer
Vote taken, motion unanimously approve 5-0. Motion carried.

6. Staff Comment

7. Adjourn

Chairman Jackson called for a request for dismissal.
Motion by Commissioner Bodenhamer to adjourn
Seconded by Commissioner
Chairman Jackson adjourned the meeting at 7:10 p.m.



Item Report

TO: The Honorable Mayor and City Council

FROM: Darryl Simmons, Zoning Administrator

DATE: February 12, 2024

TITLE: **Ordinance: 2024 Zoning Map**
Consideration for approval of an Ordinance to adopt the 2024 Official Zoning Map for the City of Kennesaw. Case #MISC2024-02.

Summary:

The City of Kennesaw Planning and Zoning Department submits an annual map for the adoption that illustrates and reflects all zoning actions approved by the Mayor and Council since the last adoption in 2023, including all approved rezoning and annexation for parcels in the City of Kennesaw. This year's current map will reflect the zoning action taken from January 1, 2023, to February 19, 2024. The Planning Commission, at their regularly scheduled meeting on February 7, 2023, motioned to recommend approval of the zoning map. Approved: Vote 5-0. Legal ads were run in the Marietta Daily Journal on January 26 and February 2, 2024.

Recommendation:

Zoning Administrator recommends approval.

Fiscal Impact:

Attachments:

1. ORD2024-_Zoning Map Adoption
2. 2023 Rezoning and Annexation Summary
3. MISC2024-02 _ZoningMap_NoSignature_ REVISED
4. MISC2024-02 _ZoningMap_LegalAd
5. 02-07-2024 PC Action Minutes

CITY OF KENNESAW

ORDINANCE NO. 2024- , 2024

**AN ORDINANCE TO ADOPT THE OFFICIAL ZONING MAP OF THE
CITY OF KENNESAW**

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

WHEREAS, an Ordinance is necessary to adopt the Official Zoning Map of the City of Kennesaw, Georgia, and;

WHEREAS, notice as advertised in the Marietta Daily Journal on January 26, 2024, and February 2, 2024; and

WHEREAS, the Kennesaw Planning Commission held a public hearing on this proposal on February 7, 2024 recommending approval; and

WHEREAS, the Mayor and Council held a public hearing on this proposal on February 19, 2024; and

WHEREAS, the Mayor and Council have determined that the proposed Official Zoning Map is in the best public interest and meets the standards established.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Kennesaw, Cobb County, Georgia, that the Official Zoning Map of the City of Kennesaw, Georgia is hereby adopted to reflect all zoning approvals regarding annexations and rezonings between January 1, 2023 and February 19, 2024; and

BE IT FURTHER ORDAINED THAT this Ordinance and the attached map 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 February 19, 2024.

Attest:

City of Kennesaw

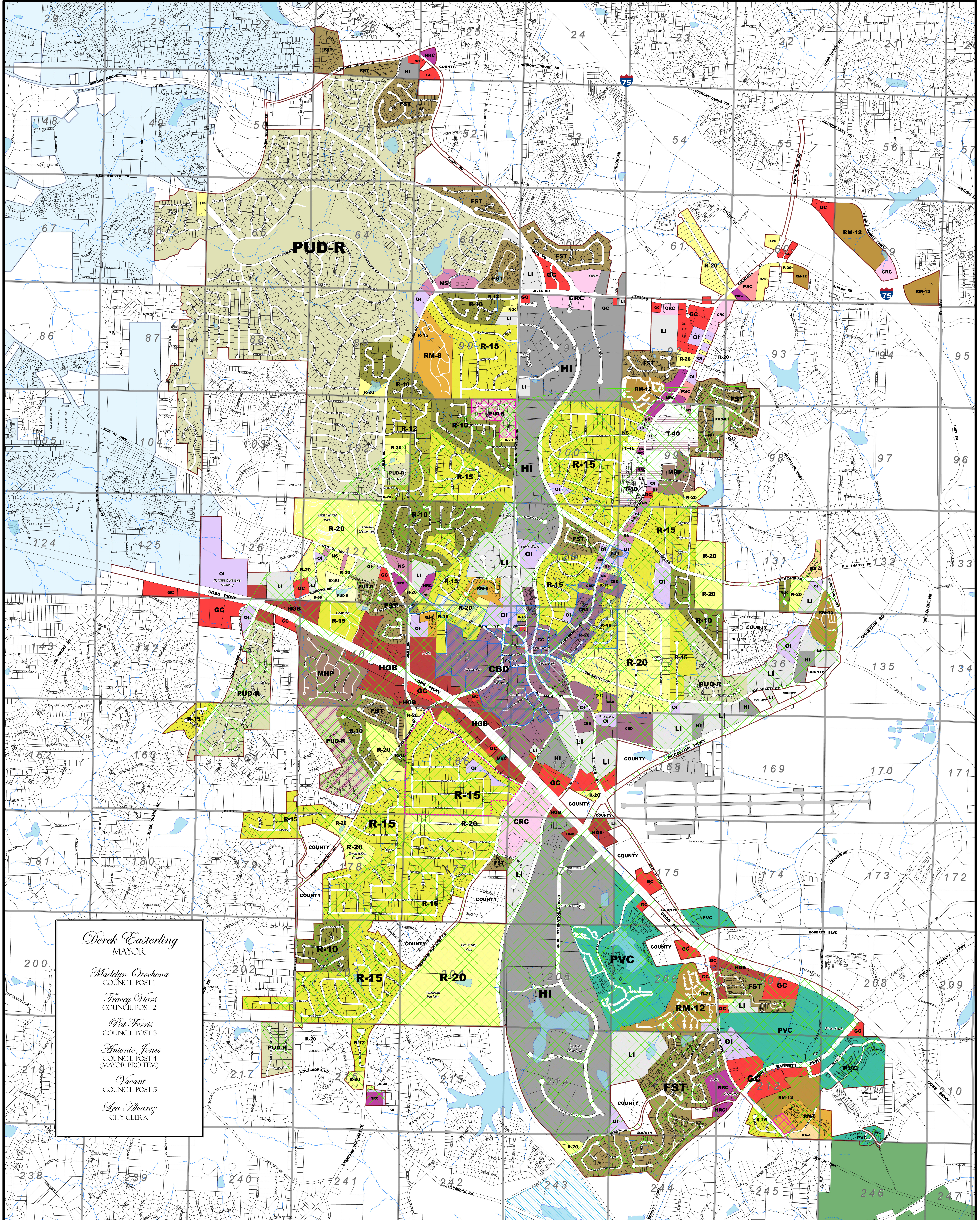
Lea Alvarez, City Clerk

Derek Easterling, Mayor

2023 Rezoning and Annexation Summary

Case No.	Applicant's Name (Property Owner)	Application Type, Project Description	Project Address	Parcel ID#
RZ2023-01	Marcos Ergas	Rezoning from County Mobile Home Park (MHP) to City General Commercial (GC) and annexation property into city limits for the construction of a four story climate control self-storage facility.	1650 N Cobb Parkway	20020801300
RZ2023-02(A)	City of Kennesaw	City-initiated rezoning of select parcels within downtown Kennesaw to change their perspective zoning to Central Business District (CBD). Address: 0 Cobb Parkway or parcel number 20013900990 and owned by the City of Kennesaw. Property is a vacant detention pond located in Adams Park. Property was zoned Highway General Business (HGB), consists of 0.36 +/- acres and lies in land lot 139 and tax parcel 99.	0 Cobb Parkway	20013900990
RZ2023-02(B)	City of Kennesaw	City-initiated rezoning of select parcels within downtown Kennesaw to change their perspective zoning to Central Business District (CBD). Address: 2681 S Main Street or parcel number 20016700140 and owned by Old South Village, LLC c/o Kodiak Ventures. Property is an existing mobile home community known as "Old South Village." The property consists of approximately 30 +/- mobile home lots and was zoned Mobile Home Park (MHP), consists of 3.6 +/- acres and lies in land lot 167 and tax parcel 14.	2681 S Main Street	20016700140
RZ2023-02(D)	City of Kennesaw	City-initiated rezoning of select parcels within downtown Kennesaw to change their perspective zoning to Central Business District (CBD). Address: 2753 Watts Drive or parcel number 20013900590 and owned by the City of Kennesaw. Property is the current location of the Ben Robertson Community Center, and was zoned Office/Institutional (O&I), consists of 2.61 +/- acres and lies in land lot 139 and tax parcel 59.	2753 Watts Drive	20013900590

RZ2023-02(E)	City of Kennesaw	City-initiated rezoning of select parcels within downtown Kennesaw to change their perspective zoning to Central Business District (CBD). Address: 2754 S Main Street or parcel number 20013801880. Property has two commercial eating establishments within one building. Property was zoned General Commercial (GC), consists of 0.67 +/- acres and lies in land lot 138 and tax parcel 188.	2754 S Main Street	20013801880
RZ2023-02(F)	City of Kennesaw	City-initiated rezoning of select parcels within downtown Kennesaw to change their perspective zoning to Central Business District (CBD). Address: 2817 Sardis Street or parcel number 20013800770 and owned by the City of Kennesaw. Property is vacant and located in Depot Park. Property was zoned R-15 (Single-Family Residential), consists of 0.9 +/- acres and lies in land lot 138 and tax parcel 77.	2817 Sardis Street	20013800770
RZ2023-04	Piedmont Residential, LLC	Rezoning from Single Family Residential (R-15) to Planned Unit Development - Residential (PUD-R) for property located at 1651 McCollum Pkwy, consist of 5.13 +/- acres and lies in land lot 99 and 98 tax parcel 001 for the construction of a residential townhome community.	1651 McCollum Pkwy	20003300010
RZ2023-05	Piedmont Residential, LLC	Rezoning from Highway General Business (HGB) to Central Business District (CBD) for a mixed-use development (multi-family residential, commercial retail, and park/plaza) . Address: 2590 Keene St and 2570 N Cobb Pkwy, consists of 3.58 +/- acres and lies in land lot 167 tax parcels 042, 073 and 118.	2590 Keene Street, 2570 N Cobb Pkwy	20016700420; 20016700730; 20016701160



Derek Easterling
MAYOR

Madelyn Orachena
COUNCIL POST 1

Tracey Viars
COUNCIL POST 2

Pat Ferris
COUNCIL POST 3

Antonio Jones
COUNCIL POST 4
(MAYOR PRO-TEM)

Vacant
COUNCIL POST 5

Lea Alvarez
CITY CLERK

Zoning Districts

CBD	HGB	NRC	PUD-R	R-20	RA-6
CRC	HI	NS	PVC	R-30	RM-8
FST	LI	OI	R-10	R-40	RM-12
GC	MHP	PBSH	R-12	RA-4	RM-16
		PSC	R-15	RA-5	UVC

Form Based Code

Open Space
T-3
T-4L
T-4O
T-5
Woodland Acres Non-Conforming Parcels

Zoning Overlays

Airport Hazard District
Conservation Subdivision
Historic Districts
Historic Preservation Village
Senior Living

Acworth City Limits
Kennesaw City Limits
Kennesaw Mtn Nat'l Battlefield
Land Lots 139
Marietta City Limits

ADOPTED OFFICIAL ZONING MAP
MAYOR DEREK EASTERLING

CITY OF KENNESAW
PLANNING & ZONING DEPT.
"ALWAYS PLANNING FORWARD"

Ordinance: 2023-01
Adopted: Feb 20, 2023
Revised: Feb 05, 2024
File: ZoningMap_ep

1" = 700'

Page 104 of 269

MDJ-1255
GPN-16
**CITY OF KENNESAW
PUBLIC NOTICE**

Notice is hereby given that the City of Kennesaw shall hold public hearings to give consideration for the adoption of the official City of Kennesaw 2024 Zoning Map. A copy of the map is on file in City Hall in the Planning and Zoning office for viewing during normal business hours of 8:00 a.m. to 5:00 p.m. Monday through Friday.

Said meeting shall be held before the Planning Commission on February 7, 2024 at 6:30 p.m. and the Mayor and Council will hold a public hearing on February 19, 2024 at 6:30 p.m. both meetings to be held at 2529 J. O. Stephenson Avenue, Kennesaw, Georgia. Any interested persons may attend and be heard relative hereto.

Mayor and Council will be conducting their meeting in person and you can access the meeting via the following link: <https://www.facebook.com/CityofKennesaw/>

Any interested citizens are invited to email

kennesawcouncil@kennesaw-ga.gov.

1:26; 2:2-2024

**MINUTES OF PLANNING COMMISSION MEETING
CITY OF KENNESAW
Council Chambers
February 7, 2024
6:30 PM**

1. Call to Order / Roll Call

The meeting was called to order by Commissioner Jackson at 6:30 p.m.

Roll Call: Commissioner Jackson, Commissioner Ragus, Commissioner Bodenhamer, Commissioner Vande Zande, Commissioner Greenall and Commissioner Trim

Absent: Commissioner Patterson

Staff Present: Darryl Simmons (Planning & Zoning Administrator), Chanelle Campbell (Assistant Zoning Administrator & City Planner) and Natalie Faustine (Community Development Administrative Assistant)

Speakers: Marzia Minns (Applicant) and John Powell (3410 Jiles Rd)

2. Election of Officers

Commissioner Vande Zande nominated Commissioner Phillip Jackson as Chair. Vote taken, Commissioner Phillip Jackson was declared elected by majority of votes, as Chairman.

Commissioner Greenall nominated Commissioner Trey Bodenhamer as Vice Chair. Vote taken, Commissioner Trey Bodenhamer was declared elected by majority of votes, as Vice Chairman.

3. 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. The meeting may be accessed using Facebook Live via the following link: www.Facebook.com/City of Kennesaw/. However, comments made on Facebook Live will not be visible by City staff. If you would like to provide public comment on a specific agenda item, you can email kennesawcouncil@kennesaw-ga.gov no later than 6:00 p.m. the night of the regular meeting. Your comment will be read aloud or grouped into categories for the record. All interested parties may attend the meeting in person with limited seating available at the City Hall Council Chambers and the Ben Robertson Community Center, if needed. Please note that the Planning Commission serves as an advisory board that makes recommendations to the

Mayor and Council unless otherwise noted.

- B. Pending zoning applications may be viewed on an interactive map via the Planning & Zoning webpage or using the following link:
<https://arcg.is/1q1ubX0>.
- C. New business items on this agenda will be heard by the Mayor and Council on February 19, 2024.

4. Approval of the Meeting Minutes

- A. Approval of Meeting Minutes from December 6, 2023.

Chairman Jackson calls for a motion to approve the meeting minutes from December 6, 2023 as submitted.

Motion by Commissioner Bodenhamer to approve

Seconded by Commissioner Greenall

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

5. New Business

- A. **LU2023-03** - Consideration for approval of a land use permit request located at 2358 Whispering Drive as submitted by applicant Marzia Minns. Said request is for obtaining a home occupation business license for baking pastries. Property is zoned RM-8 (Multi-Family Residential), consists of 0.05 +/- acres and lies in land lot 128 tax parcel 335.

Chairman Jackson called for a motion regarding the land use permit application with staff conditions as outlined in the staff analysis.

Motion by Commissioner Greenall to approve with conditions as outlined by staff.

Seconded by Commissioner Bodenhamer.

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

- B. **MISC2024-01** - Consideration for approval of a text amendment request as submitted by the City of Kennesaw. Said request is to amend the Unified Development Code, Appendix A, "Unified Development Code" Section 2.01.03.06 of said chapter regarding the regulation for the R-10 single-family residential district as submitted by the City of Kennesaw.

Chairman Jackson called for a motion regarding the proposed Unified Development Code text amendment.

Motion by Commissioner Vande Zande to approve with the condition that verbiage is added to the code to specify the neighborhood this amendment will apply to.

Seconded by Commissioner Bodenhamer.

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

- C. **MISC2024-02** - Consideration for approval to adopt the 2024 Official Zoning Map for the City of Kennesaw.

Chairman Jackson called for a motion regarding the 2024 Official Zoning Map for the City of Kennesaw.

Motion by Commissioner Vande Zande to approve
Seconded by Commissioner Bodenhamer
Vote taken, motion unanimously approve 5-0. Motion carried.

6. Staff Comment

7. Adjourn

Chairman Jackson called for a request for dismissal.
Motion by Commissioner Bodenhamer to adjourn
Seconded by Commissioner
Chairman Jackson adjourned the meeting at 7:10 p.m.



Item Report

TO: The Honorable Mayor and City Council

FROM:

DATE: February 12, 2024

TITLE: **January 29, 2024, City Council Work Session Minutes**
Approval the January 29, 2024, City Council work session minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. 01-29-24 City Council Work Session Minutes - DRAFT

**MINUTES OF CITY COUNCIL WORK SESSION MEETING
CITY OF KENNESAW
Council Chambers
January 29, 2024
6:30 PM**

Present	Mayor Derek Easterling Mayor Pro Tem Antonio Jones Councilmember Madelyn Orochena Councilmember Tracey Viars Councilmember Pat Ferris Councilmember Trey Sinclair Deputy City Clerk Christie Burgner 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. and introduced Allie Hicks who is a senior at Kennesaw State University. Ms. Hicks shadowed Mayor Easterling as “Mayor for the Day” for most of the day.

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

- A. Presentation of CALEA Awards to the Kennesaw Police Department and Kennesaw/Acworth 911.

Mayor Easterling will present CALEA awards to the Kennesaw Police Department and Kennesaw/Acworth 911 on Monday February 5, 2024.

- B. Presentation of the Kennesaw Police Department's Georgia Association of Chiefs of Police State Certification.

Mayor Easterling will present the Kennesaw Police Department's Georgia Association of Chiefs of Police State Certification on Monday, February 5, 2024.

- C. Promotion of Kennesaw Police Department Officer Chris Johnson to Sergeant.

Officer Chris Johnson will be promoted to Sergeant on Monday, February 5, 2024.

6. Public Comment/Business from the Floor

7. Old Business

8. New Business

9. Committee and Board Reports

10. Public Hearing(s)

- A. Approval of ORDINANCE to adopt an oath as prescribed by the Code of Ordinances of the City of Kennesaw, Georgia, Section 2-71(f).

After discussions between the Clerk's office and legal department, the amendments to the Ordinance regarding oaths have been administratively withdrawn.

11. Consent Agenda

- A. Approval of the January 16, 2024, City Council regular meeting minutes.

12. General and Administrative

13. Public Safety

- A. Receipt of the December 2023 Crime Statistics.

Kennesaw Police Chief Bill Westenberger presented the September 2023 crimestatistics.

14. Information Technology

15. Public Works & Facility Maintenance

- A. Approval of RESOLUTION for Bid and Award of Contract to Creative Landscape Group for Landscaping of Medians on Watts Drive.

Building & Facilities Director Robbie Balenger presented a resolution to approve a contract with Creative Landscape Group for landscaping the medians on Watts Drive. The landscaping was damaged by cold weather in 2022 and did not recover. A bid was advertised with Creative Landscape Group as the lowest bidder. There were no

questions or discussion from Council. After receiving confirmation, Mayor Easterling advised the item should move to the Consent Agenda.

- B. Approval of RESOLUTION authorizing the Mayor to sign a proposal from Osprey Management, LLC for the replacement of porch soffits at the Ben Robertson Community Center.

Building & Facilities Director Robbie Balenger presented a resolution to approve a proposal from Osprey Management for the replacement of porch soffits at the Ben Robertson Community Center. When originally placed the soffits were sheetrock, and the replacements would be waterproofed. This project was not bid, and the vendor was found via a state contract. There were no questions or discussion from Council. After receiving confirmation, Mayor Easterling advised the item should move to the Consent Agenda.

- C. UPDATE: Smith-Gilbert Garden pavilion, restroom facility, and paved pathways

Building & Facilities Director Robbie Balenger along with Smith-Gilbert Gardens Executive Director Dave Simpson updated Council on Smith-Gilbert Gardens. City officials have been working with Croy Engineering to give greater access to the Gardens, including upgrading the walking paths, parking lot and restrooms, and creating ADA compliant pathways. There is also a need for more inside space to enhance the Gardens' teachings/learning, which would include a new pavilion. There is no action needed from the Council at this time, this was an update only. There were no questions or discussion from Council.

16. Recreation and Culture

17. Community Development

18. Public Comment/Business from the Floor

19. City Manager's Report

- A. Reports, Discussions, and Updates

- B. UPDATE: Chalker Park

Assistant City Manager Marty Hughes updated the Council on Chalker Park and what staff is doing to make this a park that residents will be excited to visit. Key elements of the park are to include: an accessible playground, handicap parking, green space, and a half-mile walking track with fitness stations covered in turf. Mayor Pro-Tem Antonio Jones asked if the turf was artificial, and Mr. Hughes advised that it was.

- C. UPDATE: Public Safety Facility Renderings

Assistant City Manager Marty Hughes presented public safety facility updates. This has been a long process with many different departments working together as a team to get to this point. The City owns the land around the Public Works building where the new public safety facility will be located. Staff has scheduled interviews on January 30 with four of the engineering firms who submitted a RFQ to review those firms' presentations.

Councilmember Ferris asked about the ease of parking for the community and how many secured parking spots are planned. Mr. Hughes advised that about 160-170 spots are planned, however, there has been no determination yet as to how many spaces are to be secured versus open to the public. Mr. Ferris asked about the life of the building. Mr. Hughes advised that 30-40 years is usual, but they were using City Manager Jeff Drobney's mandate of "building for the future" and hoped to get 50 years from the building. Councilmember Viars asked about the square footage of the new building. Mr. Hughes advised they are trying to get to 30,000, however, cost is the main factor. Councilmember Ferris reminded that the rule of thumb is space will be full within one to two years. Mr. Hughes advised staff is working with Chief Westenberger on the space needs of the Police Department. Councilmember Jones asked about the surrounding yards. Mr. Hughes advised they would be about the same.

D. DISCUSSION ONLY: Use of small parking lot (PD side)

Assistant City Manager Marty Hughes presented options for Council to consider regarding the small parking lot on J.O. Stephenson Avenue on the Police side of City Hall. The slope of this parking area is currently not compliant with ADA standards. The council was given a handout with pros and cons of four options: ADA parking, standard parking, green space, and a loading area only. Councilmember Orochena verified that the trees only remained with the greenspace option. City Manager Jeff Drobney asked the Council to decide on which option they preferred tonight. Dr. Drobney advised of some of the issues that come with the oak trees at the front of City Hall, including the mess they make in the fall, streetlights being covered by foliage, the bricks get moldy and slippery due to the shade of the trees, and the massive root structure of oaks destroy sidewalks, bricks, and roadways. Councilmember Viars advised she did not believe there was enough space for delivery trucks to turn around, that greenspace was not needed in this exact area, and asked if there could be a combination of ADA and regular parking spots. There can only be ADA or regular, not both. Upon further discussion of parking lot location, Mayor Pro-Tem Antonio Jones advised he would prefer the greenspace. Councilmember Ferris advised he preferred to remove the oak trees and keep the spots handicap accessible. Mayor Easterling advised he is in support of removing the trees and making the lot ADA compliant. Mayor Pro-Tem Antonio Jones inquired about the larger lot at City Hall and if it would be brought into compliance. Dr. Drobney advised that currently there is no plan to remodel the larger lot due to cost, however staff are still looking at the possibility during the remodel of the front of City Hall. Consensus of Council was to move forward with ADA compliant lot.

E. DISCUSSION ONLY: Truck Signage - Convert monument sign to non-mirrored operation

City Manager Jeff Drobney advised the Council of the history of the mirrored truck signage on Cherokee Street and Jiles Road. Councilmember Ferris asked staff how much the cost would be to change one of the messages, which could give the City another marque for events. If funding was approved, the new product would be ordered. After receiving confirmation, Mayor Easterling advised the item was approved.

F. Consideration to approve up to \$53,000 from the Court Services Improvement Fund to purchase new security equipment.

Assistant City Manager Marty Hughes advised of the need for new Court equipment to include an x-ray machine and metal detector. There were no bids for these items as State contracts were utilized. Court Services Improvement Funds will be used for these items. After receiving confirmation, Mayor Easterling advised the item should move to the Consent Agenda.

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

Mayor Pro-Tem Antonio Jones advised he was sad to have missed Trains, Trains, Trains, however he was attending an event at Kennesaw First Baptist Church.

Councilmember Sinclair advised his lease was up at the end of January, which will have him residing outside the city limits. Mr. Sinclair officially resigned from the Council as of January 29. He advised it was an honor and great privilege to serve in Kennesaw with Mayor Easterling, the Council, and staff. Mr. Sinclair thanked all that make the City great and advised he believed the City was set up to succeed moving forward.

Councilmember Ferris offered the best of luck to Councilmember Sinclair. He stated that Trains, Trains, Trains brings out the kid in people, and he still has some of the toy trains from when he was a child.

Councilmember Orochena thanked Councilmember Sinclair for his public service. Ms. Orochena advised she assisted with the Black History Bowl the previous weekend and they were down to eight teams. Mayor Easterling added that his students from Awtrey Middle School were still in the race.

Councilmember Viars advised she would miss Councilmember Sinclair. Ms. Viars stated she had met with some Kennesaw Downtown Merchants and believe there are a lot of exciting things to look forward to.

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

The meeting adjourned at 7:10 p.m.



Item Report

TO: The Honorable Mayor and City Council
FROM:
DATE: February 12, 2024
TITLE: **February 5, 2024, City Council Meeting Minutes**
Approval of the February 5, 2024, City Council regular meeting minutes.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. 2024-02-05 City Council Meeting Minutes - Draft

**MINUTES OF CITY COUNCIL MEETING
CITY OF KENNESAW
Council Chambers
(2529 J.O. Stephenson Avenue, Kennesaw, GA 30144)
February 5, 2024
6:30 PM**

Present	Mayor Derek Easterling Mayor Pro Tem Antonio Jones Councilmember Madelyn Orochena Councilmember Tracey Viars Councilmember Pat Ferris Deputy City Clerk Christie Burgner City Manager Jeff Drobney City Attorney Randall Bentley, Sr.
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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 6:31 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/>
- 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

- A. Presentation of PROCLAMATION declaring February 16, 2024, as Arbor Day in the City of Kennesaw.

Mayor Easterling presented the Georgia Arbor Day Proclamation to Smith-Gilbert Gardens Executive Director Dave Simpson. Mr. Simpson invited all to celebrate Georgia's Arbor Day by participating in a tree and shrub planting around the Gardens on Monday, February 12.

- B. Presentation of CALEA Awards to the Kennesaw Police Department and Kennesaw/Acworth 911.

Mayor Easterling and Chief Bill Westenberger presented the CALEA award to members of the Kennesaw Police Department and Kennesaw/Acworth 911. Accreditation Manager Chelsea Charnock was presented a plaque for her efforts in the recertification of the police department.

- C. Presentation of the Kennesaw Police Department's Georgia Association of Chiefs of Police State Certification.

Mayor Easterling presented the Georgia Association of Chiefs of Police State Certification to members of the Kennesaw Police Department.

- D. Promotion of Kennesaw Police Department Officer Chris Johnson to Sergeant.

Chief Westenberger introduced Sergeant Chris Johnson to Mayor, Council and the public. Sergeant Johnson has been with the Kennesaw Police Department for over five years and was promoted in November 2023. Sergeant Johnson thanked Chief Westenberger, Mayor, and Council and advised he looks forward to continuing to serve the City of Kennesaw.

6. Public Comment/Business from the Floor

6:41 p.m. Floor Open for Public Comments

There was no public comment.

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

7. Old Business

8. New Business

- A. Approval of RESOLUTION to set a qualifying fee for a Special Election on May 21, 2024, to fill a vacancy on Council Post 5 and authorization to advertise said notice and fee.

City Clerk Lea Alvarez provided information regarding the Resolution to set qualifying fees for a Special Election in May for the vacancy of Post 5. There were no questions from Council. Mayor Easterling called for a motion. Councilmember Viars moved to approve the resolution. Councilmember Ferris seconded the motion. There was no discussion. The motion was approved unanimously 4:0.

- B. Approval of RESOLUTION authorizing the 2024 Special Election qualifying dates and authorization of the Mayor to execute the contract with Cobb County Board of Elections and Registration to conduct the City's Special Election to be held May 21, 2024.

City Clerk Lea Alvarez provided information for the Resolution to authorize the 2024

Special election qualifying dates and to execute a contract with Cobb Elections to conduct the Special Elections in May. There were no questions from Council. Mayor Easterling called for a motion. Councilmember Ferris moved to approve the resolution. Councilmember Viars seconded the motion. There was no discussion. The motion was approved unanimously (4:0).

9. Committee and Board Reports

10. Public Hearing(s)

- A. Consideration of ORDINANCE to adopt an oath as prescribed by the Code of Ordinances of the City of Kennesaw, Georgia, Section 2-71(f).

Mayor Easterling advised the Public Hearing was advertised and would take place, however, the ordinance was not ready and would be advertised again when it was complete. Mayor Easterling opened the floor for public comment. There was none.

11. Consent Agenda

Mayor Easterling called for a motion for the Consent Agenda. Councilmember Viars moved to approve the Consent Agenda engross. Councilmember Jones seconded the motion. There was no discussion. The motion was approved unanimously (4:0).

- A. Approval of the January 16, 2024, City Council regular meeting minutes.
- B. Approval of RESOLUTION for Bid and Award of Contract to Creative Landscape Group for Landscaping of Medians on Watts Drive.
- C. Approval of RESOLUTION authorizing the Mayor to sign a proposal from Osprey Management, LLC for the replacement of porch soffits at the Ben Robertson Community Center.
- D. Approval of up to \$53,000 from the Court Services Improvement Fund to purchase new security equipment.

12. General and Administrative

13. Public Safety

- A. Receipt of the December 2023 Crime Statistics.

Chief Westenberg presented crime statistics from the Kennesaw Police Department for December 2023. Mayor Easterling called for a motion. Councilmember Jones moved to accept the crime statistics as presented. Councilmember Orochena seconded the motion. There was no discussion. The motion was approved unanimously (4:0).

14. Information Technology

15. Public Works

16. Recreation and Culture

17. Community Development

18. Public Comment/Business from the Floor

6:46 p.m. Floor Open for Public Comments

ANDREW BRAMLETT (City Resident): Mr. Bramlett shared a local history story about World War II veteran Alfred Jackson.

ANTHONY GUTIERREZ (City Resident): Mr. Gutierrez stated he was tired of games being played, of some businesses receiving special treatment while others receive targeted attacks, and mostly tired of losing the affordability and calm of the city he loves. Developers are given free range to do whatever they want, make promises, lie, and face no consequences or repercussions. Mr. Gutierrez advised that now more than ever the City needs a council with foresight who understands that the direction the city is headed caters more to wealthy outsiders than the families that built the city; a council that understands the heart of Kennesaw, not one that wants a cookie cutter concrete jungle that destroys the charms of small cities throughout Georgia. Mr. Gutierrez officially announced his run for the upcoming Special Election as he cannot sit back and watch this continue. Mr. Gutierrez looks forward to speaking during upcoming Council meetings and bringing to light other things that need to change.

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

19. City Manager's Report

A. Reports, Discussions, and Updates

Dr. Drobney had no comments.

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.

Mayor Easterling announced two boards/commission appointments. Rachel Mangum to the Arts and Culture Commission, and Rebecca Carlson to the Cemetery Preservation Commission. Mayor Easterling called for a motion. Councilmember Jones moved to accept the appointments by Mayor Easterling. Councilmember Viars seconded the motion. There was no discussion. The motion was approved unanimously (4:0).

21. Council Reports & Discussions

Councilmember Orochena advised she is excited for the Arbor Day celebrations at Smith-Gilbert Gardens, and stated that the Alfred Jackson interview on YouTube is interesting to watch.

Mayor Pro Tem Jones congratulated Lisa Skaggs on her recent retirement from Smith-Gilbert Gardens and thanked her for her years of service. Mr. Jones commented on the

great weather.

Councilmember Ferris had no comments.

Councilmember Viars stated the Kennesaw Police Department and 911 does a tremendous job for the city. Ms. Viars advised of a meeting with three couples of which two had not been to the city in a long time and the other couple has a daughter who attends Kennesaw State University. Ms. Viars advised of the positive feedback she gets, how others view the city and how they would like to invest in the future of the city.

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 6:51 p.m. The next regularly scheduled council meeting will be held on Monday, February 19, 2024, at 6:30 p.m. in the Council Chambers. The public is encouraged to attend or view via Facebook Live.



Item Report

TO: The Honorable Mayor and City Council

FROM: Jennifer Gordy, Assistant Finance Director

DATE: February 12, 2024

TITLE: **Fiscal Year 2023 Budget Adjustments**
Authorization for Council to approve Budget Adjustments for Fiscal Year Ended September 30, 2023. These budget adjustments are necessary to record year-end budget realignments for Annual Comprehensive Financial Reporting (ACFR) purposes.

Summary:

Authorization for Council to approve Budget Adjustments for Fiscal Year Ended September 30, 2023. These budget adjustments are necessary to record year-end budget realignments for Annual Comprehensive Financial Reporting (ACFR) purposes.

Recommendation:

Finance Director recommends approval.

Fiscal Impact:

Attachments:

1. Budget_Adjustment_Form_9.30.23

City of Kennesaw
ADJUSTMENT TO ANNUAL BUDGET
Fiscal Year Ended September 30, 2023

Fund	Description	Amount	
		DR	CR
General Fund	IT Dept Salaries/Benefits – increased for staff shifted from City Mgr Dept to IT Dept during Fiscal Year	33,000	
General Fund	City Mgr Dept Salaries/Benefits – decreased for shift to IT Dept		33,000
General Fund - Capital	Software – due to timing of project funds carried over from prior year	47,000	
General Fund - Capital	Police Vehicles – vehicles on back order from prior year	143,000	
General Fund - Capital	Street Const & Imp – dollars for resurfacing carried over from prior year	824,000	
General Fund - Capital	P&R Site Improvements – Chalker Park	41,000	
General Fund - Capital	P&R Wheelchair Swing – funded by Grant	47,500	
General Fund	Revenue, PY Reserves, Grant		1,102,500
ARP Grant	ARP Grant Expenditures – PD radios, resurfacing, facility improvements, incentive pay	5,900,397	
ARP Grant	ARP Grant Revenue		5,900,397
Hotel/Motel	Hotel/Motel Expenditures – collected more revenue than expected so more paid out	3,600	
Hotel/Motel	Hotel/Motel Revenue - collected more revenue than expected		3,600
KDA	Principal/Interest 2019 Bonds – paid off during the Fiscal Year	3,007,093	
KDA	Other Professional Services – commission on property sale	126,907	
KDA	PY Reserves/Property Sale Proceeds		3,134,000

TOTALS

\$10,173,497 \$10,173,497

JUSTIFICATION AND BACKGROUND:

Fiscal Year End Realignment for Annual Financial Reporting Purposes.



Item Report

TO: The Honorable Mayor and City Council
FROM: Bill Westenberger, Chief of Police
DATE: February 12, 2024
TITLE: **January 2024 Crime Statistics**
Receipt of the January 2024 Crime Statistics.

Summary:

Recommendation:

Fiscal Impact:

Attachments:

1. 2024 January Crime Statistics (M+C)



January 2024 Crime Statistics

Summary

January 2024 Group A Offenses (74) increased by 30% compared to January 2023 (57). A vast majority of the crimes reported in January 2024 were Assault Offenses (35). This trend is also present in the data collected for crimes reported in January 2023. Assault Offenses account for approximately 47% (35) of the crimes that have occurred within our jurisdiction in January 2024.

Out of the 693 traffic stops in January 2024, (1,024) resulted in Citations and 45% (461) Warnings. There was a total of 124 Adult Arrests that took place during the month, which is a 28% increase from January 2023 (97).

There were 105 traffic accidents YTD, 16 of which were classified as Hit and Run. Of the 105 accidents 10 had injuries, and 2 involved a pedestrian. YTD 2023 total accidents (105) are down compared to YTD 2022 (112).

Crimes	January 2024	January 2023	YTD (01/01/2024) – (01/31/2024)	YTD (01/01/2023) – (01/31/2023)
Assault Offenses	35	31	35	31
Motor Vehicle Theft	2	0	2	0
Burglary	3	2	3	2
Homicide	0	0	0	0
Larceny	30	24	30	24
Sex Offenses	3	0	3	0
Robbery	1	0	1	0
Total	74	57	74	57

	January 2024	January 2023	YTD (01/01/2024) – (01/31/2024)	YTD (01/01/2023) – (01/31/2023)
Dispatched Calls for Service	380 (-418)	798	380 (-418)	798
Self-Initiated Activity	939 (-170)	1,109	939 (-170)	1,109
Traffic Citations	1,024 (-43)	1,067	1,024 (-43)	1,067
Traffic Warnings*	461 (+170)	291	461 (+170)	291
Arrests*	124 (+27)	97	124 (+27)	97

*Warnings do not include verbal warnings

*Arrest statistics does not include juveniles

Bill Westenberger
Chief of Police



Kennesaw Police Department
2539 J. O. Stephenson Ave., Kennesaw, GA, 30144
911 Call Center: (770) 422-2505
Criminal Investigations Division: (770) 429-4533



Bayleigh Brown
Crime/ Intelligence
Analyst



Item Report

TO: The Honorable Mayor and City Council

FROM: Darryl Simmons, Zoning Administrator

DATE: February 12, 2024

TITLE: **Public Arts Exhibit: 2871 North Main Street**
 Consideration of approval for the renewal of a public arts exhibit application submitted by Sean Mills for property located at 2871 North Main Street. Case #PA2023-01.

Summary:

The proposal is to renew the public art exhibit permit for mural art on the boarded-up windows and door opening facing Main Street. The property was the former location for the Whistle Stop Restaurant which is currently vacant. This will be a temporary exhibit lasting six months. The required approval process involves public meetings before the Art and Culture Commission on February 15, 2024, the Historic Preservation Commission on February 16, 2024, and the Mayor and City Council on February 19, 2024. The city staff followed the public notification procedures as per adopted code by posting signs at the subject property and mailing letters to the adjacent property owners.

Recommendation:

Fiscal Impact:

Attachments:

1. PA2023-01_2871NorthMainSt_Application_Redacted
2. PA2023-01_2871NorthMainSt_ArtworkFullScreen
3. RENEWAL_PA2023-01_2871 N Main St_NotificationLetter
4. PA2023-01_2971NorthMainSt_Aerial Map
5. RENEWAL_PA2023-01_2871 N Main St_PublicNotificationSignPicture1
6. RENEWAL_PA2023-01_2871 N Main St_PublicNotificationSignPicture2



Case #PA2023-01
2871 N Main Street
Window Mural

APPLICATION FOR PUBLIC ART EXHIBITS

Please complete and return to Kennesaw City Hall, 2529 J.O. Stephenson Avenue, Kennesaw, Georgia 30144, email dsimmons@kennesaw-ga.gov, or fax to (770-429-4548)

Contact the Planning & Zoning office for further information: 770-590-8268

Name: Sean Mills

Date Received: 3/1/23

Business Name: Yes Maam

Received by: AT

Address:

Work Phone:

Fax#:

Email Address:

Cell Phone:

Applicant Signature:

2.03.05 Review and approval process of public art exhibits

- A. All public art exhibits shall be required to submit a written application on forms provided by the City of Kennesaw Planning and Zoning Department for a site plan permit. A complete permit application will include an artist rendering or visual representation of the art work proposed, owners affidavits, photos of existing conditions on the property including location on permanent structures or buildings, description of materials to be used in association with art work, maintenance agreement and schedules of maintenance, a rendering or visual representation of the plaque or image of acknowledgements and titles, and permit fee as adopted in the City of Kennesaw fee schedule. A complete application packet will be submitted to the Planning and Zoning Administrator or designee.
- B. The Planning and Zoning Administrator or designee will process the application and forward for review to the City of Kennesaw Art and Culture Commission on their prepared agenda within thirty days of receipt of application. The Planning and Zoning Administrator upon receipt of application, will review property for issues dealing with traffic issues and other city ordinances prior to processing for Art and Culture meeting agenda. The Planning and Zoning Administrator or designee will implement the following procedures for public notification: 1. Post a sign at the property alerting public of the time, date and location of the meeting where application will be considered; 2. Post application information and meeting information on the City of Kennesaw website; 3. Mailing of letters to property owners listed on the Cobb County Tax assessors records whose property are adjacent or about the property that is referenced on the application. Said letter will provide application information, time, date and location of the Art and Culture Commission and Mayor and Council meetings. After the application has been reviewed, a written recommendation is rendered by the Art and Culture Commission. The application will then be forwarded to the Mayor and Council for final review and action by vote.

C. The commission will review and render written recommendations to the Mayor and Council by vote on all submitted site plan permit applications during a scheduled meeting. The property owner(s) or an official representative must be present at all meetings. The commission will provide a findings document in the form of minutes that will provide the basis of decisions. Permit applications will reflect the recommendation of the commission to the Mayor and Council with the appropriate signature from the chairperson of said commission.

D. Any proposed locations in the Central Business District, Historic Preservation District or other historic districts will require a written recommendation from the Historic Preservation Commission.

E. The applicant shall be required to attend all scheduled meetings of the commission and all scheduled meetings of the Mayor and Council.

F. All approved site plan permits for permanent art exhibits will be in effect for seven years from the date of approval. The commission will accept a renewal application if art exhibit is to continue.

G. All site plan permits for temporary and rotating exhibits shall have expiration dates based on the time period scheduled for the exhibit.

H. All proposed changes to public art exhibits, including acknowledgement and titles, shall be submitted to the commission for review and approval.

(Ord. No. 2013-15, 9-16-13; Ord. No. 2014-09, 7-21-14; Ord. No. 2015-03, 2-16-15)

Briefly describe your artist rendering and submit a visual representation of the art work:

Location for the art exhibit:

2861 and 2871 N. Main Street,
Kennesaw, GA 30144

Supply description of materials to be used:

Paint

Additional information about proposed project

Mural will be painted on front boarded up windows.

APPROVAL SIGNATURES

Darryl Simmons (Application Deemed Complete)
Planning & Zoning Administrator

Date: _____

Historic Preservation Commission

Date: _____

☐ GRANTED

☐ DENIED

Reason for denial: _____

Arts and Culture Commission

Date: _____

☐ GRANTED

☐ DENIED Reason for denial: _____

Mayor and City Council

Date: _____

☐ GRANTED

☐ DENIED

Reason for denial: _____



MAYOR

Derek Easterling

City Manager

Jeff Drobney, ICMA-CM

City Clerk

Lea Alvarez, CMC

**COUNCIL**

Mayor Pro Tem Antonio Jones

Madelyn Orochena

Tracey Viars

Pat Ferris

Trey Sinclair

January 17, 2024

Subject: Public Art Exhibit

2871 North Main Street, Kennesaw, GA 30144 – Parcel ID 20013801070

Dear Property Owner,

This letter serves as a written notice that the City of Kennesaw received a request to renew the application for the public art display on the facade of the structure referenced above for an additional six months.

Please be advised that this application, which was approved in 2023, will go back through a project review by the Art and Culture Commission, Historic Preservation Commission and the Mayor and City Council. The request for renewal will be presented to the Mayor and Council at a scheduled meeting referenced below. Please find enclosed with this letter a copy of the application.

The adopted zoning ordinance section 2.03 .05 requires city staff to notify all owners whose property is adjacent or abuts to the property on the application. For a list of all of these requirements including permitted uses, restrictions and design standards, please consult the appropriate provisions which may be viewed online by visiting <https://www.municode.com/>. Please note the dates, times, and location of the required public meetings where this project will be reviewed:

Meeting Dates: Art and Culture Commission: February 15, 2024 @ 5:30pm
 Historic Preservation Commission: February 16, 2024 @ 8:00am
 Mayor and Council: February 19, 2024 @ 6:30pm

All meetings will be heard in the City Council Chambers, City Hall or you can follow the process on Facebook Live. Please visit www.kennesaw-ga.gov to view meeting agendas and access virtual meetings.

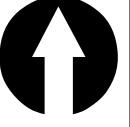
Thank you for your attention. Should you have any questions, you may call me at (770) 590 - 8268 or send an e-mail to dsimmons@kennesaw-ga.gov.

Sincerely,

Darryl Simmons

Darryl Simmons, Planning and Zoning Administrator



LAND CASES		LAND USE OR ZONING		2871 N Main Street		
		FROM	TO	Land Lot 138, Tax Parcel 108		
AV	LU			 Subject Property		 CITY OF KENNESAW PLANNING & ZONING DEPT. 770-590-8268 <i>Deirdre Estess</i> MAYOR <i>Lisa Murray</i> CITY CLERK
AX	PA2023-01	Public Art Exhibit Application				
DX	AV – Administrative Variance	 ZONING				
HBR	AX – Annexation	 KENNESAW CITY LIMITS				
SLUP	DX – De-annexation	 COBB COUNTY				
ZV	HBR – Historic Board Review	 LAND LOT				Scale: 1" = 100' Print Date: 3/20/2023 PA2023-01_Aerial Map



Public Notice

Project Address: 2871 North Main St

This sign serves as written notice for public art per section 2.03.05

The following public hearings will take place for a public art exhibit application. All meetings will be held in the City Hall Council Chambers at 2529 JO Stephenson Ave.

Meeting Dates

Art and Culture Commission - February 15, 2024 @5:30pm

Historic Preservation Commission - February 16, 2024 @8:00am

Mayor and Council - February 19, 2024 @6:30pm

Should you have any questions, contact Planning & Zoning at (770) 424-8274 or zoningdept@kennesaw-ga.gov

ED
PG
Every Day
People Group

01.30.2024 10:40

Public Notice
Project Address: 2871 North Main St
This sign serves as written notice for public art
per section 2.03.05
The following public hearings will take place for a public art
exhibit application. All meetings will be held in the City
Hall Council Chambers at 2529 JO Stephenson Ave.
Meeting Dates
Art and Culture Commission - February 15, 2024 - 6:30pm
Historic Preservation Commission - February 16, 2024 - 8:00am
Mayor and Council - February 18, 2024 - 6:30pm
Should you have any questions, contact Planning & Zoning
at (770)424-0274 or zoning@cityofkennesawga.gov

01.30.2024 10:41



Item Report

TO: The Honorable Mayor and City Council

FROM: Darryl Simmons, Zoning Administrator

DATE: February 12, 2024

TITLE: **Final Plat Application: 1994 Smith Street**
 Final plat application submitted by Watts & Broning Engineers, Inc. for 1994 Smith Street (parcel number 20009901250); this plat depicts Phase 3 of the East Park Village consisting of a 56 lot townhome development. Case# FP2023-08.

Summary:

This final plat has a total of fifty-six lots for a townhome development. Phase 3 is zoned T40 (Form Based Code) and consists of 4.46 +/- acres. Phase 1 of this subdivision was approved by Mayor and Council on July 5, 2022 and recorded (Plat Book 281 Page 183). Phase 2 was approved on October 17, 2022 and recorded (Plat Book 281 Page 370). The Plan Review Committee has reviewed the final plat and deemed the plat is in compliance and recommends approval.

Recommendation:

Zoning Administrator recommends approval of the final plat.

Fiscal Impact:

Attachments:

1. FP2023-08 Application_Redacted
2. FP20233-08_1994SmithDr_PRCLetter
3. FP2023-08 Warranty Deed
4. FP2023-08 County Tax
5. FP2023-08 City Tax
6. 02-08-2024_FP2023-08_1994SmithDr_RevisedPlat



Date Received 1/2/2024

Staff's Initials NF

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 PLAN REVIEW STAFF PRIOR TO THE SUBMISSION OF THE APPLICATION IS MANDATORY.

Date of Consultation 12/18/2023

Staff Initials _____

DEVELOPMENT NAME

EAST PARK VILLAGE-PHASE 3

Number of Units _____

PURPOSE OF DEVELOPMENT BUILD 56 TOWNHOMES

WHAT IS THE REVISION BEING MADE _____

ADDRESS OF PROPERTY 1994 SMITH STREET, MARIETTA, GA 30060

Parcel ID 20009901250 Lot Size 4.5 ACRES Present Zoning T-40

Current Use _____ Proposed Use _____

APPLICANT JERRY TARATOOT - WATTS & BROWNING ENGINEERS, INC.

Applicant address 1349 OLD 41 HWY NW, SUITE 225, MARIETTA, GA 30060

(Phone #) _____ Email Address _____

Applicant Signature _____

Signed, sealed and delivered in presence of: _____

Notary

COMMISSION EXPIRES
JANUARY 20, 2024

Date

REPRESENTATIVE TUCKER TROWELL (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 _____



CAMPAIGN DISCLOSURE REPORT ¹ BY APPLICANT²

A separate form must be completed by each applicant

Has the applicant made, within two (2) years immediately preceding the filing of this application for rezoning, campaign contributions aggregating two hundred fifty dollars (\$250.00) or more or made gifts having in the aggregate a value of two hundred fifty dollars (\$250.00) or more to a member or members of the Mayor and Council or Planning Commission who will consider the application? NO

If "Yes," the applicant and the attorney representing the applicant must file a disclosure report with the Mayor and Council of the City of Kennesaw within ten (10) days after this application is first filed.

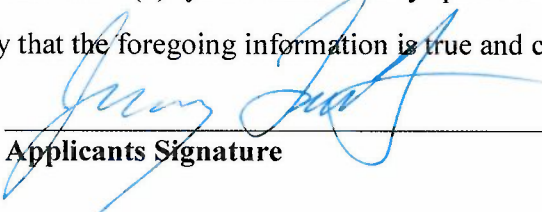
Please supply the following information that will be considered as the required disclosure:

The name of the member(s) of the Mayor and Council or Planning Commission to whom the campaign contribution or gift was made:

The dollar amount of each campaign contribution made by the applicant to the member(s) of the Mayor and Council or Planning Commission during the two (2) years immediately preceding the filing of this application and the date of each such contribution:

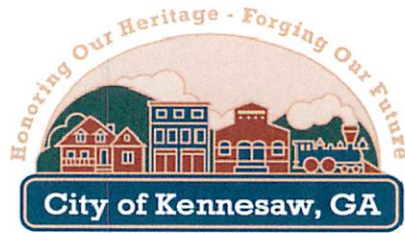
An enumeration and description of each gift having a value of two hundred fifty dollars (\$250.00) or more made by the applicant to the member(s) of the Mayor and Council or Planning Commission during the two (2) years immediately preceding the filing of this application:

I certify that the foregoing information is true and correct, this 18th day of DECEMBER, 2023


Applicants Signature

¹ If the answer to any of the above is "Yes," then the member of the Mayor and Council or Planning Commission must immediately disclose the nature and extent of such interest, in writing, to the Mayor and Council of the City of Kennesaw, Georgia. A copy should be filed with this application. Such disclosures shall be a public record and available for public inspection at any time during normal working hours.

² Applicant means any person who applies for a rezoning action and any attorney or other person representing or acting on behalf of a person who applies for a rezoning action.



Community Development Department
Plan Review Committee

Plan Review Coordinator
Scott Banks, Building Official

Plan Review Committee Members
Darryl Simmons, Zoning Administrator
Ricky Stewart, Public Works Director
Luke Howe, Economic Development Director

To: Mayor and Council

From: Plan Review Committee

Date: Thursday, February 8, 2024

The final plat (FP2023-08) was submitted by the applicant Jerry Taratoot of Watts & Browning Engineers, INC for 1994 Smith Drive (20009901250) and it was received and reviewed by the Plan Review Committee. This plat identifies phase 3 of the proposed East Park Village residential subdivision containing fifty-six (56) single-family townhomes. All members of the Plan Review Committee have verified said plat and all comments were addressed. The final plat is in compliance and ready for your consideration and approval.

A handwritten signature in blue ink, appearing to be "S. Banks", is written over a horizontal line.

Scott Banks, Plan Review Coordinator

After recording return to:
Moore Ingram Johnson & Steele, LLP
Emerson Overlook
326 Roswell Street
Suite 100
Marietta, GA 30060
22R206.1

LIMITED WARRANTY DEED

THIS **LIMITED WARRANTY DEED**, made as of this 14th day of July, 2023, by EAST PARK JV, LLC, a Georgia limited liability company ("Grantor"), in favor of EAST PARK VILLAGE PH3 DEVELOPMENT, LLC, a Georgia limited liability company ("Grantee") (the terms Grantor and Grantee to include their respective successors, legal representatives, heirs and assigns where the context hereof requires or permits).

W I T N E S S E T H:

Grantor, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, and other good and valuable consideration, in hand paid at and before the sealing and delivery of these presents, the receipt, adequacy, and sufficiency of which being hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does hereby grant, bargain, sell, and convey unto Grantee, subject only to those matters set forth on **Exhibit B** attached hereto and incorporated herein by this reference (such matters, collectively, the "Permitted Exceptions"), all that tract or parcel of land lying and being in Cobb County, State of Georgia, and being more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference, together with, all and singular, the following: (a) buildings, improvements and fixtures located thereon, and (b) all rights, members, easements and appurtenances thereof, to the same being, belonging or in any way appertaining thereto (all of the foregoing, collectively, the "Property").

TO HAVE AND TO HOLD the Property to the proper use, benefit, and behoof of Grantee, forever, in FEE SIMPLE.

AND, GRANTOR WILL WARRANT AND FOREVER DEFEND the right and title to the Property unto Grantee against the claims of all persons claiming by, through or under Grantor, but not otherwise.

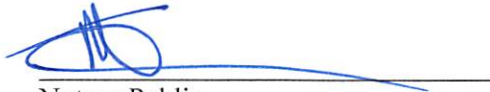
(Signatures appear on following page)

IN WITNESS WHEREOF, Grantor has executed this Limited Warranty Deed under seal as of the day and year first above written.

Signed, sealed and delivered
in the presence of:



Unofficial Witness



Notary Public

My Commission Expires: May 11, 2025

EAST PARK JV, LLC, a Georgia limited liability
company

By: Varden Capital Properties, LLC,
a Florida limited liability company,
its Manager

By:  (SEAL)
Trace McCreary, as Manager

[AFFIX NOTARY SEAL]



EXHIBIT A TO LIMITED WARRANTY DEED

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 99 OF THE 20TH DISTRICT, 2ND SECTION, CITY OF KENNESAW, COBB COUNTY, GEORGIA, CONTAINING 4.47 ACRES PER THAT CERTAIN ALTA/NSPS LAND TITLE SURVEY FOR EAST PARK VILLAGE PH3 DEVELOPMENT, LLC, SWOF TRATON EAST PARK III, LLC, UNITED COMMUNITY BANK AND FIRST AMERICAN TITLE INSURANCE COMPANY, PREPARED BY GASKINS & LECRAW, BEARING THE SEAL AND CERTIFICATION OF DEAN C. OLSEN, GEORGIA REGISTERED LAND SURVEYOR NUMBER 2806, DATED JUNE 22, 2023, LAST REVISED JULY 17, 2023. SAID SURVEY BEING INCORPORATED HEREIN BY REFERENCE AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A ¾" CRIMP TOP PIPE FOUND AT THE INTERSECTION OF THE WESTERLY LINE OF LAND LOT 99 AND THE NORTHERLY RIGHT OF WAY LINE OF SMITH DRIVE (40' R/W), SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE FROM SAID TRUE POINT OF BEGINNING AND LEAVING SAID NORTHERLY RIGHT OF WAY LINE OF SMITH DRIVE AND FOLLOWING ALONG THE WESTERN LINE OF LAND LOT 99 THE FOLLOWING COURSES AND DISTANCES: NORTH 03 DEGREES 25 MINUTES 59 SECONDS EAST A DISTANCE OF 264.36 FEET TO A 1" CRIMP TOP PIPE FOUND; THENCE NORTH 03 DEGREES 19 MINUTES 23 SECONDS EAST A DISTANCE OF 171.96 FEET TO A 1" OPEN TOP PIPE FOUND; THENCE NORTH 03 DEGREES 20 MINUTES 21 SECONDS EAST A DISTANCE OF 100.02 FEET TO A BOLT FOUND AT A POINT AND CORNER; THENCE LEAVING SAID LAND LOT LINE SOUTH 72 DEGREES 05 MINUTES 57 SECONDS EAST A DISTANCE OF 126.93 FEET TO A #4 REBAR SET AT A POINT AND CORNER; THENCE NORTH 03 DEGREES 47 MINUTES 51 SECONDS EAST A DISTANCE OF 148.34 FEET TO A #4 REBAR FOUND AT A POINT AND CORNER LOCATED ON THE SOUTHERLY RIGHT OF WAY LINE OF DOBBINS DRIVE (40' R/W); THENCE FOLLOWING ALONG THE SOUTHERLY RIGHT OF WAY LINE OF DOBBINS DRIVE ALONG A CURVE TO THE RIGHT AN ARC LENGTH OF 168.31 FEET, SAID CURVE HAVING A RADIUS OF 635.51 FEET AND BEING SUBTENDED BY A CHORD BEARING OF SOUTH 77 DEGREES 19 MINUTES 05 SECONDS EAST A CHORD DISTANCE OF 167.81 FEET TO A POINT; THENCE SOUTH 67 DEGREES 39 MINUTES 37 SECONDS EAST A DISTANCE OF 133.15 FEET TO A 1/2" OPEN TOP PIPE FOUND AT A POINT AND CORNER LOCATED AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF DOBBINS DRIVE AND THE WESTERLY RIGHT OF WAY LINE OF GILHAM DRIVE (A.K.A. SMITH DRIVE, 30' R/W); THENCE LEAVING SAID INTERSECTION AND RUNNING ALONG THE WESTERLY RIGHT OF WAY LINE OF GILHAM DRIVE THE FOLLOWING COURSES AND DISTANCES: SOUTH 13 DEGREES 39 MINUTES 54 SECONDS WEST A DISTANCE OF 148.76 FEET TO A ¾" OPEN TOP PIPE FOUND; THENCE SOUTH 21 DEGREES 01 MINUTES 02 SECONDS WEST A DISTANCE OF 101.57 FEET TO A NAIL FOUND; THENCE SOUTH 23 DEGREES 08 MINUTES 59 SECONDS WEST A DISTANCE OF 100.47 FEET TO A #4 REBAR SET; THENCE SOUTH 23 DEGREES 44 MINUTES 56 SECONDS WEST A DISTANCE OF 214.00 FEET TO A #3 REBAR FOUND DISTURBED AT A POINT AND CORNER LOCATED AT

THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF GILHAM DRIVE AND THE NORTHERLY RIGHT OF WAY LINE OF SMITH DRIVE; THENCE LEAVING SAID INTERSECTION AND RUNNING ALONG THE NORTHERLY RIGHT OF WAY LINE OF SMITH DRIVE THE FOLLOWING COURSES AND DISTANCES: SOUTH 86 DEGREES 36 MINUTES 37 SECONDS WEST A DISTANCE OF 93.93 FEET TO A #4 REBAR SET; THENCE SOUTH 83 DEGREES 27 MINUTES 52 SECONDS WEST A DISTANCE OF 79.93 FEET TO A #4 REBAR FOUND; THENCE SOUTH 79 DEGREES 25 MINUTES 27 SECONDS WEST A DISTANCE OF 80.04 FEET TO A ¾" CRIMP TOP PIPE FOUND AT A POINT AND CORNER LOCATED AT THE INTERSECTION OF THE WESTERLY LINE OF LAND LOT 99 AND THE NORTHERLY RIGHT OF WAY LINE OF SMITH DRIVE, SAID POINT BEING THE TRUE POINT OF BEGINNING.

EXHIBIT B TO LIMITED WARRANTY DEED

PERMITTED TITLE EXCEPTIONS

1. Current city, state and county ad valorem property and sanitary sewer taxes not yet due and payable
2. General utility, sewerage and drainage easements affecting the Property which do not materially interfere with Purchaser's intended use of the Property for the development of single family building lots;
3. Easements, rights of way, restrictions and other matters of record;
4. Zoning ordinances, regulations, conditions and restrictions and land use controls; and
5. Matters that would be disclosed by an accurate on the ground survey or inspection of the Property.



Printed: 1/2/2024

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
HEATHER WALKER CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Payer:
TRATON LLC

**EAST PARK VILLAGE PH3 DEVELOPMENT
LLC**

Payment Date: 10/13/2023

Tax Year	Parcel ID	Due Date	Appeal Amount		Taxes Due
2023	20009901250	10/15/2023	Pay:	N/A or	\$0.00
Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$16,056.93	\$0.00



Scan this code with your
mobile phone to view
this bill!!



City of Kennesaw
PROPERTY TAX DIVISION
2529 J. O. STEPHENSON AVE
KENNESAW, GA 30144-2780
(770) 429-4542

2023 Property Tax Bill

Parcel ID	Tax District		Bill #						
20009901250	3/3-BOND - KENNESAW CITY		242340						
Property Owner/Location/Description			Fair Market Value	Taxable Value					
EAST PARK VILLAGE PH3 DEVELOPMENT LLC 1994 SMITH ST			1,331,420	532,568					
Levies	Taxable Value	-	Exemptions	=	Net Assessment	X	Tax Rate	=	Net Tax
CITY OF KENNESAW	532,568		0		532,568		7.7500000000		\$4,127.40
BOND	532,568		0		532,568		1.5000000000		\$798.85
Exemptions:									
>Per House Bill 960 calculation, interest will accrue at .875%. Penalty will accrue at 5% after 120 days with an additional 5% assessed after each successive 120 days to a maximum of 20% of the principle amount due (House Bill 960). >Payments can be made online at www.municipalonlinepayments.com/kennesawga, in person, by mail or via our dropbox. Tax bills are mailed annually on October 1, with a due date of December 1. >Any questions concerning ownership changes or change of address should be directed to Cobb County Tax Commissioner's Office. For all other questions or concerns regarding this statement, give us a call at 770-429-4542.									
			Current Year Tax		\$4,926.25				
			Interest		\$0.00				
			Penalty		\$0.00				
			Other Fees		\$0.00				
			Payments Received		\$4,926.25				
			Other Amounts Due		\$0.00				
			Total Due		\$0.00				
			Due Date		12/01/2023				



City of Kennesaw
PROPERTY TAX DIVISION
2529 J. O. STEPHENSON AVE
KENNESAW, GA 30144-2780

Please make check or Money Order Payable to :
City of Kennesaw Property Tax Division and
include the Parcel ID on your check.

For your convenience, you may pay by check,
money order, Discover, Mastercard, AMEX,
VISA.
3% fee and \$3.50 per transaction fee added to
debit/credit card payments. \$1.25 fee per
ECheck transaction paid online.

Parcel ID: 20009901250
Amount Due: \$0.00
Bill#: 242340
Due Date: 12/01/2023

AMOUNT PAID

EAST PARK VILLAGE PH3 DEVELOPMENT LLC
720 KENNESAW AVE
MARIETTA, GA 30060

City of Kennesaw
PROPERTY TAX DIVISION
2529 J. O. STEPHENSON AVE
KENNESAW, GA 30144-2780

20TH DISTRICT, 2ND SECTION
CITY OF KENNESAW
COBB COUNTY, GEORGIA

FINAL PLAT OF
EAST PARK VILLAGE
PHASE 3
LOCATED IN
LAND LOT 99

REVISONS			
NO.	DATE	BY	DESCRIPTION
1.	01/12/24	JJT	ADDRESS CORA, CITY OF KENNESAW & COBB COUNTY FIRE COMMENTS.
2.	01/31/24	JJT	ADD APPROVED ALLEY NAMES.

W&B

WATTS & BROWNING ENGINEERS, INC.

CIVIL ENGINEERS & LAND SURVEYORS

1349 OLD 41 HWY NW STE 225

MARIETTA, GEORGIA 30060

PHONE: (678) 324-6192

FAX: (770) 694-6870

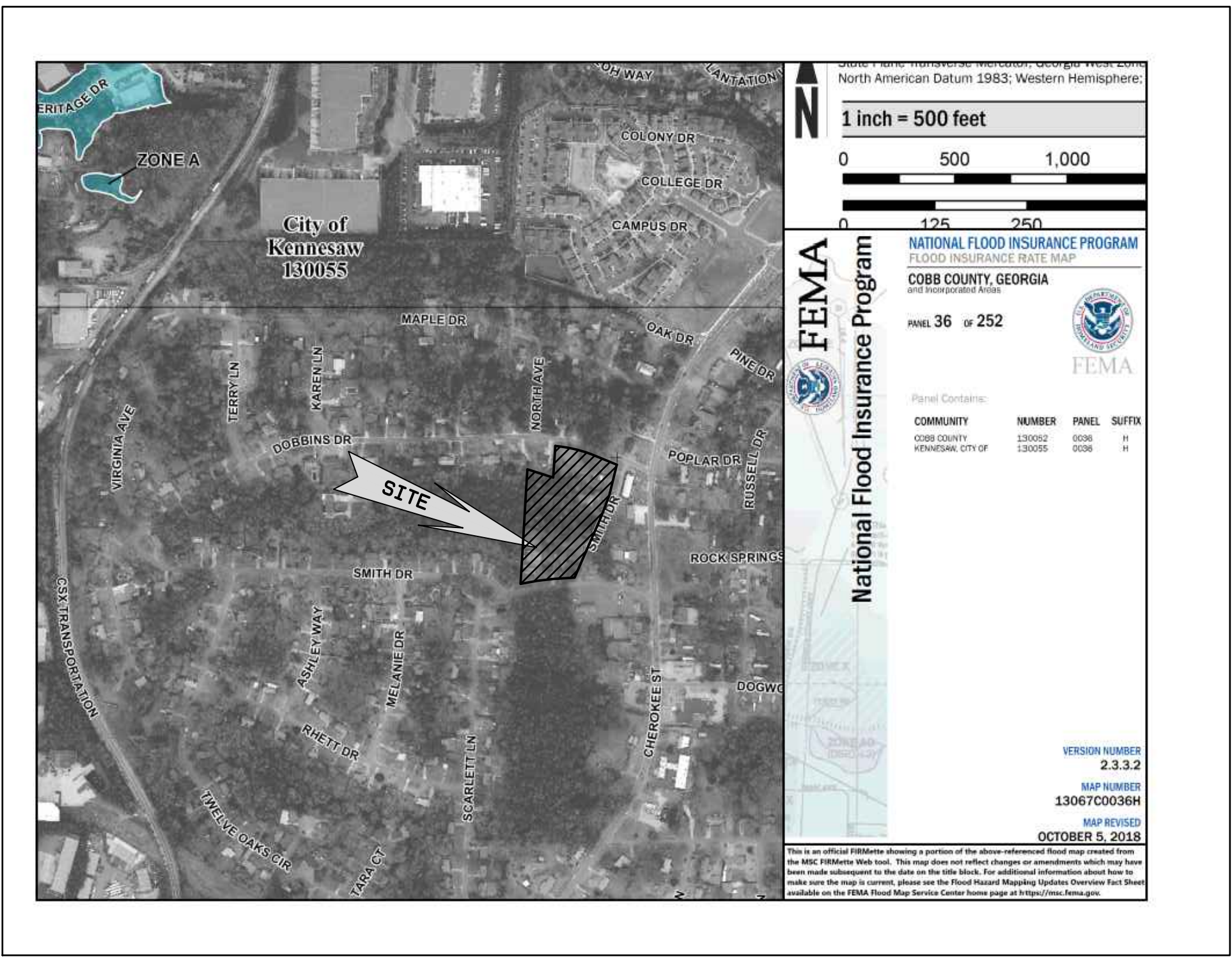
WWW.WBENG.COM

LSF000429 - PEP000714

SCALE:	N/A
DATE SURVEYED:	11/13/2023
DATE UPDATED:	N/A
SURVEYED BY:	JK
DATE DRAFTED:	12/08/2023
UPDATE DRAFTED:	N/A
DRAWN BY:	JJT
CHECKED BY:	BJB
FIELD BOOK #:	2678
JOB NUMBER:	230718
FOLDER NUMBER:	230718
CODG FILE:	N/A
DISC FILE:	230718-PP_ASB
COUNTY/LL/D/S:	COBB/99/20/2
PLAT FILE:	B
SHEET:	1 OF 3

- GENERAL NOTES:
- TOTAL AREA: 4.46383 AC
 - TOTAL LOTS: 56
 - DENSITY: 12.35 LOTS PER ACRE
 - ZONED: T-40
 - SETBACKS:
 - FRONT - 5'
 - REAR - 30'
 - SIDE - 5'
 - MAJOR SIDE - 5'
 - PERIMETER SETBACK - 10'
 - MINIMUM HOUSE SIZE: 1,400 SF
 - MAXIMUM BUILDING HEIGHT: 45'
 - MAXIMUM COVERAGE: 40%
 - SURVEYOR:
 - WATTS & BROWNING ENGINEERS, INC.
 - 1349 OLD 41 HWY NW, SUITE 225
 - MARIETTA, GA 30060
 - PHONE: (678) 324-6192
 - OWNER/DEVELOPER:
 - TRATON HOMES, LLC
 - 720 KENNESAW AVENUE
 - MARIETTA, GA 30064
 - CHRIS POSTON
 - (770) 427-9064
 - ENGINEER/DESIGNER:
 - RIDGE PLANNING AND ENGINEERING
 - 6234 OLD HIGHWAY 5, SUITE D8-250
 - WOODSTOCK, GA 30188
 - JOHN MORGAN
 - (770) 938-8900
 - EASEMENT LINES ARE DISCONTINUED OR BROKEN IN MANY AREAS. THE OVERALL PATTERN OF EASEMENT LINES CONFIRM THE LOCATION OF SUCH EASEMENTS. WHERE EASEMENT LINES ARE BROKEN IN THIS FASHION, THE EASEMENT IS HEREBY IDENTIFIED TO RUN CONTINUOUSLY THROUGHOUT THE WIDTH OR DEPTH OF THE LOTS OR BLOCK OF LOTS ON WHICH ANY PORTION OF THE EASEMENT LINE IS INDICATED. IF ANY EASEMENT IS SHOWN ON ONLY ONE PORTION OF A LOT LINE, IT IS HEREBY IDENTIFIED TO RUN THE ENTIRE LENGTH OF THE LOT LINE AT THE SAME WIDTH AND POSITION AS THAT PORTION SHOWN. ALL FLOOD ZONE AREAS ARE HEREBY IDENTIFIED AS DRAINAGE EASEMENTS OF VARIABLE WIDTH FOLLOWING THE FLOOD ZONE BOUNDARIES.
 - STORM DRAINAGE AND SANITARY SEWER EASEMENTS SHOWN HEREON ARE CENTERED ON THE NATURAL DRAINS, PIPES AND STRUCTURES ASSOCIATED WITH THE EASEMENTS. BUILDERS MUST FIELD LOCATE ALL DRAINS, PIPES AND STRUCTURES PRIOR TO ANY CONSTRUCTION OR LAND DISTURBANCE. NO CONSTRUCTION SHALL OCCUR WITHIN ANY EASEMENT AREA.
 - STATE LAW PROHIBITS THE PRIVATE CONSTRUCTION, PLANTING OR OTHERWISE MAKING IMPROVEMENTS ON THE DEDICATED RIGHT-OF-WAY. THE SOLE RESPONSIBILITY FOR REPAIRING OF ANY DAMAGE OF ANY SUCH IMPROVEMENTS SHALL BE THE PROPERTY OWNERS.
 - NO ARCHEOLOGICAL OR ARCHITECTURAL LANDMARKS, CEMETERIES OR OTHER HISTORIC FEATURES ARE KNOWN TO EXIST ON SITE.
 - TO THE BEST OF OUR KNOWLEDGE, THERE ARE NO BURY PITS LOCATED ON THE PROPERTY.
 - BUILDERS SHALL BE HELD FULLY RESPONSIBLE FOR ON-SITE EROSION CONTROL ON THEIR OWN LOTS. THIS MEANS EFFECTIVE INSTALLATION AND MAINTENANCE OF HAY BALES, SILT SCREEN, BATTEN BOARDS, CONSTRUCTION ENTRANCE GRAVEL, ETC. IN ADDITION, BUILDERS WILL BE RESPONSIBLE FOR KEEPING THE STREETS OR STREETS ADJACENT TO THEIR LOTS CLEAR OF SILT.
 - 1/2" RE-BAR IRON PINS TO BE PLACED AT ALL LOT CORNERS AT THE TIME OF PLAT RECORDING.
 - THE ABOVE GROUND UTILITY LOCATIONS WERE OBTAINED FROM FIELD OBSERVATIONS. WATTS & BROWNING HAS NOT RESEARCHED UNDERGROUND UTILITY LOCATIONS. INFORMATION SHOWN HEREON REGARDING THE EXISTENCE, SIZE, TYPE AND LOCATION OF UNDERGROUND UTILITIES IS BASED ON MARKINGS IN THE FIELD AND INFORMATION FURNISHED BY OTHERS AND WATTS & BROWNING ENGINEERS IS UNABLE TO CERTIFY TO THE ACCURACY OR COMPLETENESS OF THIS INFORMATION. INDICATED LOCATIONS SHOULD BE CONFIRMED IN THE FIELD WITH UTILITY COMPANIES PRIOR TO PROCEEDING WITH PLANNING, DESIGN OR CONSTRUCTION.
 - THIS PLAT IS SUBJECT TO THE COVENANTS SET FORTH IN THE SEPARATE DOCUMENT(S) DATED _____, WHICH HEREBY BECOMES A PART OF THIS PLAT, RECORDED IN DEED BOOK _____, PAGE _____, COBB COUNTY DEED RECORDS AND SIGNED BY THE OWNER.
 - ALL STORMWATER INFRASTRUCTURE SHOWN ON THIS PLAT IS THE SAME AS THAT IS SHOWN ON THE AS-BUILT DRAWINGS SUBMITTED TO COBB COUNTY STORMWATER MANAGEMENT.
 - DISTANCES SHOWN HEREON ARE GROUND DISTANCES.
 - ALL STORMWATER INFRASTRUCTURE ON THIS SITE, WITHIN THE OPEN SPACE TRACTS AND OUTSIDE THE RIGHT-OF-WAY ARE PRIVATELY OWNED AND ANY MAINTENANCE OR REPLACEMENT IS THE OWNER'S (HOA) RESPONSIBILITY. ALL STORMWATER INFRASTRUCTURE INSIDE THE RIGHT-OF-WAY TO BE MAINTAINED BY THE CITY OF KENNESAW.
 - NO PERMANENT STRUCTURES SHALL BE CONSTRUCTED WITHIN TEN (10) FEET OF THE EDGE OF PERMANENT COBB COUNTY WATER OR SANITARY EASEMENTS ON FRONT OR REAR SETBACKS, OR WITHIN TWO (2) FEET ON SIDE SETBACKS, PER COUNTY CODE 122-123.
 - PARKING SPACES AND LANDSCAPING IN THE RIGHT-OF-WAY ARE THE RESPONSIBILITY OF THE HOA.
 - WATER METERS SHALL NOT BE INSTALLED BEHIND ENCLOSED FENCES, IN PAVED DRIVEWAYS OR IN PAVED PARKING AREAS PER COBB COUNTY CODE SEC. 122-125.
 - WATER AND SEWER UTILITIES WITHIN THE AEUVE WILL BE DEDICATED TO COBB COUNTY AFTER THE ONE YEAR MAINTENANCE WARRANTY INSPECTION AND APPROVAL BY COWS.

NO STREET PARKING HAS BEEN
APPROVED FOR THIS DEVELOPMENT



FLOOD HAZARD STATEMENT

WATTS & BROWNING ENGINEERS, INC. HAS EXAMINED THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) FLOOD INSURANCE RATE MAP (FIRM) AND BY GRAPHICALLY PLOTTING THE LOCATION OF THE SUBJECT PROPERTY ONTO COBB COUNTY FIRM MAP NUMBER 13067C0036H, DATED OCTOBER 5, 2018, THE REFERENCED PROPERTY IS LOCATED IN THE ZONE LISTED BELOW:

ZONE X (UNSHADED): AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.

THE FLOOD LINE, IF SHOWN, IS APPROXIMATE AND THE ACTUAL LIMITS OF FLOOD LINE BASED ON PUBLISHED ELEVATIONS MAY EXTEND BEYOND THOSE SHOWN HEREON.

- SURVEY REFERENCES**
- CONSOLIDATION PLAT OF EASTPARK VILLAGE, PREPARED FOR EAST PARK JV, LLC, ARBOR REALTY SR, INC., LOCATED IN LAND LOT 99, 20TH DISTRICT, 2ND SECTION, CITY OF KENNESAW, COBB COUNTY, GEORGIA, PLAT PREPARED BY GASKINS, DATED MAY 17, 2019, FILED FOR RECORD IN COBB COUNTY CLERK OF SUPERIOR COURT, APRIL 10, 2019 IN PLAT BOOK 278, PAGE 261.
 - CONSTRUCTION PLANS OF EASTPARK VILLAGE, PHASE 3, PREPARED FOR TRATON HOMES, LOCATED IN LAND LOT 99, 20TH DISTRICT, 2ND SECTION, CITY OF KENNESAW, GEORGIA, PLANS PREPARED BY RIDGE PLANNING AND ENGINEERING, DATED JULY 29, 2022, LAST REVISED APRIL 20, 2023.

THE FIELD DATA UPON WHICH THIS MAP OR PLAT IS BASED HAS A CLOSURE OF ONE FOOT IN 26,961 FEET AND AN ANGULAR ERROR OF 03" PER ANGLE POINT, AND WAS LEAST SQUARES ADJUSTED.

THIS MAP OR PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 465,915 FEET.

A LEICA TS06 TOTAL STATION WAS USED TO OBTAIN THE LINEAR AND ANGULAR MEASUREMENTS USED IN THE PREPARATION OF THIS PLAT.

ENGINEER & SURVEYOR ACKNOWLEDGEMENT:

IT IS HEREBY CERTIFIED THAT THIS PLAT IS TRUE AND CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY BY ME OR UNDER MY SUPERVISION; THAT ALL THE MONUMENTS SHOWN HEREON ACTUALLY EXIST OR ARE MARKED AS "FUTURE"; AND THEIR LOCATION, SIZE, TYPE AND MATERIAL ARE CORRECTLY SHOWN; AND THAT ALL ENGINEERING REQUIREMENTS OF THE KENNESAW'S SUBDIVISION REGULATIONS HAVE BEEN FULLY COMPLIED WITH.

BROCK J. BUCHHOLZ

SIGNATURE: _____ PRINTED NAME: _____ DATE: _____

REGISTERED GA. LAND SURVEYOR #3210

JOHN ROBERT MORGAN

SIGNATURE: _____ PRINTED NAME: _____ DATE: _____

REGISTERED P.E. #25538

SURVEYOR'S CERTIFICATION

AS REQUIRED BY SUBSECTION (D) OF O.C.G.A. SECTION 15-6-67, THIS PLAT HAS BEEN PREPARED BY A LAND SURVEYOR AND APPROVED BY ALL APPLICABLE LOCAL JURISDICTIONS FOR RECORDING AS EVIDENCED BY APPROVAL CERTIFICATES, SIGNATURES, STAMPS, OR STATEMENTS HEREON, SUCH APPROVALS OR AFFIRMATIONS SHOULD BE CONFIRMED WITH THE APPROPRIATE GOVERNMENTAL BODIES BY ANY PURCHASER OR USER OF THIS PLAT AS TO INTENDED USE OF ANY PARCEL. FURTHERMORE, THE UNDERSIGNED LAND SURVEYOR CERTIFIES THAT THIS PLAT COMPLIES WITH THE MINIMUM TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN THE RULES AND REGULATIONS OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN O.C.G.A. SECTION 15-6-67.

BROCK J. BUCHHOLZ, GEORGIA REGISTERED LAND SURVEYOR NUMBER 3210

COBB COUNTY WATER SYSTEM APPROVAL

THIS PLAT, HAVING BEEN SUBMITTED TO COBB COUNTY WATER SYSTEMS AND HAVING BEEN FOUND TO COMPLY WITH THE COBB COUNTY DEVELOPMENT STANDARDS IS APPROVED FOR RECORDING.

COBB COUNTY WATER SYSTEM _____ DATE _____

PURSUANT TO THE LAND SUBDIVISION SECTIONS OF THIS UDC OF THE CITY OF KENNESAW, GEORGIA, ALL THE REQUIREMENTS OF APPROVAL HAVING BEEN FULFILLED, THIS FINAL PLAT WAS GIVEN FINAL APPROVAL BY THE MAYOR AND COUNCIL OF KENNESAW, GEORGIA ON _____ (DATE).

MAYOR, KENNESAW, GEORGIA _____

PLANNING & ZONING _____

BUILDING & CONSTRUCTION _____

PUBLIC WORKS _____

CITY ENGINEER _____

MAYOR & CITY COUNCIL _____

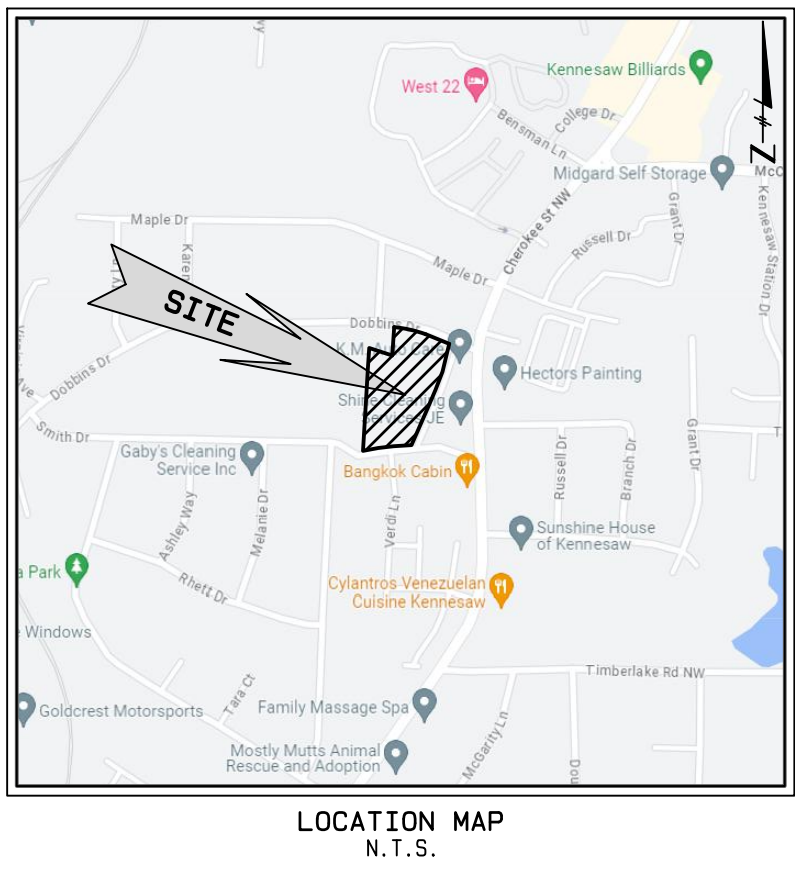
NOTHING HEREIN SHALL BE CONSTRUED TO MEAN THAT THE CITY OF KENNESAW HAS ACCEPTED THE DEDICATION OF ANY RIGHTS-OF-WAY, EASEMENTS OR OTHER AREA AS BEING DEDICATED TO PUBLIC USE.

OWNER'S ACKNOWLEDGEMENT:

THE OWNER OF THE LAND SHOWN ON THIS PLAT WHOSE NAME IS SUBSCRIBED HERETO, AND IN PERSON OR THROUGH A DULY AUTHORIZED AGENT, ACKNOWLEDGES THAT THIS PLAT WAS MADE FROM AN ACTUAL SURVEY AND DEDICATES TO THE PUBLIC FOREVER ALL STREETS, PARKS, DRAINS, EASEMENTS AND PUBLIC GROUNDS THEREON SHOWN, WHICH COMPRISES A TOTAL OF 1.5 ACRES, FOR THE PURPOSES THEREIN EXPRESSED. PROVIDED, HOWEVER, THAT NOTHING HEREIN NOR ACCEPTANCE SHALL CREATE LIABILITY ON THE PART OF COBB COUNTY AND THE CITY OF KENNESAW, ITS OFFICERS, AGENTS OR EMPLOYEES FOR FLOODING OR EROSION FROM STORM DRAINS OR FROM FLOODING FROM HIGH WATER OF NATURAL CREEKS OR RIVERS, AND COBB COUNTY AND THE CITY OF KENNESAW ARE HEREBY SPECIFICALLY RELEASED FROM ANY SUCH LIABILITY FOR THE NEGLIGENT CONSTRUCTION OR MAINTENANCE OF ALL DRAINAGE STRUCTURES, ROADS, SEDIMENT CONTROL FACILITIES AND ALL OTHER WORK PERFORMED BY THE OWNER OR DEVELOPER OF THE PROPERTY, THEIR AGENT, SERVANTS, EMPLOYEES OR CONTRACTORS.

SIGNATURE _____ DATE _____

PRINT NAME _____



FINAL PLAT OF
EAST PARK VILLAGE
PHASE 3
LOCATED IN
LAND LOT 99
20TH DISTRICT, 2ND SECTION
CITY OF KENNESAW
COBB COUNTY, GEORGIA

CITY OF KENNESAW, GEORGIA
ORDINANCE NO. 2017-11, 2017

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE
CITY OF KENNESAW, GEORGIA SO AS TO CHANGE THE ZONING DISTRICT
DESIGNATIONS FROM CITY O&I, LI, MHP, NRC, NS AND R-15 TO CITY T40 AND
T4L UNDER THE ADOPTED FORM BASED CODE DISTRICTS
(LAND LOT 99)

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

WHEREAS, Sanctuary Properties, made application to amend the Official Zoning Map of the City of Kennesaw, Georgia so as to change the zoning designation from City O&I, LI, MHP, NRC, NS and R-15 to City T40 and T4L under the adopted form based code districts for properties in Land Lot 99, 100, (as more particularly described below); and

WHEREAS, notice was advertised in the Marietta Daily Journal on October 20, 2017 and October 27, 2017, of a public hearing before the Kennesaw Planning Commission held at a Special Called Meeting of November 8, 2017 and the Mayor and Council at two Special Called Meetings of November 15, 2017 and December 7, 2017; and

WHEREAS, the Kennesaw Planning Commission held a public hearing on this proposal at a meeting held on November 8, 2017; and

WHEREAS, the Mayor and Council held two public hearings to consider this proposal at a meetings held on November 15, 2017 and December 7, 2017; and

WHEREAS, the Mayor and Council have determined that the proposed amendment to the Official Zoning Map is in the public interest and meets the standards established in the Kennesaw Zoning Code.

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

SECTION 1. The Official Zoning Map of the City of Kennesaw, Georgia is hereby amended so as to change the zoning district designation from City O&I, LI, MHP, NRC, NS and R-15 to City T40 and T4L under the adopted form based code districts for the following described properties:

LEGAL DESCRIPTION
for
EASTPARK VILLAGE – WEST SIDE

All that tract or parcel of land lying and being located in Land Lot 99 of the 20th District, 2nd Section, City of Kennesaw, Cobb County, Georgia and being more particularly described as follows:

thence N42°33'50"W a distance of 138.20 feet to a point;
thence N21°33'46"W a distance of 63.35 feet to a point;
thence N06°14'04"W a distance of 100.01 feet to a point;
thence N07°27'05"W a distance of 99.89 feet to a point;
thence S88°34'08"W a distance of 246.26 feet to a point;
thence S03°49'18"E a distance of 94.00 feet to a point;
thence S84°33'05"W a distance of 19.00 feet to a point;
thence S02°05'09"E a distance of 104.78 feet to a point;
thence N84°05'54"E a distance of 16.51 feet to a point;
thence S22°23'40"E a distance of 27.50 feet to a point;
thence S02°12'18"E a distance of 162.35 feet to a point;
thence N83°38'15"E a distance of 15.04 feet to a point;
thence N02°12'18"W a distance of 137.12 feet to a point;
thence S85°32'40"E a distance of 165.09 feet to a point;
thence S08°56'24"W a distance of 110.81 feet to a point;
thence S13°42'03"W a distance of 41.40 feet to a point;
thence S01°14'45"E a distance of 200.00 feet to a point;
thence S83°33'38"W a distance of 305.04 feet to a point;
thence S87°02'52"W a distance of 40.00 feet to a point;
thence S02°28'27"E a distance of 343.56 feet to a point;
proceeding into a curve to the left having a radius of 2,040.00 feet, an arc distance of 88.47 feet, S86°13'12"W with a chord distance of 88.46 feet to a point;
thence S84°58'39"W a distance of 255.98 feet to a point;
thence N06°31'49"W a distance of 177.69 feet to a point;
thence N84°45'04"E a distance of 202.49 feet to a point;

CITY OF KENNESAW
ORDINANCE NO. 2017-11, 2017

COMMENCING at a point at the intersection of the westerly right-of-way of Cherokee Street (R/W Varies) and the southerly right-of-way of Dobbins Drive (40' R/W); said point being the POINT OF BEGINNING;

THENCE proceeding into a curve to the left having a radius of 1,220.00 feet, an arc distance of 187.14 feet, S02°08'09"E with a chord distance of 186.96 feet to a point;

thence S06°31'49"E a distance of 473.81 feet to a point;

thence S84°38'14"W a distance of 203.82 feet to a point;

thence S04°30'32"E a distance of 61.84 feet to a point;

thence S08°21'47"E a distance of 38.22 feet to a point;

thence N84°38'14"E a distance of 204.78 feet to a point;

thence S06°31'49"E a distance of 100.02 feet to a point;

thence S84°36'42"W a distance of 201.57 feet to a point;

thence S04°59'42"E a distance of 68.81 feet to a point;

thence N82°35'56"W a distance of 28.02 feet to a point;

thence S18°32'14"W a distance of 68.58 feet to a point;

thence S73°45'25"E a distance of 277.41 feet to a point;

thence proceeding into a curve to the right having a radius of 893.71 feet, an arc distance of 470.72 feet, S14°34'20"W with a chord distance of 465.30 feet to a point;

thence S30°01'48"W a distance of 188.79 feet to a point;

thence N88°31'36"W a distance of 407.40 feet to a point;

thence N00°24'24"E a distance of 135.04 feet to a point;

thence N00°09'38"E a distance of 197.26 feet to a point;

thence N01°06'25"W a distance of 391.30 feet to a point;

thence N00°46'38"W a distance of 372.66 feet to a point;

thence N15°29'17"W a distance of 50.00 feet to a point;

thence N00°46'00"W a distance of 654.71 feet to a point;

thence N87°49'04"E a distance of 49.99 feet to a point;

CITY OF KENNESAW
ORDINANCE NO. 2017-11, 2017

thence S88°28'58"E a distance of 73.43 feet to a point;

thence proceeding into a curve to the right having a radius of 635.51 feet, an arc distance of 167.24 feet, S81°32'32"E with a chord distance of 166.76 feet to a point;

thence S71°52'29"E a distance of 133.02 feet to a point;

thence S70°22'27"E a distance of 139.76 feet to a point;

and back to the POINT OF BEGINNING.

Said Property being designated as Eastpark Village - West Side;
containing 942,801 square feet or 21.64 acres.

Legal Description is solely based on the assemblage of each individual parcel's recorded legal description and/or recorded plat; no field survey was completed to obtain or verify such information.

LEGAL DESCRIPTION
for
EASTPARK VILLAGE – EAST SIDE

All that tract or parcel of land lying and being located in Land Lot 99 of the 20th District, 2nd Section, City of Kennesaw, Cobb County, Georgia and being more particularly described as follows:

COMMENCING at a point at the intersection of the easterly right-of-way of Cherokee Street (R/W Varies) and the southerly right-of-way of McCollum Parkway (R/W Varies); said point being the POINT OF BEGINNING;

THENCE N84°26'45"E a distance of 174.91 feet to a point;

thence N84°27'04"E a distance of 113.18 feet to a point;

thence N84°41'00"E a distance of 100.00 feet to a point;

thence S88°33'43"E a distance of 40.98 feet to a point;

thence N88°04'47"E a distance of 321.42 feet to a point;

thence S04°48'11"E a distance of 1,039.23 feet to a point;

thence S86°21'47"W a distance of 254.40 feet to a point;

thence S07°26'43"E a distance of 266.06 feet to a point;

thence N73°09'43"W a distance of 131.80 feet to a point;

CITY OF KENNESAW
ORDINANCE NO. 2017-11, 2017

administrative approval as required for the six special districts as long as the residential maximum units are not exceeded.

4. Development concept plan and development proposal will incorporate open space and greenway areas and a 5.46 +/- acre of public park.

5. Development concept plan dated 11/7/17 and prepared by Miller Architecture will be subject to providing the list of proposed uses of retail specialty shops, outdoor open market, grocery store, restaurants, office space, 102 room hotel and commercial self-storage and all neighborhood friendly retail that is compatible with this development area as per the adopted city of Kennesaw comprehensive plan.

6. Master plan subject to conditions to be finalized under separate development agreement between the applicant and City of Kennesaw regarding the construction timeline and issuance of certificates of occupancy for residential and commercial components.

7. Applicant to coordinate ROW improvement project for Cherokee Street under SPLOST program to ensure that the project does not undermine city improvement project timeline.

8. Pre and post construction hydrology report to ensure that storm water runoff is addressed and there are no negative effects to adjacent properties.

9. Detailed landscaping buffer schedule and detail will incorporate evergreen trees and solid fencing along all property lines abutting residential and commercial properties not part of the master plan development. Landscaping buffer plan and landscaping plan will be subject to plan review approval. Tree variety to be in compliance with city of Kennesaw landscaping ordinance and buffer ordinance in the Unified Development Code.

10. Reversionary clause to be incorporated and approved by all parties that states that construction must be implemented within two years of date of approval. Failure to implement any development activity will result in the subject parcels being restored to original zoning district with all privileges for land uses to the property owners.

11. Applicant to pursue any opportunity to reduce the overall residential density impact by reduction of residential units in any of the residential components of the master plan.

SECTION 3. BE IT FURTHER ORDAINED THAT it is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, and phrases are severable, and if any section, paragraph, sentence, clause, and phrase is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases of this Ordinance.

CITY OF KENNESAW
ORDINANCE NO. 2017-11, 2017

SECTION 4. BE IT FURTHER ORDAINED THAT this Ordinance shall become effective from and after its adoption and execution by the Mayor, pursuant to Section 2.11 of the City Charter of the City of Kennesaw.

PASSED AND ADOPTED by the Kennesaw City Council on this 7th day of December, 2017

ATTEST:

Debra Taylor, City Clerk

CITY OF KENNESAW:

Delek Easterling, Mayor



CITY OF KENNESAW
ORDINANCE NO. 2017-11, 2017

CITY OF KENNESAW, GEORGIA
ORDINANCE NO. 2019-12, 2019

AN ORDINANCE TO AMEND A CONDITION OF REZONING UNDER
ORDINANCE NO. 2017-11, 2017 FOR EASTPARK VILLAGE

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

WHEREAS, Sanctuary Development, LLC, made application to amend a condition of a rezoning from the original rezoning Ordinance No. 2017-11, 2017 City of Kennesaw, Georgia, so as to change the maximum number of residential units; and

WHEREAS, notice was advertised in the Marietta Daily Journal on November 15, 2019 and November 22, 2019, of a public hearing before the Kennesaw Planning Commission held at a Meeting on December 04, 2019 and the Mayor and Council on December 16, 2019; and

WHEREAS, the Kennesaw Planning Commission held a public hearing on this proposal at a meeting held on December 04, 2019; and

WHEREAS, the Mayor and Council held a meeting to consider this proposal at a meeting held on December 16, 2019; and

WHEREAS, the Mayor and Council have determined that the proposed amendment to the Official Zoning Map is in the public interest and meets the standards established in the Kennesaw Zoning Code.

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

SECTION 1. Maximum number of residential units for this development to be capped at 860 238 residential units an increase of 88 residential units from the original plan that will be a mixture of housing types that include Market Rate apartments, 55+ senior age restricted condominiums and senior age restricted apartments that includes rent by the bed structure and market rate townhomes.

EASTPARK VILLAGE

All that tract or parcel of land lying and being located in Land Lot 99 of the 20th District, 2nd Section, City of Kennesaw, Cobb County, Georgia

SECTION 3. BE IT FURTHER ORDAINED THAT it is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, and phrases are severable, and if any section, paragraph, sentence, clause, and phrase is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases of this Ordinance.

SECTION 4. BE IT FURTHER ORDAINED THAT this Ordinance shall become effective from and after its adoption and execution by the Mayor, pursuant to Section 2.11 of the City Charter of the City of Kennesaw.

PASSED AND ADOPTED by the Kennesaw City Council on this 16th day of December 2019.

ATTEST:

Debra Taylor, City Clerk

CITY OF KENNESAW:

Delek Easterling, Mayor



CITY OF KENNESAW
ORDINANCE NO. 2019-12, 2019

REVISE	NO.	DATE	BY	DESCRIPTION
1.	01/12/24	JJT	ADDRESS CORA, CITY OF KENNESAW & COBB COUNTY FIRE COMMENTS.	
2.	01/31/24	JJT	ADD APPROVED ALLEY NAMES.	



SCALE:	N/A
DATE SURVEYED:	11/13/2023
DATE UPDATED:	N/A
SURVEYED BY:	JK
DATE DRAFTED:	12/08/2023
UPDATE DRAFTED:	N/A
DRAWN BY:	JJT
CHECKED BY:	BJB
FIELD BOOK #:	2678
JOB NUMBER:	230718
FOLDER NUMBER:	230718
CODG FILE:	N/A
DISC FILE:	230718-FP_ASB
COUNTY/LL/D/S:	COBB/99/20/2
PLAT FILE:	B
SHEET:	2 OF 3

PROJECT # SPR-2022-K006



Item Report

TO: The Honorable Mayor and City Council

FROM: Marty Hughes, Assistant City Manager

DATE: February 12, 2024

TITLE: **Award Bid and Contract: Gay Construction for the Public Safety Facility**
 Consideration for approval of a Resolution to award the bid and contract for the Public Safety Facility to Gay Construction Company.

Summary:

A Request for Qualifications was advertised in the Marietta Daily Journal for a Construction Manager at Risk (CMAR) for the Pre-construction and Construction Services for the Public Safety facility. Seven qualification packages were received on 12 January. Each package was reviewed and ranked by a Selection Committee, and the four highest scoring firms were interviewed on 30 January. Attachment A was reviewed by Legal.

Recommendation:

Based on the results of the Selection Committee, the City Manager's office recommends Gay Construction, and for the Mayor to sign the attached resolution and contract.

Fiscal Impact:

2022 SPLOST: Public Safety Facility

Attachments:

1. RESOLUTION - Public Safety CMAR
2. Attachment A
3. Fee Proposal
4. 12-01-23 Public Safety Facility CMAR RFQ
5. 12.-15-23 Public Safety Facility CMAR RFQ

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2024-__, 2024

**RESOLUTION TO AWARD BID AND CONTRACT WITH
GAY CONSTRUCTION COMPANY FOR THE
PUBLIC SAFETY FACILITY**

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

WHEREAS, the City desires to engage a qualified and experienced Contractor to serve as the Construction Manager at Risk (CMAR) for the Public Safety Facility; and

WHEREAS, Gay Construction Company has represented to the City they are experienced and qualified to perform those services; and

WHEREAS, Gay Construction Company has offered to provide the required CMAR services for an amount of \$1,199,875.

BE IT RESOLVED the Kennesaw City Council authorizes the Mayor to execute a contract with Gay Construction Company to perform described work as shown as Attachment A.

PASSED AND ADOPTED by the Kennesaw City Council on this __ day of February, 2024.

ATTEST:

CITY OF KENNESAW:

Lea Alvarez, City Clerk

Derek Easterling, Mayor

AIA[®] Document A133[®] – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Fifth day of February in the year 2024
(In words, indicate day, month, and year.)

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

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

and the Construction Manager:
(Name, legal status, address, and other information)

Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339

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

Kennesaw Public Safety Facility
3080 Moon Station Road
Kennesaw, GA 30144

The Program Manager:
(Name, legal status, address, and other information)

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

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. 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.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

See Attachment A

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

Init.

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User Notes:

(811030138)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

Construction Manager agrees to commence Construction on a date to be specified in a written "Notice to Proceed" of the Owner .

.3 Substantial Completion date or dates:

Construction Manager agrees to fully complete the project within four hundred fifty eight (458) consecutive calendar days.

.4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

None

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Robbie Balenger, Building & Facilities Manager
City of Kennesaw, GA
2753 Watts Drive
Kennesaw, GA 30144

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

Init.

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§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

Geo-Hydro Engineers
1000 Cobb Place Boulevard
Suite 290
Kennesaw, GA 30144

.2 Civil Engineer:

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

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Program Manager's representative:
(List name, address, and other contact information.)

Roy Acree
Croy Engineering, LLC
200 Cobb Parkway N
Building 400, Suite 413
Marietta, GA 30062
racree@croyeng.com
(770)891-5036

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Mark Whitney, Vice President
Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339
mwhitney@gayconstruction.com
(404)557-1552

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

Request for Qualifications (RFQ), Kennesaw Public Safety Facility, Construction Manager at Risk (CMAR) for Pre-Construction and Construction Services Contract, first advertised on December 1, 2023, and all subsequent addenda

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Program Manager and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Program Manager and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Program Manager, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Program Manager shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Program Manager and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Program Manager may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Program Manager and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Program Manager on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Program Manager, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Program Manager regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Program Manager's review and the Owner's acceptance. The Construction Manager shall obtain the Program Manager's approval for the portion of the Project schedule relating to the performance of the Program Manager's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Program Manager's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Program Manager, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Program Manager, the Construction Manager shall prepare, for the Program Manager's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Program Manager or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Program Manager progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Program Manager, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a

Guaranteed Maximum Price for the Work. The estimate shall be provided for the Program Manager's review and the Owner's approval. The Construction Manager shall inform the Owner and Program Manager in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Program Manager is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Program Manager's cost estimates, the Construction Manager and the Program Manager shall work together to reconcile the cost estimates.

§ 3.1.7 As the Program Manager progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Program Manager and make recommendations regarding constructability and schedules, for the Program Manager's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Program Manager regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Program Manager's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Program Manager's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of

the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Program Manager to review the Guaranteed Maximum Price proposal. In the event that the Owner or Program Manager discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Program Manager. The Guaranteed Maximum Price Amendment shall set forth the agreed-upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Program Manager of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Program Manager.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Program Manager a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Program Manager, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Program Manager, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Program Manager, and shall provide this information in its monthly reports to the Owner and Program Manager, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Reserved.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Program Manager. The Owner and the Program Manager, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall not be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.2.1 The Owner and/or operators of private or public utilities shall have access to such utility at all times, for the installation, maintenance, adjustment, repair and operation of said utility. No extra compensation will be allowed because of the delay or interference caused by such work.

§ 4.1.4.2.2 In preparing the plan drawings there has not been an all-inclusive search for identifying existing underground utilities. Therefore, any information pertaining to existing utilities is provided only for preliminary purposes and implies no guarantee as to accuracy or completeness. Prior to blasting or excavation, the Contractor is responsible for contacting all utility owners in the area. Specifically, the Contractor shall contact the "one-call notification center" SEVENTY-TWO (72) hours in advance of blasting or excavation as required by Georgia Law.

§ 4.1.4.2.4 Wherever existing utilities are encountered which conflict in actual position and location with the proposed work, the Contractor shall promptly notify the Program Manager for resolution of the conflict.

§ 4.1.4.2.5 Temporary supports, beams or bridging for utilities shall be left in place during backfill operations unless otherwise directed by the Program Manager.

§ 4.1.4.2.6 All costs in connection with supporting, protecting, relocating, removal, repair of damage, restoration, and other work on affected existing utilities and other existing underground structures whether or not they are shown on the plans, not borne by the Owner or owners of the utilities, shall be borne by the Contractor. No separate payment will be made for any work performed as herein above specified unless otherwise stated in the proposal as a separate payment item. All costs in connection therewith shall be included in the Contract price for the item to which the work pertains.

§ 4.1.4.2.7 The Contractor shall be solely and directly responsible to the Owner and/or other operator of such utility properties for any damage, injury, expense, loss, inconvenience or delay, or for any suits, actions, claims of any character brought on account of any injuries or damages which may result from the carrying out of the work.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of

A201–2017, the Program Manager does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Program Manager

The Owner shall retain a Program Manager to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Program Manager, and any further modifications to the Program Manager's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$30,000

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

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

Individual or Position	Rate
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§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

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

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

WSJ prime rate (as of date payment is due) plus 4%

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Lump sum fee of \$375,000 billed monthly in equal installments

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

4.75% of the Cost of the changes in the Work

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred percent (100 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Construction Manager agrees to pay as liquidated damages the sum of \$1,000 per each consecutive calendar day that the Construction Manager shall be in default starting thirty (30) days ("Grace Period") after the Completion Date stipulated in the Contract for completing work.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

Construction Manager general conditions to be billed as lump sum \$794,875 in equal monthly installments

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Program Manager may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

Init.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site with Owner's prior approval, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work with Owner's prior approval, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 Reserved.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Reserved.

§ 7.6.9 Reserved.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, with the Owner's prior approval.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, Subcontractors, or suppliers, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;

- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Program Manager and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Program Manager and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Program Manager, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may request that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Program Manager by the Construction Manager, and Certificates for Payment issued by the Program Manager, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Program Manager not later than the last day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Program Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 30 () days after the Program Manager receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Program Manager to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Program Manager may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Program Manager.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Program Manager determines, in the Program Manager's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the

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Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Program Manager has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Program Manager may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten Percent (10%)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner’s prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager’s Applications for Payment the Program Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall

not be deemed to be a representation that (1) the Program Manager has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Program Manager has made exhaustive or continuous on-site inspections; or (3) that the Program Manager has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Program Manager in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Program Manager that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Program Manager.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Program Manager will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Program Manager's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Program Manager is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Program Manager's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Program Manager's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Program Manager's final Certificate for Payment.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Reserved.

(Insert rate of interest agreed upon, if any.)

%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Program Manager will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Program Manager.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Article 15 of AIA Document A201–2017

☐ Litigation in a court of competent jurisdiction

☒ Other: *(Specify)*

Jurisdiction and venue of all claims not resolved or covered by General Conditions as set forth in AIA Document A201 - 2017, shall lie exclusively in the Superior Court of Cobb County, Georgia.

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination.

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In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the

Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager in the same manner as set forth in § 13.2.2 Termination by the Owner for Cause.

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, the Construction Manager shall not assign the Contract as a whole or in part without written consent of the Owner. If the Construction Manager attempts to make an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000) for each occurrence and Two Million Dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Five Million Dollars (\$ 5,000,000) in the aggregate. Professional Liability policy may be a combined professional/pollution policy per industry standard.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction

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(Paragraph deleted)

(Insert the date of the E203-2013 incorporated into this Agreement.)

.6 Other Exhibits:
(Check all boxes that apply.)

☐ AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.7 Other documents, if any, listed below: All document listed in A201-2017 § 1.1.1.
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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

OWNER (Signature)

C. Derek Easterling Mayor
(Printed name and title)

ATTEST:

Lea Alvarez, City Clerk

CONSTRUCTION MANAGER (Signature)

Mark Whitney Vice President
(Printed name and title)

ATTEST:

Secretary

(Printed Name)

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Additions and Deletions Report for

AIA® Document A133® – 2019

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

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PAGE 1

AGREEMENT made as of the Fifth day of February in the year 2024

...

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

...

Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339

...

Kennesaw Public Safety Facility
3080 Moon Station Road
Kennesaw, GA 30144

~~The Architect:~~Program Manager:

...

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

PAGE 2

See Attachment A

PAGE 3

Construction Manager agrees to commence Construction on a date to be specified in a written "Notice to Proceed" of the Owner.

...

Construction Manager agrees to fully complete the project within four hundred fifty eight (458) consecutive calendar days.

...

None

...

Robbie Balenger, Building & Facilities Manager
City of Kennesaw, GA
2753 Watts Drive
Kennesaw, GA 30144

PAGE 4

Geo-Hydro Engineers
1000 Cobb Place Boulevard
Suite 290
Kennesaw, GA 30144

...

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

...

§ 1.1.11 The Architect's Program Manager's representative:

...

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

...

(770)891-5036

...

Mark Whitney, Vice President
Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339
mwhitney@gayconstruction.com
(404)557-1552

PAGE 5

Request for Qualifications (RFQ), Kennesaw Public Safety Facility, Construction Manager at Risk (CMAR) for Pre-Construction and Construction Services Contract, first advertised on December 1, 2023, and all subsequent addenda

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed

in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the ~~Architect~~ Program Manager and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the ~~Architect~~ Program Manager and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the ~~Architect~~ Program Manager, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

PAGE 6

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and ~~Architect~~ Program Manager shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the ~~Architect~~ Program Manager and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the ~~Architect~~ Program Manager may require.

...

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the ~~Architect~~ Program Manager and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and ~~Architect~~ Program Manager on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and ~~Architect~~ Program Manager, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the ~~Architect~~ Program Manager regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 ~~The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information~~

~~Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

...

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the ~~Architect's Program Manager's~~ review and the Owner's acceptance. The Construction Manager shall obtain the ~~Architect's Program Manager's~~ approval for the portion of the Project schedule relating to the performance of the ~~Architect's Program Manager's~~ services. The Project schedule shall coordinate and integrate the Construction Manager's services, the ~~Architect's Program Manager's~~ services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

...

The Construction Manager, in consultation with the ~~Architect, Program Manager,~~ shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

...

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the ~~Architect, Program Manager,~~ the Construction Manager shall prepare, for the ~~Architect's Program Manager's~~ review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the ~~Architect Program Manager~~ or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the ~~Architect Program Manager~~ progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and ~~Architect, Program Manager,~~ an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the ~~Architect's Program Manager's~~ review and the Owner's approval. The Construction Manager shall inform the Owner and ~~Architect Program Manager~~ in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the ~~Architect Program Manager~~ is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the ~~Architect's Program Manager's~~ cost estimates, the Construction Manager and the ~~Architect Program Manager~~ shall work together to reconcile the cost estimates.

§ 3.1.7 As the ~~Architect Program Manager~~ progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and ~~Architect Program Manager~~ and make recommendations regarding constructability and schedules, for the ~~Architect's Program Manager's~~ review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and ~~Architect Program Manager~~ regarding equipment, materials, services, and temporary Project facilities.

PAGE 7

The Construction Manager shall prepare, for the ~~Architect's Program Manager's~~ review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and ~~Architect's Program Manager's~~ review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

PAGE 8

§ 3.2.5 The Construction Manager shall meet with the Owner and ~~Architect Program Manager~~ to review the Guaranteed Maximum Price proposal. In the event that the Owner or ~~Architect Program Manager~~ discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the ~~Architect Program Manager~~. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

...

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and ~~Architect Program Manager~~ of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

PAGE 9

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and ~~Architect Program Manager~~.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and ~~Architect Program Manager~~ a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017.

...

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and ~~Architect Program Manager~~, showing percentages of completion and other information required by the Owner.

...

The Construction Manager shall keep, and make available to the Owner and ~~Architect Program Manager~~, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site,

identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

...

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and ~~Architect,~~ Program Manager, and shall provide this information in its monthly reports to the Owner and ~~Architect,~~ Program Manager, in accordance with Section 3.3.2.3 above.

...

§ 4.1.2 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~**Reserved.**

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and ~~Architect,~~ Program Manager. The Owner and the ~~Architect,~~ Program Manager, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall not be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

PAGE 10

§ 4.1.4.2.1 The Owner and/or operators of private or public utilities shall have access to such utility at all times, for the installation, maintenance, adjustment, repair and operation of said utility. No extra compensation will be allowed because of the delay or interference caused by such work.

§ 4.1.4.2.2 In preparing the plan drawings there has not been an all-inclusive search for identifying existing underground utilities. Therefore, any information pertaining to existing utilities is provided only for preliminary purposes and implies no guarantee as to accuracy or completeness. Prior to blasting or excavation, the Contractor is responsible for contacting all utility owners in the area. Specifically, the Contractor shall contact the "one-call notification center" SEVENTY-TWO (72) hours in advance of blasting or excavation as required by Georgia Law.

§ 4.1.4.2.4 Wherever existing utilities are encountered which conflict in actual position and location with the proposed work, the Contractor shall promptly notify the Program Manager for resolution of the conflict.

§ 4.1.4.2.5 Temporary supports, beams or bridging for utilities shall be left in place during backfill operations unless otherwise directed by the Program Manager.

§ 4.1.4.2.6 All costs in connection with supporting, protecting, relocating, removal, repair of damage, restoration, and other work on affected existing utilities and other existing underground structures whether or not they are shown on the plans, not borne by the Owner or owners of the utilities, shall be borne by the Contractor. No separate payment will be made for any work performed as herein above specified unless otherwise stated in the proposal as a separate payment item. All costs in connection therewith shall be included in the Contract price for the item to which the work pertains.

§ 4.1.4.2.7 The Contractor shall be solely and directly responsible to the Owner and/or other operator of such utility properties for any damage, injury, expense, loss, inconvenience or delay, or for any suits, actions, claims of any character brought on account of any injuries or damages which may result from the carrying out of the work.

...

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the ~~Architect~~ Program Manager does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

PAGE 11

§ 4.3 Architect~~Program Manager~~

The Owner shall retain ~~an Architect~~ a Program Manager to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the ~~Architect~~, Program Manager, and any further modifications to the ~~Architect's~~ Program Manager's scope of services in the agreement.

...

\$30,000

...

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

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

...

%—WSJ prime rate (as of date payment is due) plus 4%

PAGE 12

Lump sum fee of \$375,000 billed monthly in equal installments

...

4.75% of the Cost of the changes in the Work

...

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred percent (100 %) of the standard rental rate paid at the place of the Project.

...

Construction Manager agrees to pay as liquidated damages the sum of \$1,000 per each consecutive calendar day that the Construction Manager shall be in default starting thirty (30) days ("Grace Period") after the Completion Date stipulated in the Contract for completing work.

...

Construction Manager general conditions to be billed as lump sum \$794,875 in equal monthly installments

...

§ 6.3.1.1 ~~The Architect-Program Manager~~ may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

PAGE 13

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the ~~site,~~ site with Owner's prior approval, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

...

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the ~~Work,~~ Work with Owner's prior approval, but only for that portion of their time required for the Work.

PAGE 14

§ 7.6.5.1 ~~The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~ **Reserved.**

...

§ 7.6.8 ~~Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~ **Reserved.**

§ 7.6.9 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~ **Reserved.**

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§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the ~~Work.~~ Work, with the Owner's prior approval.

...

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, Subcontractors, or suppliers, and only to

the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

PAGE 16

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the ~~Architect~~ Program Manager and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the ~~Architect~~ Program Manager and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the ~~Architect~~ Program Manager, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may ~~require~~ request that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

...

§ 11.1.1 Based upon Applications for Payment submitted to the ~~Architect~~ Program Manager by the Construction Manager, and Certificates for Payment issued by the ~~Architect~~ Program Manager, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

PAGE 17

§ 11.1.3 Provided that an Application for Payment is received by the ~~Architect~~ Program Manager not later than the last day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the ~~Architect~~ Program Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 30 () days after the ~~Architect~~ Program Manager receives the Application for Payment.

...

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or ~~Architect~~ Program Manager to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

...

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect~~ Program Manager may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

...

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the ~~Architect~~ Program Manager.

...

PAGE 18

- .3 That portion of Construction Change Directives that the ~~Architect~~ Program Manager determines, in the ~~Architect's~~ Program Manager's professional judgment, to be reasonably justified; and

- .2 The amount, if any, for Work that remains uncorrected and for which the ~~Architect~~ Program Manager has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the ~~Architect~~ Program Manager may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

...

Ten Percent (10%)

...

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the ~~Architect~~ Program Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the ~~Architect~~ Program Manager has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the ~~Architect~~ Program Manager has made exhaustive or continuous on-site inspections; or (3) that the ~~Architect~~ Program Manager has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

PAGE 19

- .3 a final Certificate for Payment has been issued by the ~~Architect~~ Program Manager in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the ~~Architect~~ Program Manager that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the ~~Architect~~ Program Manager.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the ~~Architect~~ Program Manager will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the ~~Architect's~~ Program Manager's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The ~~Architect~~ Program Manager is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the ~~Architect's~~ Program Manager's final Certificate for Payment. Failure

to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the ~~Architect's~~ Program Manager's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the ~~Architect's~~ Program Manager's final Certificate for ~~Payment, or as follows:~~ Payment.

...

§ 11.3 Interest

~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ Reserved.

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§ 12.1.2 The ~~Architect~~ Program Manager will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase ~~services,~~ unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision ~~Maker.~~ services.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the ~~Architect~~ Program Manager.)

...

[☒] Other: *(Specify)*

Jurisdiction and venue of all claims not resolved or covered by General Conditions as set forth in AIA Document A201 - 2017, shall lie exclusively in the Superior Court of Cobb County, Georgia.

PAGE 22

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Construction Manager ~~a termination fee as follows:~~ in the same manner as set forth in § 13.2.2 Termination by the Owner for Cause.

...

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201-2017, ~~neither party to the Contract shall the Construction Manager shall not assign the Contract as a whole or in part without written consent of the other. If either party Owner. If the Construction Manager attempts to make an assignment without such consent, that party the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.~~

...

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000) for each occurrence and Two Million Dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Five Million Dollars (\$ 5,000,000) in the aggregate. Professional Liability policy may be a combined professional/pollution policy per industry standard.

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~~.5 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

...

.7 Other documents, if any, listed below: All document listed in A201-2017 § 1.1.1.

...

C. Derek Easterling Mayor

Mark Whitney Vice President

...

ATTEST:

ATTEST:

Lea Alvarez, City Clerk

Secretary

(Printed Name)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:17:56 ET on 02/07/2024 under Order No. 2114460490 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A133® – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the Fifth day of February in the year 2024
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

Kennesaw Public Safety Facility
3080 Moon Station Road
Kennesaw, GA 30144

THE OWNER:
(Name, legal status, and address)

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction.

ARTICLE B.2 Reserved.

§ B.2.1 Reserved.

§ B.2.2 Reserved.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

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.

This document is intended to be used in conjunction with AIA Document A201™-2017, General Conditions of the Contract for Construction. Article 11 of A201™-2017 contains additional insurance provisions.

Init.

/

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User Notes:

(725837913)

(Paragraphs deleted)

§ B.2.4

(Paragraphs deleted)

Reserved.

(Paragraphs deleted)

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Program Manager, and the Program Manager's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Program Manager and the Program Manager's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Georgia. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions.

(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$ 2,000,000) general aggregate, and One Million Dollars (\$ 1,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

Init.

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User Notes:

(725837913)

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

§ B.3.2.7 Reserved.

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Five Million Dollars (\$ 5,000,000) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Five Million Dollars (\$ 5,000,000) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Five Million Dollars (\$ 5,000,000) in the aggregate.

§ B.3.2.11 Reserved.

§ B.3.2.12 Reserved

§ B.3.2.13 Required Property Insurance

§ B.3.2.13.1 The Construction Manager shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Georgia, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Construction Manager's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.3.2.13.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.3.2.13.1.1 Causes of Loss. The insurance required by this Section B.3.2.13.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:
(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit
---------------	-----------

§ B.3.2.13.1.2 Specific Required Coverages. The insurance required by this Section B.3.2.13.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
----------	-----------

§ B.3.2.13.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.3.2.13.1 or, if necessary, replace the insurance policy required under Section B.3.2.13.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.3.2.13.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.3.2.13 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.3.2.13.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.3.2.13.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.3.2.13.3 Insurance for Existing Structures
Insurance for any existing structures to be purchased and maintained by Owner.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Georgia. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

☐ **§ B.3.3.2.1** Reserved.
(Paragraph deleted)

☒ **§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Ten Million Dollars (\$ 10,000,000) in the aggregate, for Work within fifty (50) feet of railroad property.

☐ **§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

☐ **§ B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

☐ **§ B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

☐ **§ B.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type

Payment Bond

Performance Bond

Penal Sum (\$0.00)

Contract Sum

Contract Sum

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Additions and Deletions Report for AIA® Document A133® – 2019 Exhibit B

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:23:14 ET on 02/07/2024.

PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the Fifth day of February in the year 2024

...

Kennesaw Public Safety Facility
3080 Moon Station Road
Kennesaw, GA 30144

...

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

...

Gay Construction Company
2907 Log Cabin Drive
Atlanta, GA 30339

...

The ~~Owner and~~ Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE B.2 – OWNER’S INSURANCE

ARTICLE B.2 Reserved.

§ B.2.1 General

~~Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager’s request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~Reserved.

§ B.2.2 Liability InsuranceReserved.

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ B.2.3 Required Property Insurance

~~§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in~~

the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss

Sub-Limit

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

Sub-Limit

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

Reserved.

☐ **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance,** to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a

covered cause of loss.

☐ **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

☐ **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

☐ **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

☐ **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

☐ **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

☐ **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

☐ **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

☐ **§ B.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

PAGE 2

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the ~~Architect~~, Program Manager, and the ~~Architect's Program Manager's~~ consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the ~~Architect~~ Program Manager and the ~~Architect's Program Manager's~~ consultants, CG 20 32 07 04.

...

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the ~~jurisdiction where the Project is located~~, State of Georgia. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General ~~Conditions~~, unless a different duration is stated below: ~~Conditions~~.

...

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$ 2,000,000) general aggregate, and One Million Dollars (\$ 1,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

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§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

...

§ B.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000) each accident, One Million Dollars (\$ 1,000,000) each employee, and One Million Dollars (\$ 1,000,000) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks **Reserved**.

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Five Million Dollars (\$ 5,000,000) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Five Million Dollars (\$ 5,000,000) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Five Million Dollars (\$ 5,000,000) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate. Reserved.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate. Reserved

§ B.3.2.13 Required Property Insurance

§ B.3.2.13.1 The Construction Manager shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Georgia, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Construction Manager's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.3.2.13.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.3.2.13.1.1 **Causes of Loss.** The insurance required by this Section B.3.2.13.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss

Sub-Limit

§ B.3.2.13.1.2 **Specific Required Coverages.** The insurance required by this Section B.3.2.13.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows: *(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage

Sub-Limit

§ B.3.2.13.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.3.2.13.1 or, if necessary, replace the insurance policy required under Section B.3.2.13.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.3.2.13.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.3.2.13 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.3.2.13.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.3.2.13.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.3.2.13.3 Insurance for Existing Structures

Insurance for any existing structures to be purchased and maintained by Owner.

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§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. State of Georgia. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

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- [] **§ B.3.3.2.1** ~~Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below: Reserved.~~
(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)
- ...

- [X] **§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than Five Million Dollars (\$ 5,000,000) per claim and Ten Million Dollars (\$ 10,000,000) in the aggregate, for Work within fifty (50) feet of railroad property.
- ...

Payment Bond

Performance Bond

Contract Sum

Contract Sum



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Kennesaw Public Safety Facility
3080 Moon Station Road
Kennesaw, GA 30144

THE OWNER:

(Name, legal status and address)

City of Kennesaw, GA
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

THE CONTRACTOR:

Gay Construction Company
2907 Log Cabin Drive
Atlanta, Georgia 30339

THE PROGRAM MANAGER:

(Name, legal status and address)

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

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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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Program Manager. Unless specifically enumerated in the Agreement, the Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the **Program Manager** or the Program Manager's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Program Manager or the Program Manager's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Program Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Program Manager's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Program Manager and the Program Manager's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Program Manager and the Program Manager's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Program Manager's or Program Manager's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Program Manager, and the Program Manager's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Program Manager does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain a **Program Manager** lawfully licensed to practice engineering, or an entity lawfully practicing engineering, in the jurisdiction where the Project is located. That person or entity is identified as the **Program Manager** in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Program Manager terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Program Manager.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.4.1 The Owner and/or operators of private or public utilities shall have access to such utility at all times, for the installation, maintenance, adjustment, repair and operation of said utility. No extra compensation will be allowed because of the delay or interference caused by such work.

§ 2.3.4.2 In preparing the plan drawings there has not been an all-inclusive search for identifying existing underground utilities. Therefore, any information pertaining to existing utilities is provided only for preliminary purposes and implies no guarantee as to accuracy or completeness. Prior to blasting or excavation, the Contractor is responsible for contacting all utility owners in the area. Specifically, the Contractor shall contact the "one-call notification center" SEVENTY-TWO (72) hours in advance of blasting or excavation as required by Georgia Law.

§ 2.3.4.3 Wherever existing utilities are encountered which conflict in actual position and location with the proposed work, the Contractor shall promptly notify the Program Manager for resolution of the conflict.

§ 2.3.4.4 Temporary supports, beams or bridging for utilities shall be left in place during backfill operations unless otherwise directed by the Program Manager.

§ 2.3.4.5 All costs in connection with supporting, protecting, relocating, removal, repair of damage, restoration, and other work on affected existing utilities and other existing underground structures whether or not they are shown on the plans, not borne by the Owner or owners of the utilities, shall be borne by the Contractor. No separate payment will be made for any work performed as herein above specified unless otherwise stated in the proposal as a separate payment item. All costs in connection therewith shall be included in the Contract price for the item to which the work pertains.

§ 2.3.4.6 The Contractor shall be solely and directly responsible to the Owner and/or other operator of such utility properties for any damage, injury, expense, loss, inconvenience or delay, or for any suits, actions, claims of any character brought on account of any injuries or damages which may result from the carrying out of the work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Program Manager and the Program Manager may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Program Manager's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Program Manager, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Program Manager in the Program Manager's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Program Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Program Manager may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Program Manager any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Program Manager may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Program Manager issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Program Manager for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Program Manager, and shall propose alternative means, methods, techniques, sequences, or procedures. The Program Manager shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Program Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Program Manager in accordance with Section 3.12.8 or ordered by the Program Manager in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Program Manager and in accordance with a Change Order or Construction Change Directive.

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Program Manager that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Program Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Program Manager immediately and before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Program Manager will promptly investigate such conditions and, if the Program Manager determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Program Manager determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Program Manager shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Program Manager's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Program Manager. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Program Manager of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Program Manager may notify the Contractor, stating whether the Owner or the Program Manager (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Program Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Program Manager has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Program Manager's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule may be revised at appropriate intervals as required by the conditions of the Work and Project by submission of a Change Order by the Contractor.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Program Manager's approval. The Program Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Program Manager reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved

submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Program Manager.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Program Manager and Owner, and delivered to the Program Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Program Manager is subject to the limitations of Section 4.2.7. Informational submittals upon which the Program Manager is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Program Manager without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Program Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Program Manager or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Program Manager that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Program Manager.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Program Manager's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Program Manager of such deviation at the time of submittal and (1) the Program Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Program Manager's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Program Manager on previous submittals. In the absence of such notice, the Program Manager's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Program Manager will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Program Manager. The Owner and the Program Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Program Manager have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Program Manager will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Program Manager at the time and in the form specified by the Program Manager.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Program Manager with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Program Manager harmless from loss on account thereof, including but not limited to attorney fees and costs of litigation, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Program Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Program Manager.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Program Manager, Program Manager's consultants, and the elected officials, officers, attorneys, agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs of litigation, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 PROGRAM MANAGER

§ 4.1 General

§ 4.1.1 The Program Manager is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Program Manager as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Program Manager. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Program Manager will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Program Manager issues the final Certificate for Payment. The Program Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Program Manager will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Program Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Program Manager will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Program Manager will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Program Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Program Manager will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Program Manager in all communications that relate to or affect the Program Manager's services or professional responsibilities. The Owner shall promptly notify the Program Manager of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Program Manager's consultants shall be through the Program Manager. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Program Manager's evaluations of the Contractor's Applications for Payment, the Program Manager will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Program Manager has authority to reject Work that does not conform to the Contract Documents. Whenever the Program Manager considers it necessary or advisable, the Program Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Program Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Program Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Program Manager will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Program Manager's action will be taken in accordance with the submittal schedule approved by the Program Manager or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Program Manager's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Program Manager's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Program Manager's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Program Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Program Manager will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Program Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Program Manager will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Program Manager agree, the Program Manager will provide one or more Project representatives to assist in carrying out the Program Manager's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Program Manager will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Program Manager will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Program Manager will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Program Manager's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Program Manager will review and respond to requests for information about the Contract Documents. The Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Program Manager will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Program Manager of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Program Manager may notify the Contractor whether the Owner or the Program Manager (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Program Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Program Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Program Manager makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume

toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Program Manager. Each subcontract agreement shall preserve and protect the rights of the Owner and Program Manager under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension by submission of a Change Order by the Contractor.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall not remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Program Manager of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Program Manager of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner may be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction, if so determined after submission of a Change Order by the Contractor.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Program Manager will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Program Manager. A Construction Change Directive requires agreement by the Owner and Program Manager and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Program Manager alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Program Manager and signed by the Owner, Contractor, and Program Manager stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Program Manager and signed by the Owner and Program Manager, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order

changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Program Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Program Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Program Manager;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Program Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Program Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Program Manager will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Program Manager determines, in the Program Manager's professional judgment, to be reasonably justified. The Program Manager's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Program Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Program Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Program Manager may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Program Manager's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Program Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Program Manager's order for a minor change without prior notice to the Program Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Program Manager in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Program Manager, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Program Manager determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Program Manager may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices may be equitably adjusted, if so determined after the submission of a Change Order by the Contractor.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Program Manager before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Program Manager. This schedule, unless objected to by the Program Manager, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Program Manager and supported by such data to substantiate its accuracy as the Program Manager may require, and unless objected to by the Program Manager, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Program Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Program Manager require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Program Manager, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Program Manager will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Program Manager determines is properly due, and notify the Contractor and Owner of the Program Manager's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Program Manager's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Program Manager to the Owner, based on the Program Manager's evaluation of the Work and the data in the Application for Payment, that, to

the best of the Program Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Program Manager. However, the issuance of a Certificate for Payment will not be a representation that the Program Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Program Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Program Manager's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Program Manager is unable to certify payment in the amount of the Application, the Program Manager will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Program Manager cannot agree on a revised amount, the Program Manager will promptly issue a Certificate for Payment for the amount for which the Program Manager is able to make such representations to the Owner. The Program Manager may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Program Manager's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Program Manager's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Program Manager withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Program Manager and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Program Manager has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Program Manager.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Program Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Program Manager and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Program Manager shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Program Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Program Manager or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Program Manager, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Program Manager will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of all Work unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Program Manager as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Program Manager.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Program Manager will promptly make such inspection. When the Program Manager finds the Work acceptable under the Contract Documents and the Contract fully performed, the Program Manager will promptly issue a final Certificate for Payment stating that to the best of the Program Manager's knowledge, information and belief, and on the basis of the Program Manager's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Program Manager's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Program Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund

to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the
(Paragraphs deleted)
Owner.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Program Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to

the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. This provision shall not relieve the Contractor of other notice requirements by its insurance carriers, or as otherwise provided by law.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Program Manager of the condition.

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

§ 10.3.3 Reserved.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Reserved.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss, and immediately report such action to the Owner and Project Manager. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Program Manager, and Program Manager's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 Reserved.

§ 11.2.2 Reserved.

§ 11.2.3 Reserved.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 Reserved.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Program Manager

and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Program Manager and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Program Manager's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Program Manager, be uncovered for the Program Manager's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Program Manager has not specifically requested to examine prior to its being covered, the Program Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Program Manager or failing to conform to the requirements of the Contract Documents, and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Program Manager's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Program Manager, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall begin on the date of Substantial Completion.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Georgia, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. For any claim not covered in Article 15 of this Agreement, jurisdiction and venue for any claim arising from the Agreement shall lie exclusively in the Superior Court of Cobb County, Georgia.

§ 13.2 Successors and Assigns

§ 13.2.1 The Contractor binds themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, The Contractor shall not assign the Contract as a whole or in part without written consent of the Owner. If Contractor attempts to make an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Program Manager timely notice of when and where tests and inspections are to be made so that the Program Manager may be present for such procedures.

§ 13.4.2 If the Program Manager, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Program Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the

Program Manager of when and where tests and inspections are to be made so that the Program Manager may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Program Manager's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Program Manager.

§ 13.4.5 If the Program Manager is to observe tests, inspections, or approvals required by the Contract Documents, the Program Manager will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

(Paragraphs deleted)

§ 13.5 Reserved.

§ 13.6 Interest of federal, state or local officials. No Federal, State or Local official shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

§ 13.7 Other prohibited interests. No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Agreement or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Agreement or in any part thereof, any material supply subcontract, insurance contract, or any other contract pertaining to the Project.

§ 13.8 Time for completion and liquidated damages. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract Documents of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "NOTICE TO PROCEED." The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates. It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where, under the Contract, an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the

Owner; provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- (a) To any preference, priority or allocation order duly issued by the Government;
- (b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a Contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- (c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided, further, that the Contractor shall, within ten (10) calendar days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay, and notify the Contractor within a reasonable time of its decision in this matter.

§13.9 Independent contractor status. The Parties intend that the Contractor be engaged as an independent Contractor of the Owner. Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. The Contractor may not act as agent for, or on behalf of, the Owner, or to represent the Owner, or bind the Owner in any manner. The Contractor will not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of the Owner.

§13.10 E-Verify compliance. The Contractor and any Subcontractors thereof, are required and hereby agree to use a federal immigration verification system to determine the work eligibility status of all employees performing services under this Agreement and shall execute Affidavits to that effect on the forms provided by Owner. A federal immigration system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

ARTICLE 14 SUSPENSION OF THE CONTRACT

§ 14.1 Suspension by the Contractor

§ 14.1.1 The Contractor may suspend the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Program Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

Contractor shall resume work once the reason for suspension is cured or no longer applicable.

§ 14.1.2 Reserved.

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven days' notice to the Owner and Program Manager, suspend the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work executed at the time of such suspension.

§ 14.1.4 Reserved.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Program Manager that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment, if any, until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Program Manager's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1, upon approval of a Change Order submitted by the Contractor. No adjustment shall be made to the extent

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

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Program Manager, if the Program Manager is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Program Manager will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

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- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Program Manager will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Program Manager, if the Program Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision within 30 days of the date the Initial Decision is executed, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 If a party fails to file for mediation within 30 days after the execution of the Initial Decision, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without or without resolution of the dispute demand in writing for binding dispute resolution. If a party fails to file for binding dispute resolution within 30 days after the conclusion of mediation, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Cobb County, Georgia, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

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

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made more than 30 days after the conclusion of mediation. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



Additions and Deletions Report for

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Kennesaw Public Safety Facility
3080 Moon Station Road
Kennesaw, GA 30144

...

City of Kennesaw, GA
2529 J.O. Stephenson Avenue
Kennesaw, GA 30144

THE CONTRACTOR:

Gay Construction Company
2907 Log Cabin Drive
Atlanta, Georgia 30339

THE ARCHITECT;PROGRAM MANAGER:

...

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

...

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the ~~Architect~~ Program Manager. Unless specifically enumerated in the Agreement, the Contract Documents ~~do not~~ include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the ~~Architect~~ Program Manager or the ~~Architect's~~ Program Manager's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the ~~Architect~~ Program Manager or the ~~Architect's~~ Program Manager's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The ~~Architect~~ Program Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the ~~Architect's~~ Program Manager's duties.

...

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the ~~Architect~~ Program Manager and the ~~Architect's~~ Program Manager's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

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§ 1.5.1 The ~~Architect-Program Manager~~ and the ~~Architect's-Program Manager's~~ consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's-Program Manager's or Program Manager's~~ consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, ~~Architect, Program Manager, and the Architect's-Program Manager's~~ consultants.

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§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the ~~Architect-Program Manager~~ does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

...

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

§ 2.2.4 ~~Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

...

§ 2.3.2 The Owner shall retain ~~an architect~~ a **Program Manager** lawfully licensed to practice ~~architecture, engineering,~~ or an entity lawfully practicing ~~architecture, engineering,~~ in the jurisdiction where the Project is located. That person or entity is identified as the ~~Architect~~ **Program Manager** in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the ~~Architect~~ **Program Manager** terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the ~~Architect~~ **Program Manager**.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.4.1 The Owner and/or operators of private or public utilities shall have access to such utility at all times, for the installation, maintenance, adjustment, repair and operation of said utility. No extra compensation will be allowed because of the delay or interference caused by such work.

§ 2.3.4.2 In preparing the plan drawings there has not been an all-inclusive search for identifying existing underground utilities. Therefore, any information pertaining to existing utilities is provided only for preliminary purposes and implies no guarantee as to accuracy or completeness. Prior to blasting or excavation, the Contractor is responsible for contacting all utility owners in the area. Specifically, the Contractor shall contact the "one-call notification center" SEVENTY-TWO (72) hours in advance of blasting or excavation as required by Georgia Law.

§ 2.3.4.3 Wherever existing utilities are encountered which conflict in actual position and location with the proposed work, the Contractor shall promptly notify the Program Manager for resolution of the conflict.

§ 2.3.4.4 Temporary supports, beams or bridging for utilities shall be left in place during backfill operations unless otherwise directed by the Program Manager.

§ 2.3.4.5 All costs in connection with supporting, protecting, relocating, removal, repair of damage, restoration, and other work on affected existing utilities and other existing underground structures whether or not they are shown on the plans, not borne by the Owner or owners of the utilities, shall be borne by the Contractor. No separate payment will be made for any work performed as herein above specified unless otherwise stated in the proposal as a separate payment item. All costs in connection therewith shall be included in the Contract price for the item to which the work pertains.

§ 2.3.4.6 The Contractor shall be solely and directly responsible to the Owner and/or other operator of such utility properties for any damage, injury, expense, loss, inconvenience or delay, or for any suits, actions, claims of any character brought on account of any injuries or damages which may result from the carrying out of the work.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the ~~Architect~~ **Program Manager** and the ~~Architect~~ **Program Manager** may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the ~~Architect's~~ **Program Manager's** additional services made necessary by such default, neglect, or failure. If current and

future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the ~~Architect-Program Manager~~, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

...

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the ~~Architect-Program Manager~~ in the ~~Architect's-Program Manager's~~ administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the ~~Architect-Program Manager~~ any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect-Program Manager~~ may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the ~~Architect-Program Manager~~ any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect-Program Manager~~ may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the ~~Architect-Program Manager~~ issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or ~~Architect-Program Manager~~ for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

...

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and ~~Architect-Program Manager~~, and shall propose alternative means, methods, techniques, sequences, or procedures. The ~~Architect-Program Manager~~ shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the ~~Architect-Program Manager~~ objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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§ 3.4.2 Except in the case of minor changes in the Work approved by the ~~Architect-Program Manager~~ in accordance with Section 3.12.8 or ordered by the ~~Architect-Program Manager~~ in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the ~~Architect-Program Manager~~ and in accordance with a Change Order or Construction Change Directive.

...

§ 3.5.1 The Contractor warrants to the Owner and ~~Architect~~ Program Manager that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the ~~Architect~~, Program Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the ~~Architect~~ Program Manager immediately and before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The ~~Architect~~ Program Manager will promptly investigate such conditions and, if the ~~Architect~~ Program Manager determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the ~~Architect~~ Program Manager determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the ~~Architect~~ Program Manager shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the ~~Architect's~~ Program Manager's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and ~~Architect~~ Program Manager. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and ~~Architect~~ Program Manager of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the ~~Architect~~ Program Manager may notify the Contractor, stating whether the Owner or the ~~Architect~~ Program Manager (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the ~~Architect~~ Program Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or ~~Architect~~ Program Manager has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and ~~Architect's~~ Program Manager's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the

Work to completion and shall not exceed time limits current under the Contract Documents. The schedule ~~shall~~may be revised at appropriate intervals as required by the conditions of the Work and ~~Project~~Project by submission of a Change Order by the Contractor.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the ~~Architect's Program Manager's~~ approval. The ~~Architect's Program Manager's~~ approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the ~~Architect Program Manager~~ reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect Program Manager.~~

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The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the ~~Architect Program Manager~~ and Owner, and delivered to the ~~Architect Program Manager~~ for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

...

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the ~~Architect Program Manager~~ is subject to the limitations of Section 4.2.7. Informational submittals upon which the ~~Architect Program Manager~~ is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the ~~Architect Program Manager~~ without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the ~~Architect Program Manager~~, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the ~~Architect Program Manager~~ or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and ~~Architect Program Manager~~ that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the ~~Architect Program Manager.~~

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the ~~Architect's Program Manager's~~ approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the ~~Architect Program Manager~~ of such deviation at the time of submittal and (1) the ~~Architect Program Manager~~ has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the ~~Architect's Program Manager's~~ approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the ~~Architect~~ Program Manager on previous submittals. In the absence of such notice, the ~~Architect's~~ Program Manager's approval of a resubmission shall not apply to such revisions.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the ~~Architect~~ Program Manager will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the ~~Architect~~ Program Manager. The Owner and the ~~Architect~~ Program Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and ~~Architect~~ Program Manager have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the ~~Architect~~ Program Manager will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the ~~Architect~~ Program Manager at the time and in the form specified by the ~~Architect~~ Program Manager.

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The Contractor shall provide the Owner and ~~Architect~~ Program Manager with access to the Work in preparation and progress wherever located.

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and ~~Architect~~ Program Manager harmless from loss on account thereof, including but not limited to attorney fees and costs of litigation, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or ~~Architect~~ Program Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ~~Architect~~ Program Manager.

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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, and Program Manager, Program Manager's consultants, and the elected officials, officers, attorneys, agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, fees and costs of litigation~~, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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ARTICLE 4 — ARCHITECT

ARTICLE 4 PROGRAM MANAGER

§ 4.1.1 The Architect-Program Manager is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect-Program Manager as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect-Program Manager. Consent shall not be unreasonably withheld.

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§ 4.2.1 The Architect-Program Manager will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect-Program Manager issues the final Certificate for Payment. The Architect-Program Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect-Program Manager will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect-Program Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect-Program Manager will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect-Program Manager will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect-Program Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect-Program Manager will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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The Owner and Contractor shall include the Architect-Program Manager in all communications that relate to or affect the Architect's-Program Manager's services or professional responsibilities. The Owner shall promptly notify the Architect-Program Manager of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's-Program Manager's consultants shall be through the Architect-Program Manager. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's-Program Manager's evaluations of the Contractor's Applications for Payment, the Architect-Program Manager will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect-Program Manager has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect-Program Manager considers it necessary or advisable, the Architect-Program Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect-Program Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect-Program Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect-Program Manager will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of

checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's Program Manager's action will be taken in accordance with the submittal schedule approved by the Architect-Program Manager or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's Program Manager's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's Program Manager's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's Program Manager's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's Program Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect-Program Manager will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect-Program Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect-Program Manager will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect-Program Manager agree, the Architect-Program Manager will provide one or more Project representatives to assist in carrying out the Architect's Program Manager's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect-Program Manager will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect-Program Manager will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect-Program Manager will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's Program Manager's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect-Program Manager will review and respond to requests for information about the Contract Documents. The Architect's Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect-Program Manager will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect-Program Manager of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect-Program Manager may notify the Contractor whether the Owner or the Architect-Program Manager (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect-Program Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect-Program Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect-Program Manager makes reasonable objection to such substitution.

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By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect-Program Manager. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect-Program Manager under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation ~~shall~~may be equitably adjusted for increases in cost resulting from the ~~suspension~~suspension by submission of a Change Order by the Contractor.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall ~~nevertheless~~not remain legally responsible for all of the successor contractor's obligations under the subcontract.

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect-Program Manager of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect-Program Manager of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner ~~shall~~may be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly

timed activities, damage to the Work or defective ~~construction~~, if so determined after submission of a Change Order by the Contractor.

...

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the ~~Architect~~ Program Manager will allocate the cost among those responsible.

...

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and ~~Architect~~ Program Manager. A Construction Change Directive requires agreement by the Owner and ~~Architect~~ Program Manager and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the ~~Architect~~ Program Manager alone.

...

§ 7.2.1 A Change Order is a written instrument prepared by the ~~Architect~~ Program Manager and signed by the Owner, Contractor, and ~~Architect~~ Program Manager stating their agreement upon all of the following:

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§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Architect~~ Program Manager and signed by the Owner and ~~Architect~~ Program Manager, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect~~ Program Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the ~~Architect~~ Program Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the ~~Architect~~ Program Manager;

...

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the ~~Architect~~ Program Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

...

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect~~ Program Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect-Program Manager will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect-Program Manager determines, in the Architect's Program Manager's professional judgment, to be reasonably justified. The Architect's Program Manager's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect-Program Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect-Program Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

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The Architect-Program Manager may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's Program Manager's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect-Program Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's Program Manager's order for a minor change without prior notice to the Architect Program Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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§ 8.1.3 The date of Substantial Completion is the date certified by the Architect-Program Manager in accordance with Section 9.8.

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§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner-Contractor.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, Program Manager, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect-Program Manager determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect-Program Manager may determine.

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§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices ~~shall be equitably adjusted.~~ may be equitably adjusted, if so determined after the submission of a Change Order by the Contractor.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect-Program Manager before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect-Program Manager. This schedule, unless objected to by the Architect, Program Manager, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect-Program Manager and supported by such

data to substantiate its accuracy as the ~~Architect~~ Program Manager may require, and unless objected to by the ~~Architect~~ Program Manager, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

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§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the ~~Architect~~ Program Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or ~~Architect~~ Program Manager require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the ~~Architect~~ Program Manager, but not yet included in Change Orders.

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§ 9.4.1 The ~~Architect~~ Program Manager will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the ~~Architect~~ Program Manager determines is properly due, and notify the Contractor and Owner of the ~~Architect's~~ Program Manager's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the ~~Architect's~~ Program Manager's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the ~~Architect~~ Program Manager to the Owner, based on the ~~Architect's~~ Program Manager's evaluation of the Work and the data in the Application for Payment, that, to the best of the ~~Architect's~~ Program Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the ~~Architect~~ Program Manager. However, the issuance of a Certificate for Payment will not be a representation that the ~~Architect~~ Program Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 9.5.1 The ~~Architect~~ Program Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the ~~Architect's~~ Program Manager's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the ~~Architect~~ Program Manager is unable to certify payment in the amount of the Application, the ~~Architect~~ Program Manager will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and ~~Architect~~ Program Manager cannot agree on a revised amount, the ~~Architect~~ Program Manager will promptly issue a Certificate for Payment for the amount for which the ~~Architect~~ Program Manager is able to make such representations to the Owner. The ~~Architect~~ Program Manager may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the ~~Architect's~~ Program Manager's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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§ 9.5.2 When either party disputes the ~~Architect's~~ Program Manager's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

...

§ 9.5.4 If the ~~Architect~~ Program Manager withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the ~~Architect~~ Program Manager and the Contractor shall reflect such payment on its next Application for Payment.

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§ 9.6.1 After the ~~Architect~~ Program Manager has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the ~~Architect~~ Program Manager.

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§ 9.6.3 The ~~Architect~~ Program Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the ~~Architect~~ Program Manager and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor ~~Architect~~ Program Manager shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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If the ~~Architect~~ Program Manager does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the ~~Architect~~ Program Manager or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and ~~Architect~~ Program Manager, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the ~~Architect~~ Program Manager will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and

insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof all Work unless otherwise provided in the Certificate of Substantial Completion.

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect Program Manager as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect Program Manager.

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

...

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect Program Manager will promptly make such inspection. When the Architect Program Manager finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect Program Manager will promptly issue a final Certificate for Payment stating that to the best of the Architect's Program Manager's knowledge, information and belief, and on the basis of the Architect's Program Manager's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's Program Manager's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect Program Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect Program Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Architect Program Manager, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to

the ~~Architect Program Manager~~ prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner ~~except those arising from~~
~~.1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~
~~.2 — failure of the Work to comply with the requirements of the Contract Documents;~~
~~.3 — terms of special warranties required by the Contract Documents; or~~
~~.4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~Owner.

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§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or ~~Architect Program Manager~~ or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and ~~Architect Program Manager~~.

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If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. This provision shall not relieve the Contractor of other notice requirements by its insurance carriers, or as otherwise provided by law.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and ~~Architect Program Manager~~ of the condition.

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

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. site.

...

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred. Reserved.

...

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. loss, and immediately report such action to the Owner and Project Manager. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's Program Manager, and Program Manager's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

...

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Reserved.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. Reserved.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance. Reserved.

...

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance. Reserved.

...

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

...

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect-Program Manager and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect-Program Manager and Contractor shall make payments to their consultants and Subcontractors in similar manner.

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§ 12.1.1 If a portion of the Work is covered contrary to the Architect's Program Manager's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, Program Manager, be uncovered for the Architect's Program Manager's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect-Program Manager has not specifically requested to examine prior to its being covered, the Architect-Program Manager may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

...

The Contractor shall promptly correct Work rejected by the Architect-Program Manager or failing to conform to the requirements of the Contract Documents, ~~discovered before Substantial Completion~~ and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's Program Manager's services and expenses made necessary thereby, shall be at the Contractor's expense.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor ~~a~~ an express written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or ~~Architect, Program Manager~~, the Owner may correct it in accordance with Section 2.5.

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

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The Contract shall be governed by the law of the ~~place where the Project is located, State of Georgia~~, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern ~~Section 15.4~~. Section 15.4. For any claim not covered in Article 15 of this Agreement, jurisdiction and venue for any claim arising from the Agreement shall lie exclusively in the Superior Court of Cobb County, Georgia.

...

§ 13.2.1 ~~The Owner and Contractor respectively bind~~ Contractor binds themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, ~~neither party to the Contract shall~~ The Contractor shall not assign the Contract as a whole or in part without written consent of the other. ~~If either party~~ Owner. If Contractor attempts to make an assignment without such consent, that party the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

...

§ 13.3.2 No action or failure to act by the Owner, ~~Architect, Program Manager~~, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

...

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the ~~Architect~~ Program Manager timely notice of when and where tests and inspections are to be made so that the ~~Architect~~ Program Manager may be present for such procedures. ~~The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~

§ 13.4.2 If the ~~Architect, Program Manager~~, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the ~~Architect~~ Program Manager will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely

notice to the ~~Architect~~ Program Manager of when and where tests and inspections are to be made so that the ~~Architect~~ Program Manager may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the ~~Architect's~~ Program Manager's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the ~~Architect~~ Program Manager.

§ 13.4.5 If the ~~Architect~~ Program Manager is to observe tests, inspections, or approvals required by the Contract Documents, the ~~Architect~~ Program Manager will do so promptly and, where practicable, at the normal place of testing.
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§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 — TERMINATION OR SUSPENSION OF THE CONTRACT

§ 13.5 Reserved.

§ 13.6 Interest of federal, state or local officials. No Federal, State or Local official shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

§ 13.7 Other prohibited interests. No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Agreement or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Agreement or in any part thereof, any material supply subcontract, insurance contract, or any other contract pertaining to the Project.

§ 13.8 Time for completion and liquidated damages. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract Documents of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "NOTICE TO PROCEED." The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates. It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of

time is fixed for the performance of any act whatsoever; and where, under the Contract, an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

(a) To any preference, priority or allocation order duly issued by the Government;

(b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a Contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and

(c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

Provided, further, that the Contractor shall, within ten (10) calendar days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay, and notify the Contractor within a reasonable time of its decision in this matter.

§13.9 Independent contractor status. The Parties intend that the Contractor be engaged as an independent Contractor of the Owner. Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. The Contractor may not act as agent for, or on behalf of, the Owner, or to represent the Owner, or bind the Owner in any manner. The Contractor will not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of the Owner.

§13.10 E-Verify compliance. The Contractor and any Subcontractors thereof, are required and hereby agree to use a federal immigration verification system to determine the work eligibility status of all employees performing services under this Agreement and shall execute Affidavits to that effect on the forms provided by Owner. A federal immigration system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

ARTICLE 14 SUSPENSION OF THE CONTRACT

§ 14.1 Termination-Suspension by the Contractor

§ 14.1.1 The Contractor may ~~terminate-suspend~~ the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

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- .3** Because the ~~Architect~~ Program Manager has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2. Contractor shall resume work once the reason for suspension is cured or no longer applicable.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less. **Reserved.**

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, ~~terminate Program Manager, suspend~~ the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work ~~not executed, and costs incurred by reason of such termination, executed at the time of such suspension.~~

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, ~~terminate the Contract and recover from the Owner as provided in~~ Section 14.1.3. Reserved.

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§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the ~~Architect-Program Manager~~ that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further ~~payment payment, if any,~~ until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the ~~Architect's Program Manager's~~ services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

...

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under ~~Section 14.3.1. Adjustment of the Contract Sum shall include profit.~~ Section 14.3.1, upon approval of a Change Order submitted by the Contractor. No adjustment shall be made to the extent

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the ~~Agreement.~~ Subcontracts.

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§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the ~~Architect, Program Manager,~~ if the ~~Architect~~ Program Manager is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

...

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The ~~Architect-Program Manager~~ will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

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§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The ~~Architect~~ Program Manager will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

...

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the ~~Architect~~ Program Manager, if the ~~Architect~~ Program Manager is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision ~~at any time, within 30 days of the date the Initial Decision is executed,~~ subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, the execution of the Initial Decision, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

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§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without ~~resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute,~~ dispute demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, 30 days after the conclusion of mediation, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

...

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made ~~after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations, more than 30 days after the conclusion of mediation.~~ For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:21:17 ET on 02/07/2024 under Order No. 2114460490 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

EXHIBIT A
CM/GC's GENERAL CONDITIONS & FEE PROPOSAL
Kennesaw Public Safety Facility
(Submit Proposal Fee Schedule in Separate Sealed Envelope)

CM/GC'S PRE-CONSTRUCTION PHASE COSTS		\$ 30,000
CM/GC'S CONSTRUCTION FEE		
FEE AS PERCENTAGE	Flat Fee	%
FEE AMOUNT	\$ 375,000	
	Lump Sum	
CM/GC'S CONSTRUCTION PHASE GENERAL CONDITIONS		
LABOR	\$ 542,250	
GENERAL CONDITIONS	\$ 252,625	
CONSTRUCTION PHASE TOTAL	\$ 794,875	
The CMAR's Overhead Costs. The maximum amount for the CMAR's overhead cost is inclusive of all direct and incidental expenses including but not limited to travel, sustenance, reproduction, salaries, wages, design and field office expenses, and those costs listed in the General Requirements. If authorized by the Owner to proceed with Construction Phase Services, the CMAR will execute the work and be reimbursed for the actual costs as defined in the Contract Documents.		
TOTALS		
	STATED COST LIMITATION	\$ 10,000,000
TOTAL - PRE-CONSTRUCTION FEE, CONSTRUCTION FEE AND GC'S	\$ 1,199,875	
PERCENTAGE OF PROJECT	12	%

 11:17,24;12:1,8-2023

MDJ-9078
GPN-5
REQUEST FOR QUALIFICATIONS
(RFQ)
KENNESAW PUBLIC SAFETY
FACILITY
CONSTRUCTION MANAGER AT
RISK (CMAR)
FOR PRE-CONSTRUCTION AND
CONSTRUCTION SERVICES
CONTRACT

The City of Kennesaw, Georgia (Owner) is seeking qualifications from Construction Managers at Risk (CMAR) for preconstruction and construction services for their new Kennesaw Public Safety Facility.

The project site is located at 3081 Moon Station Road, Kennesaw, GA 30144 adjacent to the Kennesaw Public Works Facility. The principal item of this project includes the construction of a new two-story structure, approximately 25,000 square feet in area, that will house the City of Kennesaw Police Department. The total project budget is \$12 million, inclusive of preconstruction, construction, FF&E, contingency, and other owner associated costs. The construction manager at risk will be evaluated and selected through a qualification-based selection process.

A full RFQ Package stating the full Response requirements can be obtained from the Kennesaw City Clerk's Office, upon request to Lea Alvarez City Clerk, via email at

lalvarez@kennesaw-ga.gov. Only a Response submitted by a Firm on record with the City Clerk's Office as having received the RFQ Package from the Issuing Office will be opened.

Responses must be submitted in a sealed envelope bearing on the outside the name of the Firm, the Firm's address, and the name of the Project for which the Response is submitted. If forwarded by mail, the sealed envelope containing the Response must be enclosed in another envelope addressed as specified above.

Responses will be received by the City of Kennesaw, Georgia at the office of the City Clerk located in Kennesaw City Hall at 2529 J.O. Stephenson Avenue, Kennesaw, Georgia, 30144 until Friday, January 12, 2024, 2:00 pm Local Time. Responses will be opened at that time, and the names of the responding firms will be read aloud.

The Owner reserves the right to reject any or all Responses, to waive formalities, and re-advertise.

City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, Georgia, 30144
12:1,15-2023

of Lights and Water
12:8,15-2023

**MDJ-9078
GPN-5
REQUEST FOR QUALIFICATIONS
(RFQ)
KENNESAW PUBLIC SAFETY
FACILITY
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**City of Kennesaw, Georgia
2529 J.O. Stephenson Avenue
Kennesaw, Georgia, 30144
12:1,15-2023**

MDJ-9278



Item Report

TO: The Honorable Mayor and City Council

FROM:

DATE: February 12, 2024

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

Summary:

Recommendation:

Fiscal Impact:

Attachments:

None