



# AGENDA

## COBB COUNTY BOARD OF COMMISSIONERS REGULAR MEETING

AUGUST 25, 2020 – 7:00 PM

*Cobb County...Expect the Best!*

### CALL TO ORDER

### PRESENTATIONS

1. To present a proclamation designating the month of September, 2020 as *Life University Founder's Month of Giving for Research*.
2. To present a proclamation to the CobbLinc transit system team in appreciation of their efforts to provide much-needed services to our community during these unprecedented times, due to the COVID-19 pandemic.

### PUBLIC HEARING

3. To conduct the first public hearing to solicit comments and input on the proposed amendments to Chapter 6 (Alcoholic Beverages), Chapter 78 (Licenses, Permits and Businesses), and Chapter 134 (Zoning) of the Official Code of Cobb County.

### PUBLIC COMMENT

Those persons wishing to address the Board of Commissioners will please sign up on the "Public Comment" sign-in sheet located at the front of the meeting room. Please note that there are separate sheets for beginning of meeting and end of meeting with six (6) positions on each sheet.

Persons signed up to address the Board will be called upon by the County Attorney. Each speaker will be allotted a maximum of five (5) minutes. Speakers should address their comments toward the Chairman only.

### CONSENT AGENDA

#### **Water System**

4. To convey by quit claim deed to the underlying property owner any County rights associated with a sanitary sewer easement located at 3064 Cobb Parkway.
5. To approve a construction contract with Insituform Technologies, LLC, for FY20 Sanitary Sewer Rehabilitation, Program No. S1136.

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6. To approve a construction contract under the 2016 Stormwater Management Unit Price Contract with Ray Campbell Contracting Co., Inc., for the 2020 Stormwater Management Mowing Contract, Program No. SW2089.

## Transportation

7. To approve Lease Amendment No. 5 to the North Fixed Based Operator Lease and Operating Agreement with Hawthorne Global Aviation Services, LLC, and approve Lease Amendment No. 6 to the South Fixed Based Operator Lease and Operating Agreement with Hawthorne Global Aviation Services, LLC, regarding a rent abatement/deferment plan at Cobb County International Airport - McCollum Field, due to the COVID-19 pandemic.
8. To adopt a resolution to approve the CobbLinc Agency Safety Plan for the Department's transit system.
9. To approve the Twelfth Amendment to the Agreement with Cubic Transportation Systems, Inc., for repair, maintenance, and support services of the Breeze Fare Collection System, CCDOT Contract No. 001573.
10. To approve the Second Amendment to the Transit System Award Agreement with First Transit, Inc., regarding administrative leave/incentive payment for contractor personnel affected by CobbLinc limited operational bus service due to the COVID-19 pandemic.

## Support Services Agency

### Information Services

11. To authorize the use of funding received under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), through the Coronavirus Relief Fund and approve a Project Agreement with Controlled Access, Inc. to install the County's enterprise surveillance system at all county absentee ballot drop box locations.
12. To authorize the deletion of two vacant part-time Admin Specialist 1 positions (grade 5P) with position numbers 8120028 and 8120024 within the Postal, Printing & Records Services Division of the Information Services Department and authorize creation of one full-time Mail Services Technician position (grade 7).

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13. To authorize the use of funding received under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), through the Coronavirus Relief Fund to incorporate social distancing capabilities in Cobb County courtrooms through audio-visual technology and approve Amendment 1 to a contract with Conference Technologies, Inc.

## Public Safety Agency

14. To award the selection of Spratlin & Son Construction for the construction of a pole barn storage area and renovation of warehouse space at the Fire Annex, located at 3200 Austell Road.
15. To approve a contract with Spratlin & Son Construction to establish a Guaranteed Maximum Price for the construction of a pole barn storage area and renovation of warehouse space at the Fire Annex, located at 3200 Austell Road.

## 911 Emergency Communications

16. To approve a contract with Motorola Solutions for the purchase of two Remote Dispatch MCC7500e console positions and associated support costs for the Emergency Communications Department's Backup Center.
17. To approve a contract with BERGVIK NORTH AMERICA, INC. for solid surface flooring to replace the current carpeted flooring within the Emergency Communications Department.

## Community Development

18. To approve an Annexation Notice of Non-Objection per HB 489 Intergovernmental Agreement and HB 2 regarding a petition for annexation of a 2.417 acre tract located at 5773 Oakdale Road, into the City of Smyrna.

## Finance

19. To authorize the monthly appropriation of previously approved restricted revenue items and approve the annual carry forward of year end balances within these accounts.

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20. To approve a contract with W. Frank Newton, Inc. for the provision of administrative services for grant programs received from the U.S. Department of Housing and Urban Development and other federal and state sources.
21. To adopt a resolution adopting all budget amendments set forth in agenda items on this date.

## **CDBG**

### **CobbWorks**

22. To accept a Workforce Innovation and Opportunity Act (WIOA) grant award from the Technical College System of Georgia for CobbWorks, Inc., to provide education, training, and employment services for adults.
23. To accept a Workforce Innovation and Opportunity Act (WIOA) grant award from the Technical College System of Georgia for CobbWorks, Inc., to provide education, training, and employment services for dislocated workers.

## **County Clerk**

24. To approve minutes.

## **REGULAR AGENDA**

### **Transportation**

25. To approve Change Order No. 1 to the contract with D&H Construction Company, Inc., for drainage system repairs on Lost Mountain Lane, Project No. X2263, CCDOT Contract No. 001521.
26. To approve Change Order No. 1 to the contract with Baldwin Paving Company, Inc., for intersection improvements on Factory Shoals Road at Riverside Parkway, Project No. X2306, CCDOT Contract No. 001296.



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27. To approve Change Order No. 2 (final) to the contract with Excellere Construction, LLC for repairs on Silver Comet Trail Bridges, Project No. X2119, CCDOT Contract No. 001472.
28. To approve a Supplemental Agreement No. 1 to Project No. X2769-TO#01 to the 2018 Master Task Order Contract with Long Engineering, Inc., for engineering design of Old Alabama Road Sidewalk, CCDOT Contract No. 001308.

## **Support Services Agency**

29. To authorize a contract for the sale of certain real property situated at 4569 Dallas Street in Acworth, Georgia not required for County purposes, to the City of Acworth, through the brokerage firm of McWhirter Realty Partners.

## **PUBLIC COMMENT**

Those persons wishing to address the Board of Commissioners will please sign up on the "Public Comment" sign-in sheet located at the front of the meeting room. Please note that there are separate sheets for beginning of meeting and end of meeting with six (6) positions on each sheet.

Persons signed up to address the Board will be called upon by the County Attorney. Each speaker will be allotted a maximum of five (5) minutes. Speakers should address their comments toward the Chairman only.

## **APPOINTMENTS**

30. To announce the appointment of Ralph Rehn to the Workforce Development Board.
31. To announce the appointment of Michael Chriszt to the Workforce Development Board.
32. To approve the reappointment of Ana Murphy to the Cobb County Board of Family and Children Services.

## **COMMISSIONERS' PUBLIC ADDRESS**

Per Section 2.01.01 of the Rules of Procedure of the Board

## **ADJOURNMENT**



## **BOC Chair**

Michael H. Boyce, Chairman

Districts All

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**Item No. 1.**

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Michael H. Boyce, Chairman

**DATE:** August 25, 2020

### **PURPOSE**

To present a proclamation designating the month of September, 2020 as *Life University Founder's Month of Giving for Research*.

### **BACKGROUND**

The month of September is in celebration of the 125th anniversary of the founding of chiropractic research. Numerous people are afflicted with the disease and dysfunction of the spine and nervous system and helped by the breakthroughs in neuroscience and chiropractic research.

Life University Founder's Month of Giving is in support of chiropractic research to increase public awareness of the benefits and progress of chiropractic research.

### **IMPACT STATEMENT**

N/A

### **FUNDING**

N/A

### **RECOMMENDATION**

The Board of Commissioners present a proclamation designating September 2020 as Life University Founder's Month of Giving for Research.

### **ATTACHMENTS**

None



## **BOC Chair**

Michael H. Boyce, Chairman

Districts All

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**Item No. 2.**

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Michael H. Boyce, Chairman

**DATE:** August 25, 2020

### **PURPOSE**

To present a proclamation to the CobbLinc transit system team in appreciation of their efforts to provide much-needed services to our community during these unprecedented times, due to the COVID-19 pandemic.

### **BACKGROUND**

On March 18, 2020, Cobb County entered into an Emergency Limited Operational Services period on a county-wide basis in response to the COVID-19 pandemic and declaration of emergency on a national, state, and local level. Throughout this pandemic, CobbLinc transit service providers have been both personally and professionally impacted; however, they have continued to provide much-needed services to Cobb County citizens and customers during these unprecedented times.

On March 23, 2020, CobbLinc staff responded quickly to the public health emergency and began operating a reduced schedule on its Express bus routes to/from Atlanta, suspended walk up services at the Marietta Transfer Center kiosk, and suspended public access to the Paratransit Customer Service Center.

On March 27, 2020, additional precautions were implemented. Priority seating on local buses and regular seating in the front of commuter buses were blocked off to practice social distancing from drivers, in an effort to minimize the spread of and exposure to the COVID-19 virus.

On April 3, 2020, CobbLinc staff implemented rear-door entry/exit and temporarily began the suspension of fare collection on buses to align with social distancing recommendations for driver and passenger health and safety. Passengers were asked to enter/exit the bus using the rear doors only, except for customers requiring the accessibility ramp or kneeling feature.

On April 15, 2020, CobbLinc staff temporarily suspended operation of the Route 101 and Route 102. Route 100 continued operations with a reduced schedule that was also modified to service the Marietta Transfer Center to accommodate passengers who normally used Route 101.

On May 3, 2020, the two Cumberland Circulator routes were combined to run a single route with a modified

schedule. On the Route 10 and the Rapid 10 route, additional social distancing practices were implemented to better balance loads. The Rapid 10 route also began picking up passengers waiting at Route 10 bus stops, as long as sufficient space was available and the addition of passengers did not inhibit the ability of those already on the bus to practice social distancing.

While dealing with the uncertainties of COVID-19, the CobbLinc transit system team continues to show dedication to the citizens of Cobb County and transit system customers by continuing to provide professional, high quality, efficient services on a daily basis, while striving to safeguard the health of all employees and transit passengers.

**IMPACT STATEMENT**

N/A

**FUNDING**

N/A

**RECOMMENDATION**

The Board of Commissioners present a proclamation to the CobbLinc transit system team in appreciation of their efforts to provide much-needed services to our community during these unprecedented times, due to the COVID-19 pandemic.

**ATTACHMENTS**

None



## County Attorney's Office

H. William Rowling, Jr. , County Attorney

Districts All

Item No. 3.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** H. William Rowling, Jr. , County Attorney

**DATE:** August 25, 2020

### **PURPOSE**

To conduct the first public hearing to solicit comments and input on the proposed amendments to Chapter 6 (Alcoholic Beverages), Chapter 78 (Licenses, Permits and Businesses), and Chapter 134 (Zoning) of the Official Code of Cobb County.

### **BACKGROUND**

At various times throughout the year, the Board of Commissioners has directed the county staff to prepare amendments to the Official Code of Cobb County in order to address concerns identified during the course of routine community development activities. Staff has further been directed to bring these amendments forward in a timely fashion.

A work session was conducted to present the proposed amendments to the Board of Commissioners on August 24, 2020. This is the first public hearing by the Board of Commissioners. The Planning Commission is scheduled to review and make recommendations on Chapter 134 on September 1, 2020 at 9:00 a.m. which will then be presented to the Board of Commissioners. The second public hearing on the attached code amendments package will be held on September 8, 2020 at 9:00 a.m. The Board of Commissioners may consider any of the amendments or variations of the amendments contained in the code amendment package after the conclusion of the second hearing.

### **IMPACT STATEMENT**

N/A

### **FUNDING**

N/A

## **RECOMMENDATION**

The Board of Commissioners conduct the first public hearing to solicit comments and input on the proposed amendments to Chapter 6 (Alcoholic Beverages), Chapter 78 (Licenses, Permits and Businesses), and Chapter 134 (Zoning) of the Official Code of Cobb County.

## **ATTACHMENTS**

1. September 2020 Code Package

# **2020 CODE AMENDMENTS**

## **Official Code of Cobb County Part I. - Chapters 6, 78, and 134**

Package II (version 1)  
Draft Code Amendments  
Strikethrough Version

Board of Commissioners Public Hearing Dates  
August 25, 2020 - 7:00 pm  
September 8, 2020 - 9:00 am

Planning Commission Public Hearing Date  
Chapter 134 only  
September 1, 2020

Cobb County Government  
[www.cobbcounty.org](http://www.cobbcounty.org)



*Cobb County...Expect the Best!*

Section 6-1 of the Official Code of Cobb County, Georgia is amended by amending the following definitions to read as follows:

*Live entertainment* means music, comedy, readings, dancing, acting or other entertainment, ~~excluding adult entertainment~~, performed on the site. This classification includes dancing by patrons to live or recorded music, but excludes live conduct characterized by nudity or semi-nudity.

*Nightclub* means an establishment which operates with its primary income generation from the sales of alcoholic beverages, and which may offer live entertainment. ~~Should any establishment defined herein provide to its patrons entertainment such that the entertainment establishment may also be classified or defined as an adult entertainment establishment pursuant to the provisions of chapter 78, article III, division 8, such establishment must additionally procure a valid license for the operation of an adult entertainment establishment in accordance and through compliance with all requirements of such article. All such nightclubs shall be equipped with air condition and shall maintain an adequate kitchen with a valid full service health department permit and with a sufficient number of servers and employees for cooking, preparing and serving food and meals for their patrons, provided that nightclubs located in hotels having dining room and kitchen facilities may be excluded from the requirement of maintaining a kitchen in connection with such nightclub. The principal business of such nightclubs shall be entertainment, and the serving of food shall be incidental thereto.~~

Section 6-117(a) of the Official Code of Cobb County, Georgia is amended by adding a new subsection (a)(8) and by amending subsection (b) to read as follows:

- (a) No alcoholic beverage license may be issued where the application or other evidence shows any of the following conditions to exist:

...

- (8) That the alcoholic beverage license is sought for use at a sexually oriented business, as defined in chapter 78, article III, division 8 of this code.

- (b) Notwithstanding the circumstances set out in subsections (a)(1) through (a)(7) of this section, the license review board or the board of commissioners may waive such circumstances and grant a license. No waiver may be granted for the circumstance set out in subsection (a)(8).

Section 6-238(d) of the Official Code of Cobb County, Georgia is amended to read as follows:

- (d) Exception. Nothing contained in subparagraph (b) of this section shall apply to the premises of any theatre, concert hall, art center, museum, or similar establishment primarily devoted to the arts or theatrical performances, where the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value. The exception contained in this subparagraph (d) shall not apply to any sexually oriented business.



**Chapter 78, Article III, Division 8 of the Official Code of Cobb County, Georgia, is replaced in its entirety and amended to read as follows:**

**CHAPTER 78 – LICENSES, PERMITS AND BUSINESSES**

**ARTICLE III. – SPECIAL LICENSES AND REGULATORY FEES**

**DIVISION 8. - SEXUALLY ORIENTED BUSINESSES**

**Sec. 78-320. - Purpose; findings and rationale.**

- (a) *Purpose.* It is the purpose of this division to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County. The provisions of this division have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this division to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this division to condone or legitimize the distribution of obscene material.
- (b) *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of Commissioners, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *Stardust, 3007 LLC v. City of Brookhaven*, 899 F.3d 1164 (11th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); *Flanigan's Enters., Inc. v. City of Sandy Springs*, 703 F. App'x 929 (11th Cir. 2017); *Stardust 3007, LLC v. City of Brookhaven*, 348 Ga. App. 711 (2019); *Maxim Cabaret, Inc. v. City of Sandy Springs*, 304 Ga. 187 (2018); *Oasis Goodtime Emporium I, Inc. v. City of Doraville*, 297 Ga. 513 (2015); *Trop, Inc. v. City of Brookhaven*, 296 Ga. 85 (2014); *Goldrush II v. City of Marietta*, 267 Ga. 683 (1997); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *Artistic Entertainment, Inc. v. City of Warner Robins*, 331 F.3d 1196 (11th Cir. 2003); *Artistic Entertainment, Inc. v. City of*

Warner Robins, 223 F.3d 1306 (11th Cir. 2000); Williams v. Morgan, 478 F.3d 1316 (11th Cir. 2007); Gary v. City of Warner Robins, 311 F.3d 1334 (11th Cir. 2002); Ward v. County of Orange, 217 F.3d 1350 (11th Cir. 2002); Boss Capital, Inc. v. City of Casselberry, 187 F.3d 1251 (11th Cir. 1999); David Vincent, Inc. v. Broward County, 200 F.3d 1325 (11th Cir. 2000); Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993 (11th Cir. 1998); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999); This That And The Other Gift and Tobacco, Inc. v. Cobb County, 285 F.3d 1319 (11th Cir. 2002); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); Grand Faloon Tavern, Inc. v. Wicker, 670 F.2d 943 (11th Cir. 1982); International Food & Beverage Systems v. Ft. Lauderdale, 794 F.2d 1520 (11th Cir. 1986); 5634 E. Hillsborough Ave., Inc. v. Hillsborough County, 2007 WL 2936211 (M.D. Fla. Oct. 4, 2007), aff'd, 2008 WL 4276370 (11th Cir. Sept. 18, 2008) (per curiam); Fairfax MK, Inc. v. City of Clarkston, 274 Ga. 520 (2001); Morrison v. State, 272 Ga. 129 (2000); Flippen Alliance for Community Empowerment, Inc. v. Brannan, 601 S.E.2d 106 (Ga. Ct. App. 2004); Oasis Goodtime Emporium I, Inc. v. DeKalb County, 272 Ga. 887 (2000); Chamblee Visuals, LLC v. City of Chamblee, 270 Ga. 33 (1998); World Famous Dudley's Food & Spirits, Inc. v. City of College Park, 265 Ga. 618 (1995); Airport Bookstore, Inc. v. Jackson, 242 Ga. 214 (1978); Entm't Prods., Inc. v. Shelby County, 721 F.3d 729 (6th Cir. 2013); Lund v. City of Fall River, 714 F.3d 65 (1st Cir. 2013); Imaginary Images, Inc. v. Evans, 612 F.3d 736 (4th Cir. 2010); LLEH, Inc. v. Wichita County, 289 F.3d 358 (5th Cir. 2002); Ocello v. Koster, 354 S.W.3d 187 (Mo. 2011); 84 Video/Newsstand, Inc. v. Sartini, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); Plaza Group Properties, LLC v. Spencer County Plan Commission, 877 N.E.2d 877 (Ind. Ct. App. 2007); East Brooks Books, Inc. v. Shelby County, 588 F.3d 360 (6th Cir. 2009); Entm't Prods., Inc. v. Shelby County, 588 F.3d 372 (6th Cir. 2009); Sensations, Inc. v. City of Grand Rapids, 526 F.3d 291 (6th Cir. 2008); World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); H&A Land Corp. v. City of Kennedale, 480 F.3d 336 (5th Cir. 2007); Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995); Fantasy Ranch, Inc. v. City of Arlington, 459 F.3d 546 (5th Cir. 2006); Illinois One News, Inc. v. City of Marshall, 477 F.3d 461 (7th Cir. 2007); G.M. Enterprises, Inc. v. Town of St. Joseph, 350 F.3d 631 (7th Cir. 2003); Richland Bookmart, Inc. v. Knox County, 555 F.3d 512 (6th Cir. 2009); Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County, 256 F. Supp. 2d 385 (D. Md. 2003); Richland Bookmart, Inc. v. Nichols, 137 F.3d 435 (6th Cir. 1998); Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663 (9th Cir. 1996); DCR, Inc. v. Pierce County, 964 P.2d 380 (Wash. Ct. App. 1998); City of New York v. Hommes, 724 N.E.2d 368 (N.Y. 1999); Taylor v. State, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); Fantasyland Video, Inc. v. County of San Diego, 505 F.3d 996 (9th Cir. 2007); U.S. v. Baston, 818 F.3d 651 (11th Cir. 2016); Johnson v. California State Bd. of Accountancy, 72 F.3d 1427 (9th Cir. 1995); Spencer v. World Vision, Inc., 633 F.3d 723 (9th Cir. 2010); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); Starship Enters. of Atlanta, Inc. v. Coweta County, No. 3:09-CV-123, R. 41 (N.D. Ga. Feb. 28, 2011); High Five Investments, LLC v. Floyd County, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008); 10950 Retail, LLC v. Fulton County, No. 1:06-CV-1923, R. 62 Order (N.D. Ga. Dec. 21, 2006); 10950 Retail, LLC v. Fulton County, No. 1:06-CV-1923, R. 84 Contempt Order (N.D. Ga. Jan. 4, 2007); Z.J. Gifts D-4, L.L.C. v. City of Littleton, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001);

People ex rel. Deters v. The Lion's Den, Inc., Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); Reliable Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); Starship Enterprises of Atlanta, Inc. v. Gwinnett County, No. 17A-00699-1 (Order Granting Summary Judgment and Permanent Injunction, Jan. 12, 2018);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" *Crime & Delinquency* (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009, 2013-2019; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19 *Criminal Justice Policy Review* 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Indianapolis / Marion County Board of Zoning Appeals Documents; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); DeKalb County Testimony and Reports – 2014; and Strip Club-Trafficking Documents, the Board of Commissioners finds:

- (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

- (3) Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating. The County's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the County. The County finds that the cases and documentation relied on in this division are reasonably believed to be relevant to said secondary effects.

The County hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

**Sec. 78-321. - Definitions.**

For purposes of this division, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

*Adult arcade* means a commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained, and where a fee is charged to access the booths or rooms or to view the images displayed on the image-producing devices.

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

- (a) At least 25 percent of the establishment's displayed merchandise consists of said items; or
- (b) At least 25 percent of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items; or
- (c) The establishment maintains at least 25 percent of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
- (d) The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
- (e) The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
- (f) The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, as an establishment that caters to adult sexual interests.

*Adult cabaret* means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as an adult cabaret by offering nude conduct.

*Adult motion picture theater* means a commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein where films or videos characterized by their emphasis upon “specified sexual activities” or “specified anatomical areas” are regularly shown.

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

*Church* means a place where persons regularly assemble for religious worship.

*County* means Cobb County, Georgia.

*Director* means the Director of the Cobb County Community Development Agency or his or her designee.

*Employ, employee, and employment* describe and pertain to any person who works or engages in activity for pay on the premises of a sexually oriented business, on a full time, part time, temporary, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

*Floor space* means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

*Hearing officer* means an attorney, not an employee of the County, who is licensed to practice law in Georgia, and retained to serve as an independent tribunal to conduct hearings under this division.

*Hospital* means a building or portion thereof designed and used for therapeutic treatment of bed patients who are physically or mentally ill.

*Influential interest* means the actual power to control or influence the operation, management, or policies of the sexually oriented business or legal entity which operates the sexually oriented business. An individual is deemed to have an “influential interest” if he or she (1) is the on-site general manager of the sexually oriented business, (2) owns a financial interest of 30 percent or more of a business or of any class of voting securities of a business, or (3) holds an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

*Licensee* means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, it shall mean the person in whose name the sexually oriented business employee permit has been issued.

*Nudity or nude conduct* means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast

with less than a fully opaque covering of any part of the nipple and areola. For purposes of this division, a “fully opaque covering” must be non-flesh colored, shall not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex), and shall not simulate the appearance of the anatomical area that it covers.

*Operate* means to cause to function or to put or keep in a state of doing business.

*Operator* means any person on the premises of a sexually oriented business who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

*Package store* means a business establishment whose primary business activity is the retail sale of alcoholic beverages by the package.

*Park* means any lands or facility owned, operated, controlled or managed by any county, city or federal government or any governmental entity in and upon which recreational activities or places are provided for the recreation and enjoyment of the general public.

*Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

*Premises* means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the sexually oriented business.

*Regional shopping mall (enclosed)* means a group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large “anchor” stores, such as department stores. The common walkway or “mall” is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.

*Regularly* means the consistent and repeated doing of an act on an ongoing basis.

*Residence* means a house, apartment, mobile home, boardinghouse or roominghouse, duplex or other multifamily housing for human dwelling, or any property zoned therefor.

*School* means state, county, city, church or other schools, public or private, as teach the subjects commonly taught in the common schools of this state, and vocational schools, colleges, post-high-school learning centers, kindergartens and day care centers for persons of all ages.

*Semi-nude or semi-nudity* means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

*Sexual device* means any three dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs.

Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

*Sexual device shop* means a commercial establishment:

- (a) where more than 100 sexual devices are regularly made available for sale or rental; or
- (b) where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a room or discrete area of the establishment significantly devoted to sexual devices, positioning sexual devices near cash registers or similar points of sale, hosting events focused on sexual devices, or holding itself out to the public as a place that focuses on sexual devices).

This definition shall not be construed to include any establishment located within an enclosed regional shopping mall, an establishment containing a pharmacy that employs a licensed pharmacist to fill prescriptions on the premises, or an establishment primarily dedicated to providing durable medical equipment.

*Sexually oriented business* means an adult arcade, an adult bookstore, and adult cabaret, an adult motion picture theater, or a sexual device shop.

*Specified anatomical areas* means and includes:

- (a) Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified criminal activity* means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (a) Rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;
- (b) Prostitution, keeping a place of prostitution, pimping, or pandering;
- (c) Obscenity, disseminating or displaying matter harmful to a minor, or use of minor in sexual performance;
- (d) Any offense related to any sexually-oriented business, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity;
- (e) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (f) Any offense in another jurisdiction that, had the predicate act(s) been committed in Georgia, would have constituted any of the foregoing offenses.

*Specified sexual activity* means any of the following:

- (a) Intercourse, oral copulation, masturbation or sodomy; or

- (b) Excretory functions as a part of or in connection with any of the activities described in subsection (a) of this definition.

*Transfer of ownership or control* of a sexually oriented business means any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

*Viewing room* means the room or booth where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

**Sec. 78-322. - License or permit required.**

- (a) Sexually Oriented Business License. It shall be unlawful for any person to operate a sexually oriented business in the County without a valid sexually oriented business license.
- (b) Employee Permit. It shall be unlawful for any person to be an employee, as defined in this division, of a sexually oriented business in the County without a valid sexually oriented business employee permit, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee permit. It shall be unlawful for any person who operates a sexually oriented business to employ a person at the establishment who does not have a valid sexually oriented business employee permit.
- (c) Application. An applicant for a sexually oriented business license or a sexually oriented business employee permit shall file in person at the office of the Community Development Agency (or other office designated by the Director) a completed application made on a form provided by the Director. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (d) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate license or permit fee:
  - (1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
  - (2) Current business address or another mailing address for the applicant.
  - (3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
  - (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.



- (5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
- (6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this division, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years, and at a time during which the applicant had the influential interest:
  - (i) Been found by a court of law to have been operating unlawfully;
  - (ii) Been enjoined from engaging in conduct prohibited by law;
  - (iii) Been held in contempt of court for operating contrary to a court order;
  - (iv) Been declared by a court of law to be a nuisance; or
  - (v) Been subject to an order of closure.
- (8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this division shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. See Sections 78-332 and 78-336. The Director may waive the requirements of this subsection (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (9) A signed and sworn affidavit verifying the applicant's lawful presence in the United States as required by O.C.G.A. § 50-36-1. If the applicant is a partnership, limited liability company, corporation, or other legal entity, a signed and sworn affidavit verifying the lawful presence of each individual that executes the application on behalf of the applicant. With regard to a renewal application, if an individual has previously complied with the requirements of this subsection (9), the Director may waive the requirements of this subsection for that individual.
- (10) If the application is for a sexually oriented business license, a signed and sworn affidavit attesting that the establishment either uses the federal work authorization program in accordance with federal regulations or that the applicant employs fewer than 11 people or otherwise does not fall within the requirements of O.C.G.A. § 36-60-6.
- (11) If the application is for a sexually oriented business employee permit, the name and address of the establishment where the applicant intends to use the employee permit.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the Director within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (d) Signature. A person who seeks a sexually oriented business employee permit under this section shall sign the application for a permit. If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this division and each applicant shall be considered a licensee if a license is granted.
- (e) The information provided by an applicant in connection with an application for a license or permit under this division shall be maintained by the office of the Director on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

**Sec. 78-323. - Issuance of license.**

- (a) Sexually Oriented Business License. Upon the filing of a completed application for a sexually oriented business license, the applicant shall be considered to hold a Temporary License if the completed application is from a sexually oriented business that was lawfully commenced, and is lawfully operating, in the County and the completed application indicates that the applicant is entitled to an annual sexually oriented business license. The Temporary License shall expire upon the final decision of the County to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business license application, the Director shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Director shall issue a license unless:
  - (1) An applicant is less than eighteen (18) years of age.
  - (2) An applicant has failed to provide information required by this division for issuance of a license or has falsely answered a question or request for information on the application form.
  - (3) The license fee required by this division has not been paid.
  - (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this division.
  - (5) The sexually oriented business, as defined herein, is not in compliance with the location standards in Section 78-338 of this division or the location requirements in Chapter 134 of the Official Code of Cobb County.
  - (6) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years, and at a time during which the applicant had the influential interest:
    - (i) Been found by a court of law to have been operating unlawfully;

- (ii) Been enjoined from engaging in conduct prohibited by law;
  - (iii) Been held in contempt of court for operating contrary to a court order;
  - (iv) Been declared by a court of law to be a nuisance; or
  - (v) Been subject to an order of closure.
- (7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this division.
- (8) An applicant has, in the previous five (5) years, engaged in any misrepresentation of fact, or omission of material fact, concerning the nature of the business for which the license is sought.
- (b) Employee Permit. Upon the filing of a completed application for a sexually oriented business employee permit, the applicant shall be considered to hold a Temporary Permit if the applicant seeks a permit to work in a licensed sexually oriented business and the completed application indicates that the applicant is entitled to an annual sexually oriented business employee permit. The Temporary Permit shall expire upon the final decision of the County to deny or grant an annual permit. Within thirty (30) days of the filing of a completed sexually oriented business employee permit application, the Director shall either issue a permit to the applicant or issue a written notice of intent to deny a permit to the applicant. The Director shall issue a permit unless:
- (1) The applicant is less than 18 years of age.
  - (2) The applicant has failed to provide information as required by this division for issuance of a permit or has falsely answered a question or request for information on the application form.
  - (3) The permit fee required by this division has not been paid.
  - (4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years, and at a time during which the applicant had the influential interest:
    - (i) Been found by a court of law to have been operating unlawfully;
    - (ii) Been enjoined from engaging in conduct prohibited by law;
    - (iii) Been held in contempt of court for operating contrary to a court order;
    - (iv) Been declared by a court of law to be a nuisance; or
    - (v) Been subject to an order of closure.
  - (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this division.
  - (6) The applicant has expressed the intent to use the sexually oriented business employee permit at an establishment that is not licensed by the County to operate a sexually oriented business.
- (c) The license or permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the issued license number or permit number and its expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented

business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's permit on his or her person or on the premises where the permittee is then working.

- (d) No license or permit under this division shall be considered valid if the applicant submitted false information to obtain the license or permit.

**Sec. 78-324. - Fees.**

The fees for sexually oriented business licenses and sexually oriented business employee permits shall be as set forth in the schedule of fees as adopted by the board of commissioners.

**Sec. 78-325. - Inspection.**

Sexually oriented businesses and sexually oriented business employees shall permit the Director and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this division, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed to authorize only reasonable inspections of the licensed premises pursuant to this division.

**Sec. 78-326. - Expiration and renewal of license.**

- (a) Each license and permit shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license or permit may be renewed only by making application and payment of a fee as provided in this division. When a renewal license or permit is issued, it shall become effective the day after the previous license or permit expires and shall remain valid for a period of one calendar year from its effective date unless otherwise suspended or revoked.
- (b) Application for renewal of an annual license or permit should be made at least ninety (90) days before the expiration date of the current annual license or permit, and when made less than ninety (90) days before the expiration date, the expiration of the current license or permit will not be affected.

**Sec. 78-327. - Suspension.**

- (a) The Director shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly or recklessly violated this division or has knowingly or recklessly allowed an employee or any other person to violate this division.
- (b) The Director shall issue a written notice of intent to suspend a sexually oriented business employee permit for a period not to exceed thirty (30) days if the employee has knowingly or recklessly violated this division.

**Sec. 78-328. - Revocation.**

- (a) The Director shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee permit, as applicable, if the licensee knowingly or recklessly violates this division or has knowingly or recklessly allowed an employee or any other person to violate this division and a suspension of the licensee's license or permit has become effective within the previous twelve-month (12-mo.) period.
- (b) The Director shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee permit, as applicable, if:
  - (1) The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee permit;
  - (2) The licensee has failed to meet or maintain the qualifications to be issued or to hold the license or permit;
  - (3) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business;
  - (4) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;
  - (5) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;
  - (6) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;
  - (7) The licensee has knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises of the sexually oriented business;
  - (8) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business; or
  - (9) The licensee has knowingly or recklessly allowed three (3) or more violations of this division within a twelve-month period.
- (c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license or permit, provided that, if any conviction which serves as a basis of a revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- (d) When, after the notice and hearing procedure described in this division, the County revokes a license or permit, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee permit for one (1) year from the date revocation becomes effective.

**Sec. 78-329. - Hearing; license denial, suspension, revocation; appeal.**

- (a) When the Director issues a written notice of intent to deny, suspend, or revoke a license or permit, the Director shall immediately send such notice, which shall state the grounds under

this division for such action, to the applicant or licensee by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Director for the applicant or licensee. The notice shall also set forth the following: The applicant or licensee shall have ten (10) days after the delivery of the written notice to submit, at the office of the Director, a written request for a hearing. If the applicant or licensee does not request a hearing within said ten (10) days, the Director's written notice shall become a final denial, suspension, or revocation, as the case may be, on the fifteenth (15th) day after it is delivered to the applicant or licensee.

- (b) If the applicant or licensee (hereafter, "petitioner") does make a written request for a hearing within said ten (10) days, then the Director shall, within ten (10) days after the submission of the request, send a notice to the petitioner indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The hearing may be transcribed by either party.
- (c) At the hearing, the petitioner shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Director's witnesses. The Director may also be represented by counsel, present evidence and witnesses, and cross-examine any of the petitioner's witnesses. The hearing shall take no longer than one (1) day, unless extended at the request of the petitioner to meet the requirements of due process and proper administration of justice. The Hearing Officer shall affirm the Director's licensing decision if any substantial evidence in the record at the hearing supports any of the grounds set forth in the written notice of intent to deny, suspend, or revoke. The Hearing Office shall issue a final written decision, including specific reasons for the decision pursuant to this division, to the petitioner within five (5) days after the hearing.
- (d) If the decision is to deny, suspend, or revoke the license or permit, the decision shall advise the petitioner of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the tenth (10th) day after it is rendered. If the Hearing Officer's decision finds that there is no substantial evidence to support the Director's licensing decision, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Director to immediately withdraw the intent to deny, suspend, or revoke the license or permit and to notify the petitioner in writing by certified mail of such action. If the petitioner is not yet licensed, the Director shall contemporaneously therewith issue the license or permit to the applicant.
- (e) If any court action challenging a licensing decision is initiated, the County shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the Director: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the County's enforcement of any denial, suspension, or revocation of a license or permit, the Director shall immediately issue the petitioner a Provisional License. The Provisional License shall allow the petitioner to continue operation of the sexually oriented business or to continue

employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the petitioner's appeal or other action to restrain or otherwise enjoin the County's enforcement. While a Provisional License is in effect, the provisional licensee shall comply with the regulations set forth in Sections 78-325, 78-331, 78-332, 78-333, and 78-336, and any violations thereof shall be subject to the provisions of Section 78-334.

**Sec. 78-330. - Transfer of license.**

A licensee shall not transfer his or her license or permit to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

**Sec. 78-331. - Hours of operation.**

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

**Sec. 78-332. - Regulations pertaining to operation of adult arcade or adult motion picture theater.**

- (a) A person who operates or causes to be operated an adult arcade or adult motion picture theater shall comply with the following requirements:
- (1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
  - (2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
  - (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
  - (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the premises.

- (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
    - (i) That the occupancy of viewing rooms less than 100 square feet is limited to one person.
    - (ii) That specified sexual activity on the premises is prohibited.
    - (iii) That the making of openings between viewing rooms is prohibited.
    - (iv) That violators will be required to leave the premises.
    - (v) That violations of these regulations are unlawful.
  - (6) It shall be the duty of the operator to enforce the regulations articulated in subsections (5)(i) through (iv) of this section.
  - (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
  - (8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- (b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly or recklessly fail to fulfill that duty.
  - (c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 100 square feet in area that is occupied by any other patron.
  - (d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 100 square feet or larger in area.
  - (e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

**Sec. 78-333. - Loitering, exterior lighting and monitoring, and interior lighting requirements.**

- (a) It shall be the duty of the operator of a sexually oriented business to:
  - (1) Ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises;



- (2) Designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and
  - (3) Provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
- (b) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.
  - (c) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.
  - (d) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

**Sec. 78-334. - Penalties and enforcement.**

- (a) A person who violates any of the provisions of this division shall be guilty of a violation and, upon conviction, shall be punishable by fines not to exceed one thousand dollars (\$1,000.00) per violation, or by imprisonment for a period not to exceed sixty (60) days, or by both such fine and imprisonment. For violations of this division that are continuous with respect to time, each day that the violation continues is a separate offense. For violations of this division that are not continuous with respect to time, each violation is a separate offense.
- (b) Any premises, building, dwelling, or other structure in which a sexually oriented business is repeatedly operated or maintained in violation of this division shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.
- (c) The County's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this division to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the County, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this division, or any of the laws in force in the County or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

**Sec. 78-335. – Applicability of division to existing businesses.**

- (a) Licensing Requirements. All sexually oriented businesses lawfully operating in the County in compliance with all state and local laws prior to the effective date of this division, and all sexually oriented business employees working in the County prior to the effective date of this division, are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of ninety (90) days following the effective date of this division.

Within sixty (60) days following the effective date of this division, all sexually oriented businesses and sexually oriented business employees must apply for a license or permit under this division.

- (b) Interior Configuration Requirements. Any sexually oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of Section 78-332 and Subsection 78-336(b) shall have ninety (90) days from the effective date of this division to conform its premises to said requirements. During said ninety (90) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six (6) feet from all patrons.
- (c) Other Requirements. Except as provided for in subsections (a) and (b) above, sexually oriented businesses shall comply with this division on the date that it takes effect.

**Sec. 78-336. – Prohibited conduct.**

- (a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.
- (b) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
- (c) No employee who appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.
- (d) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business.
- (e) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of a sexually oriented business.
- (f) No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business to be simultaneously occupied by any patron and any other employee who is semi-nude or who appears semi-nude on the premises of the sexually oriented business, unless an operator of the sexually oriented business is present in the same room.
- (g) No operator or licensee of a sexually oriented business shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section.
- (h) A sign in a form to be prescribed by the Director, and summarizing the provisions of subsections (a), (b), (c), (d), and (e) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

**Sec. 78-337. - Scienter required to prove violation or business licensee liability.**

This division does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this division. Notwithstanding anything to the contrary, for the purposes of this division, an act by an employee that constitutes grounds for suspension or revocation of that employee's permit shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this division, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

**Sec. 78-338. - Location of sexually oriented businesses.**

- (a) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in unincorporated Cobb County that is:
  - (1) Within 750 feet of a residence or residential zoning district;
  - (2) Within 1,500 feet of a church, school, governmentally owned or operated building, library, civic center, public park, hospital, community club, or prison;
  - (3) Within 1,000 feet of another sexually oriented business; or
  - (4) Within 500 feet of an establishment licensed to sell alcoholic beverages for consumption on the premises or to sell alcoholic beverages as a package store.
- (b) For the purpose of this section, measurements shall be made in a straight line from the closest part of any structure occupied by the sexually oriented business to the closest property line of the zoned property and uses identified in subsection (a), above. Where a use identified in subsection (a) is located in a multi-tenant development, the distance shall be measured to the closest part of the tenant space occupied by that use rather than the property line of the entire development, so as to maximize the number of locations available to sexually oriented businesses.
- (c) The zoning and/or use of land in adjacent jurisdictions shall not disqualify any location within unincorporated Cobb County from being available to a sexually oriented business.
- (d) Notwithstanding any provision in the Official Code of Cobb County, Georgia to the contrary, a sexually oriented business in a location that satisfies the standards in this section shall not be deemed noncompliant with this section by virtue of the subsequent establishment or expansion of a land use or zoning district identified in subsection (a).
- (e) *Amortization.*
  - (1) As used in this section, "lawful nonconforming sexually oriented business" means a business that:
    - (i) was in all respects lawfully established, existing, and operating before the adoption of this division;

- (ii) is a sexually oriented business as defined in this division;
  - (iii) has continuously operated lawfully under this division since its adoption; and
  - (iv) does not conform to the location standards for sexually oriented businesses set forth in the Official Code of Cobb County, Georgia.
- (2) Notwithstanding anything to the contrary in the Official Code of Cobb County, Georgia, a lawful nonconforming sexually oriented business may continue to operate in its nonconforming location until December 31, 2021, in order to make a reasonable recoupment of its investment in said location that was made before the adoption of this division. On or before January 1, 2022, the sexually oriented business shall conform to the location standards for sexually oriented businesses in the Official Code of Cobb County, Georgia.
- (3) Hardship extension. A lawful nonconforming sexually oriented business may apply to extend the time to operate its sexually oriented business in its nonconforming location upon a showing of financial hardship. An application for an initial extension based upon financial hardship shall be made by October 31, 2021. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least 60 days before the conclusion of the business's then-current extension period.
- (4) Procedure. An application for a hardship extension shall be filed in writing with the Director, shall include documentation showing that the establishment is a lawful nonconforming sexually oriented business, shall specify the length of extension requested, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. The application shall include an electronic copy of the business's accounting or bookkeeping records, including the computer file(s) maintained in QuickBooks or any similar accounting or bookkeeping software. Within 20 days after receiving the application, the Director shall schedule a public hearing on the application before the Hearing Officer, which public hearing shall be conducted within 45 days after the Director's receipt of the application. Notice of the time and place of such public hearing shall be published at least ten days before the hearing on the County's website or in a newspaper of general circulation published within the County, and shall identify the particular business and location for which the hardship extension is requested.
- (5) The Hearing Officer shall issue a written decision within ten days after the public hearing on the application for a hardship extension. The hardship extension shall be limited to a period of up to one year, as proven necessary by the applicant. The hardship extension shall be granted only upon a showing that the applicant is a lawful nonconforming sexually oriented business and is unable to recoup its investments, made prior to the effective date of this division, in its current location unless the hardship extension is granted.

**Sec. 78-339. - Severability.**

This division and each section and provision of said division hereunder, are hereby declared to be independent sections and subsections and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said division, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this division be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this division.

**Sec. 78-340. - Conflicting code provisions repealed.**

Any provisions in this Code specifically in conflict with any provision in this division is hereby deemed inoperative and repealed.

**Secs. 78-341—78-389. - Reserved.**

Section 134-1 of the Official Code of Cobb County, Georgia is amended by deleting the following term and definition, as follows:

~~*Distance and measurement.* Distance from the proposed premises of an adult entertainment establishment shall be the measurement in lineal feet from the center of any door of customer entry of the proposed premises of the adult entertainment establishment to the nearest property line of any church, library, school, college, public park, residence or hospital. If the establishment is not on ground level, then the beginning point for measuring the distance shall be the point at ground level determined by measuring from the center of any door of customer entry perpendicular to the ground level. A radius shall be measured from the center of any door of customer entry of the proposed premises to the nearest property line of any church, library, school, college, public park, residence or hospital.~~

Section 134-1 of the Official Code of Cobb County, Georgia is amended by amending the following definition, to read as follows:

~~*Live entertainment* means music, comedy, readings, dancing, acting or other entertainment, excluding adult entertainment, performed on the site. This classification includes dancing by patrons to live or recorded music, but excludes live conduct characterized by nudity or semi-nudity.~~

Section 134-1 of the Official Code of Cobb County, Georgia is amended by adding the following term and definition, to read as follows:

*Sexually oriented business.* An adult arcade, an adult bookstore, and adult cabaret, an adult motion picture theater, or a sexual device shop, as those terms are defined in section 78-321 of Official Code of Cobb County, Georgia.

Section 134-37(a)(8) of the Official Code of Cobb County, Georgia is amended to delete the term “Adult entertainment establishments” from the list of uses that require a special land use permit, to read as follows:

(8) ~~Adult entertainment establishments.~~ [Reserved.]

Section 134-192 of the Official Code of Cobb County, Georgia is amended to delete the term “Adult entertainment establishments” and to replace it with the term “Sexually oriented businesses” where that term appears in the Summary of uses charts within that section.

Section 134-192 of the Official Code of Cobb County, Georgia is amended so that the Summary of uses chart that concerns the uses allowed in the GC, LI, and HI districts (among other

districts) is amended to delete the term “Adult entertainment establishments” and to replace it with the term “Sexually oriented businesses”, and to reflect that sexually oriented businesses are Permitted Uses in the LI and HI districts and are not allowed in the GC district, as depicted below:

TYPE OF USE	OHR	OS	NS	PSC	TS	GC	RRC	IF	LI	HI
...										
Adult entertainment establishments Sexually oriented businesses (*subject to section 78-338)						SLUP/ SE			<u>P*</u>	<u>P*</u>
...										

Section 134-193(11)(b) (concerning use limitations in the R-80 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- b. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-195(12)(b) (concerning use limitations in the R-40 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- b. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-196(12)(b) (concerning use limitations in the R-30 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- b. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-197(12)(b) (concerning use limitations in the R-20 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- b. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-198(12)(b) (concerning use limitations in the R-15 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- b. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-199(12)(f) (concerning use limitations in the R-12 single-family residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-201(12)(f) (concerning use limitations in the RA-4 single-family attached/detached residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-201.2(12)(f) (concerning use limitations in the RA-5 single-family attached/detached residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-201.3(12)(d) (concerning use limitations in the SC suburban condominium residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- d. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-202(12)(f) (concerning use limitations in the RA-6 single-family attached/detached residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-203.2(11)(f) (concerning use limitations for RSL nonsupportive residential units) of the Official Code of Cobb County, Georgia is amended to read as follows:

- f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-203.3(3) (concerning uses not permitted for RSL nonsupportive urban rental units) of the Official Code of Cobb County, Georgia is amended to read as follows:

- (3) *Permitted uses.* Anything not permitted or allowed by special exception is prohibited. Permitted uses are as follows:

- Attached residential units.

- Detached residential units.



Accessory retail uses in RSL.

Further provided that no ~~adult entertainment uses~~ sexually oriented businesses or automotive uses shall be allowed.

Neighborhood retail uses provided that the total square footage of the uses does not exceed ten percent of the total floor area of the structure(s). Further provided that no ~~adult entertainment uses~~ sexually oriented businesses or automotive uses shall be allowed.

Section 134-203.3(11)(e) (concerning use limitations for RSL nonsupportive urban rental units) of the Official Code of Cobb County, Georgia is amended to read as follows:

- e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-204(12)(e) (concerning use limitations in the RM-8 residential multifamily district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-205(12)(e) (concerning use limitations in the FST fee simple townhouse residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-206(12)(f) (concerning use limitations in the RM-12 residential multifamily district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-207(12)(e) (concerning use limitations in the RM-16 residential multifamily district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-211(11)(e) (concerning use limitations in the LRO low-rise office district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-213(12)(l) (concerning use limitations in the NRC neighborhood retail commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- l. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-214(11)(j) (concerning use limitations in the LRC limited retail commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- j. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-215(13)(e) (concerning use limitations in the O&I office and institutional district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-216(12)(d) (concerning use limitations in the UVC urban village commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- d. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-217(13)(p) (concerning use limitations in the PVC planned village community district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- p. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-218(13)(f) (concerning use limitations in the CRC community retail commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- f. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-219(12)(h) (concerning use limitations in the RMR residential mid-rise district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- h. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-220(12)(e) (concerning use limitations in the OMR office mid-rise district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- e. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-221(12)(j) (concerning use limitations in the RHR residential high-rise district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- j. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-221.1(3) (concerning uses not permitted in the UC urban condominium residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- (3) Permitted uses. Anything not permitted or allowed by special exception or condominium declaration and bylaws is prohibited. Permitted uses are as follows:

Condominiums.

Customary home occupations.

Designated recycling collection locations.

Livestock, nondomestic and wild animals, and poultry, on two or more acres.

Neighborhood retail uses, provided that the total square footage of the uses does not exceed ten percent of the total floor area of the condominium structure(s). Further provided that no ~~adult entertainment uses~~ sexually oriented businesses or automotive related uses shall be allowed.

Parking for vehicles.

Personal vehicle and equipment sales.

Section 134-221.1(12)(d) (concerning use limitations in the UC urban condominium residential district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- d. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-223(13)(c) (concerning use limitations in the OS office/service district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- c. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-224(13)(h) (concerning use limitations in the NS neighborhood shopping district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- h. No ~~adult entertainment uses sexually oriented businesses~~ are permitted.

Section 134-225(12)(k) (concerning use limitations in the PSC planned shopping center district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- k. No ~~adult entertainment uses sexually oriented businesses~~ are permitted.

Section 134-226(2)(a) (concerning definitions used in regulations for the TS tourist services district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- a. ~~Adult entertainment. See section 134-268 for definitions which apply to all adult entertainment establishments. [Reserved.]~~

Section 134-227(2)(a) (concerning definitions used in regulations for the GC general commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

- a. ~~Adult entertainment. See section 78-321 for definitions which apply to all adult entertainment establishments. [Reserved.]~~

Section 134-227(3) of the Official Code of Cobb County, Georgia is amended by deleting “Adult entertainment” from the list of permitted uses in the GC general commercial district, to read as follows:

- (3) *Permitted uses.* Permitted uses are as follows:

~~Adult entertainment.~~

Ambulance services, if accessory to a hospital or funeral home.

...

Section 134-227(12)(a) of the Official Code of Cobb County, Georgia is amended by deleting “Adult entertainment establishments” from the list of uses that are limited to locating in a regional activity center as a special exception use, to read as follows:

- a. ~~Adult entertainment establishments (see section 134-268 for required standards). [Reserved.]~~

Section 134-228(12)(g) (concerning use limitations in the RRC regional retail commercial district) of the Official Code of Cobb County, Georgia is amended to read as follows:

g. No ~~adult entertainment uses~~ sexually oriented businesses are permitted.

Section 134-230(3) of the Official Code of Cobb County, Georgia is amended by adding “Sexually oriented businesses” to the list of permitted uses in the LI light industrial district, to read as follows:

(3) *Permitted uses.* Permitted uses are as follows:

...

Self-service storage facilities (subject to section 134-279).

Sexually oriented businesses (subject to section 78-338).

Shelters (homeless).

...

Section 134-231(3) of the Official Code of Cobb County, Georgia is amended by adding “Sexually oriented businesses” to the list of permitted uses in the HI heavy industrial district, to read as follows:

(3) *Permitted uses.* Permitted uses are as follows:

...

Self-service storage facilities (subject to section 134-279).

Sexually oriented businesses (subject to section 78-338.)

Shelters (homeless).

...

Section 134-272(5)(d) (concerning parking requirements) of the Official Code of Cobb County, Georgia is amended to delete the term “Adult entertainment establishments” and to replace it with the term “Sexually oriented businesses” where that term appears in the table within that section, as depicted below:

Type of Use	Parking Requirements
...	
<del>Adult entertainment establishments</del> <u>Sexually oriented businesses</u>	1 space per 100 square feet (net) of floorspace.
...	



## Water System

Judy Jones, P.E., Agency Director

District 1

Item No. 4.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Judy Jones, P.E., Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To convey by quit claim deed to the underlying property owner any County rights associated with a sanitary sewer easement located at 3064 Cobb Parkway.

### **BACKGROUND**

As a part of the construction of a new commercial building, located at 3064 Cobb Parkway, in Land Lot 125 of the 20th District, a section of sanitary sewer was abandoned. The underlying property owner, Reese Real Estate Acworth, LLC, has requested that any County rights associated with the easement for the abandoned sanitary sewer be returned by quit claim deed.

### **IMPACT STATEMENT**

N/A

### **FUNDING**

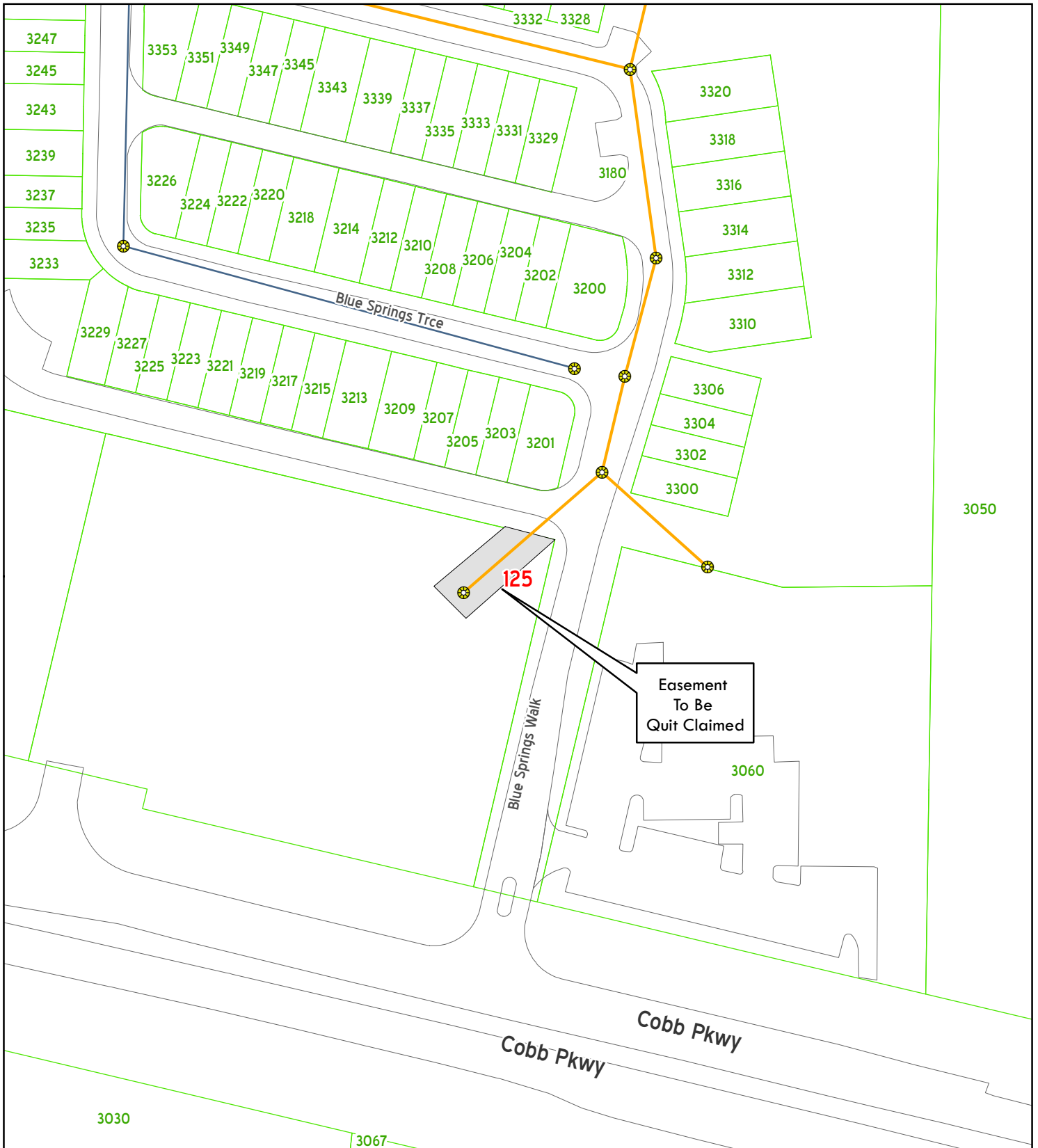
N/A

### **RECOMMENDATION**

The Board of Commissioners convey by quit claim deed to the underlying property owner, Reese Real Estate Acworth, LLC, any County rights associated with a sanitary sewer easement located at 3064 Cobb Parkway; and authorize the Chairman to execute the necessary documents.

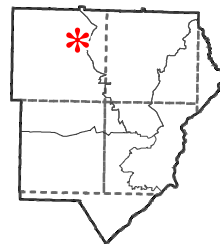
### **ATTACHMENTS**

1. Map - 082520 Quit Claim Reese Real Estate Acworth, LLC



Project: Reese Real Estate, LLC  
 Land Lot(s): 125  
 District(s): 20  
 Commission District(s): 1

1:1,200





## Water System

Judy Jones, P.E., Agency Director

Districts All

Item No. 5.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Judy Jones, P.E., Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To approve a construction contract with Insituform Technologies, LLC, for FY20 Sanitary Sewer Rehabilitation, Program No. S1136.

### **BACKGROUND**

The Water System has identified sewer lines in various areas of the County that require rehabilitation. This project includes cured-in-place pipe (CIPP) lining of approximately 47,000 linear feet of 8-inch underground sewer mains, cured-in-place service lateral lining, cured-in-place sectional point repairs, cured-in-place service connections renewals, and service cleanout assemblies.

**Bids for construction were received on July 23, 2020, and the results of the bid were as follows:**

<b>Insituform Technologies, LLC</b>	<b>\$3,642,286.75</b>
Am-Liner East, Inc.	\$4,191,298.00
Granite Inliner, LLC	\$4,704,293.00
IPR Southeast, LLC	\$6,606,181.50

### **IMPACT STATEMENT**

N/A



**FUNDING**

Funding is available in the Water System’s CIP Budget as follows:

Transfer from:

Unidentified New/Replacement Sewer Lines

Preliminary Estimates	510-500-5755-8005	S2503-Z	\$3,734,186.75
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Transfer to:

FY20 Sanitary Sewer Rehabilitation

Construction	510-500-5755-8260	S1136-C	\$3,642,286.75
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Interest Expense on Retainage	510-500-5755-6613	S1136-A	\$ 9,100.00
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Easements & Right-of-Way	510-500-5755-8020	S1136-R	\$ 5,000.00
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Materials & Supplies	510-500-5755-8265	S1136-M	\$ 5,000.00
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Contingency	510-500-5755-8810	S1136-T	<u>\$ 72,800.00</u>
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Total			\$3,734,186.75
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**RECOMMENDATION**

The Board of Commissioners approve a construction contract with Insituform Technologies, LLC, in the amount of \$3,642,286.75, for FY20 Sanitary Sewer Rehabilitation, Program No. S1136; authorize the corresponding budget transactions; and further authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

None



## Water System

Item No. 6.

Judy Jones, P.E., Agency Director

Districts All

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*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Judy Jones, P.E., Agency Director

**DATE:** August 25, 2020

### PURPOSE

To approve a construction contract under the 2016 Stormwater Management Unit Price Contract with Ray Campbell Contracting Co., Inc., for the 2020 Stormwater Management Mowing Contract, Program No. SW2089.

### BACKGROUND

The Water System has custodial responsibility for 156 floodplain properties totaling 222 acres located in various residential subdivisions throughout the county. The maintenance provided includes primarily mowing of grassed area, but also weed control, debris removal, and other similar activities. The aggregate price includes 10 treatments of each property on an as-needed basis as determined by the Stormwater Management Division.

**Pricing was solicited from 2016 Stormwater Management Unit Price Contract contractors. Three bids were received as follows:**

<b>Ray Campbell Contracting Co., Inc.</b>	<b>\$164,100.00</b>
K.M. Davis Contracting Co., Inc.	\$184,800.00
W.E. Contracting Co., Inc.	\$247,975.00

### IMPACT STATEMENT

N/A

**FUNDING**

Funding is available in the Water System’s CIP Budget as follows:

Transfer from:

Stormwater Multi-Year Budget

Drainage Contract R&M Service	510-500-5758-6496	SW9999-Z	\$164,100.00
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Transfer to:

2020 Stormwater Management Mowing Contract

Drainage Contract R&M Service	510-500-5758-6496	SW2089-C	\$164,100.00
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**RECOMMENDATION**

The Board of Commissioners approve a construction contract with Ray Campbell Contracting Co., Inc., in the amount of \$164,100.00, for the 2020 Stormwater Management Mowing Contract, Program No. SW2089; authorize the corresponding budget transaction; and further authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

None



## Transportation

Erica Parish, Agency Director

District 3

Item No. 7.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Erica Parish, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To approve Lease Amendment No. 5 to the North Fixed Based Operator Lease and Operating Agreement with Hawthorne Global Aviation Services, LLC, and approve Lease Amendment No. 6 to the South Fixed Based Operator Lease and Operating Agreement with Hawthorne Global Aviation Services, LLC, regarding a rent abatement/deferment plan at Cobb County International Airport - McCollum Field, due to the COVID-19 pandemic.

### **BACKGROUND**

On June 10, 2014, the Board of Commissioners approved Transfer, Assignment and Consent Agreement and Estoppels of the Atlanta Executive Jet Center, LLC (AEJC) North and South Fixed Base Operator (FBO) Lease and Operating Agreements to Hawthorne Global Aviation Services, LLC (Hawthorne) at Cobb County International Airport - McCollum Field (Airport). The documents required Hawthorne to assume and perform all of the covenants, agreements, provisions, and obligations of AEJC under the then current North and South FBO Leases.

In March 2020, Governor Brian Kemp declared a public health emergency in response to the COVID-19 pandemic and declaration of emergency on a national level. The ensuing local shelter in place orders substantially restricted personal and business activities, resulting in a significant decline of business at the Airport.

The COVID-19 pandemic has severely impacted aviation services and operations throughout the country. The Federal Aviation Administration recently published a determination that during the current national health emergency, local airports are granted the flexibility to utilize airport revenues to help mitigate financial impacts incurred by airport tenants.

In an effort to assist Hawthorne with their financial recovery during this unprecedented time, the Department recommends abating one month of the North and South FBO rents and fees, in a total amount of \$19,448.16. The Department also recommends deferring three months' rent and fees, in a total amount of \$58,344.48, to be paid over an eight-month repayment plan.

Lease Amendment No. 5 to the North FBO Lease and Operating Agreement and Lease Amendment No. 6 to the South FBO Lease and Operating Agreement with Hawthorne have both been reviewed by the County Attorney's Office.

Business activity at the Airport has begun to recover to normal operating levels.

**IMPACT STATEMENT**

Lease Amendment No. 5 to the North FBO Lease and Operating Agreement will forgive one month's rent and fees, in the amount of \$13,909.43. Lease Amendment No. 6 to the South FBO Lease and Operating Agreement will forgive one month's rent, in the amount of \$5,538.73. The Airport Division has sufficient Fund Balance Reserves to support the recommended abatement of lease payments for the recommended one-month period, in a total amount of \$19,448.16.

Lease Amendment No. 5 will also defer three months of rent and fees, in the amount of \$41,728.29. Lease Amendment No. 6 will defer three months of rent, in the amount of \$16,616.19. The amounts deferred will be repaid over the eight-month period from September 2020 through April 2021, increasing the regular payments due by \$5,216.04 and \$2,077.02, respectively.

**FUNDING**

N/A

**RECOMMENDATION**

The Board of Commissioners approve Lease Amendment No. 5 to the North Fixed Based Operator Lease and Operating Agreement with Hawthorne Global Aviation Services, LLC regarding a rent abatement/deferment plan at the Cobb County International Airport – McCollum Field, due to the COVID-19 pandemic; approve Lease Amendment No. 6 to the South Fixed Based Operator Lease and Operating Agreement with Hawthorne Global Aviation Services, LLC regarding a rent abatement/deferment plan at the Cobb County International Airport – McCollum Field, due to the COVID-19 pandemic; and authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

1. Lease Amendment No. 5 to the North Fixed Based Operator Lease and Operating Agreement with Hawthorne Global Aviation Services, LLC
2. Lease Amendment No. 6 to the South Fixed Based Operator Lease and Operating Agreement with Hawthorne Global Aviation Services, LLC

**STATE OF GEORGIA**

**COUNTY OF COBB**

**AMENDMENT NO. 5 OF NEW LEASE AND OPERATING AGREEMENT**

**(North FBO Premises)**

**THIS AMENDMENT No. 5 of NEW LEASE AND OPERATING AGREEMENT** (“Amendment”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (Effective Date) by and between **COBB COUNTY**, a political subdivision of the State of Georgia, (“Lessor”), and **HAWTHORNE GLOBAL AVIATION SERVICES LLC**, a Delaware limited liability company with authority to do business in the State of Georgia (“Lessee”).

**WITNESSETH:**

**WHEREAS**, Lessor and Atlanta Northside Aviation, Inc. (“Northside”) did on the 3rd day of October 2007, enter into a New Lease and Operating Agreement, as amended by Amendment No. 1 of Lease and Operating Agreement, dated December 7, 2007, Amendment No. 2 of Lease and Operating Agreement, dated April 9, 2010, Amendment No. 3 of Lease and Operating Agreement, dated September 1, 2010, and Amendment No. 4 of Lease and Operating Agreement dated December 31, 2012 (collectively the “Agreement”) for the leasehold of certain described real property (North FBO Premises) at the Cobb County Airport-McCollum Field (the "Airport"), located in Cobb County, Georgia, wherein Northside was granted the right to engage in the business of fueling, maintaining, and storing aircraft at said Airport,; and

**WHEREAS**, on October 9, 2012 Lessor approved (a) an assignment of the Agreement from Northside to Atlanta Executive Jet Center, LLC, and (b) an assignment of that certain Lease and Operating Agreement between Lessor and Preferred Aircraft Services, LLC (“Preferred”), dated March 13, 2001 (“South FBO Lease”) from Preferred to Atlanta Executive Jet Center, LLC; and

**WHEREAS**, on June 10, 2014 Lessor approved an assignment of the Agreement from Atlanta Executive Jet Center, LLC to Hawthorne Global Aviation Services LLC

pursuant to the provisions of that certain Transfer, Assignment and Consent Agreement and Estoppel; and

**WHEREAS**, in April, 2020, a Public Health Emergency with Shelter-in-Place requirements existed in Georgia to contain the spread of the COVID-19 pandemic, and the Shelter-in-Place order substantially affected the business operations of the Lessee at the Airport; and

**WHEREAS**, on or about April 7, 2020, Lessor and Lessee entered into a letter agreement (“Letter Agreement”), pursuant to which the parties agreed to a deferral of Lessee’s rent obligations under the Agreement for the months of May, June, July and August, 2020; and

**WHEREAS**, Lessee’s business operations have recovered at the Airport, Lessor has received a federal grant to provide funding assistance to address Covid-19 pandemic impacts to the Airport’s operating budget, and the Federal Aviation Administration announced that Airport revenues could be used to abate rent of airport operators as determined by local sponsors during this unusual circumstance.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, the premises, the benefits received by Lessor and Lessee, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Lessor agrees to:
  - a. Abate, and Lessee shall have no obligation to pay, rent under the Agreement for the month of April 2020 in the total amount of \$12,242.43.
  - b. Defer and accrue rental payments for the months of June, July and August 2020 under the Agreement in the total amount of \$36,727.29, which total deferred and accrued rental amount shall be paid by Lessee to Lessor as provided in Section 2a of this Amendment.
  - c. Abate, and Lessee shall have no obligation to pay, the marketing program additional rent under the Agreement for April 2020 in the total amount of \$1,667.00.

d. Defer and accrue the marketing program additional rent under the Agreement for the months of June, July and August 2020, in the total amount of \$5,001.00, which deferred and accrued marketing program additional rent amount shall be paid by Lessee to Lessor, as provided in Section 2a of this Amendment.

2. Lessee agrees to:

a. Pay to Lessor the total accrued deferred rental payment amount of \$36,727.29 and total accrued marketing program additional rent payment amount of \$5,001.00 in equal installments of \$5,216.04 over eight months beginning September 1, 2020 through April 2021. Such accrued rental payments and marketing program additional rents shall be paid in addition to the required monthly rental payment of \$12,242.43 and marketing program additional rent payment of \$1,667.00, for a total monthly payment to Lessor during those eight months as follows:

i. September 1, 2020	\$19,125.47
ii. October 1, 2020	\$19,125.47
iii. November 1, 2020	\$19,125.47
iv. December 1, 2020	\$19,125.47
v. January 1, 2021	\$19,125.47
vi. February 1, 2021	\$19,125.47
vii. March 1, 2021	\$19,125.47
viii. April 1, 2021	\$19,125.47

3. The Letter Agreement is hereby terminated and superseded by this Amendment as of the Effective Date hereof.

4. All other terms and conditions of the Agreement, as amended, shall remain the same and unchanged except as specifically set forth herein. The Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4 and this Amendment No. 5 shall be construed as if they were a single document. Any terms not defined in this Amendment shall have the same meanings as ascribed to them in the Agreement and prior amendments thereto.



IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first written above.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

[Seal]

**LESSOR:**  
**COBB COUNTY, GEORGIA**

By: \_\_\_\_\_  
Michael H. Boyce, Chairman  
Cobb County Board of Commissioners

Attest: \_\_\_\_\_  
County Clerk

Approved as to Form:

\_\_\_\_\_  
County Attorney

Signed, sealed and delivered

In the presence of:

*Will Hard*  
\_\_\_\_\_  
Witness

*Eric Lindsey*  
\_\_\_\_\_  
Notary Public

[Seal]

**LESSEE:**  
**HAWTHORNE GLOBAL AVIATION  
SERVICES LLC**

By: \_\_\_\_\_  
*B*

Title: \_\_\_\_\_  
*CKO*

Leasehold Mortgagee Approved:

*[Signature]*  
\_\_\_\_\_  
Wells Fargo Bank, N.A.

*Gay M. Meares, TD*  
\_\_\_\_\_  
Printed Name

**ERIC T. LINDSEY**  
Notary Public - State of South Carolina  
My Commission Expires March 31, 2028

**STATE OF GEORGIA**

**COUNTY OF COBB**

**AMENDMENT NO. 6 OF NEW LEASE AND OPERATING AGREEMENT**

**(South FBO Premises)**

**THIS AMENDMENT No. 6 of NEW LEASE AND OPERATING AGREEMENT** (“Amendment”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (Effective Date) by and between **COBB COUNTY**, a political subdivision of the State of Georgia, (“Lessor”), and **HAWTHORNE GLOBAL AVIATION SERVICES, LLC**, a Delaware limited liability company with authority to do business in the State of Georgia (“Lessee”).

**WITNESSETH:**

**WHEREAS**, Lessor and Preferred Aircraft Services, LLC (“Preferred”) did on the 13th day of March 2001, enter into a Lease and Operating Agreement, as amended by Amendment No. 1 of Lease and Operating Agreement, dated October 8, 2006, Amendment No. 2 of Lease and Operating Agreement, dated November 12, 2010, Amendment No. 3 of Lease and Operating Agreement, dated December 31, 2012, and Amendment No. 4 of Lease and Operating Agreement, dated April 17, 2013 as assigned by Atlanta Executive Jet Center, LLC to Lessee by Transfer, Assignment, and Consent Agreement and Estoppel – South FBO Lease, dated June 10, 2014 (the “Consent”); and Amendment No. 5 dated August 25, 2014 (collectively the “Lease”) for the leasehold of certain described real property (South FBO Premises) at the Cobb County Airport-McCollum Field (the “Airport”), located in Cobb County, Georgia, wherein Lessee was granted the right to engage in the business of fueling, maintaining, and storing aircraft at said Airport

**WHEREAS**, on October 9, 2012 Lessor approved (a) an assignment of the Agreement from Northside to Atlanta Executive Jet Center, LLC, and (b) an assignment of that certain Lease and Operating Agreement between Lessor and Preferred Aircraft Services,

LLC (“Preferred”), dated March 13, 2001 (“South FBO Lease”) from Preferred to Atlanta Executive Jet Center, LLC; and

**WHEREAS**, on June 10, 2014 Lessor approved an assignment of the Agreement from Atlanta Executive Jet Center, LLC to Hawthorne Global Aviation Services, LLC; pursuant to the provisions of that certain Transfer, Assignment and Consent Agreement and Estoppel; and

**WHEREAS**, in April, 2020, a Public Health Emergency with Shelter-in-Place requirements existed in Georgia to contain the spread of the COVID-19 pandemic, and the Shelter-in-Place order substantially affected the business operations of the Lessee at the Airport; and

**WHEREAS**, on or about April 7, 2020, Lessor and Lessee entered into a letter agreement (“Letter Agreement”) pursuant to which the parties agreed to a deferral of Lessee’s rent obligations under the Agreement for the months of May, June, July and August, 2020; and

**WHEREAS**, Lessee’s business operations have recovered at the Airport, Lessor has received a federal grant to provide funding assistance to address Covid-19 pandemic impacts to the Airport’s operating budget, and the Federal Aviation Administration announced that Airport revenues could be used to abate rent of airport operators as determined by local sponsors during this unusual circumstance.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, the premises, the benefits received by Lessor and Lessee, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Lessor agrees to:
  - a. Abate, and Lessee shall have no obligation to pay, rent under the Agreement for the month of April 2020 in the total amount of \$5,538.73.

- b. Defer and accrue rental payments for the months of June, July and August 2020 under the Agreement in the total amount of \$16,616.19, which total deferred and accrued rental amount shall be paid by Lessee to Lessor as provided in Section 2a of this Amendment.

2. Lessee agrees to:

- a. Pay to Lessor the total accrued deferred rental payment amount of \$16,616.19 in equal installments of \$2,077.02 over eight months beginning September 1, 2020 through April 2021. Such accrued rental payments shall be paid in addition to the required monthly rental payment of \$5,538.73 for a total monthly payment to Lessor during those eight months as follows:

i. September 1, 2020	\$7,615.75
ii. October 1, 2020	\$7,615.75
iii. November 1, 2020	\$7,615.75
iv. December 1, 2020	\$7,615.75
v. January 1, 2021	\$7,615.75
vi. February 1, 2021	\$7,615.75
vii. March 1, 2021	\$7,615.75
viii. April 1, 2021	\$7,615.75

- 3. The Letter Agreement is hereby terminated and superseded by this Amendment as of the Effective Date hereof.
  
- 4. All other terms and conditions of the Agreement, as amended, shall remain the same and unchanged except as specifically set forth herein. The Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5 and this Amendment No. 6 shall be construed as if they were a single document. Any terms not defined in this Amendment shall have the same meanings as ascribed to them in the Agreement and prior amendments thereto.

**{Signatures on following page.}**

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first written above.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

[Seal]

**LESSOR:**  
**COBB COUNTY, GEORGIA**

By: \_\_\_\_\_  
Michael H. Boyce, Chairman  
Cobb County Board of Commissioners

Attest: \_\_\_\_\_  
County Clerk

Approved as to Form:

\_\_\_\_\_  
County Attorney

Signed, sealed and delivered

In the presence of:

*Will State*  
\_\_\_\_\_  
Witness

*Eric Lindsey*  
\_\_\_\_\_  
Notary Public

[Seal]

**LESSEE:**  
**HAWTHORNE GLOBAL AVIATION  
SERVICES LLC**

By: *[Signature]*

Title: *CEO*

Leasehold Mortgagee Approved:

*[Signature]*  
\_\_\_\_\_  
Wells Fargo Bank, N.A.

*Gay M. McNamee*  
\_\_\_\_\_  
Printed Name

**ERIC T. LINDSEY**  
Notary Public - State of South Carolina  
My Commission Expires March 31, 2026



## Transportation

Erica Parish, Agency Director

Districts All

Item No. 8.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Erica Parish, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To adopt a resolution to approve the CobbLinc Agency Safety Plan for the Department's transit system.

### **BACKGROUND**

On July 19, 2018, Federal Transit Administration (FTA) published the Public Transportation Agency Safety Plan (PTASP) Final Rule, which requires certain operators of public transportation systems that receive federal funds under FTA's Urbanized Area Formula Grants to develop safety plans that include the processes and procedures to implement Safety Management Systems.

The PTASP rule applies to all operators of public transportation systems that are recipients and sub-recipients of federal financial assistance under the Urbanized Area Formula Program (49 U.S.C. § 5307). The rule became effective on July 19, 2019.

FTA published a Notice of Enforcement Discretion on April 22, 2020, which extended the PTASP compliance deadline from July 20, 2020 to December 31, 2020.

The PTASP regulation implements a proactive, risk-based approach to managing transit safety, and includes safety performance targets. Transit operators also must certify they have an Agency Safety Plan (ASP) in place which meets all requirements of the rule by December 31, 2020. The ASP must be updated and certified by the transit agency annually.

As required by FTA, the ASP must be approved by the Board of Commissioners; therefore, the Department recommends adoption of a resolution approving the CobbLinc ASP. Following approval by the Board, the adopted ASP will be submitted to the Georgia Department of Transportation for certification, in compliance with FTA PTASP regulations.

### **IMPACT STATEMENT**

N/A

**FUNDING**

N/A

**RECOMMENDATION**

The Board of Commissioners adopt a resolution to approve the CobbLinc Agency Safety Plan for the Department's transit system; and authorize the Chairman to execute the necessary documents.

**UNDER SEPARATE COVER**

CobbLinc Agency Safety Plan

**ATTACHMENTS**

1. Resolution

## RESOLUTION

Resolution authorizing the approval of a Public Transportation Agency Safety Plan as required by the Federal Transit Administration, an operating administration of the United States Department of Transportation, for Federal transportation assistance authorized by Chapter 53 of Title 49 of the United States Code and other Federal statutes administered by the Federal Transit Administration.

**WHEREAS**, the Federal Transit Administration's (FTA) Public Transportation Agency Safety Plan (PTASP) final rule (49 CFR Part 673) requires certain operators of public transportation systems that are recipients or subrecipients of FTA grant funds to develop safety plans that include the processes and procedures for implementing Safety Management Systems (SMS). The four SMS components of the Agency Safety Plan are Safety Management Policy, Safety Risk Management, Safety Assurance, and Safety Promotion; and

**WHEREAS**, the Agency Safety Plan must be reviewed, updated, and certified annually; and

**WHEREAS**, the Agency Safety Plan must be approved by the recipient's Board of Directors, or appropriate governing entity or official(s) responsible for policy decisions; and

**WHEREAS**, upon receipt of the approved Agency Safety Plan with signatures affixed in Section 2 (Plan Development, Approval, and Updates), the final Agency Safety Plan will be certified by the Georgia Department of Transportation (GDOT) in compliance with FTA regulations; and

**WHEREAS**, Cobb County has provided or will provide all Annual Certifications and Assurances to the FTA.

**NOW, THEREFORE, BE IT RESOLVED** by the Cobb County Board of Commissioners that:

1. The Cobb County Board of Commissioners approves the CobbLinc Agency Safety Plan.
2. The Chairman of the Cobb County Board of Commissioners confirms that the County has provided or will provide all Annual Certifications and Assurances to the Federal Transit Administration.

### CERTIFICATION

The undersigned duly qualified Chairman of the Cobb County Board of Commissioners, acting on behalf of the Cobb County Board of Commissioners, certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Cobb County Board of Commissioners held on August 25, 2020.

This \_\_\_\_ day of \_\_\_\_\_, 2020

Attest:

\_\_\_\_\_  
Michael H. Boyce, Chairman  
Cobb County Board of Commissioners

\_\_\_\_\_  
Clerk  
Cobb County Board of Commissioners





## Transportation

Erica Parish, Agency Director

Districts All

Item No. 9.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Erica Parish, Agency Director

**DATE:** August 25, 2020

### PURPOSE

To approve the Twelfth Amendment to the Agreement with Cubic Transportation Systems, Inc., for repair, maintenance, and support services of the Breeze Fare Collection System, CCDOT Contract No. 001573.

### BACKGROUND

On January 27, 2009, the Board of Commissioners approved an Agreement with Cubic Transportation Systems, Inc. (Cubic), in an amount not to exceed \$152,640.00, for repair, maintenance, and support services of the Breeze Fare Collection (Breeze) System. Breeze is a proprietary system owned by Cubic; therefore, an ongoing maintenance agreement with Cubic is necessary for as long as CobbLinc utilizes the Breeze System. All metro transit operators have selected utilization of the Breeze System to facilitate regional connectivity.

The original Agreement with Cubic was for an initial period of April 1, 2008, through September 30, 2009, and allowed for unlimited one-year extensions by written agreement signed by both parties. To date, extensions have been executed as follows:

<u>Amendment No.</u>	<u>Board Approval</u>	<u>Contract Term</u>	<u>Contract Amount</u>
First Amendment	October 13, 2009	10/01/09 - 09/30/10	\$94,284.00
Second Amendment	September 14, 2010	10/01/10 - 09/30 11	\$94,284.00
Third Amendment	October 11, 2011	10/01/11 - 09/30/12	\$92,504.00
Fourth Amendment	September 25, 2012	10/01/12 - 09/30/13	\$92,504.00
Fifth Amendment	August 27, 2013	10/01/13 - 09/30/14	\$92,504.00
Sixth Amendment	December 9, 2014	10/01/14 - 09/30/15	\$92,486.00
Seventh Amendment	September 22, 2015	10/01/15 - 09/30/16	\$92,760.00
Eighth Amendment	January 24, 2017	10/01/16 - 09/30/17	\$71,661.00
Ninth Amendment	August 22, 2017	10/01/17 - 09/30/18	\$75,244.00
Tenth Amendment	September 25, 2018	10/01/18 - 09/30/19	\$79,005.96
Eleventh Amendment	October 22, 2019	10/01/19 - 09/30/20	\$82,957.00

**Details for action requested are as follows:**

The Department requests approval to extend the Agreement with Cubic for a twelfth one-year period, in an amount not to exceed \$87,105.00, for repair, maintenance and support services for the Breeze System, for the period of October 1, 2020, through September 30, 2021.

Existing Federal Transit Administration grants will provide funding for 80 percent of the total cost, or \$69,684.00. The County will be responsible for a 20 percent local match, or \$17,421.00, as previously approved by the Board.

The Twelfth Amendment to the Agreement with Cubic has been reviewed by the County Attorney’s Office.

**IMPACT STATEMENT**

N/A

**FUNDING**

Available in the Transit Grant Fund, with the following budget transfer:

Transfer from:	203-050-T080-T080-8005	Preliminary Estimate	\$87,105.00
Transfer to:	203-050-T080-T080-6491	Annual Maintenance Contracts	\$87,105.00

**RECOMMENDATION**

The Board of Commissioners approve the Twelfth Amendment to the Agreement with Cubic Transportation Systems, Inc., in an amount not to exceed \$87,105.00, for repair, maintenance, and support services of the Breeze Fare Collection System, for the period of October 1, 2020, through September 30, 2021, CCDOT Contract No. 001573; authorize the corresponding budget transaction; and further authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

1. Twelfth Amendment to Agreement with Cubic Transportation Systems, Inc.

## TWELFTH AMENDMENT TO AGREEMENT

This Twelfth Amendment to Agreement (Eleventh Amendment) is entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between Cobb County, Georgia, a political subdivision of the State of Georgia (County), and Cubic Transportation Systems, Inc., (Cubic) a corporation authorized to do business in the State of Georgia with a principal business located at 1308 South Washington Street, Tullahoma, TN 37388.

### **WITNESSETH:**

**WHEREAS**, County and Cubic entered into an “Agreement Between Cubic Transportation Systems, Inc. and Cobb County, Georgia for Depot Repair and Support Services,” dated February 16, 2009, (Agreement) whereby Cubic agreed to provide to County depot repair and support services related to County’s Breeze Card program; and

**WHEREAS**, the original Agreement with Cubic allows for unlimited one (1) year extensions by written agreement signed by both parties; and

**WHEREAS**, the initial Term of the Agreement ended on September 30, 2009, but has been extended through September 30, 2020, by multiple Amendments to the Agreement; and

**WHEREAS**, County desires to extend the Agreement for an additional one (1) year period and Cubic desires to provide depot repair and support services for such extended term pursuant to the conditions of the Agreement, as amended, and as further amended herein;

**NOW, THEREFORE**, for and in consideration of the mutual covenants, promises and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, County and Cubic hereby agree as follows:

### **SECTION ONE**

**Paragraph 2 shall be deleted in its entirety and replaced with a new Paragraph 2, which shall read:**

**2. Term Effective Date.** The Term of this Agreement shall be deemed to begin on October 1, 2020 (Effective Date) and shall end, unless terminated sooner pursuant to the provisions of this Agreement, on September 30, 2021. The parties may extend this Agreement by written amendment, signed by both parties.

**Paragraph 7 shall be deleted in its entirety and replaced with a new Paragraph 7, which shall read:**

#### **7. Payment.**

Services will be provided as set forth in Exhibit A - Statement of Work, attached hereto and incorporated herein by reference, at the fixed price of \$87,105.00. Services performed October 1, 2020 through September 30, 2021 will be invoiced monthly at the rate of \$7,258.75. All prices are in United States Dollars, exclusive of all applicable taxes. The County agrees to pay and be solely



## **EXHIBIT A STATEMENT OF WORK**

### **1. INTRODUCTION**

A depot repair program along with on call support is vital to the significant long-term investment that the CobbLinc has made in its fare collection operations.

Contractor shall provide CobbLinc with the following services:

- A. Experienced staff that will include supervision, administration and technical personnel.
- B. Depot repair of modules removed from CobbLinc's buses and Garage Computers (GCRs) through our depot repair centers in Atlanta, Georgia and Tullahoma, Tennessee
- C. First-line on call support for Ticket Office Machines, Card 5 system, and garage computer.
- D. Second-line on call support for Driver Control Units.

Services listed above are detailed in Section 2 of this Statement of Work (SOW). It is expected that, under this Depot Repair Agreement, CobbLinc and Contractor shall continue to develop a working relationship which will assure that AFC equipment issues are raised and resolved in a timely manner. Contractor shall provide CobbLinc with the key component necessary to efficiently maintain its AFC equipment to permit CobbLinc to focus on patron expectations and performance requirements.

### **2. SUPPORT SERVICE**

Contractor offers a depot repair and on-call support service. The details for the services follow:

#### **2.1 DEPOT REPAIR**

Contractor shall provide depot repair support from its Atlanta Georgia facility. The depot facility shall include all personnel, tools, equipment and administrative material necessary to perform the repairs and return the repaired parts in a timely manner. Contractor shall provide the CobbLinc with a standard turnaround time for each repair scenario. Contractor shall provide the CobbLinc with a cause of failure for each piece of equipment repaired. Depot Repair is limited to the repairs and parts provided under this agreement.

As part of the depot repair function Contractor shall also:

- A. Maintain an adequate supply of parts to replace faulty or worn parts whenever a faulty module is being repaired.
- B. Route OEM supplied parts that are not repairable by Contractor to the OEM for repair.
- C. Be responsible for the return of all parts repaired by the Contractor depot repair staff.
- D. Depot repair services provided from Contractor's Atlanta Georgia repair facility cover the equipment shown in Table 2.1.

**Table 2.1. Equipment List**

Description	Quantity
Driver Control Units	138
Light Validators	138
Garage Computer System	1
Card 5 Machine	1
Ticket Office Machine	2

**2.1.1 Exclusions**

Depot Level Repair Agreement is only in effect for failures resulting from defects in material or workmanship, as determined and agreed upon by both Parties.

Exclusions to this Agreement include:

- A. Repairs to components of the AFC equipment that have been subject to abuse, improper corrective or preventive maintenance, accident or vandalism
- B. Repairs caused by failure to replace normal consumable items such as light bulbs, fuses, belts and rollers
- C. Software modifications
- D. Repairs to items that are not processed in accordance with **Section 2.1.2** of this Agreement

**2.1.2 Repair Request Notification**

CobbLinc maintenance personnel shall identify faulty parts in the covered equipment, those parts shall be removed and processed through the established CobbLinc guidelines.

Prior to pickup of the defective component(s), a Return Material Authorization (RMA) Number shall be obtained from Contractor’s Depot Repair Center. CobbLinc shall phone Contractor’s repair facility at 404-724-2205.

For each RMA request, the CobbLinc shall provide the following information:

- A. Callers Name and Agency
- B. Part number and serial number of defective module
- C. Brief description of the problem

All parts picked up by Contractor for repair shall be tagged and properly identified by the CobbLinc with a “Contractor Repair Tag”, indicating all above information as well as the RMA number Contractor will pick-up the defective modules from agency once per week. Pick-up and delivery shall be limited to one location.

In the event a module is unreparable, it shall be returned to the CobbLinc with an unreparable notification.

## **2.2 ON-CALL SUPPORT SERVICES**

Contractor shall provide On-call Support services for all equipment in **Table 2.1**. The service includes on-call corrective and preventive maintenance.

The highlights of the On-call Support Services are as follows:

- A. First line support for Garage Computers, Ticket Office Machines, Card 5 Devices.
  - I. Four (4) hour response Mon-Fri, 8:00am – 5:00pm.
  - II. Next business day if outside the time above or agency is closed.
- B. Second line support for Driver Control Units and Light Validators.
  - I. Five (5) hour response Mon-Fri, 8:00am – 5:00pm.
  - II. Next business day if outside the time above or agency is closed.
- C. Preventive Maintenance
  - I. Monthly PM's for Garage Computer, Card 5, and TOM.
  - II. Semi-annual PM's for DCU's.
- D. Support will be provided during software implementation.

When service is required, Contractor shall dispatch a qualified technician within the timeframe noted above to resolve the issue. Should the repair require replacement of equipment, Contractor shall replace the equipment utilizing spare items owned and controlled by CobbLinc. Contractor shall repair the equipment according to the depot repair service outlined in Section 2.1. For each service request, CobbLinc shall phone the Contractor Helpdesk at 404-724-2206.

The Helpdesk will need the following information:

- A. Callers Name and Agency
- B. Point of contact and phone number to access the machine
- C. Serial number of the device
- D. Location of the device
- E. Brief description of the problem

This action shall start the response time clock for the requested support service.

## Acronyms and Abbreviations

AFC	Automatic Fare Collection
CM	Corrective Maintenance
CS	Customer Service
DCU	Driver Control Unit
GCR	Garage Computers
LV	Light Validators
OEM	Original Equipment Manufacturer
PM	Preventive Maintenance
TOM	Ticket Office Machine





## Transportation

Erica Parish, Agency Director

Districts All

Item No. 10.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Erica Parish, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To approve the Second Amendment to the Transit System Award Agreement with First Transit, Inc., regarding administrative leave/incentive payment for contractor personnel affected by CobbLinc limited operational bus service due to the COVID-19 pandemic.

### **BACKGROUND**

On February 28, 2017, the Board of Commissioners approved a five-year contract with First Transit, Inc., to provide complete operations, maintenance, and administrative services for CobbLinc. This contract became effective on March 26, 2017.

On November 19, 2019, the Board approved the First Amendment to the Transit System Award Agreement (Agreement) with First Transit, Inc., regarding on-time performance standards/assessment of penalties for failure to meet established standards, and certain maintenance obligations associated with 19 CobbLinc Express Service commuter buses.

On March 18, 2020, Cobb County entered into an Emergency Limited Operational Services period on a county-wide basis due to the COVID-19 pandemic. As a result, CobbLinc scheduled bus services were significantly reduced.

In response to the COVID-19 pandemic and declaration of emergency on a national, state, and local level, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law on March 27, 2020. The CARES Act provides emergency assistance and health care response for individuals, families and businesses affected by the COVID-19 pandemic and provides emergency appropriations to support various governmental operations during this time. The CARES Act also allocated supplemental funding to support public transportation operations.

On April 28, 2020, the Board adopted a resolution authorizing submission of a FY20 Section 5307 Grant request to the Federal Transit Administration (FTA) under the CARES Act, in an amount not to exceed \$18,039,756.00, for transit capital, planning, and operating projects/activities. The Board also authorized the

acceptance of allocated Section 5307 Grant Program CARES Act supplemental funding.

The CARES Act funding has been made available to transit operators primarily to respond to financial burdens resulting from the COVID-19 pandemic. The funds may also be used to support capital, operating, and planning expenses and certain other expenditures, such as administrative leave and incentive compensation for employees whose job responsibilities were required in order to provide county services and who experienced exposure to elevated risks.

First Transit, Inc., has provided documentation to the County detailing the number of employees who had to be placed on unpaid administrative leave for the period of April 15, 2020 through April 17, 2020, as a result of CobbLinc limited operational bus services due to the COVID-19 pandemic. The Department recommends modifying the Agreement with First Transit, Inc., to make provisions for the one-time payment of administrative leave, in a total amount not to exceed \$3,066.70, to compensate 22 bus operators impacted.

First Transit, Inc., will also provide documentation to the County detailing the number of employees whose job responsibilities are required in order to provide the operations, maintenance, and administration of CobbLinc bus service during the COVID-19 pandemic public health emergency, and who experience exposure to elevated risks while performing those responsibilities. The Department also recommends modifying the Agreement with First Transit, Inc., to provide a one-time incentive payment of \$500.00 each, in an amount not to exceed \$126,500.00, to compensate approximately 253 employees. Per FTA regulations, incentive payment can be made to those employees meeting the criteria who continue to work during the pandemic, following the effective date of this Second Amendment, providing the employee is still employed with First Transit, Inc., at the time of payment. The personnel identified to receive the one-time incentive payment include bus operators, maintenance technicians, road supervisors, etc.

The Second Amendment to the Transit System Award Agreement with First Transit, Inc., has been reviewed by the County Attorney's Office.

### **IMPACT STATEMENT**

The Second Amendment to the Agreement with First Transit, Inc., will provide for a one-time payment, in a total amount not to exceed \$129,566.70, for personnel impacted by recent CobbLinc limited operational services due to the COVID-19 pandemic. Payment estimated at \$3,066.70 will be made to identified bus operators who had to be placed on unpaid administrative leave as a result of the reduction in bus service. Payment estimated at \$126,500.00 will be made to identified personnel, in the amount of \$500.00 each, whose job responsibilities are required in order to provide the operations, maintenance, and administration of daily CobbLinc bus service and who experience exposure to elevated risks due to the COVID-19 pandemic.

The FY20 Section 5307 Grant Program CARES Act supplemental funding, as previously approved and allocated by the Board, will provide 100 percent of this eligible operating cost incurred for the one-time administrative leave/incentive payment, as detailed in the Second Amendment to the Agreement with First Transit, Inc. No local match is required.

**FUNDING**

Available in the FY20 approved Transit Division Operating Budget, as follows:

Available:	200-050-4802-6327	Operator Service Fees	\$129,566.70
------------	-------------------	-----------------------	--------------

**RECOMMENDATION**

The Board of Commissioners approve the Second Amendment to the Transit System Award Agreement with First Transit, Inc., in an amount not to exceed \$129,566.70, regarding administrative leave/incentive payment for contractor personnel affected by CobbLinc limited operational bus service due to the COVID-19 pandemic; and authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

1. Second Amendment to the Transit System Award Agreement with First Transit, Inc.

**SECOND AMENDMENT  
to the  
TRANSIT SYSTEM AWARD AGREEMENT**

**THIS SECOND AMENDMENT** to the March 24, 2017, TRANSIT SYSTEM AWARD AGREEMENT (“SECOND AMENDMENT”), is effective as of the date of the signature of the last Party to sign this SECOND AMENDMENT (“Effective Date”), by and between COBB COUNTY, GEORGIA, a political subdivision of the State of Georgia (“COUNTY”), and FIRST TRANSIT, INC., a Corporation authorized to do business in Georgia, with its principal office located at 600 Vine Street, Suite 1400, Cincinnati, Ohio 45202 (“FIRST TRANSIT”) (hereinafter individually a “Party,” and collectively the “Parties”).

WITNESSETH

**WHEREAS**, on March 24, 2017, the COUNTY and FIRST TRANSIT entered into the TRANSIT SYSTEM AWARD AGREEMENT (“Agreement”), with an effective date of March 26, 2017, pursuant to the COUNTY’s Request for Proposals/Transit System Operation and Maintenance Services and Transit Division, RFP Number 17-6210 (“RFP”), whereby FIRST TRANSIT provides transit system operations and maintenance program management services for the COUNTY’s Transit Division of the Cobb County Department of Transportation, operating as CobbLinc (“CobbLinc”); and

**WHEREAS**, the Parties executed a First Amendment to the Agreement on December 17, 2019; and

**WHEREAS**, Title XII of Division B of Public Law No. 116-136, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) provides that Administrative Leave, Operational expenses and other certain expenses are eligible for reimbursement under the CARES Act, including expenses under third-party contracts that were incurred on or after January 20, 2020; and

**WHEREAS**, such expenses are required to retain ability to provide service and maintain readiness for reinstatement of services once it is deemed appropriate; and

**WHEREAS**, the Parties desire to amend the Agreement due to reductions in bus service necessitated by the COVID-19 Pandemic, make provisions for the payment of Administrative Leave to workers that would otherwise have had to be placed on unpaid administrative leave as a result of the reduction in service, and to make provisions for the payment of incentive compensation for workers whose job responsibilities are required in order to provide the operations, maintenance, and administration of the COUNTY’s CobbLinc bus service and who experience exposure to elevated risks due to the COVID-19 Pandemic.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Agreement is hereby amended by adding the following provisions:
  - a. **Administrative Leave Pay.** Upon COUNTY’s receipt from FIRST TRANSIT of documentation confirming the number of FIRST TRANSIT employees who were placed on unpaid administrative leave for the period of April 15, 2020 to April 17, 2020 as a result of reduced CobbLinc services due to the COVID-19 Pandemic, and the monetary amount of such unpaid administrative leave, the COUNTY shall pay to FIRST TRANSIT a one-time payment for Administrative Leave Pay in an amount not to exceed (\$3,066.70).

FIRST TRANSIT shall within 10 business days of receipt of payment from the COUNTY, make payment of same amount to such employees who were placed on unpaid administrative leave during that period.

- b. **Incentive Pay.** Upon COUNTY's receipt from FIRST TRANSIT of documentation confirming the number of FIRST TRANSIT employees who continue to work during the COVID-19 Pandemic after the Effective Date of this SECOND AMENDMENT for a period of thirty (30) days, the COUNTY agrees to pay to FIRST TRANSIT a one-time payment in an amount not to exceed (\$126,500.00), to provide for the payment of \$500.00 each, to a maximum of 253 of such employees. FIRST TRANSIT shall within 10 business days of receipt of payment from the COUNTY, make payment in the amount of \$500.00 to each of such employees.

It is the intent of the Parties that the Administrative Leave Pay and Incentive Pay provided for herein be considered as eligible expenses under the CARES Act. Therefore, FIRST TRANSIT agrees to provide support and assistance to the COUNTY related to seeking reimbursement for eligible expenses of this SECOND AMENDMENT under the CARES Act at no cost to COUNTY.

2. All payments under the provisions of this SECOND AMENDMENT are subject to audit and FIRST TRANSIT agrees to submit all related records to the COUNTY, and state and federal authorities upon request.
3. COUNTY'S responsibility for payments hereunder is subject to the availability of funds. Specifically, any payment of Administrative Leave Pay and/or Incentive Pay is contingent upon final approval and receipt of CARES Act funding grant(s).
4. Nothing herein is intended to alter the relationship between the COUNTY and FIRST TRANSIT as established in the Agreement as amended, nor is it intended to alter the relationship of the COUNTY and FIRST TRANSIT employees. FIRST TRANSIT shall be and always remain the sole employer of its employees.
5. Nothing in this SECOND AMENDMENT is intended to render any present or former FIRST TRANSIT employee an intended beneficiary of the Agreement as amended nor shall the Agreement as amended be interpreted to create a cause of action in any present or former FIRST TRANSIT employee against the COUNTY, its officers, elected officials, agents, or employees for any adverse action.
6. All other terms and conditions of the Agreement, not otherwise amended herein shall remain in full force and effect.

{SIGNATURES BEGIN ON NEXT PAGE}

**IN WITNESS WHEREOF**, COUNTY and FIRST TRANSIT have hereunto executed this **SECOND AMENDMENT** and affixed their seals through their duly authorized representatives, who have been first authorized to do so as of the Second Amendment Effective Date.

**COBB COUNTY**

By: \_\_\_\_\_  
Michael H. Boyce, Chairman  
Cobb County Board of Commissioners

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
County Clerk

APPROVED AS TO FORM BY:

\_\_\_\_\_  
County Attorney's Office

**FIRST TRANSIT, INC.**

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

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Printed Name:  
Title:

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

*Corporate Seal*



## Information Services

Kimberly Lemley, Director

District All

Item No. 11.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Kimberly Lemley, Director  
Janine Eveler, Elections Director  
William Tanks, Agency Director  
Sharon Stanley, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To authorize the use of funding received under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), through the Coronavirus Relief Fund and approve a Project Agreement with Controlled Access, Inc. to install the County’s enterprise surveillance system at all county absentee ballot drop box locations.

### **BACKGROUND**

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”). Through the Coronavirus Relief Fund, the CARES Act provides for payments to State, Local, and Tribal governments navigating the impact of the COVID-19 outbreak.

On April 24, 2020, Cobb County received funding from the federal Coronavirus Relief Fund as a local government eligible for emergency relief funding under the CARES Act.

Public health concerns related to the COVID-19 outbreak have impacted in-person voting and wait times have increased due to social distancing and sanitizing requirements. The State Election Board approved absentee ballot drop boxes in April to help voters avoid human contact during the coronavirus pandemic. The drop boxes allow voters to avoid election day lines while ensuring their absentee ballots reach election offices on time. Pursuant to the Georgia State Election Board Rule 183-1-14-0.8-.14 Secure Absentee Ballot Drop Boxes, drop box locations must have adequate lighting and use a video recording device to monitor each drop box location. The video recording device must either continuously record the drop box location or use motion detection that records one frame, or more, per minute until detection of motion triggers continuous recording. Video recordings of the drop box locations must be retained by the county registrars for 30 days after the final certification of the election, or until conclusion of any contest involving an election on the ballot in the county jurisdiction, whichever is later, and shall be made available to Secretary of State investigators upon request.

Cobb Elections identified 16 sites as absentee ballot drop box locations. Controlled Access, Inc., was selected to complete the installs to maintain consistency and compatibility with surveillance cameras at other Election facilities.

The contract with Controlled Access, Inc. is an amount not to exceed \$288,000.00. The total project cost is an amount not to exceed \$316,800.00 which includes a 10% project contingency amount of \$28,800.00 for unexpected project costs.

**IMPACT STATEMENT**

Maintenance on all parts and service is under a one-year warranty from Controlled Access, Inc. Additionally, there is a three-year manufacturer’s warranty on all parts. Maintenance for the enterprise surveillance system is included in FY 21 adopted budget. Funding for maintenance for FY 22 and beyond will be requested within the normal biennial budget process.

**FUNDING**

Funding will be available with the following budget transaction:

Decrease Expenditure:	278-055-V9CT-8820	(Contingency)	\$316,800.00
Increase Expenditure:	278-230-V9EL-6259	(IS-Accountable Equip.)	\$316,800.00

**RECOMMENDATION**

The Board of Commissioners authorize the use of federal funding through the Coronavirus Aid, Relief and Economic Security Act for the installation of the County’s enterprise surveillance system for Elections Absentee Ballot drop box locations; approve project agreement with Controlled Access, Inc. in an amount not to exceed \$288,000.00; authorize a 10% project contingency in an amount not to exceed \$28,800.00; authorize the corresponding budget transactions; and further authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

None





## Information Services

Kimberly Lemley, Director

District All

Item No. 12.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Kimberly Lemley, Director  
Sharon Stanley, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To authorize the deletion of two vacant part-time Admin Specialist 1 positions (grade 5P) with position numbers 8120028 and 8120024 within the Postal, Printing & Records Services Division of the Information Services Department and authorize creation of one full-time Mail Services Technician position (grade 7).

### **BACKGROUND**

During the past five years, Mail Services has lost nine part-time employees who were hired as full-time employees either outside or within the County. This turn-over creates increased costs in time required to train new part-time employees to provide operational services to County departments and the Court System. Extensive time expended by the Mail Center Supervisor is costly in redundant training of the mail courier routes across the County and teaching the operational functions within the mail center. Other employees are also affected due to the frequency of the existing part-time positions being unfilled and during the learning curve of newly hired employees.

The job description of the Admin Specialist 1 position (working title Mail Clerk) will be incorporated into the Mail Services Technician job description. The Mail Clerk's primary job function is to use a county vehicle to deliver mail to departments on designated routes and perform mail operational functions within the mail center alongside full-time Mail Services Technicians.

### **IMPACT STATEMENT**

The department requests the full-time Mail Services Technician position become effective immediately. Salary and fringe for the remainder of FY 2020 is available in the Information Services personnel budget.

The full impact of the conversion is estimated to be \$8,588 annually and is available within the FY 2020 budget and FY 2021 adopted budget. No additional funding is required.

## **FUNDING**

Funding is available in the Postal, Printing & Records Services Division Personnel Services Budget.

## **RECOMMENDATION**

The Board of Commissioners authorize the deletion of two vacant part-time Admin Specialist 1 positions (grade 5P) with position numbers 8120028 and 8120024 within the Postal, Printing & Records Services Division of the Information Services Department; authorize the creation of one full-time Mail Services Technician position (grade 7); authorize the corresponding budget transactions; and further authorize the Chairman to execute the necessary documents.

## **ATTACHMENTS**

None



## Information Services

Item No. 13.

Kimberly Lemley, Director

District All

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Kimberly Lemley, Director  
Sharon Stanley, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To authorize the use of funding received under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), through the Coronavirus Relief Fund to incorporate social distancing capabilities in Cobb County courtrooms through audio-visual technology and approve Amendment 1 to a contract with Conference Technologies, Inc.

### **BACKGROUND**

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"). Through the Coronavirus Relief Fund, the CARES Act provides for payments to State, Local, and Tribal governments navigating the impact of the COVID-19 outbreak.

On April 24, 2020, Cobb County received funding from the federal Coronavirus Relief Fund as a local government eligible for emergency relief funding under the CARES Act.

As public health concerns surrounding the COVID-19 outbreak continue to impact the courts, the need to incorporate social distancing capabilities in all Cobb County courtrooms through audio-visual technology is critical. This technology provides the ability for all involved in the judicial process to participate while remaining safe. Judges, jurors and attorneys can use the technology through all aspects of the trial process.

On July 14, 2020 the Board of Commissioners approved a contract with Conference Technologies, Inc. in an amount not to exceed \$232,735.00 to design, provide, and install Audio/Visual technology in three Cobb County courtrooms. This contract allows for future installations that were not previously funded. Expanding the technology to the 38 remaining courtrooms will provide a consistent level of quality interaction for participants in courtrooms throughout the entire judicial complex.

On July 14, 2020, the Board of Commissioners authorized funding within the CARES Fund for a variety of pandemic related programs and expenditures. Funding for the expansion of audio-visual technology was included in that approved appropriation.

The Department requests approval of Amendment No.1 to a contract with Conference Technologies, Inc. in an amount not to exceed \$3,548,679.94 to expand the design and install of Audio/Visual technology to 38 additional county courtrooms. The total project cost is an amount not to exceed \$3,690,626.94 and includes a 4% contingency of \$141,947.00 to cover any unexpected project costs.

**IMPACT STATEMENT**

Maintenance for ongoing support expansion of the courtroom audio-visual solution is estimated to be \$91,200.00 annually beginning in FY 2022. Funding for FY 2022 and beyond will be requested within the normal biennial budget process.

**FUNDING**

Funding is available in the CARES Fund as follows:

278-035-V9IS-6259 (Accountable Equipment – IS related only)

**RECOMMENDATION**

The Board of Commissioners approve Amendment 1 to a contract with Conference Technologies, Inc. in an amount not to exceed \$3,548,679.94 incorporate social distancing capabilities in Cobb County courtrooms through audio-visual technology; authorize a 4% project contingency in an amount not to exceed \$141,947.00; authorize the corresponding budget transactions; and further authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

None



## Public Safety

Randy Crider, Agency Director

Districts All

Item No. 14.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Randy Crider, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To award the selection of Spratlin & Son Construction for the construction of a pole barn storage area and renovation of warehouse space at the Fire Annex, located at 3200 Austell Road.

### **BACKGROUND**

On June 09, 2020, the Board authorized the use of funding received under the CARES (Coronavirus Aid, Relief, and Economic Security) Act, through the Coronavirus Relief Fund to construct a pole barn storage area and renovate current warehouse space, including security upgrades for controlled access gates, additional lighting, and security fencing, at the Fire Annex, located at 3200 Austell Road, to respond to a COVID-19 public health emergency.

The Request for Proposal (RFP) for the Construction Manager At-Risk (CM at-Risk) for the Strategic Stockpile, Sealed Bid #20-6539, was advertised in the Marietta Daily Journal on July 17, 24, and 31, 2020. Five (5) bids were received on August 06, 2020. The Selection Committee members were comprised of the following: Adam Storey (Public Safety), DeWayne Campbell (Fire and Emergency Services), Sarah Logue (Property Management), Robert LeFiles (Emergency Management Agency), and Lisa Rodriguez (Purchasing Department). The Committee determined Spratlin and Son Construction's proposal to be the top ranked. Spratlin and Son Construction's references have been checked and verified.

The CM at-Risk contract valued at \$850,061.00, includes the General Conditions, in the amount of \$108,800.00, and the Contractor Fee, in the amount of \$75,000.00.

### **IMPACT STATEMENT**

Associated costs for operation and maintenance will be absorbed into the Fire and Emergency Services budget as appropriate.

**FUNDING**

Funding is available in the CARES Program Fund 278, Department of Homeland Security, Disaster Relief Funds/County Preparedness (COVID) for the EMA Stockpile as follows:

278-493-V9S1-8110	(Renovation)	\$718,561.00
278-493-V9S1-6207	(Safety Supplies)	\$131,500.00

**RECOMMENDATION**

The Board of Commissioners award the selection of Spratlin & Son Construction, in the amount of \$850,061.00, for Construction Manager at-Risk services to construct a pole barn storage area and renovated warehouse space at the Fire Annex, located at 3200 Austell Road, and authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

None



## Public Safety

Randy Crider, Agency Director

Districts All

Item No. 15.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Randy Crider, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To approve a contract with Spratlin & Son Construction to establish a Guaranteed Maximum Price for the construction of a pole barn storage area and renovation of warehouse space at the Fire Annex, located at 3200 Austell Road.

### **BACKGROUND**

On June 09, 2020, the Board authorized the use of funding received under the CARES (Coronavirus Aid, Relief, and Economic Security) Act, through the Coronavirus Relief Fund to construct a pole barn storage area and renovate current warehouse space, including security upgrades for controlled access gates, additional lighting, and security fencing, at the Fire Annex, located at 3200 Austell Road, to respond to a COVID-19 public health emergency.

The Request for Proposal (RFP) for the Construction Manager At-Risk (CM at-Risk) for the Strategic Stockpile, Sealed Bid #20-6539, was advertised in the Marietta Daily Journal on July 17, 24, and 31, 2020. Five (5) bids were received on August 06, 2020. The Selection Committee members were comprised of the following: Adam Storey (Public Safety), DeWayne Campbell (Fire and Emergency Services), Sarah Logue (Property Management), Robert LeFiles (Emergency Management Agency), and Lisa Rodriguez (Purchasing Department). The Committee determined Spratlin and Son Construction's proposal to be the top ranked. Spratlin and Son Construction's references have been checked and verified.

The CM at-Risk qualifications were reviewed by the committee and ranked in order of the most qualified. The committee recommended Spratlin and Son Construction, the top ranked firm, be selected for CM at-Risk services for the construction of a pole barn and renovation to the current warehouse space, including security upgrades for controlled access gates, additional lighting, and security fencing, at the Fire Annex, located at 3200 Austell Road, to respond to a COVID-19 public health emergency.

Spratlin & Son Construction determined the Guaranteed Maximum Price (GMP) in the amount of \$850,061.00 to include all construction costs, project contingency, and contractor's fee.

**IMPACT STATEMENT**

Associated costs for operation and maintenance will be absorbed into the Fire and Emergency Services budget as appropriate.

**FUNDING**

Funding is available in the CARES Program Fund 278, Department of Homeland Security, Disaster Relief Funds/County Preparedness (COVID) for the EMA Stockpile as follows:

278-493-V9S1-8110	(Renovation)	\$718,561.00
278-493-V9S1-6207	(Safety Supplies)	\$131,500.00

**RECOMMENDATION**

The Board of Commissioners approve a contract with Spratlin & Son Construction, in the amount of \$850,061.00, to establish a Guaranteed Maximum Price for the construction of a pole barn storage area and renovation of warehouse space at the Fire Annex, located at 3200 Austell Road, and authorize the Chairman to execute the necessary documents in a form substantially similar to that provided under separate cover and as approved by the County Attorney’s Office.

**ATTACHMENTS**

1. strategic stockpile contract



**CONTRACT FOR CONSTRUCTION**  
**AT-RISK CONSTRUCTION MANAGEMENT**  
**GUARANTEED MAXIMUM PRICE**

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**ARTICLE 1 AGREEMENT**

This Agreement is entered into by and between the:

“OWNER”: **COBB COUNTY, GEORGIA  
100 Cherokee Street  
Marietta, GA 30090**

And

“CONSTRUCTION MANAGER”: John W. Spratlin & Son, LLC  
PO Box 66  
Lincolnton, GA 30817

For and in consideration of the mutual promises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Owner and the Construction Manager agree as follows:

EFFECTIVE DATE. This Agreement is executed under seal, and shall be effective on the date signed by the last party to do so (“Effective Date”).

NOTICES. Notice to the Parties shall be given at the above addresses. Unless otherwise provided, all notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when (1) personally delivered, or (2) on the third calendar day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent *via* national overnight commercial carrier to the addresses set forth above or at a substitute address previously furnished to the other parties by written notice in accordance herewith.

AUTHORIZED REPRESENTATIVES. The authorized representatives and addresses of the Owner, the Construction Manager and the Professional are:

OWNER:

Representative: Adam Storey  
Address: 100 Cherokee St.  
City, State, Zip: Marietta, Ga 30090  
Office: 770-528-3802 Mobile: 404-390-9434 Fax:  
E-mail: adam.storey@cobbcounty.org

CONSTRUCTION MANAGER:

Representative: Mike Cartner  
Address: 5133 Washington Rd  
  
City, State, Zip: Evans, GA 30809  
Office: 706-359-4695 Mobile: 706-401-4168 Fax:  
E-mail: Mike@spratlinandson.com  
License #: GCCO004401 FEIN / SSN #: 27-4242426

DESIGN PROFESSIONAL: Earl Smith, Croft & Associates  
3400 Blue Springs Road  
Kennesaw, Ga 30144

OWNER'S PROJECT IDENTIFICATION INFORMATION:

Project Title: STRATEGIC STOCKPILE  
Project Location: Cobb County Fire Annex  
Address: 3200 Austell Road  
City, State, Zip: Marietta, Georgia 30008

Project ID Number: Sealed Bid #20-6539

General Project Description: Construction of Pole Barn, and Construction Modifications to Existing Warehouse Located at 3200 Austell Road, Marietta, GA 30008

**ARTICLE 2 GENERAL PROVISIONS**

2.1 Relationship of Parties. The Owner is engaging the Construction Manager to furnish or cause to be furnished (i) all labor, equipment, goods and materials now or hereafter required by this Agreement to successfully plan, construct and complete the Work; (ii) all construction management and supervisory services required by this Agreement to successfully plan, construct and complete the Project.

2.1.1 The Owner and Construction Manager each acknowledges that it will act in good faith in carrying out its duties and obligations.

2.1.2 The Owner's engagement of the Construction Manager is based upon the Construction Manager's representations to the Owner that it (i) is experienced in providing construction management services for projects of similar size and complexity to the Project; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform construction management services for the Project; and (iv) has the expertise and ability to provide construction management services which will meet the Owner's objectives and requirements and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

2.1.3 The Construction Manager represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

2.1.4 Neither the Construction Manager nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in this Agreement unless authorized in writing by the Owner's Representative.

2.2 Design Professional. The Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work, except the following: N/A.

2.2.1 The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise may be provided in this Agreement.

2.2.2 The Owner shall obtain from the Design Professional either a license for the Construction Manager and Subcontractors to use the design documents prepared by the Design Professional or ownership of the copyrights for such design documents, and the Construction Manager shall not be held liable for claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.3 Definitions. When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

2.3.1 "Agreement" means this Agreement between Owner and Construction Manager, as modified, and exhibits and attachments made part of this agreement upon execution.

2.3.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.3.3 "Certificate Of Substantial Completion" means the Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

2.3.4 A "Change Order" is a written order signed by the Owner and the Construction Manager after execution of this Agreement indicating changes in the scope of the Work, the GMP and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by the Construction Manager and accepted by the Owner.

2.3.5 "Contract Price" means the dollar amount for which the Construction Manager agrees to perform the Work set forth in the Agreement.

2.3.6 The "Contract Documents" include those documents listed in Article 3, Section 3.1, and modifications issued in accordance with this Agreement.

2.3.7 "Contract Time" is the period between the Date of Commencement and the Final Completion.

2.3.8 "Cost of the Work" means the costs and discounts specified in Article 9.

2.3.9 The "Construction Manager" is the person or entity identified in Article 1 and includes the Construction Manager's Representative.

2.3.10 "Date of Commencement" is as set forth in section 4.4.3.

2.3.11 "Day" means a calendar day.

2.3.12 "Defective Work" is any portion of the Work that does not conform with the Contract Documents.

2.3.13 "Design Professional" means the licensed architect or engineer, and its consultants, retained by the Owner to perform design services for the Project.

2.3.14 "Final Completion" occurs on the date when the Construction Manager's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the Construction Manager.

2.3.15 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Construction Manager must comply that are enacted as of the Agreement date.

2.3.16 A "Material Supplier" is a person or entity retained by the Construction Manager to provide material and equipment for the Work.

2.3.17 "Others" means other contractors, material suppliers, and persons at the Worksite who are not employed by the Construction Manager, or Subcontractors.

2.3.18 "Owner" is the person or entity identified in Article 1 and includes the Owner's Representative.

2.3.19 Owner's Related Parties: Any parent, subsidiary or affiliated entities of the Owner, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

2.3.20 The "Parties" are collectively the Owner and the Construction Manager.

2.3.21 The "Project," as identified in Article 1, is the building, facility, or other improvements for which the Construction Manager is to perform Work under this Agreement. It may also include construction by the Owner or Others.

2.3.22 "Project Design Schedule" is the timetable which sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

2.3.23 The "Schedule of the Work" is the document prepared by the Construction Manager that specifies the dates on which the Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner.

2.3.24 "Subcontractor" is a person or entity retained by the Construction Manager as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or Others.

2.3.25 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Construction Manager's control. This date shall be

confirmed by a certificate of Substantial Completion signed by the Owner and Construction Manager.

2.3.26 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.3.27 "Work" means the construction and services necessary or incidental to fulfill the Construction Manager's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

2.3.28 "Worksite" or "Site" means the geographical area of the Project location as identified in Article 1 where the Work is to be performed.

### **ARTICLE 3 CONTRACT DOCUMENTS**

3.1 This Agreement is comprised of the following Contract Documents:

This Agreement, and all attached documents, appendices, and exhibits;

Drawings;

Specifications;

Special Conditions, if any; (listed in Appendix L)

The Request for Proposal issued by Owner, first advertised on July 17, 2020, with Project Identification "Sealed Bid # 20-6539"

Proposal(s) submitted by the Construction Manager and accepted by the Owner, dated August 6, 2020;

Any amendments or addenda executed by the Owner and the Construction Manager hereafter;

Approved Change Order(s) or field orders; and

Additional documents listed hereafter, if any: N/A

3.2 Interpretation of Contract Documents.

3.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Construction Manager shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable.



3.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Construction Manager shall immediately submit the matter to the Owner and, if directed, to its Design Professional for clarification. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Dates of Substantial or Final Completion or Contract Price or dispute mitigation and resolution.

3.2.3 Where figures are given, they shall be preferred to scaled dimensions.

3.2.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

3.2.5. ORDER OF PRECEDENCE. In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to §**Error! Reference source not found.** the drawings, specifications, and addenda issued before the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner pursuant to § 4.15.4 or designated as a Contract Document in §**Error! Reference source not found.**; (f) other Contract Documents listed in this Agreement.

- 3.3 In every case, requirements established by the Contract Documents shall be considered as the minimum which will be accepted.
- 3.4 Shop drawings and other submittals from the Construction Manager or its subcontractors and suppliers do not constitute a part of this Agreement.
- 3.5 The furnishing of information by the Owner to the Construction Manager shall not relieve the Construction Manager of responsibilities contained elsewhere in this Agreement to evaluate information and documents provided by the Owner and the Construction Manager shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the Construction Manager to perform the Work.

#### **ARTICLE 4 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

- 4.1 General Responsibilities. Upon execution of Appendix E and issuance of a Notice To Proceed by the Owner, the Construction Manager shall commence provision of the Work.

4.1.1 The Construction Manager shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents.

4.1.2 The Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions. In such case, the Construction Manager shall not be liable to the Owner for damages resulting from compliance with such instructions unless the Construction Manager

recognized and failed to timely report to the Owner any error, inconsistency, omission, or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences, or procedures.

4.1.3 The Construction Manager shall perform Work only within locations allowed by the Contract Documents, Laws, and applicable permits.

#### 4.2 Construction Personnel and Supervision.

4.2.1 The Construction Manager shall provide competent supervision for the performance of the Work. Before commencing the Work, the Construction Manager shall notify the Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so the Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, the Construction Manager shall name a different superintendent for the Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

4.2.2 The Construction Manager shall be responsible to the Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors.

4.2.3 The Construction Manager shall permit only fit and skilled persons to perform the Work. The Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, the Construction Manager shall immediately reassign the person on receipt of the Owner's written notice to do so.

4.2.4 The Construction Manager's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. If the Construction Manager changes its representative or their authority, the Construction Manager shall immediately notify the Owner in writing.

#### 4.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section are included in Construction Manager's work.

4.3.1 PRELIMINARY EVALUATION Construction Manager shall provide a preliminary evaluation of Owner's Program and report such findings to Owner and Design Professional.

4.3.2 CONSULTATION Construction Manager shall schedule and attend regular meetings with Owner and Design Professional. Construction Manager shall consult with Owner and Design Professional regarding site use and improvements and the selection of materials, building systems, and equipment. Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

4.3.3 SCHEDULE OF THE WORK When Project requirements have been sufficiently identified, Construction Manager shall prepare a preliminary Schedule of the Work for Design Professional's review and Owner's approval. Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of Owner, Construction Manager, Design Professional, and the requirements of governmental entities. As design proceeds, Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicate that milestone dates contained in prior Schedules of the Work will not be met, Construction Manager shall notify and make recommendations to Owner. If the Project is to be completed in phases, Construction Manager shall make recommendations to Owner and Design Professional regarding the phased issuance of the drawings and specifications.

#### 4.3.4 ESTIMATES

4.3.4.1 When Owner has sufficiently identified Owner's Program and other Project requirements and Design Professional has prepared other basic design criteria, Construction Manager shall prepare, for the review of Design Professional and approval of Owner, an initial estimate for the Project, utilizing area, volume, or similar conceptual estimating techniques.

4.3.4.2 When schematic or preliminary design documents have been completed by Design Professional and approved by Owner, Construction Manager shall prepare for the review of Design Professional and approval of Owner, a more detailed budget with supporting data. During the preparation of the design development documents or documents of comparable detail, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by The Parties.

4.3.4.3 When design development documents or documents of comparable detail have been completed by Design Professional and approved by Owner, Construction Manager shall prepare a further detailed estimate with supporting data for review by Design Professional and approval by Owner. During the preparation of the drawings and specifications, Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Parties.

4.3.4.4 If any estimate submitted to Owner exceeds previously approved estimates, Construction Manager shall notify and make recommendations to Owner.

4.3.5 CONSTRUCTION DOCUMENT REVIEW Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact Construction Manager's ability to perform the Work in

an expeditious and economical manner. Construction Manager shall issue a report to Design Professional and Owner for their review and action as appropriate. In addition, Construction Manager shall promptly report to Owner and Design Professional any errors or omissions which it discovers in the drawings and specifications.

- 4.3.6 TEMPORARY FACILITIES Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by Construction Manager, its Subcontractors, Subsubcontractors, and Suppliers.
  - 4.3.7 LONG-LEAD-TIME ITEMS Construction Manager shall recommend to Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. Construction Manager shall help expedite the delivery of long-lead-time items.
  - 4.3.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to Owner and Design Professional a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work. Owner shall promptly reply in writing to Construction Manager if Owner or Design Professional know of any objection to a subcontractor. Owner may designate specific persons or entities from whom Construction Manager shall solicit bids.
  - 4.3.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION Construction Manager shall consult with Owner regarding equal employment opportunity and affirmative action programs.
  - 4.3.10 CONSULTANTS Construction Manager shall assist Owner in selecting, retaining, and coordinating the professional services of a surveyor, testing laboratories, and special consultants as needed.
  - 4.3.11 PERMITS Construction Manager shall assist Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by Construction Manager.
  - 4.3.12 OTHER PRECONSTRUCTION SERVICES Construction Manager shall provide such other preconstruction services as are agreed upon by the Parties and identified in an attached exhibit to this Agreement.
- 4.4 Guaranteed Maximum Price Proposal (GMP).
- 4.4.1 The Construction Manager shall prepare and deliver to the Owner, with copies to the Professional if designated, a Guaranteed Maximum Price ("GMP") proposal which shall be attached hereto as Appendix A. The Construction Manager shall, at a minimum, include in the GMP proposal:
    - (i) a recital of the specific Construction Documents, including drawings, specifications, and all addenda thereto, used in preparation of the GMP proposal;

- (ii) the three elements of the Contract Price including:
  - a) General Conditions Cost, as defined in Section 9.2, not to exceed the General Conditions Guaranteed Maximum Cost, set forth in Appendix E;
  - b) estimated Subcontracts Cost, detailed by each subcontract, trade or bid division, and including a reasonable, separately stated maximum contingency amount for each subcontract, trade or bid division; and
  - c) The actual or estimated amount of the Management Fee, as applicable, as defined in Section 8.3;
- (iii) a description of all other inclusions to or exclusions from the GMP;
- (iv) all assumptions and clarifications;
- (v) the proposed Date of Substantial Completion upon which the GMP is based;
- (vi) an outline of preliminary Construction Schedule showing proposed start and finish dates of major components of construction; and
- (vii) the date by which the GMP proposal must be accepted by the Owner.

4.4.2 The Owner may, in its sole discretion and based on its sole judgment, (i) indicate its acceptance of a GMP Proposal; (ii) reject a GMP Proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a party or parties other than the Construction Manager.

4.4.3 If the Owner accepts a GMP Proposal, the Parties shall complete and execute Appendix E attached hereto, and the Owner shall issue a written notice to proceed to the Construction Manager ("Notice to Proceed") establishing the date construction is to commence (the "Commencement Date"). The Construction Manager shall not expend any monies for construction prior to receipt of such Notice to Proceed without the written approval of the Owner.

4.5 Cooperation With Work of Owner and Others. The Construction Manager shall perform the Work so as not to interrupt any operations of the Owner on the Site.

4.5.1 The Construction Manager understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Construction Manager's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.

4.5.2 The Construction Manager shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Construction Manager understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.

4.5.3 The Construction Manager shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for

performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Contract Documents.

#### 4.6 Construction Services and Administration.

4.6.1 Construction Manager's On-Site Facilities. Commencing at the Date of Commencement and terminating on the Date Of Final Completion, the Construction Manager shall provide a Site field office and toilet facilities at the Project Site for the duration of the construction period.

#### 4.6.2 Sufficiency Of Site and Worksite Conditions.

4.6.2.1 Prior to signing this Agreement, the Construction Manager has

(i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and

(ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of the Work.

4.6.2.2 In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the Construction Manager has also

(i) reviewed all available as-built and record drawings, plans and specifications; and

(ii) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing this Agreement.

Claims resulting from the Construction Manager's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

4.6.3 Concealed or Unknown Site Conditions. If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. The Construction Manager shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Construction Managers Fee, Date of Substantial Completion or Date of Final Completion, as a result of the unknown condition shall be determined as provided in Article 10.

4.6.4 The Construction Manager's failure to notify the Professional(s) and Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

4.6.5 Prior to commencing the Work, the Construction Manager shall examine and compare the drawings and specifications with information furnished by the Owner that are considered Contract Documents, relevant field measurements made by the Construction Manager, and any visible conditions at the Worksite affecting the Work.

4.6.6 Should the Construction Manager discover any errors, omissions, or inconsistencies in the Contract Documents, the Construction Manager shall promptly report them to the Owner. It is recognized, however, that the Construction Manager is not acting in the capacity of a licensed design professional, and that the Construction Manager's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies or to ascertain compliance with applicable laws, building codes, or regulations. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

4.6.7 The Construction Manager shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless the Construction Manager knowingly fails to report a recognized problem to the Owner.

4.6.8 The Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of the Construction Manager's reports described in the three preceding subsections.

4.6.9 If the Construction Manager performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Contract Documents; or (ii) a variance between the Contract Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Owner and prior to receiving written authorization from the Owner to proceed, the Construction Manager shall be responsible for the consequences of such performance.

4.6.10 Cost Reporting. The Construction Manager shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Construction Manager shall maintain a complete set of all books and records prepared or used by the Construction Manager with respect to the Project. The Construction Manager's records supporting its performance and billings under this Agreement shall be current, complete, and accurate and maintained according to Generally Accepted Accounting Principles. The Owner shall be afforded access to all of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. The Construction Manager shall preserve all such records for a period of three years after the final payment or longer where required by Law.

4.6.10.1 The Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee their accuracy.

4.7 Materials Furnished by the Owner or Others.

4.7.1 If the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Construction Manager shall be the responsibility of the Construction Manager and may be deducted from any amounts due or to become due the Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

4.8 Quality Control, Tests and Inspections. The Construction Manager shall develop and implement a quality management program to insure quality construction.

4.8.1 The Construction Manager shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Construction Manager shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in subsection 4.8.3, the Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by the Construction Manager and promptly delivered to the Owner.

4.8.2 If the Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, the Construction Manager shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at the Owner's expense except as provided in the subsection below.

4.8.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of the Construction Manager, the Construction Manager shall be responsible for costs of correction and retesting.

4.9 Workmanship. The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

4.10 Warranty.

4.10.1 The Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the Owner's request, the Construction Manager shall



furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Construction Managers warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or Others, or abuse. The Construction Manager's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

4.10.2 With respect to any portion of Work first performed after Substantial Completion, the Construction Managers warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

4.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty.

4.10.4 The Construction Manager shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents, and shall deliver such warranties to Owner on or before the date of Substantial Completion, including a comprehensive list identifying all warranties. Construction Manager's liability for such warranties shall be limited to the one-year correction period referred to in the section immediately below. After that period the Construction Manager shall provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers for such extended warranties.

#### 4.11 Construction Manager's Inspection and Correction of Defective or Incomplete Work.

4.11.1 Rejection and Correction of Work in Progress. During the course of Project, the Construction Manager shall inspect and promptly reject any Work (i) which does not conform to the Contract Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

4.11.1.1 The Construction Manager shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Construction Manager shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.

4.11.1.2 The Construction Manager shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the Construction Manager's correction or removal of rejected Work.

#### 4.11.2 Correction of Work Within One Year.

4.11.2.1 If prior to Substantial Completion or within one year after the date of Substantial Completion of the Work any Defective Work is found, the Owner shall promptly notify the Construction Manager in writing. Unless the Owner provides

written acceptance of the condition, the Construction Manager shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the Owner discovers and does not promptly notify the Construction Manager or give the Construction Manager an opportunity to test or correct Defective Work as reasonably requested by the Construction Manager, the Owner waives the Construction Manager's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

4.11.2.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Construction Manager.

4.11.2.3 If the Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due the Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner.

4.11.2.4 The Construction Manager's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, the Owner discovers any Work which the Owner considers Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Construction Manager and allow the Construction Manager an opportunity to correct the Work if the Construction Manager elects to do so. If the Construction Manager elects to correct the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner and shall complete the correction of Work within a mutually agreed timeframe. If the Construction Manager does not elect to correct the Work, the Owner may have the Work corrected by itself or Others, and, if the Owner intends to seek recovery of those costs from the Construction Manager, the Owner shall promptly provide the Construction Manager with an accounting of the correction costs it incurs.

4.11.2.5 If the Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, the Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

4.11.2.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Construction Manager's other obligations under the Contract Documents.

4.11.2.7 Prior to final payment, at the Owner's option and with the Construction Manager's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

#### 4.12 Correction of Covered Work.

4.12.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective, the Construction Manager shall pay the costs of uncovering and replacement.

4.12.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, a portion of the Work is covered, the Owner, by written request, may require the Construction Manager to uncover the Work for the Owner's observation. In this circumstance the Work shall be replaced at the Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

#### 4.13 Safety of Persons and Property, Control of Work Site.

4.13.1 The Construction Manager shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Construction Manager shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

4.13.2 The Construction Manager shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any other individual.

4.13.3 The Construction Manager shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.

4.13.4 Safety Precautions and Programs. The Construction Manager shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with Laws.

4.13.4.1 Security For The Project. The Construction Manager shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

4.13.4.2 The Construction Manager shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or

offsite locations for use in the Work; and (c) property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Worksite.

4.13.4.3 Construction Manager's Safety Representative. The Construction Manager's Worksite Safety Representative is Jim Gaine, phone: 843-276-0968, who shall act as the Construction Managers authorized safety representative with a duty to prevent accidents. If no individual is identified in this subsection, the safety representative shall be the Construction Manager's Representative. The Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When the Construction Manager is required to file an accident report with a public authority, the Construction Manager shall furnish a copy of the report to the Owner.

4.13.4.4 The Construction Manager shall provide the Owner with copies of all notices required of the Construction Manager by law or regulation. The Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

4.13.4.5 Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent acts or omissions of the Construction Manager, or anyone for whose acts the Construction Manager may be liable, shall be promptly remedied by the Construction Manager. With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss; or (b) accept the damage or loss.

4.13.4.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Construction Manager's safety program, may require the Construction Manager to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Construction Manager does not adopt corrective measures, the Owner may perform them and deduct their cost from the GMP. The Construction Manager agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on the Construction Manager's compliance with the Owner's reasonable request.

4.14 Emergencies. In an emergency affecting the safety of persons or property, the Construction Manager shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in Article 10.

4.15 Hazardous Materials.

4.15.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under Laws or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. The Construction Manager shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

4.15.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, the Construction Manager shall be entitled to immediately stop Work in the affected area. The Construction Manager shall promptly report the condition to the Owner, the Design Professional, and, if required, the governmental agency with jurisdiction.

4.15.3 The Construction Manager shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

4.15.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work. The Construction Manager shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

4.15.5 If the Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Construction Manager shall be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion.

4.15.6 Materials Brought to the Worksite.

4.15.6.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Construction Manager, Subcontractors, the Owner or Others, shall be maintained at the Worksite by the Construction Manager and made available to the Owner, Subcontractors, and Others.

4.15.6.2 The Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work.

4.15.6.3 This section shall survive the completion of the Work or any termination of this Agreement.

4.16 Compliance with Governmental Requirements. The Construction Manager shall:

(i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;

(ii) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work; and

(iii) give all notices required of it by governmental authorities relating to the Project.

4.17 Records. The Construction Manager shall, concurrently with performance, maintain detailed records of activities on the Site.

4.16.1 As-Built Drawings. The Construction Manager shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Professional(s), the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Construction Manager shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction.

4.18 Bribes And Kick-Backs. The Construction Manager shall not by any means:

(i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;

(ii) confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;

(iii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or

(iv) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Construction Manager has a direct or indirect proprietary or other pecuniary interest.

4.19 Incident Reporting. The Construction Manager shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.

4.20 Commissioning. The Construction Manager shall, through the Owner's Representative, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.

4.20.1 The Construction Manager shall provide the Owner with operation and maintenance manuals and other operational documentation not less than twenty-eight calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.

4.20.2 The Construction Manager shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.

#### 4.21 Submittals.

4.21.1 The Construction Manager shall submit to the Owner and the Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. The Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, the Construction Manager shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. The Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review and approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Neither the Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, the Construction Manager agrees upon request to submit in a timely fashion to the Design Professional and the Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Owner.

4.21.2 Submittal Schedule. The Construction Manager shall timely prepare and transmit to the Owner a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Owner; and (iii) set forth specific dates for submission of the listed submittals. The Construction Manager shall review and approve all submittals prior to submission to the Owner.

4.21.3 Processing Of Submittals. The Construction Manager shall in timely fashion review, approve if appropriate and forward submittals to the Owner for review and approval along with such detail and information as the Owner requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.

4.21.4 The Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval of submittals by the Owner shall not relieve the Construction Manager from responsibility for Defective Work or from complying with this Contract, including all plans and specifications, except as changed by Change Order.

4.21.5 The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

4.21.6 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to the Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.

- 4.21.7 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Construction Manager obtains approvals required under the Contract Documents for substitutions. All such substitutions shall be promptly memorialized in a Change Order no later than seven (7) Days following approval by the Owner and, if applicable, Design Professional provide for an adjustment in the Contract Price or Contract Time.
- 4.22 Permits and Fees. The Construction Manager shall give public authorities all notices required by law and, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. The Construction Manager shall provide to the Owner copies of all notices, permits, licenses, and renewals required under this Agreement.
- 4.23 Cutting, Fitting, and Patching.
- 4.22.1 The Construction Manager shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others.
- 4.23.2 Cutting, patching, or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.
- 4.24 Cleaning Up.
- 4.24.1 The Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.
- 4.24.2 If the Construction Manager fails to commence compliance with cleanup duties within two (2) Business Days after written notification from the Owner of non-compliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the Construction Manager in the next payment period.
- 4.25 Access to Work. The Construction Manager shall facilitate the access of the Owner, its Design Professional, and Others to Work in progress.
- 4.26 Compliance with Laws. The Construction Manager shall comply with all Laws at its own costs. The Construction Manager shall be liable to the Owner for all loss, cost, or expense attributable to any acts or omissions by the Construction Manager, its employees, subcontractors, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to the Owner is given and advance approval by appropriate authorities, including the Owner, is received.



## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

- 5.1 Information and Services. The Owner shall provide the Construction Manager with information reasonably necessary to assist the Construction Manager in performing its services including, if applicable:
- (i) the Site legal description and any required survey;
  - (ii) all written and tangible material in its possession concerning conditions below ground at the Site;
  - (iii) if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and
  - (iv) the Owner's pertinent Project dates and key milestone dates.

Any information or services to be provided by the Owner shall be fulfilled with reasonable detail and in a timely manner.

- 5.2 Timely Compensation of Construction Manager. The Owner shall timely compensate the Construction Manager in accordance with this Agreement.
- 5.3 Owner Review of Documents. The Owner shall review documents prepared by the Construction Manager in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Construction Manager of any of its responsibilities.
- 5.4 Status of Owner. The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Construction Manager, for any of the foregoing purposes, be deemed the agent of the Owner.
- 5.5 Owner's Utilities. The Owner shall provide water, gas and electrical energy only as they exist at the Site prior to the start of construction. The Construction Manager shall be responsible to provide and pay for connections to, extensions from and means of using these utilities.

5.5.1 The Owner will pay utility company bills for water, gas and electrical energy which is required for the Project and which passes through the Owner's meters. However, the Owner shall not pay for (i) water which is expended without proper regard for ecological and conservation considerations; (ii) electrical energy expended in electric heating devices; or (iii) utilities for Construction Manager's field offices.

5.5.2 Acceptance by the Construction Manager of the use of the Owner's water, gas and electrical energy constitutes a release from the Construction Manager to the Owner of all claims and liability for any damages or losses which may be incurred by the Construction Manager as a result of water, gas and electrical energy outages or voltage variations or surges.

- 5.6 **Statements Of Owner's Capacity.** The Owner, upon reasonable written request, shall furnish to the Construction Manager in writing statements of
- (i) the record legal title to the Site on which the Project is located and the Owner's interest therein at the time of execution of this Agreement; and
  - (ii) the Owner's financial capacity to pay for the Project, subject to such reasonable confidentiality requirements that the Owner may impose.
- 5.7 **Owner's Cutting And Patching.** Cutting, patching, or altering the Work by the Owner or Others shall be done with the prior written approval of the Construction Manager, which approval shall not be unreasonably withheld,
- 5.8 **Owner's Right to Clean Up.** In case of a dispute between the Construction Manager and Others with regard to respective responsibilities for cleaning up at the Worksite, the Owner may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.
- 5.9 **Cost of Correcting Damaged or Destroyed Work.** With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Construction Manager incurs additional costs or is delayed due to such loss or damage, the Construction Manager shall be entitled to an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee and Date of Substantial Completion or Date of Final Completion.

## **ARTICLE 6 SUBCONTRACTS**

- 6.1 **Subcontractors.** The Work not performed by the Construction Manager with its own forces shall be performed by Subcontractors. All subcontracts shall be issued on a lump sum basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor
- 6.2 **Award of Subcontracts and Other Contracts for Portions of the Work.**
- 6.2.1 Promptly after the execution of this Agreement, the Construction Manager shall provide the Owner, and, if directed, the Design Professional with a written list of the proposed subcontractors and significant Material Suppliers. If the Owner has a reasonable objection to any proposed subcontractor or material supplier, the Owner shall notify the Construction Manager in writing. Failure to promptly object shall constitute acceptance.
  - 6.2.2 If the Owner has reasonably and promptly objected, the Construction Manager shall not contract with the proposed Subcontractor or Material Supplier, and the Construction Manager shall propose another acceptable Subcontractor or Material Supplier to the Owner. An appropriate Change Order shall reflect any increase or decrease in the GMP or Dates of Substantial or Final Completion because of the substitution.
- 6.3 **Binding of Subcontractors and Material Suppliers.** The Construction Manager agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's or Material Supplier's

portions of the Work. It is the intent of the Owner and the Construction Manager that the obligations of the Construction Manager's subcontractors and suppliers inure to the benefit of the Owner and the Construction Manager, and that the Owner be a third-party beneficiary of the Construction Manager's agreements with its subcontractors and suppliers.

- 6.4 The Construction Manager's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Construction Manager's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Agreement, and upon request of the Owner, the Construction Manager's subcontractors and suppliers will perform services for the Owner.
- 6.5 Resolution Of Trade Disputes. The Construction Manager shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.
- 6.6 Contingent Assignment of Subcontracts.

6.6.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by the Construction Manager to the Owner, subject to the prior rights of any surety, provided that:

6.6.1.1 this Agreement is terminated by the Owner pursuant to sections 17.1, 17.3 or 17.4; and

6.6.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Construction Manager in writing, and assumes all rights and obligations of the Construction Manager pursuant to each subcontract agreement.

6.6.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractors compensation shall be equitably adjusted as a result of the suspension.

## **ARTICLE 7 TIME**

- 7.1 Date of Commencement. The Date of Commencement shall be established in a Notice to Proceed issued by the Owner.

7.1.1 Substantial/Final Completion. Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in Amendment 1 to this Agreement subject to adjustments as provided for in the Contract Documents. The Owner and the Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in Appendix A. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

7.1.2 Time is of the essence for this Agreement.

7.1.3 Unless instructed by the Owner in writing, the Construction Manager shall not knowingly commence the Work before the effective date of insurance to be provided by the Construction Manager or the Owner as required by the Contract Documents.

## 7.2 Schedule of The Work.

7.2.1 Before submitting the first application for payment, the Construction Manager shall submit to the Owner and, if directed, the Design Professional a Schedule of the Work showing the dates on which the Construction Manager plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner. The Construction Manager shall comply with the approved Schedule of the Work, unless directed by the Owner to do otherwise or the Construction Manager is otherwise entitled to an adjustment in the Contract Time. The Construction Manager shall update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.

7.2.2 The Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. The Owner may require the Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others. To the extent such changes increase the Construction Manager's costs or time, the GMP or the Dates of Substantial or Final Completion shall be equitably adjusted.

## 7.3 Delays and Extensions Of Time.

7.3.1 If the Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Construction Manager, the Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. Examples of causes beyond the control of the Construction Manager include, but are not limited to, the following: (a) acts or omissions of the Owner, the Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by the Owner pending dispute resolution or suspension by the Owner under section 17.3; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the Construction Manager; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics, (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. The Construction Manager shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of Article 10.

7.3.2 In addition, if the Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, the Construction Manager shall be entitled to an equitable adjustment in the GMP subject to section 7.7.

7.3.3 Notice of Delays. If delays to the Work are encountered for any reason, the Construction Manager shall provide prompt written notice to the Owner of the cause of such delays after the Construction Manager first recognizes the delay. The Owner and the Construction Manager agree to take reasonable steps to mitigate the effect of such delays.

7.4 Notice of Delay Claims. If the Construction Manager requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in the section above, the Construction Manager shall give the Owner written notice of the claim in accordance with section 10.5. If the Construction Manager causes delay in the completion of the Work, the Owner shall be entitled to recover its additional costs subject to section 7.7. The Owner shall process any such claim against the Construction Manager in accordance with Article 10.

7.5 Monitoring Progress and Costs. Following acceptance by the Owner of the GMP, the Construction Manager shall establish a process for monitoring actual costs against the GMP and actual progress against the Schedule of Work. The Construction Manager will provide written reports to the Owner at intervals as agreed to by the Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

7.6 Liquidated Damages.

7.6.1 Substantial Completion. The Owner and the Construction Manager agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Substantial Completion.

7.6.1.1 The Construction Manager understands that if the Date of Substantial Completion established by this Agreement, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Substantial Completion is not attained, the Construction Manager shall pay the Owner One-thousand dollars (\$1,000.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extras costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Substantial Completion.

7.6.2 Final Completion. The Owner and the Construction Manager agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Final Completion.

7.6.2.1 The Construction Manager understands that if the Date of Final Completion established by this Agreement, as may be amended by subsequent Change Order is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Final Completion is not attained the Construction Manager shall pay the Owner as liquidated damages for delay and not as a penalty, fifteen (15%) percent of the daily amount stated for failure to timely achieve Substantial Completion, even if not

actually imposed, for each calendar day of unexcused delay in achieving Final Completion. By way of example and not as a limitation, if Owner fails to achieve Final Completion by the required date, the Construction Manager shall pay to Owner \$ 150.00 per day for each calendar day of unexcused delay in achieving Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Final Completion.

7.6.3 Other Liquidated Damages. The Owner and the Construction Manager may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

7.7 Limited Mutual Waiver Of Consequential Damages. Except for damages mutually agreed upon by the Parties as liquidated damages in this Article and excluding losses covered by insurance required by the Contract Documents, the Owner and the Construction Manager agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. The Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The following items of damages are excluded from this mutual waiver: None.

7.7.1 The Owner and the Construction Manager shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

## **ARTICLE 8 COMPENSATION OF CONSTRUCTION MANAGER**

8.1 The Owner shall compensate the Construction Manager for Work performed on the following basis:

8.1.1 the Cost of the Work as allowed in Article 9; and

8.1.2 the Construction Manager's Fee subject to adjustment as provided in section 8.4.

8.2 The compensation to be paid shall be limited to the GMP established in Appendix A, as the GMP may be adjusted under Article 10.

8.2.1 Payment for Work performed shall be as set forth in Article 11.

8.3 Construction Manager's Fee. The Construction Managers Fee shall be \$75,000.00, subject to adjustment as provided in section 8.4.

8.3.1 Items within the Management Fee and for which the Construction Manager is entitled to no additional compensation include, without limitation:

- (i) direct costs incurred with the exception of those specifically enumerated compensable as a General Conditions Cost or a Subcontracts Cost;
- (ii) wages, salaries, bonuses and incentive compensation, of the Construction Manager's supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on or off the Project Site, including all company overhead and expenses
- (iii) the cost of Construction Manager's home or branch office employees or consultants not at the Project Site;
- (iv) cost of fringe benefits, contributions, assessments and taxes, including for example such items as Unemployment Compensation and Social Security, to the extent that such cost is required by law and is based on the compensation paid to the Construction Manager's employees referred to in subparagraphs (ii) and (iii) above;
- (v) non-field office (home and branch office) operational expenses such as telegrams, telephone service and long-distance and zone telephone charges, postage, office supplies, expressage, and other similar expenses;
- (vi) data-processing costs indirectly related to the Work; including hardware, software, and CAD costs;
- (vii) personnel expenses and temporary living allowances incurred due to relocation of personnel required for the Work;
- (viii) cost of all non-project specific insurance;
- (ix) all general operating expenses;
- (x) all capital expenses, including any interest;
- (xi) all sales, use or similar taxes related to the Project imposed by any governmental authority on the Construction Manager's services and non-reimbursable costs;
- (xii) any costs which would cause the Contract Price to exceed the GMP; and
- (xiii) any costs or expenses incurred by the Construction Manager, not included in the General Conditions Cost, for provision of management services necessary to complete the Project in an expeditious and economical manner consistent with this Agreement and the best interests of the Owner.

8.4 Adjustment In The Construction Manager's Fee. Adjustment in the Construction Managers Fee shall be made as follows:

8.4.1 for changes in the Work as provided in Article 10, the Construction Manager's Fee shall be adjusted as follows: 0% of the increase to Cost of the Work.

8.4.2 for delays in the Work not caused by the Construction Manager, except as provided in section 7.3, there shall be an equitable adjustment in the Construction Manager's Fee to compensate the Construction Manager for increased expenses; and

8.4.3 if the Construction Manager is placed in charge of managing the replacement of an insured or uninsured loss, the Construction Manager shall be paid an additional fee in the same proportion that the Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

8.5 Preconstruction Services Compensation. Construction Manager shall be compensated for Preconstruction Services as follows: N/A

## **ARTICLE 9 COST OF THE WORK**

9.1 The Owner agrees to pay the Construction Manager for the Cost of the Work as defined in this Article. This payment shall be in addition to the Construction Manager's Fee stipulated in section 8.3.

9.2 General Conditions Cost. The following items are included within Cost of the Work (the "General Conditions Cost"):

9.2.1 Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work.

9.2.2 Salaries of the Construction Managers employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

9.2.2.1 Project Management

9.2.2.2 Administrative

9.2.2.3 Jobsite Supervision

9.2.3 costs, including transportation and storage, installation, maintenance, dismantling 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; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value;

9.2.4 costs incurred to provide site safety;

9.2.5 costs of removal of debris from the site;

9.2.6 costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;



- 9.2.7 that portion of the reasonable expenses of the Construction Manager's personnel incurred while traveling in discharge of duties directly connected with the Work;
- 9.2.8 that portion of insurance and bond premiums that can be directly attributed to this Contract for Construction. Premiums shall be net of trade discounts, volume discounts, dividends and other adjustments;
- 9.2.9 Sales, use or similar taxes imposed by a governmental authority and paid by the Construction Manager, and directly related to the Work;
- 9.2.10 fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract for Construction to pay;
- 9.2.11 data processing costs directly related to the Work; however, these costs shall not include any hardware, software, or CADD costs unless approved by the Owner in writing;
- 9.2.12 expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner;
- 9.2.13 the cost of obtaining and using all utility services required for the Work;
- 9.2.14 the cost of crossing or protecting any public utility, if required, and as directed by the Owner;
- 9.2.15 all reasonable costs and expenditures necessary for the operation of the site office, such as stationary, supplies, blueprinting, furniture, fixtures, office equipment and field computer services, provided that quantity and rates are subject to Owner's prior written approval;
- 9.2.16 the cost of secure off-site storage space or facilities approved in advance by Owner;
- 9.2.17 printing and reproduction of the Construction Documents;
- 9.2.18 rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers; however any rental charge shall not exceed the purchase price of such facilities, machinery, equipment or tools; and
- 9.2.19 other expenses or charges properly incurred and paid in the prosecution of the Work, with the prior written approval of the Owner.
- 9.3 Discounts. All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.
- 9.4 Price Guarantees.

9.4.1 Upon execution of Appendix E, the Construction Manager guarantees that the Contract Price shall not exceed the GMP. All costs or expenses that would cause the Contract Price to exceed the GMP shall be borne by the Construction Manager unless adjusted by Change Order.

9.4.2 Upon execution of Appendix E, the Construction Manager guarantees that the General Conditions Cost shall not exceed the General Conditions Guaranteed-Maximum Cost and that all costs or expenses that would cause the General Conditions Cost to exceed the General Conditions Guaranteed-Maximum Cost shall be borne by the Construction Manager unless adjusted by Change Order.

9.4.3 Upon execution of Appendix E, the Construction Manager guarantees that, (i) unless adjusted by Change Order, the final cost to the Owner of each individual subcontract, trade or bid division shall not exceed the sum total of the estimated cost and contingency for that subcontract, trade or bid division as set forth in the GMP; (ii) no unused contingency amount from any subcontract, trade or bid division shall be transferred, carried over or applied to any other subcontract, trade or bid division, but rather such unused contingency shall inure to the Owner's benefit; and (iii) the cost of any subcontract, trade or bid division exceeding the sum total of the estimated cost and contingency for that subcontract, trade or bid division shall be borne by the Construction Manager unless adjusted by Change Order

9.4.4 Upon execution of Appendix E, the Construction Manager guarantees that to the extent the GMP proposal includes contingencies, no unused contingency shall be transferred, carried over or applied to any other GMP line item, but rather such unused contingency shall inure to the Owner's benefit.

## **ARTICLE 10 CHANGES**

### **10.1 Change Order Requests.**

10.1.1 The Construction Manager may request or the Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion. Any such requests for changes in the Work shall be processed in accordance with this Article.

10.1.2 With respect to requests for changes by parties other than the Construction Manager, the Construction Manager shall prepare and submit change order requests to the Professional, if designated, or to the Owner.

10.1.3 When requested to do so, the Construction Manager shall prepare and submit to the Owner or designated Professional drawings, specifications or other data in support of a change order request.

10.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.

10.2 Owner-Directed Changes. The Owner may unilaterally direct the Construction Manager to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of this Agreement, and the Construction Manager, upon written direction from the Owner, shall proceed with such change.

10.3 Professional-Directed Changes. If Owner designates a Professional authorized to direct changes, such Professional, without Owner's prior approval, may authorize or direct the Construction Manager to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Construction Manager shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Construction Manager.

10.4 Administration of Changes.

10.4.1 If designated, the Professional will administer and manage all change order requests and Change Orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and Change Orders.

10.4.2 If no Professional has been designated, Owner will administer change order requests.

10.5 Claims for Additional Cost or Time. Except as provided in subsection 7.3.2 and section 7.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, the Construction Manager shall give the Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, the Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, the Owner shall respond in writing denying or approving the claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.

10.5.1 Compensation for Changes. With respect to all change order requests involving credit to the Owner or additional compensation to the Construction Manager, the Construction Manager shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the Owner.

10.5.1.1 If price quotations for change order requests are determined by the Owner to be unreasonable, the Construction Manager shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Owner determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.

10.5.1.2 Change Order – Material Increase in Scope. For Change Orders materially increasing or decreasing the Construction Manager’s scope of services, the Construction Manager’s Management Fee shall be equitably adjusted.

10.5.1.3 Change Order – Increase in Subcontracts Cost. If the Subcontracts Cost is increased by Change Order, the Owner shall pay the Construction Manager the aggregate net cost directly paid by the Construction Manager to subcontractors or suppliers for performance of the Work. If the Management Fee is being paid by the Owner to the Construction Manager on a “Fixed Percentage of Aggregate Subcontracts” basis, the Management Fee shall be increased according to the percentage set forth in Section 8.3 above; if the Construction Manager is being paid on a lump sum fixed fee basis, the Construction Manager shall receive no additional Management Fee.

10.5.1.4 The Construction Manager and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Agreement, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.

10.5.1.5 It is the responsibility of the Construction Manager to review and approve all pricing of additional work required of its subcontractors and suppliers.

10.5.1.6 Change Order – Decrease in Subcontracts Cost. If the Subcontracts Cost is decreased by change order, payment due from the Owner to the Construction Manager shall be reduced by the amount the Construction Manager is no longer obligated to pay subcontractors or suppliers for performance of the Work. If the Management Fee is being paid by the Owner to the Construction Manager on a “Fixed Percentage of Aggregate Subcontracts” basis, the Management Fee shall be decreased according to the percentage set forth in Section 8.3; if the Construction Manager is being paid on a lump sum fixed fee basis, the Construction Manager’s Fee shall not be reduced.

10.6 Performance of Changes. Upon receipt of a Change Order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Contract Documents.

10.7 Disputes Regarding Changes.

10.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing within seven (7) Days of the disputed Change Order decision, and prior to performance of the Work which is the subject of the dispute, and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.

10.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the appropriate Professional, if designated, will (i)

receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Contract Price or time.

- 10.8 Necessity for Signed Writing. With the Exception of Change Orders which do not involve a change in Project cost, time for construction, scope, or approved design elements, all Change Order requests are subject to Cobb County Board of Commissioners approval, and if approved, must be signed by the Chairman indicating such approval. Change Orders shall document changes in the scope of Work as well as increases or decreases in cost to the original Contract. No act, omission or course of dealing shall alter the requirement that Change Orders shall be in writing and signed by the Owner, and that Change Orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Construction Manager understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

#### **ARTICLE 11 PAYMENT**

- 11.1 Management Fee. Unless adjusted as provided in Section 8.4, the Owner will pay to the Construction Manager as a Management Fee, \$75,000.00 as shown on Appendix "A" (which, before any adjustment is \$75,000.00). Unless otherwise agreed by the Parties, the Management Fee shall be paid in Four (4) equal monthly installments of \$18,750.00 each.

- 11.2 Schedule of Values. Within thirty (30) Days from the date of execution of this Agreement, the Construction Manager shall prepare and submit to the Owner and, if directed, the Design Professional a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.

11.2.1 The Construction Manager's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Construction Manager shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Construction Manager's payment requests. The schedule of values shall not be changed without written change order authorized by the Owner.

11.2.3 Unit Prices. If any portion of the Contract Price is determined by the application of unit prices, the number of units contained in the Construction Manager's Compensation Schedule is an estimate only, and the compensation to the Construction Manager shall be determined by the actual number of units incorporated in, or required by, the Work.

- 11.3 Progress Payments.

11.3.1 Applications. The Construction Manager shall submit to the Owner and, if directed, the Design Professional a monthly application for payment no later than the First (1st) Day of the calendar month for the preceding thirty (30) Days. The Construction Manager's applications for payment shall be itemized and supported by the Construction Manager's schedule of values and any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly

authorized Change Orders. The monthly installment payment of the Management Fee, as provided in Section 11.1 shall be included as a line item on each application for payment. The Owner shall pay the amount otherwise due on any payment application, as certified by the Design Professional, if applicable, no later than twenty (20) Days after the Construction Manager has submitted a complete and accurate payment application, or such shorter time period as required by applicable state statute.

11.3.2 Invoice Warranties and Guarantees. The Construction Manager expressly warrants and guarantees to the Owner that:

(i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Construction Manager, whichever occurs first;

(ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and

(iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Construction Manager, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager, or its subcontractors or suppliers.

11.3.3 Construction Manager's Signature. The signature of the Construction Manager on any invoice constitutes the Construction Manager's certification to the Owner that (i) the Construction Manager's services listed in the invoice have progressed to the level indicated and have been performed as required by this Agreement; (ii) the Construction Manager has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and (iii) the amount requested is currently due and owing.

11.3.4 Stored Materials and Equipment. Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by the Construction Manager of bills of sale and proof of required insurance, or such other documentation satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the Worksite.

11.3.5 Nonrefundable Material Deposits. Applications for payment will include materials and equipment from suppliers requiring deposits prior to delivery to and storage at the site. Approval of payment applications for nonrefundable material deposits shall be conditioned on submission by the Contractor of bills of sale or other such documentation satisfactory to the Owner to establish the proper valuation of the nonrefundable material deposits, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein.

11.3.6 Lien Waivers and Liens.

11.3.6.1 Partial Lien Waivers and Affidavits. If required by the Owner, as a prerequisite for payment, the Construction Manager shall provide partial lien and claim waivers in the amount of the application for payment and affidavits from its Subcontractors and Material Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall the Construction Manager be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

11.3.6.2 Responsibility For Liens. If the Owner has made payments in the time required by this Article, the Construction Manager shall, within thirty (30) Days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If the Construction Manager fails to take such action on a lien, the Owner may cause the lien to be removed at the Construction Manager's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to Article 17 relating to the subject matter of the lien.

11.3.7 RETAINAGE From each progress payment made before Substantial Completion, Owner may retain ten percent (10%), of the amount otherwise due after deduction of any amounts as provided in §11.4, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:

11.3.7.1.1 after the Work is fifty percent (50%) complete, Owner shall withhold no additional retainage and shall pay Construction Manager the full amount due on account of subsequent progress payments;

11.3.7.1.2 Owner may, in its sole discretion, reduce the amount to be retained at any time;

11.3.7.2 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, Construction Manager may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

11.4 Adjustment of Construction Manager's Payment Application.

11.4.1 The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Construction Manager is responsible under this Agreement:

(i) the Construction Manager's repeated failure to perform the Work as required by the Contract Documents;

(ii) except as accepted by the insurer providing builders risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and

caused by the Construction Manager to the Owner or Others to whom the Owner may be liable;

(iii) the Construction Manager's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner;

(iv) Defective Work not corrected in a timely fashion;

(v) reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion;

(vi) reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

(vii) uninsured third-party claims involving the Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Construction Manager furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

11.4.2 No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld,

11.5 Acceptance of Work. Neither the Owners payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

11.6 Payment Delay. If for any reason not the fault of the Construction Manager the Construction Manager does not receive a progress payment from the Owner within seven (7) Days after the time such payment is due, then the Construction Manager, upon giving seven (7) Days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Construction Manager has been received, including interest for late payment. The GMP and Dates of Substantial or Final Completion shall be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay, and start-up.

11.7 Substantial Completion.

11.7.1 The Construction Manager shall notify the Owner and, if directed, the Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by the Owner without excessive interference in completing any remaining unfinished Work. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner, with the assistance of its Design Professional, shall promptly compile a list of items to be completed or



corrected so the Owner may occupy or use the Work or designated portion for its intended use. The Construction Manager shall promptly complete all items on the list.

11.7.2 When Substantial Completion of the Work or a designated portion is achieved, the Construction Manager shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of the Owner and Construction Manager for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the Construction Manager to the Owner and, if directed, to the Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

11.7.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

11.8 Partial Occupancy or Use. The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. The Construction Manager shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy.

11.9 Final Completion and Final Payment.

11.9.1 Upon notification from the Construction Manager that the Work is complete and ready for final inspection and acceptance, the Owner, with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

11.9.2 When the Work is complete, the Construction Manager shall prepare for the Owner's written acceptance a final application for payment stating that to the best of the Construction Managers knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

11.9.3 Final payment of the balance of the GMP shall be made to the Construction Manager within thirty (30) Days after the Construction Manager has submitted an application for final payment, including submissions required under subsection 11.9.4 and a Certificate of Final Completion has been executed by the Owner and Construction Manager.

11.9.4 Final payment shall be due on the Construction Manager's submission of the following to the Owner:

11.9.4.1 an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

11.9.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

11.9.4.3 release of any liens, conditioned on final payment being received;

11.9.4.4 consent of any surety; and

11.9.4.5 any outstanding known and unreported accidents or injuries experienced by the Construction Manager or its Subcontractors at the Worksite.

11.9.5 Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

11.9.6 Acceptance of Final Payment. Unless the Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

#### 11.10 Late Payment.

11.10.1 Interest on Outstanding Amounts Due. Interest shall accrue on amounts owed by the Owner to the Construction Manager which remain unpaid thirty calendar days following the date on which payment is due. Said interest shall accrue at the discounted ninety-day U.S. Treasury bill rate as established by the Weekly Auction and as reported in *The Wall Street Journal* on the weekday following each such Weekly Auction.

11.10.2 No interest shall accrue when payment is delayed because of a dispute between the Owner and the Construction Manager, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement.

11.11 Taxes. The Construction Manager shall incorporate into the Contract Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of this Agreement, whether or not yet effective or merely scheduled to go into effect. The Construction Manager shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Owner by any taxing authority with respect to such taxes. The Construction Manager shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or Construction Manager on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

11.12 Compensation of Construction Manager's Subcontractors and Suppliers. Upon receipt of payment from the Owner, the Construction Manager shall pay each of its subcontractors and suppliers out of the amount received by the Construction Manager on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Construction Manager's subcontractors or suppliers. However, the

Owner reserves the right, but has no duty, to make payment jointly to the Construction Manager and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Construction Manager fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

## **ARTICLE 12 PROPRIETARY DOCUMENTS AND CONFIDENTIALITY**

- 12.1 Nature and Use of Information. All information, documents, and electronic media furnished by the Owner to the Construction Manager (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the Construction Manager; and (v) shall not be used by the Construction Manager on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance. The Owner hereby grants to the Construction Manager a limited license to use and reproduce applicable portions of the Contract Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.
- 12.2 Ownership of Information. All information, documents, and electronic media prepared by or on behalf of the Construction Manager for the Project are the sole property of the Owner free of any retention rights of the Construction Manager. The Construction Manager hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Construction Manager for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.
- 12.3 Disclosure of Information. The Construction Manager shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Agreement, or as required by law or court order.
- 12.4 Instructions to Employees. Because it is difficult to separate proprietary and confidential information from that which is not, the Construction Manager shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.
- 12.5 Non-Publication. Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.
- 12.6 Confidentiality.
- 12.6.1 The Construction Manager acknowledges that it may receive confidential information of the County and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, sub subcontractors, and/or staff to likewise protect such confidential information. The Construction Manager agrees that confidential information it receives or such reports, information, opinions, or conclusions

that Construction Manager creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the County. The Construction Manager shall exercise reasonable precautions to prevent the unauthorized disclosure and use of County information whether specifically deemed confidential or not.

12.6.2 The Construction Manager acknowledges that the County's disclosure of documentation is governed by Georgia's Open Records Act, and Construction Manager further acknowledges that, if Construction Manager submits records containing trade secret information and if Construction Manager wishes to keep such records confidential, Construction Manager must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

### **ARTICLE 13 INSURANCE AND INDEMNITY**

13.1 General Indemnity. To the fullest extent permitted by law the construction manager shall secure, defend, protect, hold harmless, and indemnify the County, the County's Elected and Appointed Officials, Officers, Boards, Commissions, Agents, Employees, Representatives, Consultants, Servants, and Volunteers (collectively, the "indemnitees") from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) ("claims"), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the indemnitees allegedly or actually arising out of or resulting from the construction manager's performance or non-performance of the Work, including without limitation any breach of contract or negligent act or omission (i) of the construction manager; or (ii) of the construction manager's subcontractors or suppliers, or (iii) of the agents, employees or servants of the construction manager or its subcontractors or suppliers. This indemnification obligation is subject to the following limitations:

13.1.1 It is the intent of the parties that this Agreement is an agreement for the construction, alteration, repair, and/or maintenance of a building structure, appurtenances, and appliances, including moving, demolition, and excavating connected therewith ("construction services"), as those terms are used in O.C.G.A. § 13-8-2(b), but that this Agreement also may require engineering, architectural, and/or land surveying services ("design services"), as those terms are used in O.C.G.A. § 13-8-2(c). Therefore, to the extent that any claim arises pursuant to this Agreement for which indemnification is sought for construction services, such indemnification shall apply where the indemnitee(s) are partially responsible for the situation giving rise to the claim, but shall not apply to claims arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the indemnitee(s). To the extent that any claim arises pursuant to this agreement for which indemnification is sought for design services, such indemnification shall be limited to the indemnitor's (including its agents' and employees') negligence, recklessness, or intentionally wrongful conduct in the performance of such services.

- 13.2 To the fullest extent permitted by law, the construction manager, for itself and for its subcontractors and suppliers, and the respective agents, employees and servants of each, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by the owner or the owner's related parties pursuant to the indemnification provision contained in Section 13.1 above.
- 13.3 Intellectual property indemnity. To the fullest extent permitted by law, the construction manager shall defend, protect, hold harmless, and indemnify the owner and the owner's related parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the owner or professional(s) in writing. If the construction manager has reason to believe the use of a required design, process or product is an infringement of a patent, the construction manager shall be responsible for such loss unless such information is promptly given to the owner.

The foregoing obligations to indemnify contained in Sections 13.1 through 13.3 shall survive the termination or expiration of this Agreement.

- 13.4 Construction Manager-Provided Insurance Program. The Construction Manager shall provide insurance and the Owner is not required to provide insurance. The Owner will communicate and cooperate with the Construction Manager and the Construction Manager's insurance broker, as required.

13.4.1 The Construction Manager shall purchase and maintain at all times that it is performing services under this Agreement, at its expense, from a company or companies authorized to do business in the state of Georgia, insurance policies containing the types of coverages and minimum limits of liability, and meeting the requirements, as set forth in Appendix G attached to and made a part of this Contract, protecting from claims which may arise out of or result from the performance or non-performance of services under this Agreement by the Construction Manager or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable.

- 13.5 General Insurance Requirements. Unless otherwise required, each insurance policy:
- (i) shall be issued by an insurance carrier acceptable to the Owner;
  - (ii) shall be kept in force throughout performance of the Construction Manager's services and for one year after the end of such performance;
  - (iii) shall be an occurrence policy; and
  - (iv) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without twenty-eight calendar days' prior written notice to the Owner.

- 13.6 Certificates of Insurance. Prior to performance of services on the Project, the Construction Manager shall (i) have all required insurance coverage in effect; and (ii) deliver to the Owner certificates of insurance for all its required minimum insurance coverage. The Construction Manager shall (i) require that its subcontractors, and suppliers have similar coverage in effect, and prior to the performance of any services on the Project by the Construction Manager's subcontractors and suppliers, and (ii) shall ensure that all required insurance coverages of its subcontractors and suppliers is in effect. The Owner shall have no responsibility to verify compliance by the Construction Manager or its subcontractors and suppliers. Upon the request of the Owner, the Construction Manager shall deliver to the Owner certificates of insurance and/or copies of policies for all required insurance coverage.
- 13.7 Effect of Insurance. Compliance with insurance requirements shall not relieve the Construction Manager of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Agreement, and the Owner shall be entitled to pursue any remedy in law or equity if the Construction Manager fails to comply with the contractual provisions of this Agreement. Indemnity obligations specified elsewhere in this Agreement shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.
- 13.8 Waiver of Subrogation. The Construction Manager hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the Construction Manager, and to anyone claiming by, through or under the Construction Manager, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.

#### **ARTICLE 14 BOND REQUIREMENTS**

- 14.1 General Bond Requirements. The Construction Manager shall provide payment and performance bonds, each having a penal sum equal to the GMP, on forms substantially similar to those attached hereto as Appendices H-1 and H-2, and with a surety licensed to do business in the State of Georgia and listed on the Treasury Department's most current list (Circular 570, as amended).

14.1.1 The amount of the premiums for such bonds shall be included in the GMP. 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 Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

14.1.2 Delivery Of Bonds. The Construction Manager shall deliver any required bond(s) and power(s) of attorney to the Owner prior to commencement of the Work.

#### **ARTICLE 15 OWNER'S RIGHT TO STOP WORK**

- 15.1 Cease And Desist Order. If the Construction Manager fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Agreement, the Owner may, by written notice, order the Construction Manager to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of

such instruction, the Construction Manager shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

15.1.1 The Construction Manager shall not be entitled to an adjustment in the time for performance or the Contract Price under this clause since such stoppages are considered to be the fault of the Construction Manager.

15.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or others.

15.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Construction Manager fails and refuses with seven calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another Construction Manager, and the Construction Manager shall be responsible for the cost of performing such Work by the Owner.

15.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Construction Manager.

#### **ARTICLE 16 TERMINATION OR SUSPENSION OF AGREEMENT**

##### **16.1 Termination For Cause by Owner.**

16.1.1 The Owner may terminate this Agreement for cause if the Construction Manager materially breaches this Agreement by:

(i) refusing, failing or being unable to properly manage or perform on any Work or portion of Work on the Project;

(ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;

(iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;

(iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;

(v) refusing, failing or being unable to substantially perform in accordance with the terms of the Agreement as determined by the Owner, or as otherwise defined elsewhere herein;  
or

(vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Construction Manager.

16.1.2 Upon the occurrence of any of the events described in Section 17.1.1, the Owner may give written notice to the Construction Manager setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. At any time

thereafter, if the Construction Manager fails to initiate the cure or if the Construction Manager fails to expeditiously continue such cure until complete, the Owner may give written notice to the Construction Manager of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (iii) take such other action as is necessary to correct such failure;
- (iv) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Construction Manager;
- (v) directly pay the Construction Manager's subcontractors and suppliers compensation due to them from the Construction Manager;
- (vi) finish the Work by whatever method the Owner may deem expedient; and
- (vii) require the Construction Manager to assign the Construction Manager's right, title and interest in any or all of Construction Manager's subcontracts or orders to the Owner.

16.1.3 If the Owner terminates the Agreement for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Construction Manager, the Construction Manager's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Construction Manager the Owner's damages resulting from the termination.

16.1.4 If the Owner terminates this Agreement for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Section 16.3.

## 16.2 Termination For Cause by Construction Manager.

16.2.1 The Construction Manager may terminate this Agreement for cause if the Owner materially breaches this Agreement by:

- (i) refusing, failing or being unable to make prompt payment to the Construction Manager without just cause;
- (ii) disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of this Agreement or any other agreement between the Owner and the Construction Manager.



16.2.2 Upon the occurrence of any of the events described in Section 16.2.1, the Construction Manager may give written notice to the Owner setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. If the Owner fails to cure the default within seven calendar days, the Construction Manager, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

16.3 Termination or Suspension For Convenience. The Owner may at any time give written notice to the Construction Manager terminating this Agreement or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Construction Manager shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

16.4 Statutory Termination. In compliance with O.C.G.A. § 36-60-13, if the Term of this Contract continues beyond the calendar year in which this Contract is executed, the parties agree that this Contract shall terminate absolutely and without further obligation on the part of the Owner on December 31 each calendar year of the Term, and further, that this Contract shall automatically renew on January 1 of each subsequent calendar year absent the Owner's provision of written notice of non-renewal to Construction Manager at least five (5) calendar days prior to the end of the then current calendar year. Title to any supplies, materials, equipment, or other personal property shall remain in Construction Manager until fully paid for by Owner. Further, this Contract shall terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of the Owner.

16.5 Construction Manager's Compensation When Construction Manager Terminates For Cause Or Owner Terminates For Convenience or Per Statute. If this Agreement is (i) terminated by the Construction Manager pursuant to Section 16.2; (ii) terminated by the Owner pursuant to Section 16.3; (iii) suspended more than three months by the Owner pursuant to Section 16.3; (iv) or by Owner pursuant to O.C.G.A. § 36-60-13, the Owner shall pay the Construction Manager specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the Construction Manager. Absent agreement on the additional amount due the Construction Manager, the Owner shall pay the Construction Manager:

(i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Construction Manager's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Construction Manager would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and

(ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

16.6 Construction Manager's Compensation When Owner Terminates For Cause. If this Agreement is terminated by the Owner for cause pursuant to Section 16.1, no further payment shall be made to the Construction Manager until Final Completion of the Project.

At such time, the Construction Manager shall be paid the remainder of the Contract Price less all costs and damages incurred by the Owner as a result of the default of the Construction Manager, including liquidated damages applicable thereto. The Construction Manager shall additionally reimburse the Owner for any additional costs or expenses incurred.

- 16.7 Limitation On Termination Compensation. Irrespective of the reason for termination or the party terminating, the total sum paid to the Construction Manager shall not exceed the Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Agreement, and shall in no event include duplication of payment.
- 16.8 Construction Manager's Responsibility Upon Termination. Irrespective of the reason for termination or the party terminating, if this Agreement is terminated, the Construction Manager shall, unless notified otherwise by the Owner,
- (i) immediately stop work;
  - (ii) terminate outstanding orders and subcontracts;
  - (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
  - (iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Construction Manager has;
  - (v) promptly deliver to the County all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Agreement, whether completed or in process, in the form specified by the County
- 16.9 Lack of Duty To Terminate. The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Construction Manager to exercise that right for the benefit of the Owner, the Construction Manager or any other persons or entities.
- 16.10 Limitation on Termination Claim. If the Construction Manager fails to file a claim within one year from the effective date of termination, the Owner shall pay the Construction Manager only for services actually performed and expenses actually incurred prior to the effective termination date.
- 16.11 Assumption of Contracts. The Owner reserves the right in termination for cause to take assignment of all contracts between the Construction Manager and its subcontractors, vendors, and suppliers. The Owner will promptly notify the Construction Manager of the contracts the Owner elects to assume. Upon receipt of such notice, the Construction Manager shall promptly take all steps necessary to effect such assignment.

## **ARTICLE 17 APPLICABLE LAW AND DISPUTE RESOLUTION**

- 17.1 Applicable State Law. This Agreement shall be deemed to be entered into in and shall be interpreted under the laws of the state of Georgia.

- 17.2 Court Actions. Except as expressly prohibited by law:
- (i) all legal actions hereunder shall be conducted only in the Superior Court of Cobb County, Georgia or federal court in the Northern District of Georgia (“Court”);
  - (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein; and
  - (iii) the parties waive any right to assert the doctrine of forum *non conveniens* or to object to venue.
- 17.3 Mutual Discussion. In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Agreement or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 17.4 Facilitative Mediation. If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Agreement or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.
- 17.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.
- 17.4.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.
- 17.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.
- 17.4.4 The Owner, the Professional(s), the Construction Manager, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Agreement or an agreement that incorporates this Agreement by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.
- 17.5 Conflicting Dispute Resolution Provisions. Neither party to this Agreement shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve

any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.

- 17.6 Arbitration Preclusion. In case of a dispute relating to the Project, or arising out of this Agreement, no party to this Agreement shall be required to participate in or be bound by, any arbitration proceedings.
- 17.7 Performance During Dispute Resolution. The Owner and the Construction Manager agree that pending the resolution of any dispute, controversy, or question, the Owner and the Construction Manager shall each continue to perform their respective obligations without interruption or delay, and the Construction Manager shall not stop or delay the performance of the Work.

#### **ARTICLE 18 DAMAGES AND REMEDIES**

- 18.1 Construction Manager's Repair. The Construction Manager shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Agreement, or any other applicable warranty or guarantee.
- 18.2 Construction Manager's Reimbursement. The Construction Manager shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Construction Manager's failure to substantially perform in accordance with the terms of this Agreement; (ii) deficiencies or conflicts in the Contract Documents attributable to the Construction Manager or of which the Construction Manager was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Agreement or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Construction Manager.
- 18.3 Non-Exclusivity Of Owner's Remedies. The Owner's selection of one or more remedies for breach of this Agreement contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Agreement or by law.
- 18.4 Waiver Of Damages. The Construction Manager shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.
- 18.5 Interest. The Owner is entitled to interest on all amounts due from the Construction Manager that remain unpaid thirty days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Section 11.10.1.

#### **ARTICLE 19 NONDISCRIMINATION**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Contractor agrees that, during performance of this Agreement, Contractor, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Contractor agrees to comply with all applicable

implementing regulations and shall include the provisions of this Section in every subcontract for services contemplated under this Agreement.

## **ARTICLE 20 CONFLICT OF INTEREST**

20.1 The Construction Manager shall execute and deliver to Owner an affidavit in the form as set forth in Appendix I attached to and by reference made a part of this Contract whereby Construction Manager certifies that to the best of his knowledge no circumstances exist which will cause a conflict of interest in performing the services required by this Agreement, that no employee of Owner, nor any member thereof, nor any public agency or official affected by this Contract, has any pecuniary interest in the business of Construction Manager or his subcontractor(s) and that no person associated with the CM or his subcontractor(s) has any interest that would conflict in any manner or degree with the performance of the Contract.

20.1.1 Should the Construction Manager become aware of any circumstances which may cause a conflict of interest during the term of this Contract, the CM shall immediately notify Owner. If Owner determines that a conflict of interest exists, Owner may require that the CM take action to remedy the conflict of interest or terminate the Contract without liability. Owner shall have the right to recover any fees paid for services rendered by the CM which were performed while a conflict of interest existed if the CM had knowledge of the conflict of interest and did not notify Owner within one week of becoming aware of the existence of the conflict of interest.

20.2 The Construction Manager warrants he and his subcontractor(s) have not employed or retained any company or person other than a bona fide employee working solely for the CM or his subcontractor(s) to solicit or secure this Contract and that he and his subcontractor(s) have not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the CM or his subcontractor(s) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of this Contract. For any breach or violation of this provision, Owner shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the price, or otherwise recover, the full amount of such fee, commission, percentage, gift, payment, or consideration.

20.3 The Construction Manager shall include the terms and conditions of Sections 21.1 and 21.2 of this Article in all subcontractor agreements for work to be performed under this Agreement.

## **ARTICLE 21 GEORGIA SECURITY & IMMIGRATION COMPLIANCE ACT**

21.1 Immigration Compliance. The Owner and Construction Manager (sometimes referred to as "Contractor") agree that compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 of the Rules of the Georgia Department of Labor are conditions of this Contract for the physical performance of services.

Physical Performance of Services – includes any performance of labor or services for a public employer using a bidding process or by contract wherein the labor or services exceed \$2,499.99.

21.3 The Contractor further agrees and represents that its compliance with the requirements of O.C.G.A. §13-10-91 and DOL Rule 300-10-1-.02 is attested to on the executed Contractor Affidavit and Contract attached hereto as Appendix J-1.

21.4 The Contractor further agrees and represents that:

21.4.1 The Contractor (and any subcontractors, regardless of tier) shall fully comply with the requirements for completing and submitting the "Immigration Compliance Certification" attached hereto as Appendix J-3 and that such certification shall be received by the Owner prior to the commencement of any work under the contract or subcontract;

21.4.2 The Contractor (or any subcontractor, regardless of tier) shall notify the Owner within five (5) business days of entering into a contract or other agreement for hire with any subcontractor(s), regardless of tier;

21.4.3 The Contractor shall be responsible for obtaining and providing to the Owner the "Subcontractor Affidavit & Agreement" and "Immigration Compliance Certification" attached to as Appendix J-2 and Appendix J-3 from each subcontractor, regardless of tier, employed or retained for work under the contract prior to the commencement of any work under the contract or any subcontract;

21.4.4 Owner reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

21.4.5 Any contractor and/or subcontractor retaining any other subcontractor to perform services under the contract shall provide legal notice to any subcontractor of the requirements of Owner for immigration compliance and further provide notice that Owner reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

21.4.6 Failure to comply with any of the requirements and procedures of the Owner (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by county or state officials upon request; and/or failure to continue to meet any of the statutory or county obligations during the life of the contract) shall constitute a material breach of the Contract and shall entitle the Owner to dismiss any general contractor or to require the dismissal of any subcontractor or sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements;

21.4.7 Upon notice of a material breach of these provisions, the Contractor (or subcontractor, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the Owner shall be entitled to all available remedies, including termination of the Contract, the requirement that a subcontractor be dismissed from performing work under the Contract, and any and all damages permissible by law.

- 21.5 Immigration Compliance Certification: Prior to commencing work under any contract for the physical performance of services, the Contractor shall complete the "IMMIGRATION COMPLIANCE CERTIFICATION" form attached hereto and submit the same to the Owner.
- 21.6 Prior to allowing any other subcontractor to perform work under the contract, the Contractor shall obtain a completed "IMMIGRATION COMPLIANCE CERTIFICATION" from each subcontractor (regardless of tier) and submit the same to the Owner.

## **ARTICLE 22 MISCELLANEOUS PROVISIONS**

- 22.1 Integration. 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, for the Project. This Agreement may be amended only by written instruments signed by both the Owner and the Construction Manager, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.
- 22.2 Severability. If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 22.3 Waiver. No provision of this Agreement may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.
- 22.4 Strict Compliance. No failure of the Owner to insist upon strict compliance by the Construction Manager with any provision of this Agreement shall operate to release, discharge, modify, change or affect any of the Construction Manager's obligations.
- 22.5 Third-Party Beneficiaries. This Agreement shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Agreement, nothing contained in this Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Construction Manager.
- 22.6 Survival. All provisions of this Agreement which contain continuing obligations shall survive its expiration or termination.
- 22.7 Titles. The titles given to the Articles are for ease of reference only and shall not be relied upon or cited for any other purpose.
- 22.8 Joint Drafting. The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.
- 22.9 Assignment. Except as prohibited by applicable law, neither party shall assign any or all of its benefits or executory obligations under this Agreement without the approval of the other party, except in case of assignment solely for security or assignment by the Owner

to a Related Party of the Owner, or except as otherwise specifically provided for in this Agreement in case of default. The Owner and the Construction Manager bind their successors and assigns to the other party to this Agreement.

- 22.10 Execution of Documents. Upon the request of the Owner, the Construction Manager shall execute documents required by the Owner's lender whereby the Construction Manager agrees that in the event of the Owner's default under, or the termination of, any construction loan agreement, the Construction Manager will complete the services required by this Agreement under the terms and conditions contained herein so long as the lender fulfills the obligations of the Owner toward the Construction Manager as set forth in this Agreement.

This Agreement is entered into on the date of the last party to execute same.

{SIGNATURES BEGIN NEXT PAGE}



**OWNER:  
COBB COUNTY, GEORGIA**

By: \_\_\_\_\_  
Michael H. Boyce, Chairman  
Board of Commissioners

Attest: \_\_\_\_\_  
County Clerk

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_

County Attorney's Office

**CONSTRUCTION MANAGER:**

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

Print Name: Mike Cartner \_\_\_\_\_

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

Attest: \_\_\_\_\_

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

Date: \_\_\_\_\_

*[Insert Corporate Seal ]*

**APPENDIX A**  
**GUARANTEED MAXIMUM PRICE PROPOSAL**

## APPENDIX B

### CONSTRUCTION MANAGER'S PERSONNEL CHART

For each of the Construction Manager's primary employees working on the Project, list:

- A. Name
- B. Job category
- C. Responsibility

Mike Cartner, Project Executive

Jim Gaine, Operations Manager/Project Manager

Terrance Curry, Site Supervisor

John McCord, Senior Superintendent

## **APPENDIX C**

### **CONSTRUCTION MANAGER'S SUBCONTRACTORS AND SUPPLIERS CHART**

Kirby Building: PEMB supplier

North Cobb Electrical: Electrical subcontractor

Strictly Mechanical: HVAC subcontractor

Knight Construction: Metal studs, drywall, and ceilings

**APPENDIX D**  
**OWNER'S CONSULTANT(S) CHART**  
**(If Applicable)**

**APPENDIX E**

**AUTHORIZATION FOR CONSTRUCTION**

Pursuant to this Agreement Between Cobb County, Georgia (“Owner”) and John W. Spratlin & Son, LLC (“Construction Manager”), for Cobb County Strategic Stockpile, Project Number 20-6539 (the “Project”), the Owner and the Construction Manager hereby execute this **Appendix E** and further agree as set forth below.

- 1. The Construction Manager’s Guaranteed Maximum Price (“GMP”) proposal dated August 6, 2020, attached hereto and incorporated herein, is accepted by the Owner.
- 2. The General Conditions Guaranteed Maximum Cost is  
One Hundred Eight Thousand Eight Hundred Dollars (\$108,800.00).
- 3. The Subcontracts Cost is  
Six Hundred Sixty-Six Thousand Two Hundred Sixty-One Dollars (\$666,261.00).
- 3. If applicable, the Lump Sum Fixed Management Fee Is  
Seventy-Five Thousand Dollars (\$75,000.00).
- 4. The Guaranteed Maximum Price is  
Eight Hundred Fifty Thousand Sixty-One Dollars (\$850,061.00).
- 5. The Date of Substantial Completion shall be December 31, 2020.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
COBB COUNTY, GEORGIA  
 (“Owner”)

By: \_\_\_\_\_  
Michael H. Boyce  
Its: Chairman \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
 (“Construction Manager”)

By: \_\_\_\_\_  
Its: \_Owner\_\_\_\_\_

Date: \_\_\_\_\_  
[Insert Corporate Seal]

## **APPENDIX F**

### **CONSTRUCTION MANAGER'S COMPENSATION SCHEDULE**

*[Insert information as required]*

- A. Schedule of values for payment of the Subcontracts Cost and General Conditions Cost
  
- B. Time Schedule for payment of the Management Fee
  
- C. Unit prices and estimated number of units for compensation for services rendered and goods supplied on a unit-price basis
  
- D. Rates for compensation for services rendered on a time-and-material basis
  
- E. Compensation for goods furnished on a time-and-material basis
  
- F. Allowances

## APPENDIX G

### REQUIRED INSURANCE

A. Requirement:

Contractor shall procure and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with performance of the Work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

B. Minimum Limits of Insurance:

Contractor shall maintain insurance policies with coverage and limits no less than:

- i. Commercial General Liability: \$1,000,000 combined single limit per occurrence for comprehensive coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage for premises/operations, products/completed operations, independent contractors and contractual liability (specifically covering the indemnity), broad-form property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on "an occurrence" basis ("claims made" coverage is not acceptable).
- ii. Commercial Automobile Liability (owned, non-owned and hired): \$1,000,000 combined single limit per occurrence and for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
- iii. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the State of Georgia and Employers Liability of \$1,000,000 per occurrence or disease.
- iv. Professional Liability (Errors and Omissions) Coverage: \$1,000,000 per claim and in the aggregate is required, in the event a contractor is performing design, engineering or other professional services.
- v. Commercial Umbrella or Excess Liability Coverage: \$2,000,000 in liability excess coverage per occurrence above the contracts stated minimum coverage limits for Commercial General Liability, Commercial Automobile Liability, and the Workers' Compensation and Employers Liability policies of insurance. This may be satisfied by having the underlying liability limits that equal or exceed the combined amount of the underlying liability limits and umbrella coverage.
- vi. Builder's "All Risk" Insurance: In the event Contractor is performing construction services under the Contract, Contractor shall procure and maintain "All-Risk" Builder's insurance, written on a commercially



recognized policy form, providing coverage for the Work performed under the contract, and the materials, equipment or other items incorporated therein, while the same are located at the construction site, stored off-site, or at the place of manufacture. The policy limit shall be in a minimum amount equal to the "full insurable value" of such equipment and 100% of the value of the Contract, including any additional costs which are normally insured under such policy. The insurance coverage shall include boiler and machinery insurance on a comprehensive basis and include coverage against damage or loss caused by earth movement (including but not limited to earthquake, landslide, subsidence and volcanic eruption), fire, flood, hurricanes, explosion, hail, lightning, weather, vandalism, malicious mischief, wind, collapse, riot, aircraft, smoke, or other cataclysmic events, and coverage against damage or loss caused by machinery accidents and operational and performance testing, commissioning and start-up, with extended coverage, and providing coverage for transit, with sub-limits sufficient to insure the full replacement value of the property or equipment removed from its site and while located away from its site until the date of final acceptance of the Work.

The making of progress payments to the Contractor shall not be construed as relieving the Contractor or its subcontractors or insurance carriers providing the coverage described herein for responsibility for loss or direct physical loss, damage or destruction occurring prior to final acceptance of the Work.

C. Deductibles and Self-Insured Retention

Any deductibles or self-insurance retentions must be declared to and approved by Owner so that Owner may ensure the financial solvency of the Contractor. At the option of Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Owner, its officers, officials, and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Contractor shall pay all deductibles and be liable for all claims, losses and damages for which it self-insures.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- i. General Liability, Automobile Liability, and Umbrella/Excess Insurance
  - (a) Additional Insured Requirement. Cobb County, its elected and appointed officials, officers, boards, commissions, officers, employees, representatives, servants, volunteers and agents (hereinafter referred to as "Insured Party" or "Insured Parties") are to be **covered as additional insureds** as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, leased, or used by the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special

limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Contractor to provide liability insurance coverage to the any Insured Party for claims asserted against such Insured Party for its sole negligence.

- (b) Primary Insurance Requirement. The Contractor's insurance coverage shall be primary and noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of the Contractor's insurance and shall not contribute with it.
- (c) Reporting Requirement. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.
- (d) Separate Coverage. Coverage shall state that the Contractor's insurance shall apply separately to each Insured Party against whom claim is made or suit is brought.
- (e) Defense Costs/Cross Liability. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.

E. Workers' Compensation and Employers Liability Coverage

The Contractor shall have and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, its agents, representatives, employees or subcontractors. The insurer shall agree to waive all rights of subrogation against Owner, and its officers, officials, employees and volunteers for losses arising from the work performed by the Contractor for Owner.

F. Waiver of Subrogation

The insurers shall agree under each policy of insurance required by this Contract to waive all rights of subrogation against the Insured Parties for losses arising from work performed by the Contractor for Owner.

G. All Coverages

i. Notice Requirement.

Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Owner, in care of the Cobb

County *[insert department name and address]*. Owner reserves the right to accept alternate notice terms and provisions provided they meet the minimum requirements under Georgia law.

(ii) Acceptability.

The insurance to be maintained by Contractor must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurers with a Best's Policyholder's Rating of "A" or better and with a financial rating of Class VII or greater, or be otherwise acceptable to Cobb County. All policies shall be subject to approval by Cobb County Attorney's Office as to form and content.

(iii) Failure of Insurers.

The Contractor shall be responsible for any delay resulting from the failure of any insurer to furnish proof of coverage in the prescribed form

H. Verification of Coverage

Contractor shall furnish Owner with certificates of insurance and endorsements to the policies evidencing all coverages required by this Contract. Additionally, the declarations page for each insurance policy listed on the certificate of insurance shall be submitted to Owner. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements shall be received and approved by Owner before any work commences. Owner reserves the right to require complete, certified copies of all required insurance policies at any time. The contractor shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage

I. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for

subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the Insured Parties as additional insureds.

**APPENDIX H-1**

**PERFORMANCE BOND  
COBB COUNTY**

**KNOW ALL MEN BY THESE PRESENTS THAT** \_\_\_\_\_ (as “BUILDER”, hereinafter referred to as the “Principal”), and \_\_\_\_\_ (as SURETY COMPANY, hereinafter referred to as the “BUILDER’S SURETY”), are held and firmly bound unto Cobb County, Georgia (as OWNER, hereinafter referred to as the “County”), for the use and benefit the County, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which the Principal and the Builder’s Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered, or is about to enter, into a certain written agreement with the County, dated the \_\_\_\_ of \_\_\_\_\_, 20\_\_ which is incorporated herein by reference in its entirety (hereinafter referred to as the “CONTRACT”), for the construction of a project known as \_\_\_\_\_, (hereinafter referred to as “the PROJECT”).

**NOW THEREFORE**, the conditions of this obligation are as follows:

1. That if the Principal shall fully and completely perform each and all of the terms, provisions and requirements of the Contract, including and during the period of any warranties or guarantees required thereunder, and all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, and if the Principal and the Builder’s Surety shall indemnify and hold harmless the County from any and all losses, liability and damages, claims, judgments, liens, costs and fees of every description, including but not limited to, any damages for delay, which the County may incur, sustain or suffer by reason of the failure or default on the part of the Principal in the performance of any and all of the terms, provisions, and requirements of the Contract, including all modifications, amendments, changes, deletions, additions, and alterations thereto, and any warranties or guarantees required thereunder, then this obligation shall be void; otherwise to remain in full force and effect;
2. In the event of a failure of performance of the Contract by the Principal, which shall include, but not be limited to, any breach or default of the Contract:

a. The Builder's Surety shall commence performance of its obligations and undertakings under this Bond no later than thirty (30) calendar days after written notice from the County to the Builder's Surety; and

b. The means, method or procedure by which the Builder's Surety undertakes to perform its obligations under this Bond shall be subject to the advance written approval of the County.

The Builder's Surety hereby waives notice of any and all modifications, omissions, additions, changes, and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments. The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

**IN WITNESS WHEREOF**, the Principal and Builder's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers or attorneys-in-fact, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BUILDER ("Principal"):**

**BUILDER'S SURETY:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_ (SEAL)

Title: \_\_\_\_\_ (SEAL)

Attest: \_\_\_\_\_  
(Signature)

Attest: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

(ATTACH SURETY'S POWER OF ATTORNEY)

**APPENDIX H-2**

**PAYMENT BOND  
COBB COUNTY**

**KNOW ALL MEN BY THESE PRESENTS THAT** \_\_\_\_\_ (as BUILDER, hereinafter referred to as the "Principal"), and \_\_\_\_\_ (as SURETY COMPANY, hereinafter referred to as the "BUILDER'S SURETY"), are held and firmly bound unto Cobb County (as OWNER, hereinafter referred to as the "County"), for the use and benefit of any "Claimant," as hereinafter defined, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.\_\_), lawful money of the United States of America, for the payment of which the Principal and the Builder's Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered, or is about to enter, into a certain written agreement with the County, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, which is incorporated herein by reference in its entirety (hereinafter referred to as the "CONTRACT"), for the construction of a project known as \_\_\_\_\_, (hereinafter referred to as "the PROJECT").

**NOW THEREFORE**, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor, services, and materials used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

A "Claimant" shall be defined herein as any Subcontractor, person, Party, partnership, corporation, or other entity furnishing labor, services, or materials used or reasonably required for use in the performance of the Contract, without regard to whether such labor, services, or materials were sold, leased, or rented, and without regard to whether such Claimant is or is not in privity of the Contract with the Principal or any Subcontractor performing Work on the Project.

In the event of any claim made by the Claimant against the County, or the filing of a Lien against the property of the County affected by the Contract, the Builder's Surety shall either settle or resolve the Claim and shall remove any such Lien by bond or otherwise as provided in the Contract.

The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

**IN WITNESS WHEREOF**, the Principal and Builder's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers on this day of \_\_\_\_\_, 20\_\_.

**BUILDER:**

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_ (SEAL)

**BUILDER'S SURETY:**

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_ (SEAL)

Attest: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

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

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

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

Date: \_\_\_\_\_

(ATTACH SURETY'S POWER OF ATTORNEY)



**APPENDIX I**

**CONFLICT OF INTEREST AFFIDAVIT**

As a duly authorized representative of the firm John W. Spratlin & Son, LLC, I, Mike Cartner with the title Owner certify that to the best of my knowledge and belief that no circumstances exist that will cause a conflict of interest in performing services for Cobb County under the Agreement to which this affidavit is attached and incorporated by reference, that no employee of Cobb County, nor any public agency, official or employee affected by such Agreement has any pecuniary interest in the business of this firm, associates or consultants of this firm, or the firm's parent firm, subsidiary, or other legal entity of which this firm is a part, and that no person associated with or employed by this firm has any interest that would conflict in any way, manner or degree with the performance of services for Cobb County.

Subscribed and sworn before me on this  
the \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_ **John W. Spratlin & Son, LLC** \_\_\_\_.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Signature of Authorized Representative

Print Name: Mike Cartner \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
[Seal]

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

Date: \_\_\_\_\_

[Notary Seal]

**APPENDIX J-1**

**CONTRACTOR AFFIDAVIT & AGREEMENT**

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program [an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)]. The undersigned Contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the Contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contractor or subcontractor will:

- (1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit. (EXHIBIT F-1) prior to the commencement of any work under the contract/agreement;;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (Exhibit F-2) prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any Contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance for a period of five (5) years and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Allow the audit or review of records of compliance by the County upon request.

231883  
EEV (E-Verify) Program User ID Number

\_\_\_\_\_  
BY: Authorized Officer or Agent  
(Contractor Name)  
Mike Cartner  
Printed Name

John W. Spratlin & Son, LLC  
Contractor Business Name  
\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_  
Effective 10-23-2013

**APPENDIX J-2**

**SUBCONTRACTOR AFFIDAVIT & AGREEMENT**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program [an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)]. The undersigned subcontractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the Contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contractor or subcontractor will:

- (1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit (EXHIBIT F-1) prior to the commencement of any work under the contract/agreement;;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (Exhibit F-2) prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any Contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance for a period of five (5) years and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Allow the audit or review of records of compliance by the County upon request.

\_\_\_\_\_  
EEV (E-Verify) Program User ID Number

\_\_\_\_\_  
BY: Authorized Officer or Agent  
(Contractor Name)

\_\_\_\_\_  
Subcontractor Business Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED BEFORE ME

ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary

**APPENDIX J-3**

**EMPLOYER IMMIGRATION COMPLIANCE CERTIFICATION**

(To be completed by Contractor and all subcontractors prior to contract initiation, every six months after commencement of work, and at any time there is a change in personnel assigned to the Project.)

I certify to the Cobb County Board of Commissioners that the following employees will be assigned to:

\_\_\_\_\_Cobb County Strategic Stockpile\_\_\_\_\_
(Project Name/Program Number)
\_Mike Cartner\_\_\_\_\_ \_Jim Gain\_\_\_\_\_ \_Terrance Curry\_\_\_\_ \_John McCord\_\_\_\_\_

I further certify to Cobb County, Georgia the following:

- The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our contract to use the program;
• We have not received a Final Nonconfirmation response from E-Verify for any of the employees listed;
• If we receive a Final Nonconfirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee's involvement with the Project;
• I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9's are accurate;
• To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States;
• If any other employee is assigned to this Cobb County project, a certification will be provided for said employee prior to the employee commencing work on the Project.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

Sworn to by:

Employer Name & Address:

\_\_\_\_\_
Signature of Officer

\_\_John W. Spratlin & Son, LLC\_\_\_\_\_

\_Mike Cartner/Owner\_\_\_\_\_
Printed Name/Title

\_\_PO Box 66/139 N. Peachtree St\_\_\_\_\_

\_\_\_\_\_
Date

\_\_Lincolnton, GA 30817\_\_\_\_\_

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

\_\_\_\_\_
Notary Public

Commission Expires: \_\_\_\_\_

EFFECTIVE 10-23-2013

**APPENDIX K**  
**SPECIAL CONDITIONS**

**APPENDIX L**  
**PROPOSED MODIFICATIONS**



## 911 Emergency Communications

Item No. 16.

Destiny Davidson, 911 Director  
Districts All

---

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Destiny Davidson, 911 Director  
Randy Crider, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To approve a contract with Motorola Solutions for the purchase of two Remote Dispatch MCC7500e console positions and associated support costs for the Emergency Communications Department's Backup Center.

### **BACKGROUND**

On July 14, 2020, the Board of Commissioners approved CARES funding in the amount of \$230,443.00 for the purchase of two Remote Dispatch MCC7500e radios consoles for the Emergency Communications Department's Backup Center. These consoles will provide the minimal mandated positions in the event the Primary Center has to be evacuated for decontamination or to simultaneously utilize both Centers in order to provide increased social distancing in response to the COVID 19 pandemic.

### **IMPACT STATEMENT**

N/A

### **FUNDING**

Funding is available in the CARES Program Fund 278, Department of Homeland Security, Disaster Relief Funds/County Preparedness (COVID) as follows:

278-130-V9PS-8421	Communication Equipment and Technology	\$230,443.00
-------------------	--	--------------

### **RECOMMENDATION**

The Board of Commissioners approve a contract with Motorola Solutions for the purchase of two Remote Dispatch MCC7500e console positions and associated support costs for the Emergency Communications Department Backup Center and authorize the Chairman to execute the necessary documents.

## **ATTACHMENTS**

1. Signed Two (2) Position MCC7500e Console Firewall Proposal 8-6-20 (2)





**GLENN HENDRY**  
**706-570-3693**

**Cobb County Board of Commissioners**

**Two Position (2) MCC7500e  
Communications Console System**

**8-6-20**

- (1) **Two (2) Remote Dispatch MCC7500e console positions to include:** **\$157,887.00**
- Decommission co-located dispatch
  - Add 2 GGM routers
  - 2 firewalls
  - Spare FP
  - Must be installed prior to the November 2020 P25 Radio System Upgrade
  - Positions to be installed outside the RNI

**Services and SUA costs**

Year 1	\$ 7,032.00
Year 2	\$10,361.96
Year 3	\$10,576.64
Year 4	\$10,797.76
Year 5	\$11,025.32
Year 6	\$11,260.04
Year 7	<u>\$11,501.91</u>

**Seven (7) Years of Service and SUA Support** **\$ 72,555.63**

**Total Two (2) Position MCC7500 with Seven (7) Years of Service and SUA Support** **\$230,442.63**

- Pricing includes 2020 State Contract NASPO pricing.

Philip Landgrebe  
Georgia Area Sales Manager  
Motorola Solutions, Inc.



## 911 Emergency Communications

Item No. 17.

Destiny Davidson, 911 Director  
Districts All

---

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Destiny Davidson, 911 Director  
Randy Crider, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To approve a contract with BERGVIK NORTH AMERICA, INC. for solid surface flooring to replace the current carpeted flooring within the Emergency Communications Department.

### **BACKGROUND**

On July 14, 2020, the Board of Commissioners approved CARES Program funding, in the amount of \$142,000.00, as a preliminary estimate for replacement of the flooring in the Emergency Communications Department.

The Cobb County Emergency Communications Department's dispatch center operates on a 24/7 basis and the current carpeted flooring is heavily worn and soiled. Due to 24/7 operations, the Department is unable to utilize the disinfectant lighting being used in the individual office spaces and common areas. Frequent traditional carpet cleaning methods are problematic due to the presence of critical infrastructure technology cabling beneath the flooring.

Replacing the current carpet with a solid surface raised flooring will allow frequent disinfection resulting in a reduction of bacteria and viruses, including those associated with the COVID 19 pandemic. BERGVIK NORTH AMERICA, INC. is a sole source provider for this flooring, and submitted a quote, in the amount of \$127,000.00, for this project. In accordance with the Policy on Procurement and Contract Management, this sole source procurement has been reviewed by the Purchasing Director and Support Services Agency Director, and approved as meeting the criteria for sole source procurement.

### **IMPACT STATEMENT**

N/A

**FUNDING**

Funding is available in the CARES Program Fund 278, Department of Homeland Security, Disaster Relief Funds/County Preparedness (COVID) as follows:

278-130-V9PS-8110	(Renovation of Buildings and Structures)	\$127,000.00
-------------------	--	--------------

**RECOMMENDATION**

The Board of Commissioners approve a contract with BERGVIK NORTH AMERICA, INC. in the amount of \$127,000.00, for solid surface flooring to replace the current carpeted flooring within the Emergency Communications Department and authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

1. Bergvik Quote 200039-Rev3



BERGVIK NORTH AMERICA, INC.  
2040 Shipley Drive, Bldg. C-3  
Salisbury, Maryland 21801  
Tel. 410 548 1449  
[www.bergvik.com](http://www.bergvik.com)

Consignee  
**Cobb County 911**  
Cassie Mazloom  
140N Marietta Pkwy  
Marietta, Ga. 30060

**Our reference:**  
Peter Brandstrom  
443-365-9300  
[peter.brandstrom@bergvik.com](mailto:peter.brandstrom@bergvik.com)

**Your reference**  
Kevin Gardner

**Telephone**  
770-499-4158

**Quotation date**  
08/07/2020

**Quotation No.**  
**200039-Rev3**

REVISED FIRM QUOTATION

**Project: Iso Floor Compact for Cobb County 911 center**

Dear Cassie,

Referring to your inquiry through our Rep Ben Whitley, below is our Iso Floor Compact proposal for your project.  
The quotation is based on the documents and information shown below;

This quotation is based on your floorplan drawing no.:  
A. Cobb Floor Measurements - BW 10-24-19A.pdf  
B. Watson drawing

The price on page 2 are for all necessary component needed.

**Floor specification**

Type of raised floor:	Iso Floor Compact in general & Iso Floor Standard Supervisor platform
Panel uniform distributed load UDL:	210 psf or 10 kN/m <sup>2</sup>
Panel Point load:	<0.12" defl. at 665 lbs point load
Floor height:	8.5"
Surface finishes:	A0040 Oak Laminate
Total floor area:	Approx 5100 ft <sup>2</sup>

**TOTAL: \$127 000.00**

**Included in scope of work:**

- Flooring material as shown below on page 2
- Travel expenses incl hotel and perdiem.

**Not included in scope of work:**

- Building Permits
- Structural Stamp
- Grounding of new raised access floor.
- Waste Container for removal of existing raised floor material and disposal of same.
- Waiting time due to other trades. Waiting time is charged extra with \$ 1200.00 per day.

BF Art.No.	Units	Description
42-1080	162	6000 mm profile
42-1081	0	Cut profile
42-1041	405	40x40 cut profile
42-8930	5000	Drillquick
44-0260	810	IF pedestal for FFH 8.5"
44-0365	55	IF pedestal for FFH 14.5" (supervisor platform)
42-9144	865	Pedestal head type 80
48-1111	1250	40/40 cross bar clip
02-10337	25	Foam tape
70-4089	9	Aluminium edge tape
30-0702	5	Panel lifter
52-5182	1392	Floor panel 24"x24", A0040 Oak, V313+Alu
	8	Border fascia A0040 Oak for supervisor platform
	2	Steps A0040 Oak
	12 lf	Hand railing

Ben commission 10%

Pos 1	Total 5100 SF new material cost:	\$94 000.00
Pos 2	Freight to site in Marietta, GA of local made substructure:	\$3 500.00
Pos 3	Removal of existing floor & installation of new Iso Compact Floor:	\$31 500.00
Pos 4	Credit for 800 existing floor panels @ \$2.50 to ship to NJ by Bergvik	-\$2 000.00
	<b><u>TOTAL:</u></b>	<b>\$127 000.00</b>

***NOTE: Customer to provide waste container placed right outside exit door and be responsible for disposal of existing raised floor material.***

## TERMS

The proposal is subject to intervening sales

<u>Price validity</u>	Offered prices are valid excl. GA Sales & Use Tax and for undivided delivery (when otherwise not incl. in the proposal).
<u>Terms of delivery</u>	Delivered and installed to Marietta, GA.
<u>Amount of installation phases</u>	1 <b>(to be installed at the same time as the Dispatch Center)</b>
<u>Way of delivery</u>	Ocean freight and Truck.
<u>Delivery time - material to site</u>	8 - 10 weeks after written confirmed order
<u>Installation by Bergvik</u>	<u>If Bergvik is contracted to perform the installation</u> , it is agreed that they can do so using qualified non-union labor without the risk of a labor dispute with either local unions, contractor or customer. Customer will also assist with free unloading and intransportation of all materials, and provide 110 V and light at no cost to Bergvik.
<u>Terms of payment</u>	30% deposit with order, remaining 70% Net 30 days from invoice date. Bergvik may invoice for material and freight separately upon delivery.
<u>Late payment</u>	In the event that the customer at any time should fail to make payment in full on the due date, Bergvik shall be entitled to claim interest on the sum overdue, until payment is made, at the rate of 1.5% per month.
<u>Proposal valid until</u>	8/30/2020, for delivery by latest 11/15/2020.
<u>Component standard</u>	According to Bergvik North America's standard.
<u>Warranty with Bergvik Laminate</u>	5 years from invoice date. The warranty covers material only provided that the product has been installed and maintained according to Bergvik instructions and that chair wheels are for hard floors.  <i>Note! The warranty is valid only when the products are stored and handled inside, not exposed to rain or snow, and exposed to relative humidity RH of max 80% for maximum 8 hours.</i>
<u>General conditions</u>	If not otherwise stated above, General conditions according to ECE 188 shall apply.

Salisbury, Maryland      08/07/2020

Yours sincerely,  
Bergvik North America, Inc

Peter Brandstrom



## Community Development

Jessica Guinn, Agency Director

District 4

Item No. 18.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Jessica Guinn, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To approve an Annexation Notice of Non-Objection per HB 489 Intergovernmental Agreement and HB 2 regarding a petition for annexation of a 2.417 acre tract located at 5773 Oakdale Road, into the City of Smyrna.

### **BACKGROUND**

On July 27, 2004, the Board of Commissioners entered into intergovernmental agreements with each of Cobb's municipalities. The agreements serve as the land use dispute resolution process required by HB489. Per the intergovernmental agreements with the Cities of Acworth, Austell, Kennesaw, Marietta, Powder Springs, and Smyrna, the Board of Commissioners must adopt annexation responses by the County to be valid. On September 1, 2007, HB2, which enacts a binding dispute-resolution process, became effective.

### **IMPACT STATEMENT**

N/A

### **FUNDING**

N/A

### **RECOMMENDATION**

The Board of Commissioners approve an Annexation Notice of Non-Objection per HB 489 Intergovernmental Agreement and HB 2 regarding a petition for annexation of Land Lot 0055, 18thDistrict, parcel 0007, 2nd Section, located on a 2.417 acre tract located at 4773 Oakdale Road, into the City of Smyrna.

### **ATTACHMENTS**

1. DRAFT\_Non-Objection\_5773\_Oakedale\_Rd\_2020-08
2. Report\_5773\_Oakdale\_Rd\_2020-08
3. Sketch\_Map\_5773\_Oakdale\_Rd\_2020-08



COBB COUNTY  
BOARD OF COMMISSIONERS

100 Cherokee Street, Suite 300  
Marietta, Georgia 30090-7000  
Phone: (770) 528-3305 Fax: (770) 528-2606

Michael H. Boyce  
Chairman

CERTIFIED MAIL  
7015 0640 0001 4999 8964

July 7, 2020

The Honorable Derek Norton, Mayor  
City of Smyrna  
City Hall  
P.O. Box 1226 / 2800 King Street  
Smyrna, Georgia 30080

**Re: Petition for Annexation – Land Lot 0055, 18<sup>th</sup> District, Parcel 0007, 2<sup>nd</sup> Section, 5773 Oakdale Road, Cobb County, Georgia; Notice of Non-Objection.**

Dear Mayor Norton:

We are in receipt of the above-referenced annexation request. Please accept this response to the annexation proposal for 4772 Oakdale Road. The subject property is currently zoned R-20 and is within an area identified as Medium Density Residential (MDR) according to the Cobb County Future Land Use Map. The application indicates the site will not be rezoned and will be utilized for residential – 1 dwelling unit. Based on our HB 489 Intergovernmental Agreement, this is a non-objectionable request.

In summary, please accept this letter as the County's formal **notice of non-objection** to the proposed annexation. Please see the attached comments from the *[List Department(s)]*. Should you have any questions or need any additional information, please contact Jay Northrup, Intergovernmental Coordinator, at (770) 528-2199.



**Re: Petition for Annexation – Land Lot 0055, 18<sup>th</sup> District, Parcel 0007, 2<sup>nd</sup> Section, 5773  
Oakdale Road, Cobb County, Georgia; Notice of Non-Objection.**

Sincerely,

---

Michael H. Boyce, Chairman

cc: Jackie McMorris, County Manager – VIA E-mail  
H. William Rowling, Jr., County Attorney- VIA E-mail  
Brian Johnson, Senior Associate County Attorney, VIA E-mail  
Jessica Guinn, Community Development Director – VIA E-mail  
Jason Gaines, Planning Division Manager – VIA E-mail  
Pamela Mabry, County Clerk – Via E-Mail  
Rusty Martin, Director of Community Development, City of Smyrna  
Joey Staubes, Planner II, City of Smyrna

**Re: Petition for Annexation – Land Lot 0055, 18<sup>th</sup> District, Parcel 0007, 2<sup>nd</sup> Section, 5773  
Oakdale Road, Cobb County, Georgia; Notice of Non-Objection.**

[signature page continued]

Sincerely,

---

Keli Gambrill, District 1 Commissioner

cc: Jackie McMorris, County Manager – VIA E-mail  
H. William Rowling, Jr., County Attorney- VIA E-mail  
Brian Johnson, Senior Associate County Attorney, VIA E-mail  
Jessica Guinn, Community Development Director – VIA E-mail  
Jason Gaines, Planning Division Manager – VIA E-mail  
Pamela Mabry, County Clerk – Via E-Mail  
Rusty Martin, Director of Community Development, City of Smyrna  
Joey Staubes, Planner II, City of Smyrna

**Re: Petition for Annexation – Land Lot 0055, 18<sup>th</sup> District, Parcel 0007, 2<sup>nd</sup> Section, 5773  
Oakdale Road, Cobb County, Georgia; Notice of Non-Objection.**

[signature page continued]

Sincerely,

---

Bob Ott, District 2 Commissioner

cc: Jackie McMorris, County Manager – VIA E-mail  
H. William Rowling, Jr., County Attorney- VIA E-mail  
Brian Johnson, Senior Associate County Attorney, VIA E-mail  
Jessica Guinn, Community Development Director – VIA E-mail  
Jason Gaines, Planning Division Manager – VIA E-mail  
Pamela Mabry, County Clerk – Via E-Mail  
Rusty Martin, Director of Community Development, City of Smyrna  
Joey Staubes, Planner II, City of Smyrna

**Re: Petition for Annexation – Land Lot 0055, 18<sup>th</sup> District, Parcel 0007, 2<sup>nd</sup> Section, 5773  
Oakdale Road, Cobb County, Georgia; Notice of Non-Objection.**

[signature page continued]

Sincerely,

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JoAnn K. Birrell, District 3 Commissioner

cc: Jackie McMorris, County Manager – VIA E-mail  
H. William Rowling, Jr., County Attorney- VIA E-mail  
Brian Johnson, Senior Associate County Attorney, VIA E-mail  
Jessica Guinn, Community Development Director – VIA E-mail  
Jason Gaines, Planning Division Manager – VIA E-mail  
Pamela Mabry, County Clerk – Via E-Mail  
Rusty Martin, Director of Community Development, City of Smyrna  
Joey Staubes, Planner II, City of Smyrna

**Re: Petition for Annexation – Land Lot 0055, 18<sup>th</sup> District, Parcel 0007, 2<sup>nd</sup> Section, 5773  
Oakdale Road, Cobb County, Georgia; Notice of Non-Objection.**

[signature page continued]

Sincerely,

---

Lisa Cupid, District 4 Commissioner

cc: Jackie McMorris, County Manager – VIA E-mail  
H. William Rowling, Jr., County Attorney- VIA E-mail  
Brian Johnson, Senior Associate County Attorney, VIA E-mail  
Jessica Guinn, Community Development Director – VIA E-mail  
Jason Gaines, Planning Division Manager – VIA E-mail  
Pamela Mabry, County Clerk – Via E-Mail  
Rusty Martin, Director of Community Development, City of Smyrna  
Joey Staubes, Planner II, City of Smyrna

**Re: Petition for Annexation – Land Lot 0055, 18<sup>th</sup> District, Parcel 0007, 2<sup>nd</sup> Section, 5773  
Oakdale Road, Cobb County, Georgia; Notice of Non-Objection.**

Sincerely,

---

JoAnn K. Birrell, Vice Chairman

cc: Jackie McMorris, County Manager – VIA E-mail  
H. William Rowling, Jr., County Attorney- VIA E-mail  
Brian Johnson, Senior Associate County Attorney, VIA E-mail  
Jessica Guinn, Community Development Director – VIA E-mail  
Jason Gaines, Planning Division Manager – VIA E-mail  
Pamela Mabry, County Clerk – Via E-Mail  
Rusty Martin, Director of Community Development, City of Smyrna  
Joey Staubes, Planner II, City of Smyrna



**Cobb County Community Development Agency**  
Planning Division  
**Annexation Analysis**

**Report Prepared by:** Jay Northrup, Intergovernmental Coordinator  
**Deadline for Response to City:** the soonest possible, July 7, 2020

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**BOC Commissioner District:** 4 (Cupid)

**BOC Agenda Deadline:** August 11, 2020, or August 28, 2020 if certified is received after 07/04/2020

**City of Annexation:** Smyrna

**Applicant:** Annexation – Sean Tintle Rezoning – N/A

**Property Location:** 5773 Oakdale Road

**Land Lot/District:** 0055/18<sup>th</sup>

**PID(s):** 1800500070

**Acreage:** 2.417 acres

**Road Access:** Oakdale Road

**Current County Zoning:** R-20

**Proposed City Zoning:** R-20

**Proposed Use:** Residential -1 dwelling unit

**Proposed Density:** 0.414 units per acre

**Future Land Use Designation:** Medium Density Residential (MDR)

**Consistent with HB 489 LUA:** Yes

**Comments:** This application is unobjectionable in accordance with the Intergovernmental Agreement pertaining to land use. It has the necessary contiguity for annexation. The zoning, which is remaining unchanged is un-objectionable. The density is well below that agreed upon 5 DUA for already developed parcels. Annexation of the subject parcel would not create a new island, and there are no Cobb County facilities on the parcel.

**Recommendation:** Non-/Objection

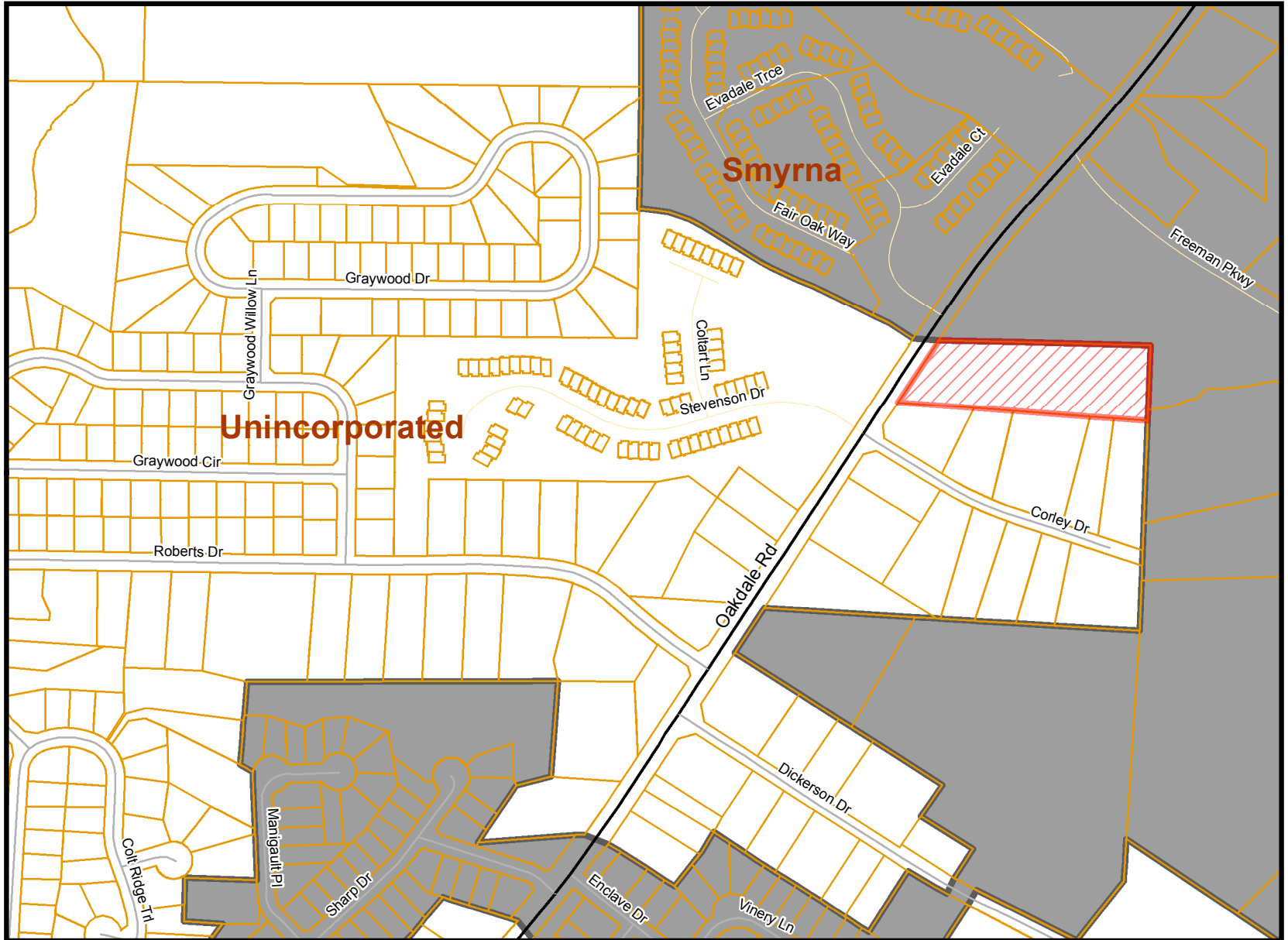
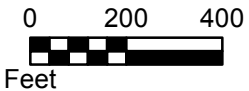
# De/Annexation Location Map

August 2020

18th District  
Land Lot 0055  
Parcels 0007

## Legend

-  Annexed Areas
-  Acworth
-  Austell
-  Kennesaw
-  Marietta
-  Powder Springs
-  Smyrna
-  Unincorporated







## Finance

William Volckmann, Director/Comptroller

Districts All

Item No. 19.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** William Volckmann, Director/Comptroller

**DATE:** August 25, 2020

### **PURPOSE**

To authorize the monthly appropriation of previously approved restricted revenue items and approve the annual carry forward of year end balances within these accounts.

### **BACKGROUND**

There are a number of revenue sources that are received and restricted for specific purposes within departmental budgets that have been approved via previous Board actions. At this time, we request authorization to include revenues as defined below in the Monthly Standard Reserve appropriation. This action will allow the funding to be appropriated into the departmental budget monthly rather than waiting until the end of the fiscal year to appropriate the full year collections into the following year's budget.

Details of revenues to be included in monthly appropriation are as follow:

On July 23, 2019, the Board of Commissioners authorized the creation of a new fund which is dedicated to activities associated with the Federal Equitable Sharing Program. Currently, there are three County departments that participate in this program and receive funding from two program sources. The departments are the District Attorney's Office; The Sheriff's Office; and the Police Department. The revenue that is received through this program is either from the Department of the Treasury or from the Department of Justice. Each participating agency has two units within this fund to distinguish the funding source and enable detailed reporting for program compliance. We request authorization to appropriate the funding as received, as well as associated interest, to make available for eligible program expenditures immediately. There are six units impacted in this fund.

There are three units within the General Fund that will be impacted with this request.

The first is the Tax Commissioner's Office. Periodically the Tax Commissioner is tasked with collection of liens associated with In Rem Nuisances. Per Cobb County Code §83-7, Nuisance Abatement Procedure, the appointed Public Officer of Cobb County shall cause remedy of the nuisance property and file in the Office of the Clerk of Superior Court a lien for costs against the real property upon which such cost was incurred. Such

costs shall include but not be limited to the cost of demolition, reasonable attorneys' fees and all court costs, appraisal fees, administrative costs incurred by the Tax Commissioner, restoration to grade of the real property should it be demolished, and title examination costs. Upon a final determination of costs, fees, and expenses incurred in accordance with this article, the Public Officer shall transmit to the Tax Commissioner a statement of the total due and secured by said lien, together with supporting documents. It shall be the duty of the Tax Commissioner to collect the amount of the lien using all methods available for collecting real property ad valorem taxes, including specifically O.C.G.A. §48-4; provided, that the limitation of O.C.G.A. §48-4-78 which requires 12 months of delinquency before commencing a tax foreclosure shall not apply. The Tax Commissioner shall remit the amount collected to the General Fund of the County. Establishing this item as a Standard Reserve will allow the Tax Commissioner to charge expenses related to collection of such liens to a specific budgetary line that is funded by revenue collected in satisfaction of these liens.

Community Development - Inspections Division is responsible for conducting inspections and serves as the appointed Public Officer on behalf of Cobb County with regard to In Rem Nuisance Abatement proceedings. Per Cobb County Code § 83-7, Nuisance Abatement Procedure, the appointment of a Public Officer grants said officer the authority to carry out remedies in the event of noncompliance with a nuisance abatement order. This code also provides for the filing of a lien for costs against the real property upon which such cost was incurred. Such costs shall include but not be limited to the cost of demolition, reasonable attorneys' fees and all court costs, appraisal fees, administrative costs incurred by the Tax Commissioner, restoration to grade of the real property should it be demolished, and title examination costs. Establishing this item as a Standard Reserve appropriation will allow the Community Development - Inspections Division to charge expenses related to such nuisance abatement activities, such as demolition and restoration, to a specific budgetary line that is funded by revenue collected in satisfaction of these liens.

Community Development - Code Enforcement Division is tasked with ensuring compliance with County code pertaining to the conditions of property located within the County. Cobb County Code §83-9, Weed Control, provides that uncontrolled weed growth on properties within unincorporated Cobb County is a health risk and undesirable in that it provides harborage for rodents and insects, lowers property values, and constitutes a public nuisance. It is unlawful for the owner of any property to permit weeds to obtain a height exceeding 12 inches unless exempted as described in §83-11 of the Cobb County Code. If Code Enforcement personnel have reason to believe a violation as described exists, the owner of the property shall be notified and has 20 calendar days to remedy the condition. Should the property owner fail to comply after proper notice, the Code Enforcement Officer shall certify to the Director of Finance the expense incurred in remedying the condition whereupon such expense plus any administrative penalty as provided, shall become payable within 30 calendar days, after which a special assessment lien and charge shall be attached to the property, which shall be payable with interest at the rate of eight percent per annum from the date of such certification until paid. Such lien shall be in favor of Cobb County, Georgia, and may be satisfied at any time by payment thereof including accrued interest. Notice of such lien shall be filed in the Office of the Clerk of Superior Court and recorded among the public records of Cobb County, Georgia. Establishing this item as a Standard Reserve appropriation will allow the Community Development - Code Enforcement Division to charge expenses related to such remediation of code violations to a specific budgetary line that is funded by revenue collected from the satisfaction of such liens.

## **IMPACT STATEMENT**

There is no impact to County annual budgets. This action authorizes the routine monthly appropriation of restricted revenue, as received, to make available for immediate use for intended, authorized purposes.

## **FUNDING**

Funding will be appropriated as received to the following revenue and expenditure budgets:

### **Equitable Sharing Fund**

#### **Police Department**

##### **Justice**

Increase Revenue: 288-130-PD0J-4429 (Dept. of Justice)  
288-130-PD0J-4855 (Interest)

Increase Expenditure: 288-130-PD0J-8820 (Contingency)

##### **Treasury**

Increase Revenue: 288-130-PD0T-4430 (Dept. of the Treasury)  
288-130-PD0T-4855 (Interest)

Increase Expenditure: 288-130-PD0T-8820 (Contingency)

#### **District Attorney**

##### **Justice**

Increase Revenue: 288-170-DA0J-4429 (Dept. of Justice)  
288-170-DA0J-4855 (Interest)

Increase Expenditure: 288-170-DA0J-8820 (Contingency)

##### **Treasury**

Increase Revenue: 288-170-DA0T-4430 (Dept. of the Treasury)  
288-170-DA0T-4855 (Interest)

Increase Expenditure: 288-170-DA0T-8820 (Contingency)

#### **Sheriff's Office**

##### **Justice**

Increase Revenue: 288-210-SO0J-4429 (Dept. of Justice)  
288-210-SO0J-4855 (Interest)

Increase Expenditure: 288-210-SO0J-8820 (Contingency)

**Treasury**

Increase Revenue: 288-210-SO0T-4430 (Dept. of the Treasury)  
288-210-SO0T-4855 (Interest)

Increase Expenditure: 288-210-SO0T-8820 (Contingency)

**General Fund**

**Tax Commissioner**

Increase Revenue: 010-230-9600-4534 (Judicial In Rem Fees)

Increase Expenditure: 010-230-9600-6339 (Judicial In Rem Expenses)

**Community Development**

**Inspections Division**

Increase Revenue: 010-030-0320-4534 (Judicial In Rem Fees)

Increase Expenditure: 010-030-0320-6339 (Judicial In Rem Expenses)

**Community Development**

**Code Enforcement Division**

Increase Revenue: 010-030-0350-4804 (Court Fines/Liens)

Increase Expenditure: 010-030-0350-8852 (Restricted Reserve)

**RECOMMENDATION**

The Board of Commissioners authorize the monthly appropriation of previously approved restricted revenue items and approve the annual carry forward of year end balances within these accounts; authorize the corresponding budget transactions; and further authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

None



## CDBG

Kimberly Roberts, Managing Director

Districts All

Item No. 20.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Kimberly Roberts, Managing Director

**DATE:** August 25, 2020

### **PURPOSE**

To approve a contract with W. Frank Newton, Inc. for the provision of administrative services for grant programs received from the U.S. Department of Housing and Urban Development and other federal and state sources.

### **BACKGROUND**

On May 29, 2020 the Board of Commissioners authorized the Finance Department to issue a Request for Proposals (RFP) for the provision of administrative services for Cobb County's grant programs from HUD and other federal and state sources. These grants include the Community Development Block Grant (CDBG), Justice Assistance Grants (JAG), Community Services Block Grant (CSBG), Emergency Solutions Grant (ESG), HOME Program, Federal Emergency Management Agency (FEMA) and others.

The deadline for submission of the RFPs was June 25, 2020. Twenty-eight prospective bidders requested and received a copy of the RFP but only one response was received which was from W. Frank Newton, Inc. The selection committee consisting of Stephanie Brice, Interim Purchasing Director, Purchasing Department; Brian Johnson, Senior Associate County Attorney; Roxane Rush, Finance Division Manager, Finance; Cathleen Franklin, Grants Development Specialist, Finance; Lana Melton, Grants Specialist, Finance; Jason Gaines, Division Manager, Planning and Economic Development; and Juliet Hoilett, Business Manager, Cobb Senior Services, reviewed the response submitted and evaluated it based on qualifications/experience, approach/availability, financial stability, and cost. The proposal scored well and the committee had no questions or comments. W. Frank Newton, Inc. is the only responsive bidder.

The proposed contract term is for three years with two additional one-year options. The initial term of the agreement will be for three (3) years starting October 1, 2020 and terminating on September 30, 2023, with an option to renew for (2) additional (1) year periods, these being October 1, 2023 through September 30, 2024 and October 1, 2024 through September 30, 2025.

The Contract Fee is as follows:

PY2020 (October 1, 2020-September 30, 2021)	\$996,532.00
PY2021 (October 1, 2021-September 30, 2022)	\$1,000,731.00
PY2022 (October 1, 2022-September 30, 2023)	\$1,004,500.00

The County will reserve the right to review and adjust administrative costs as appropriate.

**IMPACT STATEMENT**

N/A

**FUNDING**

The contract fees for administration of HUD and other federal and state grant programs are paid entirely with grant funds. No monies from the County's General Fund are used. The addition or deletion of grant programs received by the County may result in changes to contract fees. Funding for administrative fees are already included in each of the budgets for the various grant programs being administered. If this funding were reduced or no longer made available, we would no longer pay for professional services and operating costs, the programs would be terminated and the employment positions eliminated.

**RECOMMENDATION**

The Board of Commissioners approve a contract with W. Frank Newton, Inc. for the provision of administrative services for U.S. Department of Housing and Urban Development (HUD) and other federal and state grant programs; authorize all budget transactions; and further authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

1. Contract WFN FY21

## GRANT ADMINISTRATION AGREEMENT

This fixed price Grant Administration Agreement (the “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the Cobb COUNTY Board of Commissioners (the “COUNTY”), and W. Frank Newton, Inc. (the “CONTRACTOR”), sometimes hereinafter referred to individually as the “Party” and collectively as the “Parties.”

WITNESSETH THAT:

**WHEREAS**, the COUNTY desires to engage the CONTRACTOR to render complete professional administrative services for the Community Development Block Grant Program (CDBG), the Community Services Block Grant Program (CSBG), the Home Investment Partnership Act Grant Program (HOME), the Emergency Solutions Grant Program (ESG), the Emergency Food and Shelter(EFSP-FEMA) Grant Program , the Justice Assistance Grant (JAG) Program, the and for any other programs that may be added to the Agreement (collectively the “Programs” or the “COUNTY’s Programs”); and

**WHEREAS**, the CONTRACTOR was a responsive and qualified bidder pursuant to a Request For Proposals from the COUNTY dated June 25, 2020 (the “RFP”), and was approved by the Cobb COUNTY Board of Commissioners on August \_\_, 2020; and,

**WHEREAS**, the CONTRACTOR desires to render such professional administrative services in connection with the Programs;

**NOW, THEREFORE**, in consideration of the promises, mutual covenants, benefits and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **EMPLOYMENT OF THE CONTRACTOR** The COUNTY hereby agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to perform professional administrative services in accordance with the terms and conditions contained herein and reasonably inferable herefrom.
2. **SCOPE OF SERVICES.** The CONTRACTOR shall perform and carry out in a satisfactory and proper manner, as determined by the Cobb COUNTY Board of Commissioners or its designated staff, all administrative services as described herein and in the RFP, and all other services incidental and necessary to the satisfactory performance of this Agreement.

Subject only to the general policies and directions of the COUNTY with regard to grants administration and operations, and to the provisions and requirements of this Agreement, CONTRACTOR shall, upon receiving COUNTY’s notice to proceed, do all things necessary to manage, operate, and maintain administration of the Programs including, but not limited to:

1. Provide executive and administrative management;
2. Be knowledgeable of, develop, apply for and manage grants;
3. Undertake day-to-day operation of COUNTY grant Programs;
4. Employ and supervise a sufficient number of experienced, qualified and capable personnel to perform required duties;
5. Administer the Programs;
6. Monitor all programs according to individual grant requirements;

7. Maintain in good working order all CONTRACTOR provided facilities and equipment;
8. Prepare and submit to the COUNTY reports and analyses of financial and other matters, including program progress reports, monthly calendar of scheduled events and public hearings, and monthly program and financial reports for each grant program;
9. Provide clerical, statistical, and bookkeeping services for COUNTY programs;
10. Coordinate accounting requirements between the COUNTY and other agencies.
11. Use the COUNTY's purchasing system to contract for goods and services;
12. Secure grant payment drawdowns and insure obligations to the grant programs are paid in a timely manner;
13. Retain and make all grant associated records available to COBB COUNTY staff and federal and state agencies;
14. Provide technical assistance to the Grants sub-recipients;
15. Monitor and audit sub-recipients as related to performance of grant requirements;
16. Undertake such other work or other services as may be necessary in connection with the operation of the overall grant administration program and in accordance with this Agreement and RFP and **EXHIBIT 2 – SCOPE OF WORK** attached hereto.

The COUNTY may require changes to the Scope of Services set forth throughout this Agreement. In addition, the CONTRACTOR may be requested to provide administrative services for other grant programs not identified in this Agreement. Any change or addition of service, including any increase or decrease in the amount of the CONTRACTOR's compensation, which is mutually agreed upon by the COUNTY and the CONTRACTOR shall be incorporated in this Agreement by means of a written amendment executed by both Parties.

### **Recipients of Services**

CONTRACTOR agrees to determine eligibility of clients to receive services in compliance with all grant requirements as well as state and federal law. Eligibility criteria may involve income levels, disability status, and legal residency. CONTRACTOR agrees to provide services only to those clients who are eligible and to maintain documentation of such service eligibility on file.

### **3. TERM.**

The initial term of the agreement shall be for three (3) years starting **October 1, 2020 and terminating on September 30, 2023**, with an option to renew for two (2) additional one (1) year periods, these being **October 1, 2023 through September 30, 2024 and October 1, 2024 through September 30, 2025**. Any option to renew will be made at the sole discretion of the COUNTY. The total term of the Agreement shall in no event exceed five (5) years.

This Agreement shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of COBB COUNTY under this Agreement.

The Agreement shall be subject to the provisions of O.C.G.A 36-60-13 regarding multi-year contracts. This contract shall terminate absolutely and without further obligation on the part of Cobb COUNTY at the close of the calendar year in which it was executed, and at the close of each succeeding calendar year for which it may be renewed as provided in O.C.G.A. Section 36-60-13.



The contract shall automatically renew for each of the remaining calendar years provided for in the contract, unless positive action is taken by COBB COUNTY to terminate such contract, and the nature of such action shall be written notice provided to the CONTRACTOR within at least sixty (60) days prior to September 30 of the initial year of the contract or of each succeeding remaining calendar year.

#### **4. FIXED PRICE COMPENSATION AND METHOD OF PAYMENT**

**A. FIXED PRICE COMPENSAION.** The CONTRACTOR shall be compensated for the work and services performed under this Agreement that are acceptable to the COUNTY on a fixed price basis. The fixed price for each year of the Initial Term is attached hereto as EXHIBIT 1 (“Fixed Price Compensation and Method of Payment”) and expressly made a part hereof. Notwithstanding the above, the COUNTY reserves the right to review and renegotiate indirect and administrative costs on an annual COUNTY fiscal year basis. The CONTRACTOR agrees upon receipt of notice from the COUNTY to, in good faith and in a timely manner, negotiate its indirect and administrative costs.

If individual grant programs are added or deducted during the term of the Agreement, the payment amounts will be adjusted accordingly.

The COUNTY reserves the right to assess an indirect cost fee to individual grant programs, provided that the fee assesses does not reduce the fixed price compensation to the CONTRACTOR nor exceed the percentage of administrative costs allowed under any grant program for which the fee is assessed.

**B. METHOD OF PAYMENT.** The CONTRACTOR shall submit to the COUNTY separate sequentially numbered fixed price invoices for compensation for work and services performed for each program as described in EXHIBIT 1. Subject to the COUNTY’s right to verify the accuracy of the invoice(s) and the satisfactory performance of the services being invoiced and subject to grant funding availability and eligibility, the COUNTY will make fixed price compensation payments to the CONTRACTOR as soon as practicable. The professional fees paid to the CONTRACTOR will be funded 100% by the Programs funds, if at all, and the COUNTY shall have absolutely no obligation to make any payments to CONTRACTOR from COUNTY general or other designated COUNTY funds.

The COUNTY may withhold payment or portions of payment if the COUNTY determines that the CONTRACTOR has not fulfilled its obligations under the Agreement. Such withholdings shall be deducted by the COUNTY from monies invoiced by the CONTRACTOR in the subsequent month’s invoice following the COUNTY’S performance evaluation and the COUNTY supplying at least ten (10) days prior written notice of the COUNTY’S intent to deduct thereby affording the CONTRACTOR an opportunity during said ten-day period to provide information to the COUNTY challenging the factual basis for such previous month’s intended deduction.

**C. COSTS APPORTIONED.** In order to comply with regulations and to establish a simplified system of accounting for planning and administrative CONTRACTOR costs associated with the Programs, costs will be apportioned on a first-in, first-out basis, whenever appropriate, or another program approved accounting plan as agreed upon by the Parties.

The terms of this Section 4 and the terms of the entire Agreement are intended to supersede all provisions of the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1 through 13-11-11, and as may be amended.

**5. PROGRAM EXPENSES.** The CONTRACTOR shall adhere to all provisions of the “Common Rule” (24 CFR Part 85) and Super Circular 2 CFR Part 200, and to all other Federal, State, COUNTY or program procurement policies, procedures, regulations, or requirements, whichever is more restrictive, in the procurement of all eligible, Program-related goods and services. All eligible program expenses shall be billed to and paid by the COUNTY subject to the terms herein

All eligible program expenditures made from Program Income must adhere to all applicable COUNTY policies and guidelines.

All eligible program expenses incurred and paid by the CONTRACTOR related to travel shall not exceed the approved COUNTY line item budget amount, and shall adhere to all COUNTY policies and guidelines with the exception of travel advances. Travel advances shall not be issued to the CONTRACTOR by the COUNTY. All travel expense reports shall reflect with particularity the purpose of the travel, and if such travel benefits any other governmental entity or client served by the CONTRACTOR, only the pro rata share or actual costs directly attributable to serving Cobb COUNTY pursuant to this Contract shall be billed to or paid by Cobb COUNTY.

**6. PROGRAM INCOME.** All grant income revenues collected by CONTRACTOR are to be reinvested into the respective grant program as provided in Federal Register Part 570.504 for Community Development Block Grants. CONTRACTOR shall be responsible for processing program income revenues in the manner discussed in EXHIBIT 2-SCOPE OF WORK attached hereto and specifically made a part hereof, and as necessary for the COUNTY to meet the requirements of Federal and State funding sources.

**7. AGREEMENTS BY CONTRACTOR.** To ensure the successful execution of the COUNTY’s Programs, the CONTRACTOR agrees to the following provisions:

- A. Robert G. Autorina of W. Frank Newton, Inc., will serve as the COUNTY’s Program Official Representative in all matters relating to the U.S. Department of Housing and Urban Development, the Georgia Department of Human Resources, and with all other public and private agencies-Federal, State and local.
- B. The CONTRACTOR will provide periodic progress reports to the Cobb County Board of Commissioners and the Cobb County Manager on a frequency deemed appropriate by the COUNTY, and otherwise set forth herein.
- C. The CONTRACTOR, in cooperation with the Cobb County Board of Commissioners and the Cobb County Manager, will be responsible for administering and managing all appropriate CDBG, HOME, ESG, CSBG, JAG, and FEMA Program operations. The CONTRACTOR will administer and manage the programs, including all procurement, contracting, operational, financial, record keeping, and reporting, in compliance with all program rules, regulations, requirements and guidelines, COUNTY policies, and input and direction of the Cobb County Board of Commissioners and the Cobb County Manager, as well as the rules, regulations, requirements and guidelines of HUD and all other appropriate Federal and State agencies.

- D. The CONTRACTOR agrees to provide compensation requests at time intervals which meet the Cobb County Office of Finance Department's regular payment schedule, unless conditions warrant emergency or special action.

**8. AGREEMENTS BY THE COUNTY.** The COUNTY, using program funds, agrees to provide the following:

- A. Fixed price compensation for approved and eligible CONTRACTOR services.
- B. Payment of all eligible program expenses if purchased according to applicable procurement requirements.
- C. Reimbursement to the CONTRACTOR for all eligible program expenses which are incurred and paid by the CONTRACTOR related to travel.

Additionally, the COUNTY agrees to:

- D. Periodically meet with the CONTRACTOR to review the operations of the CONTRACTOR and to ascertain if any modifications are deemed necessary to successfully plan and implement the COUNTY's Programs.
- E. Provide the coordination and support of Cobb COUNTY in whatever ways are reasonable and beneficial to the proper operations of the Programs.
- F. Provide facilities, equipment, and office supplies for the CONTRACTOR needed to administer grant programs.

**9. INDEPENDENT CONTRACTOR STATUS**

Under the CONTRACT, the CONTRACTOR shall be an independent CONTRACTOR and not an agent of the COUNTY or the Board of Commissioners. The CONTRACTOR shall be fully responsible for all acts and omissions of its employees, SUBCONTRACTORS and their suppliers, and specifically shall be responsible for sufficient supervision and inspection to ensure compliance in every respect with the CONTRACT requirements. There shall be no contractual relationship between any SUBCONTRACTOR or supplier and the COUNTY by virtue of the CONTRACT with the CONTRACTOR. No provision of this CONTRACT shall be for the benefit of any party other than the COUNTY and the CONTRACTOR.

The COUNTY, in consideration of the compensation provided to the CONTRACTOR, shall also be the lessee of all facilities and equipment used pursuant to this RFP (other than equipment purchased by the COUNTY). The CONTRACTOR, and not the COUNTY, is the employer of all grant administration employees and the CONTRACTOR is responsible for their wages, hours, benefits, worker's compensation, social security, and all other incidents of employment.

**10. KEY PERSONNEL.** The CONTRACTOR'S General Manager/President and staff are considered to be essential to the work being performed under this Agreement. Prior to diverting any of these individuals to other programs, the CONTRACTOR shall notify the COUNTY reasonably in

advance and submit justification and proposed substitutions in sufficient detail to permit evaluation of the impact on the PROJECT. CONTRACTOR shall make no diversion without the written consent of the COUNTY. Replacements to staff vacancies should be made within reasonable time limits to not hamper or delay the grant programs.

**11. CONTRACTOR'S PERSONNEL; REMOVAL OF PERSONNEL.** Promptly upon the written demand of the Cobb COUNTY Manager, CONTRACTOR shall remove from activities associated with this Agreement any personnel whom COUNTY considers unsuitable for such work. This right of the COUNTY shall not, however, serve to create any employer-employee relationship between the COUNTY and CONTRACTOR's employees who shall, at all times, remain employees of CONTRACTOR only.

**12. SUBCONTRACTING** The CONTRACTOR shall not assign, award, or delegate any of its rights, duties or obligations under this Agreement to a SUBCONTRACTOR without prior written approval of the COUNTY. The COUNTY'S approval of any assignment, award or delegation shall not release the CONTRACTOR of any obligation under the Agreement. The CONTRACTOR shall be fully responsible for the acts and omissions of the SUBCONTRACTORS, and of persons either directly or indirectly employed by the CONTRACTOR, as the CONTRACTOR is for the acts and omissions of persons directly employed by it. Nothing contained in this Agreement shall create any contractual relation between any SUBCONTRACTOR and the COUNTY.

**13. PERFORMANCE STANDARDS.** The CONTRACTOR will perform all services required by the Agreement according to the performance standards set forth below and in the RFP. The CONTRACTOR's plans and procedures, submitted with the Proposal, shall incorporate actions necessary to provide service according to these standards. The performance standards shall apply to all services.

The COUNTY has developed these standards with which the CONTRACTOR is expected to comply to ensure that the CONTRACTOR's services and employee performance meet COUNTY standards. Failure by the CONTRACTOR to meet these standards could result in the COUNTY assessing an appropriate compensation amount for each incident of non-compliance and/or termination. The COUNTY has established specific performance standards related to the following:

- i. Operating requirements
- ii. Cleanliness
- iii. ADA/Georgia Accessibility Code Compliance
- iv. Safety requirements
- v. Reporting requirements
- vi. Customer service requirements

**14. FEDERAL REGULATIONS AND REQUIREMENTS.** EXHIBIT 3 outlines requirements pertaining to this Agreement. These clauses are incorporated into this Agreement with the same force and effect as if they were included in the main text or the Agreement. It is understood and agreed that the CONTRACTOR may be obligated by and to the COUNTY for any specifications or documentation required of the COUNTY under these clauses.

**15. NOTICE REQUIREMENT.** All notices and correspondences required under this Agreement shall be in writing and shall be delivered personally, prepaid registered or certified mail, return receipt requested or overnight receipted delivery service.

All notices and correspondences to the COUNTY shall be addressed as follows:

Cobb County Office of Finance  
100 Cherokee Street, Suite 400  
Marietta, GA 30090-7000  
Telephone: (770) 528-1505  
Facsimile: (770) 528-1557

**16. REVIEW AND COORDINATION; MEETINGS.** To ensure adequate review and evaluation of services provided, and proper coordination among interested parties, the COUNTY shall be kept fully informed by the CONTRACTOR of the progress of the services to be performed hereunder. The COUNTY may request the CONTRACTOR to meet with designated officials of the COUNTY and other public and private agencies from time-to-time to review the services provided. Reasonable prior notice of such review will be given to the CONTRACTOR. Upon request of the COUNTY, the CONTRACTOR shall, at its own expense, attend COUNTY and citizens' meetings to provide information concerning grants and grant programs and services. The General Manager, representing the CONTRACTOR, shall attend, at a minimum, monthly meetings with COUNTY staff at times and locations to be determined by COUNTY staff. In addition, the CONTRACTOR is expected to be available to meet with COUNTY staff and officials to discuss issues of importance as deemed necessary by the COUNTY.

**17. REPORTS.** The CONTRACTOR shall furnish the COUNTY periodic progress reports, in such form as may be specified by the COUNTY Manager or his designee, outlining the services provided by the CONTRACTOR during the time period of such report, and the current status of all work, including the amount of work which has been completed as of the end of the report period. Such report(s) shall be furnished as requested by the COUNTY.

**18. ACCESS TO RECORDS AND REPORTS.** The following access to records requirements apply to this Agreement:

1. The CONTRACTOR agrees to permit COUNTY staff to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
2. The CONTRACTOR agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than five years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the CONTRACTOR agrees to maintain same until the COUNTY has disposed of all such litigation, appeals, claims or exceptions related thereto.

**19. RETENTION AND EXAMINATION OF RECORDS.** CONTRACTOR shall maintain all books, records, documents, accounting ledgers, databases, and similar materials relating to work performed for COUNTY under this Agreement on file for at least five (5) years following the date of the last expenditure report filed with HUD and/or other federal funding agencies. All records stored on a computer database must be in a format compatible with the COUNTY'S. Any duly authorized representative(s) of COUNTY shall have access to such records for the purpose of inspection, audit, and copying at reasonable times, during CONTRACTOR'S usual and customary business hours. If records are stored offsite, CONTRACTOR agrees to provide COUNTY with necessary documents and information needed to access data stored offsite. CONTRACTOR shall provide proper facilities

to COUNTY representative(s) for such access and inspection. Further, any duly authorized representative(s) of COUNTY shall be permitted to observe and inspect any or all of CONTRACTOR'S facilities and activities during CONTRACTOR'S usual and customary business hours for the purposes of evaluating and judging the nature and extent of CONTRACTOR'S compliance with the provision of this CONTRACT. In such instances, COUNTY representative(s) shall not interfere unreasonably with or disrupt such activities.

All clients shall be notified that their name, address, and other personal information is public record, but that information regarding their respective case will be referred to inquiries according to project number or some other code that will not reveal personal identity.

The CONTRACTOR shall maintain, and the COUNTY and its representatives shall have the right to examine, all books, records, documents, accounting procedures and practices and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the Agreement. The materials described above as well as any relevant database and computer tapes or disks containing such information shall be made available at the COUNTY office of the CONTRACTOR at all reasonable times for inspection, audit, and reproduction during the term of the Agreement, and for five (5) years from the final date of settlement or payment under the Agreement.

**20. RIGHTS IN DOCUMENTS, MATERIALS, AND DATA PRODUCED.** The CONTRACTOR agrees that all reports, drawings, plans, studies, specifications, estimates, maps, computations and other data prepared by or for the CONTRACTOR under the terms of this Agreement shall be delivered to, become and remain the property of the COUNTY upon termination or completion of the services. The COUNTY shall have the right to use same without restriction or limitation and without compensation to the CONTRACTOR other than provided for in this Agreement. For the purposes of this Agreement, "data" includes writings, sound recordings, or other graphic representations and works of similar nature. No reports, maps or other documents produced in whole or in part under the Agreement, shall be the subject of an application for copyright by or on behalf of the CONTRACTOR or its subcontractors. The CONTRACTOR acknowledges that matters regarding the rights to inventions and materials generated by or arising out of may be subject to certain regulations issued by the United States Department of Housing and Urban Development (HUD) or other federal funding agencies. If this Contract provides for the development of systems analysis products, models, electronic data processing systems, software or related services, the methods, material, logic and systems developed under this Agreement shall be the property of the COUNTY, and may be used as it deems appropriate, including the right to re-use and republish the same without limitation.

**21. DATA TO BE FURNISHED BY THE COUNTY TO THE CONTRACTOR.** All information, data, reports, records and maps which are existing, readily available and reasonably necessary, as determined by the COUNTY, for the performance by the CONTRACTOR for the service required by this Agreement, shall be furnished to the CONTRACTOR without charge by the COUNTY. The COUNTY shall fully cooperate with the CONTRACTOR in the performance of the CONTRACTOR'S duties under this Agreement.

**22. APPROVAL OF PROCEDURES** The CONTRACTOR'S proposal to the Request for Proposals is hereby incorporated into this Agreement by reference. The CONTRACTOR'S proposal, together with the requirements in the Request for Proposals, shall constitute the CONTRACTOR'S operating procedures, policies and practices, and, upon reasonable written request from the

COUNTY, the CONTRACTOR shall amend such procedures, policies and practices in accordance therewith. The CONTRACTOR shall request the COUNTY'S prior written approval for any change to these responses. Such procedures, policies and practices shall be deemed to include all CONTRACTOR'S employees' training and orientation and CONTRACTOR'S employee performance codes and disciplinary procedures, and other performance-related procedures or policies.

**23. THE COUNTY AND CONTRACTOR-SUPPLIED PROPERTY; USE BY CONTRACTOR.** The title to capital items provided by the COUNTY shall remain with the COUNTY. Furthermore, the CONTRACTOR shall maintain adequate property control records of all COUNTY-furnished property in accordance with sound industry practice and as approved by the COUNTY. Unless expressly authorized in writing by the COUNTY, the CONTRACTOR shall not use any facilities or equipment which are part of the COUNTY'S Programs other than in connection with the services required to be performed under the Agreement. The CONTRACTOR shall not use any such facilities or equipment for any purpose other than may be specifically permitted by the COUNTY and in the COUNTY'S sole discretion and under such terms as the COUNTY elects.

**24. RISK OF LOSS OR DAMAGE.** The CONTRACTOR will be responsible for all losses and/or damages to buildings, structures, and facilities, whether owned or leased by the COUNTY, used in the performance of this CONTRACT, which are due to the negligence of the CONTRACTOR, its agents, representatives, employees, or subcontractors.

**25. CONTRACTOR CERTIFICATIONS.** The project will be funded in whole by grants from Federal, State, and other government agencies. Therefore, the CONTRACTOR shall provide compliance by executing the associated Certifications attached hereto as EXHIBIT 4 (4-1 through 4-13) and specifically made a part hereof regarding:

Should the CONTRACTOR become aware that any violation has occurred or of any circumstance which may cause a breach or violation with any of these certification conditions or requirements during the term of this Agreement, the CONTRACTOR shall immediately notify the COUNTY, but in any event within one week. If the COUNTY determines that a breach or violation has occurred or exists, the COUNTY may require the CONTRACTOR to take action to remedy the breach or violation, or the COUNTY may immediately terminate this Agreement without liability. The COUNTY shall have the right to recover all compensation paid for service rendered by the CONTRACTOR, his SUBCONTRACTORS, agents, or employees which were performed while a breach or violation of any certification requirement existed, if the CONTRACTOR knew or should have known of any breach or violation and did not notify the COUNTY as required by this section.

**A. *Required Certifications***

1. Certifications regarding Fair Housing; Anti-Displacement; and Confidentiality (Exhibit 4-1)
2. Certification Regarding Conflict of Interest (Exhibit 4-2)
3. Certification regarding Drug-free Workplace. (Exhibit 4-3)
4. Certification regarding Guidance on Lobbying Restrictions. (Exhibit 4-4)

5. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions. (Exhibit 4-5)
6. Certification regarding Section 3 Plan. (Exhibit 4-6)
7. Certification regarding Non-Segregated Facilities. (Exhibit 4-7)
8. Certification for Conflict of Interest (Exhibit 4-8)
9. Certification for Confidentiality (Exhibit 4-9)
10. Certification of Compliance with Georgia Security and Immigration Act (Exhibit 4-10)
  - CONTRACTOR Affidavit & Agreement- Attachment 3-I (a)
  - SUBCONTRACTOR Affidavit & Agreement- Attachment 3-I (b)
  - Employer Immigration Compliance Certification- Attachment 3-I (c)
11. Prohibition Against Contingent Fees (Exhibit 4-11)
12. Officials Not To Benefit (Exhibit 4-12)
13. Statement of Assurance (Exhibit 4-13)

**26. SUSPENSION OR TERMINATION OF THE AGREEMENT FOR CAUSE.**

**A. SUSPENSION OR TERMINATION FOR CAUSE.** If, through any cause, the CONTRACTOR shall be in Default of the Agreement as Default is hereinafter defined, the COUNTY, at its option, shall thereupon have in addition to any other remedies in law or equity, the right to:

Indefinitely suspend any or all CONTRACTOR services and all compensation to the CONTRACTOR until such obligations of the CONTRACTOR are fulfilled to the full satisfaction of the COUNTY. Any suspension of services shall be by written notice from the COUNTY to the CONTRACTOR stating the reasons therefore, and specifying the effective date thereof. Such written notice shall be dated at least ten (10) days before the effective date of such suspension of services; or,

Terminate any or all parts of this Agreement by giving written notice to the CONTRACTOR stating the reasons therefore, specifying the effective date thereof, and allowing the CONTRACTOR thirty (30) days to cure before the effective date of such termination. If the CONTRACTOR has not cured or remedied the default within this thirty (30) day period, the COUNTY may immediately terminate this Agreement without liability.

In the event of termination, all finished or unfinished documents and other materials collected or produced under this Agreement shall become the property of the COUNTY and CONTRACTOR shall promptly deliver the same to COUNTY upon its request. The CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to the effective date of termination. The CONTRACTOR shall have no right to seek recovery, and hereby waives such right, for any consequential damages, loss of business, lost profits, or any other compensation, fees, or damages claimed for whatever reason.

**B. TERMINATION FOR CAUSE.** Either party may terminate this Agreement should either party Default in the performance of any of the terms, covenants, obligations, or conditions of this Agreement and the non-defaulting party may proceed by following any of the options listed below in the Default section.

**C. DEFAULT.** Default shall mean a failure to comply with or timely and properly fulfill any of the provisions and obligations of this Agreement or any applicable COUNTY, State, or Federal laws, which do not fall within the force majeure provisions of this Agreement. Additionally:



- a. The CONTRACTOR will be in default should the CONTRACTOR become insolvent or unable to pay its debts as they mature or make an assignment for the benefit of creditors or should a bankruptcy petition under the Bankruptcy Code of 1978, as amended, be brought by or against the CONTRACTOR; or
- b. The CONTRACTOR will be in default should a judgment or order for payment of money no longer subject to appeal or which judgment or order, in the opinion of the COUNTY, would be fruitless to appeal, be entered against the CONTRACTOR by any court or other tribunal which exceeds \$100,000 in amount and (a) such judgment or order shall continue undischarged or unpaid for a period of 30 days and (b) an insurer acceptable to the COUNTY has not acknowledged that such judgment or order is fully covered by a relevant policy of insurance and (c) or the COUNTY is otherwise reasonably satisfied that the CONTRACTOR would be able to satisfy the judgment without affecting its ability to provide those services.

Further, in the event of default, the non-defaulting party shall have the right, but not the obligation, to cure such default and to charge the defaulting party for the costs of curing the default against any sums due or which become due to the defaulting party under this Agreement. The non-defaulting party shall use an economical and reasonable method of curing any such default.

This Agreement may be cancelled or annulled by the Purchasing Director in whole or in part by written notice of default to the CONTRACTOR upon non-performance or violation of any agreement term. In any event, the defaulting CONTRACTOR (or his surety) shall be liable to the COUNTY for costs to the COUNTY in excess of the defaulted contract prices; provided, however, that the CONTRACTOR shall continue the performance of this Agreement to the extent not terminated under the provisions of this clause. Failure of the CONTRACTOR to deliver materials or services within the time stipulated on its proposal, unless extended in writing by the Purchasing Director, shall constitute default.

**D. TERMINATION FOR CONVENIENCE.** The COUNTY may terminate this Agreement at any time for any reason upon ninety (90) days written notice to the CONTRACTOR. Any notice to terminate this Agreement shall be given by certified mail, return receipt requested. The effective date of termination shall be ninety (90) days from the date of receipt as noted on the return receipt. The COUNTY shall be responsible for compensating the CONTRACTOR for all services adequately rendered up to the effective date of termination and CONTRACTOR shall not be entitled to any other compensation, fees, or damages claimed for whatever reason,

## **Disputes**

Except as otherwise provided in the contract documents, any dispute concerning a question of fact arising under the CONTRACT which is not disposed of shall be decided after a hearing by the Purchasing Director who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the CONTRACTOR. The decision of the Purchasing Director shall be final and binding, however, the CONTRACTOR shall have the right to appeal said decision to a court of competent jurisdiction.

## **27. LAWS GOVERNING AND VENUE OF ACTIONS**

The Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia. The courts of Georgia, located in COBB COUNTY, Georgia, and, as applicable, the United States District Court for the Northern District of Georgia, shall have exclusive jurisdiction to hear any claim between the CONTRACTOR and the COUNTY in connection with the Agreement or the operation of grants administration, and CONTRACTOR submits to the jurisdiction and venue of such courts.

## **28. INSURANCE AND INDEMNIFICATION REQUIREMENTS**

### **Insurance**

The CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with performance of the Work hereunder by the CONTRACTOR, his agents, representatives, employees, or subcontractors. At a minimum, the CONTRACTOR shall maintain the following insurance coverages.

#### **A. Requirement:**

CONTRACTOR shall procure and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with performance of the Work hereunder by the CONTRACTOR, his agents, representatives, employees, or SUBCONTRACTORS.

#### **B. Minimum Limits of Insurance:**

CONTRACTOR shall maintain insurance policies with coverage and limits no less than:

- i. Commercial General Liability: \$1,000,000 combined single limit per occurrence for comprehensive coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage for premises/operations, products/completed operations, independent contractors and contractual liability (specifically covering the indemnity), broad-form property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on “an occurrence” basis (“claims made” coverage is not acceptable).
- ii. Commercial Automobile Liability (owned, non-owned and hired): \$1,000,000 combined single limit per occurrence and for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

- iii. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the State of Georgia and Employers Liability of \$1,000,000 per occurrence or disease.
- iv. Professional Liability (Errors and Omissions) Coverage: \$1,000,000 combined single limit per occurrence is required, in the event a CONTRACTOR is performing design, engineering or other professional services.

C. Deductibles and Self-Insured Retention

Any deductibles or self-insurance retentions must be declared to and approved by the COUNTY so that the COUNTY may ensure the financial solvency of the CONTRACTOR. At the option of the COUNTY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, and employees; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. CONTRACTOR shall pay all deductibles and be liable for all claims, losses and damages for which it self-insures.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability, and Umbrella Liability Coverages:

The COUNTY and its officers, officials, employees and volunteers are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the CONTRACTOR. CONTRACTOR should maintain professional liability coverage, at a minimum, in the amounts of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY and its officers, officials, employees or volunteers.

The CONTRACTOR is responsible for insuring its own property and equipment.

All program files, records, equipment, and furnishings stored off-site must be insured.

2. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the COUNTY and its officers, officials, employees and volunteers for losses arising from the work performed by the CONTRACTOR for the COUNTY.

3. All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be changed, cancelled, suspended, terminated or non-renewed except after sixty (60) days prior written notice by certified mail, return receipt requested, has been given to COBB COUNTY of said change of coverage, cancellation, suspension, termination/ or non-renewal.

F. Waiver of Subrogation

The insurers shall agree under each policy of insurance required by this Agreement to waive all rights of subrogation against the Insured Parties for losses arising from work performed by the CONTRACTOR for Owner.

G. All Coverages

i. Notice Requirement.

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Owner, in care of the Cobb County Manager, 100 Cherokee Street, Marietta, GA 30090. Owner reserves the right to accept alternate notice terms and provisions provided they meet the minimum requirements under Georgia law.

(ii) Acceptability.

The insurance to be maintained by CONTRACTOR must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurers with an A.M. Best's rating of no less than A: VII, or be otherwise acceptable to Cobb COUNTY. All policies shall be subject to approval by Cobb County Attorney's Office as to form and content.

(iii) Failure of Insurers. The CONTRACTOR shall be responsible for any delay resulting from the failure of any insurer to furnish proof of coverage in the prescribed form

H. Verification of Coverage

CONTRACTOR shall furnish Owner with certificates of insurance and endorsements to the policies evidencing all coverages required by this Agreement. Additionally, the declarations page for each insurance policy listed on the certificate of insurance shall be submitted to Owner. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements shall be received and approved by Owner before any work commences. Owner reserves the right to require complete, certified copies of all required insurance policies at any time. The CONTRACTOR shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage

I. SUBCONTRACTORS

SUBCONTRACTOR means one not in the employment of the CONTRACTOR who is performing all or part of the services under this Agreement under a separate Agreement with the CONTRACTOR.

CONTRACTOR shall include all SUBCONTRACTORS as insured under its insurance or shall ensure that SUBCONTRACTORS have met the insurance requirements of this agreement. COUNTY may request evidence of SUBCONTRACTOR's insurance.

CONTRACTOR is responsible for having all SUBCONTRACTORS comply with all terms and conditions of the agreement.

Grant Subrecipient shall not be construed to mean subcontractor.

#### WAIVER OF SUBROGATION

CONTRACTOR shall require all insurance policies in any way related to the work and secured and maintained by CONTRACTOR to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against COUNTY. CONTRACTOR shall require of SUBCONTRACTORS, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section.

#### 29. INDEMNIFICATION

The CONTRACTOR shall, in addition to any other obligation herein, agree to indemnify COBB COUNTY and, to the fullest extent permitted by law, protect, defend, indemnify and hold harmless COBB COUNTY, its agents, officers, officials, employees and volunteers from and against all claims, actions, liabilities, losses (including economic losses), costs arising out of any actual or alleged; (a) bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including the loss of use resulting therefrom, or any other damage or loss arising out of or resulting from claims resulting in whole or in part from any actual or alleged act or omission of the proposer, any independent CONTRACTOR or SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of work; or, (b) violation of any law, statute, ordinance, governmental administrative order, rule, regulation, or infringement of patent rights or other intellectual property rights by the successful proposer in the performance of work; or, (c) liens, claims or actions made by the successful proposer or other party performing the work, as approved by the COUNTY.

The indemnification obligations herein shall not be limited by any limitation on the amount, type of damages, compensation, or benefits payable by or for the successful proposer or its SUBCONTRACTOR, as approved by the COUNTY, under workers compensation acts, disability benefit acts, other employee benefit acts, or any statutory bar or insurance.

#### **Patent Indemnity**

The CONTRACTOR guarantees to hold the COUNTY, its agents, officers or employees harmless from liability of any nature or kind for use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished

or used in the performance of the Agreement, for which the CONTRACTOR is not the patentee, assignee or licensee.

B. The COUNTY shall give the CONTRACTOR timely notice of, and shall forward to it every demand, notice, summons or other process received with respect to any claim or legal proceedings within the purview hereof, but the failure of the COUNTY to give such notice shall not affect such right to indemnification unless such failure was a result of the COUNTY'S gross negligence or fraud and such failure is materially prejudicial to the CONTRACTOR. The COUNTY agrees to reasonably cooperate with the CONTRACTOR in connection with the defense of any such claim.

C. The indemnification obligations herein shall not be limited by any limitation on the amount, type of damages, compensation, or benefits payable by or for the CONTRACTOR or its SUBCONTRACTOR, as approved by the COUNTY, under workers' compensation acts, disability benefit acts, other employee benefit acts, or any statutory bar or insurance.

**30. TURNOVER PROCEDURE.** The COUNTY has established a turnover procedure for return of equipment at end of the Agreement. At the COUNTY'S option, a turnover inspection may be implemented with or without a change in CONTRACTORS. **EXHIBIT 5** outlines the procedures that are to be followed during the turnover period, and is attached hereto and specifically made a part hereof.

**31. GENERAL CONDITIONS.**

**COMPLETE AGREEMENT; ENTIRE AGREEMENT.**

This Agreement and the attachments and documents incorporated herein, the RFP and the Consultant's response to the RFP, by reference, constitute the complete and exclusive statement of the terms of the Agreement between the COUNTY and the CONTRACTOR, supersede all prior representations, understanding and communications and shall not be amended except upon the written agreement by both parties. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. COUNTY'S failure to insist in one or more instances upon the performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of COUNTY'S right to such performance by CONTRACTOR.

If there are any conflicts with the terms and conditions of any of the Agreement documents mentioned above, the order of precedence shall be in the order listed above. The Agreement documents supersede all prior written verbal representations, understandings, or communications.

**ASSIGNMENT; SUBCONTRACTING.** The CONTRACTOR shall not assign, subcontract, award, or delegate any of its rights, duties or obligations under this Agreement to a SUBCONTRACTOR without prior written approval of the COUNTY. The COUNTY'S approval of any assignment, award or delegation shall not release the CONTRACTOR of any obligation under the Agreement. The CONTRACTOR shall be fully responsible for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by the CONTRACTOR, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.

Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the COUNTY.

**SUBCONTRACTOR STATEMENTS.** The CONTRACTOR shall require each of its subcontractors to sign statements certifying compliance with all terms, conditions, and requirements contained in this Agreement.

Such signed statements shall be a part of all contracts between the CONTRACTOR and his subcontractors. The CONTRACTOR shall provide such statements to the COUNTY and they shall be incorporated in and become a part of this Agreement. No compensation shall be payable to the CONTRACTOR until such executed statements are received by the COUNTY for all of the CONTRACTOR's subcontractors. Failure of any subcontractor to faithfully comply shall be cause for immediate termination of this Agreement without liability to the COUNTY.

Should the CONTRACTOR become aware of any subcontractor's failure to comply, the CONTRACTOR shall immediately notify the COUNTY, but in any event within one week. If the COUNTY determines that a failure to comply has occurred or exists, the COUNTY may require the CONTRACTOR to take action to remedy the failure to comply, or the COUNTY may immediately terminate this Agreement without liability. The COUNTY shall have the right to recover all compensation paid for services rendered by the CONTRACTOR to his subcontractors, agents, or employees which were performed while a subcontractor's failure to comply existed, if the CONTRACTOR knew or should have known of a failure to comply and did not notify the COUNTY as required by this section.

**CONFIDENTIALITY.** Any and all reports, information or data of whatever nature, including names and addresses provide to, or prepared, generated or assembled by the CONTRACTOR in connection with the performance of the Agreement shall not be made available to any individual or organization outside the CONTRACTOR without the prior written approval of the COUNTY unless such is required by a court process. CONTRACTOR shall promptly notify the COUNTY of any request for such information so that it can comply with the mandates of the Georgia Open Records Act.

**APPLICABLE LAW.** This Agreement shall be deemed to have been executed and performed in the State of Georgia, and all questions of interpretation and construction shall be construed by the laws of the State of Georgia, and both parties agree that exclusive venue shall be in a court of competent jurisdiction located in Cobb County, Georgia.

**SEVERABILITY OF PROVISIONS.** Any provision of the Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions of the Agreement, or affecting the validity or enforceability of such provisions in any other jurisdiction.

**NO FORFEITURE OF RIGHTS.** An election not to exercise any right under this Agreement shall not prohibit or waive the right of either party from exercising such right any other time during the term of this Agreement.

**FORCE MAJURE.** Any delay or failure of performance by either party shall not constitute a default or give rise to any claims for damages if and to the extent the failure is caused by any act, event or condition beyond that party's control and adversely affecting its ability to perform its obligations including:

- a. Acts of God, lightening, earthquake, fire, epidemic, landslide, drought, hurricane, tornado,

storm, explosion, failure of utilities, flood, nuclear radiation, or any other act by third parties that interferes with operations;

- b. Condemnation or other taking by any government body, change in any applicable law, rule, regulation, ordinance, or permit condition not in effect as of the date hereof; or,
- c. Any order, judgment, action or determination of any federal or state court, administrative agency or government body.

**EMERGENCIES.** In the event of a declared civil disorder or natural catastrophe, the CONTRACTOR shall direct the employees to operate as ordered by federal, state, and/or the COUNTY civil authorities. Compensation shall be based on actual hours of service performed.

**COMPLIANCE WITH LAW.** The CONTRACTOR shall comply with all applicable federal, state and local laws and regulations relating directly or indirectly to providing services. All facilities and equipment shall be maintained and operated at all times in compliance with all applicable rules, regulations and codes governing the operation of businesses within the COUNTY and its municipalities, and those of the State of Georgia and the United States. The COUNTY shall comply with all federal and state laws and regulations applicable to the COUNTY and related directly or indirectly to providing services.

**EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA).** The CONTRACTOR shall comply with the provisions of the Employee Retirement Income Security Act of 1974, as amended with respect to each of its employee benefit plans. The CONTRACTOR shall supply the COUNTY with such information concerning the status of each of the CONTRACTOR'S employee benefit plans, as the COUNTY shall reasonably request.

**LICENSES, PERMITS, AND FILING FEES.** The CONTRACTOR is solely responsible for obtaining any licenses or other authorization required by law to perform the services required in this Agreement.

**TAX EXEMPT.** COBB COUNTY is exempt from federal excise tax and Georgia sales tax with regards to goods and services purchased directly by COBB COUNTY. Suppliers and CONTRACTORS are responsible for federal excise tax and sales tax, including taxes for materials incorporated in COUNTY construction projects. Suppliers and CONTRACTORS should contact the State of Georgia Sales Tax Division for additional information.

**TERMS AND CONDITIONS.** In addition to meeting all program requirements, the CONTRACTOR agrees to abide by the more restrictive of all terms and conditions of: 1) the RFP Sealed Bid # 20-6526 2) CONTRACTOR's Proposal for Professional Services, dated June 25, 2020 and submitted in response to the RFP; and 3) the terms and conditions of this Agreement. Resolution of any conflicting term or condition in these documents shall be made at the sole discretion of the COUNTY. Terms and conditions may only be changed by written amendment to this Agreement, agreed to by both parties.

CONSULTANT:



BY: \_\_\_\_\_  
Robert G. Autorina, President  
W. Frank Newton, Inc.

COBB COUNTY:

BY: \_\_\_\_\_  
Michael H. Boyce, Chairman

ATTEST:

\_\_\_\_\_  
County Clerk's Office

**EXHIBIT 1**

**FIXED PRICE COMPENSATION AND METHOD OF PAYMENT**

Fixed Price Compensation: The fixed price compensation for the respective program services to be rendered by the CONTRACTOR for Program Year 2020 (October 1, 2020-September 30, 2021), Program Year 2021 (October 1, 2021-September 30, 2022) and Program Year 2023 (October 1, 2022 – September 30, 2023) are as follows:

	<b>Program Title</b>	<b>Program Year 2020</b>	<b>Program Year 2021</b>	<b>Program Year 2022</b>
<b>CDBG</b>	Community Development Block Grants	\$ 757,000	\$ 758,829	\$ 760,000
<b>HOME</b>	HOME Investment Partnership Act Grants	\$ 138,000	\$ 139,000	\$ 140,000
<b>ESG</b>	Emergency Shelter Grants	\$ 19,000	\$ 19,500	\$ 20,000
<b>CSBG</b>	Community Services Block Grants	\$ 67,500	\$ 68,250	\$ 69,000
<b>JAG</b>	Justice Assistance Grant	\$ 9,760	\$ 9,880	\$ 10,000
<b>ESFG</b>	Emergency Food and Shelter Grant (FEMA)	\$ 5,272	\$ 5,272	\$ 5,500
	<b>TOTAL All Grants Cost</b>	<b>\$ 996,532</b>	<b>\$ 1,000,731</b>	<b>\$ 1,004,500</b>

The COUNTY reserves the right each year of the Agreement to review the compensation to be paid to the CONTRACTOR and CONTRACTOR, at the request of the COUNTY, agrees to negotiate in good faith the cost of its services. In no event shall the fixed price compensation to CONTRACTOR exceed the grant program cap for administrative costs.

**FIXED PRICE COMPENSATION AND METHOD OF PAYMENT**

Method of Payment: The following method of payment outlines a mutually agreed upon approach for timely fixed price compensation payments to the CONTRACTOR by the COUNTY.

The CONTRACTOR and the Cobb COUNTY Finance Department will arrange a monthly payment schedule for fixed price compensation. Fixed price compensation payments for all programs except FEMA shall be invoiced in equal fixed amounts, separately for each program,

on a monthly basis. FEMA fixed price compensation shall be invoiced twice annually, after all FEMA administrative services have been provided. Subject to Cobb COUNTY's right to verify the accuracy of the invoice(s) and the satisfactory performance of the services being invoiced, the COUNTY will make fixed price compensation payments to the CONTRACTOR as soon as practicable.

The CONTRACTOR shall submit separate invoices for fixed price compensation for each program. With the exception of FEMA fixed price compensation, each fixed price compensation invoice submitted shall be sequentially numbered and be equal in amount so as to equate to 1/12 of the total annual amount of the fixed price compensation due for the respective program for the respective year of this Agreement.

## EXHIBIT 2

### **SCOPE OF WORK**

The CONTRACTOR shall administer for the COUNTY the following grant and related programs. The CONTRACTOR will coordinate all tasks of these programs with the Cobb COUNTY Manager's Office, the Office of Finance, the Purchasing Director, and other appropriate COUNTY Departments, as directed by the Board of Commissioners or its designee.

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG)  
HOME INVESTMENT PARTNERSHIP ACT GRANT PROGRAM (HOME)  
EMERGENCY SOLUTIONS GRANT PROGRAM (ESG)  
COMMUNITY SERVICES BLOCK GRANT PROGRAM (CSBG)  
JUSTICE ASSISTANCE GRANT PROGRAM (JAG)  
EMERGENCY FOOD AND SHELTER GRANT PROGRAMS (EFSP-FEMA)

### **SECTION 1 - GENERAL REQUIRED SERVICES**

The CONTRACTOR will work closely with Cobb COUNTY and will provide such personnel as required to carry out the following responsibilities.

- 1.1 Become and remain familiar with all Federal and State legislated provisions of the grant programs. Such information shall be disseminated to recipients of grants, COUNTY personnel, and other persons who should be kept abreast of grant requirements. This provision includes attending appropriate training sessions that are sponsored by respective grant providers. In addition, the CONTRACTOR should become and remain familiar with proposed legislation, case studies, and legal actions relevant to Cobb COUNTY programs and disseminate such information to appropriate COUNTY personnel.
- 1.2 Provide grant supportive services to the COUNTY and its subrecipients including:
  - a. Planning activities;
  - b. Completion of work program activities, e.g., program description, public hearings, consolidated plan(s), and annual action plan(s), and required amendments, at a minimum of one week before the deadlines established by the issuing grant agency;
  - c. Preparation of operating and capital budget recommendations according to established deadlines;
  - d. Obtainment of Board of Commissioners' approval of all policies and procedures, including any revisions, amendments or other changes and coordinate such changes through the Office of Finance;
  - e. Preparation of Board of Commissioners' agenda items with approval by Office of Finance; and
  - f. Establishment and maintenance of all project and program files.

- 1.3 Develop, document, and implement procurement procedures which meet all Federal, State, COUNTY, or program requirements, including the “Common Rule,” 24 CFR 85, and the Office of Management and Budget Circular A-87 and the OMB Supercircular. These procedures shall meet the more restrictive, applicable procurement requirements and include, but are not limited to:
  - a. Processes for both competitive and non-competitive procurement, as appropriate;
  - b. A code of conduct for administrative staff;
  - c. The assurance of fair and open competition;
  - d. Evaluation of proposals and qualifications; and
  - e. Cost/price analysis and selection of proposals.
- 1.4 Develop, document, and implement contracting procedures which meet all Federal, State, COUNTY, and program requirements which include, but are not limited to:
  - a. A contract review and approval process. This process shall include review of contracts and agreements by the CONTRACTOR, the Cobb County Attorney’s Office, Cobb County’s Office of Finance, and other appropriate Cobb County staff;
  - b. Preparation of contracts and agreements, approved as to form by the Cobb County Attorney’s Office, for execution by the Chairman of the Cobb County Board of Commissioners;
  - c. A process to prepare contract and agreement modifications as necessary; and
  - d. A contract and agreement administration system, which includes retaining procurement records according to all Federal, State, County, and program requirements.
- 1.5 The COUNTY’s financial system and Office of Finance shall be used to identify grant projects and to record monetary activities within these projects, to ensure that funds are handled in compliance with all Federal, State, and COUNTY fiscal management requirements.
  - a. The CONTRACTOR shall ensure the COUNTY’s financial system is reconcilable to the balances maintained by the issuers of the individual grant programs at all times, i.e., Federal and State agencies.
  - b. Invoices for the administrator’s services shall be sequentially numbered and shall be submitted for equal amounts monthly over the term of the Agreement.
  - c. All other eligible program expenses incurred by the CONTRACTOR shall be submitted for payment on a timely basis and shall be supported by the appropriate documentation and authorized signatures.
- 1.6 Prepare brochures and other informational materials, including information on CONTRACTOR’s website and COUNTY’s website, which may be required to properly

inform the public and potentially interested participants about Cobb COUNTY's available grant programs and services.

- 1.7 Develop and implement use of a monitoring manual, approved by the COUNTY, which will set forth specific procedures to be followed in monitoring grant programs within Cobb COUNTY. This manual will be sufficient to ensure that the CONTRACTOR can determine compliance with all grant requirements and shall include procedures to monitor all subrecipients.
- 1.8 Use facilities in the administration of these grant programs that are centrally located within COBB COUNTY, and within a reasonable distance of the COBB COUNTY Government Offices, and accessible according to Americans with Disabilities Act (ADA) regulations, and Georgia Accessibility Code requirements.
- 1.9 Notify the COUNTY's Office of Finance of all asset purchases made with grant funds and identify these with COUNTY property identification tags.
- 1.10 Report to the COUNTY, in writing, all program activities on a monthly basis. Such reporting will include but not be limited to performance and financial reporting.
- 1.11 Make records and personnel available for audit by Federal, State, or COUNTY representatives.
- 1.12 Provide the COUNTY with an independent, certified financial audit of the firm within one hundred eighty (180) calendar days following the close of the firm's fiscal year. The CONTRACTOR will agree to maintain an auditable financial system and submit a financial and compliance audit to the COUNTY, in accordance with generally accepted auditing standards established by the American Institute of Certified Public Accountants (AICPA.) The COUNTY shall have the right to review performance and to inspect or copy any and all records, books, papers and documents which relate to the Agreement at any time during performance or thereafter until the end of the record retention period.
- 1.13 Provide a monthly reconciliation of revenues and expenses, according to each program to the COUNTY's recorded revenues and expenses.
- 1.14 Retain all records pertinent to the Agreement, including financial, statistical, property, participant records, invoices, receipts, and support documentation for a period of no less than five (5) years following the date that the last applicable expenditure report is filed with HUD or other grant agencies. The following qualifications apply.
  - a. If, prior to the expiration of the five (5) year retention period, any litigation or audit is begun, or a claim is instituted involving the grant or agreements covered by the records, the recipient shall retain the records beyond the five (5) year period until the litigation, audit finding(s), or claim has been finally resolved.
  - b. If non-expendable property was acquired through the respective program or assigned to the CONTRACTOR by the COUNTY, the CONTRACTOR shall retain records on said property for a period of five (5) years after final disposition of the property, except as provided in (a) above.

- c. Should the CONTRACTOR cease to do business within the five (5) year period or thereafter during the required record retention period, the CONTRACTOR agrees to deliver all records (financial, participant, statistical, and property), complete in form, to the COUNTY. The CONTRACTOR shall retain sole liability for the content of such records.
- 1.15 Abide by the Fair Labor Standards Act and Federal Income Tax Code requirements, especially as they deal with the identification and distinguishment between employees and independent CONTRACTORS.
  - 1.16 Provide an adequate number of experienced, qualified and capable personnel as required to carry out all grant program responsibilities. Ensure that all replacement personnel be equally experienced, qualified and capable to ensure the on-going successful administration of each grant program.
  - 1.17 Utilize all electronic data reporting processes applicable to each respective grant program and ensure the accuracy of all reported data and information.
  - 1.18 Implementation of Consolidated Plan Objectives.
    - a. Conduct periodic reviews of the approved Consolidated Plan and make necessary revisions.
    - b. Establish and maintain a system for ensuring the progress of Consolidated Plan Objectives.
    - c. Coordinate and monitor Consolidated Plan activities with other public and private agencies.
    - d. Identify needed housing and community development programs.
    - e. Prepare or assist in the preparation of housing assistance programs.
    - f. Encourage and assure that fair housing programs are conducted in conjunction with all housing assistance programs.
    - g. Prepare COBB COUNTY's Consolidated Annual Performance Report and submit to the COUNTY for review and approval prior to being submitted to HUD.
  - 1.19 Give notice that funding of grant programs is through efforts provided by COBB COUNTY on stationary, publications, websites and at public gatherings that involve grant activities. Carry out such other activities for COBB COUNTY as are required to meet all Federal, State, and local grant requirements, and implement efficient and quality grant programs.

## SECTION 2 – CDBG REQUIRED SERVICES

Design, plan, manage, and control all CDBG program activities in compliance with all HUD requirements.

- 2.1 Prepare the COUNTY's Consolidated Plan, Annual Action Plan, and necessary amendments for the Consolidated Submission for Community Planning and Development Programs.
- 2.2 Design and manage all appropriate citizens' participation plan activities, including:

- a. Furnishing information on the amount of CDBG funds which are expected to be available for activities to be undertaken, and the impact which will result;
  - b. Holding the required number of public hearings to obtain needs assessment information, and the opinions of Cobb COUNTY residents on proposed projects;
  - c. Meeting with interested local groups and cities to explain proposed goals and objectives; and
  - d. Preparing a HUD-required Citizens Participation Plan.
- 2.3 Coordinate grant agreements and letters of credit requirements for all CDBG funds with the COUNTY's Office of Finance.
- 2.4 Prepare all required HUD submittals connected with CDBG activities and submit to the COUNTY for review and approval prior to being forwarded to HUD.
- 2.5 Maintain review procedures to ensure CDBG project eligibility.
- 2.6 Establish and maintain communications with subrecipients, including but not limited to: meetings, technical assistance, project implementation, and program and financial monitoring.
- 2.7 Prepare project benefits' impacts on low and moderate-income families.
- 2.8 Provide overall program management and supervision, including but not limited to the following:
- a. Coordinate the CDBG Program with the Chairman of the COBB COUNTY Board of Commissioners, the overall Board of Commissioners, the COUNTY Manager, and the Office of Finance.
  - b. Serve as COBB COUNTY's CDBG program representative with:
    - Department of Housing and Urban Development (HUD).
    - Other public agencies--Federal, State, and local.
    - Private agencies--Chamber of Commerce, associations, and non-profit agencies.
  - c. Establish and implement CDBG Program policies and procedures, as approved by the Board of Commissioners and the County Manager, in concert with the financial management aspects carried out by the COUNTY Office of Finance.
  - d. Develop and implement, in conjunction with the Board of Commissioners and County Manager, a coordinated system within COBB COUNTY Government that maximizes the efforts of all appropriate COUNTY departments in planning and implementing the CDBG Program.
  - e. Coordinate the various CDBG Program Areas—Housing/Rehabilitation, Public Facilities, Economic Development, Public Services, and Planning and Administration.



- f. Recommend CDBG Program budgets to the Board of Commissioners and County Manager, and once adopted, ensure program adherence to the approved budgets.
  - g. Provide on-going coordination with the Office of Finance to carry out an on-going transfer system for HUD and U.S. Treasury payment procedures that will allow all administration activities, housing activities, public facilities, public services, economic development projects, and all other eligible activities to be paid on a timely basis.
  - h. Meet on a periodic basis with the Board of Commissioners and/or the County Manager to provide a status report on program operations, obtain on-going CDBG Program input, and obtain policy direction on overall CDBG Program activities.
  - i. Monitor the COUNTY's adherence to the HUD three-day-limit rule for use of Federal funds.
  - j. Coordinate CDBG matters with all participating public and private agencies.
  - k. Establish and monitor a Program/Project Implementation Schedule for Public Facilities, Economic Development, Public Services, and Housing projects.
  - l. Coordinate and participate in all HUD Review/Monitoring meetings.
  - m. Coordinate through the Office of Finance recommendations to the Board of Commissioners and the County Manager on official COUNTY responses to all HUD monitoring reports and audits as well as complaints or issues of concern from other funding agencies.
  - n. Coordinate the programmatic operations of the CDBG Program in the conduct of an annual financial audit (single audit).
  - o. Ensure that all HUD, OMB, and other Federal, State, and local regulations, policies and procedures are met.
  - p. Establish and coordinate the implementation of a viable monitoring and evaluation system for all CDBG Program activities.
- 2.9 Provide the following planning activities to include, but not be limited to the following:
- a. Design and carry out all CDBG Program planning activities required to allow Cobb COUNTY to meet all HUD grant submission requirements for all CDBG grant funds, in conjunction with the COUNTY's Office of Finance.
  - b. Design and conduct a comprehensive Community Development needs assessment which includes proposed projects and needs data from the following types of agencies and organizations:
    - Board of Commissioners;
    - County Departments;

Participating cities;  
Local Human Services agencies;  
Other public and private organizations; and  
Cobb County citizens.

c. Prepare COBB COUNTY's Consolidated Plan and Annual Action Plan.

Include Cobb's Community Development objectives to be pursued.

Describe the activities proposed to be carried out with CDBG funds, including the following information for each activity:

- a. Address at least one of the three broad national objectives.
- b. Ensure eligibility pursuant to HUD's legislation, regulations, and latest annual grantee instructions.
- c. Describe activities in detail, including location, to allow Cobb residents to determine the degree to which they may be affected.

Meet all other requirements per the latest regulations, and the annual HUD grantee instructions.

d. Design and carry out all appropriate Citizens' Participation Plan activities.

Furnish residents with information concerning the amount of CDBG funds expected to be available for community development activities and the range of activities to be undertaken.

Publish the COBB COUNTY Annual Proposed Consolidated Plan, and include a description of activities in sufficient detail, including location, to allow citizens to know the impact of activities on them.

Hold at least two public hearings to obtain Needs Assessment information and the views of Cobb residents on proposed objectives, housing, and community development projects contained in the Consolidated Plan.

Meet with interested local groups and cities to explain proposed goals and objectives, and to encourage participation in the development of the Consolidated Plan.

e. Prepare and disseminate COBB COUNTY's Annual Consolidated Plan.

1. Provide consideration of residents' views and comments in Consolidated Plan preparation.

2. Use HUD Consolidated Plan format.
3. Prepare and update HUD's required Citizens Participation Plan as a part of the Consolidated Plan development process.
4. Obtain input and approval of the Board of Commissioners and the County Manager and then submit to HUD.
5. Provide an assessment of the relationship of the use of funds:
  - a. To the community development objectives identified in Cobb's Consolidated Plan per HUD requirements; and,
  - b. To the broad national objectives.
6. Publish in the COUNTY's legal organ a notice of Consolidated Plan availability to Cobb's residents.
7. Print a sufficient number of copies of the Consolidated Plan and distribute them to all interested agencies, organizations, interested local residents, and make available to the public.
- f. Complete all HUD forms and meet all submission requirements including all new certification requirements.
- g. Follow-up with HUD to provide all necessary additional information.
- h. Prepare a HUD-required plan for minimizing the displacement of persons as a result of CDBG funded activities.

#### 2.10 Environmental Assessments.

- a. Cobb County designated the Managing Director of the CDBG Program Office as Cobb County's Certifying Official for all required Environmental Certifications of the County's CDBG, ESG, and HOME Programs, and related Federal Projects subject to NEPA (24 CFR Part 58). The Managing Director shall have signatory rights for all Environmental Documents except for the Environmental Impact Statements (EIS) which requires full consultation with the Cobb County Chairman and Board of Commissioners and signature of the Cobb County Chairman. The CDBG Program Office will maintain an overall Environmental Review Records (ERR) System for all HUD projects
- b. Review each specific CDBG project to determine the level of environmental review to be completed, including:
  - An Environmental Assessment;
  - Finding of Level of Impact;
  - Publishing required public notices;

Certifying environmental review completion;

Preparing adequate ERR documentation; and,

Submitting all ERR information to HUD, EPA, and other appropriate Federal, Georgia Department of Natural Resources (DNR), and local agencies.

- c. Assess and document evidence of compliance with provisions for historic preservation, floodplain/wetlands and related Federal environmental regulations.
- d. Serve as Environmental Review Officer and make necessary findings on level of impact.
- e. Comply with all HUD and related Federal environmental regulations relating to four categories of compliance.

Exempt activities.

Categorically excluded activities.

Environmental Assessments.

Environmental Impact Statements.

- f. Carry out all necessary review procedures to prepare and comply with HUD Environmental Assessments.
- g. Prepare and submit all appropriate HUD requests for ERR release of funds on specific projects.
- h. Prepare and maintain all necessary information on HUD flood plain insurance requirements.
- i. Prepare and submit all appropriate E.O. 12372 documentation to Area Clearinghouse, State Clearinghouse, and HUD for final release of funds.

2.11 Maintain an overall system to ensure that all HUD regulations are met by all subrecipients, CONTRACTORS, and subcontractors.

- a. Prepare appropriate checklist and forms required to maintain an on-going system of CDBG Program compliance.
- b. Conduct necessary research activities to ensure that all HUD regulations relating to grants administration, affirmative action, Davis-Bacon wage rates, financial management, and related CDBG activities are identified and incorporated into overall CDBG Policies and Procedures.
- c. Complete all review activities to ascertain full compliance with HUD regulations.
- d. Prepare appropriate documentation on compliance activities.

- 2.12 Administer a comprehensive COBB COUNTY Housing Rehabilitation Program.
- a. Prepare and maintain detail procedures, forms, etc., to implement rehabilitation and minor home repair programs.
  - b. Maintain and update minimum housing standards to be utilized (Housing Code, Energy Standards, Section 8 Standards, State Code, and others as appropriate.)
  - c. Prepare checklist of minimum rehabilitation standards, deficiency specifications and related items.
  - d. Coordinate with other housing improvement programs to maximize the effectiveness of Federal and State housing conservation.
  - e. Coordinate with participating cities, local agencies, and lending institutions to identify various local sites for program information, dissemination, application taking, and related rehabilitation activities.
  - f. Coordinate the distribution of a brochure(s) and related materials on types of housing rehabilitation assistance available, income limits and other eligibility criteria and also publish such information on COUNTY and CONTRACTOR websites.
  - g. Coordinate with and provide oversight assistance to the Housing Inspector(s) who will conduct initial inspections, work write-ups, cost estimates, periodic construction management inspections, and final inspections of eligible client homes.
  - h. Work closely with the Board of Commissioners and the County Manager through the Office of Finance to adopt and carry out all necessary policies and procedures.
  - i. Maintain an on-going system for obtaining Cobb County Board of Commissioners and the County Manager input into overall program operations.
  - j. Maintain an on-going system for qualifying and implementing eligible CDBG grants and deferred payment loans.
    1. Qualify family and/or structure.
    2. Ascertain eligible loan/grant amount.
    3. Carry out procurement practices on grant activities to be completed, in accordance with Federal, State, and COUNTY program policies.
    4. Maintain projects in HUD mainframe computer using the HUD Integrated Disbursement Information System (IDIS).
    5. Prepare all necessary applications, contract documents, work write-ups, cost estimates, and related documentation.
    6. Periodically monitor completed work and inspections. **NOTE: Inspection services are included within the required services of this RFP.**

7. Request payment disbursements through the Cobb County Office of Finance.
8. Coordinate and reconcile all CDBG files, project records and accounting of funds, with the Cobb County's official records.
- k. Maintain an on-going system for taking applications from eligible COBB COUNTY residents.
- l. Implement an efficient process for qualifying applicants and completing all administrative requirements of rehabilitation work for loans and/or grants.
- m. Maintain loan and grant project files for all applicants and eligible households.
- n. Maintain all appropriate program records.
  - o. Maintain a list of participating CONTRACTORS.
  - p. Maintain a computerized Housing Rehabilitation Data Base (HRDB) system.
  - q. Conduct all necessary Housing Rehabilitation activities including:
    - Application taking and screening;
    - Family Qualification--income, etc;
    - Structure Qualification--economic feasibility, types of improvements necessary to meet minimum standards and grantee performance indicators (GPI's), as appropriate;
    - Maintain all necessary project files; and,
    - Conduct all activities necessary to approve and complete loan/grant requests.
- r. Work closely with the Cobb County Office of Finance
  - Request loan/grant disbursements on a timely basis.
  - Maintain a consolidated programmatic and financial management system.
  - Coordinate with the Office of Finance during the annual financial single audit.
  - Coordinate all CDBG Program administrative and programmatic activities.
  - Assist the Office of Finance in the process of drawing rehabilitation reimbursements from HUD (IDIS System).
- s. Coordinate with the Community Development Department to prevent the rehabilitation of units in areas where the zoning use has undergone significant change and rehabilitation may not be appropriate.

- t. Coordinate closely with COUNTY and/or local government building inspectors on housing rehabilitation inspections.
- u. Coordinate with the Department of Transportation to prevent the rehabilitation of units where plans exist for acquisition of the parcel on which the unit sits or for acquisition of improvements on the parcel, including the unit, in conjunction with a road widening project or the construction of a new road.
- v. Conduct all other activities necessary to ensure the on-going success of the Cobb COUNTY Housing Rehabilitation Program.

2.13 Provide liaison assistance with participating cities and other subrecipients to include:

- a. Establish and maintain on-going meetings, technical assistance, monitoring trips and related communications with participating cities and subrecipients;
- b. Provide CDBG planning, needs assessment and technical assistance in the qualification of eligible CDBG activities;
- c. Provide assistance in the preparation of all necessary documentation for proposals/applications to be submitted and approved;
- d. Provide assistance in conducting Environmental Review Assessments, and in meeting Davis-Bacon Act, procurement, contracting and other CDBG requirements;
- e. Assist cities and other subrecipients in the establishment of appropriate accounting and related grants administration systems;
- f. Provide liaison and oversight assistance on project implementation activities;
- g. Coordinate the timely reimbursement of eligible CDBG expenditures; and,
- h. Carry out other appropriate liaison activities.

2.14 Attend and participate in HUD sponsored and related conferences and workshops.

- a. Community Development meetings.
- b. Attend and participate in appropriate conferences and workshops.
- c. Disseminate all relevant information to COUNTY personnel and others as may be appropriate.

2.15 Perform Public Facilities Programs related activities to include the following.

- a. Conduct planning activities for public facilities projects.
- b. Review projects for CDBG eligibility.

- c. Develop a “Project Package” of potentially eligible projects.
- d. Obtain Board of Commissioners’ approval of specific projects.
- e. Conduct Environmental Review process, including HUD flood insurance requirements.
- f. Obtain Davis-Bacon prevailing wage rate determinations for each CDBG project to be affected by Davis-Bacon Act requirements.
- g. Carry out all Executive Order 12372 requirements for planning or construction of water or sewer facilities.
- h. Prepare all project proposal/application documentation, including project benefits impact on low and moderate-income families.
- i. Monitor project activities.
- j. Coordinate the reimbursement of eligible CDBG expenditures.
- k. Maintain all necessary project files.
- l. Monitor all appropriate contract inspections, project closeout and final payment activities.
- m. Establish and maintain a computerized Project Data Base System (PDBS) for all approved CDBG Public Facilities.
- n. Conduct other appropriate public facilities activities, including but not limited to, accessibility to programs and facilities as required under the ADA.

2.16 Perform Economic Development Program activities to include the following.

- a. Conduct on-going planning activities for economic development projects.
- b. Design policies and procedures, including but not limited to:
  - Impact on job creation and/or retention for low and moderate-income persons;
  - Types of eligible activities--technical assistance, loans, infrastructure, and related projects; and,
  - Maximum dollar amount for each loan/grant and for each infrastructure project;
- c. Design all appropriate forms for use with applicants.
- d. Develop review procedures to determine CDBG eligibility.
- e. Obtain Board of Commissioners’ approval of all policies and procedures.
- f. Obtain Board of Commissioners’ input and approval in the development of a Project Package of potentially eligible projects.



- g. Coordinate and work closely with the Chamber of Commerce and other appropriate agencies on Economic Development activities.
- h. Coordinate and work closely with the various Development Authorities and other related development organizations.
- i. Obtain Board of Commissioners' approval of specific projects.
- j. Prepare all project proposal/application documentation for each approved project, including benefits impact on low and moderate-income persons.
- k. Conduct Environmental Review process as may be required in compliance with the National Environmental Policy Act (NEPA)
- l. Obtain all Davis-Bacon Act clearances.
- m. Coordinate all contract activities.
- n. Coordinate and monitor all implementation activities, completion acceptance, project closeout and final payment activities.
- o. Coordinate the reimbursement of eligible CDBG expenditures.
- p. Maintain all project files.
- q. Conduct all other appropriate economic development activities.

2.17 Perform Public Services Program activities to include, but not be limited to the following.

- a. Conduct planning activities for public services projects, with emphasis on one-time and/or capital projects, i.e., vans, equipment, etc.
- b. Review projects for CDBG eligibility.
- c. Develop a "Project Package" of potentially eligible projects.
- d. Obtain Board of Commissioners' approval of specific projects.
- e. Conduct Environmental Review process for each project as required.
- f. Obtain, where appropriate, Davis-Bacon prevailing wage rate determinations for each CDBG project.
- g. Prepare all project proposal/application documentation, including project benefits impact on low and moderate-income families.
- h. Monitor project activities.

- i. Coordinate the reimbursement of eligible CDBG expenditures.
  - j. Maintain all necessary project files.
  - k. Monitor all appropriate contract inspections, project closeouts and final payment activities.
  - l. Conduct all other appropriate public services activities, including but not limited to accessibility to programs and facilities as required under the ADA.
- 2.18 Perform Annual CDBG Program closeout activities to include, but not be limited to the following:
- a. Prepare the Grantee's Annual Consolidated Plan Report and submit to the COUNTY prior to forwarding it to HUD.
  - b. In concert with the COUNTY, respond to HUD monitoring or audit reports with prior acknowledgement of the Office of Finance and COUNTY Manager.
  - c. Assist the Office of Finance with the annual financial audit and respond to any comments from HUD.
  - d. Prepare HUD grant closeout forms, as appropriate.
- 2.19 Prepare and update HUD's required Analysis of Impediments to Fair Housing report and distribute copies as determined to be appropriate by the COUNTY.
- 2.20 Carry out all other appropriate CDBG Program activities, including but not limited to the following.
- a. Manage all other CDBG activities, i.e., land acquisition requirements, relocation requirements, etc.
  - b. Perform all other appropriate CDBG work in concert with the Board of Commissioners and the COUNTY Manager, through the Office of Finance.

### **SECTION 3 – HOME REQUIRED SERVICES**

Use best efforts to increase the supply of affordable housing at the community level for low and moderate-income families.

- 3.1 Maintain one or more eligible Community Housing Development Organizations (CHDOs).
- 3.2 Provide overall coordination of HOME Program Consortium activities, and management and administration of COBB COUNTY HOME Program activities.
- 3.3 Develop and maintain policies and procedures for all facets of COBB COUNTY's HOME Programs.

- 3.4 Establish and implement HOME Program monitoring systems for COBB COUNTY.
- 3.5 Coordinate and conduct all necessary HOME planning and program management activities for the Cobb COUNTY Programs.
- 3.6 Ensure that all HOME Program projects meet all eligibility requirements and are consistent with the long and short-term objectives, goals, and strategies of the COBB COUNTY Consolidated Plan.
- 3.7 Design all appropriate forms, applications, and other documents needed to obtain project approval, to review for HOME Program compliance, and to ensure effective project implementation for the COBB COUNTY HOME Programs.
- 3.8 Conduct all appropriate HOME Program Environmental Assessments for COBB COUNTY HOME Program.
- 3.9 Coordinate and conduct HOME Program activities to ensure proper linkages are established between HUD and Cobb COUNTY.
- 3.10 Carry out all appropriate COBB COUNTY HOME Program financial management activities.
- 3.11 Carry out all appropriate programmatic activities of the COBB COUNTY HOME Program.
- 3.12 Maintain all record-keeping and reporting activities for COBB COUNTY so that effective Cash Management System transactions can be sustained between COBB COUNTY and HUD.
- 3.13 Provide outreach activities for the COBB COUNTY HOME Program.
- 3.14 Provide technical assistance to eligible homeowners, non-profit, and profit-making agencies, housing authorities, and other public and private organizations in implementing the Cobb COUNTY HOME Programs.
- 3.15 Prepare all required financial and programmatic reports for COBB COUNTY HOME Program.
- 3.16 Prepare all required financial and programmatic reports for submission to HUD on a timely basis.
- 3.17 Reconcile, on a monthly basis, all HOME Program financial activity recorded in the COUNTY's Advantage Financial System to all HUD reported financial activity.
- 3.18 Ensure that Davis-Bacon prevailing wage rates are adhered to, whenever appropriate/required.
- 3.19 Attend and/or conduct all relevant HOME training programs.
- 3.20 Carry out all appropriate oversight activities and COBB COUNTY HOME-Program activities in keeping with the Federal Common Rule, OMB Circular A-87, OMB Supercircular 2 CFR Part 200, and other appropriate Federal, State, and local requirements.

- 3.21 Establish and maintain all necessary HOME Project files.
- 3.22 Coordinate and participate in all HUD Review/Monitoring meetings.
- 3.23 Working through the Office of Finance, recommend to the Board of Commissioners and the COUNTY Manager, official COUNTY responses on all HUD monitoring reports and audits.
- 3.24 Coordinate the programmatic operations of the HOME Programs in conducting an annual financial audit (single audit).
- 3.25 Prepare HOME Program components of the Consolidated Plan and any amendments to Program Descriptions. Such components shall include but are not limited to HOME needs, long and short-term objectives, and proposed projects and activities.
- 3.26 Conduct overall management activities including preparation of budgets, subrecipients agreements, and recommendation for payment (to other subrecipients).
- 3.27 Conduct the COBB COUNTY HOME Program management activities including preparation of budgets, subrecipient agreements and contracts, client application processing, and recommendation for payment (to subrecipients and CONTRACTORS.)
- 3.28 Set up HOME projects in the HUD mainframe computer using the HUD's IDIS software.
- 3.29 Carry out all necessary HOME Program administrative and project delivery activities for COBB COUNTY.

#### **SECTION 4 – ESG REQUIRED SERVICES**

Administer the planning, implementation, coordination, and management of all Emergency Solutions Grant (ESG) activities required to allow COBB COUNTY to meet all HUD grant provision requirements.

Required services shall include, but not be limited to implementing the effective administration of all financial and programmatic elements of the ESG Program, gaining approval of all grant fund disbursements, and meeting all reporting and record keeping requirements of HUD and Cobb COUNTY.

- 4.1 Conduct overall ESG Program Management activities, including placing the ESG needs, long and short-term objectives and proposed activities in the Consolidated Plan, preparation of budgets, contracts, and recommendation of payment to ESG subrecipients' organizations.
- 4.2 Prepare all necessary HUD documents to qualify COBB COUNTY for ESG funds.
- 4.3 Provide technical and training assistance to participating public and private organizations.
- 4.4 Assist the service delivery organizations in preparing a viable countywide system for program implementation.

- 4.5 Work with funded organizations to identify and document all non-Federal matching resources required under the ESG Program.
- 4.6 Maintain a viable ESG Program monitoring system.
- 4.7 Conduct all necessary ESG Program Environmental Review and Records activities.
- 4.8 Establish and conduct all appropriate ESG project financial management activities.
- 4.9 Ensure that all ESG Program activities are carried out in keeping with all HUD regulations, OMB Circulars, and related Federal, State, and local requirements.
- 4.10 Meet all ESG Program reporting and record keeping requirements of HUD and COBB COUNTY, including providing periodic financial and programmatic reports to COBB COUNTY.
- 4.11 Reconcile, on a monthly basis, all ESG Program financial activities recorded in the COUNTY's Advantage Financial System to all HUD reported financial activities.
- 4.12 Carry out all other necessary ESG Program activities.
- 4.13 Set up ESG projects in the HUD mainframe computer using HUD software (IDIS).

## **SECTION 5 – CSBG REQUIRED SERVICES**

Administer and manage the planning, implementation, and monitoring of the Community Services Block Grant (CSBG) Program for Cobb COUNTY. Funding for the CSBG Program is not the result of the CDBG entitlement to Cobb COUNTY, but is provided through the State of Georgia. The programs are, however, administered by the COUNTY.

- 5.1 Coordinate the CSBG Program with the Board of Commissioners, COUNTY Manager, all appropriate COUNTY departments, and local human services organizations, and with the citizens of COBB COUNTY.
- 5.2 Serve as Cobb COUNTY's authorized CSBG Representative with the following.
  - a. Georgia Department of Human Resources (DHR).
  - b. COUNTY-designated CSBG Subcontract Agencies.
  - c. Other local public and private agencies.
- 5.3 Establish, implement, and maintain CSBG financial management/grants administration policies and procedures.

- 5.4 Coordinate and work closely with the COBB COUNTY Office of Finance to set up or amend budgets, process revenues and disbursements for the CSBG Program, and to reconcile all CSBG files, project records and accounting of funds with Cobb COUNTY's official records.
- 5.5 Coordinate the services provided by the various CSBG Subcontract Agencies.
- 5.6 Monitor Cobb COUNTY's overall CSBG Program activities in accordance with all CSBG program policies and procedures on an on-going basis.
- 5.7 Ensure eligibility and availability of funds for all approved CSBG Program expenditures and ensure that all CSBG Program expenditures are in accord with Cobb COUNTY's approved CSBG Budget(s).
- 5.8 Establish and maintain an on-going system for processing CONTRACTOR/subcontractor cost advances and/or reimbursements in accordance with DHR policies and procedures and in compliance with applicable Federal Rules and Regulations and COUNTY procedures governing the CSBG Program.
- 5.9 Meet on a periodic basis with the Office of Finance, the Board of Commissioners and/or COUNTY Manager to provide a status report on program operations and financial activities, obtain on-going CSBG Program input, and to obtain policy direction on overall CSBG program activities.
- 5.10 Coordinate with all appropriate public and private agencies -- Federal, State, and local.
- 5.11 Administer the CSBG Minor Home Repair Program to ensure the on-going success of the program.
- 5.12 Assist the Office of Finance in the process of drawing CSBG reimbursement funds from the Georgia Department of Human Resources.
- 5.13 Coordinate all DHR-Cobb COUNTY Monitoring Review meetings.
- 5.14 In concert with the COUNTY, provide official COUNTY responses to all DHR monitoring reports and audits.
- 5.15 Coordinate the re-programming/amendment(s) of CSBG funds, as may be appropriate throughout the contract year.
- 5.16 Coordinate with the Office of Finance and the COUNTY's independent auditor on the conduct of an annual CSBG financial audit as a part of the COUNTY's single audit process.
- 5.17 Prepare and submit all required DHR performance and financial reports on a timely basis.
- 5.18 Reconcile, on a monthly basis, all CSBG Program financial activity recorded in the COUNTY's Advantage Financial System to all DHR reported financial activity.
- 5.19 Prepare the Project Application Plan for submission to DHR within the prescribed deadline and for any subsequent year for which the contract is renewed.

- 5.20 Prepare annual needs assessment as part of the annual comprehensive planning process.
- 5.21 Ensure that all DHR, OMB, and other Federal, State and local regulations, policies and procedures are met.
- 5.22 Disseminate and explain all policies and procedures relative to the CSBG Program to approved CSBG Subcontract Agencies.
- 5.23 Attend appropriate training classes, workshops, conferences, and seminars on the CSBG Program.
- 5.24 Establish and coordinate all appropriate orientation and training programs for Cobb COUNTY's CSBG Subcontract Agencies.
- 5.25 Monitor Cobb COUNTY's CSBG Program subcontracts to ensure proper implementation of all program and project goals and objectives, identify operational problems, and assist in the initiation and completion of all corrective action.
- 5.26 Perform all other necessary Program Administration/Management activities required to meet DHR CSBG program requirements, regulations, and guidelines to ensure the successful implementation and continuation of the COBB COUNTY CSBG Program.

## **SECTION 6 – JAG REQUIRED SERVICES**

Design, administer, and manage the Justice Assistance Grant (JAG) Program that COBB COUNTY receives from the U. S. Department of Justice including, but not limited to the following.

- 6.1 Solicit applications for JAG funding from potential subrecipients and prepare evaluation criteria as requested by the COUNTY. Submit recommendations to the COUNTY through the Office of Finance and the COUNTY Manager.
- 6.2 Develop subrecipient agreements as approved by the Board of Commissioners and monitor compliance with their contracts.
- 6.3 Monitor the program operations and the financial activities of all JAG funded programs.
- 6.4 Process monthly financial reimbursements.
- 6.5 Develop and submit monthly, quarterly, semi-annual and annual reports on a timely basis to the Department of Justice in accordance with all applicable rules and regulations and provide copies of these reports to the Office of Finance.

## **SECTION 7 – EMERGENCY FOOD AND SHELTER PROGRAM SERVICES (FEMA)**

Assist individuals and families with basic living necessities, including utilities, transportation, etc., during emergency conditions. Implement the effective administration of all financial and programmatic elements of the FEMA- sponsored Emergency Food and Shelter programs, gaining approval of all grant fund disbursements, and meeting all reporting and record keeping requirements of FEMA and Cobb COUNTY.

- 7.1 Conduct FEMA programs, including emergency food and shelter needs, proposed activities in the Consolidated Plan, preparation of budgets, contracts, and recommendation of payment to FEMA subrecipients.
- 7.2 Prepare all necessary FEMA documents to qualify Cobb COUNTY for FEMA funds for the Emergency Food and Shelter Program (EFSP).
- 7.3 Assist the service delivery organizations in preparing a viable countywide system for program implementation.
- 7.4 Maintain a viable FEMA/EFSP monitoring system.
- 7.5 Conduct all necessary FEMA review and records activities.
- 7.6 Establish and conduct all appropriate FEMA financial management activities.
- 7.7 Ensure all emergency food and shelter activities are carried out in keeping with FEMA regulations, OMB Circulars, and related Federal, State, and local requirements.
- 7.8 Meet all FEMA reporting and record keeping requirements, including providing periodic financial and programmatic reports to COBB COUNTY.
- 7.9 Reconcile, on a monthly basis, all FEMA financial activities recorded in the COUNTY's Advantage Financial System to all FEMA reported financial activities.
- 7.10 Carry out all other necessary FEMA activities.



## EXHIBIT 3

### **FEDERAL REQUIREMENTS**

#### **CLAUSES INCORPORATED BY REFERENCE**

This Agreement incorporates the following clauses and the referenced laws, regulations, and policies with the same force and effect as if given in the main text of the Agreement. It is understood and agreed that the CONTRACTOR may be obligated by and to Cobb COUNTY (hereinafter referred to as the COUNTY) for any specifications or documentation required of the COUNTY under these clauses and provisions.

#### **1. ENERGY CONSERVATION REQUIREMENTS**

**Energy Conservation** - The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### **2. CLEAN WATER REQUIREMENTS**

##### **Clean Water**

A. The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The CONTRACTOR agrees to report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification the appropriate EPA Regional Office.

B. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance.

#### **3. LOBBYING**

Each contracting tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**4. ACCESS TO RECORDS AND REPORTS**

**Access to Records** - The following access to records requirements apply to this Agreement:

A. The CONTRACTOR agrees to permit COUNTY staff to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

B. The CONTRACTOR agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than five years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the CONTRACTOR agrees to maintain same until the COUNTY has disposed of all such litigation, appeals, claims or exceptions related thereto.

**5. FEDERAL CHANGES**

**Federal Changes** - The CONTRACTOR shall at all times comply with all applicable HUD or other federal funding agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference in any Agreement between the COUNTY and HUD, as they may be amended or promulgated from time to time during the term of this Agreement. The CONTRACTOR's failure to comply shall constitute a material breach of this Agreement.

**6. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

**No Obligation by the Federal Government**

A. The COUNTY and the CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the COUNTY, the CONTRACTOR, or any other party (whether or not a party to that Agreement pertaining to any matter resulting from the underlying Agreement).

B. The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part by HUD. It is further agreed that the clause shall not be modified, except to identify the SUBCONTRACTOR who will be subject to its provisions.

**7. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

**Program Fraud and False or Fraudulent Statements or Related Acts**

A. The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the HUD assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

B. The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the SUBCONTRACTOR who will be subject to the provisions.

**8. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION**

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

**Instructions for Certification**

A. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the COUNTY may pursue available remedies, including suspension and/or debarment.

C. The prospective lower tier participant shall provide immediate written notice to the COUNTY if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

D. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact the COUNTY for assistance in obtaining a copy of those regulations.

E. The prospective lower tier participant agreed by submitting their proposal or offer to the COUNTY that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the COUNTY.

F. The prospective lower tier participant further agreed by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

H. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

I. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the COUNTY may pursue available remedies including suspension and/or debarment.

## **9. PRIVACY ACT**

**Contracts Involving Federal Privacy Act Requirements** - The following requirements apply to the CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any contract:

A. The CONTRACTOR agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. The CONTRACTOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and

that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

B. The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by HUD.

## 10. CIVIL RIGHTS REQUIREMENTS

**Civil Rights** - The following requirements apply to the underlying contract:

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, and 42 U.S.C. § 12132, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements HUD may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements HUD may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements HUD may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements HUD may issue.

C. The CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by HUD, modified only if necessary to identify the affected parties.

## **11. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES (ADA)**

### **Access Requirements for Persons with Disabilities**

The CONTRACTOR agrees to comply with the requirements which express the Federal policy that the elderly and persons with disabilities have the same right as other persons to use facilities, and that special efforts shall be made in planning and designing those facilities to implement those policies. The CONTRACTOR also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

A. U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

B. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

C. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

D. Any implementing requirements HUD may issue.

## **12. OMB Supercircular**

CONTRACTOR agrees to comply with all requirements and conditions of OMB 2 CFR Part 200-Uniform Administrative requirements, Cost Principles and Audit Requirements for Federal Awards (also known as the Super Circular)

# **EXHIBIT 4**

## **CERTIFICATIONS**

1. Certifications regarding Fair Housing; Anti-Displacement; and Confidentiality (Exhibit 4-1)
2. Certification Regarding Conflict of Interest (Exhibit 4-2)
3. Certification regarding Drug-free Workplace. (Exhibit 4-3)
4. Certification regarding Guidance on Lobbying Restrictions. (Exhibit 4-4)
5. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions. (Exhibit 4-5)
6. Certification regarding Section 3 Plan. (Exhibit 4-6)
7. Certification regarding Non-Segregated Facilities. (Exhibit 4-7)
8. Certification for Conflict of Interest (Exhibit 4-8)
9. Certification for Confidentiality (Exhibit 4-9)
10. Certification of Compliance with Georgia Security and Immigration Act (Exhibit 4-10)
  - CONTRACTOR Affidavit & Agreement- Attachment 3-I (a)
  - SUBCONTRACTOR Affidavit & Agreement- Attachment 3-I (b)
  - Employer Immigration Compliance Certification- Attachment 3-I (c)
11. Prohibition Against Contingent Fees (Exhibit 4-11)
12. Officials Not To Benefit (Exhibit 4-12)
13. Statement of Assurance (Exhibit 4-13)

**EXHIBIT 4-1**

**CERTIFICATIONS FOR FAIR HOUSING – ANTI-DISPLACEMENT AND  
RELOCATION - CONFIDENTIALITY**

In accordance with the applicable statutes and regulations governing the consolidated plan regulations, the Contractor certifies that:

**Affirmatively Further Fair Housing** – The CONTRACTOR will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the grant jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

**Anti-displacement and Relocation Plan** – The CONTRACTOR will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24: and in effect will follow a residential anti-displacement and relocation assistance plan required under section 104(D) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

**Confidentiality** – The CONTRACTOR will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project except with the written authorization of the person responsible for the operation of that shelter.

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)



**EXHIBIT 4-2**

**WARRANTY/CONFLICT OF INTEREST STATEMENT**

The undersigned, \_\_\_\_\_, warrants that all information provided by it in this proposal is true and accurate. As a duly authorized representative of \_\_\_\_\_ (Firm), I \_\_\_\_\_ (Name), \_\_\_\_\_ (Title), certify that to the best of my knowledge no circumstances exist which would cause a conflict of interest in performing services for COBB COUNTY Government, that no employee of COBB COUNTY, nor any public agency official or employee affected by this RFP has any pecuniary interest in the business of this firm, associates or consultants of this firm, or the firm's parent firm, subsidiary, or other legal entity of which this firm is a part, and that no person associated with or employed by this firm has any interest that would conflict in any manner or degree with the performance of services for COBB COUNTY Government, including the purchase of goods or services.

Date: \_\_\_\_\_

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

Authorized Representative Name: \_\_\_\_\_

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

Signature: \_\_\_\_\_

**EXHIBIT 4-3**

**DRUG FREE WORKPLACE**

The undersigned in accordance with the Georgia Law hereby certifies that \_\_\_\_\_ (Name of Business) does:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or a plea of guilty or nolo contendere, to any violation of Chapter 1893, or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm fully complies with the above requirements.

\_\_\_\_\_  
(Name-Print)

\_\_\_\_\_  
(Title)

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

\_\_\_\_\_  
(Date)

**EXHIBIT 4-4**

**CERTIFICATION REGARDING GUIDANCE ON LOBBYING RESTRICTIONS**

The undersigned [CONTRACTOR] certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The undersigned swears that the foregoing statement is true and correct. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.

The undersigned swears that the foregoing statement is true and correct. Any material misrepresentation will be grounds for terminating and contract which may be awarded and for initiating action under Federal and State laws concerning false statements.

Firm Name \_\_\_\_\_

Signature of Certifying Official \_\_\_\_\_

Typed Name \_\_\_\_\_

Typed Title \_\_\_\_\_

Corporate Seal (where appropriate)

Date \_\_\_\_\_

State \_\_\_\_\_ COUNTY \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2020 before me appeared \_\_\_\_\_ (name), to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by \_\_\_\_\_ (name of firm) to execute the affidavit and did so as his or her free act and deed.

(Seal)

Notary Public \_\_\_\_\_

Commission Expires \_\_\_\_\_

## EXHIBIT 4-5

### CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

#### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies, the lower tier participant may be subject to suspension and/or disbarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if, at any time, the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
5. The prospective lower tier participant agrees by submitting this proposal that, should a proposed covered transaction be knowingly entered into with a person who is debarred, suspended, declared ineligible or voluntarily excluded, it shall be prohibited from participation in the covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may, but is not required to, check the Nonprocurement List Issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
  - a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  
  - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned swears that the foregoing statement is true and correct. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.

Firm Name \_\_\_\_\_

Signature of Certifying Official \_\_\_\_\_

Typed Name \_\_\_\_\_

Typed Title \_\_\_\_\_

Corporate Seal (where appropriate)

Date \_\_\_\_\_

State \_\_\_\_\_ COUNTY \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 2020 before me appeared \_\_\_\_\_ (name), to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by \_\_\_\_\_ (name or firm) to execute the affidavit and did so as his or her free act and deed.

(Seal)

Notary Public \_\_\_\_\_

Commission Expires \_\_\_\_\_

**EXHIBIT 4-6**

**SECTION 3 PLAN CERTIFICATION**

W. Frank Newton, Inc. (WFN) agrees to implement the following specific Section 3 Plan directed at increasing the utilization of lower income residents and businesses within COBB COUNTY.

- A. WFN will ascertain the exact boundaries of the Section 3 Plan covered project areas, and, where advantageous, seek the assistance of local officials in preparing and implementing the Firm's Section 3 Plan.
- B. Will recruit from within COBB COUNTY the necessary number of lower income residents through: local advertising media, Marietta Daily Journal, and through community organizations and public or private institutions operating within or serving COBB COUNTY, such as the Chamber of Commerce, the Georgia Department of Labor, the Governor's Office of Economic Development, Workforce Division, the Urban League, the NAACP, the Local Housing Authorities, and related organizations. These organizations (and any other that COBB COUNTY recommends) will be notified of all openings in W. Frank Newton, Inc.
- C. WFN will prepare a list of all lower income area residents who have applied, either on their own or by referral from any source, and employ such persons, if otherwise eligible, and if a vacancy exists.
- D. Will insert the Section 3 Plan in all bid proposal documents, and to require all bidders on subcontracts to submit a Section 3 Plan, including numeric goals and the specific steps planned to accomplish these goals.
- E. Will formally contact unions, subcontractors, and trade associations to secure their cooperation or this program.
- F. Will ensure that all appropriate Section 3 business concerns are notified of any pending subcontract opportunities.
- G. Will maintain records, including copies of correspondence, memoranda, etc., which document that all of the above action steps have been taken.
- H. Will appoint a Company Official to be its Section officer to coordinate the implementation of this Section 3 Plan.

- I. Will develop a list of all projected work force needs for all phases of this grants management project, by occupation, trade, skill level, and number of positions, along with the number of new hires anticipated for this project, and the number of Section 3 residents for which jobs will be made available.
  
- J. Will, as openings become available during the Agreement period, solicit and strongly consider Section 3 lower income residents to fill any and all available positions.

WFN will work with all of the employment sources identified in WFN's Section 3 Plan to recruit eligible Section 3 employees for any potential positions. Thus, WFN anticipates that it will be of assistance to COBB COUNTY, during the Agreement period, in meeting its overall Section 3 goals.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name - Print

\_\_\_\_\_  
Title



**EXHIBIT 4-7**  
**CERTIFICATION BY CONTRACTOR REGARDING NON-SEGREGATED**  
**FACILITIES**

The CONTRACTOR certifies that he does not, and will not, provide and maintain segregated facilities for his employees at his establishments and, further that he does not, and will not, permit his employees to perform their services at those locations, under his control, where segregated facilities are provided and maintained. Segregated facilities include, but are not necessarily limited to drinking fountains, transportation, parking, entertainment, recreation, and housing facilities; waiting, rest, wash, dressing, and locker rooms, and time clock, work, storage, restaurant, and other eating area which are set apart in fact, or by explicit directive, habit, local custom, or otherwise, on the basis of color, creed, national origin, and race. The CONTRACTOR agrees that, except where he has obtained identical certifications from proposed subcontractors for specific time periods, he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

The CONTRACTOR will not discriminate against any employee, applicant for employment or subcontractor because of race, color, religion, age, sex, disability or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and subcontractors are selected, and that employees are treated during employment, without regard to their race, color, religion, age, sex disability or national origin. Such action shall include, but not be limited to the advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training including apprenticeship; and participation in recreational and educational services. The CONTRACTOR will, in all solicitations or advertisements for subcontractors or employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, sex, disability or national origin.

Should the CONTRACTOR become aware that any violation has occurred or of any circumstance which may breach or violate any Equal Employment Opportunity requirement during the term of this Contract, the CONTRACTOR shall immediately notify the COUNTY, but in any event within one week. If the COUNTY determines that a breach or violation has occurred or exists, the COUNTY may require the CONTRACTOR to take action to remedy the breach or violation, or the COUNTY may immediately terminate this Contract without liability. The COUNTY shall have the right to recover all compensation paid for services rendered by the CONTRACTOR, his subcontractors, agents, or employees which were performed while a breach or violation of any Equal Employment Opportunity requirement existed, if the CONTRACTOR knew or should have known of the breach or violation and did not notify the COUNTY as required by this section.

The CONTRACTOR agrees that a breach of this certification is a violation of the Equal Opportunity clause in this Contract. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

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CONTRACTOR

---

(Signature)

---

Name and Title of Signer

---

Date

**EXHIBIT 4-8**

**CERTIFICATION FOR CONFLICT OF INTEREST**

The CONTRACTOR and the COUNTY certify that the provisions of the Official Code of Georgia Annotated, 45-10-20 through 45-10-28, as amended, which prohibit and regulate certain transactions between certain State officials, employees, and the State of Georgia, have not been violated and will not be violated in any respect.

By execution of this Agreement the CONTRACTOR certifies that to the best of his knowledge no circumstances exist which will cause a conflict of interest in performing the services required by this Agreement, that no employee of the COUNTY, nor any member thereof, nor any public agency or official affected by this Contract, has any pecuniary interest in the business of the CONTRACTOR or his subcontractor(s), and that no person associated with the CONTRACTOR or his subcontractor(s) has any interest which would conflict in any manner or degree with the performance of this Contract.

Employees and independent CONTRACTORs of the CONTRACTOR who perform any work or service relative to the Cobb COUNTY CDBG, HOME, ESG, CSBG, JAG, and FEMA Programs shall be prohibited from entering into any contract for services or employment with any program subrecipient.

Should the CONTRACTOR become aware that any conflict or appearance of conflict of interest exists or of any circumstance which may cause a conflict or appearance of conflict of interest during the term of this Agreement, the CONTRACTOR shall immediately notify the COUNTY, but in any event within one week. If the COUNTY determines that a conflict of interest has occurred or exists, the COUNTY may require the CONTRACTOR to take action to remedy the conflict of interest, or the COUNTY may immediately terminated this Contract without liability. The COUNTY shall have the right to recover all compensation paid for services rendered by the CONTRACTOR, his subcontractors, agents, or employees which were performed while a conflict of interest if the CONTRACTOR knew or should have known that a conflict existed and did not notify the COUNTY as required by this section.

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)

**EXHIBIT 4-9**

**CERTIFICATIONS FOR CONFIDENTIALITY**

In accordance with the applicable statutes and regulations governing the consolidated plan regulations, and CONTRACTOR certifies that:

**Confidentiality** – The CONTRACTOR will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project except with the written authorization of the person responsible for the operation of that shelter.

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)

## **Compliance with Georgia Security and Immigration Compliance Act**

### **PROCEDURES & REQUIREMENTS**

*(Effective 07-01-2013 - Supersedes All Previous Versions)*

#### **BACKGROUND**

Pursuant to the “Georgia Security and Immigration Compliance Act,” COBB COUNTY cannot enter into a contract for the physical performance of services unless the CONTRACTOR registers and participates in the federal work authorization program to verify information of all newly hired employees or subcontractors. Neither may any CONTRACTOR or SUBCONTRACTOR enter a contract with the COUNTY in connection with the physical performance of services unless the CONTRACTOR and/or SUBCONTRACTOR registers and participates in the federal work authorization program to verify information of all new employees. O.C.G.A. § 13-10-91.

Before any bid for the physical performance of services is considered, the bid must include a signed, notarized affidavit from the CONTRACTOR attesting to the following: (1) the affiant has registered with and is authorized to use the federal work authorization program; (2) the user ID number and date of authorization for the affiant; and (3) the affiant is using and will continue to use the federal work authorization program throughout the contract period. O.C.G.A. § 13-10-91 (b) (1). Affidavits shall be maintained for five years from the date of receipt. O.C.G.A. § 13-10-91 (b) (1).

Upon contracting with a new SUBCONTRACTOR, a CONTRACTOR or SUBCONTRACTOR shall, as a condition of the contract or subcontract, provide Cobb COUNTY with notice of the identity of any and all subsequent SUBCONTRACTORS hired or contracted by that CONTRACTOR or SUBCONTRACTOR within five (5) business days of entering into a contract or agreement for hire with any SUBCONTRACTOR. Such notice shall include an affidavit including the SUBCONTRACTOR’s name, address, user ID number, and date of authorization to use the federal work authorization program. O.C.G.A. § 13-10-91 (b) (3).

Based upon the COUNTY’s experience and desire for full compliance, no work may be commenced by any subsequent SUBCONTRACTOR prior to notice being received by the COUNTY that the SUBCONTRACTOR (regardless of tier) is in compliance with the law and the attached Procedures & Requirements, including the preparation and submission of the CONTRACTOR (or SUBCONTRACTOR) Affidavit & Agreement AND the Immigration Compliance Certificate PRIOR to the commencement of any work.

#### **DEFINITIONS**

Affidavit – a written statement made or taken under oath before an officer of the court or a notary public or other person who duly has been authorized so to act.

Affiant – the person who makes and subscribes to a statement made under oath (affidavit).

**Physical Performance of Services – any performance of labor or services for a public employer using a bidding process or by contract wherein the labor or services exceed \$2,499.99.**

**PROCEDURES & REQUIREMENTS**

1. Bid Documents: Bid documents should contain information regarding the contract language and contractual requirements described below.
2. Responsive Bid Documents: Responsive bid documents MUST INCLUDE a signed, notarized affidavit from the CONTRACTOR in the form attached as EXHIBIT A (CONTRACTOR AFFIDAVIT & AGREEMENT). **If the affidavit is not submitted at the time of the bid, the applicant will be disqualified.**

**This Affidavit Must Be Signed, Notarized And Submitted With Any Bid Requiring The Performance Of Physical Services. If The Affidavit Is Not Submitted At The Time Of The Bid, The Bid Will Be Determined To Be Non-Responsive And Will Be Disqualified.**

3. Contract Language & Contractual Requirements: Affirmative language shall be contained in agreements for the performance of services to cover all statutory and COUNTY requirements; such language shall require:

(a) That affidavits in the form attached to these “Procedures & Requirements” be executed from a CONTRACTOR (and any SUBCONTRACTORS, regardless of tier) and notarized, showing compliance with the requirements of O.C.G.A. § 13-10-91 and that such be made part of the contract and/or subcontracts;

(b) That the CONTRACTOR (and any subcontractors, regardless of tier) fully comply with the requirements for completing and submitting the “Immigration Compliance Certification” and that such certification be received by the COUNTY prior to the commencement of any work under the contract or subcontract;

(c) That the CONTRACTOR (or any SUBCONTRACTOR, regardless of tier) notify the COUNTY within five (5) business days of entering into a contract or other agreement for hire with any SUBCONTRACTOR(s), regardless of tier;

(d) That the CONTRACTOR be responsible for obtaining and providing to the COUNTY the “SUBCONTRACTOR Affidavit & Agreement” and “Immigration Compliance Certification” attached to and required under these “Procedures & Requirements” from each SUBCONTRACTOR, regardless of tier, employed or retained for work under the contract prior to the commencement of any work under the contract or any subcontract;

(e) That COBB COUNTY, Georgia, reserves the right to dismiss, or require the dismissal of, any CONTRACTOR or SUBCONTRACTOR for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of

O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

(f) That any CONTRACTOR and/or SUBCONTRACTOR retaining any other SUBCONTRACTOR to perform services under the contract provide legal notice to any SUBCONTRACTOR of the requirements of COBB COUNTY for immigration compliance and further provide notice that Cobb COUNTY, Georgia, reserves the right to dismiss, or require the dismissal of, any CONTRACTOR or SUBCONTRACTOR for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

(g) That failure to comply with any of the requirements and procedures of the COUNTY (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by COUNTY or State officials upon request; and/or failure to continue to meet any of the statutory or COUNTY obligations during the life of the contract) shall constitute a material breach of the agreement and shall entitle the COUNTY to dismiss any general CONTRACTOR or to require the dismissal of any SUBCONTRACTOR or SUB/SUBCONTRACTOR (irrespective of tier) for failing to fully comply with these requirements;

(h) That upon notice of a material breach of these provisions, the CONTRACTOR (or SUBCONTRACTOR, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the COUNTY shall be entitled to all available remedies, including termination of the contract, the requirement that a SUBCONTRACTOR be dismissed from performing work under the contract, and any and all damages permissible by law.

4. Immigration Compliance Certification: Prior to commencing work under any contract for the physical performance of services, the CONTRACTOR shall complete the "IMMIGRATION COMPLIANCE CERTIFICATION" form attached to these "Procedures & Requirements" and submits the same to the COUNTY.

Prior to allowing any other SUBCONTRACTOR to perform work under the contract, the CONTRACTOR shall obtain a completed "IMMIGRATION COMPLIANCE CERTIFICATION" from each SUBCONTRACTOR (regardless of tier) and submit the same to the COUNTY.

***FORM ATTACHMENTS:***

1. CONTRACTOR AFFIDAVIT & AGREEMENT (EXHIBIT A);
2. SUBCONTRACTOR AFFIDAVIT & AGREEMENT (EXHIBIT A-1);
3. IMMIGRATION COMPLIANCE CERTIFICATION (EXHIBIT A-2).

**CONTRACTOR AFFIDAVIT & AGREEMENT**

**(EXHIBIT A)**

***This affidavit must be signed, notarized and submitted with any bid requiring the performance of physical services. If the affidavit is not submitted at the time of the bid, the bid will be determined non-responsive and will be disqualified.***

By executing this affidavit, the undersigned contractor verifies compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontract(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County Georgia, the CONTRACTOR or subcontractor will:

- (1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
  
- (2) Secure from any subcontractor (s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit (EXHIBIT A-1) prior to the commencement of any work under the contract/agreement;
  
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
  
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
  
- (5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
  
- (6) Maintain such records for a period of five (5) years.



EEV (E-Verify) Program User ID Number

\_\_\_\_\_  
EEV Program Date of Authorization

\_\_\_\_\_  
BY: Authorized Officer or Agent  
[CONTRACTOR Name]

\_\_\_\_\_  
CONTRACTOR Business Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED BEFORE ME

ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 2020

Notary Public Commission Expires: \_\_\_\_\_

Effective 07-01-2013

**SUBCONTRACTOR AFFIDAVIT & AGREEMENT  
(EXHIBIT A-1)**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the undersigned subcontractor will:

- (1) Notify the COUNTY within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on this Subcontractor Affidavit form (EXHIBIT A-1) prior to the commencement of any work under the contract/agreement;
- (3) Secure from any subcontractor(s) and/or their subcontractor (s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Maintain such records for a period of five (5) years.

\_\_\_\_\_  
EEV (E-Verify) Program User ID Number

\_\_\_\_\_  
EEV Program Date of Authorization

\_\_\_\_\_  
BY: Authorized Officer or Agent  
[Subcontractor Name]

\_\_\_\_\_  
Subcontractor Business Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 202\_\_

\_\_\_\_\_  
Notary Public Commission Expires:

**IMMIGRATION COMPLIANCE CERTIFICATION**

**(Required to be completed by contractors and all Subcontractors)**  
**(EXHIBIT A-2)**

I certify to the Cobb COUNTY Board of Commissioners that the following employees will be assigned to:

_____		
<i>(Project Name/Description)</i>		
_____	_____	_____
_____	_____	_____

I further certify to Cobb COUNTY, Georgia the following:

- The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our contract to use the program;
- We have not received a Final Nonconfirmation response from E-Verify for any of the employees listed.
- If we receive a Final Nonconfirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee's involvement with the project.
- I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9's are accurate.
- To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States.
- If any other employee is assigned to this Cobb COUNTY project, a certification will be provided for said employee prior to the employee commencing work on the project.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

**Sworn to by:**

**Employer Name & Address:**

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_

\_\_\_\_\_  
Printed Name/Title

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_

SWORN AND SUBSCRIBED BEFORE ME  
ON THIS THE \_\_\_\_ DAY OF \_\_\_\_\_, 202\_\_

Notary Public  
Commission Expires: \_\_\_\_\_

***Effective 07-01-2013***  
**EXHIBIT 4-11**

**PROHIBITION AGAINST CONTINGENT FEES**

By execution of this Agreement the CONTRACTOR warrants that he and his subcontractor(s) have not employed or retained any company or person other than a bona fide employee working solely for the CONTRACTOR or his subcontractor(s) to solicit or secure this Agreement and that he and his subcontractor(s) have not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONTRACTOR or his subcontractors, any fee, commission, percentage, gift, payment or other consideration contingent upon or resulting from the award of this Agreement. For any breach or violation of this provision, the COUNTY shall have the right to immediately terminate this Agreement without liability and, at its discretion, deduct for the CONTRACTOR's compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, payment, or consideration.

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)

**EXHIBIT 4-12**

**OFFICIALS NOT TO BENEFIT**

No member of, or delegate to the Congress of the United States of America, resident Commissioner or employee of the United States Government, shall be admitted to any share or part of this Agreement or to any benefits arising herefrom.

Should the CONTRACTOR become aware that any violation has occurred or of any breach or violation of this provision during the term of this Agreement, the CONTRACTOR shall immediately notify the COUNTY, but in any event within one week. If the COUNTY determines that a breach or violation of this provision has occurred or exists, the COUNTY may require that the CONTRACTOR take action to remedy the breach or violation, or the COUNTY may immediately terminate this Contract without liability. The COUNTY shall have the right to recover all compensation paid for services rendered by the CONTRACTOR, his subcontractors, agents, or employees which were performed while a breach or violation of this provision existed, if the CONTRACTOR knew or should have known that a breach or violation of this provision existed and did not notify the COUNTY as required by this section.

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Date)

**EXHIBIT 4-13**  
**STATEMENT OF ASSURANCES**

1. It will establish safeguards or prohibit employees from using their positions for a purpose that is or give the appearance of being motivated by a desire for private gain for themselves or others, particularly those with family, business or other ties. (29CFR Part 97.36)
2. It will upon the written request of Cobb County, and/or State or Federal Agency promptly refund to Cobb County, all funds representing disallowed costs. This repayment shall be made regardless of any claim of the sub recipient against any other person or entity.
3. It will retain all records pertinent to the Grant Award for a period of three years after the termination of this AGREEMENT. Records for equipment shall be retained for a period for three years beginning on the last day of the Program Year in which final disposition of property occurred. If any litigation, claim, negotiation, audit, or other action involving the records has been completed before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it.
4. The Administrative entity acknowledges that the Georgia Open Records Act (O.C.G.A.50-18-70 et seq.) provided at 50-18(a) that records received or maintained by a private person, firm, corporation, or other private entity in the performance of a service or function for or on behalf of an agency, or public office, shall be subject to the Georgia Open Records Act, and provides a criminal misdemeanor penalty for knowing and willful noncompliance with Open Records Act provisions. The administrative entity acknowledges that the Open Record Act also contains an exception to the general rule requiring that public records be made accessible to the public, which exception provides that the public records prohibited or specifically exempted from being open to inspection by the general public, by order of a court of this state or by law, shall not be open to inspection by the general public. The administrative entity agrees to comply with the Open Records Act and to protect private and confidential records that are exempted from being open to inspection by the general public.
5. The administrative entity certifies that it is in compliance with the Georgia's Service Delivery Strategy Law (O.C.G.A. 36-70-20 et seq.), which states that each county and its cities must agree upon the manner in which each local service is delivered, resolve inter-jurisdictional land use conflicts and address tax equity and extraterritorial water and sewer rate equity issues.

The undersigned swears that the foregoing statement is true and correct. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Attest:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## EXHIBIT 5

### **TURNOVER PROCEDURE**

Upon termination of the AGREEMENT, the CONTRACTOR shall make available all program operational and financial records, and return all COUNTY owned/leased facilities and equipment to the COUNTY ready for use, with no deferred maintenance or damage. The Turnover Procedure outlined below will be followed during the turnover period.

In the event that the CONTRACTOR returns facilities and/or equipment to the COUNTY with deferred maintenance or damage, the COUNTY shall determine the cost to correct such deficiency(s) and COUNTY shall have the right of set off and shall withhold said amount from CONTRACTOR'S final payment(s). COUNTY may, at its discretion, use withheld funds to correct and resolve deferred maintenance and/or damage as necessary to bring facilities and/or equipment into compliance with acceptable standards for turnover.

#### Turnover Procedure

The turnover procedure is designed to determine the exact progress of all planned and on-going grant programs, and the condition of grant facilities and equipment at the time of turnover between CONTRACTORS. This procedure shall be implemented toward the end of the current Agreement term and prior to the commencement of the new Agreement. At the COUNTY'S option, a turnover inspection may be implemented with or without a change in CONTRACTORS.

#### Pre-Audit Meeting

The current CONTRACTOR, the SUCCESSOR, and the COUNTY (or its designee) shall meet thirty to sixty (30-60) days prior to turnover. All parties shall be represented by authorized personnel at this Pre-Audit Meeting. The purpose of the Pre-Audit Meeting shall be to set guidelines for procedure during the Initial Audit. Procedures shall be agreed upon and confirmed in writing by all parties within five (5) working days of the Pre-Audit Meeting.

#### Initial Audit

The CONTRACTOR, SUCCESSOR, and the COUNTY (or its designee) shall meet sixty (60) to ninety (90) days prior to turnover at the CONTRACTOR'S facility. All parties shall be represented by authorized personnel at this Initial Audit. CONTRACTOR shall make available their current facility and such personnel as necessary. CONTRACTOR shall make available to the COUNTY (or its designee) all records as appropriate. The CONTRACTOR, SUCCESSOR, and COUNTY (or its designee) shall cooperate fully during the Initial Audit as set forth in the guidelines determined at the Pre-Audit Meeting.

At this time the COUNTY (or its designee) shall examine records of proposed and on-going programs, and all facilities and equipment to determine the current conditions.



CONTRACTOR shall make facilities and equipment available to accommodate the Initial Audit. All parties shall be provided the draft results of this inspection at the conclusion of the Initial Audit.

After the Initial Audit, CONTRACTOR and COUNTY (or its designee) shall meet to determine a plan and timeline for resolution of prospective and on-going programs, and missing or defective facilities/equipment found during the Initial Audit.

CONTRACTOR shall furnish COUNTY with timeline and specific plan for resolution of prospective and on-going programs, and missing or defective facilities/equipment prior to turnover. The "Resolution Plan" shall be submitted no less than thirty days prior to expected turnover date.

#### Turnover Audit

Within one week prior to turnover, COUNTY (or its designee), CONTRACTOR, and SUCCESSOR, shall meet to physically re-examine all records, facilities, and equipment. Records shall be kept, and made available to the COUNTY (or its designee), documenting program activities and facilities/equipment, which have been reconditioned since the initial inspection. The current program positions and condition of all facilities and equipment shall be determined. CONTRACTOR shall make available adequate facilities and equipment dedicated to accommodate the Initial Audit. All parties shall be provided the draft results of this inspection at the conclusion of the Turnover Audit.



## Finance

William Volckmann, Director/Comptroller

Districts All

Item No. 21.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** William Volckmann, Director/Comptroller

**DATE:** August 25, 2020

### **PURPOSE**

To adopt a resolution adopting all budget amendments set forth in agenda items on this date.

### **BACKGROUND**

Georgia Law, O.C.G.A. §36-81-3(b), requires each unit of local government to operate under an annual balanced budget adopted by ordinance or resolution. Cobb County Code 2-49 provides for revisions to the adopted budget during the year only by formal action of the commission in a regular meeting.

In an official opinion dated February 24, 1999, the Attorney General of the State of Georgia concluded that all amendments to the budgets of local governments must be adopted by ordinance at each meeting when the amendments are approved by the Board of Commissioners.

### **IMPACT STATEMENT**

N/A

### **FUNDING**

N/A

### **RECOMMENDATION**

The Board of Commissioners adopt a resolution adopting all budget amendments set forth in agenda items on this date.

### **ATTACHMENTS**

1. 08252020 Resolution

COBB COUNTY BOARD OF COMMISSIONERS

RESOLUTION

ADOPTING ALL BUDGET AMENDMENTS  
SET FORTH IN AGENDA ITEMS ON THIS DATE

WHEREAS, Georgia Law, O.C.G.A. § 36-81-3 (b), requires each unit of government to operate under an annual balanced budget adopted by ordinance or resolution; and

WHEREAS, Cobb County Code 2-49 provides for revisions to the adopted budget during the year only by formal action of the commission in a regular meeting; and

WHEREAS, in official opinion date February 24, 1999, the Attorney General of the State of Georgia concluded that all amendments to the budgets of local government must be adopted by ordinance or resolution;

NOW, THEREFORE, BE IT RESOLVED the Cobb County Board of Commissioners does hereby adopt all such budget amendments as are set forth in agenda items which are adopted by the Board of Commissioners without change this date, as well as other such budget amendments as shall be specifically detailed in motions adopted by the Board of Commissions this date.

This 25<sup>th</sup> of August 2020



**CobbWorks, Inc.**  
 Sonya Grant, Managing Director  
 Districts All

**Item No. 22.**

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager  
**FROM:** Sonya Grant, Managing Director  
**DATE:** August 25, 2020

**PURPOSE**

To accept a Workforce Innovation and Opportunity Act (WIOA) grant award from the Technical College System of Georgia for CobbWorks, Inc., to provide education, training, and employment services for adults.

**BACKGROUND**

Cobb County has been awarded a FY2020 Adult Program grant of \$122,595.00 for the provision of adult education, training, and employment services by CobbWorks, Inc., This grant will serve approximately 22 participants.

The grant period is from July 1, 2020 through June 30, 2022. The grant number is AFR1-11-20-20-03-004, the CFDA# is 17.258 and the FAIN# is AA-34763-20-55-A-13.

**IMPACT STATEMENT**

All expenditures will be paid with grant funds. No local match from the County is required. If this funding were reduced or no longer made available, we would no longer pay for professional services and operating costs, the programs would be terminated and the employment positions eliminated.

**FUNDING**

Funding for this Workforce Innovation and Opportunity Act grant will be appropriated in the WIOA Fund as follows:

Increase Revenue:

276-120-WP20-WP20AD-A-XX/4430 (Admin)	\$12,260.00
276-120-WP20-WP20AD-P-XX/4430 (Program)	\$110,335.00

Increase Expenditures:

276-120-WP20-WP20AD-A-Varies (Admin)	\$12,260.00
276-120-WP20-WP20AD-P-Varies (Program)	<u>\$110,335.00</u>
Total Grant: (See Attachment Details)	\$122,595.00

## **RECOMMENDATION**

The Board of Commissioners accept a grant award from the Technical College System of Georgia for CobbWorks, Inc., the local Workforce Development Board, in the amount of \$.122,595.00, to provide training and employment services for the Adult Program; authorize corresponding budget transactions; and further authorize the Chairman to execute the necessary documents.

## **ATTACHMENTS**

1. Area 4 WIOA Adult PY2020
2. PY20 Adult budgets 08-10-20

Technical College System of Georgia, Office of Workforce Development  
GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

**STATEMENT OF GRANT AWARD**

RECIPIENT: Cobb County

LOCAL WORKFORCE AREA: 004      REGION: 03

GRANT NO: 11-20-20-03-004

FAIN: AA-34763-20-55-A-13

GRANT PERIOD:

FROM: 7/1/2020      THRU: 6/30/2022

GRANT YEAR:      PY      2020

PROGAM TITLE/TYPE:      Adult Program/I      CFDA NO:      17.258

**TOTAL FUNDS: \$ 122,595**

**Admin not to exceed: \$ 12,260**

This award is hereby made, in the amount and for the period shown above, from a grant under the Workforce Innovation and Opportunity Act (P.L. 113-128), as amended, to the above mentioned recipient, and in accordance with the Workforce Innovation Plan project application. This award is subject to any attached assurances, revisions, special conditions, or waivers.

This award is subject to all applicable policies, rules and regulations, and conditions as prescribed by the Technical College System of Georgia's Office of Workforce Development (OWD) and the United States Department of Labor. It is also subject to such further laws, rules, regulations and policies as may be reasonably prescribed by the State of Georgia or the Federal Government under Public Law 113-128, as amended.

This grant becomes effective on the beginning of the grant period, provided that within thirty (30) days of the award execution date (below), the properly executed original Statement of Grant Award and any of the attached properly executed revisions, waivers and special condition statements are returned to OWD.

- This award is subject to Certification Regarding the Role of the Local Grant Recipient
- This award is subject to Subrecipient Designation (if applicable)
- This award is subject to Liability Waiver
- This award is subject to Certification on Nondiscrimination and Equal Opportunity Requirements
- This award is subject to Certification Regarding Drug-Free Workplace Requirements
- This award is subject to Certification Regarding Debarment and Suspension
- This award is subject to Certification For Lobbying
- This award is subject to Statement of Assurances
- This award is subject to special conditions (attached)

\_\_\_\_\_  
Technical College System of Georgia  
Executive Director, Office of Workforce Development

\_\_\_\_\_  
Date Executed

I, \_\_\_\_\_ (typed) acting under my authority to contract on behalf of the recipient of the above described grant on the terms and conditions stated above or incorporated by reference therein, do hereby accept this Grant Award.

\_\_\_\_\_  
Date of Acceptance

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Director

Technical College System of Georgia, Office of Workforce Development  
GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

**GRANT CONTRACT STATEMENT OF WORK**

**Funds are to be used to implement general Adult workforce/Training activities as allowable under Public Law No:113-128 Workforce Innovation and Opportunity Act.**

**LIABILITY WAIVER**

---

RECIPIENT: Cobb County

LOCAL WORKFORCE AREA: 004

SUBGRANT NO: 11-20-20-03-004

SUBGRANT PERIOD:

FROM: 7/1/2020 THRU: 6/30/2022

PROGRAM TITLE/TYPE: Adult Program I

DATE OF AWARD: 7/1/2020

EIN:

DUNS:

Approved Indirect Cost Rate:

Fiscal Agent Risk Level: Low

=====

THE LOCAL GRANT RECIPIENT AGREES TO, AND WILL HOLD HARMLESS THE TECHNICAL COLLEGE SYSTEM OF GEORGIA'S OFFICE OF WORKFORCE DEVELOPMENT, ITS OFFICERS AND EMPLOYEES AND THE STATE OF GEORGIA FROM ALL CLAIMS, COSTS, DAMAGES, OR EXPENSE ARISING FROM ANY ACTS OR OMISSIONS OF THE RECIPIENT, ITS EMPLOYEES OR AGENTS WHILE PERFORMING UNDER THIS GRANT AWARD.

---

Date of Acceptance

---

Authorized Signature

---

Executive Director

(WIOA 4/2015)  
LIABWAIV.FRM

**Technical College System of Georgia, Office of Workforce Development**  
**GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)**

**STATEMENT OF ASSURANCES**

**Nondiscrimination and Equal Opportunity Requirements of WIOA**

- (1) As a condition to the award of financial assistance under WIOA from the U.S. Department of Labor, the grant recipient assures, with respect to operation of the WIOA-funded program or activity and all agreements or arrangements to carry out the WIOA-funded program or activity, that it will comply fully with the nondiscrimination, and equal opportunity provisions of Section 188 of the Workforce Innovation and Opportunity Act (WIOA), including the Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; The Age Discrimination Act of 1975, as amended; and Title IX of the Education Amendments of 1972, as amended. The grant recipient also assures that it will comply with all regulations implementing the laws listed above. The grant recipient understands that the United States has the right to seek judicial enforcement of this assurance.
- (2) The obligation for insuring service provider or vendor compliance with the nondiscrimination and equal opportunity provisions of WIOA rests with the LWDA grant recipient, as specified in the LWDA grant recipient's Method of Administration.
- (3) The LWDA grant recipient agrees to abide by the Equal Opportunity policy stated below and must provide initial and continuing notice that it does not discriminate on any prohibited ground. The LWDA grant recipient must also take appropriate steps to ensure that communication with individuals with disabilities are as effective as communications with others.

The Equal Opportunity notice must contain the following specific wording:

**EQUAL OPPORTUNITY IS THE LAW**

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and Against any beneficiary of programs financially assisted under the Title I of the Workforce Innovation and Opportunity Act (WIOA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIOA Title I—financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity; Providing opportunities in, or treating any person with regard to, such a program or activity; or Making employment decisions in the administration of, or in connection with, such a program or activity.

- (4) At a minimum, the notice required by sections 60-1.42 and 60-1.4(a) must be posted prominently in reasonable places; Disseminated in internal memoranda and other written or electronic communication; Included in handbooks or manuals; and made available to each participant and made part of each participant's file.

(WIOA/7/2000)



**Technical College System of Georgia, Office of Workforce Development**  
**GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)**

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

- A. The grant recipient certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing an on-going drug-free awareness program to inform employees about:
    - (1) The dangers of drug abuse in the workplace;
    - (2) The grantee's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (c) Making it a requirement that each employee to be engaged in the performance of the grant, be given a copy of the statement required by paragraph (a);
  - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
    - (1) Abide by the terms of the statement; and
    - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. The notice shall include the identification number(s) of each affected grant;
  - (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:
    - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
  - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(WIOA 7/2000)

**Technical College System of Georgia, Office of Workforce Development**  
**GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Local Grant Recipient Covered Transactions**

**Instructions for Certification**

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective local grant recipient knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

By signing and submitting this proposal, the prospective local grant recipient is providing the certification set out below:

1. The prospective local grant recipient shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective local grant recipient learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
2. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any local grant recipient covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
3. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Local Grant Recipient Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
4. A participant in a covered transaction may rely upon a certification of a prospective participant in a local grant recipient covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principles. Each participant may, but is not required to, check the Nonprocurement List.
5. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
6. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a local grant recipient covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

- (1) The prospective local grant recipient certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective local grant recipient is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned swears that the foregoing statement is true and correct. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.

(WIOA 7/2000)

**CERTIFICATION FOR LOBBYING**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,  
AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards of greater than \$100,000, at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(WIOA 7/2000)

**Technical College System of Georgia, Office of Workforce Development**  
**GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)**

**STATEMENT OF ASSURANCES**

The grant recipient (Chief Elected Official) and Grant Administrator and/or fiscal agent (when such designation has occurred) hereby assures and certifies that it will comply with Public Law 113-128, Federal Workforce Innovation and Opportunity Act (WIOA) Regulations, and any amendments or additions to said Regulations, State and local law, the Regulations and Policies as issued by the Technical College System of Georgia's Office of Workforce Development (OWD), requirements contained in the applicable OMB Circulars, and applicable Uniform Administrative Requirements.

1. It was selected in accordance with Sec. 107 (b)(c)(d) of the Act as the authorized entity to receive the Grant. It further attests that a resolution, motion, or similar action has been duly adopted or passed authorizing it to accept all understandings and assurances contained within this Grant Award.
2. It will establish safeguards or prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with family, business or other ties.
3. It will, upon the written request of the OWD, promptly refund to the OWD all funds representing disallowed costs. This repayment shall be made regardless of any claim of the subrecipient against any other person or entity.
4. It will retain all records pertinent to this Grant Award for a period of three years after the closeout package is accepted by OWD. Records for equipment shall be retained for a period for three years beginning on the last day of the Program Year in which final disposition of property occurred. If any litigation, claim, negotiation, audit, or other action involving the records has not been completed before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it.
5. The grant administrator acknowledges that the Georgia Open Records Act (O.C.G.A. 50-18-70 et seq.) provided at 50-18(a) that records received or maintained by a private person, firm, corporation, or other private entity in the performance of a service or function for or on behalf of an agency, or public office, shall be subject to the Georgia Open Records Act, and provides a criminal misdemeanor penalty for knowing and willful noncompliance with Open Records Act provisions. The grant administrator acknowledges that the Open Records Act also contains an exception to the general rule requiring that public records be made accessible to the public, which exception provides that the public records prohibited or specifically exempted from being open to inspection by the general public, by order of a court of this state or by law, shall not be open to inspection by the general public. The grant administrator agrees to comply with the Open Records Act and to protect private and confidential records that are exempted from being open to inspection by the general public.
6. The grant administrator certifies that it is in compliance with the Georgia's Service Delivery Strategy Law (O.C.G.A. 36-70-20 et seq.), which states that each county and its cities must agree upon the manner in which each local service is delivered, resolve interjurisdictional land use conflicts, and address tax equity and extraterritorial water and sewer rate equity issues.
7. The grant administrator assures that no funds received under the Workforce Innovation and Opportunity Act (WIOA) will be used to assist, promote, or deter union organizing.
8. The grant administrator certifies that it is in compliance with Public Law 104-91, August 21, 1996: Health Insurance Portability and Accountability Act of 1996.
9. Veteran's Priority Provision: This program is subject to the provisions of the "Jobs for Veteran's Act", Public Law 107-288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the U.S. Department of Labor. Please note that, to obtain service, a veteran must meet the program's eligibility requirements.
10. Salary & Bonus Limitation: In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading "Employment & Training", shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under Section 101 of Public Law 109-149.
11. Prior Approval for WIOA General Purpose Equipment Acquisitions: Per 2 CFR 200.439 (b)(2), Local Workforce Development Board (LWDB) staff, as well as Grant Administrators and/or Fiscal Agents, must request, and receive written approval from the OWD prior to acquisition of Workforce Innovation and Opportunity Act (WIOA) General Purpose Equipment with a unit cost of \$5,000 or more. Failure to obtain written prior approval for purchases may result in questioned and/or disallowed costs.

12. Acorn Prohibition: Section 511 of the Consolidated Appropriations Act, 2010 (P.L. 111-117, Division E) (“CAA”), requires that no direct or indirect funding from the Consolidated Appropriations Act may be provided to the Association of Community Organizations for Reform Now (“ACORN”) or any of its subsidiaries through Federal grantees or contractors. DOL is required to take steps so that no Federal funds from the Consolidated Appropriations Act, 2010, are awarded or obligated by DOL grantees or contractors to ACORN or its subsidiaries as subgrantees, subcontractors, or other subrecipients. This prohibition applies not only to a direct recipient of Federal funds, but also to a subrecipient (e.g., a subcontractor, subgrantee, or contractor of a grantee).
13. Intellectual Property Rights: The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for federal purposes: i) the copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and ii) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.
14. Executive Order 12928: Pursuant to Executive Order 12928, the recipient is strongly encouraged to provide subcontracting/subgranting opportunities to Historically Black Colleges and Universities and other Minority Institutions such as Hispanic-serving Institutions and Tribal Colleges and Universities; and to Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals.  
  
Executive Order 13043: Pursuant to Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, recipients are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.  
  
Executive Order 13166: As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, dated August 11, 2000, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, recipients must take reasonable steps to ensure that LEP persons have meaningful access to programs in accordance with DOL’s Policy Guidance on the Prohibition of National Origin Discrimination as it affects persons with limited English proficiency [05/29/2003] Volume 68, Number 103, Page 32289-32305. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipients are encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance and information regarding your LEP obligations, go to <http://www.lep.gov>.  
  
Executive Order 13513: Pursuant to Executive Order 13513, Federal Leadership on reducing Text Messaging While Driving, dated October 1, 2009, recipients and subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving company-owned or –rented vehicles or GOV, or while driving POV when on official Government business or when performing any work for or on behalf of the Government. Recipients and subrecipients are also encouraged to conduct initiatives of the type described in section 3(a) of this order.
15. Flood Insurance: The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 *et seq.*, provides that no Federal financial assistance to acquire, modernize, or construct property may be provided in identified flood-prone communities in the United States, unless the community participates in the National Flood Insurance Program and flood insurance is purchased within 1 year of the identification. The flood insurance purchase requirement applies to both public and private applicants for DOL support. Lists of flood-prone areas that are eligible for flood insurance are published in the Federal Register by FEMA.
16. Architectural Barriers: The Architectural Barriers Act of 1968, 42 U.S.C. 4151 *et seq.*, as amended, the Federal Property Management Regulations (see 41 CFR 102-76), and the Uniform Federal Accessibility Standards issued by GSA (see 36 CFR 1191, Appendixes C and D) set forth requirements to make facilities accessible to, and usable by, the physically handicapped and include minimum design standards. All new facilities designed or constructed with grant support must comply with these requirements.
17. Drug-Free Workplace: The Drug-Free Workplace Act of 1988, 41 U.S.C. 702 *et seq.*, and 2 CFR 182 require that all organizations receiving grants from any Federal agency maintain a drug-free workplace. The recipient must notify the awarding office if an employee of the recipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for suspension or debarment.
18. Hotel-Motel fire safety: Pursuant to 15 U.S.C. 2225a, the recipient must ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (P.L. 101-391, as amended). Recipients may search the Hotel Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act.

19. Buy American Notice Requirement: In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds available under the Workforce Innovation and Opportunity Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products, as required by the Buy American Act (41 U.S.C. 10a *et seq.*). See WIOA Section 502—Buy-American Requirements.

If applicable, the following needs to be on all products developed in whole or in part with grant funds:

This workforce solution was funded by a grant awarded by the U.S. Department of Labor’s Employment and Training Administration. The solution was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This solution is copyrighted by the institution that created it. Internal use, by an organization and/or personal use by an individual for non-commercial purposes, is permissible. All other uses require the prior authorization of the copyright owner.”  
(<http://wdr.doleta.gov/directives/attach/TEGL/tegl19-11a9.pdf>)

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Date of Acceptance

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Authorized Signature

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TITLE (Typed)

**Technical College System of Georgia, Office of Workforce Development**

**SPECIAL CONDITIONS**

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Please see the attached Georgia Illegal Immigration Reform and Enforcement Act of 2011 Affidavits.

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**Technical College System of Georgia, Office of Workforce Development**

**The Georgia Illegal Immigration Reform and Enforcement Act of 2011 Affidavit(s)**

**INFORMATION SHEET**

Effective July 1, 2011, the Georgia Illegal Immigration Reform and Enforcement Act of 2011 has been revised to state that any organization in the State of Georgia receiving state or federal funds must utilize the federal work authorization program, operated by the U.S. Department of Homeland Security, to verify employment eligibility of all newly hired employees.

**Subcontracting/Sub-subcontracting**

If you are not subcontracting at this time, please indicate by writing “N/A,” initialing and dating each of the *Subcontractor Affidavit and Agreements*. An LWDA shall not enter into any contract with a subcontractor or sub-subcontractor unless they are registered and participating in the federal work authorization program. If you are subcontracting or plan to subcontract during the course of this agreement in connection with the physical performance of services pursuant to your grant award from the Technical College System of Georgia – Office of Workforce Development, you must complete the *Subcontractor Affidavit and Agreement* and return the forms to our office within five (5) business days of entering into such subcontract or sub-subcontract.

**Independent Contractors**

In lieu of completing affidavits, independent contractors may submit a copy of a valid **Georgia Driver’s License** or Identification card if no new employees will be hired for the term of the contract. If an Independent contractor does not have a state issues Georgia driver’s license, he/she will need to follow the standard registration process to obtain an E-verify User ID number and verification number. Once an employee is hired, E-verification must be done regardless of business structure.



**Technical College System of Georgia, Office of Workforce Development**

**Georgia Illegal Immigration Reform and Enforcement Act of 2011**

**Grantee Affidavit under O.C.G.A. § 13-10-91 (b)(1)**

By executing this affidavit, the undersigned Grantee verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the **Technical College System of Georgia, Office of Workforce Development** has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned Grantee will continue to use the federal work authorization program throughout the contract period and the undersigned grantee will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the Grantee with the information required by O.C.G.A. § 13-10-91 (b). The Grantee hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Grantee

\_\_\_\_\_  
Name of Grant Award

\_\_\_\_\_  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, \_\_\_\_\_, 201\_\_ in \_\_\_\_ (city), \_\_\_\_\_ (state).

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME  
ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**Technical College System of Georgia, Office of Workforce Development**

**Georgia Illegal Immigration Reform and Enforcement Act of 2011  
Subcontractor Affidavit under O.C.G.A. § 13-10-91 (b)(3)**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ on behalf of \_\_\_\_\_ has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-contractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Subcontractor

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.  
Executed on \_\_\_\_\_, \_\_\_\_\_, 201\_\_ in \_\_\_ (city), \_\_\_\_\_ (state).

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME  
ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

OMB Approval No. 0348-0040

## ASSURANCES -- NON-CONSTRUCTION PROGRAMS

**Note:** Certain provisions of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives. This will also apply to any information or documentation needed for financial drawdowns or in the administration of the grant.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;  
  
(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290-dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (I) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 961-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Health Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition of \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State

management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
19. Will comply with all applicable requirements of all other Federal and State laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		Date SUBMITTED

Standard Form 424B (Rev. 7-97) Back

<b>EMPLOYMENT AND TRAINING ADMINISTRATION</b> <b>ADVISORY SYSTEM</b> <b>U.S. DEPARTMENT OF LABOR</b> <b>Washington, D.C. 20210</b>	CLASSIFICATION Reporting/Subaward/Executive Compensation
	CORRESPONDENCE SYMBOL OFAM/OGCM
	DATE November 15, 2010

**ADVISORY:** TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 11-10

**TO:** STATE WORKFORCE AGENCIES  
 STATE WORKFORCE LIAISONS  
 ALL STATE AND LOCAL WORKFORCE BOARDS  
 ALL DIRECT ETA GRANT RECIPIENTS

**FROM:** JANE OATES /s/  
 Assistant Secretary

**SUBJECT:** Sub-award and Executive Compensation Data Reporting Requirements  
 Under the Federal Funding Accountability and Transparency Act (FFATA)

**1. Purpose.** To inform all Employment and Training (ETA) workforce system agencies of additional Office of Management and Budget (OMB) reporting requirements under the FFATA effective October 1, 2010.

**2. References.**

- The Federal Funding Accountability and Transparency Act of 2006, Public Law 109-282, 120 Stat. 1186, S. 2590 (enacted September 26, 2006) and subsequent 2008 amendments 31 USC 6101
- Memorandum for Senior Accountable Officials Over the Quality of Federal Spending Information, dated April 6, 2010, Open Government Directive – Federal Spending Transparency: [http://www.whitehouse.gov/sites/default/files/omb/assets/open\\_gov/OpenGovernmentDirective\\_04062010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/open_gov/OpenGovernmentDirective_04062010.pdf)
- Memorandum for Senior Accountable Officials, dated August 27, 2010, Open Government Directive – Federal Spending and Transparency and Compensation Data Reporting [http://www.whitehouse.gov/sites/default/files/omb/open/Executive\\_Compensation\\_Reporting\\_08272010.pdf](http://www.whitehouse.gov/sites/default/files/omb/open/Executive_Compensation_Reporting_08272010.pdf)
- 75 Fed. Reg. 55663, (Sept 14, 2010), Requirements for Federal Funding Accountability and Transparency Act Implementation (Interim final guidance)
- 75 Fed. Reg. 55671, (Sept 14, 2010), Financial Assistance Use of Universal Identifier and Central Contractor Registration
- Training and Employment Guidance Letter (TEGL) No. 29-08, dated June 10, 2009

**3. Background.** The FFATA requires full disclosure to the public of Federal spending information by all entities and organizations receiving Federal funding under Federal grant awards. The intent of the Act is to: 1) have Federal spending information available to the public; 2) make the information easily accessible; and 3) reduce wasteful spending by the Federal government. As required by FFATA and subsequent OMB guidance, recipients of Federal awards are required to report sub-award and executive compensation information for certain entities and organizations. The legislation also requires information about Federal awards to be made available to the public via a single searchable website. USASpending.gov has been designated as the website to be used to display data about grants, loans, cooperative agreements and other forms of Federal financial assistance.

The FFATA Sub-award Reporting System (FSRS) is the reporting system used by the Federal prime awardees to electronically report first tier sub-award information and executive compensation. The FSRS started accepting sub-award and executive compensation data on October 29, 2010. The sub-award information entered into FSRS by the prime awardee will be accessible on [www.USASpending.gov](http://www.USASpending.gov).

#### **4. Requirements.**

##### **A. Federal Grant Awardees Subject to the Sub-award and Executive Compensation Reporting Requirements**

Under the April, 6, 2010, *OMB Memorandum, entitled: Open Government Directive – Federal Spending Transparency*, all direct recipients (prime recipients) of Federal grants and cooperative agreements with an award date on or after October 1, 2010, fall under FFATA reporting requirements. Prime recipients of Federal grants and cooperative agreements will be required to report sub-award information and executive compensation information, including the total compensation and names of the top five executives of the prime recipient and of the first tier sub-recipients in the FSRS database.

The FFATA reporting requirements apply to grants and cooperative agreements that are equal to or over \$25,000. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award will be subject to the reporting requirements as of the date the award equals or exceeds \$25,000. If the initial award equals or exceeds \$25,000 but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the award continues to be subject to the reporting requirements.

**For ETA, this means new Federal grants and cooperative agreements awarded on or after October 1, 2010, where the funding is equal to or over \$25,000 are subject to the sub-award and executive compensation reporting requirements.**

##### **B. When Are Prime Grant Awardees to Report Sub-award and Executive Compensation Information?**

- To meet the FFATA reporting requirement, the prime recipient must report information related to a sub-award by the end of the month following the month the sub-award is obligated. Below are two examples:
  - For a grant awarded on October 2, 2010, the prime recipient has until November 30, 2010, to report the sub-award and executive compensation information.
  - For a grant awarded on October 31, 2010, the prime recipient has until November 30, 2010, to report the sub-award and executive compensation information.

### **C. Systems Registrations Required by the FFATA**

All grantees subject to the reporting requirements must register with the following systems:

- FSRS
- Dun and Bradstreet, Data Universal Numbering System (DUNS)
- Central Contractor Registration System (CCR)

Instructions on registration with DUNS and CCR were provided in TEGL 29-08. Instructions for registering with FSRS are available on <https://www.fsr.gov/>.

### **D. Federal Awards That Are Not Subject To the FFATA Reporting Requirements**

- Under the August 27, 2010, OMB Memorandum, entitled: *Open Government Directive – Federal Spending Transparency and Sub-award and Compensation Data Reporting*, new or existing grants that are funded by the American Recovery and Reinvestment Act are not subject to FFATA reporting requirements. These awards and related sub-awards will continue to be reported through FederalReporting.gov.
- The following types of awards also are not subject to FFATA and are not normally used by ETA, but the information is included to provide complete OMB requirements:
  - Transfers of title between Federal agencies of Federally owned property;
  - Federal inter-agency transfers of award funds;
  - Cooperative Research and Development Agreements (CRDA)
  - Federal awards to individuals who apply for or receive Federal awards as natural persons (i.e., unrelated to any business or non-profit organization he or she may own or operate in his or her name);
  - Federal awards to entities that had a gross income, from all sources, of less than \$300,000 in the entities' previous tax year; and
  - Federal awards, if the required reporting would disclose classified information.

### **E. Webinar – Sub-award and Executive Compensation Reporting**

A webinar is scheduled for November 16, 2010, from 1:00 pm - 2:00 pm to provide an overview of the new OMB reporting requirements and the FSRS reporting system. Registration details are available at <https://www.workforce3one.org>.

### **F. Questions**

In order to provide answers to more frequently asked questions, ETA has established an email account for FFATA related inquiries: [FFATA.reporting@dol.gov](mailto:FFATA.reporting@dol.gov). ETA grantees with questions about FFATA reporting should submit inquiries to [FFATA.reporting@dol.gov](mailto:FFATA.reporting@dol.gov). Replies will come from the same mailbox address as soon as answers are available.

**5. Action Requested.** All affected grantees must report in accordance with OMB established guidelines and timeframes.

**6. Inquiries.** Questions concerning this advisory should be directed to your appropriate Regional Office.

In order to remain in compliance with FFATA reporting, please complete this document and return to the Office of Workforce Development with your signed grant award. Thank you for your prompt assistance.

**FAIN:**

1. Subawardee DUNS Number \_\_\_\_\_
2. Subawardee Name \_\_\_\_\_
3. Subawardee DBA Name \_\_\_\_\_
4. Subawardee Address \_\_\_\_\_
5. If DBA, Subawardee Parent DUNS Number \_\_\_\_\_
6. Amount of Subaward \_\_\_\_\_
7. Subaward Obligation / Action Date \_\_\_\_\_
8. CFDA Program Number and Program Title \_\_\_\_\_
9. Federal Agency Name \_\_\_\_\_
10. Subaward Project Description \_\_\_\_\_
11. Subaward Principle Place of Project Performance \_\_\_\_\_
12. Subaward Number \_\_\_\_\_
13. In the preceding fiscal year, did the subawardee receive 80% of its annual gross revenues from the Federal government? Yes \_\_\_\_\_ No \_\_\_\_\_  
If Yes, continue to question 14. If No, questionnaire is complete.
14. In the preceding fiscal year, were the subawardee's annual gross revenues from the Federal government more than \$25 million annual? Yes \_\_\_\_\_ No \_\_\_\_\_  
If Yes, continue to question 15. If No, questionnaire is complete.
15. Does the public have access to the names and total compensation of the subawardee's five most highly compensated officers through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986? Yes \_\_\_\_\_ No \_\_\_\_\_  
If No, continue to question 16. If Yes, questionnaire is complete.



16. Please list the names and compensation of the subawardee's five most highly compensated officers.

1. \_\_\_\_\_ \$ \_\_\_\_\_

2. \_\_\_\_\_ \$ \_\_\_\_\_

3. \_\_\_\_\_ \$ \_\_\_\_\_

4. \_\_\_\_\_ \$ \_\_\_\_\_

5. \_\_\_\_\_ \$ \_\_\_\_\_

WIOA Adult Program

Grant Period = 7/1/2020 - 6/30/2022

Grant Number = 11-20-20-03-004

CFDA#: 17.258

FAIN#: AA-34763-20-55-A-13

Code	REVENUE -- PY 2019 Award	PY 2019 BUDGET	PY 2019 BUDGET	PY 2019 BUDGET
	Grants -Federal	\$ 122,595.00	\$ 110,335.00	\$ 12,260.00
	EXPENSES	ADULT PY2020	ADULT PROGRAM	ADULT ADMIN
6116	Office Supplies	940	846	94
6168	Gas and Diesel	124	124	
6174	Janitorial Supplies	752	677	75
6258	Equipment	6,936	6,242	694
6302	Accounting & Auditing	486		486
6312	Salaries & Fringe Benefits	73,512	64,989	8,523
6326	Professional Services	9,232	8,309	923
6348	Computer Charges	582	524	58
6382	Postage	16	14	2
6384	Telephone & Telegraph	360	324	36
6392	Registration Fees	210	189	21
6395	WIA Training Expense	14,884	14,884	
6396	Travel Expense	805	725	80
6432	Advertising & Legal Notices	5	5	-
6438	General Printing Charges	235	200	35
6476	Utilities	1,140	1,026	114
6532	Rent (Equipment)	974	974	
6534	Rent (CobbWorks)	2,668	2,401	267
6536	Rent (Storage Facility)	138	138	
6581	Administrative Services	7,817	7,035	782
6584	Memberships	540	486	54
6588	Subscription, Directories, & Publications	156	140	16
6621	Parking	83	83	-
	<b>TOTAL EXPENSES</b>	<b>122,595.00</b>	<b>110,335.00</b>	<b>12,260.00</b>
	<b>INCOME OVER (UNDER) EXPENSES</b>	<b>-</b>	<b>-</b>	<b>-</b>



**CobbWorks, Inc.**  
 Sonya Grant, Managing Director  
 Districts All

**Item No. 23.**

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager  
**FROM:** Sonya Grant, Managing Director  
**DATE:** August 25, 2020

**PURPOSE**

To accept a Workforce Innovation and Opportunity Act (WIOA) grant award from the Technical College System of Georgia for CobbWorks, Inc., to provide education, training, and employment services for dislocated workers.

**BACKGROUND**

Cobb County has been awarded a FY2020 Dislocated Worker Program grant of \$260,084.00 for the provision of dislocated worker education, training, and employment services by CobbWorks, Inc., This grant will serve approximately 47 participants.

The grant period is from July 1, 2020 through June 30, 2022. The grant number is AFR1-31-20-20-03-004, the CFDA# is 17.278 and the FAIN# is AA-34763-20-55-A-13.

**IMPACT STATEMENT**

All expenditures will be paid with grant funds. No local match from the County is required. If this funding were reduced or no longer made available, we would no longer pay for professional services and operating costs, the programs would be terminated and the employment positions eliminated.

**FUNDING**

Funding for this Workforce Innovation and Opportunity Act grant will be appropriated in the WIOA Fund as follows:

<u>Increase Revenue:</u>	
276-120-WP20-WP20DW-A-XX/4430 (Admin)	\$26,008.00
276-120-WP20-WP20DW-P-XX/4430 (Program)	\$234,076.00
<u>Increase Expenditures:</u>	
276-120-WP20-WP20DW-A-Varies (Admin)	\$26,008.00
276-120-WP20-WP20DW-P-Varies (Program)	<u>\$234,076.00</u>

Total Grant: (See Attachment Details)

\$260,084.00

**RECOMMENDATION**

The Board of Commissioners accept a Dislocated Worker Program grant award from the Technical College System of Georgia for CobbWorks, Inc., the local Workforce Development Board, in the amount of \$260,084.00, to provide training and employment services for dislocated workers; authorize corresponding budget transactions; and further authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

1. Area 4 WIOA DW PY2020
2. PY20 DW budgets 08-10-20

Technical College System of Georgia, Office of Workforce Development  
GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

**STATEMENT OF GRANT AWARD**

RECIPIENT: Cobb County

LOCAL WORKFORCE AREA: 004      REGION: 03

GRANT NO: 31-20-20-03-004

FAIN: AA-34763-20-55-A-13

GRANT PERIOD:

FROM: 7/1/2020      THRU: 6/30/2022

GRANT YEAR:      PY      2020

PROGAM TITLE/TYPE:      Dislocated Worker/I

CFDA NO:      17.278

**TOTAL FUNDS: \$ 260,084**

**Admin not to exceed: \$ 26,008**

This award is hereby made, in the amount and for the period shown above, from a grant under the Workforce Innovation and Opportunity Act (P.L. 113-128), as amended, to the above mentioned recipient, and in accordance with the Workforce Innovation Plan project application. This award is subject to any attached assurances, revisions, special conditions, or waivers.

This award is subject to all applicable policies, rules and regulations, and conditions as prescribed by the Technical College System of Georgia's Office of Workforce Development (OWD) and the United States Department of Labor. It is also subject to such further laws, rules, regulations and policies as may be reasonably prescribed by the State of Georgia or the Federal Government under Public Law 113-128, as amended.

This grant becomes effective on the beginning of the grant period, provided that within thirty (30) days of the award execution date (below), the properly executed original Statement of Grant Award and any of the attached properly executed revisions, waivers and special condition statements are returned to OWD.

- This award is subject to Certification Regarding the Role of the Local Grant Recipient
- This award is subject to Subrecipient Designation (if applicable)
- This award is subject to Liability Waiver
- This award is subject to Certification on Nondiscrimination and Equal Opportunity Requirements
- This award is subject to Certification Regarding Drug-Free Workplace Requirements
- This award is subject to Certification Regarding Debarment and Suspension
- This award is subject to Certification For Lobbying
- This award is subject to Statement of Assurances
- This award is subject to special conditions (attached)

\_\_\_\_\_  
Technical College System of Georgia  
Executive Director, Office of Workforce Development

\_\_\_\_\_  
Date Executed

I, \_\_\_\_\_ (typed) acting under my authority to contract on behalf of the recipient of the above described grant on the terms and conditions stated above or incorporated by reference therein, do hereby accept this Grant Award.

\_\_\_\_\_  
Date of Acceptance

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Director

Technical College System of Georgia, Office of Workforce Development  
GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

**GRANT CONTRACT STATEMENT OF WORK**

**Funds are to be used to implement general Dislocated Worker workforce/Training activities as allowable under Public Law No:113-128 Workforce Innovation and Opportunity Act.**

**LIABILITY WAIVER**

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RECIPIENT: Cobb County

LOCAL WORKFORCE AREA: 004

SUBGRANT NO: 31-20-20-03-004

SUBGRANT PERIOD:

FROM: 7/1/2020 THRU: 6/30/2022

PROGRAM TITLE/TYPE: Dislocated Worker Program I

DATE OF AWARD: 7/1/2020

EIN:

DUNS:

Approved Indirect Cost Rate:

Fiscal Agent Risk Level: Low

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THE LOCAL GRANT RECIPIENT AGREES TO, AND WILL HOLD HARMLESS THE TECHNICAL COLLEGE SYSTEM OF GEORGIA'S OFFICE OF WORKFORCE DEVELOPMENT, ITS OFFICERS AND EMPLOYEES AND THE STATE OF GEORGIA FROM ALL CLAIMS, COSTS, DAMAGES, OR EXPENSE ARISING FROM ANY ACTS OR OMISSIONS OF THE RECIPIENT, ITS EMPLOYEES OR AGENTS WHILE PERFORMING UNDER THIS GRANT AWARD.

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Date of Acceptance

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Authorized Signature

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Executive Director

(WIOA 4/2015)  
LIABWAIV.FRM

**Technical College System of Georgia, Office of Workforce Development**  
**GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)**

**STATEMENT OF ASSURANCES**

**Nondiscrimination and Equal Opportunity Requirements of WIOA**

- (1) As a condition to the award of financial assistance under WIOA from the U.S. Department of Labor, the grant recipient assures, with respect to operation of the WIOA-funded program or activity and all agreements or arrangements to carry out the WIOA-funded program or activity, that it will comply fully with the nondiscrimination, and equal opportunity provisions of Section 188 of the Workforce Innovation and Opportunity Act (WIOA), including the Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; The Age Discrimination Act of 1975, as amended; and Title IX of the Education Amendments of 1972, as amended. The grant recipient also assures that it will comply with all regulations implementing the laws listed above. The grant recipient understands that the United States has the right to seek judicial enforcement of this assurance.
- (2) The obligation for insuring service provider or vendor compliance with the nondiscrimination and equal opportunity provisions of WIOA rests with the LWDA grant recipient, as specified in the LWDA grant recipient's Method of Administration.
- (3) The LWDA grant recipient agrees to abide by the Equal Opportunity policy stated below and must provide initial and continuing notice that it does not discriminate on any prohibited ground. The LWDA grant recipient must also take appropriate steps to ensure that communication with individuals with disabilities are as effective as communications with others.

The Equal Opportunity notice must contain the following specific wording:

**EQUAL OPPORTUNITY IS THE LAW**

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and Against any beneficiary of programs financially assisted under the Title I of the Workforce Innovation and Opportunity Act (WIOA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIOA Title I—financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity; Providing opportunities in, or treating any person with regard to, such a program or activity; or Making employment decisions in the administration of, or in connection with, such a program or activity.

- (4) At a minimum, the notice required by sections 60-1.42 and 60-1.4(a) must be posted prominently in reasonable places; Disseminated in internal memoranda and other written or electronic communication; Included in handbooks or manuals; and made available to each participant and made part of each participant's file.

(WIOA/7/2000)

**Technical College System of Georgia, Office of Workforce Development**  
**GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)**

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

- A. The grant recipient certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing an on-going drug-free awareness program to inform employees about:
    - (1) The dangers of drug abuse in the workplace;
    - (2) The grantee's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (c) Making it a requirement that each employee to be engaged in the performance of the grant, be given a copy of the statement required by paragraph (a);
  - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
    - (1) Abide by the terms of the statement; and
    - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. The notice shall include the identification number(s) of each affected grant;
  - (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:
    - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
  - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(WIOA 7/2000)



**Technical College System of Georgia, Office of Workforce Development**  
**GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Local Grant Recipient Covered Transactions**

**Instructions for Certification**

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective local grant recipient knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

By signing and submitting this proposal, the prospective local grant recipient is providing the certification set out below:

1. The prospective local grant recipient shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective local grant recipient learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
2. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any local grant recipient covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
3. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Local Grant Recipient Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
4. A participant in a covered transaction may rely upon a certification of a prospective participant in a local grant recipient covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principles. Each participant may, but is not required to, check the Nonprocurement List.
5. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
6. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a local grant recipient covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

- (1) The prospective local grant recipient certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective local grant recipient is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned swears that the foregoing statement is true and correct. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.

(WIOA 7/2000)

**CERTIFICATION FOR LOBBYING**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS,  
AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards of greater than \$100,000, at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(WIOA 7/2000)

**Technical College System of Georgia, Office of Workforce Development**  
**GEORGIA WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)**

**STATEMENT OF ASSURANCES**

The grant recipient (Chief Elected Official) and Grant Administrator and/or fiscal agent (when such designation has occurred) hereby assures and certifies that it will comply with Public Law 113-128, Federal Workforce Innovation and Opportunity Act (WIOA) Regulations, and any amendments or additions to said Regulations, State and local law, the Regulations and Policies as issued by the Technical College System of Georgia's Office of Workforce Development (OWD), requirements contained in the applicable OMB Circulars, and applicable Uniform Administrative Requirements.

1. It was selected in accordance with Sec. 107 (b)(c)(d) of the Act as the authorized entity to receive the Grant. It further attests that a resolution, motion, or similar action has been duly adopted or passed authorizing it to accept all understandings and assurances contained within this Grant Award.
2. It will establish safeguards or prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with family, business or other ties.
3. It will, upon the written request of the OWD, promptly refund to the OWD all funds representing disallowed costs. This repayment shall be made regardless of any claim of the subrecipient against any other person or entity.
4. It will retain all records pertinent to this Grant Award for a period of three years after the closeout package is accepted by OWD. Records for equipment shall be retained for a period for three years beginning on the last day of the Program Year in which final disposition of property occurred. If any litigation, claim, negotiation, audit, or other action involving the records has not been completed before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it.
5. The grant administrator acknowledges that the Georgia Open Records Act (O.C.G.A. 50-18-70 et seq.) provided at 50-18(a) that records received or maintained by a private person, firm, corporation, or other private entity in the performance of a service or function for or on behalf of an agency, or public office, shall be subject to the Georgia Open Records Act, and provides a criminal misdemeanor penalty for knowing and willful noncompliance with Open Records Act provisions. The grant administrator acknowledges that the Open Records Act also contains an exception to the general rule requiring that public records be made accessible to the public, which exception provides that the public records prohibited or specifically exempted from being open to inspection by the general public, by order of a court of this state or by law, shall not be open to inspection by the general public. The grant administrator agrees to comply with the Open Records Act and to protect private and confidential records that are exempted from being open to inspection by the general public.
6. The grant administrator certifies that it is in compliance with the Georgia's Service Delivery Strategy Law (O.C.G.A. 36-70-20 et seq.), which states that each county and its cities must agree upon the manner in which each local service is delivered, resolve interjurisdictional land use conflicts, and address tax equity and extraterritorial water and sewer rate equity issues.
7. The grant administrator assures that no funds received under the Workforce Innovation and Opportunity Act (WIOA) will be used to assist, promote, or deter union organizing.
8. The grant administrator certifies that it is in compliance with Public Law 104-91, August 21, 1996: Health Insurance Portability and Accountability Act of 1996.
9. Veteran's Priority Provision: This program is subject to the provisions of the "Jobs for Veteran's Act", Public Law 107-288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the U.S. Department of Labor. Please note that, to obtain service, a veteran must meet the program's eligibility requirements.
10. Salary & Bonus Limitation: In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading "Employment & Training", shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under Section 101 of Public Law 109-149.
11. Prior Approval for WIOA General Purpose Equipment Acquisitions: Per 2 CFR 200.439 (b)(2), Local Workforce Development Board (LWDB) staff, as well as Grant Administrators and/or Fiscal Agents, must request, and receive written approval from the OWD prior to acquisition of Workforce Innovation and Opportunity Act (WIOA) General Purpose Equipment with a unit cost of \$5,000 or more. Failure to obtain written prior approval for purchases may result in questioned and/or disallowed costs.

12. Acorn Prohibition: Section 511 of the Consolidated Appropriations Act, 2010 (P.L. 111-117, Division E) (“CAA”), requires that no direct or indirect funding from the Consolidated Appropriations Act may be provided to the Association of Community Organizations for Reform Now (“ACORN”) or any of its subsidiaries through Federal grantees or contractors. DOL is required to take steps so that no Federal funds from the Consolidated Appropriations Act, 2010, are awarded or obligated by DOL grantees or contractors to ACORN or its subsidiaries as subgrantees, subcontractors, or other subrecipients. This prohibition applies not only to a direct recipient of Federal funds, but also to a subrecipient (e.g., a subcontractor, subgrantee, or contractor of a grantee).
13. Intellectual Property Rights: The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for federal purposes: i) the copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and ii) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.
14. Executive Order 12928: Pursuant to Executive Order 12928, the recipient is strongly encouraged to provide subcontracting/subgranting opportunities to Historically Black Colleges and Universities and other Minority Institutions such as Hispanic-serving Institutions and Tribal Colleges and Universities; and to Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals.  
  
Executive Order 13043: Pursuant to Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, recipients are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.  
  
Executive Order 13166: As clarified by Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, dated August 11, 2000, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, recipients must take reasonable steps to ensure that LEP persons have meaningful access to programs in accordance with DOL’s Policy Guidance on the Prohibition of National Origin Discrimination as it affects persons with limited English proficiency [05/29/2003] Volume 68, Number 103, Page 32289-32305. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipients are encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance and information regarding your LEP obligations, go to <http://www.lep.gov>.  
  
Executive Order 13513: Pursuant to Executive Order 13513, Federal Leadership on reducing Text Messaging While Driving, dated October 1, 2009, recipients and subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving company-owned or –rented vehicles or GOV, or while driving POV when on official Government business or when performing any work for or on behalf of the Government. Recipients and subrecipients are also encouraged to conduct initiatives of the type described in section 3(a) of this order.
15. Flood Insurance: The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001 *et seq.*, provides that no Federal financial assistance to acquire, modernize, or construct property may be provided in identified flood-prone communities in the United States, unless the community participates in the National Flood Insurance Program and flood insurance is purchased within 1 year of the identification. The flood insurance purchase requirement applies to both public and private applicants for DOL support. Lists of flood-prone areas that are eligible for flood insurance are published in the Federal Register by FEMA.
16. Architectural Barriers: The Architectural Barriers Act of 1968, 42 U.S.C. 4151 *et seq.*, as amended, the Federal Property Management Regulations (see 41 CFR 102-76), and the Uniform Federal Accessibility Standards issued by GSA (see 36 CFR 1191, Appendixes C and D) set forth requirements to make facilities accessible to, and usable by, the physically handicapped and include minimum design standards. All new facilities designed or constructed with grant support must comply with these requirements.
17. Drug-Free Workplace: The Drug-Free Workplace Act of 1988, 41 U.S.C. 702 *et seq.*, and 2 CFR 182 require that all organizations receiving grants from any Federal agency maintain a drug-free workplace. The recipient must notify the awarding office if an employee of the recipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for suspension or debarment.
18. Hotel-Motel fire safety: Pursuant to 15 U.S.C. 2225a, the recipient must ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (P.L. 101-391, as amended). Recipients may search the Hotel Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act.

19. Buy American Notice Requirement: In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds available under the Workforce Innovation and Opportunity Act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products, as required by the Buy American Act (41 U.S.C. 10a *et seq.*). See WIOA Section 502—Buy-American Requirements.

If applicable, the following needs to be on all products developed in whole or in part with grant funds:

This workforce solution was funded by a grant awarded by the U.S. Department of Labor’s Employment and Training Administration. The solution was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This solution is copyrighted by the institution that created it. Internal use, by an organization and/or personal use by an individual for non-commercial purposes, is permissible. All other uses require the prior authorization of the copyright owner.”  
(<http://wdr.doleta.gov/directives/attach/TEGL/tegl19-11a9.pdf>)

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Date of Acceptance

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Authorized Signature

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TITLE (Typed)

**Technical College System of Georgia, Office of Workforce Development**

**SPECIAL CONDITIONS**

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Please see the attached Georgia Illegal Immigration Reform and Enforcement Act of 2011 Affidavits.

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**Technical College System of Georgia, Office of Workforce Development**

**The Georgia Illegal Immigration Reform and Enforcement Act of 2011 Affidavit(s)**

**INFORMATION SHEET**

Effective July 1, 2011, the Georgia Illegal Immigration Reform and Enforcement Act of 2011 has been revised to state that any organization in the State of Georgia receiving state or federal funds must utilize the federal work authorization program, operated by the U.S. Department of Homeland Security, to verify employment eligibility of all newly hired employees.

**Subcontracting/Sub-subcontracting**

If you are not subcontracting at this time, please indicate by writing “N/A,” initialing and dating each of the *Subcontractor Affidavit and Agreements*. An LWDA shall not enter into any contract with a subcontractor or sub-subcontractor unless they are registered and participating in the federal work authorization program. If you are subcontracting or plan to subcontract during the course of this agreement in connection with the physical performance of services pursuant to your grant award from the Technical College System of Georgia – Office of Workforce Development, you must complete the *Subcontractor Affidavit and Agreement* and return the forms to our office within five (5) business days of entering into such subcontract or sub-subcontract.

**Independent Contractors**

In lieu of completing affidavits, independent contractors may submit a copy of a valid **Georgia Driver’s License** or Identification card if no new employees will be hired for the term of the contract. If an Independent contractor does not have a state issues Georgia driver’s license, he/she will need to follow the standard registration process to obtain an E-verify User ID number and verification number. Once an employee is hired, E-verification must be done regardless of business structure.

**Technical College System of Georgia, Office of Workforce Development**

**Georgia Illegal Immigration Reform and Enforcement Act of 2011**

**Grantee Affidavit under O.C.G.A. § 13-10-91 (b)(1)**

By executing this affidavit, the undersigned Grantee verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the **Technical College System of Georgia, Office of Workforce Development** has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned Grantee will continue to use the federal work authorization program throughout the contract period and the undersigned grantee will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the Grantee with the information required by O.C.G.A. § 13-10-91 (b). The Grantee hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Grantee

\_\_\_\_\_  
Name of Grant Award

\_\_\_\_\_  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, \_\_\_\_\_, 201\_\_ in \_\_\_\_ (city), \_\_\_\_\_ (state).

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME  
ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



**Technical College System of Georgia, Office of Workforce Development**

**Georgia Illegal Immigration Reform and Enforcement Act of 2011  
Subcontractor Affidavit under O.C.G.A. § 13-10-91 (b)(3)**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ on behalf of \_\_\_\_\_ has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-contractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Subcontractor

\_\_\_\_\_  
Name of Project

\_\_\_\_\_  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.  
Executed on \_\_\_\_\_, \_\_\_\_\_, 201\_\_ in \_\_\_ (city), \_\_\_\_\_ (state).

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME  
ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

OMB Approval No. 0348-0040

## ASSURANCES -- NON-CONSTRUCTION PROGRAMS

**Note:** Certain provisions of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives. This will also apply to any information or documentation needed for financial drawdowns or in the administration of the grant.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;  
  
(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290-dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (I) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 961-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Health Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition of \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State

management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
19. Will comply with all applicable requirements of all other Federal and State laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		Date SUBMITTED

Standard Form 424B (Rev. 7-97) Back

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	CLASSIFICATION Reporting/Subaward/Executive Compensation
	CORRESPONDENCE SYMBOL OFAM/OGCM
	DATE November 15, 2010

**ADVISORY:** TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 11-10

**TO:** STATE WORKFORCE AGENCIES  
STATE WORKFORCE LIAISONS  
ALL STATE AND LOCAL WORKFORCE BOARDS  
ALL DIRECT ETA GRANT RECIPIENTS

**FROM:** JANE OATES /s/  
Assistant Secretary

**SUBJECT:** Sub-award and Executive Compensation Data Reporting Requirements  
Under the Federal Funding Accountability and Transparency Act (FFATA)

**1. Purpose.** To inform all Employment and Training (ETA) workforce system agencies of additional Office of Management and Budget (OMB) reporting requirements under the FFATA effective October 1, 2010.

**2. References.**

- The Federal Funding Accountability and Transparency Act of 2006, Public Law 109-282, 120 Stat. 1186, S. 2590 (enacted September 26, 2006) and subsequent 2008 amendments 31 USC 6101
- Memorandum for Senior Accountable Officials Over the Quality of Federal Spending Information, dated April 6, 2010, Open Government Directive – Federal Spending Transparency: [http://www.whitehouse.gov/sites/default/files/omb/assets/open\\_gov/OpenGovernmentDirective\\_04062010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/open_gov/OpenGovernmentDirective_04062010.pdf)
- Memorandum for Senior Accountable Officials, dated August 27, 2010, Open Government Directive – Federal Spending and Transparency and Compensation Data Reporting [http://www.whitehouse.gov/sites/default/files/omb/open/Executive\\_Compensation\\_Reporting\\_08272010.pdf](http://www.whitehouse.gov/sites/default/files/omb/open/Executive_Compensation_Reporting_08272010.pdf)
- 75 Fed. Reg. 55663, (Sept 14, 2010), Requirements for Federal Funding Accountability and Transparency Act Implementation (Interim final guidance)
- 75 Fed. Reg. 55671, (Sept 14, 2010), Financial Assistance Use of Universal Identifier and Central Contractor Registration
- Training and Employment Guidance Letter (TEGL) No. 29-08, dated June 10, 2009

**3. Background.** The FFATA requires full disclosure to the public of Federal spending information by all entities and organizations receiving Federal funding under Federal grant awards. The intent of the Act is to: 1) have Federal spending information available to the public; 2) make the information easily accessible; and 3) reduce wasteful spending by the Federal government. As required by FFATA and subsequent OMB guidance, recipients of Federal awards are required to report sub-award and executive compensation information for certain entities and organizations. The legislation also requires information about Federal awards to be made available to the public via a single searchable website. USA Spending.gov has been designated as the website to be used to display data about grants, loans, cooperative agreements and other forms of Federal financial assistance.

The FFATA Sub-award Reporting System (FSRS) is the reporting system used by the Federal prime awardees to electronically report first tier sub-award information and executive compensation. The FSRS started accepting sub-award and executive compensation data on October 29, 2010. The sub-award information entered into FSRS by the prime awardee will be accessible on [www.USASpending.gov](http://www.USASpending.gov).

#### **4. Requirements.**

##### **A. Federal Grant Awardees Subject to the Sub-award and Executive Compensation Reporting Requirements**

Under the April, 6, 2010, *OMB Memorandum, entitled: Open Government Directive – Federal Spending Transparency*, all direct recipients (prime recipients) of Federal grants and cooperative agreements with an award date on or after October 1, 2010, fall under FFATA reporting requirements. Prime recipients of Federal grants and cooperative agreements will be required to report sub-award information and executive compensation information, including the total compensation and names of the top five executives of the prime recipient and of the first tier sub-recipients in the FSRS database.

The FFATA reporting requirements apply to grants and cooperative agreements that are equal to or over \$25,000. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award will be subject to the reporting requirements as of the date the award equals or exceeds \$25,000. If the initial award equals or exceeds \$25,000 but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the award continues to be subject to the reporting requirements.

**For ETA, this means new Federal grants and cooperative agreements awarded on or after October 1, 2010, where the funding is equal to or over \$25,000 are subject to the sub-award and executive compensation reporting requirements.**

##### **B. When Are Prime Grant Awardees to Report Sub-award and Executive Compensation Information?**

- To meet the FFATA reporting requirement, the prime recipient must report information related to a sub-award by the end of the month following the month the sub-award is obligated. Below are two examples:
  - For a grant awarded on October 2, 2010, the prime recipient has until November 30, 2010, to report the sub-award and executive compensation information.
  - For a grant awarded on October 31, 2010, the prime recipient has until November 30, 2010, to report the sub-award and executive compensation information.

### **C. Systems Registrations Required by the FFATA**

All grantees subject to the reporting requirements must register with the following systems:

- FSRS
- Dun and Bradstreet, Data Universal Numbering System (DUNS)
- Central Contractor Registration System (CCR)

Instructions on registration with DUNS and CCR were provided in TEGL 29-08. Instructions for registering with FSRS are available on <https://www.fsr.gov/>.

### **D. Federal Awards That Are Not Subject To the FFATA Reporting Requirements**

- Under the August 27, 2010, OMB Memorandum, entitled: *Open Government Directive – Federal Spending Transparency and Sub-award and Compensation Data Reporting*, new or existing grants that are funded by the American Recovery and Reinvestment Act are not subject to FFATA reporting requirements. These awards and related sub-awards will continue to be reported through FederalReporting.gov.
- The following types of awards also are not subject to FFATA and are not normally used by ETA, but the information is included to provide complete OMB requirements:
  - Transfers of title between Federal agencies of Federally owned property;
  - Federal inter-agency transfers of award funds;
  - Cooperative Research and Development Agreements (CRDA)
  - Federal awards to individuals who apply for or receive Federal awards as natural persons (i.e., unrelated to any business or non-profit organization he or she may own or operate in his or her name);
  - Federal awards to entities that had a gross income, from all sources, of less than \$300,000 in the entities' previous tax year; and
  - Federal awards, if the required reporting would disclose classified information.

### **E. Webinar – Sub-award and Executive Compensation Reporting**

A webinar is scheduled for November 16, 2010, from 1:00 pm - 2:00 pm to provide an overview of the new OMB reporting requirements and the FSRS reporting system. Registration details are available at <https://www.workforce3one.org>.

### **F. Questions**

In order to provide answers to more frequently asked questions, ETA has established an email account for FFATA related inquiries: [FFATA.reporting@dol.gov](mailto:FFATA.reporting@dol.gov). ETA grantees with questions about FFATA reporting should submit inquiries to [FFATA.reporting@dol.gov](mailto:FFATA.reporting@dol.gov). Replies will come from the same mailbox address as soon as answers are available.

**5. Action Requested.** All affected grantees must report in accordance with OMB established guidelines and timeframes.

**6. Inquiries.** Questions concerning this advisory should be directed to your appropriate Regional Office.

In order to remain in compliance with FFATA reporting, please complete this document and return to the Office of Workforce Development with your signed grant award. Thank you for your prompt assistance.

**FAIN:**

1. Subawardee DUNS Number \_\_\_\_\_
2. Subawardee Name \_\_\_\_\_
3. Subawardee DBA Name \_\_\_\_\_
4. Subawardee Address \_\_\_\_\_
5. If DBA, Subawardee Parent DUNS Number \_\_\_\_\_
6. Amount of Subaward \_\_\_\_\_
7. Subaward Obligation / Action Date \_\_\_\_\_
8. CFDA Program Number and Program Title \_\_\_\_\_
9. Federal Agency Name \_\_\_\_\_
10. Subaward Project Description \_\_\_\_\_
11. Subaward Principle Place of Project Performance \_\_\_\_\_
12. Subaward Number \_\_\_\_\_
13. In the preceding fiscal year, did the subawardee receive 80% of its annual gross revenues from the Federal government? Yes \_\_\_\_\_ No \_\_\_\_\_  
If Yes, continue to question 14. If No, questionnaire is complete.
14. In the preceding fiscal year, were the subawardee's annual gross revenues from the Federal government more than \$25 million annual? Yes \_\_\_\_\_ No \_\_\_\_\_  
If Yes, continue to question 15. If No, questionnaire is complete.
15. Does the public have access to the names and total compensation of the subawardee's five most highly compensated officers through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986? Yes \_\_\_\_\_ No \_\_\_\_\_  
If No, continue to question 16. If Yes, questionnaire is complete.

16. Please list the names and compensation of the subawardee's five most highly compensated officers.

1. \_\_\_\_\_ \$ \_\_\_\_\_

2. \_\_\_\_\_ \$ \_\_\_\_\_

3. \_\_\_\_\_ \$ \_\_\_\_\_

4. \_\_\_\_\_ \$ \_\_\_\_\_

5. \_\_\_\_\_ \$ \_\_\_\_\_



**WIOA Dislocated Worker Program**  
**Grant Period = 7/1/2020 - 6/30/2022**  
**Grant Number = 31-20-20-03-004**  
**CFDA#: 17.278**  
**FAIN#: AA-34763-20-55-A-13**

REVENUE -- PY 2020 Award		PY 2020 BUDGET	PY 2020 BUDGET	PY 2020 BUDGET
Grants -Federal		\$ 260,084	\$ 234,076	\$ 26,008
EXPENSES		\$ -	DISLOCATED PROGRAM	DISCOLATED ADMIN
6116	Office Supplies	\$ 2,174	\$ 1,957	\$ 217
6168	Gas and Diesel	\$ 180	\$ 180	\$ -
6174	Janitorial Supplies	\$ 1,024	\$ 922	\$ 102
6258	Equipment	\$ 11,094	\$ 9,985	\$ 1,109
6302	Accounting & Auditing	\$ 616		\$ 616
6312	Salaries & Fringe Benefits	\$ 54,942	\$ 34,126	\$ 20,816
6326	Professional Services	\$ 12,849	\$ 11,564	\$ 1,285
6348	Computer Charges	\$ 846	\$ 761	\$ 85
6382	Postage	\$ 29	\$ 26	\$ 3
6384	Telephone & Telegraph	\$ 512	\$ 461	\$ 51
6392	Registration Fees	\$ 261	\$ 235	\$ 26
6395	WIA Training Expense	\$ 156,814	\$ 156,814	
6396	Travel Expense	\$ 1,079	\$ 971	\$ 108
6432	Advertising & Legal Notices	\$ 6	\$ 5	\$ 1
6438	General Printing Charges	\$ 365	\$ 310	\$ 55
6476	Utilities	\$ 1,432	\$ 1,289	\$ 143
6532	Rent (Equipment)	\$ 1,793	\$ 1,793	
6534	Rent (CobbWorks)	\$ 3,709	\$ 3,338	\$ 371
6536	Rent (Storage Facility)	\$ 150	\$ 150	
6581	Administrative Services	\$ 9,094	\$ 8,185	\$ 909
6584	Memberships	\$ 752	\$ 677	\$ 75
6588	Subscription, Directories, & Publications	\$ 243	\$ 219	\$ 24
6621	Parking	\$ 120	\$ 108	\$ 12
<b>TOTAL EXPENSES</b>		<b>\$ 260,084</b>	<b>\$ 234,076</b>	<b>\$ 26,008</b>
<b>INCOME OVER (UNDER) EXPENSES</b>		<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

PY20 DW grant will serve approximately 47 participants



## County Clerk

Pam Mabry, County Clerk

Districts All

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Item No. 24.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Pam Mabry, County Clerk

**DATE:** August 25, 2020

### **PURPOSE**

To approve minutes.

### **BACKGROUND**

N/A

### **IMPACT STATEMENT**

N/A

### **FUNDING**

N/A

### **RECOMMENDATION**

The Board of Commissioners approve the minutes from the following meetings:

- August 10, 2020 - Agenda Work Session
- August 11, 2020 - BOC Regular
- August 18, 2020 - BOC Zoning (submitted under separate cover)

### **ATTACHMENTS**

1. 08102020 Agenda Work Session
2. 081120 BOC Regular

**MINUTES OF AGENDA WORK SESSION  
COBB COUNTY BOARD OF COMMISSIONERS  
AUGUST 10, 2020**

The Cobb County Board of Commissioners attended an Agenda Work Session on Monday, August 10, 2020, in the second-floor BOC Meeting Room, 100 Cherokee Street, Marietta, Georgia, for the purpose of receiving information and participating in discussion regarding the August 11, 2020, BOC Agenda. Present and comprising a quorum of the Board were:

Chairman Mike Boyce  
Commissioner JoAnn Birrell  
Commissioner Keli Gambrill  
Commissioner Bob Ott  
Commissioner Lisa Cupid

**1. CALL TO ORDER – CHAIRMAN BOYCE**

Chairman Boyce called the meeting to order at 9:02 a.m.

No official action was taken by the Board.

**2. MOTION TO CONDUCT EXECUTIVE SESSION TO DISCUSS LEGAL MATTERS**

MOTION: Motion by Ott, second by Birrell, to **approve** the call of an Executive Session to discuss legal matters.

VOTE: **ADOPTED** 5-0

**3. ADJOURNMENT**

The meeting was adjourned into Executive Session at 9:46 a.m.

---

Angela Cunningham  
Deputy County Clerk  
Cobb County Board of Commissioners

**MINUTES OF REGULAR MEETING  
COBB COUNTY BOARD OF COMMISSIONERS  
AUGUST 11, 2020  
9:00 AM**

The Regular Meeting of the Cobb County Board of Commissioners was held on Tuesday, August 11, 2020, at 9:00 a.m. in the second-floor public meeting room in the Cobb County Building, Marietta, Georgia. Present and comprising a quorum of the Board were:

Chairman Mike Boyce  
Commissioner JoAnn Birrell  
Commissioner Lisa Cupid  
Commissioner Keli Gambrill  
Commissioner Bob Ott

**CALL TO ORDER**

Chairman Boyce called the meeting to order at 9:04 a.m.

**PUBLIC HEARING**

- 1. To conduct a public hearing prior to expending \$100,000.00 or more for professional services needed to incorporate social distancing capabilities in Cobb County courtrooms through audio-visual technology.**

Kimberly Lemley, Information Services Director, presented information regarding professional services needed to incorporate social distancing capabilities in Cobb County courtrooms through audio-visual technology.

Chairman Boyce opened the Public Hearing and asked those persons wishing to speak to come forward. After two speakers, the Public Hearing was closed.

No official action was taken by the Board.

**NON-AGENDA ITEMS**

Motion by Boyce, second by Ott, to **approve** the addition of the following non-agenda item to the Consent Agenda for consideration:

- *County Attorney - To authorize a settlement of Cobb County v. Arlington Park Marietta, LLC, et al, Civil Action No. 19-1-00061-40, Cobb Superior Court. (See item No. 31 of these minutes.)*

**VOTE: ADOPTED 5-0**

Motion by Boyce, second by Ott, to **approve** the addition of the following non-agenda item to the Regular Agenda for consideration:

- *Support Services - To authorize a contract for the sale of certain real property at 4489 Acworth Industrial Boulevard in Acworth, GA (See item No. 47 of these minutes.)*

**VOTE: ADOPTED 5-0**

**PUBLIC COMMENT**

1. **Amy Barnes** addressed the Board regarding the Small Business Grant requirements.
2. **Jacquelyn Bettadapur** addressed the Board regarding Cobb Elections Board request.

*By consensus of the Board the following item was moved forward in the Agenda.*

**Board of Commissioners**

2. **To recommend the appointment of the Fire Chief.**

Motion by Boyce, second by Ott, to **approve** the appointment of Mr. William T. Johnson as the Fire Chief effective August 11, 2020.

VOTE: **ADOPTED 5-0**

**CONSENT AGENDA**

MOTION: Motion by Boyce, second by Birrell, to **approve** the following items on the Consent Agenda, *as revised*; and **authorize** execution of the necessary documents by the appropriate County personnel.

**Sheriff**

3. **To authorize the purchase of replacement security windows for the Cobb County Adult Detention Center (“ADC”), Building A, under provisions of a Sourcewell contract.**

To **approve** the purchase of replacement security windows for the Cobb county Adult Detention Center (“ADC”), Building A, in an amount not to exceed \$677,671.60, under provisions of a Sourcewell contract #GA10-1-072115-JME, with J.J. Morley Enterprises, Inc; **authorize** the corresponding budget transactions; and **further authorize** the Purchasing Director to execute the purchase order and any other necessary documents.

Funding will be available in the Sheriff’s Office FY2020 budget with the following transfer:

Decrease Expenditure:	010-210-9240-8113 (Plumbing Installations)	\$677,671.60
Increase Expenditure:	010-210-9240-8110 (Renovations of Bldgs)	\$677,671.60

District Attorney

4. **To authorize the application for funding from the Criminal Justice Coordinating Council, Victims of Crime Act Grant Program FY2020, Family Justice Center Competitive Request for Applications.**

To **authorize** the application for funding from the Criminal Justice Coordinating Council, Victims of Crime Act Grant Program FY2020, Family Justice Center Competitive Request for Application, and **further authorize** the Chairman to execute the necessary documents.

Superior Court Administration

5. **To authorize the acceptance and appropriation of a Criminal Justice Coordinating Council grant award to support the Adult Drug Treatment Court Program.**

To **authorize** the acceptance of grant funds from the Criminal Justice Coordinating Council in the amount of \$256,252.00, for the period July 1, 2020 through June 30, 2021 to support the Adult Drug Treatment Court Program; **approve** the transfer of all authorized personnel from unit S058 to S073 in the Grant Fund; **authorize** the corresponding budget transactions; **allow** Court Administrator Tom Charron or Program Coordinator Kristie Garrett to sign quarterly reimbursement requests on behalf of the County; and **further authorize** the Chairman to execute the necessary documents.

Funding will be available with the following transactions:

Increase Revenue:	270-225-S073-4467 (CJCC)	\$256,252.00
Increase Expenditure:	270-225-S073-6012 (Salaries)	\$ 98,818.65
	270-225-S073-6032 (Disability)	\$ 212.72
	270-225-S073-6034 (FICA)	\$ 7,101.02
	270-225-S073-6036 (Medical)	\$ 17,532.39
	270-225-S073-6038 (Life Insurance)	\$ 229.15
	270-225-S073-6044 (Retirement)	\$ 22,379.17
	270-225-S073-6045 (Defined Cont.)	\$ 1,547.98
	270-225-S073-6052 (Workers' Comp)	\$ 1,263.28
	270-225-S073-6054 (Dental)	\$ 795.64
	270-225-S073-6320 (Medical Svcs)	\$ 45,000.00
	270-225-S073-6326 (Professional Svcs)	\$ 49,000.00
	270-225-S073-6362 (Other Fees)	\$ 7,524.00
	270-225-S073-6400 (Travel)	\$ 4,848.00
		\$ 256,252.00

Juvenile Court

6. To authorize the application, acceptance and appropriation of grant funds from the Criminal Justice Coordinating Council (CJCC) under the Victims of Crimes Act (VOCA) Grant Program to support the Juvenile Court of Cobb County, Court Appointed Special Advocate (CASA) Program.

To **authorize** the acceptance and appropriation of funding from the Victims of Crime Act Grant Program for the period of October 1, 2020 through September 30, 2021 and **further authorize** the Chairman to execute the necessary documents.

Increase revenue	270-190-F053-4467	(CJCC)	\$205,805.00
Increase expenditure	270-190-F053-6012	(Salaries)	\$124,857.00
	270-190-F053-6034	(FICA)	\$ 9,552.00
	270-190-F053-6052	(Workers Comp)	\$ 1,636.00
	270-190-F053-6044	(Retirement)	\$ 32,318.00
	270-190-F053-6036	(Medical Insurance)	\$ 26,524.00
	270-190-F053-6400	(Training)	\$ 5,193.00
	270-190-F053-6326	(Professional Services)	\$ 4,325.00
	270-190-F053-6394	(Registration Fee)	\$ 1,400.00
		TOTAL	\$205,805.00

Water System

7. **To approve an agreement with Rindt-McDuff Associates, Inc. for engineering design services for FY21 Maintenance Zone 4 Miscellaneous Water Main Replacement, Program No. W2390.**

To **approve** an agreement with Rindt-McDuff Associates, Inc., in the amount of \$138,900.00, for engineering design services for FY21 Maintenance Zone 4 Miscellaneous Water Main Replacement Design, Program No. W2390; **authorize** the corresponding budget transaction; and **further authorize** the Chairman to execute the necessary documents.

Funding is available in the Water System's CIP Budget as follows:

Transfer from:

Asbestos/Cement Water Main Replacement

Preliminary Estimates	510-500-5754-8005	W2055-Z	\$138,900.00
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Transfer to:

FY21 Maintenance Zone 4 Miscellaneous Water Main Replacement Design

Engineering	510-500-5754-8225	W2390-E	\$138,900.00
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**8. To approve a construction contract with R2T, Inc. for Northwest Cobb Water Reclamation Facility Odor Control and Pump Station Improvements, Program No. T4021 and Supplemental Agreement No. 2 to the Agreement with Black and Veatch Corporation for Northwest Cobb Water Reclamation Facility Improvements, Program No. T4019.**

To **approve** a construction contract with R2T, Inc., in the amount of \$3,497,711.00, for Northwest Cobb Water Reclamation Facility Odor Control and Pump Station Improvements, Program No. T4021 and Supplemental Agreement No. 2 to the Agreement with Black and Veatch Corporation, in the amount of \$567,135.00, for Northwest Cobb Water Reclamation Facility Improvements, Program No. T4019; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

Funding is available in the Water System's CIP Budget as follows:

Transfer from:

Northwest Plant Miscellaneous Improvements

Preliminary Estimates	510-500-5753-8005	T4501-Z	\$3,582,461.00
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Transfer to:

Northwest WRF Odor Control and Pump Station Improvements

Construction	510-500-5753-8260	T4021-C	\$3,497,711.00
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Interest Expense on Retainage	510-500-5753-6613	T4021-A	\$ 8,750.00
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Easement Right-of-Way	510-500-5753-8020	T4021-R	\$ 1,000.00
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Materials & Supplies	510-500-5753-8265	T4021-M	\$ 5,000.00
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Contingency	510-500-5753-8810	T4021-T	\$ 70,000.00
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Total			\$3,582,461.00
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Increase Encumbrance

GAE 510111417503	510-500-5753-8225	T4019-E	\$ 567,135.00
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Transfer from:

Northwest Plant Miscellaneous Improvements

Preliminary Estimates	510-500-5753-8005	T4501-Z	\$ 567,135.00
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Transfer to:

Northwest Cobb Water Reclamation Facility Improvements

Engineering-Basic Fees	510-500-5753-8225	T4019-E	\$ 567,135.00
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9. **To approve an agreement with Jacobs Project Management Company for the provision of Construction Management Services, Program No. C0160.**

To **approve** an agreement with Jacobs Project Management Company, in an amount not to exceed \$7,751,497.12, for the provision of Construction Management Services, Program No. C0160; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

Funding is available in the Water System's Construction Management Services Program FY21 Adopted CIP Budget as follows:

Transfer from:

Construction Management Services

Preliminary Estimates	510-500-5752-8005	C0160-Z	\$7,751,497.12
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Transfer to:

Construction Management Services-Inspection & Supervision

Line & Plant Facilities	510-500-5752-8230	C0160-E	\$6,038,947.12
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Professional Services

Utility Locating	510-500-5752-6326	C0160-E	<u>\$1,712,550.00</u>
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Total			\$7,751,497.12
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10. **To approve Change Order No. 1 (final) to the construction contract with K. M. Davis Contracting Co., Inc. for the Shannon Green North Water Main Replacement, Program No. W2358.**

To **approve** Change Order No. 1 (final) to the construction contract with K. M. Davis Contracting Co., Inc., a savings to the project in the amount of \$117,955.90, for Shannon Green North Water Main Replacement, Program No. W2358; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

No additional funding is required for the Water System’s Shannon Green North Water Main Replacement, Program No. W2358.

Decrease Encumbrance:

GAE 510041018406	510-500-5754-8260	W2358-C	\$117,955.90
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Transfer from:

Shannon Green North Water Main Replacement

Construction	510-500-5754-8260	W2358-C	\$117,955.90
Interest Expense on Retainage	510-500-5754-6613	W2358-A	\$ 490.99
Materials & Supplies	510-500-5754-8265	W2358-M	\$ 4,694.48
Contingency	510-500-5754-8810	W2358-T	<u>\$ 11,520.00</u>
Total			\$134,661.37

Transfer to:

Unidentified New/Replacement Water Mains

Preliminary Estimates	510-500-5754-8005	W1503-Z	\$134,661.37
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11. **To approve unit price contracts for FY21-FY22 Fire Hydrant Maintenance and Repair.**

To **approve** unit price contracts for FY21-FY22 Fire Hydrant Maintenance and Repair with responsive, responsible firms; and **authorize** the Chairman to execute the necessary documents.

Funding for Fire Hydrant – Maintenance and Repair is available in the Water System’s System Maintenance Operating Budget, Fund 500, Department 500, Unit 5400, Object 6498.

**12. To approve unit price contracts for FY21-FY22 Water, Sewer, and Miscellaneous Services, Program No. C0158.**

To **approve** unit price contracts for FY21-FY22 Water, Sewer, and Miscellaneous Services, Program No. C0158, with responsive and responsible firms; and **authorize** the Chairman to execute the necessary documents.

Funding for Water and Sewer Line Repair & Maintenance Service is available in the Water System's Adopted Operating Budget, Fund 500, Department 500, Unit 5400, Objects 6516 and 6520.

Funding for new and replacement water and sewer lines and related appurtenances is available in the Water System's Unit Price Contracts-Water, Sewer & Miscellaneous Services Adopted CIP Budget, Fund 510, Department 500, Unit 5752, Object 8005, Program No. C0158.

**13. To approve Supplemental Agreement No. 1 to the construction contract with W.E. Contracting Co., Inc. for 4450 Nassau Way, Program No. SW2052.**

To **approve** Supplemental Agreement No. 1 to the construction contract with W.E. Contracting Co., Inc., in the amount of \$24,275.00, with a time extension of 15 calendar days, for 4450 Nassau Way, Program No. SW2052; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

Funding is available in the Water System's CIP Budget as follows:

Increase Encumbrance:			
GAE 51005122004	510-500-5758-6496	SW2052-C	\$24,275.00
Transfer from:			
Stormwater Multi-Year Budget			
Drainage Contract R&M Service	510-500-5758-6496	SW9999-Z	\$24,275.00
Transfer to:			
4450 Nassau Way			
Drainage Contract R&M Service	510-500-5758-6496	SW2052-C	\$24,275.00

**14. To approve Change Order No. 1 (final) to the construction contract with Chatfield Contracting, Inc. for 6085 Lakeshore Drive, Program No. SW1995.**

To **approve** Change Order No. 1 (final) to the construction contract with Chatfield Contracting, Inc., a savings to the project in the amount of \$5,572.07, for 6085 Lakeshore Drive, Program No. SW1995; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

No additional funding is required for the Water System’s 6085 Lakeshore Drive project, Program No. SW1995.

Decrease encumbrance:

GAE 51005281907	510-500-5758-6496	SW1995-C	\$5,572.07
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Transfer from:

6085 Lakeshore Drive

Drainage Contract R&M Service	510-500-5758-6496	SW1995-C	\$5,572.07
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Transfer to:

Stormwater Multi-Year Budget

Drainage Contract R&M Service	510-500-5758-6496	SW9999-Z	\$5,572.07
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**15. To authorize purchase of an Agilent 5900 Synchronous Vertical Dual View Inductively Coupled Plasma Optical Emission Spectroscopy instrument for the analysis of metals in water and wastewater samples.**

To **authorize** purchase of an Agilent 5900 Synchronous Vertical Dual View Inductively Coupled Plasma Optical Emission Spectroscopy instrument for the analysis of metals in water and wastewater samples, in the amount of \$88,264.96; **authorize** the corresponding budget transaction; and **further authorize** the Chairman to execute the necessary documents.

Funding is available in the Water System’s Adopted FY20 Operating Budget as follows:

Transfer from:

500-500-5400-8610	(Specially-Equipped Vehicles)	\$88,264.96
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Transfer to:

500-500-5201-8445	(Laboratory & Scientific Equipment)	\$88,264.96
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**Transportation**

**16. To approve the annual updated Title VI Plan for Cobb County Department of Transportation.**

To **approve** the annual updated Title VI Plan for Cobb County Department of Transportation. A copy of the Title VI Plan for Cobb County Department of Transportation is attached and made a part of these minutes.

**Public Services Agency**

**Library System**

**17. To authorize the application for, and acceptance of, the annual grants for State FY 2021 from the Board of Regents, Georgia Public Library.**

To **authorize** the application and acceptance of the annual state grants for State FY 2021 from the Board of Regents, Georgia Public Library Service, in the initial amount of \$ 1,338,587.00, including any additional State-appropriated funds during the fiscal year; **authorize** the related appropriation and corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

**General Fund**

Revenue for staff reimbursement will be received in the following:

010-080-1800-4990 (Staff Reimbursement-Library) \$1,037,681.00

**Grant Fund**

Increase Revenue: **System Services** \$ 27,499.00

Increase Expenditure: 270-080-S080-4455 (Board of Regents) \$ 27,499.00

**Materials**

Increase Revenue: 270-080-S080-6204 (Other Supplies) \$ 273,407.00

Increase Expenditure: 270-080-S081-4455 (Board of Regents) \$ 273,407.00

270-080-S081-6154 (Library Materials) \$ 273,407.00

**Total:** **\$1,338,587.00**

**Senior Services**

18. **To authorize the extension of the grant period of the Advancing Dementia Friendly Initiatives in Georgia Grant, from the Georgia Gerontology Society, Inc. to be moved from an end date of September 30, 2020 to April 30, 2021.**

To **authorize** the extension of the grant period of the Advancing Dementia Friendly Initiatives in Georgia Grant, from the Georgia Gerontology Society, Inc. to be moved from an end date of September 30, 2020 to April 30, 2021; and **further authorize** the Chairman to execute the necessary documents.

Funding level remains the same, there is nothing additional to appropriate.

**Public Safety Agency**

19. **To approve revisions to the Education Incentive Pay Policy.**

To **approve** the additional revisions to the Education Incentive Pay Policy. A copy of the approved policy is attached and made a part of these minutes.

**Police Department**

20. **To authorize the acceptance of Flock License Plate Recognition systems being donated by Vinings Village.**

To **approve** the donation of Flock License Plate Recognition Systems being donated by Vinings Village.

**Fire Department**

21. **To approve an Agreement of Mutual and Automatic Aid between the City of Marietta Fire Department and Cobb County for fire, emergency, rescue, and support services.**

To **approve** an Agreement of Mutual and Automatic Aid between the City of Marietta Fire Department and Cobb County for fire, emergency, rescue, and support services, and **further authorize** the Chairman to execute the necessary documents.

**Community Development**

22. **To approve the street name change from Cessna Lane to Cirrus Way, located at Cobb County International Airport - McCollum Field.**

To **approve** the street name change from Cessna Lane to Cirrus Way, located at Cobb County International Airport - McCollum Field.

23. **To approve an annexation notice of Non-Objection per HB 489 Intergovernmental Agreement and HB 2 regarding a petition for annexation of a 0.30 acre tract located at 2791 Mathews Street, into the City of Smyrna.**

To **approve** an annexation notice of Non-Objection per HB 489 Intergovernmental Agreement and HB 2 regarding a petition for annexation of Land Lot 0632, 17<sup>th</sup> District, parcel 0029, 2nd Section, located on a 0.30-acre tract located at 2791 Mathews Street, into the City of Smyrna.

**Human Resources**

24. **To approve recommended revisions of the Teleworking Policy.**

To **approve** recommended revisions of the Teleworking Policy. A copy of the approved policy is attached and made a part of these minutes.

No additional funding is required.

**Finance**

25. **To adopt a resolution adopting all budget amendments set forth in agenda items on this date.**

To **adopt** a resolution adopting all budget amendments set forth in agenda items on this date. A copy of said resolution is attached and made a part of these minutes.

26. **To approve all interfund transfers for claims and safety equipment purchases to allow Risk Management to reimburse the appropriate department.**

To **approve** all interfund transfers for claims and safety equipment purchases; and **authorize** Risk Management to reimburse the appropriate department. A copy of the interfund transfers is attached and made a part of these minute.



CDBG

27. **To authorize the acceptance and allocation of Federal Fiscal Year 2020 Community Services Block Grant CARES funds provided by the Georgia Department of Human Services.**

To **authorize** the acceptance and allocation of Federal Fiscal Year 2020 Community Services Block Grant CARES funds provided by the Georgia Department of Human Services; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents. A copy of Attachment A is attached and made a part of these minutes.

The budget appropriations shown in Attachment A will account for the receipt and expenditure of CSBG CARES funds.

28. **To authorize the allocation of Emergency Solutions Grant CARES funding provided by the United States Department of Housing and Urban Development.**

To **authorize** the allocation of Emergency Solutions Grant CARES funding provided by the United States Department of Housing and Urban Development; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents. A copy of Attachment A and B is attached and made a part of these minutes.

The budget appropriations shown in Attachment A and B will account for the receipt and expenditure of PY2020 ESG-CV-1 and ESG-CV-2 funds.

CobbWorks

29. **To approve amendments to the current Memorandums of Understanding between Cobb County, WorkSource Cobb, and its other workforce development partners.**

To **approve** the current Memorandums of Understanding between Cobb County, WorkSource Cobb, and its other workforce development partners; and **authorize** the Chairman to execute the necessary documents. A copy of the Memorandums of Understanding is attached and made a part of these minutes.

County Clerk

30. To approve minutes.

To **approve** the minutes from the following meetings:

- July 27, 2020 - Agenda Work Session
- July 28, 2020 - BOC Regular

Non-Agenda

31. To authorize settlement of Cobb County v. Arlington Park Marietta, LLC, et al, Civil Action File No. 19-1-00061-40, Cobb County Superior Court, pursuant to the direction and within the terms as discussed in Executive Session on August 10, 2020, and authorize counsel to prepare and execute any necessary documents for the purposes of settling ongoing litigation.

To **authorize** settlement of Cobb County v. Arlington Park Marietta, LLC, et al, Civil Action File No. 19-1-00061-40, Cobb County Superior Court, pursuant to the direction and within the terms as discussed in Executive Session on August 10, 2020; and **authorize** counsel to prepare and execute any necessary documents for the purposes of settling ongoing litigation.

Funding is available in account 347-050-X240-X240-8748-X2401-R

**CONSENT VOTE: ADOPTED 5-0**

*Clerk's Note: Commissioner Cupid announced she would like to address a non-agenda matter regarding absentee ballot mailings and the following Motion was made:*

Motion by Cupid, second by Boyce, *for the purpose of discussion*, to **add** to the Agenda discussion of absentee ballot mailing to all voters in Cobb County.

**VOTE: FAILED 1-4**, Commissioner Cupid in favor

**REGULAR AGENDA**

**Transportation**

32. **To approve a Utility Relocation Agreement with Georgia Power Company for preliminary engineering and relocation of facilities on Bells Ferry Road at Turner Road/Dickson Road, Project No. D6040, Phase B, CCDOT Contract No. 001572.**

Motion by Birrell, second by Gambrill, to **approve** a Utility Relocation Agreement with Georgia Power Company, in an amount not to exceed \$59,330.00, for preliminary engineering and relocation of facilities on Bells Ferry Road at Turner Road/Dickson Road, Project No. D6040, Phase B, CCDOT Contract No. 001572; **authorize** the corresponding budget transaction; and **further authorize** the Chairman to execute the necessary documents.

Available in the 2005 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Transfer from:	340-050-7506-D604-8761-D6040-C	Preliminary Estimate	\$59,330.00
Transfer to:	340-050-7506-D604-8786-D6040-U	Utility Relocation	\$59,330.00

The 2005 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on June 14, 2005, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Roadway Safety and Operational Improvements.

Bells Ferry Road is an eligible project/program under the Safety and Operational Improvements - Roadway Safety and Operational Improvements Component of the 2005 SPLOST Transportation Improvements Program (Cobb County 2005 SPLOST, pp. 1, 13). Bells Ferry Road improvements include intersection improvements.

SPLOST Project Summary as of July 1, 2020:

Bells Ferry Road	Budget:	\$4,511,585.78	Expended:	\$3,257,105.91
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**VOTE: ADOPTED 5-0**

**33. To approve Change Order No. 2 (final) to the contract with Glosson Enterprises, LLC for intersection improvements on Post Oak Tritt Road at Hembree Road, Project No. X2311, CCDOT Contract No. 001243.**

Motion by Birrell, second by Ott, to **approve** Change Order No. 2 (final) to the contract with Glosson Enterprises, LLC, a savings to the project in the amount of \$56,823.10, for intersection improvements on Post Oak Tritt Road at Hembree Road, Project No. X2311, CCDOT Contract No. 001243; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

A savings to the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Decrease GAE 347031318801:	347-050-X230-X230-8762-X2311-C	Turnkey Construction	\$18,820.10
Transfer from:	347-050-X230-X230-8762-X2311-C	Turnkey Construction	\$18,820.10
Transfer to:	347-050-X230-X230-8761-X2311-C	Preliminary Estimate	\$18,820.10

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Intersection Improvements.

Post Oak Tritt Road at Hembree Road is an eligible project/program under the Safety and Operational Improvements – Intersection Improvements Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 16). Post Oak Tritt Road at Hembree Road includes intersection improvements near Pope High School.

SPLOST Project Summary as of July 1, 2020:

Post Oak Tritt Road at Hembree Road Budget: \$1,517,705.00 Expended: \$1,465,521.00

A savings to the Water System DOT Projects - Relocate Lines Adopted CIP Budget, with the following budget transfers:

Decrease GAE 510031318801:	510-500-5756-8260-W4376-C	Construction	\$38,003.00
Transfer from:	Post Oak Tritt Road at Hembree Road Water Main Replacement		
	510-500-5756-8260-W4376-C	Construction	\$38,003.00
	510-500-5756-6613-W4376-A	Interest Expense on Retainage	\$ 260.00
	510-500-5756-8265-W4376-M	Materials and Supplies	\$ 5,000.00
	510-500-5756-8810-W4376-T	Contingency	<u>\$ 2,080.00</u>
		Total:	\$45,343.00
Transfer to:	DOT Projects - Relocate Lines		
	510-500-5756-8005-W4069-Z	Preliminary Estimate	\$45,343.00

**VOTE: ADOPTED 5-0**

**34. To approve a contract with Excellere Construction, LLC for Bells Ferry Road at Turner Road/Dickson Road, Project No. D6040, Phase B, CCDOT Contract No. 001509.**

Motion by Birrell, second by Gambrill, to **approve** a contract with Excellere Construction, LLC, in an amount not to exceed \$537,200.00, for Bells Ferry Road at Turner Road/Dickson Road, Project No. D6040, Phase B, CCDOT Contract No. 001509; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

Available in the 2005 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Transfer from:	340-050-7506-D604-8761-D6040-C	Preliminary Estimate	\$428,748.75
Transfer to:	340-050-7506-D604-8762-D6040-C	Turnkey Construction	\$428,748.75

The 2005 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on June 14, 2005, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Roadway Safety and Operational Improvements.

Bells Ferry Road is an eligible project/program under the Safety and Operational Improvements - Roadway Safety and Operational Improvements Component of the 2005 SPLOST Transportation Improvements Program (Cobb County 2005 SPLOST, pp. 1, 13). Bells Ferry Road improvements include intersection improvements.

SPLOST Project Summary as of July 1, 2020:

Bells Ferry Road	Budget:	\$4,511,585.78	Expended:	\$3,257,105.91
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Available in the Water System DOT Projects - Relocate Lines Adopted CIP Budget, with the following budget transfers:

Transfer from:	DOT Project – Relocate Lines		
	510-500-5756-8005-W4069-Z	Preliminary Estimate	\$115,621.25
Transfer to:	Bells Ferry Road at Turner/ Dickson Roads		
	510-500-5756-8260-W4400 -C	Construction	\$108,451.25
	510-500-5756-8265-W4400-M	Materials and Supplies	\$ 5,000.00
	510-500-5756-8810-W4400 -T	Contingency	<u>\$ 2,170.00</u>
		Total:	\$115,621.25

**VOTE: ADOPTED 5-0**

**35. To approve Change Order No. 1 (final) to the contract with Baldwin Paving Company, Inc., for intersection improvements on Blackwell Road at Autumn Ridge Parkway, Project No. X2302, CCDOT Contract No. 001326.**

Motion by Birrell, second by Gambrill, to **approve** Change Order No. 1 (final) to the contract with Baldwin Paving Company, Inc., a savings to the project in the amount of \$112,615.15, for intersection improvements on Blackwell Road at Autumn Ridge Parkway, Project No. X2302, CCDOT Contract No. 001326; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

A savings to the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Decrease GAE	347-050-X230-X230-8762-X2302-C	Turnkey Construction	\$77,939.63
34712111834:			
Transfer from:	347-050-X230-X230-8762-X2302-C	Turnkey Construction	\$77,939.63
Transfer to:	347-050-X200-X200-8761-X2000-C	Preliminary Estimate	\$77,939.63

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Intersection Improvements.

Blackwell Road at Autumn Ridge Parkway is an eligible project/program under the Safety and Operational Improvements – Intersection Improvements Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 16). Blackwell Road at Autumn Ridge Parkway includes intersection improvements.

SPLOST Project Summary as of July 1, 2020:

Blackwell Road at Autumn Ridge Parkway Budget: \$1,372,201.00 Expended: \$1,165,197.83

A savings to the Water System DOT Projects - Relocate Lines Adopted CIP Budget, with the following budget transfers:

Decrease GAE	510-500-5756-8260-W4382-C	Construction	\$ 34,675.52
51012111834:			
Transfer from:	Blackwell Road at Autumn Ridge Parkway		
	510-500-5756-8260-W4382-C	Construction	\$ 34,675.52
	510-500-5756-6613-W4382-A	Interest Expense on Retainage	\$ 994.98
	510-500-5756-8265-W4382-M	Materials and Supplies	\$ 500.00
	510-500-5756-8810-W4382-T	Contingency	\$ <u>3,980.00</u>
		Total:	\$ 40,150.50
Transfer to:	DOT Projects - Relocate Lines		
	510-500-5756-8005-W4069-Z	Preliminary Estimate	\$ 40,150.50

**VOTE: ADOPTED 5-0**

**36. To approve Change Order No. 2 (final) to the contract with Tri Scapes, Inc., for Bells Ferry Road Sidewalk, Project No. X2745, CCDOT Contract No. 001352.**

Motion by Ott, second by Boyce, to **approve** Change Order No. 2 (final) to the contract with Tri Scapes Inc., in an amount not to exceed \$1,500.00, for Bells Ferry Road Sidewalk, Project No. X2745, CCDOT Contract No. 001352; **authorize** the corresponding budget transaction; and **further authorize** the Chairman to execute the necessary documents.

Available in the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Transfer from:	347-050-X270-X270-8761-X2745-C	Preliminary Estimate	\$1,500.00
Transfer to:	347-050-X270-X270-8762-X2745-C	Turnkey Construction	\$1,500.00
Increase GAE 34707091928:	347-050-X270-X270-8762-X2745-C	Turnkey Construction	\$1,500.00

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Sidewalks.

Bells Ferry Road Sidewalk is an eligible project/program under the Pedestrian Improvements – Sidewalks Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 14). Pedestrian Improvements within Commission District 3 include construction of sidewalks and other pedestrian improvements along roadways in the vicinity of schools, activity centers, multi-modal facilities (transit stops/shelters, etc.), and other congested areas, to include pedestrian bridges where needed.

SPLOST Project Summary as of July 1, 2020:

Bells Ferry Road Sidewalk	Budget:	\$486,155.00	Expended:	\$398,989.39
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**VOTE: ADOPTED 5-0**

**37. To approve Change Order No. 1 (final) to the contract with Baldwin Paving Company, Inc., for construction of Paces Ferry Road/Paces Ferry Road Sidewalk at CSXT, Project Nos. X2318/X2726, CCDOT Contract No. 001262.**

Motion by Ott, second by Cupid, to **approve** Change Order No. 1 (final) to the contract with Baldwin Paving Company, Inc., a savings to the project in the amount of \$258,760.26, for construction of Paces Ferry Road/Paces Ferry Road Sidewalk at CSXT, Project Nos. X2318/X2726, CCDOT Contract No. 001262; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

A savings to the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Decrease GAE 34704091929:	347-050-X230-X230-8762- X2318-C	Turnkey Construction	\$161,405.41
Transfer from:	347-050-X230-X230-8762-X2318-C	Turnkey Construction	\$161,405.41
Transfer to:	347-050-X200-X200-8761-X2000-C	Preliminary Estimate	\$161,405.41

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Intersection Improvements.

Paces Ferry Road is an eligible project/program under the Safety and Operational Improvements - Intersections Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 17). Safety and Operational Intersection Improvements include typical safety and operational intersection improvements or roundabout construction. Specific locations have been determined by analysis.

Paces Ferry Road	Budget:	\$1,107,489.71	Expended:	\$919,106.37
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**To approve Change Order No. 1 (final) to the contract with Baldwin Paving Company, Inc., for construction of Paces Ferry Road/Paces Ferry Road Sidewalk at CSXT, Project Nos. X2318/X2726, CCDOT Contract No. 001262 – (CONT.)**

A savings to the Water System DOT Projects - Relocate Lines Adopted CIP Budget, with the following budget transfers:

Decrease GAE 51004091929:	510-500-5756-8260-W4388-C	Construction	\$34,926.06
Transfer from:	Paces Ferry Road at Paces Mill Road Imprv.		
	510-500-5756-8260-W4388-C	Construction	\$34,926.06
	510-500-5756-6613-W4388-A	Interest Expense on Retainage	\$ 110.00
	510-500-5756-8265-W4388-M	Materials and Supplies	\$ 1,000.00
	510-500-5756-8810-W4388-T	Contingency	\$ 900.00
		Total:	\$36,936.06
Transfer to:	DOT Projects - Relocate Lines		
	510-500-5756-8005-W4069-Z	Preliminary Estimate	\$36,936.06

A savings to the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Decrease GAE 347040919291:	347-050-X270-X270-8762-X2726-C	Turnkey Construction	\$62,428.79
Transfer from:	347-050-X270-X270-8762-X2726-C	Turnkey Construction	\$62,428.79
Transfer to:	347-050-X270-X270-8761-X2721-C	Preliminary Estimate	\$62,428.79

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Sidewalks.

Paces Ferry Road Sidewalk at CSXT is an eligible project/program under the Pedestrian Improvements - Sidewalks Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 14). Pedestrian Improvements within Commission District 2 include construction of sidewalks and other pedestrian improvements along roadways in the vicinity of schools, activity centers, multi modal facilities (transit stops/shelters, etc.), and other congested areas, to include pedestrian bridges where needed.

SPLOST Project Summary as of July 1, 2020:

Paces Ferry Road Sidewalk at CSXT	Budget: \$282,281.16	Expended: \$214,791.59
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**VOTE: ADOPTED 5-0**

**38. To approve Change Order No. 1 (final) to the contract with Butch Thompson Enterprises, Inc., for drainage system repairs on Chattahoochee Plantation Drive, Project No. X2247, CCDOT Contract No. 001454.**

Motion by Ott, second by Cupid, to **approve** Change Order No. 1 (final) to the contract with Butch Thompson Enterprises, Inc., a savings of \$32,231.09, for drainage system repairs on Chattahoochee Plantation Drive, Project No. X2247, CCDOT Contract No. 001454; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

A savings to the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer and interfund transfer back to the Water & Sewer Renewal Fund:

Decrease GAE 34702112028:	347-050-X220-X220-8762-X2247-C	Turnkey Construction	\$32,231.09
Transfer from:	347-050-X220-X220-8762-X2247-C	Turnkey Construction	\$16,115.55
Transfer to:	347-050-X220-X220-8761-X2247-C	Preliminary Estimate	\$16,115.55
Decrease Revenue:	347-050-X220-X220-4960-X2247-C	Interfund Transfer Rev.	\$16,115.54
Decrease Expenditure:	347-050-X220-X220-8762-X2247-C	Turnkey Construction	\$16,115.54
Decrease Expenditure:	510-500-5756-5756-6594-W4069-Z	Interfund Transfer Exp.	\$16,115.54
Increase Expenditure:	510-500-5756-5756-8005-W4069-Z	Preliminary Estimate	\$16,115.54

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Drainage System Improvements.

Chattahoochee Plantation Drive is an eligible project/program under the Infrastructure Preservation - Drainage System Improvements Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 9). Drainage System Improvements include repair and replacement of roadway drainage systems throughout the County.

SPLOST Project Summary as of July 1, 2020:

Chattahoochee Plantation Drainage	Budget:	\$187,231.00	Expended:	\$154,534.71
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**VOTE: ADOPTED 5-0**

**39. To approve a contract with Excellere Construction, LLC for drainage system repairs on Seabury Court, Project No. X2264, CCDOT Contract No. 001536.**

Motion by Cupid, second by Birrell, to **approve** a contract with Excellere Construction, LLC, in an amount not to exceed \$64,800.00, for drainage system repairs on Seabury Court, Project No. X2264, CCDOT Contract No. 001536; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

Available in the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Transfer from:	347-050-X220-X220-8761-X2264-C	Preliminary Estimate	\$59,800.00
Transfer to:	347-050-X220-X220-8762-X2264-C	Turnkey Construction	\$59,800.00

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Drainage System Improvements.

Seabury Court is an eligible project/program under the Infrastructure Preservation - Drainage System Improvements Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 9). Drainage System Improvements include repair and replacement of roadway drainage systems throughout the County.

SPLOST Project Summary as of July 1, 2020:

Seabury Court Drainage (new project as of August 11, 2020) Budget: N/A Expended: N/A

Available in the Water System DOT Projects - Relocate Lines Adopted CIP Budget, with the following budget transfers:

Transfer from:	DOT Projects – Relocate Lines		
	510-500-5756-8005-W4069-Z	Preliminary Estimate	\$6,200.00
Transfer to:	Seabury Court Drainage – Utility Allowance		
	510-500-5756-8260-W5030-C	Construction	\$5,000.00
	510-500-5756-8265-W5030-M	Materials and Supplies	\$1,000.00
	510-500-5756-8810-W5030-T	Contingency	<u>\$ 200.00</u>
		Total:	\$6,200.00

**VOTE: ADOPTED 5-0**

40. **To determine that circumstances are such that it is necessary to proceed with condemnation proceedings by Declaration of Taking under O.C.G.A. §32-3-4, et. seq., on one parcel for Kennesaw Mountain Pedestrian Improvements, State P.I. No. 0015279, Cobb County Project No. X2404.**

Motion by Gambrill, second by Ott, to **determine** that circumstances are such that it is necessary to proceed with condemnation proceedings by Declaration of Taking under O.C.G.A. §32-3-4, et. seq.; **authorize** the commencement of condemnation proceedings on one parcel for Kennesaw Mountain Pedestrian Improvements, State P.I. No. 0015279, Cobb County Project No. X2404; **adopt** a Resolution and Order, as approved by the County Attorney's Office; and **further authorize** the Chairman to execute the necessary documents. A copy of attachment I is attached and made a part of these minutes.

VOTE: **ADOPTED 5-0**

UNOFFICIAL

Support Services Agency

Information Services

41. **To approve a contract with Nixon Power Services, LLC for the purchase and installation of the emergency generator for the new Data Center, and authorize procurement of miscellaneous items related to the equipment installation, under provisions of Sourcewell Kohler contract #120617-KOH. This is 2016 SPLOST project, Support Services Facilities Improvements Program X0920.**

Motion by Ott, second by Cupid, to **approve** a contract with Nixon Power Services, LLC, in the amount of \$173,027.14, for installation of a new generator at the new Cobb County Data Center; **authorize** procurement of miscellaneous items related to the equipment installation in an amount not to exceed \$75,000.00; **authorize** the corresponding budget transactions; and **further authorize** the Purchasing Director to execute the necessary documents.

Funding is available in the 2016 SPLOST Support Services Facilities Improvements Program Fund with the following budget transfer:

Transfer from:	347-110-X092-8005-X0920-T	(Preliminary Estimates)	\$248,027.14
Transfer to:	347-110-X092-8135-X0920-R	(Other Machinery & Equip)	\$248,027.14

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Facilities Improvements – Building Security, Emergency/Life Safety Upgrades.

The generator installation for the new Cobb County Data Center is an eligible capital improvement project/program under the 2016 SPLOST and is an approved project of the Support Services Facilities Improvements Work Program (Cobb County 2016 SPLOST, p.37) which provides for the modernization of life safety systems in County facilities to ensure employee and public safety as well as protection of physical assets to include the data center emergency generator.

SPLOST Project Summary as of July 1, 2020

Facilities Improvements X0920	Budget: \$6,875,101.00	Expended: \$2,461,968.61
		This Agenda Item: \$ 248,027.14
		To Date: \$2,709,995.75

VOTE: **ADOPTED 5-0**

**42. To approve a contract with Marietta Power for the installation of an additional electrical power feed in the new Cobb County Data Center. This is a 2016 SPLOST project, Support Services Facilities Improvements Program X0920.**

Motion by Ott, second by Cupid, to **approve** a contract with Marietta Power in an amount not to exceed \$249,600.00 for the installation of an additional electrical power feed in the new Cobb County Data Center; **authorize** the corresponding budget transactions; and **further authorize** the Purchasing Director to execute the necessary documents.

Available in the 2016 SPLOST Support Services Facilities Improvements Program Fund with the following budget transfer:

Transfer from:	347-110-X092-8005-X0920-T	(Preliminary Estimates)	\$249,600.00
Transfer to:	347-110-X092-8112-X0920-R	(Electrical)	\$249,600.00

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Facilities Improvements – Building Security, Emergency/Life Safety Upgrades.

The installation of electrical power in the new Cobb County Data Center is an eligible capital project/program under the 2016 SPLOST. “Facilities Improvement” is an approved project of the Support Services Facilities Improvements Work Program (Cobb County 2016 SPLOST, p. 37) which provides for the modernization of life safety systems in County facilities to ensure employee and public safety as well as protection of physical assets.

SPLOST Project Summary as of July 1, 2020

Facilities Improvements X0920	Budget: \$6,875,101.00	Expended: \$2,461,968.61
		Immediate Previous Agenda Item:
		\$ 248,027.14
		This Agenda Item: <u>\$ 249,600.00</u>
		To Date: \$2,959,595.75

VOTE: ADOPTED 5-0

**43. To approve a contract with Garland/Design Building Solutions, Inc., for exterior walls and roof renovations at the new Cobb County Data Center under provisions of the Racine County Wisconsin, OMNIA Partners Master Agreement #PW1925. This is 2016 SPLOST project, Support Services Facilities Improvements Program X0920 and X0921.**

Motion by Ott, second by Birrell, to **approve** a contract with Garland/Design Build Solutions, Inc. in an amount not to exceed \$450,986.00, for restoration of the existing exterior wall and roof at the new Cobb County Data Center, a 2016 SPLOST project; **authorize** a 10% contingency in an amount not to exceed \$45,099.00; **authorize** the corresponding budget transactions; and **further authorize** the Purchasing Director to execute the necessary documents.

Funding is available in the 2016 SPLOST Support Services Facilities Improvements Program Fund project budget as follows:

347-110-X092-8111-X0921-A	(Roof Repair/Replacement)	\$235,569.98
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Funding is available in the 2016 SPLOST Support Services Facilities Improvements Program Fund with the following budget transfer:

Transfer from:	347-110-X092-8005-X0920-T	(Preliminary Estimates)	\$260,515.02
Transfer to:	347-110-X092-8111-X0920-R	(Roofs)	\$215,416.02
	347-110-X092-8005-X0920-R	(Contingency)	\$ 45,099.00

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Facilities Improvements – Building Security, Emergency/Life Safety Upgrades and Roof Repair/Replacement.

The exterior walls and roof renovations project for the new Cobb County Data Center is an eligible capital improvement project/program under the 2016 SPLOST. Facilities Improvements is an approved project of the Support Services Facilities Improvements Work Program (Cobb County 2016 SPLOST, p.37) which provides for the modernization of life safety systems in County facilities to ensure employee and public safety as well as protection of physical assets to include the data center exterior walls and roof renovations.

**SPLOST Project Summary as of July 1, 2020**

Facilities Improvements X0921	Budget: \$1,000,000.00	Expended: \$	764,430.02
Facilities Improvements X0920	Budget: \$6,875,101.00	Expended: \$2,461,968.61	
		Immediate Previous 2 Agenda	
		Items: \$	497,627.14
		This Agenda Item: \$	<u>260,515.02</u>
		To Date: \$3,220,110.77	

**VOTE: ADOPTED 5-0**

**44. To approve a contract with Allstar Lighting & Electrical Service, under the provisions of a Cobb County Master Agreement for the installation of internal power equipment at the new Cobb County Data Center. This is 2016 SPLOST project, Support Services Facilities Improvements Program X0920.**

Motion by Ott, second by Birrell, to **approve** a contract with Allstar Lighting & Electrical Service in an amount not to exceed \$85,000.00, for installation of internal power equipment at the new Cobb County Data Center, a 2016 SPLOST project; **authorize** a 10% contingency in an amount not to exceed \$8,500.00; **authorize** the corresponding budget transactions; and **further authorize** the Purchasing Director to execute the necessary documents.

Funding is available in the 2016 SPLOST Support Services Facilities Improvements Program Fund with the following budget transfer:

Transfer from:	347-110-X092-8005-X0920-T	(Preliminary Estimates)	\$93,500.00
Transfer to:	347-110-X092-8112-X0920-R	(Electrical)	\$93,500.00

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Facilities Improvements – Building Security, Emergency/Life Safety Upgrades.

The internal power equipment for the new Cobb County Data Center is an eligible capital improvement project/program under the 2016 SPLOST and is an approved project of the Support Services Facilities Improvements Work Program (Cobb County 2016 SPLOST, p.37) which provides for the modernization of life safety systems in County facilities to ensure employee and public safety as well as protection of physical assets to include the data center internal power equipment.

SPLOST Project Summary as of July 1, 2020

Facilities Improvements X0920	Budget: \$ 6,875,101.00	Expended: \$2,461,968.61
		Immediate Previous 3 Agenda
		Items: \$ 758,142.16
		This Agenda Item: \$ <u>93,500.00</u>
		To Date: \$3,313,610.77

VOTE: ADOPTED 5-0



**45. To approve a project agreement with Controlled Access, Inc. for the installation of the County’s enterprise access control system at the new Police Headquarters facility. This is 2016 SPLOST project, Support Services Technology Improvements Program X0020.**

Motion by Ott, second by Cupid, to **approve** a Project Agreement with Controlled Access, Inc. in an amount not to exceed \$161,075.00, for the installation of the County’s enterprise access control system at the new CCPD Headquarters; **authorize** a 10% contingency in an amount not to exceed \$16,108.00; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents.

Funding is available in the 2016 SPLOST Technology Improvements Program Fund with the following budget transfers:

Transfer from:	347-035-X002-8005-X0020-A	(Preliminary Estimates)	\$177,183.00
Transfer to:	347-035-X002-8676-X0020-M	(Professional Services)	\$161,075.00
	347-035-X002-8005-X0020-M	(Contingency)	\$ 16,108.00

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Technology Improvements.

Technology needs for the CCPD headquarters is an eligible project/program under the 2016 SPLOST. “Business Technology Transformation” is an approved project of the Support Services Technology Improvements Work Program (Cobb County 2016 SPLOST, p. 38) which includes hardware and software technology needs.

SPLOST Project Summary as of July 1, 2020:

Budget: \$23,358,000.00

Expended: \$2,884,803.45

**VOTE: ADOPTED 5-0**

Public Safety Agency

**46. To authorize the revenue received from a lease with LGE Community Credit Union to be appropriated back into the Police HQ 2016 SPLOST budget, Program 1042.**

Motion by Birrell, second by Gambrill, to **authorize** the revenue received, in the amount of \$649,087.05, and future revenues (lease proceeds and related interest) received from a lease agreement with LGE Community Credit Union to be appropriated back into the Police HQ SPLOST budget; **authorize** the corresponding budget appropriation; and **further authorize** the Chairman to execute all necessary documents.

Funding to be appropriated as follows:

Increase Revenue:	347-130-X104-4870 (Rental of Real Estate and Equipment)	\$649,087.05
Increase Expenditure:	347-130-X104-8005 (Preliminary Estimate)	\$649,087.05

VOTE: **ADOPTED 5-0**

Support Services Agency Non-Agenda

**47. To authorize a contract for the sale of certain real property situated at 4489 Acworth Industrial Boulevard in Acworth, Georgia not required for County purposes to Heavenly Holdings, LLC, through the brokerage firm of McWhirter Realty Partners.**

Motion by Gambrill, second by Birrell, to **authorize** a contract for the sale of property situated at 4489 Acworth Industrial Boulevard in Acworth, Georgia not required for County purposes to Heavenly Holdings, LLC, through the brokerage firm of McWhirter Realty Partners, in the amount of \$615,000.00, pursuant to the terms of the attached Agreement for Purchase and Sale; **authorize** the corresponding budget transactions; and **further authorize** the Chairman to execute the necessary documents and take the necessary action to implement the foregoing.

Funding will be appropriated as follows:

Increase Revenue:	010-015-0145-4944 (Sale of Salvage Property)	\$615,000.00
Increase Expenditure:	010-015-0145-8845 (Fund Balance-Undesignated)	\$615,000.00

VOTE: **ADOPTED 4-1**, Commissioner Ott opposed

**ADJOURNMENT**

The meeting was adjourned at 10:25 a.m.

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Angela Cunningham  
Deputy County Clerk  
Cobb County Board of Commissioners

UNOFFICIAL



## Transportation

Erica Parish, Agency Director

District 1

Item No. 25.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Erica Parish, Agency Director

**DATE:** August 25, 2020

### PURPOSE

To approve Change Order No. 1 to the contract with D&H Construction Company, Inc., for drainage system repairs on Lost Mountain Lane, Project No. X2263, CCDOT Contract No. 001521.

### BACKGROUND

Drainage System Improvements is an approved component in the 2016 SPLOST Transportation Improvements Program.

Lost Mountain Lane is classified as a Local Street on the Cobb County Major Thoroughfare Plan. The storm drainpipes in the vicinity of 615 Lost Mountain Lane are failing. The project scope includes replacement of the failing 48-inch and 36-inch corrugated metal pipes with a twin precast 10-foot by 4-foot culvert, construction of new headwalls, and placement of new pavement.

On May 26, 2020, the Board of Commissioners approved a contract with D&H Construction Company, Inc. (D&H), for drainage system repairs on Lost Mountain Lane.

### **Details for action requested are as follows:**

Construction activity has been delayed pending fabrication and delivery of the pre-cast box culvert. As a result of this delay, D&H has requested a contract time extension to complete the work.

Change Order No. 1 to the contract with D&H, a no-cost time extension revising the contract completion date from August 21, 2020 to September 30, 2020, is requested to allow for completion of the contracted work.

Original Contract	\$465,631.75
<b>Change Order No. 1</b>	<b>\$ 0.00</b>
<b>Revised Contract</b>	<b>\$465,631.75</b>

**IMPACT STATEMENT**

N/A

**FUNDING**

N/A

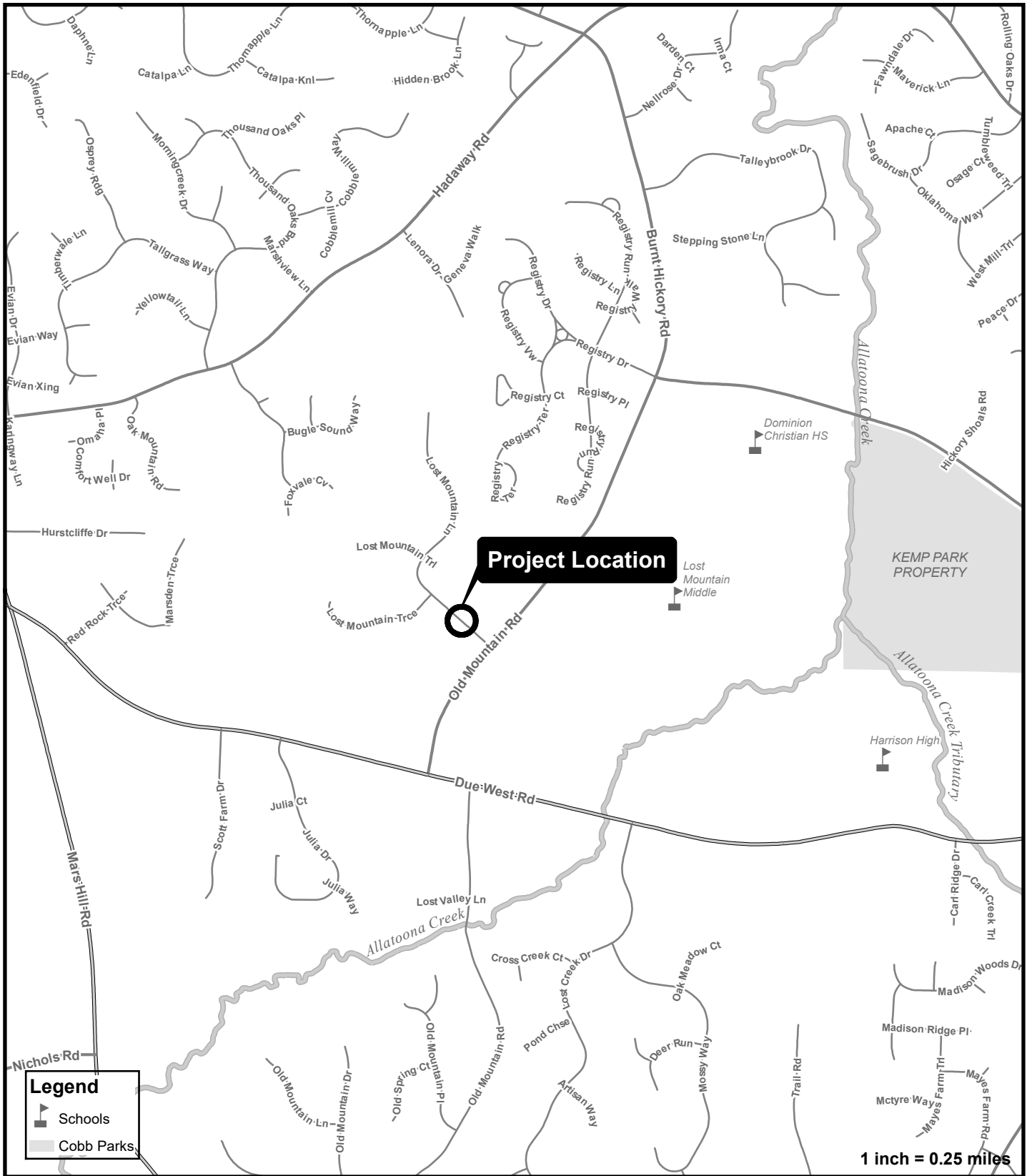
**RECOMMENDATION**

The Board of Commissioners approve Change Order No. 1 to the contract with D&H Construction Company, Inc., a no-cost time extension through September 30, 2020, for drainage system repairs on Lost Mountain Lane, Project No. X2263, CCDOT Contract No. 001521; and authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

1. Location Map

# LOCATION MAP



**Legend**

- Schools
- Cobb Parks

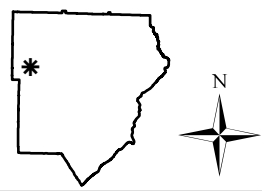
1 inch = 0.25 miles



Department of Transportation

**PROJECT:**  
**Lost Mountain Lane Drainage**  
**Project No. X2263**

**DATE:** August 25, 2020



Notes: Commission District 1



## Transportation

Erica Parish, Agency Director

District 4

Item No. 26.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Erica Parish, Agency Director

**DATE:** August 25, 2020

### PURPOSE

To approve Change Order No. 1 to the contract with Baldwin Paving Company, Inc., for intersection improvements on Factory Shoals Road at Riverside Parkway, Project No. X2306, CCDOT Contract No. 001296.

### BACKGROUND

Factory Shoals Road at Riverside Parkway (previously known as Six Flags Drive) is an approved project in the Intersection Improvements Component of the 2016 SPLOST Transportation Improvements Program.

The project includes installation of a new traffic signal, pedestrian improvements, and the addition of a right turn lane.

On October 8, 2019, the Board of Commissioners approved a contract with Baldwin Paving Company, Inc. (Baldwin), for intersection improvements on Factory Shoals Road at Riverside Parkway.

### **Details for action requested are as follows:**

Construction activity has been adversely impacted due to the COVID-19 pandemic. During this national crisis, the utility company working on this project shut down field operations, resulting in critical utility relocation delays. As a result of these delays, Baldwin has requested a contract time extension to complete the work.

Change Order No. 1 to the contract with Baldwin, a no-cost time extension revising the contract completion date from October 19, 2020 to December 28, 2020, is requested to allow for completion of the contracted work.

Original Contract	\$785,765.84
<b>Change Order No. 1</b>	<b>\$ 0.00</b>
<b>Revised Contract</b>	<b>\$785,765.84</b>

**IMPACT STATEMENT**

N/A

**FUNDING**

N/A

**RECOMMENDATION**

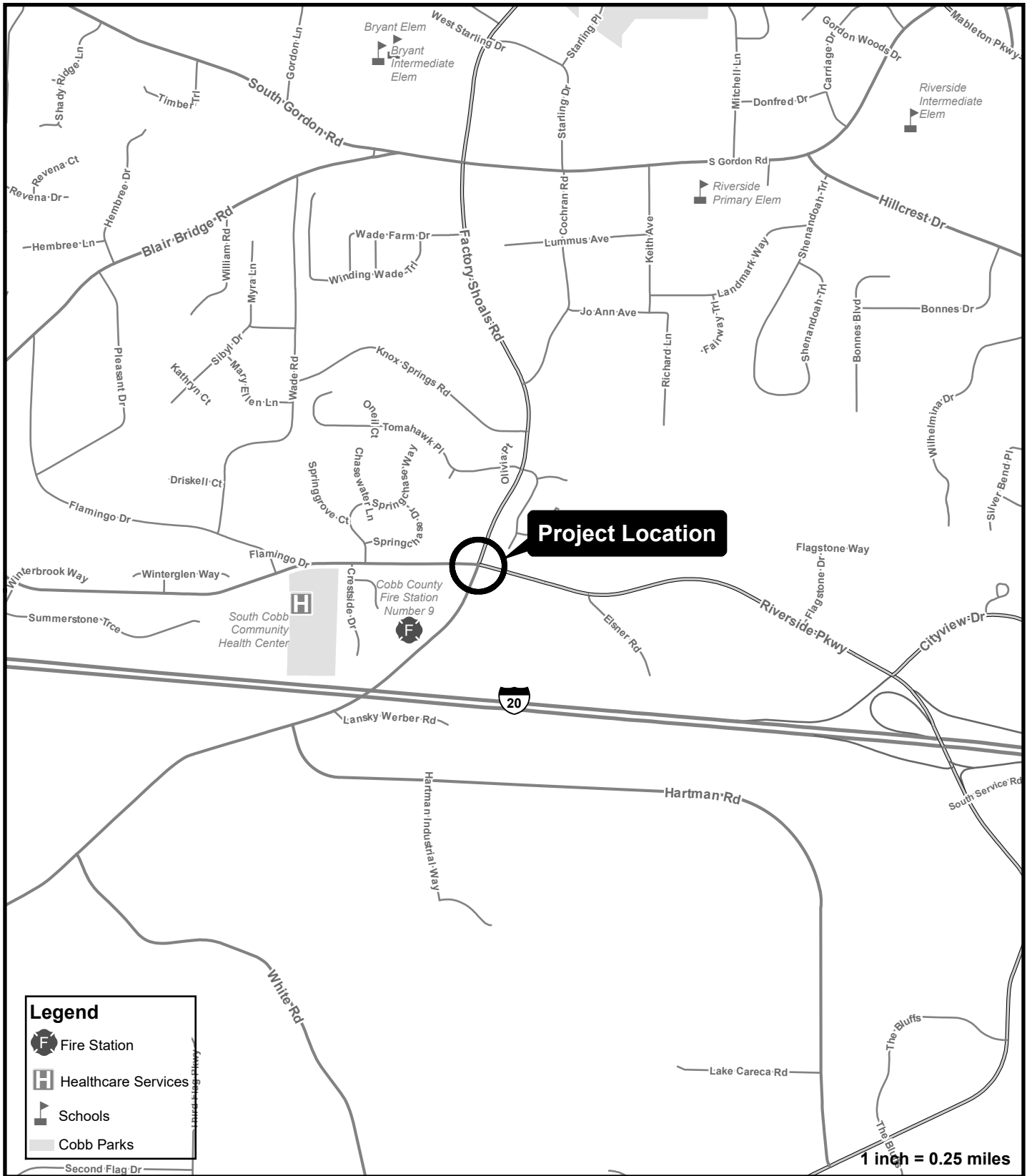
The Board of Commissioners approve Change Order No. 1 to the contract with Baldwin Paving Company, Inc., a no-cost time extension through December 28, 2020, for intersection improvements on Factory Shoals Road at Riverside Parkway, Project No. X2306, CCDOT Contract No. 001296; and authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

1. Location Map



# LOCATION MAP



**Legend**

- Fire Station
- Healthcare Services
- Schools
- Cobb Parks

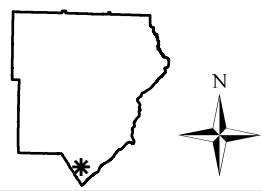
1 inch = 0.25 miles



Department of Transportation

**PROJECT:**  
**Factory Shoals Road at Riverside Parkway**  
**Project No. X2306**

DATE: August 25, 2020



Notes: Commission District 4



## Transportation

Erica Parish, Agency Director

District 4

Item No. 27.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Erica Parish, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To approve Change Order No. 2 (final) to the contract with Excellere Construction, LLC for repairs on Silver Comet Trail Bridges, Project No. X2119, CCDOT Contract No. 001472.

### **BACKGROUND**

Silver Comet Trail Bridges is an approved bridge repair/rehabilitation project in the 2016 SPLOST Transportation Improvements Program.

The project consisted of repairing two existing bridges located on the Silver Comet Trail. Repairs on the bridge over Nickajack Creek included replacement of the bridge railing and footing repairs. Repairs on the bridge over Noses Creek included replacement of the bridge deck, wood pile, and pile encasements, as well as installation of a bridge deck drainage system.

On August 13, 2019, the Board of Commissioners approved a contract with Excellere Construction, LLC (Excellere), for bridge repairs on Silver Comet Trail Bridges.

On April 28, 2020, the Board ratified previous action by the County Manager approving Change Order No. 1 to the contract with Excellere, a no-cost time extension through May 30, 2020, for bridge repairs on Silver Comet Trail Bridges.

### **Details for action requested are as follows:**

Construction is complete and Change Order No. 2 (final) to the contract with Excellere, a savings to the project in the amount of \$118,538.73, is requested due to variations between the original and final quantities. These are the final changes necessary to close this contract with Baldwin.

Original Contract	\$573,500.00
Change Order No. 1	\$ 0.00
<b>Change Order No. 2 (final)</b>	<b><u>(\$118,538.73)</u></b>
<b>Revised Contract</b>	<b>\$454,961.27</b>

**IMPACT STATEMENT**

N/A

**FUNDING**

A savings to the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Decrease GAE 34708131934: 347-050-X210-X210-8762-X2119-C	Turnkey Construction	\$118,538.73
Transfer from: 347-050-X210-X210-8762-X2119-C	Turnkey Construction	\$118,538.73
Transfer to: 347-050-X200-X200-8761-X2000-C	Preliminary Estimate	\$118,538.73

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Bridges and Culverts.

Silver Comet Trail Bridges is an eligible project/program under the Infrastructure Preservation – Bridges and Culverts Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 12). Silver Comet Trail Bridges includes repairs to existing bridges along the Silver Comet Trail.

SPLOST Project Summary as of August 5, 2020:

Silver Comet Trail Bridges	Budget: \$574,745.00	Expended: \$455,206.77
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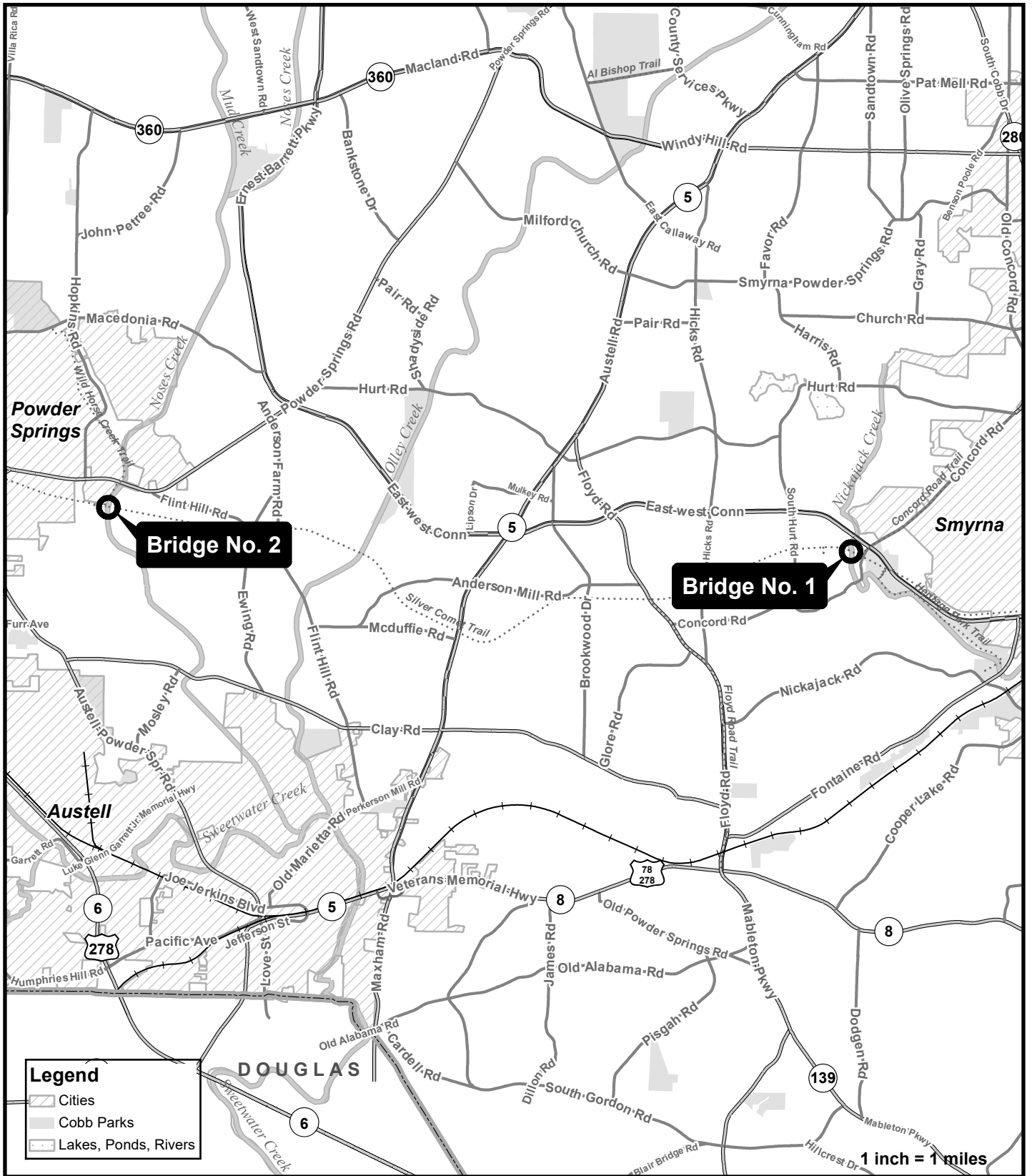
**RECOMMENDATION**

The Board of Commissioners approve Change Order No. 2 (final) to the contract with Excellere Construction, LLC, a savings to the project in the amount of \$118,538.73, for repairs on Silver Comet Trail Bridges, Project No. X2119, CCDOT Contract No. 001472; authorize the corresponding budget transaction; and further authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

1. Location Map

# LOCATION MAP



**Legend**

- Cities
- Cobb Parks
- Lakes, Ponds, Rivers

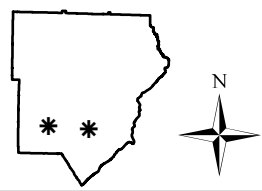
1 inch = 1 miles



Department of Transportation

**PROJECT:**  
**Silver Comet Trail Bridges**  
**Project No. X2119**

**DATE:** August 25, 2020



Notes: Commission District 4



## Transportation

Erica Parish, Agency Director

District 4

Item No. 28.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Erica Parish, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To approve a Supplemental Agreement No. 1 to Project No. X2769-TO#01 to the 2018 Master Task Order Contract with Long Engineering, Inc., for engineering design of Old Alabama Road Sidewalk, CCDOT Contract No. 001308.

### **BACKGROUND**

Sidewalks is an approved component in the 2016 SPLOST Transportation Improvements Program.

The original scope of the Old Alabama Road Sidewalk project consisted of adding a five-foot wide sidewalk along both sides of Old Alabama Road, from Maxham Road to Old Powder Springs Road. The scope of this project has been revised to fill-in gaps with existing sidewalks on the south side of Old Alabama Road, from Maxham Road to Thunderwood Road, and also on the north side of Old Alabama Road, from Megcole Road to Pisgah Road. The total revised length of the project is now estimated at 2.58 miles.

On May 22, 2018, the Board of Commissioners approved the 2018 Master Task Order Contracts. Long Engineering, Inc., was approved as a consultant for Highway Design: Roadway, Bridge, Surveying, and Geotechnical services.

On April 9, 2019, the Board approved Project No. X2769-TO#01 to the 2018 Master Task Order Contract with Long Engineering, Inc., (Long) for engineering design of Old Alabama Road Sidewalk. The scope for this Task Order included services required to complete preliminary engineering design of this project.

### **Details for action requested are as follows:**

As design nears completion, additional engineering design support services are required. Additional services will consist of engineering design support through construction completion and project close out. This support will include preparation of right-of-way plans, final construction documents, and assistance during construction.

Supplemental Agreement No. 1 to Project No. X2769-TO#01 to the 2018 Master Task Order Contract with Long, in an amount not to exceed \$123,703.68, is requested for final design services required for Old Alabama Road Sidewalk, to include final construction documents and right-of-way plans.

Original Contract	\$331,665.00
<b>Supplemental Agreement No. 1</b>	<b><u>\$123,703.68</u></b>
<b>Revised Contract</b>	<b>\$455,368.68</b>

**IMPACT STATEMENT**

N/A

**FUNDING**

Available in the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Transfer from:	347-050-X270-X270-8761-X2769-C	Preliminary Estimate	\$123,703.68
Transfer to:	347-050-X270-X270-8722-X2769-E	Engineering	\$123,703.68
Increase GAE 34704091934:	347-050-X270-X270-8722-X2769-E	Engineering	\$123,703.68

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Sidewalks.

Old Alabama Road Sidewalk is an eligible project/program under the Pedestrian Improvements – Sidewalks Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 14). Pedestrian Improvements within Commission District 4 include construction of sidewalks and other pedestrian improvements along roadways in the vicinity of schools, activity centers, multi-modal facilities (transit stops/shelters, etc.), and other congested areas, to include pedestrian bridges, where needed.

SPLOST Project Summary as of August 5, 2020:

Old Alabama Road Sidewalk	Budget: \$3,736,665.00	Expended: \$282,825.83
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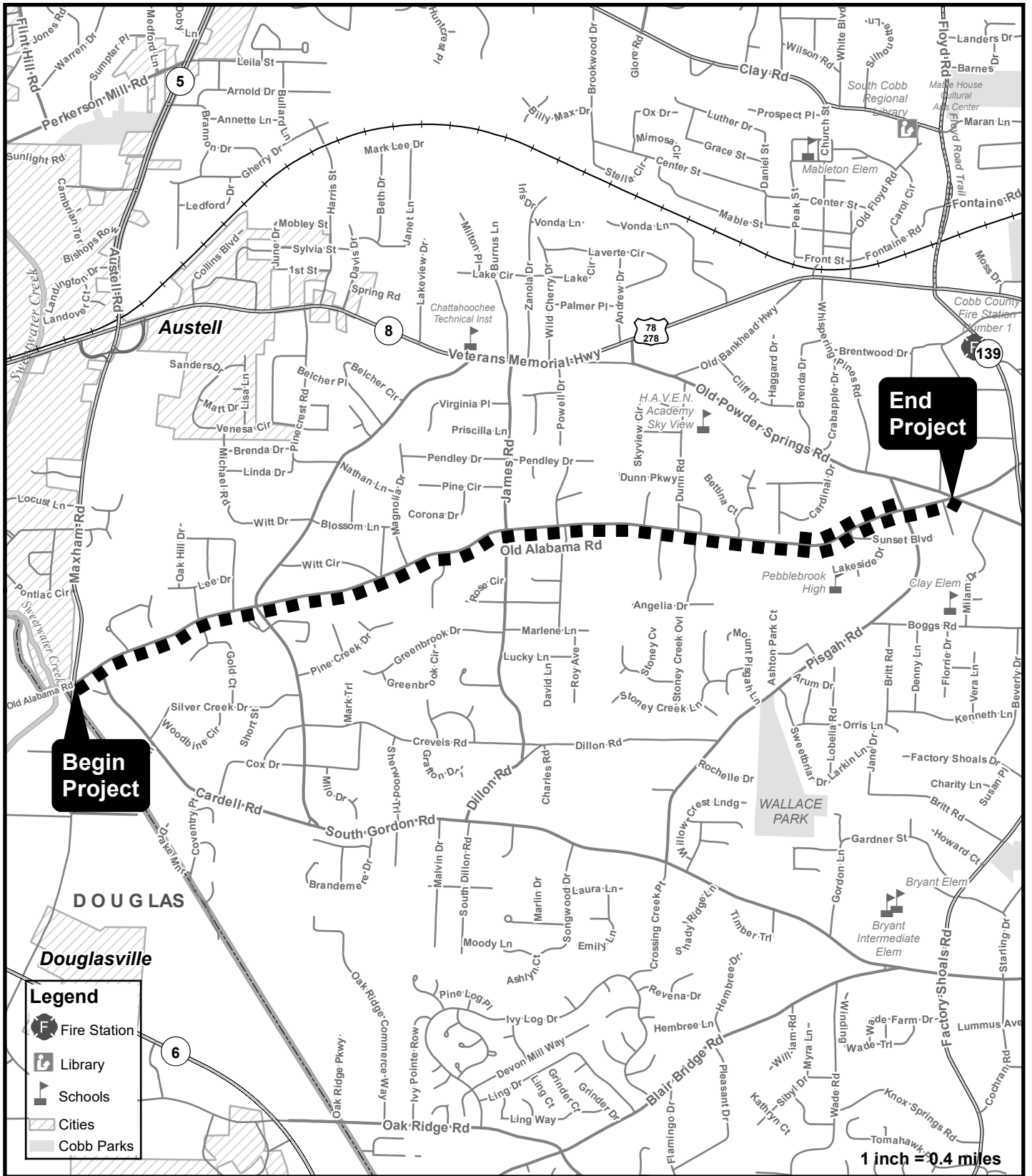
**RECOMMENDATION**

The Board of Commissioners approve Supplemental Agreement No. 1 to Project No. X2769-TO#01 to the 2018 Master Task Order Contract with Long Engineering, Inc., in an amount not to exceed \$123,703.68, for engineering design of Old Alabama Road Sidewalk, CCDOT Contract No. 001308; authorize the corresponding budget transaction; and further authorize the Chairman to execute the necessary documents.

**ATTACHMENTS**

1. Location Map

# LOCATION MAP



**Begin Project**

**End Project**

1 inch = 0.4 miles

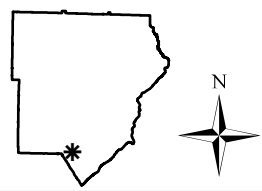
- Legend**
- Fire Station
  - Library
  - Schools
  - Cities
  - Cobb Parks



Department of Transportation

**PROJECT:**  
**Old Alabama Road Sidewalks**  
**Project No. X2769**

**DATE:** August 25, 2020



Notes: Commission District 4





## Support Services

Sharon Stanley, Agency Director

District 1

Item No. 29.

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Sharon Stanley, Agency Director

**DATE:** August 25, 2020

### **PURPOSE**

To authorize a contract for the sale of certain real property situated at 4569 Dallas Street in Acworth, Georgia not required for County purposes, to the City of Acworth, through the brokerage firm of McWhirter Realty Partners.

### **BACKGROUND**

On July 25, 2017, the Board of Commissioners approved a contract with McWhirter Realty Partners for commercial real estate brokerage services related to the sale and lease of Cobb County properties and the purchase of new properties for use by the county.

On March 20, 2020, a Commercial Purchase and Sale Agreement from Daniel Lee to purchase the property located at 4569 Dallas Street in Acworth, Georgia for the sum of \$260,000.00 was submitted through McWhirter Realty Partners. The property consists of 0.78-acres improved with a one-story 2,916 square feet building. That offer was subject to a number of contingencies to closing, including rezoning the property for use as a dental medical facility and purchaser obtaining financing. Subsequently, it was discovered that a number of other issues would need to be resolved in order to consummate the sale to Dr. Lee, including renegotiating a parking lease with the City of Acworth. An updated appraisal of the property lowered the fair market value of the property to \$240,000 given the lack of the parking on the property and other concerns.

Discussions were then held with the City of Acworth to address the outstanding issues. A proposal was made to sell the property directly to the city, which would, in turn resolve the issues in a sale of the property to Dr. Lee. The two transactions would be closed concurrently upon such resolution. This would result in reduced risk of closing and cost savings to the county in legal fees and expenses to cure the outstanding issues,

A Purchase and Sale Agreement (“Offer”) to purchase the property for the sum of \$240,000.00 was negotiated with the City of Acworth. The Offer provides for an extended due diligence period to allow the city sufficient time to rezone the property and address the other issues.

The Property Advisory Commission recommends that this property be declared surplus and sold to the City of



Acworth for that price and pursuant to the terms of the Offer. The sale of this property would bring additional revenue to the county. The net proceeds after expenses (i.e. appraisals, real estate broker fees, sale, and closing costs) will go into a surplus property account to be used for one-time expenditures as brought forward by the County Manager for Board of Commissioner appropriations.

**IMPACT STATEMENT**

N/A

**FUNDING**

Funding will be appropriated as follows:

Increase Revenue: 010-015-0145-4944 Sale of Salvage Property \$240,000.00  
Increase Expenditure: 010-015-0145-8854 Fund Balance-Undesignated \$240,000.00

**RECOMMENDATION**

The Board of Commissioners declare as surplus and approve a contract for the sale of property situated at 4569 Dallas Street in Acworth, Georgia, not required for County purposes,, to the City of Acworth, through the brokerage firm of McWhirter Realty Partners, in the amount of \$240,000.00, pursuant to the terms of the attached Agreement for Purchase and Sale; authorize the corresponding budget transactions, and further authorize the Chairman to execute the necessary documents and take all other action necessary to facilitate this sale.

**ATTACHMENTS**

1. Purchase and Sale Agreement - 4569 Dallas Street Final

## **AGREEMENT FOR PURCHASE AND SALE**

**THIS AGREEMENT** (“Agreement”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), by and between **COBB COUNTY, GEORGIA**, a political subdivision of the State of Georgia, and **THE CITY OF ACWORTH**, a Georgia municipal corporation (hereinafter referred to as “Purchaser”).

### **WITNESSETH:**

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1.0 Agreement to Sell and Purchase: Seller agrees to sell and Purchaser agrees to purchase, upon the terms and conditions hereinafter set forth, all that tract or parcel of land consisting of approximately .749 acres, situated at 4569 Dallas Street, in Acworth, Georgia, being all of the property identified as Tax Parcel ID No. 20-0032-0197-0, as further described on **Exhibit “A”**, attached hereto and by reference made a part hereof.

2.0 Purchase Price: The purchase price for the Property shall be Two HUNDRED FORTY THOUSAND AND 00/100 DOLLARS (\$240,000.00) (the “Purchase Price”).

3.0 Earnest Money: Seller shall, within three (3) business days of the Effective Date of this Agreement, deposit the sum of TEN THOUSAND DOLLARS (\$10,000.00) (“Earnest Money”) with the law firm of Haynie, Litchfield & White, P.C. (“Escrow Agent”). The Earnest Money shall be applied to the Purchase Price at Closing, and shall be refundable to Purchaser if, and only if: (i) Purchaser elects to terminate this Agreement on or before the last day of the initial Due Diligence Period, or (ii) Seller defaults upon its obligations hereunder beyond the expiration of any applicable notice and cure period.

4.0 Due Diligence: Purchaser, its agents or representatives, shall have the right at reasonable times during normal business hours after notice to Seller, for a period of three hundred sixty-five (365) days from and after the Effective Date, to enter upon the Property for the purposes of conducting soil tests, borings, percolation tests, environmental and any other tests, inspections, or examinations that Purchaser desires in regard to the Property (“Diligence Period”). Purchaser shall be responsible for the payment of any inspection fees, appraisal fees, engineering fees or other expenses of any kind incurred by Purchaser in the inspection or investigation of the Property. Purchaser shall immediately remove from title to the Property or bond off any mechanics or other liens associated with such due diligence. After any such entry or inspection, Purchaser shall promptly restore the Property to its prior condition. Purchaser shall, to the fullest extent of the law, indemnify, defend and hold Seller harmless from any and all actions, suits, liens, claims, damages, expenses, losses, and liabilities (including reasonable attorney's fees and expenses) arising from or related to Purchaser's agents' or contractors' entry upon the Property or any such inspection or study performed thereby, which indemnity shall survive the Closing or the termination of this Agreement.

If, after such tests, inspections, or examinations, Purchaser finds, in its reasonable discretion, the Property unsuitable for Purchaser's contemplated use, sale or development, Purchaser may notify Seller in writing prior to the termination of the Due Diligence Period that Purchaser has elected to terminate this Agreement. In the event Purchaser does not timely elect to terminate this Agreement in accordance with this Section 4.0, Purchaser shall be deemed to have waived this termination right. Upon such termination, the Earnest Money shall be returned to Purchaser, less the sum of One Hundred Dollars (\$100.00), which is paid as independent consideration to Seller. If Purchaser terminates this Agreement after the end of the Inspection Period, all Earnest Money shall be sent to Seller. Upon the termination of this Agreement pursuant to this subparagraph, the parties shall have no further obligations, rights, or duties hereunder, except those terms that expressly survive the termination of this Agreement.

5.0 "AS IS" CONDITION: PURCHASER HEREBY EXPRESSLY ACKNOWLEDGES AND AGREES THAT PURCHASER WILL HAVE, AS OF CLOSING, THOROUGHLY INSPECTED AND EXAMINED THE STATUS OF TITLE TO THE PROPERTY AND THE PHYSICAL CONDITION OF THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE PURCHASER TO EVALUATE THE PURCHASE OF THE PROPERTY. PURCHASER HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, PURCHASER IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION AND EVALUATION OF THE TITLE AND PHYSICAL CONDITION OF THE PROPERTY BY PURCHASER AND THAT PURCHASER IS PURCHASING AND AT CLOSING WILL ACCEPT THE PROPERTY ON AN "AS IS" "WHERE IS" AND "WITH ALL FAULTS" BASIS WITHOUT REPRESENTATIONS, WARRANTIES AND COVENANTS EXPRESSED OR IMPLIED OF ANY KIND OR NATURE, AS TO HABITABILITY, FITNESS FOR ANY PARTICULAR USE OR PURPOSE, PHYSICAL, STRUCTURAL, ENVIRONMENTAL OR OTHER CONDITION THEREOF OR OTHERWISE, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT.

6.0 Representations and Warranties:

6.1 Seller. Seller represents and covenants to Buyer that there are no actions, suits or proceedings pending or threatened against, by or affecting Seller or the Property; Seller has the authority to convey the Property to Buyer without the joinder of any other person or entity; on the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, materialmen, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any person could claim a lien against the Property; and the Property will be delivered to Buyer at Closing free and clear from any leases, contracts and tenants in possession. Each representation and warranty of Seller contained in this Agreement shall be true and accurate as of the date hereof and shall be deemed to have been made again at and as of Closing and shall be then true and accurate in all material respects.

6.2 Purchaser. Purchaser represents and warrants to Seller as follows: Purchaser is duly organized and legally existing under the laws of the State of Georgia; the

execution and delivery of, and Seller's performance under, this Agreement are within Purchaser's powers and have been duly authorized by all requisite municipal or corporate action; the person executing this Agreement on behalf of Purchaser has the authority to do so; this Agreement constitutes the legal, valid and binding obligation of Purchaser enforceable in accordance with its terms; performance of this Agreement will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Purchaser is a party or by which Purchaser might be bound; and that there are no actions, suits or proceedings pending or threatened against, by or affecting Purchaser which would prevent, impair or impact Purchaser's ability to consummate the purchase of the Property. Each representation and warranty of Purchaser contained in this Agreement shall be true and accurate as of the date hereof and shall be deemed to have been made again at and as of Closing and shall be then true and accurate in all material respects.

#### 7.0 Title:

Seller agrees to convey good and marketable fee simple title to the Property to Purchaser at Closing by limited warranty deed. "Good and marketable fee simple title" is hereby defined as title which is insurable by a national title insurance company licensed to do business in the State of Georgia at its regular rates on an ALTA Owner Policy, without exception other than the following "Permitted Title Exceptions": (1) zoning ordinances affecting said Property; (2) general utility easements of record serving said Property upon which any buildings on the Property do not encroach; (3) current city, state and county ad valorem property and sanitary taxes, if any, not yet due and payable; (4) covenants or restrictions then on record reasonably acceptable to Purchaser; and, (4) such other easements, restrictions and encumbrances specified in this Agreement or in **Exhibit "B"** attached hereto and by reference incorporated herein.

Purchaser shall have the right, prior to the expiration of the Due Diligence Period, to examine title to the Property and to furnish Seller with a written statement of objections to matters adversely affecting said title, excluding the Permitted Title Exceptions. Seller shall, within ten (10) business days after receipt of such statement of objections ("Seller's Response Period"), advise Purchaser in writing that it elects to or elects not to cure such matters. Seller may, but shall have no obligation to, cure any title matters. If Seller fails to provide such written notice to Purchaser prior to the expiration of Seller's Response Period, Seller shall be deemed to have elected not to cure any such objectionable Title Defects. If Seller elects (or is deemed to have elected) not to, cure such objections, then Purchaser, at its option, may (a) terminate this Agreement by written notice to Seller by written notice of cancellation given to Seller within five (5) days following the expiration of Seller's Response Period (failing which Purchaser shall be deemed to have waived its objections), or (b) waive such objections and proceed to Closing accepting title to the Property subject to such matters without offset or deduction from the Purchase Price. If Purchaser elects to terminate this Agreement, the Earnest Money shall be returned to Purchaser, less the sum of One Hundred Dollars (\$100.00), and the parties shall have no further obligations, rights, or duties hereunder, except those terms that expressly survive the termination of this Agreement.

8.0 Survey: Purchaser may obtain a current survey of the Property. In the event such survey reveals any encroachments or other matters unacceptable to Purchaser, in its reasonable discretion, Purchaser shall have the right to object to such survey matters by written notice to Seller prior to the expiration of the Due Diligence Period. Seller shall have the right to cure or elect not to cure such survey matter in the manner as provided in Section 7.0 above. If Seller elects (or is deemed to have elected) not to cure such survey matters prior to Closing as provided in Section 6.0 a. above, then Purchaser shall have the rights of waiver and cancellation provided in Section 6.0 a.

## 9.0 Default

9.1 Seller's Default: If, prior to or at the Closing, Seller defaults hereunder, or shall have failed to perform any of the covenants or agreements contained in this Agreement which are to be performed by Seller, or if any warranty or representation made by Seller herein is not true and correct, then Purchaser shall have the right to (a) specific performance of this Agreement; or (b) terminate this Agreement, whereupon the earnest money shall be returned to Purchaser and the parties shall be relieved of all further obligations and liabilities arising out of the Agreement, except for those obligations which by their express terms survive the termination of this Agreement.

9.2 Purchaser's Default. If, prior to or at the Closing, Purchaser defaults hereunder, or shall have failed to perform any of the covenants or agreements contained in this Agreement which are to be performed by Purchaser, or if any warranty or representation made by Purchaser herein is not true and correct, then Seller shall have the right to (a) specific performance of this Agreement; (b) pursue any remedies available to Seller, at law or in equity, due to such default by Seller; and/or (c) terminate this Agreement, whereupon the earnest money shall be paid to Seller and the parties shall be relieved of all further obligations and liabilities arising out of the Agreement, except for those obligations which by their express terms survive the termination of this Agreement.

## 10.0 Condition to Closing.

A. Seller Conditions. The obligation of Seller to consummate the transaction contemplated by this Agreement is subject to the following conditions which, if not fulfilled by the Closing or as otherwise provided herein, shall entitle Seller, at its option, to terminate the Agreement:

(i) Timely Performance. Purchaser shall have timely complied with its obligations hereunder;

(ii) Truth and Accuracy. All warranties and representations made by Purchaser herein shall have been and remain truthful in all material respects.

(iii) Approval of the Board of Commissioners. Seller's obligation to sell the Property shall be contingent upon the approval by the Cobb County Board of Commissioners of the transactions contemplated by this Agreement. In the event the Board of

Commissioners fails to approve this transaction prior to the expiration of the Due Diligence Period, this Agreement shall terminate automatically without further action of the parties, whereupon the Earnest Money shall be refunded to Purchaser and the parties shall be relieved of all further obligations hereunder, except for those obligations which expressly survive the termination of this Agreement.

(iv) Mutual Termination, Cancellation, and Release of Intergovernmental Lease Agreement between Cobb County, Georgia, as Landlord, and City of Acworth, as Tenant, dated May 13, 2006 for the Property address known as 4569 Dallas Street, Acworth, Georgia.

B. Purchaser Conditions. The obligation of Purchaser to consummate the transaction contemplated by this Agreement is subject to the following conditions which, if not fulfilled by the Closing or as otherwise provided herein, shall entitle Purchaser, at its option, to terminate the Agreement:

(i) Timely Performance. Seller shall have timely complied with its obligations hereunder;

(ii) Truth and Accuracy. All warranties and representations made by Seller herein shall have been and remain truthful in all material respects.

(iii) Approval of the City Council. Purchaser's obligation to purchase the Property shall be contingent upon the approval by the Council of the City of Acworth of the transactions contemplated by this Agreement. In the event the City Council fails to approve this transaction prior to the expiration of the Due Diligence Period, this Agreement shall terminate automatically without further action of the parties, whereupon the Earnest Money shall be refunded to Purchaser and the parties shall be relieved of all further obligations hereunder, except for those obligations which expressly survive the termination of this Agreement.

(iv) Mutual Termination, Cancellation, and Release of Intergovernmental Lease Agreement between Cobb County, Georgia, as Landlord, and City of Acworth, as Tenant, dated May 13, 2006 for the Property address known as 4569 Dallas Street, Acworth, Georgia.

#### 11.0 Closing and Closing Costs:

11.1 Closing. The consummation of the transactions described herein (herein referred to as "Closing") will be held at the law offices of Haynie, Litchfield & White, P.C. ("Closing Attorney"). The closing shall take place on or before the date that is fifteen (15) days after the expiration of the Due Diligence Period, or such other date as is agreed to by the parties ("Closing Date"). Seller and Purchaser agree to comply with, and to execute and deliver such certifications, affidavits, and statements as are required at the closing in order to meet the requirements of the Internal Revenue Code Section 1445 (Foreign/Non-foreign Sellers). Seller and Purchaser agree to reasonably cooperate with one another to deliver documents in escrow to

the Closing Attorney to avoid the need for representatives of Seller and Purchaser to attend the Closing. The Closing Attorney will represent Seller at the Closing

11.2 Closing Costs. At Closing, Purchaser shall pay the cost of the title commitment, owner's policy of title insurance, Purchaser's attorney fees, and any obligation for real estate brokers' fees or finders' fees, and all other costs incurred by Purchaser with respect to the Property. Seller shall pay costs related to recording of the Limited Warranty Deed to Purchaser, the Georgia Transfer Tax, if any, Seller's attorney's fees, and any obligation for real estate brokers' fees or finders' fees incurred by Seller with respect to the Property.

Ad valorem taxes, if any, shall be prorated as of the Closing Date. All revenue stamps, transfer taxes, and sales tax, if any, payable in connection with the sale contemplated by this Agreement shall be paid by Seller. If Closing shall occur before the tax rate is fixed for the then current year, the apportionment of taxes shall be based upon the tax rate for the immediately preceding year applied to the latest assessed valuation for the Property. The parties agree to adjust the proration of taxes within thirty (30) days after the actual taxes for the year in which closing occurs are determined, and pay or refund to the other party any amount required as a result of such adjustment. The proration provisions of this Section 11.2 shall survive the Closing. Each party shall pay its own attorneys fees incurred in connection with the transaction that is the subject of this Agreement. Seller and Purchaser shall each pay one-half (1/2) of any reasonable and actual charges for the Escrow Agent for holding the Earnest Money.

## 12.0 Closing Documents:

12.1 By Seller. At the Closing, Seller shall execute and deliver to Purchaser the following documents and instruments prepared by Seller, each duly executed and acknowledged:

(i) a Limited Warranty Deed, dated as of the Closing Date, conveying the Property to Purchaser or its permitted assigns;

(ii) a Closing Statement;

(iii) an affidavit of title and such other documents as may be reasonably required by the title insurance company to issue title insurance to Purchaser;

(iv) an executed certificate with respect to Seller's non-foreign status sufficient to comply with the requirements of Section 1445 of the Code;

(v) a lien waiver executed by Seller's broker confirming that such broker waives, releases and fully discharges any and all lien, claims of lien, or any rights, power or interest that broker has with respect to the Property pursuant to O.C.G.A. §§ 44-14-600. *et. seq.* or otherwise;

(vi) such other instruments documents as may be reasonably required by and acceptable to Purchaser's counsel or the Closing Attorney to consummate the transactions contemplated by this Agreement.

(vii) Mutual Termination, Cancellation, and Release of Intergovernmental Lease Agreement between Cobb County, Georgia, as Landlord, and City of Acworth, as Tenant, dated May 13, 2006 for the Property address known as 4569 Dallas Street, Acworth, Georgia.

12.2 By Purchaser. At the Closing, Purchaser shall do, execute and deliver to Seller the following documents and instruments prepared by Purchaser, each duly executed and acknowledged:

(i) pay to the Seller the Purchase Price set forth in Section 2.0, adjusted as provided herein, by wire transfer in immediately available funds to a bank account designated by the Seller.

(ii) provide evidence reasonably acceptable to Seller, authorizing the consummation by Purchaser of the purchase and sale transaction contemplated hereby and the execution and delivery of the closing documents on behalf of Purchaser.

(iii) a Closing Statement;

(iv) a lien waiver executed by Purchaser's broker confirming that such broker waives, releases and fully discharges any and all lien, claims of lien, or any rights, power or interest that broker has with respect to the Property pursuant to O.C.G.A. §§ 44-14-600. *et seq.* or otherwise;

(v) such other instruments documents as may be reasonably required by and acceptable to Seller's counsel or the Closing Attorney to consummate the transactions contemplated by this Agreement.

(vi) Mutual Termination, Cancellation, and Release of Intergovernmental Lease Agreement between Cobb County, Georgia, as Landlord, and City of Acworth, as Tenant, dated May 13, 2006 for the Property address known as 4569 Dallas Street, Acworth, Georgia.

13.0 Possession. Seller shall deliver possession of the Property to Purchaser at Closing.

14.0. Waiver: The failure of any party to exercise any right hereunder, or to insist upon strict compliance with the terms and conditions of the Agreement, and no custom or practice of Seller or Purchaser at variance with the terms and conditions of this Agreement shall constitute a waiver hereunder.

15.0. Entire Agreement: This Agreement constitutes the entire agreement and understanding concerning the purchase and sale of the Property contemplated hereby. This Agreement may not be changed orally, but only by an amendment in writing signed by Purchaser and Seller.



16.0. Notices: All notices shall be in writing, and shall be deemed to have been duly given (a) at the time and on the date when received if personally delivered (b) on the first business day after having been delivered to a nationally recognized overnight air courier service and with a commercial courier for next day delivery, or (c) three business days after having been deposited in registered or certified mail, return receipt requested to the addresses below.

SELLER:

Cobb County, Georgia  
100 Cherokee Street, Suite 300  
Marietta, Georgia 30090;

With a copy to:  
County Attorney  
Suite 350, 100 Cherokee Street  
Marietta, Georgia 30090;

PURCHASER:

The City of Acworth  
4415 Center Street,  
Acworth, GA 30101

With a copy to:  
Douglas Haynie, Esq.  
Haynie, Litchfield and White, PC  
222 Washington Avenue  
Marietta, GA 30060

Either party may, from time to time, by five (5) days' prior written notice to the other party, specify a different address to which notices will be sent. Rejection or refusal to accept a notice or inability to deliver a notice because of a changed address of which no notice was given will be deemed a delivery of the notice on the date when postmarked.

17.0 Survival: Any provisions of this Agreement and all warranties, representations and covenants made herein, shall survive the Closing.

18.0 Governing Law: This Agreement shall be governed by the laws of the State of Georgia. The parties agree exclusive venue shall lie in Cobb County, Georgia.

19.0 Risk of Loss: Risk of Loss. Seller shall bear the risk of loss with respect to the Property until the Closing Date.

20.0 Brokers: Seller and Buyer warrant and represent to each other that they have not employed or dealt with any other real estate agent or broker relative to the sale and purchase of the Property, other than Lisa Rock (broker name to be added) on behalf of Purchaser and McWhirter Realty Partners, LLC on behalf of Seller, whose six percent (6%) commission shall be split equally and paid by Seller at Closing. Purchaser agrees, to the extent permitted by applicable law, to indemnify and hold Seller harmless from and against any claims for any other real estate brokerage commissions.

21.0 Assignment/Binding Effect: Except for an Assignment by the City of Acworth to the Acworth Downtown Development Authority, this Agreement, and the rights and obligations hereunder, may not be assigned by either party without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld, conditioned, or delayed. The Agreement shall be fully binding on and enforceable against all parties hereto and their respective heirs, administrators, successors, and permitted assigns.

22.0 TIME IS OF THE ESSENCE OF THIS AGREEMENT.

23.0 Severability: Should any portion of this Agreement be deemed invalid, illegal or unenforceable for any reason by a court or body of competent jurisdiction, then the remaining portions of this Agreement shall remain in full force and effect.

24.0 Entire Agreement. This Agreement and the exhibits attached hereto contain the entire agreement between the parties. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by Purchaser and Seller.

25.0 Rights Cumulative: All rights, powers and privileges conferred hereunder will be cumulative and not restrictive of those given by law, except where otherwise expressly provided herein.

26.0 No Strict Construction. The parties hereto have participated jointly in the negotiation and/or drafting of this Security Instrument. In the event an ambiguity or question of intent or interpretation arises with respect to this Security Instrument, this Security Instrument shall be construed as if drafted jointly by the Grantor and Grantee and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Security Instrument.

27.0 Sovereign Immunity. Nothing contained in this Agreement shall be construed to be a waiver of Cobb County's or the City of Acworth's sovereign immunity or any individual's qualified good faith or official immunities.

28.0 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which shall constitute one Agreement, and the signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to any other counterpart.

IN WITNESS WHEREOF, the parties have set their hands and seals and agreed to be bound hereby as of the day and year first above written.

**SELLER:  
COBB COUNTY, GEORGIA**

By: \_\_\_\_\_  
Michael H. Boyce, Chairman  
Cobb County Board of Commissioners

Approved as to Form:

Attest: \_\_\_\_\_  
County Clerk

By: \_\_\_\_\_  
County Attorney

**PURCHASER:  
THE CITY OF ACWORTH, GEORGIA**

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

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

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

**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

All that tract or parcel of land situated, lying and being in Land Lot 32 of the 20<sup>th</sup> District and the 2<sup>nd</sup> Section of Cobb County, Georgia, which is more particularly described as follows:

BEGINNING at a point on the west side of Dallas Street 164 feet southerly as measured along the westerly side of Dallas Street from its intersection with the south side of Center Street; thence southerly along the west side of Dallas Street 100 feet; thence westerly 300 feet to the east side of Mill Street; thence northerly 100 feet; thence easterly 300 feet to the point of beginning.

**EXHIBIT "B"**  
**PERMITTED TITLE EXCEPTIONS**

1. Taxes and assessments not yet due and payable
2. Zoning ordinances affecting the Property
3. Utility, sewer and drainage easements and other matters of record, not affecting Purchaser's proposed use of the Property
4. Rights of ways of all public roads
5. Intergovernmental Lease Agreement, dated May 13, 2006, by and between Cobb county, Georgia, as Landlord and the City of Acworth, Georgia, as Tenant.



## **BOC Chair**

Michael H. Boyce, Chairman

Districts All

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**Item No. 30.**

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Michael H. Boyce, Chairman

**DATE:** August 25, 2020

### **PURPOSE**

To announce the appointment of Ralph Rehn to the Workforce Development Board.

### **BACKGROUND**

The Workforce Development Board was created to provide information and referral services for individuals who are unable to find employment. The Board is charged with directing local workforce programs, designating training service providers, and utilizing federal funds effectively.

The Board is composed of representatives from a wide-cross section of community interests, including primarily business, education, non-profits and other community groups. Members of the 19-member Workforce Development Board are appointed by the chairman of the Board of Commissioners and serve a term of three years.

### **IMPACT STATEMENT**

N/A

### **FUNDING**

N/A

### **RECOMMENDATION**

The Board of Commissioners announce the appointment of Ralph Rehn to the Workforce Development Board, for a term-balance to expire June 30, 2023. This appointment is to fill a vacancy.

### **ATTACHMENTS**

None



## **BOC Chair**

Michael H. Boyce, Chairman

Districts All

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**Item No. 31.**

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Michael H. Boyce, Chairman

**DATE:** August 25, 2020

### **PURPOSE**

To announce the appointment of Michael Chriszt to the Workforce Development Board.

### **BACKGROUND**

The Workforce Development Board was created to provide information and referral services for individuals who are unable to find employment. The Board is charged with directing local workforce programs, designating training service providers, and utilizing federal funds effectively.

The Board is composed of representatives from a wide-cross section of community interests, including primarily business, education, non-profits and other community groups. Members of the 19-member Workforce Development Board are appointed by the chairman of the Board of Commissioners and serve a term of three years.

### **IMPACT STATEMENT**

N/A

### **FUNDING**

N/A

### **RECOMMENDATION**

The Board of Commissioners announce the appointment of Michael Chriszt to the Workforce Development Board, for a term-balance to expire June 30, 2023. This appointment fills a vacancy.

### **ATTACHMENTS**

None



## **BOC Chair**

Michael H. Boyce, Chairman

Districts All

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**Item No. 32.**

*Cobb County...Expect the Best!*

**TO:** Dr. Jackie R. McMorris, County Manager

**FROM:** Michael H. Boyce, Chairman

**DATE:** August 25, 2020

### **PURPOSE**

To approve the reappointment of Ana Murphy to the Cobb County Board of Family and Children Services.

### **BACKGROUND**

Pursuant to the Georgia Law, each County shall have a county department of family and children services, which shall consist of a county Board of Family and Children Services, a county director of family and children services and such additional employees as may be necessary for the efficient performance of the welfare services of the county. The department shall be charged with the administration of all forms of public assistance in the county, including home relief: indoor and outdoor care for those in need; temporary assistance for needy families; old-age assistance; aid to the blind and otherwise disabled; the care and treatment of dependent, neglected, delinquent and disabled children; and such other welfare activities as shall be delegated to it by the Department of Human Services or by the County Board of Commissioners.

The Board of Commissioners shall appoint 7 members to the Board which members should be reflective of gender, race, ethnic and age characteristics of the county population.

### **IMPACT STATEMENT**

N/A

### **FUNDING**

N/A

### **RECOMMENDATION**

The Board of Commissioners approve the reappointment of Ana Murphy to the Cobb County Board of Family and Children Services, Post 5 for a term balance to expire June 30, 2025.

### **ATTACHMENTS**

None



