



Newnan City Council Meeting

October 8, 2024

Newnan City Hall

Richard A. Bolin Council Chambers

25 LaGrange Street

2:30 PM

CALL TO ORDER

INVOCATION

READING OF MINUTES

- A. Minutes from Regular Meeting on September 24, 2024
- B. Minutes from Special Called Meeting on September 24, 2024

REPORTS OF BOARDS AND COMMISSIONS

- C. 1 Appointment - Bicentennial Committee
- D. 1 Appointment - Christmas Commission, 3 year term
- E. 2 Appointments - Ethics Commission, 2 year terms

REPORTS ON OPERATIONS BY CITY MANAGER

REPORTS AND COMMUNICATIONS FROM MAYOR

NEW BUSINESS

- F. Public Hearing - Application for Alcohol Beverage License - J Holts Smokehouse - Retail On Premise (Pouring) Sales of Malt Beverages and Wine - 89 Temple Ave, Suite A - Reason: New Business
- G. Presentation and discussion regarding ordinance updates and fee schedules for Oak Hill and East View Cemeteries
- H. Consideration of contract award for Professional Design Services regarding Bi-Centennial Park and Improvements at Greenville Street Park
- I. Consideration of contract award for Construction Manager Services regarding Bi-Centennial Park and Improvements at Greenville Street Park

UNFINISHED BUSINESS

- J. Council Direction on Charter Amendment and Code of Ordinances Amendment Pertaining to Adoption of Ordinances
- K. Consideration of Amendment to Resolution and Agreement to State the Intended Uses of Funds as a Result of National Opioid Settlements

VISITORS, PETITIONS, COMMUNICATIONS & COMPLAINTS

- L. Request from NHS Band Boosters to Close Armory Rd on November 2, 2024 from 8am - 12am midnight for Band Competition
- M. Request from First Baptist Church to Close Brown St. between W. Washington and Madison for Preschool Fall Festival on October 24, 2024 from 12pm-8pm

MOTION TO ENTER INTO EXECUTIVE SESSION

- N. Motion to Enter into Executive Session

ADJOURNMENT

The regular meeting of the City Council of the City of Newnan, Georgia was held on Tuesday, September 24, 2024 at 6:30 p.m. in the Richard A. Bolin Council Chambers of City Hall with Mayor Keith Brady presiding.

CALL TO ORDER

Mayor Brady called the meeting to order and delivered the invocation.

PRESENT

Mayor Keith Brady: Council members present: Ray DuBose, Jim Thomasson, Cynthia Jenkins, Rhodes Shell, Paul Guillaume and Dustin Koritko. Also present: City Manager, Cleatus Phillips; Assistant City Manager, Hasco Craver; Assistant City Manager, Meg Kelsey; City Clerk, Megan Shea and City Attorney, Brad Sears.

READING OF MINUTES

A. Minutes from the Regular Meeting on September 10, 2024

Motion by Councilman DuBose, seconded by Councilman Shell to dispense with the reading of the minutes of the Regular Council Meeting on September 10, 2024 and adopt them as presented.

MOTION CARRIED. (7-0)

B. Minutes from Work Session on September 10, 2024

Motion by Councilman Shell, seconded by Councilman Thomasson to dispense with the reading of the minutes of the Work Session on September 10, 2024 and adopt them as presented.

MOTION CARRIED. (7-0)

REPORTS OF BOARDS AND COMMISSIONS

Youth Council Attendees

Councilwoman Jenkins introduced the members of the Newnan Youth Council who were in attendance. Jordan Jackson, Madi Rae Harris, Kamryn Styles, Liam Bulford and Naomi Craft.

C. 1 Appointment – Bicentennial Committee

Continue to next agenda.

D. 1 Appointment – Christmas Commission, 3-year term

Continue to next agenda.

E. 8 Appointments – Ethics Commission, 2-year terms

Motion by Mayor Brady, seconded by Councilman Shell to reappoint Carrie Knight for another term.

MOTION CARRIED. (7-0)

Motion by Mayor Brady, seconded by Councilman Shell to reappoint Robert McKoon for another term.

MOTION CARRIED. (7-0)

Motion by Councilman DuBose, seconded by Councilman Koritko to reappoint Bud Freeburg for another term.

MOTION CARRIED. (7-0)

Motion by Councilman DuBose, seconded by Councilwoman Jenkins to reappoint Winston Skinner for another term.

MOTION CARRIED. (7-0)

Motion by Councilman Thomasson, seconded by Councilman Shell to appoint Patrick McKee to the Ethics Commission.

MOTION CARRIED. (7-0)

Motion by Councilman Thomasson, seconded by Councilwoman Jenkins to reappoint Dr. Rebecca Gibson for another term.

MOTION CARRIED. (7-0)

F. 1 Appointment – Keep Newnan Beautiful, 3-year term

Motion by Councilwoman Jenkins, seconded by Councilman Koritko to reappoint Constance Jordan for another term.

MOTION CARRIED. (7-0)

G. 1 Appointment – Tree/Parks Commission, 3-year term

Motion by Mayor Pro Tem Guillaume, seconded by Councilman Koritko to reappoint Casey Child for another term.

MOTION CARRIED. (7-0)

H. 1 Appointment – Youth Activities Commission, 3-year term

Motion by Councilman Koritko, seconded by Councilman Shell to appoint Vashton Smith to the Youth Activities Commission.

MOTION CARRIED. (7-0)

NEW BUSINESS

I. Recognition of Fall 2024 Citizens Academy Graduates

Aimee Hadden, Communications Manager, explained that this program is over 2 days and allows the participants to learn about all the departments within the City of Newnan. Mayor Brady read the names of the graduates, and they received their certificates. Abigail Kimball, Hannah Kupfer, Lexus Hale, Mallory Morman, Gia Percival, Richard Percival and Maria Robinson.

J. Presentation and Recommendation from MSI Benefits for 2025 City of Newnan Employee Benefits Program

Meg Kelsey, Assistant City Manager, introduced John Legett with MSI Benefits Group. MSI is the City's insurance broker, and they specialize in group health insurance and related employee benefits.

Mr. John Legett began with a recap of what was put in place for 2024, which included renewing with Cigna and there were no changes to medical plans or deductions, changes to Dental, Vision and other supplemental benefit carriers. Medical is the only benefit up for renewal for 2025.

He then gave an overview of how 2024 is running so far including pharmacy spend accounting for 23% of claims and medical claims being down. Enrollment has seen a slight increase. He showed how the 3 medical plans offered, bronze, silver and gold, are running. The options for 2025 are to make no changes, to increase employee deductions or to increase employee deductions and eliminate the Gold plan. MSI recommends going with option 2.

Mr. Legett showed how the 3 options would look cost wise for employees and for the City. Cigna did hold the rates for administration fees so that is not changing. Stop Loss is the biggest expense with self-insured. Cigna tried to push for a 10% increase, but MSI negotiated that down to about 8% and the overall fixed cost they negotiated down from 8% to 6%.

Mayor Brady asked Mr. Legett to clarify the increase that would occur with option 2. He stated costs to employees range from \$3 to \$26 depending on the plan they have and coverage. Costs to the City would be a savings of \$7,258 or an expense of \$71,678 with option 1. Mayor Brady suggested for Council to not go with the recommendation and do option 1 instead.

Councilman Thomasson asked why the recommendation is option 2 over option 1? Mr. Phillips explained that when Staff looked at all options, they were also taking balancing the budget into consideration. Since the City has not raised costs and does offer such rich plans, there have been a lot of spouses of employees not previously covered who have now been added. The thought was to make a small move to not have to make a huge move down the road. Mr. Phillips stated that they are also looking at changes to vacation time. Overall, trying to offer a total package in the budget that benefits the employee but doesn't overly burden the budget.

Motion by Councilwoman Jenkins, seconded by Mayor Pro Tem Guillaume to approve option 1 with no changes. Opposed: Thomasson.

MOTION CARRIED. (6-1)

K. Presentation of FY2025 Newnan Centre Budget

Peyton Shelnett, Director of the Newnan Centre, stated that the 2025 budget was approved by their authority.

Motion by Councilman DuBose, seconded by Councilman Thomasson to approve the 2025 budget for the Newnan Centre.

MOTION CARRIED. (7-0)

L. Consideration of Consultant Services for Stormwater Infrastructure Inspections

Michael Klahr, City Engineer, explained that this is to authorize a task work order under a Master Service Agreement with Integrated Science & Engineering for completing this current year and last years stormwater infrastructure inspections. The City has a stormwater infrastructure plan that is approved by the EPD and in that plan there are annual reporting requirements. The permit period is for 5 years, 20% annually to complete. In year 2 now, it is apparent that resources are stretched, and help is needed. The Engineering department does not have the staff it had previously, and infrastructure has increased. The request is to enlist the services of ISE to help catch up for this year. This will be based on a unit price and come out to about \$39,000. ISE does this for 26 municipalities. They are also going to work with the City's GIS department to help automate work orders.

Motion by Councilman DuBose, seconded by Councilman Thomasson to approve the task work order as presented.

MOTION CARRIED. (7-0)

M. Consideration and Review of Submissions for Grant Writing and Administrative Services related to a Community HOME Investment Program (CHIP) 2025 Application

Andrew Moody, Special Projects Manager, explained that Council previously approved procuring a contractor for the CHIP Grant process. Per the Department of Community Affairs, Council must serve as the review body on the proposals. Staff provided a summary of the two responses received. The recommendation was to proceed with Gilbert & Associates.

Motion by Councilman DuBose, seconded by Councilman Thomasson to move forward with Gilbert & Associates.

MOTION CARRIED. (7-0)

UNFINISHED BUSINESS

N. Public Hearing – Rezoning Request RZ2024-02 – 0.48 acres at 65 Millard Farmer Ind Blvd
(Portion of Tax Parcel N57A-091)

Mayor Brady opened the public hearing.

Dean Smith, Senior Planner, stated that this comes after the work session that was held. At the work session there was discussion on the history of the property and Staff did some research on that. Originally, a large chunk of this land was zoned Industrial but in 1996, the owners zoned it Commercial. So, this essentially would turn it back to its original zoning.

Mr. Smith went through the 8 standards that are required for all rezonings. The proposed use is suitable, as most of the surrounding businesses are industrial. There would be no adverse effect on adjacent or nearby properties. The property could be used as currently zoned. There would be very little impact on service provision. The future land use map shows this property as business/office, so it is not compatible with the intent of the comprehensive plan. The proposed use is consistent with the proposed zoning district. The City completed a full update to the Comprehensive Plan in 2021, including the future land use map and again since the proposed use is not business/office then it is not supported by new or changing conditions not anticipated by the Comprehensive Plan. The proposed use does reflect a reasonable balance between the promotion of the public health, safety, morality and general welfare and the right to unrestricted use of property. This rezoning meets 5 of the 8 standards.

Staff recommends that the owner engage a surveyor to perform a combination plat and that a 15ft landscape buffer would be put up on the western property lines. The Planning Commission held a public hearing on August 13, 2024 and they recommended all conditions, including that the applicant maintain an adequate screening buffer, including existing trees, to screen the containers from Millard Farmer Industrial Blvd. Planning Commission voted 5-0 to recommend approval.

Applicant, Robert Dollar was present, and Council had no questions. No one spoke for or against the rezoning. Mayor Brady closed the public hearing.

Motion by Mayor Pro Tem Guillaume, seconded by Councilman Shell to accept the report from the Planning Commission.

MOTION CARRIED. (7-0)

Motion by Councilman Shell, seconded by Mayor Pro Tem Guillaume to approve the rezoning as presented.

MOTION CARRIED. (7-0)

O. Consideration of a Resolution to Adopt the 2024 Update to the Capital Improvements
Element (CIE), including the Short-Term Work Program (STWP)

Chris Cole, Senior Planner, stated there had already been a public hearing for this.

Motion by Councilman DuBose, seconded by Councilman Shell to adopt the resolution as presented.

MOTION CARRIED. (7-0)

P. Consideration of an Alternate Plan for the Intersection of Jackson St/Jefferson St/Clark St

Mr. Craver explained that this in response to a previous conversation about this project. Lowe Engineers were asked to show that they could maintain a dedicated north traffic pattern on Jefferson St. while also creating the two-way traffic pattern in front of 75 Jackson St.

Michael Klahr, City Engineer, said feedback was taken from the work session and Lowe Engineers were asked to keep the continuous traffic flow that currently exists on Jefferson St. A plan was shown with that illustrated, along with the left turn from Clark St. to continue onto Jefferson St., called a High T. The plan also showed where the traffic signals would be. The other concern brought up previously was regarding the signals not syncing the way they should, these can be tied together with fiber optics and controlled with one signal so that should fix the syncing issue. The City can't go to GDOT for a permit until there is a clear plan.

Councilman Shell asked about the left turn lane coming down Jackson St, it does not show as 3 lanes. Mr. Phillips said that the previous plan showed 3 lanes, but this new plan shows only 2 lanes. Sameer, with Lowe Engineering, said it would be a shared thru left. A simulation model was shown, illustrating current conditions from all directions and then the proposed.

Mayor Brady commented that his concern had been the 3 lanes and that that would require some land acquisition. Mr. Klahr agreed, given that it's near a historic neighborhood, that would be a challenge.

Councilman Thomasson asked about the fiber optics and where the signal would be controlled. Sameer said they are recommending fiber optics between the two signals, so the clocks run concurrently. Any other remote options with the signals would just be more work but it's doable. Mr. Klahr said all the signals in the City are being migrated to video detection and it can be presented to GDOT for the more web based options.

Mayor Brady asked if a cost estimate that is fairly accurate could be brought to Council, then if approved what are next steps. Mr. Klahr said the next step would be to go to GDOT. GDOT does not require costs so a design cost estimate could be done for Council and Staff. Construction will be completely in house, and costs can be discussed with the contractors as well. Mr. Phillips summarized that Lowe Engineers can bring back the design cost estimate, if Council approves that then Staff can submit to GDOT for permit and then the project would go to bid. If Council is not happy with the bids they can be denied.

Councilman Koritko asked about the sidewalk around the cemetery that was previously discussed. Sameer explained that to put the through lane they will have to take the sidewalk. The sidewalk

does not get used a lot and it's abutting a wall and there is still 20-25ft of right of way available behind the wall.

Motion by Councilman Shell, seconded by Councilman Thomasson to move forward with a design cost estimate.

MOTION CARRIED. (7-0)

Q. Update on Status of Distilled Spirits Package Store License – 109 Bullsboro Dr.

Mr. Rocky Singh and Mr. Pushpendra Khaira were both present to represent the store. Mayor Brady thanked them for the email sent earlier in the day with updates. Mr. Singh said that they are finally opening Beverage Vault, with a soft open on October 2nd and a grand opening on October 5th.

No action needed.

VISITORS, PETITIONS, COMMUNICATIONS & COMPLAINTS

R. Request from College Temple Neighborhood for annual Halloween street closures

Motion by Councilwoman Jenkins, seconded by Councilman Shell to approve the request as presented.

MOTION CARRIED. (7-0)

S. Request from Foundation Church for 3 parking spaces during Munchkin Masquerade on October 31st

Motion by Councilman Shell, seconded by Councilwoman Jenkins to approve the request as presented.

MOTION CARRIED. (7-0)

ADJOURNMENT

Motion by Councilman Shell, seconded by Councilman Koritko to adjourn the Council meeting at 7:30pm.

MOTION CARRIED. (7-0)

Megan Shea, City Clerk

Keith Brady, Mayor

The special called work session of the City Council of the City of Newnan, Georgia was held on Tuesday, September 24, 2024 at 5:00PM in the Richard A. Bolin Council Chambers of City Hall with Mayor Keith Brady presiding.

Present

Mayor Keith Brady: Council members present: Ray DuBose, Rhodes Shell, Cynthia Jenkins, Jim Thomasson, Dustin Koritko, Paul Guillaume. Also present: City Manager, Cleatus Phillips; Assistant City Manager, Hasco Craver; Assistant City Manager, Meg Kelsey; City Clerk, Megan Shea and City Attorney, Brad Sears.

Call to Order

Mayor Brady called the meeting to order and delivered the invocation.

A. Discussion of Due Diligence Agreement and Letter of Intent between City of Newnan and Red Hills Hospitality Group

City Manager explained that Jeremy Emmett was present to discuss the potential hotel at 57 East. Council previously met him in Thomasville, where he built a Courtyard Marriott, and had asked that he come to give a presentation and Q&A regarding what the hotel might look like.

Mr. Jeremy Emmett, owner and Chief Operating Officer of Red Hills Hospitality introduced himself. He said the point of the presentation is to look at what a project like this would look like and to leave Council with something they can go back through after.

He showed a picture of the site just for reference and said he has seen the previous site studies on the property that were done. He showed a concept plan with an L shaped hotel, which he thinks is the best orientation for it. This would be about 125 room hotel. He said there are many different options for parking and a parking deck would not be necessary. Regarding a previous boutique hotel option presented, he commented that his group has found that a brand name like Marriott may bring more brand loyal people and still be able to feel like a small boutique hotel.

Red Hills took the idea of a 125 room Courtyard Marriott at 60% occupancy and came up with \$169 ADR. He then showed a budget format for transparency and projected revenues and expenses for operating the hotel over several years. He showed layouts for a standard Courtyard, room types and finishes. Then he showed examples from the Thomasville Courtyard which is customized and how they could use higher quality materials, colors, lighting and local artwork to give a different feel to the hotel. The Courtyard model would include a bar and small bites for food but not a full restaurant, so as not to take away from local businesses. There would be an option for meeting space and that may affect the difference between 4 stories or 5 stories.

Mayor Pro Tem Guillaume asked what the square footage of conference space would be with 5 stories? Mr. Emmett stated around 2,000 square feet with a capacity around 140. Council discussed the possibility of split levels and rooftop uses.

Councilman Thomasson asked if Newnan is not a hot spot for a hotel then do they need to give the land for free and make improvements for it to work? Mr. Emmett said yes essentially but they also need to look at what the community wants. He explained that he started showing things that he knows can work and then wants to see what Newnan wants and that may end up effecting costs based on what the actual design comes out to be.

Mr. Emmett showed costs estimates for the project, both prototype and customized. He said the sitework costs could fluctuate depending on access to E. Broad and utilities. Then he showed economic impact estimates with approximate values for sales tax and occupational tax.

Councilwoman Jenkins said that they want to expand what is loved about downtown into this site and that is blocks facing each other not turned away from each other. She also said that there is the pedestrian component and the Andrew St. Corridor which includes a historic business district, and she does not want to miss the opportunity to incorporate all of that. Mr. Emmett said he wants to be on the site in the most creative way possible and he is open to incorporating those other elements.

Mayor Pro Tem Guillaume asked if Mr. Emmett has done projects before along railroad tracks and what issues might he foresee with that? Mr. Emmett said it can be annoying and the noises can have a guest impact. There are ways to soundproof and what goes right along the railroad tracks will be important. Mayor Brady referenced the Newnan Lofts project, when concerns were raised about the railroad tracks and noise, but that project was still successful.

Mr. Emmett said that he included in the packet for Council, a sample development agreement that he has used in the past. He also gave a milestone timeline to give perspective for the project. Mr. Craver suggested that Council convene again to respond to Mr. Emmett and the proposed plan.

Ms. Lynn Chapman, a resident of the neighborhood, commented that this project will be part of a historic neighborhood, and she asked what would her neighborhood be looking out at? They do not want to be looking at dumpsters. Mr. Emmett said that in previous projects they have added garage doors to hide dumpsters, so there are options. Ms. Chapman also commented that the train does not bother her, and she does hear it from her home.

Mayor Brady asked about the process that might be used to step through this. Mr. Emmett said a concept plan would be put together, just for the hotel and not the whole project as Historical Concepts has done. He suggested they work with Historical Concepts to integrate the plans and look at phases that it could all be developed in.

Mayor Pro Tem Guillaume asked to clarify the acreage needed for the hotel? Mr. Emmett said it could fit on 1 acre but if surface parking was done it would be more like 2-3 acres. Councilman Thomasson asked if the parking could be shared and Mr. Emmett said yes, that would make sense given the area. Councilman Thomasson also asked about profit sharing, the city getting something back and Mr. Emmett said that would be a legal question, but it has been done before in different ways.

ADJOURNMENT

Motion by Councilman DuBose, seconded by Councilman Koritko to adjourn the meeting at 6:12PM.

MOTION CARRIED. (7-0)

Megan Shea, City Clerk

Keith Brady, Mayor

APPLICATION FOR ALCOHOL BEVERAGE LICENSE

Name: **J Holts Smokehouse**

Licensee: **Jonathan Holt**

License Representative: **N/A**

Type License: **Retail On Premise (Pouring) Malt Beverages and Wine**

Location: **89 Temple Ave, Suite A**

TO THE CITY COUNCIL: REASON – NEW BUSINESS

(1) The above application with supporting documents and application fee has been filed in the City Clerk's office; reviewed by the appropriate departments of the City and appears to be (complete). (Sec 3-33)

If incomplete, reasons _____

(2) The citizenship requirements (have) been met. (Sec. 3-34)

If not, reasons _____

(3) Residency requirements (have) been met. (Sec. 3-35)

If not, reasons _____

(4) The location appears (to comply) with zoning requirements. (Sec 3-37)

If not, reasons _____

(5) The location of the proposed premises appears (to comply) with the distance requirements set forth in Sec. 3-39.

If not, reasons _____

(6) All taxes or other debts to the City (are) current. (Sec 3-38)

If not, reasons _____

(7) A publisher's affidavit (has not) been filed showing the notice requirement (has) been complied with. (Sec 3-40 (a))

If not, reasons Advertised. Will file affidavit prior to hearing.

(8) An affidavit from the applicant certifying posting of the proposed premises (has) been filed. (Sec. 3-40(b))

Respectfully submitted,

Megan Shea
City Clerk



To: Mayor and Council

Date: October 8, 2024

Agenda Item: Presentation and discussion regarding ordinance updates and fee schedules for Oak Hill and East View Cemeteries

Prepared By:

Purpose:

Discussion with City Council on future operations of East View and Oak Hill Cemetery including Ordinances, Fees, Operations and Future Improvements.

Background:

N/A

Funding:

N/A

Recommendation:

N/A

Attachments:

1. Chapter_7___CEMETERIES Changes
2. cemeteryFinal.pptm 3

Previous Discussion with Council:

None

Proposed Changes to Chapter 7 CEMETERIES¹

ARTICLE I. IN GENERAL

Sec. 7-1. Superintendent of cemeteries—Generally.

There shall be appointed as provided by the city charter a superintendent of cemeteries who shall give his entire time and service to the proper care of the city cemeteries. He shall receive such compensation as may be set from time to time by the city council.

(Code 1972, § 6-1)

Sec. 7-2. Same—Powers and duties.

The superintendent of cemeteries shall be responsible for the care, management and control of all cemeteries which are owned by the city or which have been assigned to the superintendent by the public works director..

The superintendent shall direct the improvement and embellishment of the walks, drives, avenues and grounds in such cemeteries and shall provide for the protection of all property, public and private, therein and for the maintenance of order therein.

(Code 1972, § 6-3; Ord. No. 08-3, § I, 2-12-08)

Sec. 7-3. Record of lot owners; written authority from lot owner prerequisite to burial.

The superintendent shall keep a record of the owners of the lots in the cemetery, and shall not allow any corpse to be buried on a private lot without written authority of the owner of such lot.

(Code 1972, § 6-4)

Sec. 7-4. Records of burials.

- (a) It shall be the duty of the superintendent of cemeteries to keep a record, in a bound book to be used for that purpose only, of all burials in the city, giving the name, nativity, age and sex of each person.
- (b) He shall also keep a record of the number of lot in which persons are interred, and if the bodies are removed to any other lot, shall make a record of the fact.

(Code 1972, § 6-5)

¹Charter reference(s)—Authority of city to acquire, operate, etc., cemeteries, § 1.4(12).

State law reference(s)—Criminal trespass and damage to property, O.C.G.A. § 16-7-20 et seq.; permit for disturbing burial place in land development, O.C.G.A. § 36-60-6; preservation and protection of abandoned or unmaintained cemeteries, O.C.G.A. § 36-60-6.1.

Sec. 7-5. Record of deaths.

The superintendent of cemeteries shall keep a book of records containing the names, ages, places of nativity of all persons interred in the cemetery.

(Code 1972, § 6-6)

Sec. 7-6. Purchase of lots.

- (a) *Installment plan authorized.* Lots may be purchased under an installment payment plan with at least one-fourth of the purchase price paid in cash at the time of purchase. The balance is to be paid in 12 equal monthly installments bearing interest at a rate of 12 percent per annum. In no case shall these monthly installments be less than \$25.00. The purchaser shall execute to the city an installment promissory note for the unpaid balance. Any deviation from this payment plan must be approved by the city manager.
- (b) *Price.* The price of the burial spaces in the various city cemeteries shall be established by the city council and may be altered from time to time by action of the council. A cemetery lot price schedule shall be on file in the office of the city clerk. The price of the cemetery lots shall be based upon the number of burial spaces, and such price shall include perpetual upkeep. Each burial space shall be five feet by ten feet.

(Code 1972, § 6-7; Ord. No. 3-90, § 6-7, 1-8-90)

Sec. 7-7. Lots not to be reserved; sale of lots in unopened section prohibited.

No cemetery lots shall be reserved in any section of the cemetery. No lots shall be sold in any section that has not been opened by the city.

(Code 1972, § 6-8)

Sec. 7-8. Charges for opening graves.

The city shall charge for opening graves. These charges shall be established by the city council and may be altered from time to time by action of the council. A schedule of grave opening fees shall be on file in the office of the city clerk. Payment of grave opening fees must be paid in full when the service is performed and may not be paid under an installment payment plan.

(Code 1972, § 6-10; Ord. No. 4-90, § 6-10, 1-8-90)

Sec. 7-9. Sale of lots.

The cemetery superintendent shall negotiate all sales of cemetery lots and shall give the purchaser a receipt for the cost of the lot and shall forthwith transmit the funds to the city treasurer's office.

(Code 1972, § 6-13)

Sec. 7-10. Payment of fees prerequisite to doing work in cemetery.

It shall be the duty of the superintendent of cemeteries to collect in advance all fees before issuing a permit for the digging of a grave or the keeping of lots and all other work done in the cemeteries of the city. All funds so collected shall forthwith be transmitted to the city clerk and treasurer.

(Code 1972, § 6-14)

Sec. 7-11. Permission required for sale or exchange of privately owned lot.

No privately owned cemetery lot or any portion of a lot can be disposed of or exchanged without the permission of the city manager.

(Code 1972, § 6-15)

Sec. 7-12. Fee for recording transfer of lot ownership.

A fee as set forth in the schedule of fees and charges shall be paid to the city treasurer at the time of recognition of any transfer of ownership of a cemetery lot made on his records.

(Code 1972, § 6-16)

- **Sec. 7-13. - Subdivision of plots; interment of persons with no interest in plot.**

The subdivision of cemetery plots, lots or spaces is not allowed by any person except the city, and no person not having an interest therein shall be interred in any plot, lot or space except by written consent of all persons interested in such plot, lot or space and the city; provided, however, a relative of any record owner may be buried in such lot, space or plot, as provided in this chapter or by the laws of the state.

- **Sec. 7-14. - Family plot inalienable.**

(a) *Reversion to city.* Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner, or of the remains of the record owner, is made in a plot transferred by deed or certificate of ownership to an individual owner and the owner dies without making disposition of the plot either in his will by a specific device, or by a written declaration filed and recorded in the office of the city clerk, the plot thereby becomes inalienable and shall be held as the family plot of the owner, with title to the same reverting to the city for protection of those who may be interred therein.

(b) *Right to burial without consent.* In a family plot one grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a right of interment in it; and in those remaining, if any, the parents and children of the deceased owner, in order of death, may be interred without the consent of any person claiming any interest in the plot.

(c) *Order of right of interment.* If no parent or child survives, the right of interment goes in the order of death, first, to the spouse of any child of the record owner, and second, in the order of death, to the next heir at law of the owner or the spouse of any heir at law.

(d) *Interment right waived in favor of other relative.* Any surviving spouse, parent, child or heir who has a right of interment in a family plot may waive such right in favor of any other relative, or spouse of a relative, of either deceased owner or of his spouse, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

- **Sec. 7-15. - Right of spouse of owner—Described.**

The spouse of any owner of any plot which contains more than one interment space has a vested right of interment of his remains in the plot, lot or space, and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner.

- **Sec. 7-16. - Same—Vested right of spouse; joinder prerequisite to divesting.**

No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree.

- **Sec. 7-17. - Plots having several owners; representation by designated owner.**

When there are several owners of the rights of interment in a plot, lot or space, they may designate one or more persons to represent the plot, lot or space and file written notice of designation with the city clerk. In the absence of such notice or of written objection to its so doing, the city is not liable to any owner for interring or permitting an interment or refusing an interment in the plot, lot or space upon the request or direction of any co-owners of the lot, space or plot.

- **Sec. 7-17. - Waiver of vested right.**

A vested right of interment may be waived and is so waived and terminated upon the interment elsewhere of the remains of the person in whom those rights are vested.

- **Sec. 7-18. - Scope of vested right.**

No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space.

Sec. 7-19. Beautification of lots.

All beautification of a cemetery lot made by the proprietor thereof shall be simple and shall be kept at the expense of the proprietor and shall be in accordance with deed restrictions or other ordinances in effect at the time of purchase. The proprietor shall apprise the superintendent of cemeteries of any work and shall receive a permit for such beautification.

(Code 1972, § 6-17)

Sec. 7-20. Removal of flowers, wreaths, etc., from lots.

- (a) No florist, firm or individual shall come onto any lot or grave at any time to remove therefrom any flowers, wreaths, arrangements, pots, stands, easels, frames or any item whatsoever except at the written direction of the lot owner and with the knowledge and supervision of the cemetery superintendent. Any violator will be charged with an offense against the city.
- (b) It shall be the duty of the lot owner or of a member of the family of the deceased to contact the superintendent within four days after any flowers, wreaths, arrangements, or the like, have been placed on any lot or grave and to give the superintendent instructions as to the disposal or disposition of same. Failure to contact the superintendent within the four days will be considered authorization for him to remove any or all of the florals that have become unsightly or disarranged.
- (c) Florals or artificial materials will be removed by the superintendent when they become faded, weather-beaten, or otherwise unsightly and objectionable to the general appearance of the cemetery. Special occasion artificial arrangements (such as for Easter, Mother's Day, Christmas, etc.) will be removed after 30 days.

(Code 1972, § 6-18)

Sec. 7-21. Maintenance of shrubs and trees on lots.

- (a) *Duty of owner.* It shall be the duty of every person owning a burial lot in the public cemetery to keep each and every tree, shrub or bush on his lot well-proportioned, shapely and neat.
- (b) *Duty upon notice from cemetery superintendent.* If the owner of any burial lot in the public cemetery shall fail to keep each and every tree, shrub or bush in his lot well-proportioned, shapely and neat, it shall be the duty of the superintendent to trim or prune or remove or cause to be removed any such tree, shrub or bush .

(Code 1972, § 6-19)

Sec. 7-22. Removal of offensive or improper objects from lots.

If any monument, marker, seat, vase, flag, statue, toys or urn or any structure or item whatever or any inscription be placed in or upon any cemetery lot which shall be determined by the cemetery superintendent to be offensive or improper, or injurious to the appearance of surrounding lots or grounds, they shall have the right, and it shall be their duty to enter upon such lot and remove the offensive or improper object.

(Code 1972, § 6-20)

Sec. 7-23. Erection, location of monuments, gravestones, markers.

- (a) *Number on lot; dimensions.* To prevent the excessive and unsightly crowding of tombstones, not more than one monument, gravestone or marker above the surface of the ground shall be permitted on one lot, and the same shall conform to the following heights:

Section	Height
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37	No restriction
38, 39, 40, 41, 43, 44' 45' 46' 47 and any section added	3 feet, 6 inches
42	Memorial Section with not any markers above ground level.

Bases for stones, monuments, etc., shall not exceed seven feet in length on four grave lots and ten feet in length on eight grave lots or larger, and the stones shall not be in excess of two feet in width, lots of three grave spaces or less will not be permitted to erect monuments; only footstones or headstones shall be allowed. All monuments shall be set in the center of the lot and a permit to erect the monument shall be obtained from the cemetery superintendent. A fee for said permit shall be established by the city council in accordance with the type marker, monument or gravestone that is to be erected on the lot. This charge shall be set forth in the city fee schedule.

- (b) *Structures to mark grave.* Headstones or footstones for graves, or any structure used to mark a grave must not be more than six inches above the surface of the ground, nor more than two feet in width. The footstone or headstone shall be six inches from the property line and centered in front of the grave space.
- (c) *Slabs.* Slabs will not be permitted, either erect or reclining, in sections 6, 7, 8, 12, 13, 14, 15, 16, 38, 39, 40, 41, 42, and 43 of the Oak Hill Cemetery. Slabs to be erected in the remaining sections shall be of marble, granite, or bronze and shall not exceed seven feet in length, three feet in width, and shall be not less than four inches in thickness. Slabs shall not extend more than four inches above the ground surface. Slabs shall be set on an adequate foundation of a mixture of cement and sand or granite dust not less than four inches thick that will insure its permanency and shall be erected under supervision of the superintendent of cemeteries. The city shall not be liable for any damages to or breakage of a slab caused by routine maintenance operations. Prior to delivery and installation of a slab, the burial lot owner or person seeking permission to erect a slab must first execute a waiver releasing the city from any liability for damages to the slab.
- (d) *Material; setting.* All monument work placed on lots shall be of marble, granite or bronze, shall be set on a solid concrete foundation that will assure its permanency and shall be erected under supervision of the superintendent of cemeteries. In no case shall the concrete foundation be of less than 6 inches deep. Any monument placed on any grave that was opened within 8 months shall have an extra concrete support extending to the vault.

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(Supp. No. 16)

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- (e) *Prohibited work.* No iron or wire and no seats or grave coverings will be allowed on lots. Glass, porcelain, plastic or other materials attached to a memorial is prohibited.
 - (f) *Corner posts.* All corner posts shall be set flush with the surface of the ground.
 - (g) Any monument company who places a monument, footstone or headstone in any city cemetery that is not in compliance with these regulations shall be brought before the city council, and their permits shall be withheld for a period of not less than six months.

(Code 1972, § 6-21; Ord. No. 17-94, § I, 12-13-94; Ord. No. 08-3, §§ II, III, 2-12-08)

Sec. 7-24. Lot enclosures.

The city council may approve lot enclosures in sections 17 through 37 inclusive of the Oak Hill Cemetery, so long as those enclosures are designed and constructed in a manner that assures aesthetic harmony with the remainder of the cemetery and are designed and constructed in a manner that does not significantly increase the cost to the city in maintaining the cemetery.

(Code 1972, § 6-22)

Sec. 7-25. Markers to indicate corners of lots.

Each cemetery lot can be marked with markers set at each corner, the same not to be over four inches square and set flush with the lawn.

(Code 1972, § 6-23)

Sec. 7-26. "For Sale" signs prohibited on cemetery grounds.

No sign indicating that a lot or vault is "FOR SALE" will be permitted in the cemetery grounds.

(Code 1972, § 6-24)

Sec. 7-27. Use of streets and sidewalks in cemetery.

- (a) It shall be unlawful for any person to use the streets and sidewalks in and through the cemetery as a means of ingress and egress, either by pedestrian or vehicular means, except for cemetery purposes.
- (b) Cemetery purposes shall be limited to interment of the deceased in columbarium's, mausoleums, diggings and filling of graves, and the maintenance of the grounds, landscaping, structures, walks and headstones and other grave monuments, visiting the grave sites of deceased family members and friends, and conducting historical research and inventory of graves subject to the provisions of the applicable code sections of this chapter, but specifically shall not include any recreational type activity not related to cemetery purposes, such as internet or cell phone based gaming or geocaching.

(Code 1972, § 6-25; Ord. No. 16-7, § I, 8-9-16)

Sec. 7-28. Cemetery to be closed at night.

The cemetery shall be closed every day from sundown to sunup.

(Code 1972, § 6-26)

Sec. 7-29. Frequenting cemetery after dark.

It shall be unlawful for any person to visit or frequent the public cemetery after dark, except by application and approval by the city cemetery superintendent.

(Code 1972, § 6-27)

Sec. 7-30. Leaving waste in cemetery.

It shall be unlawful for any person entering in or upon the cemetery to leave any waste. It shall also be unlawful for any such person, upon erection of a monument, to leave in the cemetery any material used or waste from the erection thereof, except the dirt removed from the foundation.

(Code 1972, § 6-28)

Sec. 7-31. Defacing, damaging, removing, etc., graves, monuments, trees, and other cemetery property.

No person shall in any way disturb any grave, deface, pull up or remove anything put or placed to mark a grave, or any paling or wall placed around a grave, or remove any plank, post, timber, brick or stone in the cemetery, or mutilate, destroy, deface, injure or remove any tomb, monument, gravestone or other structure placed in the city cemetery, or any fence, railing or other work for the protection or ornamentation of any tomb, monument, gravestone or other structure aforesaid, or for the ornamentation or protection of the cemetery, or wilfully destroy, cut, break, remove or injure any tree, shrub, or plant that may have been planted, or that may be growing in the cemetery, or commit any other trespass in the limits of the cemetery.

(Code 1972, § 6-29)

Sec. 7-32. Aboveground vault, crypt or mausoleum.

- (a) *Restrictions.* No aboveground vault, crypt or mausoleum shall be higher than three feet six inches; and no aboveground vault, crypt or mausoleum shall be permitted in sections 6, 7, 8, 12, 13, 14, 15, 16, 38, 41, 42, and 43 of the Oak Hill Cemetery.
- (b) *Lot size; location.* No vault, crypt or mausoleum shall be permitted aboveground, except where a lot shall contain at least 400 square feet, and shall not be placed nearer than two feet from any lot line.
- (c) *Material; setting.* All parts of aboveground vaults, crypts or mausoleums aboveground shall be of marble, granite or other cut stone and shall be set on a solid concrete foundation that will assure its permanency and shall be erected under supervision of the superintendent of cemeteries. In no case shall concrete foundations be of less than 18 inches deep.

(Code 1972, § 6-30; Ord. No. 11-90, § I(6-30), 3-12-90; Ord. No. 08-3, § IV, 2-12-08)

Sec. 7-33. Oak Hill Cemetery.

The provisions of this article shall apply to all lots in the Oak Hill Cemetery as set forth in this article.

(Ord. No. 96-3, § I, 2-13-96)

Sec. 7-34. Eastview Cemetery.

The provisions of this article shall apply to all lots in the Eastview Cemetery except as set forth herein:

- (1) No restrictions on the erection or location of monuments, or gravestones as set forth in section 7-23 of this article.
- (2) No restrictions on lot enclosures as set forth in section 7-24 of this article.

(Ord. No. 96-3, § I, 2-13-96)

Sec. 7-35. Eastview Cemetery Annex.

The provisions of this article shall apply to all lots in the Eastview Cemetery Annex except as set forth herein:

- (1) Erection, location of monuments, gravestones, markers.
 - a. *Number on lot; dimensions.* To prevent the excessive and unsightly crowding of tombstones, not more than one monument, gravestone or marker above the surface of the ground shall be permitted on one lot, and the same shall have a maximum height of three feet, six inches.

Bases for stones, monuments, etc., shall not exceed seven feet in length on four grave lots and ten feet in length on eight grave lots or larger, and the stones shall not be in excess of two feet in width, lots of three grave spaces or less will not be permitted to erect monuments; only footstones or headstones shall be allowed. All monuments shall be set in the center of the lot and a permit to erect the monument shall be obtained from the cemetery superintendent.

A fee for said permit shall be established by the city council in accordance with the type marker, monument or gravestone that is to be erected on the lot. This charge shall be set forth in the city fee schedule.
 - b. *Structures to mark grave.* Headstones or footstones for graves, or any structure used to mark a grave must not be more than six inches above the surface of the ground, nor more than two feet in width. The footstone or headstone shall be six inches from the property line and centered in front of the grave space.
 - c. *Slabs.* Slabs will not be permitted, either erect or reclining.
 - d. *Material; setting.* All monument work placed on lots shall be of marble, granite or bronze, shall be set on a solid concrete foundation that will assure its permanency and shall be erected under supervisor of the superintendent of cemeteries. In no case shall the concrete foundation be of less than 18 inches deep.
 - e. *Prohibited work.* No iron or wire and no seats or grave coverings will be allowed on lots. Glass, porcelain, plastic or other materials attached to a memorial is prohibited.
 - f. *Corner posts.* All corner posts shall be set flush with the surface of the ground.
 - g. *Lot enclosures.* No lot enclosures shall be permitted.
 - h. Any monument company who places a monument, footstone or headstone in any city cemetery that is not in compliance with these regulations shall be brought before the city council, and their licenses shall be revoked for a period of not less than six months.
- (2) *Aboveground vault, crypt or mausoleum.*

-
- a. *Restrictions.* No aboveground vault, crypt or mausoleum shall be higher than three feet, six inches.
 - b. *Lot size; location.* No vault, crypt or mausoleum shall be permitted aboveground, except where a lot shall contain at least 400 square feet, and shall not be placed nearer than two feet from any lot line.
 - c. *Material; setting.* All parts of aboveground vaults, crypts or mausoleums aboveground shall be of marble, granite, or other cut stone and shall be set on a solid concrete foundation.

(Ord. No. 96-3, § I, 2-13-96)

Secs. 7-30—7-55. Reserved.

ARTICLE II. INTERMENTS AND DISINTERMENTS

Sec. 7-56. Personnel to dig graves.

All graves in the cemeteries must be dug by the superintendent of cemeteries and his assistants or by persons, firms or corporations approved by the superintendent of cemeteries provided such person, firm or corporation shall in each instance have a permit to dig a grave in the public cemetery and shall otherwise meet and comply with the provisions of this chapter.

(Code 1972, § 6-40)

Sec. 7-57. Burials to comply with plan on file.

All burials in the cemetery shall be made according to the plan on file in the office of the city clerk and treasurer, a copy of which may be obtained by the purchaser of any lot upon request. No deviation from this plan will be permitted.

(Code 1972, § 6-41)

Sec. 7-58. Payment for lot prerequisite to interment.

No interment shall be made in the cemetery unless the superintendent of cemeteries is furnished with evidence that the burial lot in which the interment is to be made has been purchased of the city and payment therefor has been made.

(Code 1972, § 6-42)

Sec. 7-59. Owner of lot not to charge for interment.

Proprietors of cemetery lots in any city cemetery shall not allow interments to be made in their lots for a remuneration.

(Code 1972, § 6-43)

Sec. 7-60. Permit to inter.

- (a) *Required.* A permit to inter must be obtained from the cemetery superintendent, specifying the name of the person to be interred, the size of the grave and the number of the lot in which the grave is to be opened.
- (b) *Application for permit.* It shall be the duty of each person applying for a permit to give the following information: the name of the deceased, the place of nativity, the date of birth, the date of decease, the parents' name, and the lot in which interment is to take place.

(Code 1972, § 6-44)

State law reference(s)—Permits for disposition, disinterment and reinterment, O.C.G.A. § 31-10-20.

Sec. 7-61. Certificate of death prerequisite to interment.

No interment can be made in the city cemetery without a certificate containing the name, age, sex, color, residence, date of death and cause of death of the person to be buried as provided by state statutes.

(Code 1972, § 6-45)

State law reference(s)—Death certificate; filing; medical certification; forwarding death certificate to decedent's county of residence; purging voter registration list, O.C.G.A. § 31-10-15.

Sec. 7-62. Notice prerequisite to interment.

Whenever an interment is to be made in any of the cemeteries in the city, 24 hours' notice thereof must be given to the cemetery superintendent.

There shall be no interments or disinterments on the following days:

New Year's Day,
Martin Luther King Jr. Holiday (3rd Monday in January),
Good Friday,
Easter,
Mother's Day,
Father's Day,
Memorial Day,
July 4,
Labor Day,
Thanksgiving Day,
Christmas Day,

or any holiday observed by the City of Newnan.

(Code 1972, § 6-46)

Sec. 7-63. Interment in vault.

All interments in any city cemetery shall be in a vault, the style and material to be as approved by the cemetery superintendent.

(Ord. No. 03-07, § I, 3-11-03)

Editor's note(s)—Ord. No. 03-07, § I, adopted March 11, 2003, amended the Code by repealing former § 7-63, and adding a new § 7-63. Former § 7-63 pertained to minimum grave depth, and derived from the Code of 1972, § 6-47; and Ord. No. 11-90, adopted March 12, 1990.

Sec. 7-64. Liability of city for breaking vault.

The city shall not be liable for the breaking of any concrete, steel or other vaults, unless the same is due to the neglect of the city cemetery superintendent.

(Code 1972, § 6-48)

Sec. 7-65. Burial outside cemetery.

No person shall bury or cause to be buried any dead person in any other place in the city than an approved cemetery.

(Code 1972, § 6-49)

Sec. 7-66. Burial of indigents.

The superintendent of cemeteries shall not be allowed to bury any person as indigent unless approved by the city manager who shall act in accordance with state law.

(Code 1972, § 6-50; Ord. No. 08-3, § V, 2-12-08)

State law reference(s)—Interment of deceased indigents O.C.G.A. § 36-12-5 et seq.

Sec. 7-67. Limitation on number of bodies interred in same grave, vault, crypt or niche.

Not more than one body, nor the remains of more than one body, shall be interred in any one grave, vault, crypt or niche without approval from the city manager

Editor's note(s)—Ord. No. 08-3, § VI, adopted Feb. 12, 2008, repealed § 7-67, which pertained to liability of city for fees and derived from Code 1972, § 6-51.

Sec. 7-68. Disinterments.

- (a) *Consent required; doing work.* No disinterment shall be allowed except upon the written order of the owner of the lot. In every case such disinterment shall be made only by the cemetery superintendent.
- (b) *Notice; time; fee for removal.* Notice must be given in advance to the city cemetery superintendent, when a time for removal will be designated. Removal must be made only in the morning and on a weekday. Charges

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for disinterments shall be established by the city council and may be altered from time to time by action of the city council. A schedule of disinterment fees shall be on file in the office of the city clerk.

(Code 1972, § 6-52; Ord. No. 5-90, § 6-52, 1-8-90)

State law reference(s)—Permits for disinterment and reinterment, O.C.G.A. § 31-10-20; authority of coroners to disinter bodies, O.C.G.A. § 45-16-45.

ARTICLE III. THE CITY OF NEWNAN FARMER STREET CEMETERY COMMISSION²

Sec. 7-69. Establishment; purpose.

There is hereby created a commission to be known and designated as the City of Newnan Farmer Street Cemetery Commission and to be referred to in this article as the "commission" for the purposes of planning the protection, preservation, promotion, maintenance and improvement of the above named cemetery. The parcel of land referred to as the Farmer Street Cemetery for the purposes of this article is that parcel of land located on Farmer Street between East Washington Street and Glenn Street within the City of Newnan further identified as an "Old Abandoned Cemetery" on Tax map N15 Block 5 on the city tax map.

(Ord. No. 00-04, § I, 2-8-00; Ord. No. 2020-11, § I, 8-20-20)

Sec. 7-70. Composition; terms; compensation.

- (a) The commission shall consist of nine members as follows: one member shall be appointed by each of the seven council members, one member shall be appointed from the tree commission, by its members, and one member shall be appointed from the parks commission by its members. Each member shall be a resident of Coweta County during his or her term of office. Each member shall serve for a term of three years following the appointment by the council. Vacancies in office during the term of any appointment shall be filled in the same manner as the person was appointed whose office has become vacant.
- (b) The members of the commission shall serve without compensation. However, they shall be entitled to be reimbursed for any actual expenses incurred by them in the performance of their duties.

(Ord. No. 00-04, § I, 2-8-00; Ord. No. 2020-11, § I, 8-20-20; Ord. No. 2020-12, § 1, 9-8-20)

Sec. 7-71. Duty; responsibility; authority.

The commission created in this article shall have the duty, responsibility and authority:

- (1) To study, develop plans, and establish goals, for the establishment, development, care, preservation, promotion, maintenance, and placement of improvements and structures in or around the perimeter of the Farmer Street Cemetery.
- (2) To assist and coordinate its activities with the city tree commission which has the responsibility and duty to provide for and preserve the trees and shrubs within the city and the city parks commission which has the duty of recommending improvements and structures within the city parks, if the commission finds such assistance and coordination to be necessary and appropriate to its activities.

²Ord. No. 2020-11, § I, adopted Aug. 20, 2020, amended Art. III in its entirety to read as set out herein. Former Art. III pertained to similar subject matter. Historical notations have been retained for reference purposes.

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- (3) To assist the proper officials and make available to the general public news and information regarding the protection, preservation, promotion, improvement, use and maintenance of said cemetery; to recommend from time to time as necessary ordinances and other programs that will be beneficial to protect, preserve, promote, improve and maintain said cemetery.
 - (4) To make an annual report to the council, including any budget requests, on or before October 1 of each calendar year.

(Ord. No. 00-04, § I, 2-8-00; Ord. No. 2020-11 , § I, 8-20-20)

Sec. 7-72. Officers' meetings.

Upon appointment of the initial commission by the mayor and council, the commission shall meet and elect one of its members as chairman and one of its members as secretary. The commission shall then provide for the rules and procedure for the holding of regular and special meetings of the commission as deemed advisable and necessary.

(Ord. No. 00-04, § I, 2-8-00; Ord. No. 2020-11 , § I, 8-20-20)

Secs. 7-73—7-89. Reserved.

ARTICLE IV. VIOLATIONS; PENALTIES

Sec. 7-90. Violations prohibited; penalties.

- (a) No person shall violate any of the provisions of this chapter or assist another in evading or violating the requirements imposed by this chapter.
- (b) Any person knowingly violating any provision of this chapter shall be guilty of an offense against the city, punishable upon citation before the municipal court. Any person convicted of violating any provision of this article shall be punished by a fine not to exceed \$1,000.00, imprisonment not to exceed six months, or both.

(Ord. No. 16-7, § II, 8-9-16)

Ord. No. 16-7, § II, adopted August 9, 2016 , set out provisions intended for use as Art. III, § 7-70. At the editor's discretion, to prevent duplication of section numbers, these provisions have been included as Art. IV, § 7-90.

Cemetery Discussion

OAK HILL

EAST VIEW

EAST VIEW ANNEX

Ordinance Changes

7-13 through 7-18 establishes the order in which persons have burial rights after the owner passes away.

7-21 Gives the cemetery superintendent the authority to compel lot owners to keep trees, shrubs and bushes pruned for a neat appearance.

7-22 Gives the cemetery superintendent the authority to remove offensive and/or improper objects from a gravesite. Some of the improper items currently are glass vases, beer cans/bottles, coffee mugs, toys, flags, birdhouses/feeders, etc.

7-23 Monuments will be limited to owners for 4 lots or more and establishes a requirement for monument companies to obtain a permit before doing any work in any city cemetery.

7-29 Gives the cemetery superintendent the authority to allow someone to visit the cemetery after closing time.

Ordinance Changes

7-56 Gives the city the option of someone other than city staff to open or close a grave.

7-62 Defines city holidays.

7-67 Gives the city manager the authority to approve for more than one interment within a single lot.

Discussion Items

Improper Items

Cemetery Fees

Columbarium Niche Vs Mausoleum

Multiple interments within a single lot

Using a city approved vendor for grave openings and closings









Fee Comparison

NEWNAN

Fees

Interment Fees	\$0
Monument Fee	\$10

Traditional Burials

City Resident	\$550
Coweta Resident	\$750
Non-Coweta Resident	\$950

Cremation Interment

City Resident	\$250
Non-City Resident	\$250

Additional Fees

Funeral After 3:30 M-F	\$100
Oversized Vault	\$0
Weekend & Holidays	\$150
*** Open and Closing Fee***	\$600

*** Oakhill prices shown***

GRIFFIN

Fees

Interment Fees	\$150
Monument Fee	\$100

Traditional Burials

City Resident	\$1,000
Non-City Resident	\$1,400

Cremation Interment

City Resident	\$600
Non-City Resident	\$700

Additional Fees

Funeral After 3:30 M-F	\$150
Oversized Vault	\$150
Weekend & Holidays	\$200

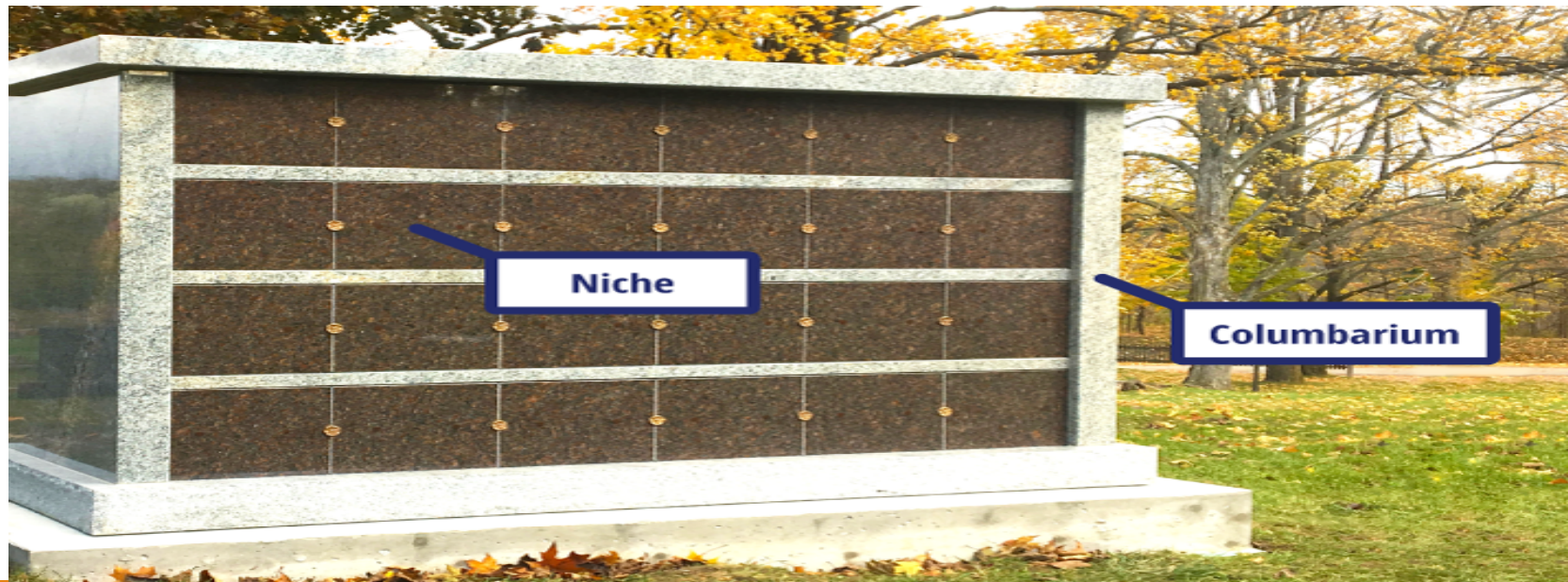
** Opening and Closing fees not included**



MAUSOLEUM VS. COLUMBARIUM

WHAT IS A COLUMBARIUM NICHE?

With the growing popularity of cremation as an alternative to traditional in-ground burial, options for cremated remains (or “cremains” as some call them) have increased. Choosing a columbarium niche as a final resting place for a cremation urn is a popular option, as it offers many of the benefits of traditional burial at a more affordable cost.



Columbarium Niche



Columbarium Niche



Columbarium Niche



What is a Mausoleum?

A mausoleum is a free-standing structure designed for above-ground, full casket interment. Mausoleums range in size, style and appearance to accommodate your needs. They have been used for burial since Ancient Egypt – technically the pyramids are extremely large mausoleums.



Mausoleum



Mausoleum



Mausoleum



Multiple interments

Double Depth Plots

These plots are essentially a single plot that can hold two caskets on top of each other. The process for burying two caskets in a double depth plot involves digging a hole deep enough for the first casket, placing it in a burial vault, and then burying the second casket about 6 feet deep. The headstone is then updated with the second person's information.

2nd Rite of Interment

Using a single grave space for an additional burial. Commonly, cemeteries that allow a 2nd Rite of Interment on a single grave space allow a combination of either: one casket + one urn, or two urns.

City approved vendor for grave openings and closings

RFP issued for services

2 Contractors would be selected

Insurance and Bonds will be required

Funeral homes will still contact city for services

City crews can strictly focus on maintenance





To: Mayor and Council

Date: October 8, 2024

Agenda Item: Consideration of contract award for Professional Design Services regarding Bi-Centennial Park and Improvements at Greenville Street Park

Prepared By: Cleatus Phillips, City Manager

Purpose:

Consideration of contract award for professional design services regarding Bi-Centennial Park and Improvements at Greenville Street Park

Background:

The voter approved 2025 SPLOST Program includes a \$4,000,0000 allocation for the design and construction of the Bi-Centennial Park and Improvements at Greenville Street Park. There also remains some funding from the 2019 SPLOST Recreation Program that will be used to assist in funding these projects. During the Council Retreat in February 2024, it was determined to advance fund the design of these parks and have them ready for construction in 2025.

On June 18, 2024, the City of Newnan received a total of nine (9) RFQ responses from professional design firms. After extensive evaluation from staff and our program management partner, Comprehensive Program Services, it was determined that Goodwyn Mills and Cawood was the highest evaluated firm and most suited for the design of these two parks.

The proposed contract between the City of Newnan and Goodwyn Mills and Cawood is attached. The total fee for design services is \$412,490. We believe the fee is fair and in-line with the design work to be done on these two (2) projects.

Funding:

2019 and 2025 SPLOST

Recommendation:

Staff recommends the contract be awarded to Goodwyn Mills and Cawood as presented.

Attachments:

1. Design Services Bidders List
2. City of Newnan SPLOST Parks B133-2019 - Final - 002

Previous Discussion with Council:

N/A



City of Newnan, Georgia

DESIGN SERVICES - SPLDST

BID OPENING:

BIDDER	BID AMOUNT	COMMENTS
BARBE / HOWER	N/A	
COLUMBIA ENG.	N/A	
CLARK PATTERSON LEE	N/A	
SMALLWOOD	N/A	
T. S. W.	N/A	
ASD / SKY	N/A	
Kimley Horn	N/A	
G. M. C.	N/A	
CROY	N/A	

BIDS OPENED BY

[Signature]
6/18/24
[Signature]
6/18/24



AIA® Document B133® – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the First day of October in the year Two Thousand Twenty Four
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

City of Newnan
25 LaGrange Street
Newnan, GA 30263

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

Goodwyn Mills Cawood, LLC
6120 Powers Ferry Rd NW
Suite 200
Atlanta, GA 30339

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

Newnan SPLOST Parks Projects
Bi-Centennial Park: **Tax Parcel N04 0012 001**
Greenville Street Park: **51 Greenville St. S Newnan, Georgia 30263**

The Construction Manager (if known):
(Name, legal status, address, and other information)

Jalen Johnson
CPS Comprehensive Program Services
3368 Hardee Avenue
Atlanta, GA 30341

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes:

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TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

See Exhibit A

§ 1.1.2 The Project's physical characteristics:

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

Bi-Centennial Park - 1.3 acre parcel bounded by train tracks, E. Washington St., and E. Broad St.

Greenville Street Park – two-acre urban park, located between Greenville Street and LaGrange Street, and Salbide Avenue.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

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

Bi-Centennial Park: \$3,000,000.00

Greenville Street Park: \$1,000,000.00

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

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.1 Design phase milestone dates, if any:

Bi-Centennial History – approx. 1.5 months
Schematic Design – approx. 1.5 months
Design Development – 2 months
Construction Documents – 4 months
Procurement – approx. 2 months

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

not applicable

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

- ☒ AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.
- ☐ AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

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

not applicable

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

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Cleatus Phillips, City Manager
City of Newnan
25 LaGrange St.

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§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address, and other contact information.)

not applicable

§ 1.1.10 The Owner shall retain the following consultants and contractors:

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

.1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

(Paragraphs deleted)

CM Anticipated Retention would be 10/22/24.

(Paragraphs deleted)

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:

(List name, address, and other contact information.)

Matt Mitchell, PLA LEED AP, VP Landscape Architecture
6120 Powers Ferry Rd NW
Suite 200
Atlanta, GA 30339

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:

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

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Landscape Architect:

Samuel Simpson, Principal
Ironwood Design Group
426 S. Atlanta St.
Suite 120

(Paragraphs deleted) Atlanta, GA 30075

§ 1.1.12.2 Consultants retained under Supplemental Services:

not applicable

§ 1.1.13 Other Initial Information on which the Agreement is based:

not applicable

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.1.2 The Architect shall design this Project such that the Guaranteed Maximum Price will not exceed the construction budget identified in Section 1.13. In the event that the Architect finds, in its opinion, that the construction costs will potentially exceed the construction budget, the Architect shall immediately stop work and give written notice to the Owner, who will either revise the budget to increase the construction budget or direct the Architect to reduce the scope of the Project. If the Owner agrees to increase the construction budget because the Owner's Program exceeds the construction budget, there shall be a negotiated increase in the compensation of the Architect under this Agreement as a result thereof. If the Owner elects to reduce the scope of the Project, the Architect shall, at no additional cost to the Owner, revise or redraft any and all documents necessary so as to bring the project within the construction budget and maintain the Preliminary Design and Construction Schedule; provided, however, if the cost of redesign is material, and the budget changes are the result of unexpected market forces, then the Architect shall be equitably reimbursed for such Design Services.

§ 2.1.3 The Architect shall review the Program with the Owner to confirm its understanding of the Owner's requirements. The Architect shall assist the Owner in refining or making clarifications to the Owner's requirements for the Project. If extensive changes from the Program are required, the Architect's compensation and schedule may be equitably adjusted based on original contract percentages for basic design and construction administration services.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and Two Million Dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) each employee, and One Million Dollars (\$ 1,000,000.00) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Four Million Dollars (\$ 4,000,000.00) per claim and Four Million Dollars (\$ 4,000,000.00) in the aggregate.

§ 2.6.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

§ 2.7 Delays by Design Professional. The design professional is responsible for the timely performance of its Design and assumes full responsibility for the timely performance of its consultants. The Design Professional acknowledges and agrees that if milestones in the Preliminary Design and Construction Schedule are not met due to acts or omissions of the Design Professional, then the Design Professional will, at its own expense, accelerate its work, or replace delinquent consultants, and retain such additional resources as necessary to return the Project to the Preliminary Design and Construction Schedule.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the

Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Upon completion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed,

and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques,

sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Assistance with Selection of Construction Manager	Owner
§ 4.1.1.2 Programming	Not Provided
§ 4.1.1.3 Multiple Preliminary Designs	Architect
§ 4.1.1.4 Measured drawings	Architect
§ 4.1.1.5 Existing facilities surveys	Owner
§ 4.1.1.6 Site evaluation and planning	Architect
§ 4.1.1.7 Building Information Model management responsibilities	Not Provided
§ 4.1.1.8 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9 Civil engineering	Architect
§ 4.1.1.10 Landscape design	Architect
§ 4.1.1.11 Architectural interior design	Architect
§ 4.1.1.12 Value analysis	Not Provided
§ 4.1.1.13 Cost estimating	Not Provided
§ 4.1.1.14 On-site project representation	Not Provided
§ 4.1.1.15 Conformed documents for construction	Architect
§ 4.1.1.16 As-designed record drawings	Architect
§ 4.1.1.17 As-constructed record drawings	Not Provided
§ 4.1.1.18 Post-occupancy evaluation	Not Provided
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22 Telecommunications/data design	Not Provided
§ 4.1.1.23 Security evaluation and planning	Not Provided
§ 4.1.1.24 Commissioning	Not Provided
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26 Historic preservation	Not Provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	Architect
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29 Other Supplemental Services	Not Provided
§ 4.1.1.30 Signage/Wayfinding	Not Provided
§ 4.1.1.31 Acoustical Consulting	Not Provided
§ 4.1.1.32 Fast-Track Design Services	Not Provided
§ 4.1.1.33 Advanced Renderings, 3D Visualizations, Flythrough	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

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(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the

Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Twelve (12) visits to the site by the Architect during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court located in Coweta County

☐ Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

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

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

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

For Services Rendered

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum

(Paragraphs deleted)

\$412,490.00

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Hourly as indicated in GMC's Current Rate and Fee Schedule

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus twenty percent (20 %), or as follows:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Bi-Centennial Park History	Four	percent	4	%)
Schematic Design Phase	Ten	percent (	10	%)
Design Development Phase	Twenty Six	percent (	26	%)
Construction Documents Phase	Forty One	percent (	41	%)
Construction Phase	Nineteen	percent (	19	%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

Init.

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User Notes:

(1513646440)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

As indicated in GMC's 2024 Rate and Fee Schedule

Employee or Category	Rate (\$0.00)
----------------------	---------------

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus twenty percent (20 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

not applicable

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

Init.

N/A

(Paragraph deleted)

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

One Point Five Percent % 1.5

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

ARCHITECT'S RESPONSIBILITIES

12.1 Supplement To Article 2 Architect's Responsibilities.

Responsibilities for Delays

- a. The Architect is not responsible for delays caused by factors beyond the Architect's reasonable control, including but not limited to delays because of strikes, lockouts, work slow downs or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Owner to furnish timely information or approve or disprove of the Architect's services or work product promptly, failure to obtain funding, failure to obtain major lease agreements or delays caused by faulty performance by the Owner or by the Contractors of any level. When such delays beyond the Architect's reasonable control occur, the Owner agrees the Architect is not responsible for damages, nor shall the Architect be deemed to be in default of this Agreement.

ADDITIONAL SERVICES

12.2 Project Representation Beyond Basic Services

- a. If more extensive representation at the site is required than is described under Article 3.4, Construction Phase, and if the Owner and Architect agree, one or more full-time Project Representative(s) shall be provided.
- b. It is agreed: (i) the Owner may elect, at its sole option, to provide full-time Project Representative(s), to be employed and compensated by the Owner and who shall be fully responsible to the Owner; or (ii) the Owner may elect, at its sole option, for the Architect to provide full-time Project Representative(s) as an Amendment to this Agreement.
- c. Through the on-site observations by full-time Project Representative(s) of the work in progress, the Architect shall endeavor to provide further protection for the Owner against defects in the work, but providing such project representation shall not modify the rights, responsibilities, or

Init.

/

obligations or the Architect under this Agreement nor make the Architect responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs, or for the Contractor's failure to perform the work in accordance with the Contract Documents.

12.3 Document Revisions

Providing services to change drawings, related documents, and providing associated construction administration after the Owner has approved Design Development Documents, to include but not be limited to:

- a. Making changes to alter the Owner approved Construction Cost Budget to: (i) to reduce the Estimate of Probable Construction Cost below the current Construction Cost Budget to reflect a savings to the Owner or (ii) to upgrade the quality or scope of the Project by increasing the Estimate of Probable Construction Cost up to, but within the current Construction Cost Budget.
- b. Making changes caused by the Owner's representatives (including users, special engineer(s) and/or consultant(s)) due to (i) errors and omissions in their drawings, specifications and related documents (ii) conflicts between the Architect's documents and the Owner's representatives, user's, special engineer's and/or consultant's documents which do not conform to the parameters of the Architect's documents or (iii) the failure to provide the Architect with design information on a timely basis for the orderly progress of the Project, in accordance with the Project Design Schedule where the Architect was not in prior possession of information.
- c. In cases where any changes are required as a result of discrepancies in the Architect's documents and its basic consultants' documents, (normal and special) the Architect shall, within the Basic Service Compensation, provide the professional services necessary to affect like changes to its documents.
- d. The Architect will provide an estimate of additional cost, based on the Architect's hourly rates, and submit to the Owner for approval.

12.4 Other Additional Services

- a. Providing services to review, attend meetings and revise documents for Governmental directed changes after the documents have been approved by the Governmental Agency having jurisdiction over the Project.
- b. Providing services to accommodate concealed conditions after construction documents are complete, not to include normal or common coordination issues that can and should be expected in a renovation project.

12.5 Additional Consultants

- a. It is understood and agreed that: (i) the Owner may elect, at its sole option, to provide additional special consultant(s), beyond those included as part of the Specialty Consultants currently employed for the project, to be employed and compensated by the Owner and who shall be fully responsible to the Owner, or (ii) the Owner may elect, as its sole option, for the Architect to provide the additional special consultant(s) as an Amendment to this Agreement.

MISCELLANEOUS PROVISIONS

12.6 Supplement to Article 10, Miscellaneous Provisions

10.10 There shall be no reduction in fee for actual services provided due to deductive Change Order items or deductive Alternates.

10.11 If a Change Order is generated as a result of an error or omission by the Architect, there will be no cost to the Owner for A/E fees.

10.12 **Project Betterment**

If, due to the Architect's error, any required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the actual cost to add such item or component to the extent that such item or component would have been otherwise necessary for the project or otherwise adds value or betterment to the project. If due to Architect's error, the Architect will be responsible for added cost due to demolition, corrective or other rework and on upcharges for out of sequence work.

10.13 **Consequential Damages**

Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the Owner or the Architect, their employees, agents, subconsultants or subcontractors. Consequential damages include but are not limited to loss of use and loss of profit.

10.14 **Indemnification**

Owner agrees to indemnify, hold harmless and defend the Architect and its Consultants from and against each and every claim made against Architect for loss of business, damages, equitable remedies, penalties, litigation expenses, attorney fees and insurance deductibles, or any combination thereof, brought against the Architect by reason of Architect's participation with the Project (as opposed to a claim based on Architect's own negligence, errors, or omissions) and arising out of interruption of public utilities, closing of public streets, and/or any injury to or destruction of tangible property, including the loss of use resulting from construction activities in and around the Project and other areas that must remain in use during the construction period. It is agreed and understood that the Owner, through itself and/or its Construction Manager, is responsible for providing access to restricted areas and for ensuring the proper and timely interruption and closing of public streets, as applicable. The Architect shall remain liable, however, for any claims brought against Architect, Owner, or others based upon Architect's professional negligent acts, errors or omissions in connection with Architect's performance under this Agreement or in connection with this Project.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B133™-2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 Building Information Modeling Exhibit, if completed:

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)

[] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

.4 Other documents:
(List other documents, if any, forming part of the Agreement.)

GMC's 2024 Hourly Rate and Fee Schedule
City of Newnan SPLOST Parks Projects Proposal Dated September 9, 2024

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

OWNER (Signature)

(Printed name and title)



ARCHITECT (Signature)

Matt Mitchell, VP, GA Landscape Architecture

(Printed name, title, and license number, if required)

Additions and Deletions Report for

AIA® Document B133® – 2019

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

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PAGE 1

AGREEMENT made as of the First day of October in the year Two Thousand Twenty Four

...

City of Newnan
25 LaGrange Street
Newnan, GA 30263

...

Goodwyn Mills Cawood, LLC
6120 Powers Ferry Rd NW
Suite 200
Atlanta, GA 30339

...

Newnan SPLOST Parks Projects
Bi-Centennial Park: Tax Parcel N04 0012 001
Greenville Street Park: 51 Greenville St. S Newnan, Georgia 30263

...

Jalen Johnson
CPS Comprehensive Program Services
3368 Hardee Avenue
Atlanta, GA 30341

PAGE 2

See Exhibit A

...

Bi-Centennial Park - 1.3 acre parcel bounded by train tracks, E. Washington St., and E. Broad St.
Greenville Street Park – two-acre urban park, located between Greenville Street and LaGrange Street, and Salbide Avenue.

...

Bi-Centennial Park: \$3,000,000.00
Greenville Street Park: \$1,000,000.00

PAGE 3

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User Notes:

(1513646440)

Bi-Centennial History – approx. 1.5 months
Schematic Design – approx. 1.5 months
Design Development – 2 months
Construction Documents – 4 months
Procurement – approx. 2 months

...
TBD

...
TBD

...
not applicable

...
☒ [X] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

...
not applicable

...
Cleatus Phillips, City Manager
City of Newnan
25 LaGrange St.
Newnan, GA 30263
PAGE 4

not applicable

...
.2 — Land Surveyor:

.3 — Geotechnical Engineer:

CM Anticipated Retention would be 10/22/24.

...

~~.4 — Civil Engineer:~~

~~.5 — Other consultants and contractors:
(List any other consultants and contractors retained by the Owner.)~~

...

Matt Mitchell, PLA LEED AP, VP Landscape Architecture
6120 Powers Ferry Rd NW
Suite 200
Atlanta, GA 30339

...

~~.1 — Structural Engineer:~~Landscape Architect:

Samuel Simpson, Principal
Ironwood Design Group
426 S. Atlanta St.
Suite 120

~~.2 — Mechanical Engineer:~~

~~.3 — Electrical Engineer:~~

Atlanta, GA 30075

...

not applicable

PAGE 5

not applicable

...

§ 2.1.2 The Architect shall design this Project such that the Guaranteed Maximum Price will not exceed the construction budget identified in Section 1.13. In the event that the Architect finds, in its opinion, that the construction

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(1513646440)

costs will potentially exceed the construction budget, the Architect shall immediately stop work and give written notice to the Owner, who will either revise the budget to increase the construction budget or direct the Architect to reduce the scope of the Project. If the Owner agrees to increase the construction budget because the Owner's Program exceeds the construction budget, there shall be a negotiated increase in the compensation of the Architect under this Agreement as a result thereof. If the Owner elects to reduce the scope of the Project, the Architect shall, at no additional cost to the Owner, revise or redraft any and all documents necessary so as to bring the project within the construction budget and maintain the Preliminary Design and Construction Schedule; provided, however, if the cost of redesign is material, and the budget changes are the result of unexpected market forces, then the Architect shall be equitably reimbursed for such Design Services.

§ 2.1.3 The Architect shall review the Program with the Owner to confirm its understanding of the Owner's requirements. The Architect shall assist the Owner in refining or making clarifications to the Owner's requirements for the Project. If extensive changes from the Program are required, the Architect's compensation and schedule may be equitably adjusted based on original contract percentages for basic design and construction administration services.

PAGE 6

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and Two Million Dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) each employee, and One Million Dollars (\$ 1,000,000.00) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Four Million Dollars (\$ 4,000,000.00) per claim and Four Million Dollars (\$ 4,000,000.00) in the aggregate.

...

§ 2.7 Delays by Design Professional. The design professional is responsible for the timely performance of its Design and assumes full responsibility for the timely performance of its consultants. The Design Professional acknowledges and agrees that if milestones in the Preliminary Design and Construction Schedule are not met due to acts or omissions of the Design Professional, then the Design Professional will, at its own expense, accelerate its work, or replace delinquent consultants, and retain such additional resources as necessary to return the Project to the Preliminary Design and Construction Schedule.

PAGE 9

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

PAGE 13

§ 4.1.1.1	Assistance with Selection of Construction Manager	<u>Owner</u>
§ 4.1.1.2	Programming	<u>Not Provided</u>
§ 4.1.1.3	Multiple Preliminary Designs	<u>Architect</u>
§ 4.1.1.4	Measured drawings	<u>Architect</u>
§ 4.1.1.5	Existing facilities surveys	<u>Owner</u>
§ 4.1.1.6	Site evaluation and planning	<u>Architect</u>
§ 4.1.1.7	Building Information Model management responsibilities	<u>Not Provided</u>
§ 4.1.1.8	Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.9	Civil engineering	<u>Architect</u>
§ 4.1.1.10	Landscape design	<u>Architect</u>
§ 4.1.1.11	Architectural interior design	<u>Architect</u>
§ 4.1.1.12	Value analysis	<u>Not Provided</u>
§ 4.1.1.13	Cost estimating	<u>Not Provided</u>
§ 4.1.1.14	On-site project representation	<u>Not Provided</u>
§ 4.1.1.15	Conformed documents for construction	<u>Architect</u>
§ 4.1.1.16	As-designed record drawings	<u>Architect</u>
§ 4.1.1.17	As-constructed record drawings	<u>Not Provided</u>
§ 4.1.1.18	Post-occupancy evaluation	<u>Not Provided</u>
§ 4.1.1.19	Facility support services	<u>Not Provided</u>
§ 4.1.1.20	Tenant-related services	<u>Not Provided</u>
§ 4.1.1.21	Architect's coordination of the Owner's consultants	<u>Not Provided</u>
§ 4.1.1.22	Telecommunications/data design	<u>Not Provided</u>
§ 4.1.1.23	Security evaluation and planning	<u>Not Provided</u>
§ 4.1.1.24	Commissioning	<u>Not Provided</u>
§ 4.1.1.25	Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.26	Historic preservation	<u>Not Provided</u>
§ 4.1.1.27	Furniture, furnishings, and equipment design	<u>Architect</u>
§ 4.1.1.28	Other services provided by specialty Consultants	<u>Not Provided</u>
§ 4.1.1.29	Other Supplemental Services	<u>Not Provided</u>
§ 4.1.1.30	Signage/Wayfinding	<u>Not Provided</u>
§ 4.1.1.31	Acoustical Consulting	<u>Not Provided</u>
§ 4.1.1.32	Fast-Track Design Services	<u>Not Provided</u>
§ 4.1.1.33	Advanced Renderings, 3D Visualizations, Flythrough	<u>Not Provided</u>

PAGE 15

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Twelve (12) visits to the site by the Architect during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion

...

§ 4.2.5 If the services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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User Notes:

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PAGE 19

[X] Litigation in a court of competent jurisdiction located in Coweta County

PAGE 21

For Services Rendered

PAGE 22

(Insert amount)

.2 — Percentage Basis

(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 — Other

(Describe the method of compensation) \$412,490.00

...

Hourly as indicated in GMC's Current Rate and Fee Schedule

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus twenty percent (20 %), or as follows:

...

<u>Bi-Centennial Park History</u>	<u>Four</u>	<u>percent</u>	<u>4</u>	<u>%</u>
Schematic Design Phase	<u>Ten</u>	percent (	<u>10</u>	%)
Design Development Phase	<u>Twenty Six</u>	percent (	<u>26</u>	%)
Construction Documents Phase	<u>Forty One</u>	percent (	<u>41</u>	%)
Construction Phase	<u>Nineteen</u>	percent (	<u>19</u>	%)

PAGE 23

As indicated in GMC's 2024 Rate and Fee Schedule

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus twenty percent (20 %) of the expenses incurred.

...

not applicable

...

§ 11.10.1.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

N/A

~~§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

PAGE 24

One Point Five Percent % 1.5

...

ARCHITECT'S RESPONSIBILITIES

12.1 Supplement To Article 2 Architect's Responsibilities.

Responsibilities for Delays

- a. The Architect is not responsible for delays caused by factors beyond the Architect's reasonable control, including but not limited to delays because of strikes, lockouts, work slow downs or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Owner to furnish timely information or approve or disprove of the Architect's services or work product promptly, failure to obtain funding, failure to obtain major lease agreements or delays caused by faulty performance by the Owner or by the Contractors of any level. When such delays beyond the Architect's reasonable control occur, the Owner agrees the Architect is not responsible for damages, nor shall the Architect be deemed to be in default of this Agreement.

ADDITIONAL SERVICES

12.2 Project Representation Beyond Basic Services

- a. If more extensive representation at the site is required than is described under Article 3.4, Construction Phase, and if the Owner and Architect agree, one or more full-time Project Representative(s) shall be provided.
- b. It is agreed: (i) the Owner may elect, at its sole option, to provide full-time Project Representative(s), to be employed and compensated by the Owner and who shall be fully responsible to the Owner; or (ii) the Owner may elect, at its sole option, for the Architect to provide full-time Project Representative(s) as an Amendment to this Agreement.
- c. Through the on-site observations by full-time Project Representative(s) of the work in progress, the Architect shall endeavor to provide further protection for the Owner against defects in the work, but providing such project representation shall not modify the rights, responsibilities, or obligations of the Architect under this Agreement nor make the Architect responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs, or for the Contractor's failure to perform the work in accordance with the Contract Documents.

12.3 Document Revisions

Providing services to change drawings, related documents, and providing associated construction administration after the Owner has approved Design Development Documents, to include but not be limited to:

- a. Making changes to alter the Owner approved Construction Cost Budget to: (i) to reduce the Estimate of Probable Construction Cost below the current Construction Cost Budget to reflect a savings to the Owner or (ii) to upgrade the quality or scope of the Project by increasing the Estimate of Probable Construction Cost up to, but within the current Construction Cost Budget.
- b. Making changes caused by the Owner's representatives (including users, special engineer(s) and/or consultant(s)) due to (i) errors and omissions in their drawings, specifications and related documents (ii) conflicts between the Architect's documents and the Owner's representatives, user's, special engineer's and/or consultant's documents which do not conform to the parameters of the Architect's documents or (iii) the failure to provide the Architect with design information on a timely basis for the orderly progress of the Project, in accordance with the Project Design Schedule where the Architect was not in prior possession of information.
- c. In cases where any changes are required as a result of discrepancies in the Architect's documents and its basic consultants' documents, (normal and special) the Architect shall, within the Basic Service Compensation, provide the professional services necessary to affect like changes to its documents.
- d. The Architect will provide an estimate of additional cost, based on the Architect's hourly rates, and submit to the Owner for approval.

12.4 Other Additional Services

- a. Providing services to review, attend meetings and revise documents for Governmental directed changes after the documents have been approved by the Governmental Agency having jurisdiction over the Project.
- b. Providing services to accommodate concealed conditions after construction documents are complete, not to include normal or common coordination issues that can and should be expected in a renovation project.

12.5 Additional Consultants

- a. It is understood and agreed that: (i) the Owner may elect, at its sole option, to provide additional special consultant(s), beyond those included as part of the Specialty Consultants currently employed for the project, to be employed and compensated by the Owner and who shall be fully responsible to the Owner, or (ii) the Owner may elect, as its sole option, for the Architect to provide the additional special consultant(s) as an Amendment to this Agreement.

MISCELLANEOUS PROVISIONS

12.6 Supplement to Article 10, Miscellaneous Provisions

- 10.10 There shall be no reduction in fee for actual services provided due to deductive Change Order items or deductive Alternates.

10.11 If a Change Order is generated as a result of an error or omission by the Architect, there will be no cost to the Owner for A/E fees.

10.12 Project Betterment

If, due to the Architect's error, any required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the actual cost to add such item or component to the extent that such item or component would have been otherwise necessary for the project or otherwise adds value or betterment to the project. If due to Architect's error, the Architect will be responsible for added cost due to demolition, corrective or other rework and on upcharges for out of sequence work.

10.13 Consequential Damages

Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the Owner or the Architect, their employees, agents, subconsultants or subcontractors. Consequential damages include but are not limited to loss of use and loss of profit.

10.14 Indemnification

Owner agrees to indemnify, hold harmless and defend the Architect and its Consultants from and against each and every claim made against Architect for loss of business, damages, equitable remedies, penalties, litigation expenses, attorney fees and insurance deductibles, or any combination thereof, brought against the Architect by reason of Architect's participation with the Project (as opposed to a claim based on Architect's own negligence, errors, or omissions) and arising out of interruption of public utilities, closing of public streets, and/or any injury to or destruction of tangible property, including the loss of use resulting from construction activities in and around the Project and other areas that must remain in use during the construction period. It is agreed and understood that the Owner, through itself and/or its Construction Manager, is responsible for providing access to restricted areas and for ensuring the proper and timely interruption and closing of public streets, as applicable. The Architect shall remain liable, however, for any claims brought against Architect, Owner, or others based upon Architect's professional negligent acts, errors or omissions in connection with Architect's performance under this Agreement or in connection with this Project.

PAGE 27

GMC's 2024 Hourly Rate and Fee Schedule

City of Newnan SPLOST Parks Projects Proposal Dated September 9, 2024

...



...

Matt Mitchell, VP, GA Landscape Architecture

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Matt Mitchell, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:06:21 ET on 10/01/2024 under Order No. 3104239043 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ – 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



To: Mayor and Council

Date: October 8, 2024

Agenda Item: Consideration of contract award for Construction Manager Services regarding Bi-Centennial Park and Improvements at Greenville Street Park

Prepared By: Cleatus Phillips, City Manager

Purpose:

Consideration of contract award for Construction Manager services regarding Bi-Centennial Park and Improvements at Greenville Street Park

Background:

The voter approved 2025 SPLOST Program includes a \$4,000,0000 allocation for the design and construction of the Bi-Centennial Park and Improvements at Greenville Street Park. There also remains some funding from the 2019 SPLOST Recreation Program that will be used to assist in funding these projects. During the Council Retreat in February 2024, it was determined to advance fund the design of these parks and have them ready for construction in 2025.

On June 18, 2024, the City of Newnan received a total of two (2) RFQ responses from Construction Manager Firms. After extensive evaluation from staff and our program management partner, Comprehensive Program Services, it was determined that New South Construction was the highest evaluated firm and most suited for the construction management of these two parks.

The proposed contract between the City of Newnan and New South Construction is attached. The total fee for pre-construction management services is \$51,455.40. Staff believes the pre-construction fee is fair and in-line with the work to be done on these two (2) projects. These projects are being delivered in the form of Construction Manager @ Risk. This is the pre-construction portion of the contract where the New South will work with the design team to develop a Guaranteed Maximum Price (GMP) to construct the projects. After the GMP is prepared, it will be submitted to the Council for final consideration.

Funding:

2019 and 2025 SPLOST

Recommendation:

Staff recommends that the Construction Manager Contract be awarded to New South Construction as presented.

Attachments:

1. Construction Manager Bidder List
2. CON AIA A133 Contract

Previous Discussion with Council:

N/A



City of Newnan, Georgia

CMAR - SPLOST

BID OPENING:

BIDDER	BID AMOUNT	COMMENTS
NEW South	N/A	
P.E. STRUCTURES	N/A	

BIDS OPENED BY

6/18/24
MNR
6/18/24

AIA® Document A133® – 2019

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

AGREEMENT made as of the eleventh day of September in the year two thousand twenty four

(In words, indicate day, month, and year.)

BETWEEN the Owner:

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

City of Newnan
Lagrange Street
Newnan, Ga 30263

and the Construction Manager:

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

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

for the following Project:

(Name, location, and detailed description)

Newnan SPLOOST parks
51 Greenville St. S and Tax Parcel N04 0012 001
Newnan, Ga 30263

The Architect:

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

ADDITIONS AND DELETIONS:

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

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

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

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

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

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

Greenville Street Park

Greenville Street Park is currently a two-acre urban park nestled between Greenville Street and LaGrange Street, and Salbide Avenue. The Park currently features a 25-column colonnaded entrance, a terraced lawn area, and a stage that serves a small amphitheater, water fountain, and a covered pavilion. The goal for the City of Newnan is to expand this existing park to enhance public performance.

The tentative scope is included but not limited to: Demoing the existing stage and adding a covered stage with all new power/AV/LV Upgrades. Seating expansion, additional canopies, greenspace, restrooms, LINC Connection

Bi-Centennial Park

Bi-Centennial Park will be a new park that is a major component of the approved SPLOST Funding. The City of Newnan would like this park to tell the history of the City of Newnan within the design. The project scope for Bi-Centennial Park includes but is not limited to: Retaining Walls with Ribbon Seating, Bio-Retention Pond, Pavilions, Gardens, Walkways/LINC Trailhead, Parking

§ 1.1.2 The Project's physical characteristics:

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

Greenville Street Park: 51 Greenville St. S Newnan, Georgia 3026

Bi-Centennial Park: Tax Parcel N04 0012 00

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

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

Greenville Street Park: \$1,000,000.00

Bi-Centennial Park: \$3,000,000.00

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

- .1 Design phase milestone dates, if any:

TBD

- .2 Construction commencement date:

TBD

- .3 Substantial Completion date or dates:

TBD

- .4 Other milestone dates:

TBD

The Guaranteed Maximum Price Amendment shall provide for the applicable milestone dates.

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

(Identify any requirements for fast-track scheduling or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

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

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

Jalen Johnson
Comprehensive Program Services
3368 Hardee Avenue
Atlanta, Ga 30341

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

Rob Ragan
New South Construction, LLC
1180 West Peachtree Street, Suite 700
Atlanta, Ga 30309

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate changes in the Initial Information.

§ 1.3 Absent a change in employment, neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, Exhibits hereto, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction (as modified), shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017 (as modified), which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager, but the Owner and Architect shall promptly report to the Construction Manager any issues discovered by or made known to the Owner and Architect as a request for information. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager, if any are required, during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing any requested building information modeling and/or digital data protocols for the Project to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 To the extent that the Owner requires any incidental services, construction consulting, or value engineering, the Owner acknowledges that such services are advisory and are not professional design services. The Owner will, with due diligence, refer such questions, matters, and inquiries to the Architect or other design professionals, and the Construction Manager shall have no liability to the Owner or the Architect or its consultants for such services requested by the Owner and rendered hereunder.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall include the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use in its sole discretion to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The contingency shall be increased to the extent of buyout savings.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information

presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. In the event that the Contractor is required to pay or bear the burden of any new federal, state, or local tax, or of any rate increase of an existing tax (except a tax on net profits) or pay or bear the burden of any new tariff, as a result of any statute, court decision, written ruling, or regulation taking effect after the contract date, the Guaranteed Maximum Price shall be increased by the amount of the new tax or tax increase.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

51,455.40

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

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

Individual or Position	Rate
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§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

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

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

Current Prime Rate plus 3.5 % per annum

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Liquidated Damages shall be the sole and exclusive remedy for any delay hereunder. Accordingly, the Contractor agrees to pay the Owner, as liquidated damages and not as a penalty, the sum of [_____ dollars (\$_0_)] for each calendar day starting the 45th day following the Substantial Completion Date that the Contractor fails to achieve Substantial Completion; provided that in no event shall the damages assessed against Contractor in accordance with this Section 6.1.6 exceed fifty percent (50%) of Contractor's Fee.

Both Contractor and Owner agree that in the event that Substantial Completion is not reached within the Contract Time, including approved extensions, the damages would be difficult or impossible to ascertain, and that the aforementioned amount for liquidated damages is reasonable estimate of the potential damages.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

"Savings" means the amount, if any, by which the Guaranteed Maximum Price exceeds the total Contract Sum payable under this Contract, without including in such calculation any amounts saved in Allowance items. If there are Savings, then fifty (50%) of Savings will be kept by the Owner and fifty percent (50%) of such Savings will be paid to the Contractor as part of the final payment. However, the Owner may retain the Contractor's portion of Savings to offset liquidated damages due to the Owner hereunder or other sums due Owner pursuant to this Agreement.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to (1) the assumptions and clarifications with the Guaranteed Maximum Price Amendment and (2) any additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

(Paragraph deleted)

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include the items set forth in Sections 7.1 through 7.7, as modified to adjust for any agreed upon fixed costs and/or unit prices.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall endeavor to obtain such approval in writing prior to incurring the cost.

(Paragraph deleted)

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the original duration plus 3 months of the Project Schedule as set forth in the Guaranteed Maximum Amendment, unless the parties execute a Modification. The Construction Manager shall be entitled to an

equitable adjustment for any period in excess of the original duration plus 3 months providing the excess is not due to Contractor failing to efficiently manage the original duration.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the gross negligence or intentional act of the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall

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be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 Unless otherwise provided in the attached exhibits (which shall take precedence), the Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14, or as defined in and/or listed in Exhibit "1" Construction Manager Project Wages and Salaries which shall take precedence;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in valid Change Orders approved by the owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase (which are in addition to and shall be paid outside of the GMP).

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner. The Contractor shall then determine, with the advice of the Owner and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. The Construction Manager shall not have to keep records for items billed at a fixed rate as provided herein, as such items are not subject to audit. The Owner shall ensure the confidentiality of all records obtained from the Construction Manager pursuant to this Article.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 20th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 20th day of the next month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 The Construction Manager may allocate costs from a contingency to another line item in the schedule of values in its sole discretion.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, which shall be computed multiplying the fixed fee amount, adding increases from change orders, and multiplying that by the percentage of completed Work.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

At the start of the project, the Owner may withhold ten percent (10%) as retainage. When the project billing reaches (50%) fifty percent of the project GMP the retainage withheld will be reduced to five percent (5%), and further reduced to one percent (1%) upon receipt of a Certificate of Occupancy.

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

A one hundred percent (100%) payment will be made on a "line-item" basis within 60 days after

Substantial Completion of the following line items: (a) excavation, (b) sheeting and shoring, (c) site utilities, (d) structural steel, [insert other early completing subcontractors].

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Upon Substantial Completion of the Work, the Construction Manager will be paid all retainage, exclusive of a reasonable estimate of the Work to be completed and one hundred fifty percent (150%) of the value attributable to "punch list" work. As items on the punch list are completed, the Construction Manager will be paid one hundred fifty percent (150%) of their value at the next progress payment.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

(Paragraph deleted)

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct and complete an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Pending a final resolution of the disputed

amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

Current Prime Rate plus 3.5 % per annum

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201-2017 (as modified). However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

- ☐ Arbitration pursuant to Article 15 of AIA Document A201-2017
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: (Specify)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.1.1 Termination by Construction Manager

In addition to any other basis specified in the Contract Documents, the following shall constitute bases for termination by the Construction Manager:

- (a) Owner's failure to pay Construction Manager in accordance with the terms of the Contract for a period of more than twenty-one (21) calendar days;
- (b) Owner's refusal for a period of more than twenty-one (21) calendar days from written request by Construction Manager to issue appropriate Change Orders or Construction Change Directives in writing where

the Owner's or its Agent's conduct interferes with Construction Manager's performance causing delays to the Construction Manager; and
(c) Owner's failure to provide Construction Manager with adequate plans and specifications for Construction Manager to perform its Work in an efficient and workmanlike manner unless the Owner promptly remedies that failure through plan or specification amendments in written Change Orders issued within twenty-one (21) calendar days from written request by Construction Manager.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

100% of the unpaid portion of Contractor's Fee.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (\$) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

The following special stipulations shall take precedence over anything to the contrary.

§ 14.5.1 Owner hereby agrees that any information related to or associated with Construction Manager, Construction Manager's proposal, pricing, the scope of the project, personnel rates, equipment rates, subcontractor pricing, general conditions pricing, subcontractor identity, the value of the project, Construction Manager's ownership, Construction Manager's financial data, means and methods, and any other information regarding the Project or Construction Manager whether known or anticipated shall be referred to as Information. The purpose of the disclosures will of the Information will be in furtherance of the Project. All tangible and intangible Information provided by Construction Manager to Owner related to or in furtherance of the Project, and any tangible or intangible information derived therefrom, shall be deemed "Confidential Information." Owner shall take precautions to keep the Confidential Information strictly confidential and shall not disclose it, or cause or permit it to be disclosed, to any person or entity, except as necessary in furtherance of the Project. In no event will such precautions be less than those absolutely necessary to protect (i) the Confidential Information and (ii) against any unauthorized disclosure of the Confidential Information.

§ 14.5.3. Extensions of Time for Abnormal Weather. Extensions of time will be granted for abnormal weather conditions that delay the critical path of the progress of the work, subject to the provisions below.

- i. **Weather Delay Days.** Weather delay days are those days where the project site receives more than ½" of precipitation or extreme weather conditions and the event causes a delay in the critical path work.
- ii. **Anticipated Weather Delay Days.** Anticipated weather delay days are the weather delay days specified in Exhibit O that the Contractor shall expect to incur and shall provide for in the schedule.
- iii. **Abnormal Weather Delay Days.** Abnormal weather delay days are weather delay days in excess of the number of days specified in Exhibit O.
- iv. **Documenting Weather Delay Days.** The Contractor shall record actual weather delay days incurred at the site and describe the weather's impact to the critical path. Weather delay days shall be documented by the Contractor and verified by the Owner's onsite representative. Not later than ten days after the end of each calendar month, the Contractor shall submit a report to the Architect documenting the number of weather delay days incurred in the month and the number of anticipated weather delay days remaining.
- v. **Extensions of Time for Abnormal Weather Delay Days.** The Contractor shall be entitled to a contract extension due to weather delay days whenever the number of weather delay days incurred is greater than the total number of anticipated weather delay days for the project, the Architect shall determine if each subsequent weather delay day impacts the critical path.
- vi. **Claims for Extension of Time for Abnormal Weather Delay Days.** When the number of weather delay days incurred exceeds the number of Anticipated Weather Delay Days, the Contractor may make a claim for contract extension. These claims shall be processed as a Change Order. The Contractor must make reasonable efforts to mitigate the effects of abnormal weather delay days in order to be entitled to a contract extension.
- vii. **Dispute – Abnormal Weather Delay.** The Architect's recommendations as to abnormal weather delay shall be subject to the Contractor's right to assert a claim or dispute in accord with the A201, Article 15.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

Init.

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User Notes:

(1936152650)

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction (as modified).
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

[Only applies if date of such E203 is set forth herein].

- .6 Other Exhibits:

(Check all boxes that apply.)

☐ AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

(Insert the date of the E234-2019 incorporated into this Agreement.)

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Exhibit "1" Construction Manager Project Wages and Salaries

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

OWNER (Signature)

(Printed name and title)



CONSTRUCTION MANAGER (Signature)

Rob Dunn, Executive Vice President

(Printed name and title)



To: Mayor and Council
Date: October 8, 2024
Agenda Item: Council Direction on Charter Amendment and Code of Ordinances Amendment Pertaining to Adoption of Ordinances
Prepared By: Cleatus Phillips, City Manager

Purpose:

To provide staff with direction regarding a change to the City Charter regarding the adoption of ordinances on 2nd reading.

Background:

PLEASE NOTE: This is not a request to act upon the ordinance. The purpose of the agenda item is to provide staff with direction. If Council desires to pursue a charter amendment, staff will advertise as required and bring the ordinance back to Council for consideration at a later date.

As you are aware, the Council can only adopt an ordinance on first reading if the vote is 7-0. Any absence of a council member or any opposing vote requires a 'second reading' and final consideration at a later council meeting. The proposed Charter Amendment would allow an ordinance to be passed on first reading provided the ordinance is duly published on the agenda and at least 4 council members vote in favor of the ordinance.

During the August 13th Council meeting, this matter was discussed. There was a brief discussion regarding potential amendments, including 1) second reading requirements only for ordinances that are codified, 2) not requiring a second reading when there is a unanimous vote of the council members present; and, 3) simple majority of Council.

Staff was directed to research this matter and return the item to Council for further conversation. In doing research, staff was unable to find an organization that utilized options 1 or 2 as shown above.

Simple majority is the overwhelming process utilized by local governments in Georgia. Staff were able to find a few instances where ordinances had to be read at a prior meeting before being acted upon, but once acted upon, there were no second reading requirements. This latter process would require a change to our zoning/annexation process.

Funding:

N/A

Recommendation:

Staff recommends that if the Council desires to pursue a charter amendment, that we utilize the simple majority procedures as shown in the attached ordinance.

Attachments:

1. Article II , Chapter 2 Code of Ord. Sec. 2.32) amendment (7-22-2024)
2. Article II , Charter Sec. 2.12 (b) amendment (7-22-2024)

Previous Discussion with Council:

August 13, 2024

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF NEWNAN
BY AMENDING SEC. 2-32, INTRODUCTION, ENACTMENT OF ORDINANCES, OF
ARTICLE II, CITY COUNCIL OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE
CITY OF NEWNAN SO AS TO PROVIDE FOR ADOPTION OF ORDINANCES UPON
INTROUCTION, AND FOR OTHER PURPOSES

BE IT ORDAINED AND IT IS HEREBY ORDAINED by the authority of the Mayor and Council of the City of Newnan, that Section 2-32. Introduction, enactment of ordinances, of Article II, City Council, of Chapter 2 of the Code of Ordinances of the City of Newnan is and is hereby adopted to read as follows:

SECTION I: Sec. 2-32. Introduction, enactment of ordinances.

An ordinance may be introduced by any member of the city council and considered at a regular or special meeting of the city council. Ordinances shall be considered and adopted or rejected by the city council in accordance with the rules which it shall establish and the provisions of this Code of Ordinances and the Charter which require the affirmative vote of four members of the city council; however, an ordinance shall not be adopted the same day it is introduced unless said ordinance is an emergency ordinance as provided for in Section 2.14 of the Charter or unless said ordinance has been published as an agenda item prepared for the regular or special meeting. Upon introduction of any ordinance, the clerk shall as soon as possible distribute a copy to the Mayor and to each council member and shall file a reasonable number of copies in the office of the clerk and at such other public places as the city council may designate.

SECTION II: All ordinances in conflict herewith are hereby repealed.

SECTION III. If any section, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

SECTION IV. The effective date of this ordinance amending the Code of Ordinances of the City of Newnan is _____, 2024.

ADOPTED by the Mayor and Council of the City of Newnan, in regular session,
this ____ day of _____, 2024.

ATTEST:

L. Keith Brady, Mayor

Megan Shea, City Clerk

Paul Guillaume, Mayor Pro-Tem

REVIEWED AS TO FORM:

C. Bradford Sears, Jr., City Attorney

Cynthia E. Jenkins, Councilmember

Cleatus Phillips, City Manager

Rhodes H. Shell, Councilmember

Raymond F. DuBose, Councilmember

Dustin Koritko, Councilmember

James J. Thomasson, III, Councilmember

AN ORDINANCE TO AMEND THE CHARTER OF THE CITY OF NEWNAN BY
AMENDING ARTICLE II, CITY GOVERNMENT, SECTION 2.12 (b), ORDINANCE FORM,
PROCEDURE, SO AS TO PROVIDE FOR ADOPTION OF ORDINANCES UPON
INTRODUCTION, AND FOR OTHER PURPOSES

BE IT ORDAINED and it is hereby ordained by the Mayor and Council of the City of Newnan and Georgia Code Section 36-35-3; Ga. Laws 1965, Pages 298 et seq.; Ga. Laws 1966, Pages 295 et seq.; Ga. Laws 1976, Pages 1429 et seq. that paragraph (b) of Section 2.12, Ordinance form, procedure, of Article II, City Government, of the Charter of the City of Newnan, Georgia, approved March 31, 1987, (Ga. Laws 1987 p. 5160) and as subsequently amended be and is hereby repealed in its entirety as same was specifically amended by Ordinance No. 95-26 adopted on second reading on November 14, 1995 and a new paragraph (b) of Section 2.12 of Article II is hereby added to the Charter o the City of Newnan to read as follows:

Section 2.12 (b). An ordinance may be introduced by any member of the city council and considered at a regular or special meeting of the city council. Ordinances shall be considered and adopted or rejected by the city council in accordance with the rules which it shall establish and the provisions of this Charter which require the affirmative vote of four members of the city council; however, an ordinance shall not be adopted the same day it is introduced unless said ordinance is an emergency ordinance as provided for in Section 2.14 of the Charter or unless said ordinance has been published as an agenda item prepared for the regular or special meeting. Upon introduction of any ordinance, the clerk shall as soon as possible distribute a copy to the Mayor and to each council member and shall file a reasonable number of copies in the office of the clerk and at such other public places as the city council may designate.

BE IT FURTHER ORDAINED, that all Charter provisions in conflict herewith are hereby repealed.

BE IT FURTHER ORDAINED, that the effective date of this Ordinance amending the Charter of the City of Newnan be _____.

ADOPTED in open session for the first time by the Mayor and Council of the City of Newnan, this ____ day of _____, 2024.

ATTEST:

_____	_____
Megan Shea, City Clerk	L. Keith Brady, Mayor

_____	_____
REVIEWED AS TO FORM:	Paul Guillaume, Mayor Pro-Tem

_____	_____
C. Bradford Sears, Jr., City Attorney	Cynthia E. Jenkins, Councilmember

_____	_____
Cleatus Phillips, City Manager	Rhodes H. Shell, Councilmember

Raymond F. DuBose, Councilmember

Dustin Koritko, Councilmember

James J. Thomasson, III, Councilmember



To: Mayor and Council

Date: October 8, 2024

Agenda Item: Consideration of Amendment to Resolution and Agreement to State the Intended Uses of Funds as a Result of National Opioid Settlements

Prepared By: Hasco Craver, Assistant City Manager

Purpose:

Newnan City Council may consider amending an existing resolution and agreement stating the receipt and use of funds as a result of the national opioid settlement.

Background:

Beginning in March 2022, the City of Newnan joined nationwide settlement agreements between state and local governments and pharmaceutical distributors, manufacturers and retailers. In doing so, the City of Newnan is poised to receive funds to be used in the prevention, mitigation and/or remediation of negative conditions resulting from the use of opioids.

In May 2023, the Newnan City Council voted unanimously in support of a resolution and agreement that provided details related to the receipt and use of funds that had been received at that time. The resolution stated that the City of Newnan had received \$58,225.08. The agreement stated that the City of Newnan would engage Coweta FORCE, a private non-profit organization aimed at providing recovery support services. The agreement stated that Coweta FORCE had developed a Peer Emergency Department Program, which employed certain staff members to locate at the Emergency Department of Piedmont Newnan Hospital to provide direct services to individuals visiting the hospital and struggling with recovery needs. The executed agreement remains in effect through December 31, 2024. The executed document provides no mechanism for renewal and/or extension.

The City of Newnan, as a party to the national settlement agreements, has continued to receive funds. In fact, additional payers have been remitting funds, through the Directing Administrator, to the City of Newnan. All funds received must continue to be used in the prevention, mitigation and/or remediation of negative conditions resulting from the use of opioids. Very specifically, the City of Newnan has received \$160,986.07 since the program's inception (this includes the \$58,225.08 received in 2023).

In spring 2024, City staff members met with staff members from Piedmont Newnan Hospital and Coweta FORCE to discuss the success of the current program as well as to consider expanding the program with additional funds being received by the City of Newnan. Piedmont Newnan staff were very complimentary of the program and supported its continuation and potential expansion (Please find a copy of a support letter from Piedmont Newnan attached herein). Members of Coweta FORCE were equally pleased with the program and invited an opportunity to expand recovery support services using national opioid settlement funds (please find a copy of the Recovery Connections Program Description attached herein). The expanded program described by Coweta FORCE enables additional recovery specialists to remain in the Emergency Department as well as to expand into primary care physician groups' locations.

Upon request, in September 2024, City staff received projected allocations from most payers. Payers' projected allocation amounts as well as terms differ. For instance, "Distributor" payments will continue annually through 2038, while "Allergan" payments will only continue through 2029. In addition, each payer will be remitting differing amounts. The City of Newnan will receive payments from Distributor, Jansen, Teva, Allergan, CVS, Walgreens, Walmart, and McKinsey.

To date, the City of Newnan has received a total of \$160,986.

To date, the City of Newnan has expended \$58,225.08 (original agreement with Coweta FORCE).

The total projected amount of funds per year over the next several years is shown in the attachment herein. Annual funding amounts fluctuate between \$15,000 and \$41,000.

The City of Newnan has not yet received projected funding amounts from Walmart and McKinsey. Year 1 funding amounts from Walmart and McKinsey are \$32,633 and \$10,387 respectively.

It is important to note that the aforementioned represent projected amounts. The Directing Administrator has acknowledged that amounts may differ over time as "relevant facts and circumstances may change."

At the July 16, 2024 City Council, members voted unanimously to instruct staff to prepare an amendment to the existing resolution and agreement, thereby creating an opportunity for annual renewals with Coweta FORCE for a five (5) year term. In addition, City staff recommend that all national opioid settlement funds be allocated to the Recovery Connections Program.

Please note that the City of Newnan will continue to receive annual reports from Coweta FORCE related to the use of funds as well as the impact of the program.

Funding:

National Opioid Settlement Funds

Recommendation:

It is the recommendation of City staff that the Newnan City Council support the amendment, extending the current term of the agreement and allowing for certain funds to be used by Coweta FORCE to support the Recovery Connections Program.

Attachments:

1. Recovery Connections Program Infographic
2. Recovery Connections Program Description
3. Piedmont Newnan Support Letter
4. Projected Allocations 2025-2038
5. Amendment of Resolution and Agreement for Use of Opioid Funds_10_8_2024

Previous Discussion with Council:

Newnan City Council, at the July 16, 2024 Council Meeting, instructed staff to construct an amendment to current resolution and agreement, thereby allowing Coweta FORCE to receive funding through 2029.

IMPACT STATEMENT

MET WITH **55** PEERS

PEER INTERACTIONS **310**

OVERDOSES **13**

ETOH
POISONING **12**

ED VISITS

21

HOSPITAL
FLOOR

72

AUD **25**

SUD **10**

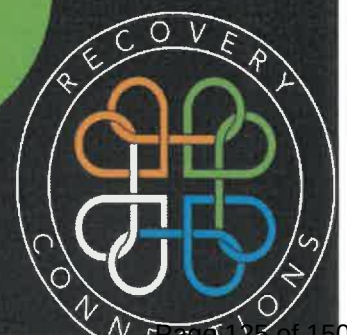
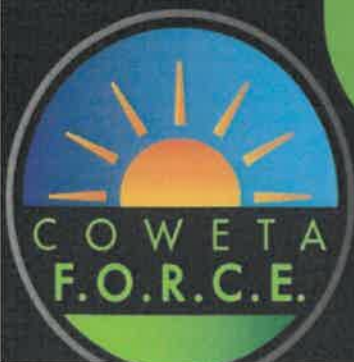
POLY **13**

LONG TERM
SUPPORT **13**

COMMUNITY
PARTNERS **15**

FAMILY
MEMBERS
SERVED **56**

TOTAL SUCCESSFUL INTERACTIONS
SINCE MAY 2023
391





Friends Of Recovery for Community Empowerment

Recovery Connections Program Description

Peer Recovery Support Services implemented within Piedmont Newnan Hospital System serves community members admitted due to substance-related injury and overdose. The Recovery Connections Program executed by Coweta FORCE represents a multifaceted approach to addressing the complex challenges of addiction and facilitating sustainable recovery.

The Recovery Connections Program integrates various components aimed at providing peer support to individuals served during their hospital stay and beyond.

The Recovery Connections Program has recently expanded this support service from the Piedmont Newnan Emergency Department to all the floors of the facility and the Piedmont Newnan primary care physician groups.

The program involves several components:

1. **Certified Peer Specialist-Addictive Disease:** The Coweta FORCE Recovery Connections Team is staffed by CPS-AD trained and credentialed by the Georgia Council for Recovery in partnership with the Georgia Department of Behavioral Health and Developmental Disabilities. Our Certified Peer Specialist are essential members of the healthcare team who provide one-on-one support to Piedmont Newnan patients who admit with substance-related issues. We offer emotional support, share our own lived-experience, and help patients navigate the recovery process.
2. **Resource Navigation:** Recovery Connections staff assist patients in accessing various resources, including addiction recovery clinical services, recovery supportive housing, employment opportunities, connection to the recovery community by means of multiple pathway options, education opportunities, and other community-based support services.
3. **Continuity of Care and Transition Support:** Recovery Connections staff prioritize seamless transitions from hospital care to community-based support services to ensure engagement in recovery. The Recovery Connections team provides ongoing regular follow up with patients well after hospital discharge for ongoing accountability, support, and encouragement as they continue their recovery journey.
4. **Family and Community Engagement:** Recognizing the vital role of social support in recovery, Recovery Connections staff are available to engage family members, friends, and community networks in the recovery process. Staff offer education, guidance, and support to loved ones to foster healthy communication and boundaries within the support system.

The Recovery Connections Program in partnership with Piedmont Newnan Healthcare provides better access to long-term support that greatly increases recovery rates, reduces hospital readmission rates, and leverages support and resources for community members impacted by substance use disorder and their families.

May 21, 2024

To Whom It May Concern,

I write today in support of Coweta FORCE and the request for continued funding from the City of Newnan and its Opioid Settlement Funds. Piedmont Newnan Hospital entered into a partnership with Coweta FORCE in 2023 to provide counseling and support services to patients seeking assistance with substance misuse.

Coweta FORCE (Friends of Recovery for Community Empowerment) is an independent, non-profit organization led and governed by people in recovery focused on education and training, recovery support, and advocacy. As a Recovery Community Organization, it is their mission is to provide recovery support services in the community for individuals and family members impacted by addiction.

Piedmont Newnan Hospital, located in Newnan, Georgia, is a cornerstone of wellness providing high-quality, comprehensive healthcare as the only acute-care facility in Coweta County. With Emergency Department visits growing 60% in the past 10 years, we see and treat many individuals that battle substance misuse and this partnership is crucial to positively impacting those in need of support behind their hospital stay.

The Peer Recovery Support Services implemented within Piedmont Newnan Hospital System serves community members seeking hospital care and struggling with a substance-related injury and overdose. The program is executed by Coweta FORCE and represents a multifaceted approach to addressing the complex challenges of addiction and facilitating sustainable recovery, and integrates various components aimed at providing peer support to individuals served during their hospital stay and beyond. The Recovery Connections Program has recently expanded this support service from the Piedmont Newnan Emergency Department to all the floors of the facility (to patients requiring hospital admission) and the Piedmont Newnan primary care physician groups.

Since May of 2023, through the Peer Recovery Support Services, Coweta FORCE has supported **74** unduplicated patients, **64** total unduplicated family members of patients supported, and has had **433** follow-up encounters.

We currently have two dedicated peer counselors available on-call, currently from 8 a.m. to 5 p.m., seven days a week, who will respond to a request within one hour during those times. This funding will allow Coweta FORCE to increase the number of peer counselors available and continue to expand their reach outside of Piedmont.

In order for us to continue to provide high-quality, patient-centered care to our communities, we need to ensure substance abuse in our community is addressed and support is provided to individuals in need that want to recover. This Coweta FORCE program is critical in getting these individuals, and their families, the help and support they need.

Sincerely,



Projected Allocations 2025

Payment Type	Projected Allocation Amount
Distributor Payment 5	\$13,066.28
Janssen Payment 5	\$0.00
Teva Year 3	\$2,769.56
Allergan Year 3	\$3,359.25
CVS Year 3	\$5,941.05
Walgreens Year 3	\$2,319.08
Total =	\$27,455.22

Projected Allocations 2026

Payment Type	Projected Allocation Amount
Distributor Payment 6	\$13,066.28
Janssen Payment 6	\$2,485.76
Teva Year 4	\$2,769.56
Allergan Year 4	\$3,359.25
CVS Year 4	\$6,032.77
Walgreens Year 4	\$2,001.70
Total =	\$29,715.32

Projected Allocations 2027

Payment Type	Projected Allocation Amount
Distributor Payment 7	\$10,173.70
Janssen Payment 7	\$2,485.76
Teva Year 5	\$2,769.56
Allergan Year 5	\$4,668.62
CVS Year 5	\$6,032.77
Walgreens Year 5	\$2,001.10
Total =	\$28,131.51

Projected Allocations 2028

Payment Type	Projected Allocation Amount
Distributor Payment 8	\$19,021.41
Janssen Payment 8	\$2,485.76
Teva Year 6	\$2,769.56
Allergan Year 6	\$4,668.62
CVS Year 6	\$8,267.45
Walgreens Year 6	\$2,078.67
Total =	\$39,291.47

Projected Allocations 2029

Payment Type	Projected Allocation Amount
Distributor Payment 9	\$19,021.41
Janssen Payment 9	\$3,164.80
Teva Year 7	\$4,219.66
Allergan Year 7	\$4,668.62
CVS Year 7	\$7,854.41
Walgreens Year 7	\$2,078.67
Total =	\$41,007.57

Projected Allocations 2030

Payment Type	Projected Allocation Amount
Distributor Payment 10	\$19,021.41
Janssen Payment 10	\$3,164.80
Teva Year 8	\$4,219.66
CVS Year 8	\$7,441.36
Walgreens Year 8	\$6,087.99
Total =	\$39,935.22

Projected Allocations 2031

Payment Type	Projected Allocation Amount
Distributor Payment II	\$15,989.42
Janssen Payment II	\$3,164.80
Teva Year 9	\$4,219.66
CVS Year 9	\$7,434.81
Walgreens Year 9	\$6,087.99
Total =	\$36,896.68

Projected Allocations 2032

Payment Type	Projected Allocation Amount
Distributor Payment 12	\$15,989.42
Teva Year 10	\$4,219.66
CVS Year 10	\$7,434.81
Walgreens Year 10	\$6,087.99
Total =	\$33,731.88

Projected Allocations 2033

Payment Type	Projected Allocation Amount
Distributor Payment 13	\$15,989.42
Teva Year 11	\$4,219.66
Walgreens Year 11	\$6,087.99
Total =	\$26,297.07

Projected Allocations 2034

Payment Type	Projected Allocation Amount
Distributor Payment I4	\$15,989.42
Teva Year 12	\$4,219.66
Walgreens Year 12	\$6,087.99
Total =	\$26,297.07

Projected Allocations 2035

Payment Type	Projected Allocation Amount
Distributor Payment 15	\$15,989.42
Teva Year 13	\$4,219.66
Walgreens Year 13	\$6,087.99
Total =	\$26,297.07

Projected Allocations 2036

Payment Type	Projected Allocation Amount
Distributor Payment 16	\$15,989.42
Walgreens Year 14	\$6,087.99
Total =	\$22,077.41

Projected Allocations 2037

Payment Type	Projected Allocation Amount
Distributor Payment 17	\$15,989.42
Walgreens Year 15	\$6,087.99
Total =	\$22,077.41

Projected Allocations 2038

Payment Type	Projected Allocation Amount
Distributor Payment 18	\$15,989.42
Total =	\$15,989.42

RESOLUTION NO. _____

**AN AMENDMENT TO RESOLUTION NO.2023-9 TO STATE THE
INTENDED USES OF ADDITIONAL FUNDS RECEIVED BY THE CITY
OF NEWNAN, GEORGIA, AS A RESULT OF NATIONAL OPIOID
SETTLEMENTS; AND FOR OTHER PURPOSES.**

WHEREAS, on November 2, 2022, the City of Newnan received a Distributor Settlement – Allocation Notice from the Directing Administrator of the National Opioid Settlements and received funding therewith; and,

WHEREAS, on November 18, 2022, the City of Newnan received a Janssen Settlement – Allocation Notice from the Directing Administrator of the National Opioid Settlements and received funding therewith; and,

WHEREAS, by Resolution No 2023-9 dated May 23, 2023, The City Council of the City of Newnan (“City”) entered into an Agreement with Coweta CORCE, Inc. (“Coweta FORCE” or “Beneficiary”) entered into that certain Agreement dated May 23, 2023 (“Agreement”) between City and Beneficiary, relating to the use of the City’s share of the funds from the National Opioid Settlement pursuant to the Distribution Settlement Agreement (“Settlements”); and

WHEREAS, City has received notice of entitlement to additional funds from the Settlements and notice that the time period for use of the funds has extended; and

WHEREAS, on November 22, 2022, the City of Newnan received an Allergen Settlement – Allocation Notice from the Directing Administrator of the National Opioid Settlements; and,

WHEREAS, on November 22, 2022, the City of Newnan received a Teva Settlement – Allocation Notice from the Directing Administrator of the National Opioid Settlements; and,

WHEREAS, on November 14, 2022, the City of Newnan received a Walmart Settlement – Allocation Notice from the Directing Administrator of the National Opioid Settlements; and,

WHEREAS, on December 9, 2022, the City of Newnan received a CVS Settlement – Allocation Notice from the Directing Administrator of the National Opioid Settlements; and,

WHEREAS, on December 9, 2022, the City of Newnan received a Walgreens Settlement – Allocation Notice from the Directing Administrator of the National Opioid Settlements; and,

WHEREAS, the City of Newnan shall receive the additional funding under the collectively “National Opioid Settlements” pursuant to its State-Subdivision Agreement, the State of Georgia and Local Governments Memorandum of Understanding Concerning “National Opioid Settlements”; and,

WHEREAS, City has determined that Beneficiary is the proper entity to provide for use of the additional funds; and,

WHEREAS, Beneficiary has agreed to provide for use of the additional funds pursuant to the Settlements and the Agreements and this Amended Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF NEWNAN, GEORGIA; AND THE AGREEMENT OF BENEFICIARY THE FOLLOWING:

The parties agree to:

1. EFFECTIVE DATE AND TERM

This Agreement shall commence when last executed by all parties and remain in effect through December 31, 2025, with an automatic annual renewal for a period not to exceed five years, unless terminated by the CITY in writing.

2. GRAND TOTAL NATIONAL OPIOID FUNDS TO BE DISSEMINATED TO BENEFICIARY

The grand total subaward of all funds received shall be disseminated by the CITY to the BENEFICIARY as part of this Agreement, to be delivered in a lump sum annual payment.

3. LIMITATIONS REGARDING THE USE OF NATIONAL OPIOID FUNDS

Funds must be used according to the Distribution Settlement Agreement

4. REPORTING REQUIREMENTS TO ENSURE COMPLIANCE

For the CITY to ensure compliance with the existing guidelines set forth by the Distribution Settlement Agreement during the term of this Agreement, the BENEFICIARY, shall participate in routine meetings with staff to provide expense reports and documentation to support such expenditures.

5. TIMELINE REGARDING THE DISSEMINATION OF FUNDS TO RECIPIENT

Upon receipt of the BENEFICIARY's signed award agreement, the CITY shall disseminate funds therein within thirty (30) days. Award dissemination is further subject to all applicable federal, state, and local laws regarding the governance of funds within the Distribution Settlement Agreement.

6. TERMINATION

The CITY may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the BENEFICIARY.

7. HOLD HARMLESS AND INDEMNIFICATION

The BENEFICIARY agrees to defend, indemnify, and hold the CITY, its officers, officials, employees, agents, and volunteers harmless from and against any and all claims, injuries, damages, losses or expenses, including without limitation personal injury, bodily injury, sickness, disease, or death, or damage to or destruction of property, which are alleged or proven to be caused in whole or in part by an act or omission of the BENEFICIARY, its officers, directors, employees, and/or agents relating to the CITY's performance or failure to perform under this Agreement. This section shall survive the expiration or termination of this Agreement.

8. COMPLIANCE WITH LAWS AND GUIDELINES

The BENEFICIARY shall comply with all federal, state, and local laws and all requirements and published guidance set forth regarding the usage of any and all monies appropriated under the Distribution Settlement Agreement.

9. MAINTENANCE AND AUDIT OF RECORDS

The BENEFICIARY shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by the CITY or its designees for five (5) years following termination of this Agreement.

10. NOTICES

Any notices desired or required to be given hereunder shall be in writing, and shall be deemed received three (3) days after deposit with the US Postal Service (postage fully prepaid, certified mail, return receipt requested), and addressed to the party to which it is intended at its last known address, or to such person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

BENEFICIARY
Coweta FORCE
36 Salbide Avenue
Newnan, GA 30263

CITY
City of Newnan
Attn: Hasco Craver, Assistant City Manager
25 LaGrange Street
Newnan, GA 30263

11. IMPROPER INFLUENCE

Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

12. CONFLICT OF INTEREST

The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

13. TIME

Time is of the essence in this Agreement.

14. SURVIVAL

The provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

15. AMENDMENT

No amendment or modification to the Agreement shall be effective without prior written consent of the authorized representatives of the parties.

16. GOVERNING LAW; VENUE

The Agreement shall be governed in all respects by the laws of the State of Georgia, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in conjunction with the Agreement may be instituted and maintained only in a court of competent jurisdiction.

17. NON-WAIVER

No failure on the part of the CITY to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the CITY of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the CITY at law or in equity.

18. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

19. ASSIGNMENT

The BENEFICIARY shall not assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the CITY.

20. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the CITY and the BENEFICIARY for the use of funds received under this Agreement and it shall also include all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

21. SEVERABILITY

In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of the Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

22. COUNTERPARTS

This Agreement may be executed in one or more counterparts, any of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

23. AUTHORIZATION

Each party signing below warrants to the other party, that they have the full power and authority to execute this Agreement on behalf of the party for whom they sign.

24. NOT A NOVATION

All of the terms and conditions of the Mary 23, 2024 Resolution and Agreement shall remain in full force and effect.

DONE, RATIFIED, and PASSED, by the City Council of the City of Newnan, Georgia, this the _____ day of _____, 2024 in regular session assembled.

ATTEST:

L. Keith Brady, Mayor

Megan Shea, City Clerk

Paul Guillaume, Mayor Pro-Tem

REVIEWED AS TO FORM:

C. Bradford Sears, Jr., City Attorney

Cynthia E. Jenkins, Councilmember

Cleatus Phillips, City Manager

Rhodes H. Shell, Councilmember

Ray DuBose, Councilmember

Dustin Koritko, Councilmember

James J. Thomasson III, Councilmember

Acknowledged and agreed on behalf of the City of Newnan, Georgia by:

Name

Title

Date

Acknowledged and agreed on behalf of Coweta FORCE, by:

Name

Title

Date



NHS BAND BOOSTERS, INC.

September 30, 2024

Mr. Cleatus Phillips
City Manager of Newnan
25 LaGrange Street
Newnan, Georgia 30263

Mr. Phillips:

Newnan High School Band Boosters, Inc. are requesting that on November 2, 2024, from 8:00 a.m. until 12:00 midnight that Armory Road be closed due to our Old Southeastern Invitational Band Competition. This is our biggest fundraising event of the year. We will have 17 visiting schools attending and we will need Armory Road for parking of buses and equipment trucks throughout the day.

We appreciate your time and consideration.

Sincerely,

A handwritten signature in black ink that reads 'Christy Hammond'.

Christy Hammond, Vice President

NHS Band Booster, Inc.

Motion to Enter into Executive Session

I move that we now enter into closed session as allowed by O.C.G.A. §50-14-4 and pursuant to advice by the City Attorney, for the purpose of discussing

And that we, in open session, adopt a resolution authorizing and directing the Mayor or presiding officer to execute an affidavit in compliance with O.C.G.A. §50-14-4, and that this body ratify the actions of the Council taken in closed session and confirm that the subject matters of the closed session were within exceptions permitted by the open meetings law.

Motion to Adopt Resolution after Adjourning Back into Regular Session

I move that we adopt the resolution authorizing the Mayor to execute the affidavit stating that the subject matter of the closed portion of the council meeting was within the exceptions provided by O.C.G.A. §50-14-4(b).