LUMPKIN COUNTY
Board of Commissioners
Work Session II Agenda
Commissioners Boardroom

September 20, 2022
5:30 P.M.

- **CALL TO ORDER** Chairman Dockery

- **PROCLAMATIONS**

1. Community Helping Place Ornament for 2022 Joint Proclamation
2. Joint Proclamation City of Dahlonega & Lumpkin County – Chamber of Commerce Outgoing Board Chairman

- **CONSIDERATION OF MINUTES**

3. Board of Commissioners - Joint Special Called Meeting - Aug 1, 2022 4:30 PM
4. Board of Commissioners - Work Session - Aug 2, 2022 4:00 PM
5. Board of Commissioners - Public Hearing - Aug 9, 2022 5:30 PM
6. Board of Commissioners - Public Hearing - Aug 9, 2022 6:00 PM
7. Board of Commissioners - Public Hearing - Aug 11, 2022 9:00 AM
8. Board of Commissioners - Public Hearing - Aug 16, 2022 5:00 PM
9. Board of Commissioners - Work Session II - Aug 16, 2022 5:30 PM
10. Board of Commissioners - Regular Meeting - Aug 16, 2022 6:00 PM
11. Board of Commissioners - Public Hearing - Aug 23, 2022 4:00 PM
12. Board of Commissioners - Special Called Meeting - Aug 23, 2022 4:30 PM

- **RESOLUTIONS**

13. 2022 - 38 - Resolution to Amend the Character Area Map *(Planning Director Bruce Georgia)*
14. 2022 - 43 - Resolution Authorizing Among Other Things the Execution of an IGA & Bond Purchase Agreement *(Finance Director Abby Branan)*
15. 2022 - 44 - Appoint Member to Veterans Affairs Committee - Trent Miller to Seat 9, unexpired term end 04/14/2023
16. 2022 - 45 - Resolution Authorizing Execution of IGA for Use & Distribution of Proceeds Generated by 2023 TSPLOST
17. 2022 - 46 - TSPLOST Resolution to Call for Election
18. 2022 - 47 - Resolution to Amend the FY2022 Budget *(Finance Director Abby Branan)*
19. 2022 - 48 - Resolution to Amend the FY2023 Budget *(Finance Director Abby Branan)*

- **CONTRACTS/AGREEMENTS**

20. 2022-056 - Animal Shelter Professional Vet Services *(Animal Shelter Manager Wayne Marshall)*
21. 2022-057 - Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment System *(Planning Director Bruce Georgia)*
22. 2022-058 - Amendment to the Financial Assistance Award Form CD-451 for Award 13-08-I2210 *(Development Authority Director Rebecca Mincey)* ***Ratify***
23. 2022-059 - DebtBook Contract *(Finance Director Abby Branan)*
24. 2022-061 - Contract Award Pinetree Way/Memorial Drive Improvements *(Public Works Director Larry Reiter)*
25. 2022-062 - Transfer Station & Recycling Program Contract *(Public Works Director Larry Reiter)*
26. 2022-063 - LC Wimpy Airport Crack Sealing & Runway Remarking - Wall Contract *(Public Works Director Larry Reiter)*
27. 2022-064 - GDOT Crack Sealing and Runway Remarking Supplemental Agreement *(Public Works Director Larry Reiter)*

- **OTHER ITEMS**

28. Proposed LMIG FY2023 Road Resurfacing List *(Public Works Director Larry Reiter)*
29. Request use of SPLOST or ARPA Funds for LCWSA System Improvements *(Water & Sewerage Authority Director Sean Phipps)*
30. LCWSA – Request for recommitment of County to Provide ARPA Matching Funds for WWTP *(Water & Sewerage Authority Director Sean Phipps)*
31. Enotah Judicial Circuit Superior Court Reporter Independent Contractor Agreement *(Finance Director Abby Branan)*
32. Enotah Judicial Circuit Budget Increase *(Finance Director Abby Branan)*

- **COUNTY MANAGER**
- **COUNTY ATTORNEY**
- **COMMISSIONERS**
- **PUBLIC COMMENT (Agenda Specific)**
- **ADJOURNMENT**

Lumpkin County, Georgia

Board of Commissioners Department

Date: September 20, 2022

Agenda Item: Community Helping Place Ornament for 2022 Joint Proclamation

Item Description: Community Helping Place Ornament for 2022 Joint Proclamation

Attachments:
2022 Joint Proclamation Community Helping Place Ornament

Joint Proclamation

By
Lumpkin County
And
The City of Dahlonega

WHEREAS; **the City of Dahlonega and the County of Lumpkin, Georgia maintain their unique and warm sense of community as a community of choice by partnering with public and private entities to provide a safe, diverse, and economically sound environment; and**

WHEREAS; **the Community Helping Place is the largest outreach program in Dahlonega and Lumpkin County and is committed to providing basic needs such as food, clothing, medical and financial assistance to those Dahlonega and Lumpkin County residents in need, thereby enabling an economically sound environment;**

WHEREAS; **Dahlonega and Lumpkin County have a month-long Old Fashioned Christmas Celebration on their ornament-strewn historic public square that is nationally recognized as a taste of a Norman Rockwell-like Christmas with an Appalachian twist; and**

WHEREAS; **the Community Helping Place's White Christmas program provides food and toys to neighbors in need during the most festive time of the year; and**

WHEREAS; **the Community Helping Place has a series of Christmas collectible ornaments that celebrate and commemorate the uniqueness of Dahlonega and Lumpkin County and will make them available to all citizens, friends and supporters in an effort to raise funds for Community Helping Place programs.**

NOW, THEREFORE, BE IT RESOLVED **that the City of Dahlonega and Lumpkin County hereby proclaim the Community Helping Place Ornament to be the *Official 2022 City of Dahlonega/ Lumpkin County Collectors Ornament.***

Lumpkin County Georgia	*City of Dahlonega*
_____	_____
Chris Dockery, Chairman	**JoAnne Taylor, Mayor**
Attest:	**Attest:**
_____	_____
Melissa Witcher, County Clerk	**Mary Csukas, City Clerk**

Attachment: 2022 Joint Proclamation Community Helping Place Ornament (3425 : Community Helping Place Ornament for 2022 Joint

Lumpkin County, Georgia

Board of Commissioners Department

Date: September 20, 2022

Agenda Item: Joint Proclamation City of Dahlonega & Lumpkin County – Chamber of Commerce Outgoing Board Chairman

Item Description: Joint Proclamation City of Dahlonega & Lumpkin County – Chamber of Commerce Outgoing 2022 Board Chairman Mark Spraker

Attachments:
2022 Joint Proclamation Mark Spraker

Joint Proclamation

By
Lumpkin County
And
The City of Dahlonega

WHEREAS; **Mark Spraker has served as Chair of the Board of Directors for the Dahlonega-Lumpkin County Chamber of Commerce; and**

WHEREAS; **under Mark Spraker's leadership the Dahlonega-Lumpkin County Chamber distinguished itself as a catalyst for business growth, a convener of leaders and influencers, and a champion for a thriving community; and**

WHEREAS; **the work accomplished under his leadership has benefited our community through its efforts in small business growth, tourism promotion, advocacy on behalf of our community's business, and leadership development programs; and**

WHEREAS; **the Dahlonega-Lumpkin County Chamber unceasingly promotes Dahlonega-Lumpkin County for quality growth and development; and**

WHEREAS; **the business community, represented by Dahlonega-Lumpkin County Chamber, has been a driving force in fostering enhanced educational opportunities, promoting tourism, leadership development, the creation of jobs, and a positive vision of the future; and**

WHEREAS; **the Dahlonega-Lumpkin County Chamber has sought to achieve successful results for our community in a cooperative spirit with other organizations; and**

WHEREAS; **the Dahlonega-Lumpkin County Chamber has proudly represented the business community of Dahlonega-Lumpkin County; and**

WHEREAS; **the Dahlonega-Lumpkin County Chamber has been a strong partner with the City of Dahlonega and Lumpkin County in endeavors to promote and develop our local business community; and**

NOW, THEREFORE, BE IT RESOLVED **let it be known that Mark Spraker has served as an effective leader as the Chair of the Dahlonega-Lumpkin County Chamber of Commerce and Visitors Bureau Board of Directors for 2022.**

Lumpkin County Georgia	*City of Dahlonega*
_____	_____
Chris Dockery, Chairman	**JoAnne Taylor, Mayor**
Attest:	**Attest:**
_____	_____
Melissa Witcher, County Clerk	**Mary Csukas, City Clerk**

Attachment: 2022 Joint Proclamation Mark Spraker (3496 : Joint Proclamation City of Dahlonega & Lumpkin County – Chamber of Commerce Outgoing Board Chairman)

LUMPKIN COUNTY
Board of Commissioners
Joint Special Called Meeting Minutes
Executive Conference Room

August 1, 2022
4:30 P.M.

Minutes Acceptance: Minutes of Aug 1, 2022 4:30 PM (CONSIDERATION OF MINUTES)

I. Call to Order

The meeting was called to order at 4:30 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Tucker Greene	District 1 Commissioner	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

Present were Dahlonega City Council members Ross Shirley, Lance Bagley, Ryan Reagin, Johnny Ariemma, and Roman Gaddis. Also present were City Interim Manager Bill Lewis and City Public Works Director Mark Buchanan. Mayor JoAnne Taylor was absent from the meeting.

II. Consideration of Agenda

Motion: *A motion was made by Commissioner Mayfield to approve the agenda. The motion was seconded by Commissioner Stringer. The motion was approved and carried.*

III. Overview of Process and Timeline

Chairman Dockery gave a brief introduction to the meeting and then turned it over to Alan Ours, the County Manager. Finance Director Abby Branan handed out a proposed timeline. Mr. Ours explained that the economy has been good and collections from TSPLOST have been higher than anticipated; currently we are on track to obtain $15 million. Under the old law, collections would have ceased once we reached the projected amount. However, at the last legislative session, Georgia lawmakers changed the law so we are allowed to continue the tax through the year despite exceeding collections.

Mr. Ours said we can have a special election this November to continue the TSPLOST. LOST and TSPLOST are governed by different laws. The County has to notify the City and hold a meeting. Thirty days must pass following the meeting before the Board of Commissioners can call for an election via resolution. Mr. Ours said today we will discuss the revenue estimates, tax distribution, and proposed projects, and then we have to vote on an intergovernmental agreement by September 20 which defines the tax distribution. The Commissioners will then approve a resolution in September.

Chairman Dockery suggested putting together a joint team with the City and County to go over some of the projects and then bring them back to the governing bodies. The committee could include members from the BOC and the City Council, both the City Manager and the County Manager, and necessary staff members. They will hopefully be able to resolve any issues before September 20.

City Councilman Ron Larson agreed it was a good idea, and said we could let the managers choose which staff to work with. Councilman Ariemma volunteered to represent the City, and Commissioner Stringer said he could serve on the committee as well. Councilman Lance Bagley asked if TSPLOST could potentially be used for

bike paths or things besides just roads. Larry Reiter, Public Works Director for the County, confirmed that it can be used for bike paths, sidewalks, and similar things.

Mr. Ours explained TSPLOST can also be used to purchase equipment. Councilman Ariemma asked if it could also be used for purchasing property, but Mr. Ours was doubtful unless it was used for right-of-way. Councilman Ariemma explained he was concerned about the intersection of Pinetree Way and Morrison Moore Parkway due to the future elementary school and the recreational facility/gymnasium. He said we might want to consider purchasing right-of-way to build an additional entrance.

IV. Estimated Revenue

Mr. Ours said the current TSPLOST split is 79/21, which was based on population estimates before the Census was conducted. In the last 12-month period, TSPLOST brought in $5.1 million. A conservative estimate for future collections is $20 million, which would be about $330,000 per month in sales tax collections. Mr. Ours said economists are predicting we will have a recession, so we should be wary of that. Councilman Roman Gaddis asked if we could continue to collect during the time frame of the TSPLOST even if collections are exceeded, and Mr. Ours confirmed we can due to the new law. Councilman Larson said the City's Finance Director, Allison Martin, had estimated revenues of $23 million, and he would like for her to serve on the joint committee as well.

Mr. Ours said we have to be cautious with how we word the language regarding the TSPLOST projects. If we list a project but don't collect enough to fund the project, we will still have to complete it. Mr. Reiter agreed, saying it is better to be less specific since you don't know what the cost of a particular project could be. You should say "intersection improvements" rather than stating a specific intersection, since it may end up requiring more money than you first thought. You do not want to be stuck in a project that you cannot finish. Councilman Ariemma agreed that we need to be cautious with our numbers, and Mr. Lewis said it may be worthwhile to look at a joint project.

V. Signature Project

Mr. Ours said the joint project for the current TSPLOST was the roundabout by the school. Mr. Reiter listed off some possible joint projects that he has been thinking of. He had initially discussed the Highway 400/60 intersection with GDOT, but they informed him that will all be federally funded. TSPLOST money would not speed it up and might even delay it further. Another potential project is at the intersection of Highway 9 and Auraria Road by the gas station and Torrington Drive. There is another opportunity for a project at the intersection of Burnt Stand and Auraria on the near side of Blackburn Elementary. That intersection is horrible for two hours per day, twice a day.

Councilman Larson agreed that the Auraria Road intersection at Highway 9 would be valid for a joint project since there have been so many accidents there. The committee can discuss this potential project.

Councilman Ariemma made some more comments about the intersection of Pinetree Way and Morrison Moore and asked if there was some sort of master plan for that area. Mr. Reiter said he has worked on the redesign and discussed some of the specifications. There will still be an issue with the drive through at Zaxby's backing up. Councilman Ariemma asked if there was a way to incorporate a second entrance near the back. Mr. Reiter said he has examined that possibility in the past, potentially linking the Justice Center complex up to the site of the new elementary school. He said he has always wanted to tie in Pinetree Way, Mechanicsville Road, and Riley Road. There is no way to create an access point through Highway 52 because it would cut through Yahoola Park.

VI. Other Projects

VII. Distribution of Tax

Mr. Ours said the distribution of the tax is ultimately up to the BOC and the Council. Across Georgia, it is distributed in many different ways. Some counties base it on LOST, SPLOST, or LMIG. Some base it on population, and some have combinations of formulas. Mr. Ours said the TSPLOST is a bit different than LOST

Minutes Acceptance: Minutes of Aug 1, 2022 4:30 PM (CONSIDERATION OF MINUTES)

or SPLOST, and he thinks it is appropriate to consider road mileage in the distribution. The committee will be able to come up with different options.

Councilman Larson asked why we currently have a 79/21 split, and Chairman Dockery replied it was due to estimated population. Councilman Ariemma suggested that we include traffic density as well. The City does not have a lot of road mileage, he observed, but they do have a lot of traffic. Chairman Dockery is in favor of the idea of putting together a joint committee with elected officials, staff, and even representatives from ACCG or GMA. He said the key will be compromise.

There was discussion on when this committee should report back to the governing bodies. Mr. Ours said they should reconvene sometime near the 3rd or 4th week in August to report their findings. We do not want to wait too long because we do not know how many times the committee will have to meet. They proposed to meet on Monday, August 22nd. Mr. Ours will coordinate with Bill Lewis to schedule the committee meeting.

Councilman Lance Bagley advocated for a nice bike path at the reservoir that would benefit people in the City and in the County. Chairman Dockery said that had been one of the projects on his mind as well, and he has discussed it with Roman Gaddis for years. This could potentially be a joint project. They also discussed the possibility of including the County's Rock House Road property with the trails. Chairman Dockery said it certainly might be possible and part of it could even be considered for parking.

VIII. Adjournment

Motion: *A motion was made by Commissioner Mayfield to adjourn the meeting. The motion was seconded by Commissioner Stringer, and the meeting ended at 5:16 PM.*

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 1, 2022 4:30 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Work Session Minutes
Commissioners Boardroom

August 2, 2022
4:00 P.M.

Minutes Acceptance: Minutes of Aug 2, 2022 4:00 PM (CONSIDERATION OF MINUTES)

CALL TO ORDER

The meeting was called to order at 4:02 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Tucker Greene	District 1 Commissioner	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

PRESENTATIONS

1. GA Forestry Annual Report *(Wesley Sisk)*

GA Forestry Annual Report

Wesley Sisk of the Georgia Forestry Commission reported on the agency's activities in Lumpkin County for the past year, as well as changes to the burn permit system. Chairman Dockery asked if the agency would still do prescribed burns for private land, and Mr. Sisk responded that they will. He said per the burn permit changes, small piles of yard debris and leaves no longer require a permit. The Chairman was concerned since most of the fires in Lumpkin County have been started by residential burn piles, according to GFC's report. Mr. Sisk pointed out the majority of those fires did not obtain a permit to begin with. Commissioner Mayfield said he was thankful for GFC because they saved his house from being burned down 25 years ago.

2. Holly Theater Presentation

Holly Theater Presentation

PROCLAMATIONS

3. Proclamation for the Lumpkin County 8U Baseball Team GRPA Class C State Championship Winners

Proclamation for the Lumpkin County 8U Baseball Team GRPA Class C State Championship Winners

MINUTES

4. Board of Commissioners - Work Session - Jul 5, 2022 4:00 PM

5. Board of Commissioners - Special Called Work Session - Jul 16, 2022 9:00 AM
6. Board of Commissioners - Work Session II - Jul 19, 2022 5:30 PM
7. Board of Commissioners - Regular Meeting - Jul 19, 2022 6:00 PM

RESOLUTIONS

8. 2022 - 37 - Resolution Adopting the Statement of Ethics

Resolution Adopting the Statement of Ethics

9. 2022 - 38 - Resolution to Amend the Character Area Map *(Planning Director Bruce Georgia)*

Resolution to Amend the Character Area Map (Regular Meeting). United Family Homes, LLC. has submitted a Character Area Map Amendment request for Map/Parcel 083-100, Dahlonega, GA 30533.

10. 2022 - 39 - Reappoint Members to Planning Commission - Danny Clark, Seat 4 term expires 8/27/26

Reappoint Members to Planning Commission - Danny Clark, Seat 4 term expires 8/27/26

11. 2022 - 40 - Resolution to Appoint Member to Board of Elections - Robin McIntosh to Seat 5 exp 12/31/2022

Resolution to Appoint Member to Board of Elections - Robin McIntosh to Seat 5 exp 12/31/2022

CONTRACTS/AGREEMENTS

12. 2022-050 - CTC Technology & Energy Professional Consulting Contract *(Development Authority Director Rebecca Mincey)*

CTC Technology & Energy Professional Consulting Contract.

13. 2022-051 - Amend School Resource Officer IGA with Board of Education *(Finance Director Abby Branan)*

Amend School Resource Officer IGA with Board of Education. Consideration of Adding a School Resource Officer Position.

14. 2022-052 - Amend IGA with Board of Education Concerning Aquatic Facility *(Special Projects Director Ashley Peck)*

Amend IGA with Board of Education Concerning Aquatic Facility. Approval of the amended IGA with the Board of Education due to the required revision/scope change to the Aquatic Center/Pool Project.

OTHER ITEMS

15. Voting Delegate – Legislative Leadership Conference

Voting Delegate – Legislative Leadership Conference

16. Alcoholic Beverage License – Massey Burns Inc. d/b/a 52 West Brewing *(County Clerk Melissa Witcher)*

Minutes Acceptance: Minutes of Aug 2, 2022 4:00 PM (CONSIDERATION OF MINUTES)

Alcoholic Beverage License – Massey Burns Inc. d/b/a 52 West Brewing. This is for the issuance of an alcoholic beverage license for Manufacturer sales located at 350 Hwy 52 West, Dahlonega, GA 30533.

17. LC Wimpy Airport Crack Sealing and Runway Remarking Bid Award (Contractor TBD) *(Public Works Director Larry Reiter)*

LC Wimpy Airport Crack Sealing and Runway Remarking Bid Award (Contractor TBD). Approve bid to allow a notice of award to be sent to contractor and proposed contractor to GDOT.

18. LC Wimpy Airport Consultant Proposal Committee *(Public Works Director Larry Reiter)*

LC Wimpy Airport Consultant Proposal Committee. Form a committee to review proposals and recommend a consultant to contract with for professional engineering, architectural, and construction inspection/administration services for the Lumpkin County Airport.

19. Inmate Medical Services Statement for December 2021 – March 2022 *(Finance Director Abby Branan)*

Inmate Medical Services Statement for December 2021 – March 2022. Consideration of payment for invoices received from CorrectHealth for services provided December 2021 – March 2022.

Finance Director Abby Branan summarized the item and our contract history with CorrectHealth. The new (current) contract went into effect April 2022. Written notice of an increase was provided to Sheriff Jarrard on December 15, 2021, and the BOC considered a new contract in February 2022, which would be a $5,282.66 increase from the 2021 rate. The BOC chose to put it out for bid. CorrectHealth was chosen and the new contract was awarded for April 1, 2022 to March 31, 2023.

Ms. Branan explained that on March 15, 2022, an invoice was given to the County for $62,380.60 for a balance owed from December of 2021 through March 2022. Essentially, they are billing us for the months where we did not have a contract with them, which is the difference of the base rate from the 2021 contract to their originally offered renewal rate from December 2021. The bill also includes a labor variance of $46,532.62 from where they had to hire contract/travel nurses to remain fully staffed. The requested money is the base compensation of $5,282.66 for each month along with the labor variance.

Chairman Dockery said it is not CorrectHealth's fault that we did not renew the new contract in time. He thinks the County should recognize what the rate would have been had we entered into the new contract on time, which is about $29,000 for the three months. This is about $2,000 more per month than they are asking for.

Chairman Dockery said he has a hard time understanding this labor variance invoice. He is aware there is a provision in the new contract for a labor variance should CorrectHealth have to use contract/travel employees. However, the County was not forewarned or given a choice about this, and we should have the opportunity to say "no." The Chairman said he has a hard time with an additional labor cost that we knew nothing about until August 2022.

Sheriff Jarrard said they had to use contract nurses during those months due to their staff shortage. The Sheriff had insisted that a nurse be present on the weekends, not just during the week, since he did not want his jailors handing out medication. He believes that is what we are being billed for.

Chairman Dockery asked where we would get the funding for this, as it is not in the budget. A funding source for the $46,000 will have to be identified. Sheriff Jarrard said it would be money well spent, and he suggested using the revenue from housing out-of-county inmates. The Chairman said he will ask the County Attorney, Joy Edelberg, to review the current contract. Going forward, there needs to be a provision in the contract regarding what should happen if CorrectHealth needs to use contract employees. It needs to be disclosed before it is billed, and the BOC should be have the chance to review and approve it out of fairness to the taxpayers of this county. He said this $46,000 is essentially out of nowhere; the BOC had no knowledge besides what the contract said. Giving them the $29,000 rate for those months is the right thing to do, but this labor variance is like a blank check.

Ms. Branan said this has been brought before the BOC because it would be paying for something outside of the contract. Around the time of when the new contract was approved is when they began sending the bills for this labor variance cost.

Minutes Acceptance: Minutes of Aug 2, 2022 4:00 PM (CONSIDERATION OF MINUTES)

Sheriff Jarrard said his opinion is that we owe this to CorrectHealth because we used those nurses. Since we used the service, he feels it is owed to them. He claimed they have been asking for this since the spring, and he reached out to Mr. Ours about a month ago regarding the bill, which is why it is now on the agenda.

Chairman Dockery reiterated that this labor bill was not approved by the BOC. We did not enter the current contract in January when we should have, so he feels it is fair to compensate them at the current contract rate for those three months. The Chairman explained we did pay them, but it was about $22,000. They are requesting an additional ~$5,300 for each of those three months, but he would like to increase that to reflect the current contract rate.

Commissioner Mayfield said he understands that they used travel nurses, but it is a huge bill. Sheriff Jarrard replied he feels that we owe it, and he offers to help pay for it. Commissioner Mayfield said we will have to find the money somewhere.

Commissioner Greene asked if we could see this issue happen again under the current contract? Chairman Dockery said yes. The County Attorney pointed out that the old contract's terms stated it was automatically renewed unless either party gave a 60-day notice of non-renewal. The old contract did not have a provision for travel nurses. Since neither of us gave a notice of non-renewal, the old contract automatically renewed. Mr. Ours said he doesn't believe they can legally make us pay for the travel nurses since it was not in the old contract, which automatically renewed. We hired them to provide nurses, which was their responsibility. According to the contract, it was their responsibility to pay the nurses.

Chairman Dockery agreed he does not think we are obligated to pay it because CorrectHealth was contractually obliged. It is the cost of doing business. He does not go back and bill his customers just because the cost of 2x4's went up, because the price is agreed upon beforehand. This was a service that was not contractually authorized; they should have brought it before the BOC. Sheriff Jarrard said he has been mentioning it to County staff since the spring, but the Chairman said the services had already been rendered at that point. It will be up to the Commissioners if they want to pay it.

Chairman Dockery said we need to evaluate the current contract to make sure it is specific that these things require pre-approval before it is billed. We do not want to be in this situation again. The Sheriff said in the future he can email it to Mr. Ours and the Board of Commissioners to have an item placed on the agenda. He was under the impression it had been authorized after he mentioned it to the County Manager during a phone call, but Mr. Ours said he does not have the authority to approve something like that.

COUNTY MANAGER

Mr. Ours said we received an email from the City of Dahlonega regarding the LOST negotiations. The LOST is the one cent sales tax that has to be renewed every ten years, and the current split is 75/25. That tax is completely used to roll back property taxes. Last month, the BOC adopted a resolution to keep the current 75/25 distribution. It was determined during our research that the actual split could have been justified at 87/13, but in good faith we approved keeping the split the same. However, the City Council voted last night to enter mediation. Therefore, we will work to find a mediator and schedule a time for the mediation.

COUNTY ATTORNEY

COMMISSIONERS

Commissioner Mayfield was asked to announce a message from one of his constituents since he is unable to come to the meetings in person. Mr. Larry Dills states he is 100% totally opposed to the new swimming pool project.

PUBLIC COMMENT (Agenda Specific)

ADJOURNMENT

Minutes Acceptance: Minutes of Aug 2, 2022 4:00 PM (CONSIDERATION OF MINUTES)

The meeting was adjourned at 5:11 pm.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 2, 2022 4:00 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Public Hearing Minutes
Commissioners Boardroom

August 9, 2022
5:30 P.M.

Minutes Acceptance: Minutes of Aug 9, 2022 5:30 PM (CONSIDERATION OF MINUTES)

Call to Order

The meeting was called to order at 5:31 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Tucker Greene	District 1 Commissioner	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

Public Comment

Proposed 2023 Lumpkin County Budget

City Councilman Johnny Ariemma addressed the Board of Commissioners and said he knows they will do the right thing. Lumpkin County has such a low per capita income and inflation has become so high all over the country. Mr. Ariemma brought up the senior tax exemption and how so many people are moving to Lumpkin County just to take advantage of it. He believes it is time we sit down with our legislators to modify the exemption, as it currently creates a tax shift and overburdens other taxpayers. He suggested implementing a time period after seniors move in where they would not be able to get the full exemption. Mr. Ariemma also said it would be beneficial to know just how many seniors are moving in and immediately taking the exemption.

Mr. Ariemma then brought up how much the college has grown in the past few years. Going down Chestatee street, there are for-profit businesses in the university-owned buildings and they don't have to pay any property tax. When the college bought Chestatee Hospital, there went $60,000 off of the tax rolls. Mr. Ariemma said we need to evaluate what is coming off of the tax rolls and have some conversations about it.

Adjournment

The meeting was adjourned at 5:39 PM.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 9, 2022 5:30 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Public Hearing Minutes
Commissioners Boardroom

August 9, 2022
6:00 P.M.

Minutes Acceptance: Minutes of Aug 9, 2022 6:00 PM (CONSIDERATION OF MINUTES)

Call to Order

The meeting was called to order at 6:00 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Tucker Greene	District 1 Commissioner	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

Public Comment

Public Comment on Property Tax Increase

The Lumpkin County Board of Commissioners has tentatively adopted a millage rate, which will require an increase in property taxes over the roll-back rate by 15.10 percent in unincorporated Lumpkin County, and 20.84 percent in incorporated Lumpkin County.

Steven Scoggin, 410 Lewis Brown Road, said his tax appraisal increased 80% from last year and he does not understand why. He said he turned in an appeal form to the office of the Tax Assessor on May 11, but he has not heard anything back from them. Mr. Scoggin believes his home was over-appraised.

The County Manager said he would get Mr. Scoggin's contact information and find out what is going on with his appraisal from the Chief Appraiser.

Adjournment

The meeting was adjourned at 6:04 pm.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher

County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 9, 2022 6:00 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Public Hearing Minutes
Commissioners Boardroom

August 11, 2022
9:00 AM

Call to Order

The meeting was called to order at 9:03 AM by District 3 Commissioner Rhett Stringer

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Absent	
Tucker Greene	District 1 Commissioner	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

Public Comment

Public Comment on Property Tax Increase

The Lumpkin County Board of Commissioners has tentatively adopted a millage rate, which will require an increase in property taxes over the roll-back rate by 15.10 percent in unincorporated Lumpkin County, and 20.84 percent in incorporated Lumpkin County.

There were no comments from the public.

Adjournment

The meeting was adjourned at 9:04 AM.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 11, 2022 9:00 AM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Public Hearing Minutes
Commissioners Boardroom

August 16, 2022
5:00 P.M.

Call to Order

The meeting was called to order at 5:02 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Tucker Greene	District 1 Commissioner	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Absent	
Jeffrey Moran	District 4 Commissioner	Present	

Public Comment

Alcoholic Beverage License (Manufacturer) - David Burns for Massey Burns, Inc. d/b/a 52 West Brewing

There were no comments from the public.

Adjournment

The meeting was adjourned at 5:03 PM.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 16, 2022 5:00 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Work Session II Minutes
Commissioners Boardroom

August 16, 2022
5:30 P.M.

Minutes Acceptance: Minutes of Aug 16, 2022 5:30 PM (CONSIDERATION OF MINUTES)

CALL TO ORDER

The meeting was called to order at 5:35 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Tucker Greene	District 1 Commissioner	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

PRESENTATIONS

1. Introduction of New 4-H Extension Agent Autumn Callahan *(Clark MacAllister)*

Introduction of New 4-H Extension Agent Autumn Callahan

PROCLAMATIONS

2. Proclamation for the Lumpkin County 8U Baseball Team GRPA Class C State Championship Winners

Proclamation for the Lumpkin County 8U Baseball Team GRPA Class C State Championship Winners

CONSIDERATION OF MINUTES

3. Board of Commissioners - Work Session - Jul 5, 2022 4:00 PM
4. Board of Commissioners - Special Called Work Session - Jul 16, 2022 9:00 AM
5. Board of Commissioners - Work Session II - Jul 19, 2022 5:30 PM
6. Board of Commissioners - Regular Meeting - Jul 19, 2022 6:00 PM

RESOLUTIONS

7. 2022 - 37 - Resolution Adopting the Statement of Ethics

Resolution Adopting the Statement of Ethics

8. 2022 - 39 - Reappoint Members to Planning Commission - Danny Clark, Seat 4 term expires 8/27/26

Reappoint Members to Planning Commission - Danny Clark, Seat 4 term expires 8/27/26

9. 2022 - 40 - Resolution to Appoint Member to Board of Elections - Robin McIntosh to Seat 5 exp 12/31/2022

Resolution to Appoint Member to Board of Elections - Robin McIntosh to Seat 5 exp 12/31/2022

CONTRACTS/AGREEMENTS

10. 2022-050 - CTC Technology & Energy Professional Consulting Contract *(Development Authority Director Rebecca Mincey)*

CTC Technology & Energy Professional Consulting Contract.

11. 2022-051 - Amend School Resource Officer IGA with Board of Education *(Finance Director Abby Branan)*

Amend School Resource Officer IGA with Board of Education. Consideration of Adding a School Resource Officer Position.

Finance Director Abby Branan said the Board of Education will fund 100% of the personnel costs, but Sheriff Jarrard has agreed to provide the vehicle out of his fleet and out of his operating budget.

12. 2022-052 - Amend IGA with Board of Education Concerning Aquatic Facility *(Special Projects Director Ashley Peck)*

Amend IGA with Board of Education Concerning Aquatic Facility. Approval of the amended IGA with the Board of Education due to the required revision/scope change to the Aquatic Center/Pool Project.

13. 2022-053 - IGA with Secretary of State for Additional Voting Equipment *(Special Projects Director Ashley Peck)*

IGA with Secretary of State for Additional Voting Equipment. Approval of IGA with the Secretary of State for the loan of election equipment for the November General Election.

14. 2022-054 - Yahoola Creek Reservoir Pedestrian Trails Phase I Cultural Resource Survey *(Finance Director Abby Branan)*

Yahoola Creek Reservoir Pedestrian Trails Phase I Cultural Resource Survey. Consideration of a contract for a Phase I Cultural Resource Survey

OTHER ITEMS

15. Voting Delegate – Legislative Leadership Conference

Voting Delegate – Legislative Leadership Conference

16. Alcoholic Beverage License – Massey Burns Inc. d/b/a 52 West Brewing *(County Clerk Melissa Witcher)*

Alcoholic Beverage License – Massey Burns Inc. d/b/a 52 West Brewing. This is for the issuance of an alcoholic beverage license for Manufacturer sales located at 350 Hwy 52 West, Dahlonega, GA 30533.

Minutes Acceptance: Minutes of Aug 16, 2022 5:30 PM (CONSIDERATION OF MINUTES)

17. LC Wimpy Airport Crack Sealing and Runway Remarking Bid Award (Contractor TBD) *(Public Works Director Larry Reiter)*

LC Wimpy Airport Crack Sealing and Runway Remarking Bid Award (Contractor TBD). Approve bid to allow a notice of award to be sent to contractor and proposed contractor to GDOT.

The recommendation of the Airport Authority was Wall Asphalt.

18. LC Wimpy Airport Consultant Proposal Committee *(Public Works Director Larry Reiter)*

LC Wimpy Airport Consultant Proposal Committee. Form a committee to review proposals and recommend a consultant to contract with for professional engineering, architectural, and construction inspection/administration services for the Lumpkin County Airport.

This item was struck from the agenda.

19. 2022-055 - Inmate Medical Services Statement for December 2021 – March 2022 *(Finance Director Abby Branan)*

Inmate Medical Services Statement for December 2021 – March 2022. Consideration of payment for invoices received from CorrectHealth for services provided December 2021 – March 2022.

Ms. Branan stated she went through the Sheriff's Office Budget and there are no funds available for this. Sheriff Jarrard said he put this in motion because he did not want the jail to be without a nurse every day. He requested that CorrectHealth be able to speak tonight about this. He said he felt as if the extra nurse was approved after he spoke to the County Manager about it on the phone because that is how he has done things for the last 14 years. It did not get brought before the Commissioners for a vote after that phone conversation. He hopes we will come to some sort of agreement because CorrectHealth might take an action if we do not pay. Chairman Dockery allowed the representative of CorrectHealth to speak.

John Ritter of CorrectHealth said there has been a crisis nursing shortage for the past two years. They had to make a choice between reducing coverage or continuing with the current coverage with help from the nursing agency. Sheriff Jarrard had indicated he wanted to keep full nursing coverage, so CorrectHealth proceeded with hiring the travel nurses. Mr. Ritter said they provided this extra staffing December through March and have already paid the agency invoices. It is a comparison of $22 per hour versus $75 per hour. Mr. Ritter said all he is asking for is to be reimbursed for the agency costs that they have already paid. They are also requesting payment at the proposed new rate so they can at least break even in Lumpkin County.

Chairman Dockery said he is a general contractor for building houses. When he signs a contract with his client, he is obligated to it. When studs rose in price, he paid the difference and lost money. He was contractually obligated to keep it at a certain price, so he had to pay for the studs even though they were more expensive. The original contract obligates CorrectHealth to pay for that service. That contract was signed by the Board of Commissioners, so if there was to be a change in that contract, then you would have to come back to us to work on it. The Chairman said the BOC should have been allowed to discuss it before services were rendered.

Commissioner Greene said he believes Chairman Dockery is speaking for the majority of the BOC. He agrees about paying CorrectHealth back to January with the new rate, but he has an issue with the extra $42,000 for the travel nurses. If you are under contract to provide a service, you're obligated to provide it via the terms of the contract. That is the responsibility of the provider. Commissioner Greene said it is a hard press for him to say yes to pulling out $42,000 for a service we were already under contract for.

Mr. Ritter said he spoke about this with the client (Sheriff Jarrard), and he said he wanted the extra nurse in order to have full coverage. We discussed this amendment throughout the bid process, and the contract includes an "extraordinary wage" clause. We could have remained revenue neutral by cutting some of the staffing days, but Sheriff Jarrard said he had to have the extra nurse so he would have 7 days per week of service. We paid for it; we honored the Sheriff's request. Mr. Ritter said he thought his contact person was the Sheriff.

Commissioner Stringer said he thinks the Sheriff is not the client; the taxpayer is the client. The contract is signed by this Board. Sheriff Jarrard said his obligation is the health of the inmates. He could not risk having times without a nurse since he did not want his jailors having to pass out medication. That is why he reached out to the County Manager, and he was told "I understand." Then he went back to CorrectHealth and put it into

Minutes Acceptance: Minutes of Aug 16, 2022 5:30 PM (CONSIDERATION OF MINUTES)

motion. Sheriff Jarrard said he recalls someone saying something like "Let's get through the bid process and then we can clear this up." He stated he never wanted this to go out for bid because he thought the price would go up, and then it did go up. Sheriff Jarrard explained he tried to go through the County Manager and is interpretation of the phone call is that he understood and things could move forward.

Ms. Branan said the old contract was set to automatically renew unless notice of non-renewal was given in advance by either party. For January, February, and March, it was paid at the old contract rate. Sheriff Jarrard said he is the one who put this into motion because he was not willing to be without a nurse. He handled things the way he has handled them for 14 years, and the Sheriff's Office should be responsible for paying it.

20. Amend the 2020 SPLOST 2022 Work Plan *(Finance Director Abby Branan)*

Amend the 2020 SPLOST 2022 Work Plan. Request to amend the 2022 work plan for the 2020 SPLOST program.

COUNTY MANAGER

COUNTY ATTORNEY

COMMISSIONERS

PUBLIC COMMENT (Agenda Specific)

ADJOURNMENT

The meeting ended at 6:01 pm.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 16, 2022 5:30 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Regular Meeting Minutes
Commissioners Boardroom

August 16, 2022
6:00 P.M.

Minutes Acceptance: Minutes of Aug 16, 2022 6:00 PM (CONSIDERATION OF MINUTES)

CALL TO ORDER

The meeting was called to order at 6:09 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Tucker Greene	District 1 Commissioner	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

INVOCATION

Mr. Josh Chatham from Shoal Creek Baptist Church gave the invocation, followed by the Pledge of Allegiance.

CONSIDERATION OF AGENDA

Motion: *A motion was made by Chairman Dockery to approve the agenda with the change of striking item 17 (Airport Consultant Proposal Committee). The motion was seconded by District 1 Commissioner Greene. The motion was approved and carried.*

PUBLIC COMMENTS (Agenda Specific)

There were no comments from the public.

PROCLAMATIONS

1. Proclamation for the Lumpkin County 8U Baseball Team GRPA Class C State Championship Winners

Proclamation for the Lumpkin County 8U Baseball Team GRPA Class C State Championship Winners

Motion: *A motion was made by District 1 Commissioner Greene to approve the proclamation. The motion was seconded by District 3 Commissioner Stringer. The motion was approved and carried.*

CONSIDERATION OF MINUTES

Motion: *A motion was made by District 4 Commissioner Moran to approve the minutes by acclamation. The motion was seconded by District 3 Commissioner Stringer. The motion was approved and carried.*

2. Board of Commissioners - Work Session - Jul 5, 2022 4:00 PM
3. Board of Commissioners - Special Called Work Session - Jul 16, 2022 9:00 AM
4. Board of Commissioners - Work Session II - Jul 19, 2022 5:30 PM
5. Board of Commissioners - Regular Meeting - Jul 19, 2022 6:00 PM

RESOLUTIONS

6. 2022 - 37 - Resolution Adopting the Statement of Ethics

Resolution Adopting the Statement of Ethics

Motion: *A motion was made by District 4 Commissioner Moran to approve Resolution Adopting the Statement of Ethics. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

7. 2022 - 39 - Reappoint Members to Planning Commission - Danny Clark, Seat 4 term expires 8/27/26

Reappoint Members to Planning Commission - Danny Clark, Seat 4 term expires 8/27/26

Motion: *A motion was made by Chairman Dockery to reappoint Danny Clark to seat 4 with a term expiring 8/27/2026. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

8. 2022 - 40 - Resolution to Appoint Member to Board of Elections - Robin McIntosh to Seat 5 exp 12/31/2022

Resolution to Appoint Member to Board of Elections - Robin McIntosh to Seat 5 exp 12/31/2022

Motion: *A motion was made by Chairman Dockery to appoint Robin McIntosh to seat 5 with an unexpired term ending 12/31/2022. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

REPORTS

Department reports can be viewed on the Commissioners web page at www.lumpkincounty.gov

Elected Officials

City Councilman Lance Bagley said they finally have a liquor store coming to Dahlonega. It will be at 19 Choice Street and it will be 8 months before it is open.

Sheriff Jarrard said the UNG students will be moving in from Thursday until Saturday, so the intersection by Moe's will be backed up. On Saturday night, they usually have a big block party to celebrate the start of the semester. Sheriff Jarrard said he does not want to see any students getting a criminal history. There will be a big law enforcement presence Saturday night and they will have road checkpoints set up.

CONTRACTS/AGREEMENTS

9. 2022-050 - CTC Technology & Energy Professional Consulting Contract *(Development Authority Director Rebecca Mincey)*

CTC Technology & Energy Professional Consulting Contract.

Minutes Acceptance: Minutes of Aug 16, 2022 6:00 PM (CONSIDERATION OF MINUTES)

Motion: *A motion was made by District 3 Commissioner Stringer to approve CTC Technology & Energy Professional Consulting Contract. The motion was seconded by District 1 Commissioner Greene. The motion was approved and carried.*

10. 2022-051 - Amend School Resource Officer IGA with Board of Education *(Finance Director Abby Branan)*

Amend School Resource Officer IGA with Board of Education. Consideration of Adding a School Resource Officer Position.

Motion: *A motion was made by District 2 Commissioner Mayfield to approve Amend School Resource Officer IGA with Board of Education. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

11. 2022-052 - Amend IGA with Board of Education Concerning Aquatic Facility *(Special Projects Director Ashley Peck)*

Amend IGA with Board of Education Concerning Aquatic Facility. Approval of the amended IGA with the Board of Education due to the required revision/scope change to the Aquatic Center/Pool Project.

Motion: *A motion was made by District 1 Commissioner Greene to approve Amend IGA with Board of Education Concerning Aquatic Facility. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

12. 2022-053 - IGA with Secretary of State for Additional Voting Equipment *(Special Projects Director Ashley Peck)*

IGA with Secretary of State for Additional Voting Equipment. Approval of IGA with the Secretary of State for the loan of election equipment for the November General Election.

Motion: *A motion was made by District 3 Commissioner Stringer to approve IGA with Secretary of State for Additional Voting Equipment. The motion was seconded by District 1 Commissioner Greene. The motion was approved and carried.*

13. 2022-054 - Yahoola Creek Reservoir Pedestrian Trails Phase I Cultural Resource Survey *(Finance Director Abby Branan)*

Yahoola Creek Reservoir Pedestrian Trails Phase I Cultural Resource Survey. Consideration of a contract for a Phase I Cultural Resource Survey

Motion: *A motion was made by District 2 Commissioner Mayfield to approve Yahoola Creek Reservoir Pedestrian Trails Phase I Cultural Resource Survey. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

OTHER ITEMS

14. Voting Delegate – Legislative Leadership Conference

Voting Delegate – Legislative Leadership Conference

Motion: *A motion was made by District 3 Commissioner Stringer to nominate Chairman Dockery to be the voting delegate. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

15. Alcoholic Beverage License – Massey Burns Inc. d/b/a 52 West Brewing *(County Clerk Melissa Witcher)*

Minutes Acceptance: Minutes of Aug 16, 2022 6:00 PM (CONSIDERATION OF MINUTES)

Alcoholic Beverage License – Massey Burns Inc. d/b/a 52 West Brewing. This is for the issuance of an alcoholic beverage license for Manufacturer sales located at 350 Hwy 52 West, Dahlonega, GA 30533.

Motion: *A motion was made by District 1 Commissioner Greene to approve Alcoholic Beverage License – Massey Burns Inc. d/b/a 52 West Brewing. The motion was seconded by District 4 Commissioner Moran. The motion was approved and carried.*

16. LC Wimpy Airport Crack Sealing and Runway Remarking Bid Award (Contractor TBD) *(Public Works Director Larry Reiter)*

LC Wimpy Airport Crack Sealing and Runway Remarking Bid Award (Contractor TBD). Approve bid to allow a notice of award to be sent to contractor and proposed contractor to GDOT.

Motion: *A motion was made by District 4 Commissioner Moran to approve LC Wimpy Airport Crack Sealing and Runway Remarking Bid Award (Contractor TBD). The motion was seconded by District 1 Commissioner Greene. The motion was approved and carried.*

17. LC Wimpy Airport Consultant Proposal Committee *(Public Works Director Larry Reiter)*

LC Wimpy Airport Consultant Proposal Committee. Form a committee to review proposals and recommend a consultant to contract with for professional engineering, architectural, and construction inspection/administration services for the Lumpkin County Airport.

This item was struck from the agenda.

18. 2022-055 - Inmate Medical Services Statement for December 2021 – March 2022 *(Finance Director Abby Branan)*

Inmate Medical Services Statement for December 2021 – March 2022. Consideration of payment for invoices received from CorrectHealth for services provided December 2021 – March 2022.

Motion: *A motion was made by District 3 Commissioner Stringer to approve paying the new updated rate back through January 1st. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

19. Amend the 2020 SPLOST 2022 Work Plan *(Finance Director Abby Branan)*

Amend the 2020 SPLOST 2022 Work Plan. Request to amend the 2022 work plan for the 2020 SPLOST program.

Motion: *A motion was made by District 3 Commissioner Stringer to approve Amend the 2020 SPLOST 2022 Work Plan. The motion was seconded by District 1 Commissioner Greene. The motion was approved and carried.*

COUNTY MANAGER

COUNTY ATTORNEY

COMMISSIONERS

Commissioner Greene thanked the BOC for recognizing the baseball team.

PUBLIC COMMENTS

Minutes Acceptance: Minutes of Aug 16, 2022 6:00 PM (CONSIDERATION OF MINUTES)

Sheriff Jarrard, addressing the inmate medical bill topic, said his only other option would have been to take inmates to the hospital every time, and that would have cost tens of thousands of dollars. He did things the way he has been doing them for the last 14 years. He said he does not know if we will have to rebid the inmate medical care or something else.

ADJOURNMENT

Motion: *Commissioner Mayfield moved to adjourn the meeting and was seconded by Commissioner Stringer. The motion was approved unanimously, and the meeting was adjourned at 6:31 PM.*

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

LUMPKIN COUNTY
Board of Commissioners
Public Hearing Minutes
Commissioners Boardroom

August 23, 2022
4:00 P.M.

Call to Order

The meeting was called to order at 4:01 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Tucker Greene	District 1 Commissioner	Absent	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Absent	
Jeffrey Moran	District 4 Commissioner	Present	

Public Comment

Public Comment on Property Tax Increase

The Lumpkin County Board of Commissioners has tentatively adopted a millage rate, which will require an increase in property taxes over the roll-back rate by 15.10 percent in unincorporated Lumpkin County, and 20.84 percent in incorporated Lumpkin County.

There were no comments from the public.

Adjournment

The meeting was adjourned at 4:02 PM.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 23, 2022 4:00 PM (CONSIDERATION OF MINUTES)

LUMPKIN COUNTY
Board of Commissioners
Special Called Meeting Minutes
Commissioners Boardroom

August 23, 2022
4:30 P.M.

Minutes Acceptance: Minutes of Aug 23, 2022 4:30 PM (CONSIDERATION OF MINUTES)

CALL TO ORDER

The meeting was called to order at 4:30 PM by Chairman Chris Dockery

Attendee Name	Title	Status	Arrived
Chris Dockery	Chairman	Present	
Tucker Greene	District 1 Commissioner	Present	
Bobby Mayfield	District 2 Commissioner	Present	
Rhett Stringer	District 3 Commissioner	Present	
Jeffrey Moran	District 4 Commissioner	Present	

CONSIDERATION OF AGENDA

Motion: *A motion was made by Commissioner Stringer to approve the agenda, and it was seconded by Commissioner Mayfield. The motion was approved unanimously.*

RESOLUTIONS

1. 2022 - 41 - Establish the 2023 Budget *(Finance Director Abby Branan)*

Establish the 2023 Budget

Motion: *A motion was made by District 3 Commissioner Stringer to approve Establish the 2023 Budget. The motion was seconded by District 2 Commissioner Mayfield. The motion was approved and carried.*

2. 2022 - 42 - Establish the 2022 Ad Valorem Tax Millage Rate *(Finance Director Abby Branan)*

Establish the 2022 Ad Valorem Tax Millage Rate

Chairman Dockery read aloud a letter from the Board of Education and Superintendent Rob Brown.

Motion: *A motion was made by District 2 Commissioner Mayfield to approve Establish the 2022 Ad Valorem Tax Millage Rate. The motion was seconded by District 1 Commissioner Greene. The motion was approved and carried.*

ADJOURNMENT

Motion: *A motion was made by Commissioner Mayfield to adjourn the meeting. The motion was seconded by Commissioner Moran. The motion was approved and carried.*

The meeting was adjourned at 4:38 PM.

Date

Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

Melissa Witcher
County Clerk, Lumpkin County

Minutes Acceptance: Minutes of Aug 23, 2022 4:30 PM (CONSIDERATION OF MINUTES)

Lumpkin County, Georgia

Planning Department

Date: September 20, 2022

Agenda Item: Resolution to Amend the Character Area Map

Item Description: Resolution to Amend the Character Area Map (Regular Meeting). United Family Homes, LLC. has submitted a Character Area Map Amendment request for Map/Parcel 083-100, Dahlonega, GA 30533.

Facts & Historical Information:

1. On 7 October 2021, the applicant met with the Planning Review Committee to discuss the land use and development requirements.

2. On 7 July 2022, the applicant met again with the Planning Review Committee to discuss the project, and informed the developers of the change in Land Use Regulations with regard to their project.

3. On 10 July 2022, the Planning Department received the CAM application from United Family Homes, LLC. The request is for changing the current character area of Residential Growth to the Gateway Corridor Overlay District.

4. On 8 August 2022, the Planning Commission will hear the CAM from Residential Growth to Gateway Corridor Overlay District and will provide the BOC with the recommendation immediately following the meeting date. The Planning Department will provide the board with the Planning Commissions recommendation in an updated staff analysis.

Land Use: Chapter 27

The current Character Area for parcel 083-100 is Residential Growth. The developer also owns a contiguous parcel 082-269, within the Gateway Corridor Overlay District. This parcel will be the access to the multi-family development. A DOT entrance permit is being staffed. The total acreage for both parcels is approximately 50 acres. The land use regulations allow for multi-family development in both Character Areas. Note that the performance standards require 2 acres per unit (RG) in the restrictive development category. This requirement does not apply to the Gateway Corridor Overlay District, as it's in the General Development Category.

The performance standards for multi-family are:

Road Classification			ACTIVITIES	ACRES	BUFFER (ft)	SETBACKS (ft) from		SCREENING (ft)	
A	C	L				Adjoining Property	Road R.O.W.	Total	Partial

♦	♦	♦	Multi-Family Development*	R	**	200	250	250	250	300
♦	♦	♦		G	4	25	50	50	50	75
			*See Ch. 26 Sec. 604 for further requirements. **2 acres per unit in restrictive development.							

The development standards for development in the Gateway Corridor Overlay District (Reflected in the Gateway Overlay District Development Design Guidelines) regulate a higher standard for architectural finishes, landscaping, signage and lighting.

Land Development: Chapter 26

The following reflects the multi-family development density standards based on infrastructure.

Density, maximum bedrooms per acre:

Individual well and septic:	Four bedrooms/acre.
Shared/community well and septic:	Four bedrooms/acre.
Public water and septic:	Six bedrooms/acre.
Public water (with buildings sprinklered) and septic:	Eight bedrooms/acre.
Public water and public sewer:	Twelve bedrooms/acre.
Public water (buildings sprinklered) and public sewer:	Sixteen bedrooms/acre.

Potential Course of Action:

1. Approve the character area map amendment as requested.
2. Approve the character area map amendment with conditions.
3. Table or deny the character area map amendment request.

Budgetary Impact:

None

Planning Commission's Recommendation: The Planning Commission unanimously recommends to the Board of Commissioners to change the current Residential Growth Character Area (effecting only Map/Parcel # 083-100) to the Gateway Corridor Overlay District.

<Insert Resolution Here>

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Attachments:
1743_HWY 60 _Deed
2022-08-15_UFH - Hwy 60 Letter of Intent
2022-08-15_UFH - Hwy 60 Architectural Concept
220716_Hwy 60 Apartments - Render 1
220716_Hwy 60 Apartments - Render 2
220716_Hwy 60 Apartments - Render 3
220716_Hwy 60 Apartments - Render 4
220716_Hwy 60 Apartments - Render 5
220716_Hwy 60 Apartments - Render 6
220716_Hwy 60 Apartments - Render 7
220716_Hwy 60 Apartments - Render 8
220716_Hwy 60 Apartments - Render 9
220716_Hwy 60 Apartments - Render 10
220716_Hwy 60 Apartments - Render 11
Location Map with Character Area
United Family Homes_Ownership document

BOLING RICE LLC

A LIMITED LIABILITY COMPANY

Zack A. Rice
Paul J. McGruder
Renee D. T. Welch
Taylor H. Rice

207 PIRKLE FERRY ROAD
CUMMING, GEORGIA 30040

Of Counsel:
Angie Martin McKinney
Samuel R. Bagwell

Matthew C. Bottoms

Leon Boling (1919 - 2015)
Larry H. Boling (1951 - 1991)

Telephone: 770.887.3162
Facsimile: 770.889.8824
Facsimile: 770.844.6602

March 17, 2022

United Family Home LLC
8740 Colonial Place
Duluth, GA 3097

Re: Brandy Mountain Road, Dahlonega, GA

To Whom It May Concern:

Enclosed herewith please find the original recorded Limited Warranty Deed and Owner's Title Policy for the above referenced property. Please place these documents in safe keeping.

We appreciate the opportunity of assisting you with this matter. If we can be of further assistance, please let us know.

Kindest regards,

Wendi Payne
Post Closing
Enclosures
#80855

Attachment: 1743_HWY 60 _Deed (2022 - 38 : Resolution to Amend the Character Area Map)

DOC# 000067
FILED IN OFFICE
1/6/2022 01:15 PM
BK:1543 PG:129-130
RITA HARKINS
CLERK OF COURTS
LUMPKIN COUNTY

REAL ESTATE TRANSFER
TAX PAID: $1100.00
PT-61 093-2022-000032

AFTER RECORDING, RETURN TO:
Zack A. Rice
Boling Rice LLC
207 Pirkle Ferry Road
Cumming, GA 30040
#80855

STATE OF GEORGIA

COUNTY OF FORSYTH

LIMITED WARRANTY DEED

THIS INDENTURE is made as of **December 28, 2021**, between **Charles Turner, III** (hereinafter referred to as "Grantor") and **United Family Home LLC, a Georgia limited liability company** (hereinafter referred to as "Grantee"), ("Grantor" and "Grantee" to include their respective heirs, successors, executors, administrators, legal representatives and assigns where the context requires or permits).

W I T N E S S E T H:

GRANTOR, in consideration of the sum of Ten and No/100 Dollars ($10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and does hereby grant, bargain, sell, alien, convey and confirm unto Grantee the following:

All that tract or parcel of land lying and being in Land Lot 140, 11th District, 1st Section of Lumpkin County, Georgia, containing 43.719 acres, more or less, as shown on a plat of survey, dated August 25, 2015, prepared for Charles Turner by Jessie R. Henderson, Georgia Registered Land Surveyor, No. 2985, recorded in Plat Cabinet 1, Slide 206, page 116, Lumpkin County, Georgia records. Said plat and the record thereof are incorporated herein by reference for a more complete description of subject property.

AND

Attachment: 1743_HWY 60 _Deed (2022 - 38 : Resolution to Amend the Character Area Map)

All that tract or parcel of land lying and being in Land Lots 140 and 149, 11th District, originally of Hall County, now Lumpkin County, Georgia, consisting of 8.18 acres, according to a Survey For: Hoyt Robinson Estate, dated July 29, 2000, last revised March 17, 2021, by Jason D. Watkins, Registered Land Surveyor, said plat is recorded at Plat Book 2021, Page 71, Lumpkin County, Georgia Records, which plat and reference thereto is incorporated herein for a more complete description of the subject property.

TO HAVE AND TO HOLD, the Land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of Grantee, forever in FEE SIMPLE.

AND GRANTOR WILL WARRANT and forever defend the right and title of the above described property unto Grantee against the claims of all persons claiming by, through or under Grantor.

EXECUTED under seal as of the date above.

Signed, sealed and delivered
in the presence of:

_____
Witness

_____
Notary Public

JACKIE RICE NOTARY PUBLIC LUMPKIN COUNTY, GA My Commission Expires 2022

(SEAL)

_____ (SEAL)
Charles Turner, III

_____ (SEAL)

Attachment: 1743_HWY 60 _Deed (2022 - 38 : Resolution to Amend the Character Area Map)

CHICAGO TITLE INSURANCE COMPANY

Policy No.: 2487-1-80855-2022.7230610-226948806

OWNER'S POLICY OF TITLE INSURANCE

Issued by

CHICAGO TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, CHICAGO TITLE INSURANCE COMPANY, a Florida corporation, (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding.
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
   (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (a) the occupancy, use, or enjoyment of the Land;
   (b) the character, dimensions, or location of any improvement erected on the Land;
   (c) the subdivision of land; or
   (d) environmental protection
   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated Schedule A or being defective
   (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

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(b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
(i) to be timely, or
(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

CHICAGO TITLE INSURANCE COMPANY

Countersigned:

By: _____
Authorized Officer or Agent
Zack A. Rice
Boling Rice, LLC
207 Pirkle Ferry Rd
Cumming, GA 30040-2525
Tel:770-887-3162
Fax:770-889-8824

By:

Michael J. Nolan
President

Attest:

Marjorie Nemzura
Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
(i) the occupancy, use, or enjoyment of the Land;
(ii) the character, dimensions or location of any improvement erected on the Land;
(iii) the subdivision of land; or
(iv) environmental protection;
or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
(a) created, suffered, assumed, or agreed to by the Insured Claimant;
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
(c) resulting in no loss or damage to the Insured Claimant;
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
(a) a fraudulent conveyance or fraudulent transfer; or
(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

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CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a)"Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.

(b)"Date of Policy": The date designated as 'Date of Policy" in Schedule A.

(c)"Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d)"Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1)if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2)if the grantee wholly owns the named Insured,

(3)if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or

(4)if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g)"Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h)"Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

7230610 ALTA Owners Policy 06/17/06 w-GA Mod_306
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5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

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This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. THIS SECTION INTENTIONALLY DELETED

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

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16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at CHICAGO TITLE INSURANCE COMPANY, Attn: Claims Department, P.O. Box 45023, Jacksonville, FL 32232-5023

Attachment: 1743_HWY 60 _Deed (2022 - 38 : Resolution to Amend the Character Area Map)

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CHICAGO TITLE INSURANCE COMPANY

OWNER'S POLICY OF TITLE INSURANCE

SCHEDULE A

File No.:	80855
Policy Number:	2487-1-80855-2022.7230610-226948806
Property/Address Reference:	Land Lot 140 & 149 of the 11th District, 1st Section of Lumpkin County, Georgia, being known as 51.899 acres, Brandy Mountain Road, Dahlonega, GA 30533
Amount of Insurance:	$1,100,000.00
Date of Policy:	December 28, 2021 at 5:00 o'clock P.M.
Policy Premium Paid:	$2,145.00

1. Name of Insured:

   United Family Home LLC, a Georgia limited liability company

2. The Estate or Interest in the Land that is insured by this Policy is:

   Fee Simple

3. Title to the Land is vested in:

   United Family Home LLC, a Georgia limited liability company by virtue of Limited Warranty Deed between Charles Turner, II and United Family Home LLC, a Georgia limited liability company, dated December 28, 2021, filed of record January 6, 2022, Lumpkin County, Georgia Records.

4. The Land described in this Policy is described as follows:

   All that tract or parcel of land lying and being in Land Lots 140 and 149 of the 11th District, 1st Section of Lumpkin County, Georgia, and being more particularly described on Exhibit "A" attached hereto.

Attachment: 1743_HWY 60 _Deed (2022 - 38 : Resolution to Amend the Character Area Map)

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot 140, 11th District, 1st Section of Lumpkin County, Georgia, containing 43.719 acres, more or less, as shown on a plat of survey, dated August 25, 2015, prepared for Charles Turner by Jessie R. Henderson, Georgia Registered Land Surveyor, No. 2985, recorded in Plat Cabinet 1, Slide 206, page 116, Lumpkin County, Georgia records. Said plat and the record thereof are incorporated herein by reference for a more complete description of subject property.

AND

All that tract or parcel of land lying and being in Land Lots 140 and 149, 11th District, originally of Hall County, now Lumpkin County, Georgia, consisting of 8.18 acres, according to a Survey For: Hoyt Robinson Estate, dated July 29, 2000, last revised March 17, 2021, by Jason D. Watkins, Registered Land Surveyor, said plat is recorded at Plat Book 2021, Page 71, Lumpkin County, Georgia Records, which plat and reference thereto is incorporated herein for a more complete description of the subject property.

Attachment: 1743_HWY 60 _Deed (2022 - 38 : Resolution to Amend the Character Area Map)

This Policy is only valid if Schedule B is attached.

Schedule A consists of two (2) pages.

Attachment: 1743_HWY 60 _Deed (2022 - 38 : Resolution to Amend the Character Area Map)

CHICAGO TITLE INSURANCE COMPANY

OWNER'S POLICY OF TITLE INSURANCE

POLICY NUMBER
2487-1-80855-2022.7230610-226948806

SCHEDULE B
EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) which arise by reason of:

1. Deleted.

2. All State and County real property ad valorem taxes for the year 2022 and subsequent years, not yet due and payable, and any additional taxes for the current year or any prior years resulting from a reassessment, amendment or re-billing of city or county taxes subsequent to the Effective Date.

3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.

4. Easements or claims of easements, not shown by the public records.

5. Deleted.

6. Deleted.

7. Deleted.

8. This policy does not insure the accuracy of the engineering calculation used to determine the exact amount of acreage contained within the Land.

As to 43.719 acres:

9. Subject to mineral interests previously reserved.

10. Subject to a conveyance in Evelyn Early.

11. Rights of upper and lower riparian owners in and to the waters which flow along the southern boundary.

Attachment: 1743_HWY 60 _Deed (2022 - 38 : Resolution to Amend the Character Area Map)

As to 8.18 acres:

12. Matters shown on Survey For: Hoyt Robinson Estate, dated July 29, 2000, last revised March 17, 2021, by Jason D. Watkins, Registered Land Surveyor, said plat is recorded at Plat Book 2021, Page 71, Lumpkin County, Georgia Records.

Countersigned:
Boling Rice LLC

By:_____
Zack A. Rice, Member
Authorized Signatory

This Policy is only valid if Schedule A is attached.
Schedule B consists of three (3) pages.

Attachment: 1743_HWY 60 _Deed (2022 - 38 : Resolution to Amend the Character Area Map)

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2022-08-13 // Character Area Map Amendment Letter of Intent : Lumpkin County Highway 60 Apartments

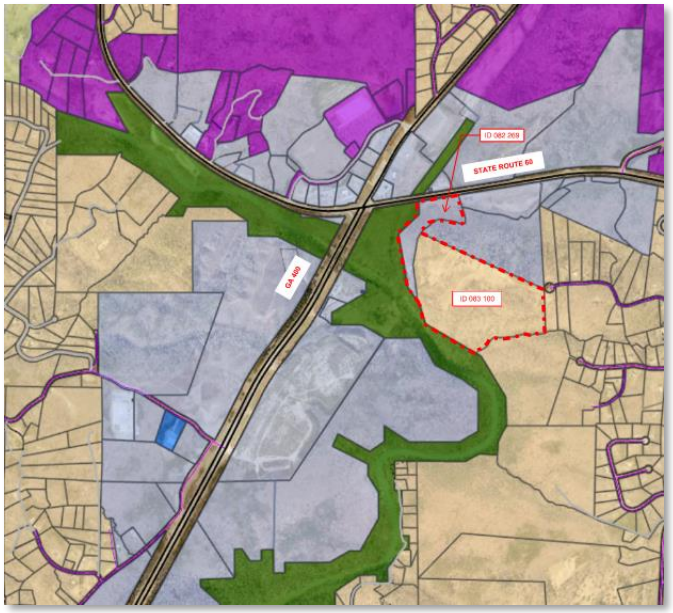
To the Planning Commission and Board of Commissioners:

This letter of intent is in regards to the "Lumpkin Highway 60" project with a proposed location utilizing Land Lots 140, 141, 148, & 149 in the 11th District of (what was originally Hall County) Lumpkin County, Georgia.

- Currently the 8.2 Acre Parcel (ID 082 269) is categorized in the "Gateway Corridor Overlay District" allowing for higher density development.

- The 40.99 Acre Parcel 083 100 is currently zoned in "Residential Growth".

We are requesting to merge the two parcels (ID 082 269 and ID 083 100) and to categorize them as a combined parcel within "Gateway Corridor Overlay District".



Attachment: 2022-08-15_UFH - Hwy 60 Letter of Intent (2022 - 38 : Resolution to Amend the Character Area Map)

Changing from Residential Growth to Gateway Corridor Overlay District comes with many benefits to the site and to Lumpkin County including the following:

- **Shifts from Low Density to a High Density :** Residential Growth would only allow for about 25 units over the full 49 acres. Shifting to a higher density categorization would allow for the proposed 288 units over about 11 acres out of the 49.

  BENEFITS:

  - Having higher density means a connection to Infrastructure: Sewer and Water. This avoids the potential of 25 separate wells and 25 separate septic systems in close proximity to the Chestatee River.
  - Having a smaller footprint for development would allow for less site disturbance. This is desired due to the proximity to the Chestatee River
  - Having a smaller development footprint allows for the preservation of old-growth pine/hardwoods that are on 38 out of the 49 acres.
    - This is ecologically responsible
    - This allows for the preservation of visual screening of the development from those traveling on 400/60.
  - Higher density would provide an economic boon to Lumpkin county, providing a larger and more stabilized housing anchor for any future planned economic growth/development such as Hospitals and Universities.

- **Requires a Higher Standard of Development:** The Gateway Corridor Overlay District requires a higher standard of development and will result in a higher quality construction product

  BENEFITS:

  - A higher standard of development will be enforced, necessitating the usage of nicer and more lasting materials
  - The intent of the design for these buildings is to integrate into the traditional architectural design prevalent in the area, while modernizing certain feature locations of the buildings with tasteful and timeless detailing. The material palettes are suggested to be a neutral and nature-inspired combination of wood tones, whites, beiges, and greens.
  - The development is planned to be a gated community with attractive site work and landscaping to minimally disturb the intersection and be as unobtrusive as possible.
  - The Higher Standard of Development, paired with a target rent of $2,000/month will attract more stabilized housing residents

Attachment: 2022-08-15_UFH - Hwy 60 Letter of Intent (2022 - 38 : Resolution to Amend the Character Area Map)

Regarding Character Area Map Amendments, per Section 27-8.1.3

A. Whether the land use amendment proposal meets the policies and intent established in the current comprehensive plan and the CAM.

- The land use amendment proposal would meet the policies and intent established in the Comprehensive Plan that was informed by the SWOT Analysis by :
  - Solving Short-comings and County Needs Addressed in the Comprehensive Plan such as :
    - Gaps in workforce/starter housing supply
    - Limited options for commercial tax base
  - Presenting Opportunities/Unique Possibilities such as :
    - Providing a housing anchor for Potential Medical Hub with Hospital Relocation
    - Initiate precedent in new/smart growth
  - Controlling Threats/Outside Risks such as :
    - Managing potential conflicts from growth by focusing on a single high quality development rather than uncontrolled variety of developments at unknown qualities and impacts
    - Managing possible rapid growth from metro Atlanta by consolidating housing options into a low acreage parcel to avoid over-development and sprawl

- Page 10 Lumpkin County Comprehensive Plan : Update land use policies to mitigate impacts of new development / Target utility and infrastructure improvements in a way compatible with rural character
  - This project would create a single, high density, development instance that would need to utilize sewer/city water. This avoids potential future development of low density that could include up to 25 separate wells/septic tanks in close proximity to the Chestatee River

B. Whether the land use amendment proposal is compatible with the surrounding future land uses as identified in the CAM;

- As notable in the overall site plan and the portion of the CAM included on Page 1, most of the surrounding large parcels that buffer GA 400 and State Route 60 are already designated “Gateway Corridor Overlay District”.

C. Whether the CAM amendment proposal can be adequately served by existing transportation facilities and other infrastructure, such as schools, water and sewer;

- This parcel being amended is already served by the GA400 Corridor and is accessed via Hwy 60. The water and sewer infrastructure is existing and capable of servicing the first phase of this project at 230 Beds / 132 Units.
- Phases II and III would be served by the sewer expansion efforts expected to be completed by 2025.

D. Whether the CAM amendment proposal negatively impacts natural and scenic resources identified by the county;

- Some natural and scenic resources identified by the county include :
  - Scenic Rural Vistas – State Rout 400 and State Route 60 providing the “Gateway” into the county and city of Dahlonega
  - The Chestatee River
  - The Rugged/Forested Terrain

- The CAM amendment proposal positively impacts natural and scenic resources identified by the county by allowing a higher density development which:
  - Allows for an economically viable project with minimal impact on the site, preserving 75%+ of the hardwood/pine growth forest on site
  - Allows for the retainage of a majority of the tree canopy preserving the scenic views from 400 and 60
  - Reduces site disturbance which reduces the impact on the Chestatee River
  - Reduces the potential for septic/well installs which avoids negative impacts on the water-table/the Chestatee

Attachment: 2022-08-15_UFH - Hwy 60 Letter of Intent (2022 - 38 : Resolution to Amend the Character Area Map)

E. **<u>Whether the CAM amendment proposal is in the best interest of the county and the public good and whether the proposal protects the health and welfare of its citizens; and</u>**

- This amendment proposal follows the interest of the county and the public good by protecting the health and welfare of its citizens. It does so by:
  - Promoting ***Economic Prosperity***, providing housing for new good jobs located nearby and providing a high quality product
  - Contributes towards ***Resource Management*** and utilizes ***Efficient Land Use*** by smartly avoiding ecologically harmful development of a sensitive parcel close to scenic routes and the Chestatee River
  - Initiates ***Local Preparedness*** by providing justification and purpose for expanding sewer treatment facilities which would point towards a future where Septic could be minimized in sensitive areas.
  - Creates a ***Sense of Place*** by creating local housing nearby to the future hospital and university which would allow for shorter commutes for residents and a more localized sense of community

F. **<u>Whether the property to be affected by the CAM amendment proposal has a reasonable economic use as currently designated on the CAM.</u>**

- There is a reasonable economic use currently as single family detached housing, but such a development would be ecologically harmful by:
  - Possibly introducing 25 separate septic tanks up-hill from the Chestatee River
  - Possibly introducing 25 separate wells which could disturb the proximity water-table
  - Resulting in the disturbance of the total 50 acres of the site, risking exposure to 400/60 and reduction of the quality of those vistas

---

The program of the proposed development to be built upon the rezoned land is as designed as indicated below:

4 Multi-Family Buildings, each at 3 stories, combining to a total Unit Count of 288, comprised of 100 One-Bedroom Units, 168 Two-Bedroom Units, and 20 Three-Bedroom Units. There will be an on-site leasing center, fitness center, pool, playground, and dog park.

It is understood that the current capacity for development is limited and as a result, the project will be phased into three phases. Phase I will include the development of the site, the amenities, and buildings 2000 and 3000 totaling to 132 units. Phase II will be building 1000, adding a total of 78 units. Phase III will be building 4000 adding an additional 78 units.

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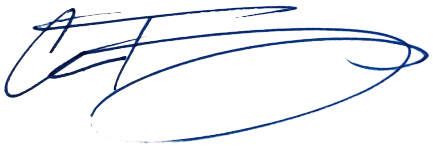

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1 Site
1" = 100'-0"

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HWY 60 APARTMENTS

Lumpkin County, GA

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#	Rev	Date

Owner

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Site Plan

G001

Scale 1" = 100'-0"

Revision Release

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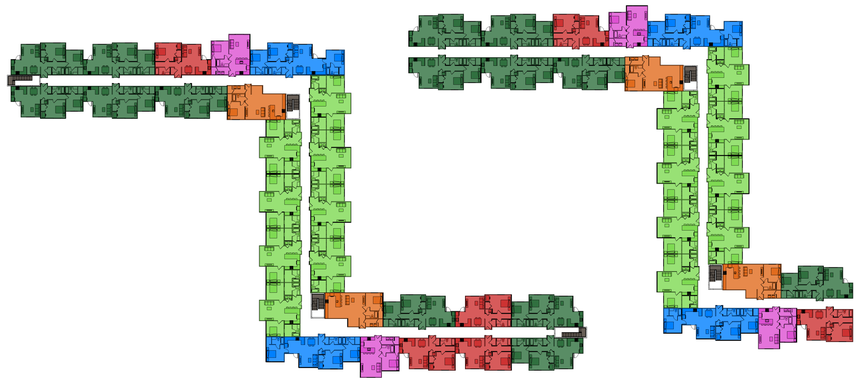
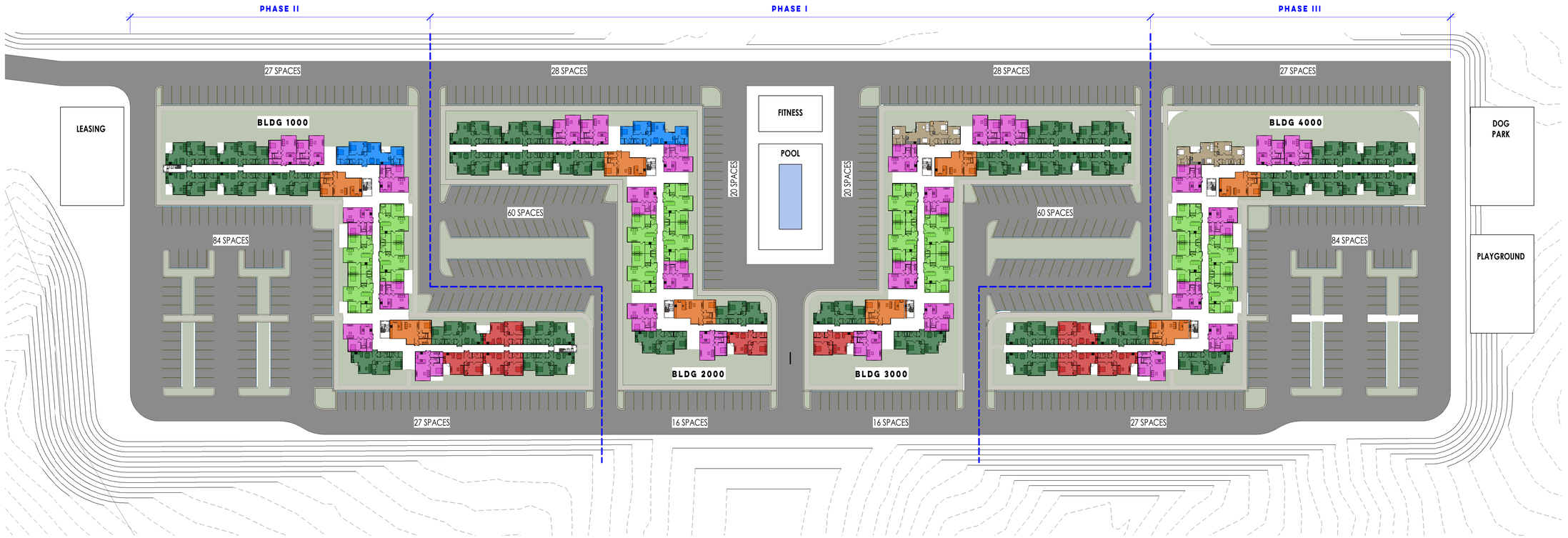
Attachment: 2022-08-15_UPH - Hwy 60 Architectural Concept (2022 - 38 : Resolution to Amend the Character Area Map)



4 Levels 2/3
1" = 50'-0"



1 Architectural Site Plan - Level 1
1" = 50'-0"

TOTAL UNITS : 288	**BUILDING 1000 : TYPE 1**	**BUILDING 2000 : TYPE 2**	**BUILDING 3000 : TYPE 2**	**BUILDING 4000 : TYPE 1**
TOTAL BEDS : 496	**78 UNITS**	**66 UNITS**	**66 UNITS**	**78 UNITS**
TOTAL 1 BR : 100 (35%) TOTAL 2 BR : 168 (58%) TOTAL 3 BR : 20 (7%)	**L1 -** 12 @1BR / 13 @2BR / 1 @3BR **L2 -** 8 @1BR / 16 @2BR / 2 @3BR **L3 -** 8 @1BR / 16 @2BR / 2 @3BR	**L1 -** 10 @1BR / 11 @2BR / 1 @3BR **L2 -** 6 @1BR / 14 @2BR / 2 @3BR **L3 -** 6 @1BR / 14 @2BR / 2 @3BR	**L1 -** 10 @1BR / 11 @2BR / 1 @3BR **L2 -** 6 @1BR / 14 @2BR / 2 @3BR **L3 -** 6 @1BR / 14 @2BR / 2 @3BR	**L1 -** 12 @1BR / 13 @2BR / 1 @3BR **L2 -** 8 @1BR / 16 @2BR / 2 @3BR **L3 -** 8 @1BR / 16 @2BR / 2 @3BR
TOTAL PARKING : 524	1BR = 28 TOTAL 2BR = 45 TOTAL 3BR = 5 TOTAL **133 BEDS TOTAL**	1BR = 22 TOTAL 2BR = 39 TOTAL 3BR = 5 TOTAL **115 BEDS TOTAL**	1BR = 22 TOTAL 2BR = 39 TOTAL 3BR = 5 TOTAL **115 BEDS TOTAL**	1BR = 28 TOTAL 2BR = 45 TOTAL 3BR = 5 TOTAL **133 BEDS TOTAL**

UNIT TYPE KEY	
	= 1 BEDROOM
	= 2 BEDROOM
	= 3 BEDROOM

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HWY 60 APARTMENTS

Lumpkin County, GA

Attachment: 2022-08-15_UFH - Hwy 60 Architectural Concept (2022 - 38 : Resolution to Amend the Character Area Map)

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Architectural Site Plan

G002

Scale: As indicated

Revision Release:

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FOOTPRINT AREA = 31,542 SF

1 Code Analysis - Building 1000
1/32" = 1'-0"

31,542 SF Floor Plate

LEVEL 1:
-26 UNITS
- 1BR - 12 (RED)
- 2BR - 13 (GREEN)
- 3BR - 1 (BLUE)

LEVEL 2 / 3:
-26 UNITS
- 1BR - 8 (RED)
- 2BR - 16 (GREEN)
- 3BR - 2 (BLUE)

3 STORIES = 78 UNITS

SECTION 601
GENERAL

TABLE 601 FIRE-RESISTANCE RATING REQUIREMENTS FOR BUILDING ELEMENTS (HOURS)

BUILDING ELEMENT	TYPE I		TYPE II		TYPE III		TYPE IV	TYPE V	
	A	B	A	B	A	B	HT	A	B
Primary structural frame[i] (see Section 202)	3[b,f]	2[b,f]	1[b]	0[b]	1[b]	0[b]	HT[b]	1[b]	0[b]
Bearing walls Exterior[a] Interior	3 3[b]	2 2[b]	1 1	0 0	2 1	2 0	2 1/HT	1 1	0 0
Nonbearing walls and partitions Exterior	See Table 602								
Nonbearing walls and partitions Interior[d]	0	0	0	0	0	0	See Section 2304.11.2	0	0
Floor construction and associated secondary members (see Section 202)	2	2	1	0	1	0	HT	1	0
Roof construction and associated secondary members (see Section 202)	1 1/2[b]	1[b,c]	1[b,c]	0[b]	1[b,c]	0	HT	1[b,c]	0

For SI: 1 foot = 304.8 mm.

a. Roof supports: Fire-resistance ratings of primary structural frame and bearing walls are permitted to be reduced by 1 hour where supporting a roof only.
b. Except in Group R, I-1, I-2 and R-1 occupancies, fire protection of structural members in roof construction shall not be required, including protection of primary structural frame members, roof framing and decking where every part of the roof construction is 20 feet or more above any floor immediately below. Fire-retardant-treated wood members shall be allowed to be used for such unprotected members.
c. Heavy timber shall be allowed where a 1-hour or 2-hour fire-resistance rating is required and where a 3-hour or less fire-resistance rating is required.
d. Not less than the fire-resistance rating required by other sections of this code.
e. Not less than the fire-resistance rating based on fire separation distance (see Table 602).
f. Not less than the fire-resistance rating as referenced in Section 704.10.

SECTION 602
CONSTRUCTION CLASSIFICATION

TABLE 602 FIRE-RESISTANCE RATING REQUIREMENTS FOR EXTERIOR WALLS BASED ON FIRE SEPARATION DISTANCE[a, f, g]

FIRE SEPARATION DISTANCE = X (feet)	TYPE OF CONSTRUCTION	OCCUPANCY GROUP H[d]	OCCUPANCY GROUP F-1, M, S-2[e]	OCCUPANCY GROUP A, B, E, F-2, I, R[e], S-1, U[c]
X ≤ 5[f]	All	3	2	1
5 ≤ X < 10	IA Others	3 2	2 1	1 1
10 ≤ X < 30	IA, IB IIB, IIIB Others	2 1 1	1 0 0	1[c] 0 0
X ≥ 30	All	0	0	0

For SI: 1 foot = 304.8 mm.

a. Load-bearing exterior walls shall also comply with the fire-resistance rating requirements of Table 601.
b. See Section 706.1.1 for party walls.
c. Open parking garages complying with Section 406 shall not be required to have a fire-resistance rating.
d. The fire-resistance rating of exterior walls with a horizontal projection exceeding 4 feet (1219 mm) shall be permitted to be based on the fire-resistance distance of the exterior wall and the story in which the wall is located.
e. For special requirements for Group H, see Section 415.6.2.
f. For special requirements for Group S aircraft hangars, see Section 412.3.1.
g. Where Table 705.8 permits increasing exterior walls with unlimited area of unprotected openings, the required fire-resistance rating for the exterior walls is 3 hours.
h. For a building containing only a Group U occupancy private garage or carport, the exterior wall shall not be required to have a fire-resistance rating outside the fire separation distance is a Type 1/2(H) story or greater.
i. For a Group R-3 building or Type IIA or Type IV-C construction, the exterior wall shall not be required to have a fire-resistance rating where the fire separation distance is 5 feet (1524 mm) or greater.

602.1 General.
Buildings and structures erected or to be erected, altered or extended in height or area shall be classified in one of the five construction types defined in Sections 602.2 through 602.5. The building elements shall have a fire-resistance rating not less than that specified in Table 601 and exterior walls shall have a fire-resistance rating not less than that specified in Table 602. Where required to have a fire-resistance rating by Table 601, building elements shall comply with the applicable provisions of Section 703.2. The protection of openings, ducts and air transfer openings in building elements shall not be required unless required by other provisions of this code.

602.1.1 Minimum requirements.
A building or portion thereof shall not be required to conform to the details of a type of construction higher than that type which meets the minimum requirements based on occupancy even though certain features of such a building actually conform to a higher type of construction.

602.3 Type III.
Type III construction is that type of construction in which the exterior walls are of noncombustible materials and the interior building elements are of any material permitted by this code. *Fire-retardant-treated wood* framing and sheathing complying with Section 2303.2 shall be permitted within exterior wall assemblies of a 2-hour rating or less.

TABLE 506.2

OCCUPANCY CLASSIFICATION	SEE FOOTNOTES	TYPE OF CONSTRUCTION							
		TYPE I		TYPE II		TYPE III		TYPE IV	TYPE V	
		A	B	A	B	A	B	HT	A	B
R-2[f]	NS[f]	UL	UL	24,000	16,000	24,000	16,000	20,000	12,000	7,000
	S13R									
	S1	UL	UL	96,000	64,000	96,000	64,000	82,500	48,000	28,000
	SM	UL	UL	72,000	48,000	72,000	48,000	61,500	36,000	21,000

For SI: 1 square foot = 0.0929 m²

UL = Unlimited, NP = Not Permitted, NS = Buildings not equipped throughout with an automatic sprinkler system. S1 = Buildings a maximum of one story above grade plane equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1. S13R = Buildings two or more stories above grade plane equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.3. S13D = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2.

a. See Chapters 4 and 5 for specific exceptions to the allowable height or the chapter.
b. See Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.
c. New Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.
d. The NS value is only for use in evaluation of existing building area in accordance with the International Existing Building Code.
e. New Group I-1 and I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For New Group I-1 occupancies, Condition 1 see Exception 1 of Section 903.2.6.
f. New and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the International Fire Code
g. New Group m occupancies are the parkades 2 and 3 of Section 903.2.9.
h. New Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.
i. The maximum allowable area for a single-story noncombustible Group U greenhouse is permitted to be 5,000 square feet, or the allowable area shall be permitted to comply with Table 2702.1 of Appendix C.

506.2.3

506.2.3 Single-occupancy, multistory buildings.
The allowable area of a single-occupancy building with more than one story *above grade plane* shall be determined in accordance with Equation 5-2:

$A_a = [A_t + (NS \times F_i)] \times S_a$ (Equation 5-2)

where:

A_a = Allowable area (square feet)
A_t = Tabular allowable area factor (NS, S13R, S13D or SM value, as applicable) in accordance with Table 506.2.
NS = Tabular allowable area factor in accordance with Table 506.2 for a nonsprinklered building (regardless of whether the building is sprinklered).
I_f = Area factor increase due to frontage (percent) as calculated in accordance with Section 506.3.
S_a = Actual number of building stories *above grade plane*, not to exceed three. For buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2, use the actual number of building stories *above grade plane*, not to exceed four.
No individual story shall exceed the allowable area (A_a) as determined by Equation 5-2 using the value of $S_a = 1$.

[A] PUBLIC WAY. A street, alley or other parcel of land open to the outside air leading to a street, that has been deeded, dedicated or otherwise permanently appropriated to the public for public use and which has a clear width and height of not less than 10 feet (3048 mm).

506.3

506.3 Frontage increase.
Every building shall adjoin or have access to a public way to receive an area factor increase based on frontage. Area factor increase shall be determined in accordance with Sections 506.3.1 through 506.3.3.

506.3.1 Minimum percentage of perimeter.
To qualify for an area factor increase based on frontage, a building shall have not less than 25 percent of its perimeter on a public way or open space. Such open space shall be either on the same lot or dedicated for public use and shall be accessed from a street or approved *fire lane*.

506.3.2 Minimum frontage distance.
To qualify for an area factor increase based on frontage, the *public way* or open space adjacent to the building perimeter shall have a minimum distance (*W*) of 20 feet (6096 mm) measured at right angles from the building face to any of the following:

1. The closest interior lot line.
2. The entire width of a street, alley or public way.
3. The exterior face of an adjacent building on the same property.

Where the value of *W* is greater than 30 feet (9144 mm), a value of 30 feet (9144 mm) shall be used in calculating the *building area* increase based on frontage, regardless of the actual width of the public way or open space. Where the value of *W* varies along the perimeter of the building, the calculation performed in accordance with Equation 5-3 shall be based on the weighted average value calculated in accordance with Equation 5-4.

$W = (L_1 \times w_1 + L_2 \times w_2 + L_3 \times w_3 \ldots)/F$ (Equation 5-4)

where:

W (Width- weighted average) = Calculated width of public way or open space (feet).
L_n = Length of a portion of the exterior perimeter wall.
w_n = Width (≥ 20 feet) of a public way or open space associated with that portion of the exterior perimeter wall.
F = Building perimeter that fronts on a public way or open space having a width of 20 feet (6096 mm) or more.

Exception: Where a building meets the requirements of Section 507, as applicable, except for compliance with the minimum 60-foot (18 288 mm) public way or yard requirement, and the value of *W* is greater than 30 feet (9144 mm), the value of *W* shall not exceed 60 feet (18 288 mm).

506.3.3 Amount of increase.
The area factor increase based on frontage shall be determined in accordance with Equation 5-5:

$I_f = 0.25[F - 0.25]W/30$ (Equation 5-5)

where:

I_f = Area factor increase due to frontage.
F = Building perimeter that fronts on a public way or open space having minimum distance of 20 feet (6096 mm).
P = Perimeter of entire building (feet).
W = Width of public way or open space (feet) in accordance with Section 506.3.2

BUILDING TYPE IIIA / R-2

per 506.3

W = (L1*w1 + L2*w2 + L3*w3...)/F

if W is greater than 30', then 30' is used as W value

F = perimeter of building fronting on public way with min distance of 20'
F = 233.61 + 169.78 + 162.35 + 57.27 + 222.37 + 173.39 + 173.59 + 51.24 = **1,243.6**

W = [(233.61 * 30) + (169.78*30) + (162.35*30) + (57.27*30) + (222.37*30) + (173.39*30) + (173.59*30) + (51.24*30)] / F
W = [(7,008.3) + (5,093.4) + (4,870.5) + (1,718.1) + (6,671.1) + (5,201.7) + (5,207.7) + (1,537.2)] / F
W = 37,308 / 1,243.6
W = 30

AMOUNT OF INCREASE --> iF = [F/P - 0.25]W/30

iF = [1,243.6/1,243.6 - 0.25]*30/30
iF = [0.75]*1

iF = 0.75

per Table 506.2
Aa = [At + (NS * iF)] *Sa

At = 72,000
NS = 24,000
If = 0.75
Sa=3

ALLOWABLE AREA FOR TOTAL BUILDING AREA = [72,000 + [24,000*0.75)] * 3 = **270,000 SF**
ALLOWABLE AREA FOR SINGLE FLOOR OF BUILDING = [72,000 + [24,000 * 0.75)] * 1 **= 90,000 SF**

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HWY 60 APARTMENTS

Lumpkin County, GA

Attachment: 2022-08-15_UFH - Hwy 60 Architectural Concept (2022 - 38 : Resolution to Amend the Character Area Map)

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Code Analysis

G100

Scale: As indicated

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Attachment: 220716_Hwy 60 Apartments - Render 1 (2022 - 38 : Resolution to Amend the Character Area Map)

Attachment: 220716_Hwy 60 Apartments - Render 2 (2022 - 38 : Resolution to Amend the Character Area Map)

Attachment: 220716_Hwy 60 Apartments - Render 4 (2022 - 38 : Resolution to Amend the Character Area Map)

Attachment: 220716_Hwy 60 Apartments - Render 5 (2022 - 38 : Resolution to Amend the Character Area Map)

Attachment: 220716_Hwy 60 Apartments - Render 6 (2022 - 38 : Resolution to Amend the Character Area Map)

Attachment: 220716_Hwy 60 Apartments - Render 7 (2022 - 38 : Resolution to Amend the Character Area Map)

Attachment: 220716_Hwy 60 Apartments - Render 8 (2022 - 38 : Resolution to Amend the Character Area Map)

Attachment: 220716_Hwy 60 Apartments - Render 9 (2022 - 38 : Resolution to Amend the Character Area Map)

Attachment: 220716_Hwy 60 Apartments - Render 10 (2022 - 38 : Resolution to Amend the Character Area Map)

Attachment: 220716_Hwy 60 Apartments - Render 11 (2022 - 38 : Resolution to Amend the Character Area Map)

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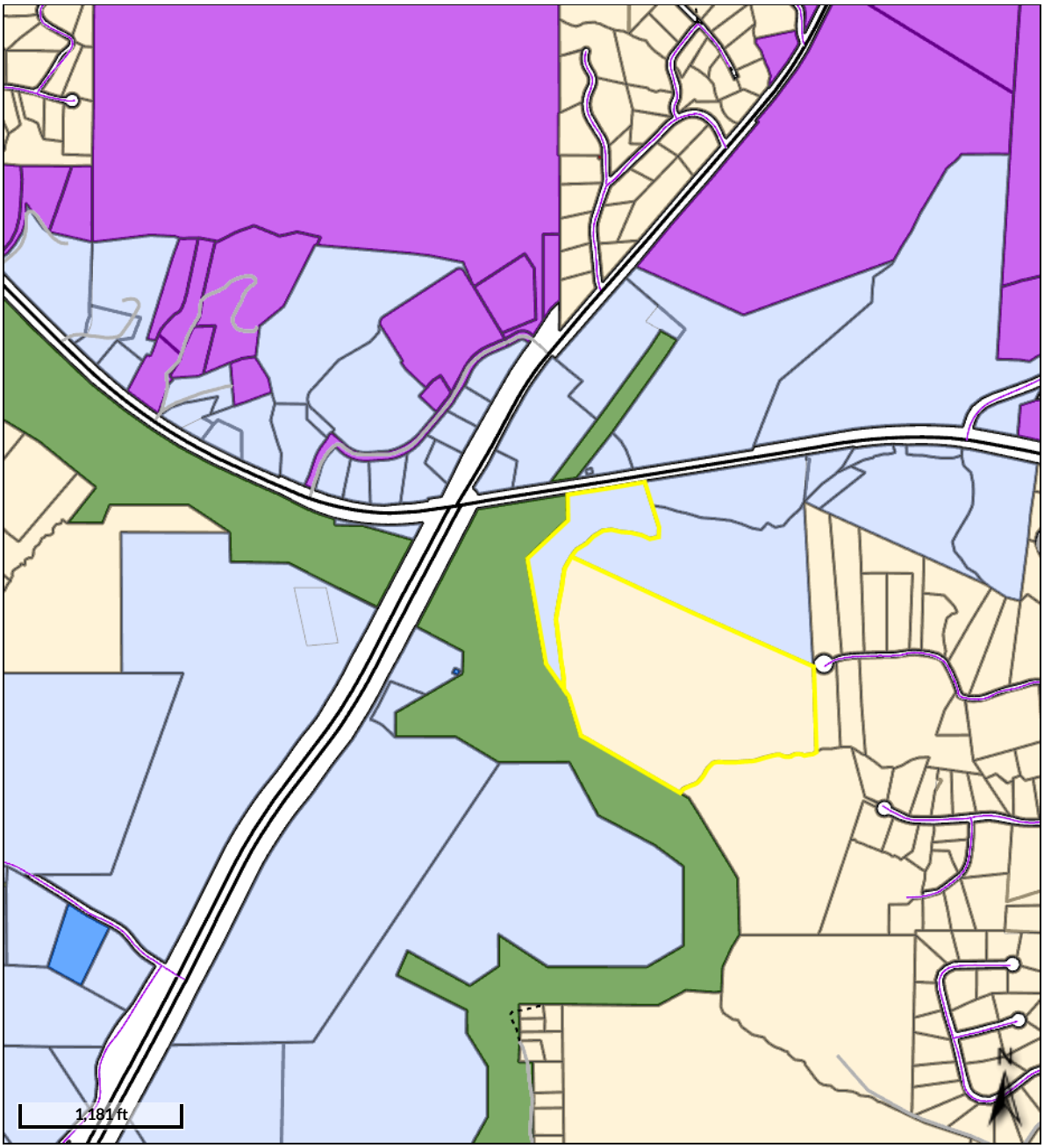
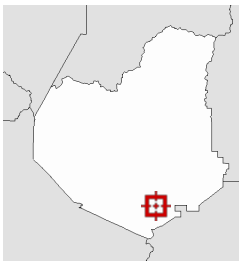


Overview



Legend

- Parcels

Character Area 2021

- Commerce Corridc
- Gateway Corridor
- Gateway Corridor Overlay District
- Community Village Center
- Neighborhood Village Center
- Agricultural Preservation
- Residential Growth
- Rural Places
- Industrial
- Public/Institutiona
- Recreation/Open Space/Conservatic
- Transportation/Co
- City of Dahlonega

Date created: 7/18/2022
Last Data Uploaded: 7/14/2022 5:30:50 PM

Developed by Schneider GEOSPATIAL

Attachment: Location Map with Character Area (2022 - 38 : Resolution to Amend the Character Area Map)

KRISHNAN COMPANY

CERTIFIED PUBLIC ACCOUNTANT

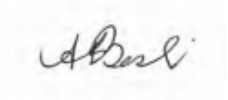
March 31, 2015

To Whom It May Concern:

This is to certify that the Ramakrishnan Srinivasan is the 100 % shareholders of United Family Homes, LLC (FEI # 27-1539230) located at 10050 Medlock Bridge Road, Ste 220 C, Johns Creek, Ga 30097. And we are Certified Public Accountants for his personal and corporate taxes for last 5 years.

If you have any further questions regarding this account kindly contact us at 770-368-1030.

Yours truly,



Krishnan Company, P.C., CPA

CPA SM

America Counts on CPAs

746 HOLCOMB BRIDGE ROAD, NORCROSS, GA 30071

TEL. 770 . 368 . 1030 FAX. 770 . 368 . 1060 WWW.KRISHNANCO.COM

Attachment: United Family Homes_Ownership document (2022 - 38 : Resolution to Amend the Character Area Map)

Lumpkin County, Georgia

Finance Department

Date: September 20, 2022

Agenda Item: Resolution Authorizing Among Other Things the Execution of an IGA & Bond Purchase Agreement

Item Description: A RESOLUTION OF THE LUMPKIN COUNTY BOARD OF COMMISSIONERS AUTHORIZING, AMONG OTHER THINGS, THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT AND A BOND PURCHASE AGREEMENT RELATING TO THE ISSUANCE OF THE LUMPKIN COUNTY PUBLIC BUILDING AUTHORITY REVENUE BONDS, SERIES 2022.

A RESOLUTION OF THE LUMPKIN COUNTY BOARD OF COMMISSIONERS AUTHORIZING, AMONG OTHER THINGS, THE EXECUTION OF AN INTERGOVERNMENTAL CONTRACT AND A BOND PURCHASE AGREEMENT RELATING TO THE ISSUANCE OF THE LUMPKIN COUNTY PUBLIC BUILDING AUTHORITY REVENUE BONDS, SERIES 2022

WHEREAS, the Lumpkin County Public Building Authority (the "Authority") is a public body corporate and politic created pursuant to the Lumpkin County Public Building Authority Act (2001 Ga. Laws, p. 3501 *et seq.*, as amended (the "Act")); and

WHEREAS, pursuant to the Act, the Authority has the power to (a) acquire, construct, add to, extend, improve, equip, operate and maintain "projects" (as defined in the Act), (b) execute contracts, leases, agreements and instruments necessary or convenient in connection with the acquisition, construction, addition, extension, improvement, equipping, operation or maintenance of a project and (c) issue revenue bonds for the purpose of paying the costs of a project and for the purpose of refunding revenue bonds previously issued; and

WHEREAS, under the terms of the Act, "project" means and includes all buildings and facilities necessary or convenient for the efficient operation of Lumpkin County, Georgia (the "County"); and

WHEREAS, pursuant to the Revenue Bond Law of the State of Georgia (O.C.G.A. Section 36-82-60, *et seq.,* as amended) (the "Revenue Bond Law"), the Authority and the County have the power to (a) construct, reconstruct, improve, better and extend any "undertaking" (as defined in the Revenue Bond Law), (b) operate and maintain any undertaking and (c) issue revenue bonds to finance the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of any undertaking; and

WHEREAS, under the terms of the Revenue Bond Law, "undertaking" means and includes parks, tennis courts, swimming pools, playgrounds and athletic fields; and

WHEREAS, pursuant to Article IX, Section II, Paragraph III(a)(5) of the Constitution of the State of Georgia, the County has the power to provide parks, recreational areas, programs and facilities; and

WHEREAS, Article IX, Section III, Paragraph I(a) of the Constitution of the State of Georgia authorizes, among other things, any county, municipality or other political subdivision of the State to contract, for a period not exceeding fifty years, with another county, municipality or political subdivision or with any other public agency, public corporation or public authority for joint services, for the provision of services, or for the provision or separate use of facilities or equipment, provided that such contract deals with activities, services or facilities which the contracting parties are authorized by law to undertake or to provide; and

WHEREAS, the Authority proposes to issue its (a) Tax-Exempt Revenue Bonds, Series 2022A (the "Series 2022A Bonds") for the purpose of (i) acquiring, constructing and equipping a gymnasium, a pool, a lazy river, water slides, a splash pad, pickleball courts and any other recreation projects deemed desirable by the County (the "Projects"), (ii) paying capitalized interest on the Series 2022A Bonds and (iii) paying the costs of issuing the Series 2022A Bonds and (b) Taxable Revenue Bonds, Series 2022B (the "Series 2022B Bonds" and together with the Series 2022A Bonds, the "Bonds") for the purpose of (i) paying a portion of the debt service on the Authority's Revenue Bond (County Recreation Projects), Series 2020A (the "Series 2020A Bond"), the proceeds of which are being used to pay for a portion of the costs of the Projects, (ii) paying capitalized interest on the Series 2022B Bonds and (iii) paying the costs of issuing the Series 2022B Bonds; and

WHEREAS, the Bonds will be issued by the Authority pursuant to a resolution adopted by the Authority on August 9, 2022, as supplemented on September 20, 2022 (the "Resolution"); and

WHEREAS, the Authority and the County propose to enter into an Intergovernmental Contract, dated as of October 1, 2022 or the first day of the month in which the Bonds are issued (the "Contract"), pursuant to which the Authority will agree to, among other things, (a) issue the Bonds and (b) sell the Projects to the County, and the County will agree to, among other things, (a) buy the Projects from the Authority, (b) acquire, construct,

equip and operate the Projects, (c) pay the Authority amounts sufficient to enable the Authority to pay the debt service on the Bonds (the "Contract Payments") and (d) levy an ad valorem property tax, unlimited as to rate or amount, on all property in the County subject to such tax in order to make such Contract Payments; and

WHEREAS, the Bonds will be secured by a first lien on the Contract, the Contract Payments and the moneys and investments in the funds created in the Resolution; and

WHEREAS, the Authority, the County and Stifel, Nicolaus & Company, Incorporated, as underwriter (the "Underwriter"), also propose to enter into a Bond Purchase Agreement, dated September 20, 2022 (the "Bond Purchase Agreement"), pursuant to which the Underwriter will buy the Bonds from the Authority and resell them to the purchasers of the Bonds; and

WHEREAS, the County also proposes to ratify the distribution of a Preliminary Official Statement, dated [POS Date] (the "Preliminary Official Statement") and authorize the execution and distribution of an Official Statement, dated September 20, 2022 (the "Official Statement") related to the Bonds; and

WHEREAS, the County also proposes to execute a Continuing Disclosure Certificate, dated September 20, 2022 (the "Disclosure Certificate") in order to enable the Underwriter to comply with Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the "Rule"); and

WHEREAS, the County also proposes to authorize the execution, delivery and performance of a Custodial Agreement, dated as of October 1, 2021 or the first day of the month in which the Bonds are issued, (the "Custodial Agreement"), among the Authority, the County and U.S. Bank National Association, as custodian; and

WHEREAS, the County also proposes to authorize the execution, delivery and performance of a Paying Agency Agreement, dated as of October 1, 2022 or the first day of the month in which the Bonds are issued (the "Paying Agency Agreement"), among the Authority, the County and Regions Bank, as paying agent and bond registrar; and

WHEREAS, the County also proposes to authorize the execution, delivery and performance of an Escrow Agreement, dated as of October 1, 2022 or the first day of the month in which the Bonds are issued (the "Escrow Agreement"), among the Authority, the County and Regions Bank, as escrow agent; and

WHEREAS, the County also proposes to authorize the execution, delivery and performance of a First Amendment to Installment Sale Agreement (Series 2020A), dated as of October 1, 2022 or the first day of the month in which the Bonds are issued (the "First Amendment"), among the Authority, the County and the owner of the Series 2020A Bond; and

WHEREAS, the County also proposes to authorize the execution, delivery and performance of a Limited Warranty Deed, dated as of October 1, 2022 or the first day of the month in which the Bonds are issued (the "Limited Warranty Deed"), from the County in favor of the Authority.

NOW, THEREFORE, BE IT RESOLVED by the LUMPKIN COUNTY BOARD OF COMMISSIONERS, as follows:

Section 1. **Authorization Financing of the Projects**. The financing of the Projects as described above is hereby authorized.

Section 2. **Authorization of Bonds**. The issuance of the Bonds by the Authority is hereby authorized to the extent necessary.

Section 3. **Acknowledgement of Resolution**. The County hereby acknowledges the receipt and terms of the Resolution.

Section 4. **Authorization of the Contract**. The execution, delivery and performance of the Contract are hereby authorized. The Contract shall be executed by the Chairman or Vice-Chairman. The Clerk may attest the same and the seal may be impressed thereon. The Contract shall be in substantially the form attached

hereto as Exhibit "A," subject to such changes, insertions and omissions as may be approved by the person executing the same, and the execution of the Contract shall be conclusive evidence of any such approval. The Contract is by this reference thereto spread upon the minutes.

Section 5. Authorization of the Bond Purchase Agreement. The execution, delivery and performance of the Bond Purchase Agreement are hereby authorized. The Bond Purchase Agreement shall be executed by the Chairman or Vice-Chairman. The Clerk may attest the same and the seal may be impressed thereon. The Bond Purchase Agreement shall be in substantially the form attached hereto as Exhibit "B," subject to such changes, insertions and omissions as may be approved by the person executing the same, and the execution of the Bond Purchase Agreement shall be conclusive evidence of any such approval. The Bond Purchase Agreement is by this reference thereto spread upon the minutes.

Section 6. Authorization of Official Statements. The distribution of the Preliminary Official Statement is hereby ratified and approved. The execution and delivery of the certificate deeming the Preliminary Official Statement final as required by the Rule are hereby ratified and approved. The execution and distribution of the Official Statement are hereby authorized. The Official Statement shall be executed by the Chairman or Vice-Chairman. The Official Statement shall be in substantially the same form as the Preliminary Official Statement presented at this meeting and on file with the Clerk, subject to such changes, insertions and omissions as may be approved by the person executing the same, and the execution of the Official Statement shall be conclusive evidence of any such approval.

Section 7. Authorization of Disclosure Certificate. The execution, delivery and performance of the Disclosure Certificate are hereby authorized. The Disclosure Certificate shall be executed by the Chairman or Vice-Chairman. The Clerk may attest the same and the seal may be impressed thereon. The Disclosure Certificate shall be in substantially the form attached to the hereto as Exhibit "C," subject to such changes, insertions and omissions as may be approved by the person executing the same, and the execution of the Disclosure Certificate shall be conclusive evidence of any such approval. The Disclosure Certificate is by this reference thereto spread upon the minutes.

Section 8. Authorization of Custodial Agreement. The execution, delivery and performance of the Custodial Agreement are hereby authorized. The Custodial Agreement shall be executed by the Chairman or Vice-Chairman. The Clerk may attest the same and the seal may be impressed thereon. The Custodial Agreement shall be in substantially the form attached to the hereto as Exhibit "D," subject to such changes, insertions and omissions as may be approved by the person executing the same, and the execution of the Custodial Agreement shall be conclusive evidence of any such approval. The Custodial Agreement is by this reference thereto spread upon the minutes.

Section 9. Authorization of Paying Agency Agreement. The execution, delivery and performance of the Paying Agency Agreement are hereby authorized. The Paying Agency Agreement shall be executed by the Chairman or Vice-Chairman. The Clerk may attest the same and the seal may be impressed thereon. The Paying Agency Agreement shall be in substantially the form attached to the hereto as Exhibit "E," subject to such changes, insertions and omissions as may be approved by the person executing the same, and the execution of the Paying Agency Agreement shall be conclusive evidence of any such approval. The Paying Agency Agreement is by this reference thereto spread upon the minutes.

Section 10. Authorization of Escrow Agreement. The execution, delivery and performance of the Escrow Agreement are hereby authorized. The Escrow Agreement shall be executed by the Chairman or Vice-Chairman. The Clerk may attest the same and the seal may be impressed thereon. The Escrow Agreement shall be in substantially the form attached to the hereto as Exhibit "F," subject to such changes, insertions and omissions as may be approved by the person executing the same, and the execution of the Escrow Agreement shall be conclusive evidence of any such approval. The Escrow Agreement is by this reference thereto spread upon the minutes.

Section 11. Authorization of First Amendment. The execution, delivery and performance of the First Amendment are hereby authorized. The First Amendment shall be executed by the Chairman or Vice-Chairman. The Clerk may attest the same and the seal may be impressed thereon. The First Amendment shall be in substantially the form attached to the hereto as Exhibit "G," subject to such changes, insertions and omissions as may be approved by the person executing the same, and the execution of the First Amendment shall be conclusive evidence of any such approval. The First Amendment is by this reference thereto spread upon the minutes.

Section 12. **Authorization of Limited Warranty Deed**. The execution, delivery and performance of the Limited Warranty Deed are hereby authorized. The Limited Warranty Deed shall be executed by the Chairman or Vice-Chairman. The Clerk may attest the same and the seal may be impressed thereon. The Limited Warranty Deed shall be in substantially the form attached to the hereto as Exhibit "H," subject to such changes, insertions and omissions as may be approved by the person executing the same, and the execution of the Limited Warranty Deed shall be conclusive evidence of any such approval. The Limited Warranty Deed is by this reference thereto spread upon the minutes.

Section 13. **Validation of Bonds**. All actions taken in connection with the validation of the Bonds are hereby ratified and approved.

Section 14. **Tax and Non-Arbitrage Certificate**. Any officer of the County is hereby authorized to execute a tax and non-arbitrage certificate with respect to the Bonds in order to comply with Section 148 of the Internal Revenue Code of 1986, as amended.

Section 15. **General Authority**. The officers, employees and agents of the County are hereby authorized, empowered and directed to do all such acts and things, including, but not limited to making covenants on behalf of the County and to execute all such documents and certificates as may be necessary to carry out the transactions contemplated by this Resolution.

Section 16. **Actions Approved and Confirmed**. All acts and doings of the officers, employees and agents of the County which are in conformity with the purposes and intent of this Resolution are hereby authorized and approved.

Section 17. **Repealing Clause**. Any and all resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

Section 18. **Effective Date**. This Resolution shall take effect immediately upon its adoption.

[Remainder of Page Intentionally Left Blank]

ADOPTED on September 20, 2022.

LUMPKIN COUNTY BOARD OF COMMISSIONERS

(SEAL)

By:_____
Chairman

Attest:

_____
Clerk

EXHIBIT "A"

FORM OF CONTRACT
EXHIBIT "B"

FORM OF BOND PURCHASE AGREEMENT
EXHIBIT "C"

FORM OF DISCLOSURE CERTIFICATE

EXHIBIT "D"

FORM OF CUSTODIAL AGREEMENT

EXHIBIT E"

FORM OF PAYING AGENCY AGREEMENT

EXHIBIT "F"

FORM OF ESCROW AGREEMENT

EXHIBIT "G"

FORM OF FIRST AMENDMENT

EXHIBIT "H"

FORM OF WARRATNY DEED

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Lumpkin County, Georgia

Board of Commissioners Department

Date: September 20, 2022

Agenda Item: Appoint Member to Veterans Affairs Committee - Trent Miller to Seat 9, unexpired term end 04/14/2023

Item Description: Appoint Member to Veterans Affairs Committee - Trent Miller to Seat 9, unexpired term ending 04/14/2023

LUMPKIN COUNTY RESOLUTION NO. 2022-44

**A RESOLUTION TO APPOINT A MEMBER
TO THE
LUMPKIN COUNTY VETERANS' AFFAIRS ADVISORY COMMITTEE**

Whereas, the Board of Commissioners of Lumpkin County desires to appoint a member to the Lumpkin County Veterans' Affairs Advisory Committee to fill the remainder of an unexpired term;

Now therefore, it is hereby resolved that the following person is appointed to serve on the Lumpkin County Veterans' Affairs Advisory Committee for the seat and term indicated below:

Name:	**Seat Number:**	**Term Expiration:**
Trent Miller	Seat 9	April 14, 2023

Resolved, adopted and effective this 20th day of September, 2022.

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Lumpkin County, Georgia

Board of Commissioners Department

Date: September 20, 2022

Agenda Item: Resolution Authorizing Execution of IGA for Use & Distribution of Proceeds Generated by 2023 TSPLOST

Item Description: Resolution Authorizing Execution of IGA for Use & Distribution of Proceeds Generated by 2023 TSPLOST

Facts & Historical Information:

Lumpkin County and the City of Dahlonega have agreed to propose a continuation of the Road Maintenance and Improvement Tax to the citizens in November 2022. In accordance with the law that enables single counties to pursue this type of referendum with their cities, and to maximize the collection rate, an intergovernmental agreement must be approved with each county and city that desires to participate. This IGA will not only determine distribution percentages and set forth projects, it will also drive the ballot language when the Board votes to call the referendum at next month's meeting.

The IGA, as presented, outlines the following:

- Program collections occur April 1, 2023 - March 31, 2028
- Distribution to Lumpkin County 81% and City of Dahlonega 19%
- Estimated proceeds of $20,000,000
- Issuance of debt for funding a portion of the County projects, the Joint Project, capitalized interest on the debt, and the debt issuance costs
- Debt service will be paid on a pro-rata share basis
- Joint Project scope and budget will be approved by both parties
- Referendum will occur on November 8, 2022
- Sinking Fund will be held for collecting debt service payments, and no distributions will be made to either party until the annual debt service payment is fully collected

Courses of Action:

A. Approve the IGA as presented.
B. Approve the IGA with edits.
C. Do not approve the IGA.

Budget Impact: COA A allows the County to move forward with the call for referendum. It will allow the voters to continue the TSPLOST program, thus not impacting the operating budget by funding road projects.

Due to timing requirements, COA B and C will prevent the County from moving forward with the call for referendum. COA B does not allow the City of Dahlonega time for consideration of the IGA, therefore eliminating the ability to call for referendum.

Staff Recommendation: The recommendation of staff is COA A.

RESOLUTION 2022-45

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT FOR USE AND DISTRIBUTION OF PROCEEDS GENERATED BY THE 2023 TRANSPORTATION SPECIAL PURPOSE LOCAL OPTION SALES TAX REFERENDUM.

WHEREAS, the Lumpkin County Board of Commissioners proposes to enter into a certain Intergovernmental Agreement For Use And Distribution Of Proceeds Generated By The 2023 Transportation Special Purpose Local Option Sales Tax Referendum ("IGA") with the City of Dahlonega dated as of September 20, 2022; and

WHEREAS, said IGA provides for use and distribution of TSPLOST proceeds for the purpose of funding transportation projects within the County and the City as authorized by O.C.G.A. § 48-8-261(a);

NOW, THEREFORE, BE IT RESOLVED, by the Lumpkin County Board of Commissioners, as follows:

The execution, delivery and performance of the IGA are hereby authorized. The IGA shall be executed by the Chairman or Vice-Chairman. The Clerk may attest the same and the seal may be impressed thereon. The IGA shall be in substantially the form attached hereto as Exhibit "A," subject to such changes, insertions and omissions as may be approved by the person executing the same, and the execution of the IGA shall be conclusive evidence of any such approval. The IGA is by this reference thereto spread upon the minutes.

RESOLVED, ADOPTED AND EFFECTIVE this 20th day of September, 2022.

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Attachments:
TSPLOST 2023 IGA (Final)

STATE OF GEORGIA)

COUNTY OF LUMPKIN) **INTERGOVERNMENTAL AGREEMENT**

INTERGOVERNMENTAL AGREEMENT FOR USE AND DISTRIBUTION OF PROCEEDS GENERATED BY THE 2023 TRANSPORTATION SPECIAL PURPOSE LOCAL OPTION SALES TAX REFERENDUM

THIS INTERGOVERNMENTAL AGREEMENT ("IGA" or "Agreement") is made and entered into this ____ of September, 2022 by and between **LUMPKIN COUNTY, GEORGIA,** a political subdivision of the State of Georgia (hereinafter referred to as **"Lumpkin County"** or **"County"**), and the **CITY OF DAHLONEGA,** (hereinafter referred to as the "**City**"), the sole municipal corporation of the State of Georgia with the County.

WITNESSETH:

WHEREAS, the parties to this Agreement consist of Lumpkin County and the City of Dahlonega; and

WHEREAS, Section 48-8-260, *et seq.* of Official Code of Georgia Annotated **("O.C.G.A.")** (the **"Act")** authorizes the imposition of a single county one percent (1.0%) sales and use Transportation Special Purpose Local Option Sales tax (the **"TSPLOST" or "Tax")** for capital outlay projects in the special districts created pursuant to O.C.G.A. § 48-8-261(a) which correspond with the geographical boundaries of the counties of the State of Georgia; and

WHEREAS, O.C.G.A. § 48-8-261(b) authorizes the imposition of the TSPLOST to be used solely for transportation purposes, and O.C.G.A. § 48-8-262 authorizes the distribution of proceeds from the TSPLOST to the county governing authority and any qualified municipalities in accordance with an intergovernmental agreement entered into for such purpose; and

WHEREAS, the parties anticipate that Lumpkin County will approve and sign a Resolution authorizing the Board of Elections and Registration of Lumpkin County to call a Referendum on the issue of the imposition of a single county one percent (1.0%) sales and use TSPLOST to begin on April 1, 2023 and to conclude on March 31, 2028; and

WHEREAS, the parties desire to execute an Intergovernmental Agreement to control the distribution and use of TSPLOST proceeds received solely by Lumpkin County and the City of Dahlonega; and

WHEREAS, Article IX, Section III, Paragraph I of the Constitution of the State provides that, in pertinent part, any county, municipality or other political subdivision of the State may contract for any period not exceeding fifty years with each other or with any public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, for such activities, services or facilities which the county, municipality or public authority is authorized by law to undertake or provide; and

Attachment: TSPLOST 2023 IGA (Final) (2022 - 45 : Resolution Authorizing Execution of IGA for Use & Distribution of Proceeds Generated by

WHEREAS, in accordance with the Act, the parties anticipate that the Board of Commissioners of Lumpkin County, Georgia will approve and sign a Resolution (the **"Resolution"),** to impose, levy and collect a TSPLOST within the County conditioned upon the approval by a majority ofthe qualified voters residing within the County voting in a referendum thereon to be held on November 8, 2022, and said resolution shall be delivered to the Board of Elections of Lumpkin County, as election superintendent for the County, who shall issue a call for the referendum as described in said resolution; and

WHEREAS, the County and the City anticipate the issuance of general obligation debt may be necessary to fund some or all of the transportation projects, if approved by the voters; and

WHEREAS, for the purpose of the distribution of proceeds for the April 1, 2023 through March 31, 2028 TSPLOST, the Special District shall be known as the boundaries of Lumpkin County; and

WHEREAS, the City of Dahlonega is a qualified municipality and is eligible to receive distributions of the one percent (1.0%) TSPLOST Proceeds; and

WHEREAS, the parties hereto are interested in serving the needs of the residents of Lumpkin County by planning and performing transportation projects within the County and the City; and

WHEREAS, the parties intend that the transportation projects which are the subject of this Agreement shall benefit residents of Lumpkin County and the City; and

WHEREAS, the County and the City are committed to continue to work together to improve the County and City's transportation infrastructure; and

WHEREAS, the County and the City have identified transportation needs that are important to the current and future well-being of their residents and have determined that proceeds from the TSPLOST should be used to address a portion of these needs.

NOW THEREFORE, for and in consideration of the foregoing and in consideration of the mutual promises and understandings herein made and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do consent and agree as follows:

SECTION 1. EFFECTIVE DATE AND TERM OF THE TAX

This Intergovernmental Agreement is conditioned upon a Referendum to be approved by a majority of the voters of Lumpkin County to impose a one percent (1.0%) TSPLOST, which shall commence on April 1, 2023, and continue to, through and including March 31, 2028.

SECTION 2. ADMINISTRATION EXPENSES

Pursuant to O.C.G.A. § 48-8-267, one percent (1.0%) of the amount of TSPLOST proceeds collected beginning April 1, 2023, shall be paid into the General Fund of the State of Georgia ("State") treasury in order to defray the costs of administration of the Georgia Department of Revenue. The remaining ninety-nine percent (99%) of the amount collected from the TSPLOST

Attachment: TSPLOST 2023 IGA (Final) (2022 - 45 : Resolution Authorizing Execution of IGA for Use & Distribution of Proceeds Generated by

Tax proceeds (hereinafter known as the "net proceeds") beginning April 1, 2023 and ending March 31, 2028, shall be distributed by the State of Georgia to the County, and shall be allocated to each jurisdiction based on the percentages shown in the table below in Section 3.

SECTION 3. DISTRIBUTION OF NET PROCEEDS

DISTRIBUTION PERCENTAGES

LUMPKIN COUNTY	81.00%
CITY OF DAHLONEGA	19.00%
TOTAL	**100.00%**

(A) To facilitate the distribution of net proceeds, the parties agree that the sum of Twenty Million and 00/100 Dollars ($20,000,000.00) shall represent an estimate of the maximum net proceeds to be derived from the subject TSPLOST during its five year term.

(B) The parties agree that the aggregate total distribution received by the City shall amount to nineteen percent (19.0%) of the net proceeds distributed by the State, with the remaining eighty-one percent (81.0%) of the net proceeds distributed by the State to be received by the County.

(C) The County and the City anticipate the issuance of general obligation debt of the County (the "Debt") for the purpose of funding (a) a portion of the County projects, (b) the joint County and City project (the "Joint Project") described on Exhibit A, (c) capitalized interest on the Debt and (d) the costs of issuing the Debt. The parties agree that their TSPLOST proceeds shall be applied to their pro-rata share of the Debt as more fully provided below. The cost of the Joint Project will be shared by the City and the County on the same pro-rata basis that they are sharing TSPLOST proceeds. The scope and budget of the Joint Project shall be subject to the approval of the parties hereto.

SECTION 4. DEFINITION OF AUTHORIZED TRANSPORTATION PURPOSES

In recognition of the need for transportation improvements across the County and the City, the parties agree that the total net proceeds shall be utilized for transportation purposes, as defined in O.C.G.A. § 48-8-260 and § 48-8-121.

SECTION 5. PROJECTS

(A) The projects and purposes ("Transportation Projects and Purposes") to be funded from the net proceeds of the TSPLOST pursuant to this Agreement and the estimated dollar amounts allocated for each transportation purpose are contained in Exhibit "A" which is attached hereto and incorporated herein by this reference and made a part of this agreement. The parties acknowledge and agree that 30% of the estimate revenues are being expended on projects that are consistent with the Statewide Strategic Transportation Plan as defined in O.C.G.A. § 32-2-22.

Attachment: TSPLOST 2023 IGA (Final) (2022 - 45 : Resolution Authorizing Execution of IGA for Use & Distribution of Proceeds Generated by

(B) All Transportation Projects included in this Agreement shall be funded in whole or in part from net proceeds from the TSPLOST authorized by law except as otherwise agreed in writing by the parties.

(C) No part of the net proceeds from the tax received in any year shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed. Notwithstanding the foregoing, the City's share of the TSPLOST proceeds shall only be applied to pay the City's pro-rata share of the debt service on the Debt, and the County's share of the TSPLOST proceeds shall only be applied to pay the County's pro-rata share of the debt service on the Debt.

SECTION 6. EFFECTIVE DATE AND TERM OF THIS AGREEMENT

(A) This Agreement shall become effective on the date of its execution by all parties. If the November 8, 2022 Referendum concerning the imposition of the TSPLOST is not approved by a majority of the voters of Lumpkin County, this Agreement shall expire and shall be of no force and effect after November 8, 2022.

(B) Except as otherwise provided herein, the TSPLOST which is the subject of the November 8, 2022 Referendum shall continue for a period of five years from April 1, 2023, until March 31, 2028 unless otherwise terminated earlier pursuant to applicable Georgia law.

SECTION 7. EXPENSES

The County shall administer the TSPLOST Fund to effectuate the terms of this Agreement and shall be responsible for the cost of holding the TSPLOST election. The County shall be reimbursed for the costs of the election from the County's pro-rata share of the proceeds deposited in the County's TSPLOST Fund.

SECTION 8. THE DEBT.

The ballot shall contain the language required by the Act for the authorization of the Debt. The County shall issue the Debt for the Joint Project. The County may, but shall not be required, to issue the Debt for the County Projects. Upon request by the City, the County will provide the City the estimated issuance costs and estimated debt service regarding the Debt.

Each party benefiting from the issuance of Debt is referred to herein as a "Borrowing Entity." Each Borrowing Entity acknowledges that it is responsible for the payment of its pro-rata share of (i) the debt service on the Debt, (ii) the costs of issuance and (iii) arbitrage rebate. If the City is a Borrowing Entity, it authorizes the County to apply its share of the TSPLOST proceeds to pay its pro-rata share of the debt service on the Debt.

The Debt shall be paid first from a Borrowing Entity's share of the TSPLOST proceeds. In the event that there are insufficient TSPLOST proceeds to pay the Debt, each Borrowing Entity shall pay its share of any shortfall (the "Debt Service Payments") from its general fund. Each Borrowing Entity covenants that, in order to make the Debt Service Payments

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when due from its general fund to the extent required, it will exercise its power of taxation to the extent necessary to timely pay any amounts required to be paid hereunder, and it will make available and use for such payments all taxes levied and collected for that purpose together with funds received from any other source. Each Borrowing Entity further covenants and agrees that in order to make funds available for such purpose, it will, in its general revenue, appropriation, and budgetary measures whereby its tax funds or revenues and the allocation thereof are controlled or provided for, include sums sufficient to timely satisfy such Debt Service Payments that may be required to be made from the general fund, whether or not any other sums are included in such measure, until all payments so required to be made shall have been made in full. The obligation of the Borrowing Entity to make any payments that may be required to be made from its general fund shall constitute a general obligation of the Borrowing Entity and a pledge of the full faith and credit of the Borrowing Entity.

In the event for any reason any such provision or appropriation is not made as provided in the preceding paragraph, then the fiscal officers of the Borrowing Entity are hereby authorized and directed to set up as an appropriation on the accounts in the appropriate fiscal year the amounts required to timely pay the obligations which may be due from the general fund. The amount of such appropriation shall be due and payable and shall be expended for the purpose of paying any such obligations, and such appropriation shall have the same legal status as if the Borrowing Entity had included the amount of the appropriation in its general revenue, appropriation, and budgetary measures, and the fiscal officers of the Borrowing Entity shall immediately make such Debt Service Payments to the paying agent for the Debt if for any reason the payment of such obligations shall not otherwise have been timely made.

The obligations of the Borrowing Entity to make the Debt Service Payments and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional. Until such time as the principal of and interest on the Debt shall have been paid in full or provision for the payment thereof shall have been made, the Borrowing Entity (a) will not suspend or discontinue any payments provided for herein, (b) will perform and observe all of its other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, failure to complete any project, a defect in any project or any failure of the other party to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

The County shall be responsible for all aspects of the Debt issuance process. The County will select the underwriter, bond counsel, etc. (collectively, the "Debt Professionals"). When Debt is issued for the Joint Project, the County will keep the City informed of the progression of the Debt issuance. The City shall cooperate with the Debt issuance process.

If the Debt only funds the Joint Project, excess Debt proceeds shall be applied to debt service. If the Debt funds the Joint Project and a County Project, (a) 81% of the excess Debt proceeds allocable to the Joint Project shall be returned to the County and 19% shall be returned to the City and (b) all of the excess Debt proceeds allocable to a County Project shall be returned to the County.

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SECTION 9. COUNTY TSPLOST FUND; SEPARATE ACCOUNTS; NO COMMINGLING

The net proceeds from the TSPLOST shall be maintained in the parties' separate accounts and utilized exclusively for the purposes specified in this Agreement. The parties acknowledge that TSPLOST proceeds are not guaranteed. Proceeds received under the amount estimated in the Referendum question shall be allocated in accordance with the percentages set forth in this Agreement and shall be used on the Transportation Projects and Purposes as outlined in Exhibit A to this Agreement.

(A) A special fund or account shall be created by the County and designated as the 2023 Lumpkin County Transportation Special Purpose Local Option Sales Tax Fund ("TSPLOST Fund"). The County shall select a local bank which shall act as a depository and custodian of the TSPLOST Fund upon such terms and conditions as may be acceptable to the County.

(B) The City shall create a special fund to be designated as the 2023 Transportation Special Purpose Local Option Sales Tax Fund ("TSPLOST Fund"). The City shall select a local bank which shall act as a depository and custodian of the TSPLOST proceeds received by the City upon such terms and conditions as may be acceptable to the City.

(C) All TSPLOST proceeds shall be maintained by the County and the City in the separate accounts or funds established pursuant to this Section. Except as provided in Section 14, TSPLOST proceeds shall not be commingled with other funds of the County or the City and shall be used exclusively for the purposes detailed in this Agreement. No funds other than TSPLOST proceeds shall be placed in such funds or accounts.

SECTION 10. ALLOCATION OF EXCESS FUNDS

Any net proceeds over and above the amount estimated in Section 3(A) of this Agreement during the quarter during which this amount is reached shall be allocated in accordance with the percentages set forth in this Agreement and shall be used solely for the transportation purposes listed herein. Each party shall expend its portion of the excess net proceeds from the 2023 TSPLOST Program on the Transportation Projects and Purposes as outlined in Exhibit A to this Agreement.

SECTION 11. AUDITS

At the end of each party's fiscal year wherein net proceeds from the TSPLOST are distributed, each party shall cause an audit of the distribution and use of its portion of the net proceeds from the TSPLOST to be completed. Each party to this Agreement shall pay the cost of each such annual audit that it conducts. Each party shall publish each of its annual audits as required by law.

SECTION 12. COMPLETION OF PROJECTS

Any TSPLOST proceeds held by a County or City at the end of the five year period shall, for the purposes of this Agreement, be deemed excess funds and disposed of as provided under O.C.G.A. § 48-8-269.5.

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SECTION 13. PUBLICATION OF PROJECTS

Pursuant to O.C.G.A. § 48-8-269.6, not later than December 31 of each year, the County and the City, shall publish annually, in a newspaper of general circulation in the boundaries of the County and the City and in a prominent location on the City's and the County's website, a simple, nontechnical report which shows for each purpose in the resolution calling for the imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The report shall also include a statement of what corrective action the county or qualified municipality intends to implement with respect to each purpose which is underfunded or behind schedule and a statement of any surplus funds which have not been expended for a purpose.

SECTION 14. PROCEDURE FOR DISBURSEMENT OF TSPLOST PROCEEDS

(A) Upon receipt by the County of TSPLOST proceeds collected by the State Department of Revenue, the County shall immediately deposit said proceeds in the TSPLOST Fund. Within the TSPLOST Fund, the County shall create or cause to be created three subaccounts: the "Debt Service Account," the "County Account" and the "City Account." TSPLOST proceeds that will be used to pay debt service on the Debt shall be deposited into the Debt Service Account; TSPLOST proceeds that will be used to fund County projects not funded with Debt shall be deposited into the County Account; and TSPLOST Proceeds that will be used to fund City projects shall be deposited into the City Account. Amounts on deposit in the City Account shall be disbursed by the County to the City once each month within 10 days of the County's receipt thereof. Each disbursement shall be made by check unless the City provides written wire transfer instructions to the County and pays all costs associated with such wire transfer. The City shall create and maintain a separate account for the receipt and disbursement of the TSPLOST proceeds in accordance with Section 8 of this Agreement.

(B) If Debt is issued, the County shall establish a 12 month period as the "Sinking Fund Year" for the Debt. Within each Sinking Fund Year, the TSPLOST proceeds of each Borrowing Entity shall be deposited into the Debt Service Account until there is an amount therein sufficient to pay that Borrowing Entity's pro-rata share of the debt service coming due on the Debt for such Sinking Fund Year. After a Borrowing Entity has funded its pro-rata share of the debt service coming due on the Debt for the Sinking Fund Year, the remaining TSPLOST proceeds of that Borrowing Entity shall be deposited into the County Account or the City Account, as appropriate.

(C) Should the City cease to exist as a legal entity before all funds are distributed under this Agreement, the City's share of the funds subsequent to dissolution shall be paid to the County as part of the County's share unless an act of the Georgia General Assembly makes the defunct City part of another successor municipality. If such an act is passed, the defunct City's share shall be paid to the successor Municipality in addition to all other funds to which the successor Municipality would otherwise be entitled.

SECTION 15. ENTIRE AGREEMENT

This Agreement, including any attachments or exhibits, constitutes all of the understanding and agreements of whatsoever nature or kind existing between the Parties with respect to distribution and use of the proceeds from the TSPLOST.

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SECTION 16. AMENDMENTS

This Agreement shall not be amended or modified except by agreement in writing executed by all Parties hereto.

SECTION 17. GOVERNING LAW

This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Georgia.

SECTION 18. SEVERABILITY

It is agreed that the illegality or invalidity of any term or clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein.

SECTION 19. COMPLIANCE WITH THE LAW

Each party to this Agreement shall comply with all applicable local, State, and Federal statutes, ordinances, rules and regulations.

SECTION 20. NO CONSENT TO BREACH

No consent or waiver, express or implied, by any party to this Agreement to any breach of any covenant, condition or duty of another party shall be construed as a consent to or waiver of any future breach of the same.

SECTION 21. NOTICES

All notices, consents, waivers, directions, requests, or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally or sent by registered or certified United States mail, postage prepaid, as follows:

SECTION 22. COUNTERPARTS

This Agreement shall be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 23. MEDIATION

The County and the City agree to submit any controversy arising under this Agreement to mediation for a resolution. The parties to the mediation shall mutually select a neutral party to serve as mediator. Costs of mediation shall be shared equally among the parties to the mediation.

[EXECUTION ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the County and the City, acting through their duly authorized agents, have caused this Agreement to be signed, sealed and delivered for final execution by the County on the date indicated herein.

AS TO LUMPKIN COUNTY:

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Clerk, Lumpkin County

AS TO THE CITY OF DAHLONEGA:

JoAnne Taylor
_____
JoAnne Taylor, Mayor
City of Dahlonega

CITY OF DAHLONEGA SEAL DAHLONEGA, GEORGIA

Attest: Mary Csukas
_____
Mary Csukas
Dahlonega City Clerk

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EXHIBIT "A"

2023 LUMPKIN COUNTY TSPLOST PROJECT LIST
2023 TSPLOST REVENUE ESTIMATE - $20,000,000

	County/Municipality	Cost Estimate
Joint – Lumpkin County & City of Dahlonega		
Auraria Road/Dawsonville Highway/Torrington Drive Intersection Improvements	Lumpkin County and City of Dahlonega	$5,000,000
Lumpkin County		
Roads and Bridges – Paving, Striping, Maintenance, Construction & Improvements	Lumpkin County	
Road Maintenance Equipment	Lumpkin County	
TOTAL FUNDS TO LUMPKIN COUNTY		$12,150,000
City of Dahlonega		
Roads and Bridges Construction & Improvements	City of Dahlonega	
Sidewalks Construction & Improvements	City of Dahlonega	
Bicycle Paths Construction & Improvements	City of Dahlonega	
TOTAL FUNDS TO CITY OF DAHLONEGA		$2,850,000
PROGRAM TOTAL		$20,000,000

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Lumpkin County, Georgia

Board of Commissioners Department

Date: September 20, 2022

Agenda Item: TSPLOST Resolution to Call for Election

Item Description: TSPLOST Resolution to Call for Election. A Resolution calling for an election to impose a County Transportation Special Purpose Local Option Sales Tax with the concurrence of the City of Dahlonega.

Lumpkin County Resolution 2022-46

A Resolution Calling for an Election to Impose a Lumpkin County Transportation Special Purpose Local Option Sales Tax

WHEREAS, Section 48-8-260, et seq. of Official Code of Georgia Annotated ("O.C.G.A.") (the "Act") authorizes the imposition of a single county one percent (1.0%) sales and use tax, sometimes referred to as Transportation Special Purpose Local Option Sales Tax (the "TSPLOST" or "Tax"), for various transportation purposes and projects in the special districts created pursuant to O.C.G.A. § 48-8-261(a) which correspond with the geographical boundaries of the counties of the State of Georgia; and

WHEREAS, the Board of Commissioners of Lumpkin County, Georgia (the "Board of Commissioners") has determined that (a) the region has not proposed a referendum on a tax under Article 5 of Chapter 8 of Title 48 and (b) Lumpkin County is currently levying a tax under Part 1 of Article 3 of Chapter 8 of Title 48; and

WHEREAS, the Board of Commissioners has determined that it is in the best interest of the citizens of Lumpkin County, Georgia (the "County") that a one percent TSPLOST be imposed in a special district within the County to raise approximately $20,000,000 for various transportation purposes and projects (the "Projects"); and

WHEREAS, the Board of Commissioners delivered a written notice (the "Notice") to the Mayor of the City of Dahlonega, the sole Municipality located within the County, regarding the imposition of the TSPLOST; and

WHEREAS, the Notice contained the date, time, place, and purpose of a meeting at which designated representatives of the County and the City of Dahlonega met and discussed the possible projects for inclusion in the referendum, including municipally owned and operated projects; and

WHEREAS, the Notice was delivered or mailed at least 10 days prior to the date of the meeting, and the meeting was held at least 30 days prior to the issuance of a call for the referendum; and

WHEREAS, the County has entered into an intergovernmental agreement with the City of Dahlonega (the "Agreement"); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Lumpkin County, Georgia as follows:

(A) Assuming the question of imposing a County TSPLOST is approved by the voters of the special district in the election hereinafter referred to, the TSPLOST shall be imposed for the term, purposes and costs as follows:

1. In order to finance the Projects described herein, a TSPLOST in the amount of one percent (1%) on all sales and uses in the County is hereby authorized to be levied and collected within the special district created in the County as provided in the Act.

2. The proceeds of such tax are to be used to fund the Projects. The Projects consist of a "Joint County Project and City Project", "County Projects" and "City Projects." The Joint County Project and City Project, County Projects, the City Projects, and the estimated Costs are set forth in the Exhibit "A" attached hereto and incorporated herein by reference.

3. The TSPLOST is to be imposed for a period of five (5) years.

(B) Call for the Election; Ballot Form; Notice.

1. The Board of Elections of Lumpkin County is hereby requested to call an election in all voting precincts in the County on November 8, 2022, a date established by law for a special election, for the purpose of submitting to the qualified voters of the County the question set forth in paragraph 2 below.

2. The ballots to be used in the election shall have written or printed thereon substantially the following:

( ) YES	**Shall a special one percent sales and use tax be imposed in the special district consisting of Lumpkin County for a period of time of five (5) years and for the raising of an estimated**
( ) NO	**amount of $20,000,000 for transportation purposes?**
	If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of Lumpkin County in the principal amount of $7,000,000 for the purpose of funding a portion of the County Projects, a Joint County Project and City Project, capitalized interest on the debt and the costs of issuing the debt.

3. It is hereby requested that the election be held by the Board of Elections of Lumpkin County in accordance with the election laws of the State of Georgia, including, without limitation, the election laws relating to special elections. It is hereby further requested that the Board of Elections of Lumpkin County canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the State Revenue Commissioner.

4. (a) The Board of Elections of Lumpkin County is hereby authorized and requested to publish a notice of the election as required by law in the newspaper in which Sheriff's advertisements for the County are published once a week for four weeks immediately preceding the date of the election. The notice of the election shall be in substantially the form attached hereto as Exhibit "B".

(b) The Board of Elections of Lumpkin County is hereby authorized and requested to publish a notice of call of the election as required by law in the newspaper in which Sheriff's advertisements for the County are published immediately after receipt of this resolution. The notice of call shall be in substantially the form attached hereto as Exhibit "C".

(C) Debt Terms.

1. Assuming that the imposition of such TSPLOST is approved by the voters, the County is hereby authorized to issue general obligation debt (the "Debt") (in whole or in part and in one or more series) in a maximum aggregate principal amount of $7,000,000. The proceeds of the Debt, when issued, shall be used to fund a portion of the County Projects, a Joint County Project and City Project (the "Joint Project"), capitalized interest on the Debt and the costs of issuing the Debt. The Debt shall bear interest at rates not to exceed 8% from its date of issuance or from such other date as may be designated by the County prior to the issuance of the Debt. The actual rate or rates shall be determined in a supplemental resolution to be adopted by the County prior to the issuance of the Debt. The maximum amount of principal to be paid in each year during the life of such Debt shall be as follows:

Year	Amount
2026	$2,220,000
2027	$2,330,000
2028	$2,450,000

2. When Debt is issued, the TSPLOST proceeds allocable to the beneficiary of that Debt shall only be used for paying debt service requirements on the Debt until such time as there is on deposit in a separate account sufficient monies to pay all principal and interest on the Debt coming due in that year as more fully provided in the Agreement.

3. Any brochures, listings, or other advertisements issued by the County or by any other person, firm, corporation or association with the knowledge and consent of the County, shall be deemed to be a statement of intention of the County concerning the use of the proceeds of the Debt, and such statement of intention shall be binding upon the County in the expenditure of such Debt or interest received from such Debt to the extent provided in Section 36-82-1 of the Official Code of Georgia Annotated.

(D) The County hereby waives the independent performance audit or performance review referred to in Section 36-82-100 of the Official Code of Georgia Annotated.

(E) The Clerk of the Board of Commissioners is hereby authorized and directed to deliver a copy of this resolution to the Board of Elections of Lumpkin County, with a request that the Board of Elections of Lumpkin County issue the call for an election.

(F) The County expects to reimburse itself with Debt proceeds for costs of the County Projects and the Joint Project paid by it prior to the issuance of the Debt. This resolution is intended to be a declaration of official intent within the meaning of Treasury Regulation Section 1.150-2.

(G) The proper officers and agents of the County are hereby authorized to take any and all further actions as may be required in connection with the imposition of TSPLOST.

(H) This resolution shall take effect immediately upon its adoption.

Resolved, adopted and effective this ____ day of September, 2022.

LUMPKIN COUNTY, GEORGIA

By:_____
Chris Dockery, Chairman

ATTEST:

_____
Melissa Z. Witcher
Lumpkin County Clerk

EXHIBIT “B”

Notice of Election

TO THE QUALIFIED VOTERS OF LUMPKIN COUNTY, GEORGIA

NOTICE IS HEREBY GIVEN that on the 8th day of November, 2022, an election will be held at the regular polling places in all the election districts of Lumpkin County, Georgia (“the County”), at which time there will be submitted to the qualified voters of the county for their determination the question of whether a single county one percent (1.0%) sales and use tax, sometimes referred to as Transportation Special Purpose Local Option Sales Tax (the "TSPLOST"), on all sales and uses in the special district created in the County for a period of five years for the raising of approximately $20,000,000 for the purpose of funding various transportation purposes and projects for the County (the “County Projects”), a Joint County Project and City Project (the “Joint Project”) and various transportation purposes and projects for the City of Dahlonega, Georgia (the “City Projects”).

If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of the County in the principal amount of $7,000,000 (the “Debt”). The Debt may be issued in whole or in part and in one or more series. The proceeds of the Debt, if issued, shall be used to fund a portion of the County Projects, the Joint Project, capitalized interest on the Debt and the costs of issuing the Debt. The Debt shall bear interest at rates not to exceed 8% from its date of issuance or from such other date as may be designated by the County prior to the issuance of the Debt. The actual rate or rates shall be determined in a supplemental resolution to be adopted by the County prior to the issuance of the Debt. The maximum amount of principal to be paid in each year during the life of such County shall be as follows:

Year	Amount
2026	$2,220,000
2027	$2,330,000
2028	$2,450,000

Any brochures, listings, or other advertisements issued by the County or by any other person, firm, corporation or association with the knowledge and consent of the County shall be deemed to be a statement of intention of the County concerning the use of the proceeds of the Debt, and such statement of intention shall be binding upon the County in the expenditure of such Debt or interest received from such Debt to the extent provided in Section 36-82-1 of the Official Code of Georgia Annotated.

The ballot to be used in such election shall have written or printed thereon substantially the following:

( ) YES	**Shall a special one percent sales and use tax be imposed in the special district consisting of Lumpkin County for a period of time of five (5) years and for the raising of an estimated**
( ) NO	**amount of $20,000,000 for transportation purposes?**

If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of Lumpkin County in the principal amount of $7,000,000 for the purpose of funding a portion of the County Projects, a Joint County Project and City Project, capitalized interest on the debt and the costs of issuing the debt.

Pursuant to O.C.G.A. 36-82-100, the County notifies all interested parties that no additional independent performance audit or performance review (the "Bond Audit") will be conducted with respect to the Debt. However, the County will continue to ensure that Debt proceeds are expended efficiently and economically, as intended by the Bond Audit.

Exhibit C

NOTICE OF CALL OF ELECTION

TO THE QUALIFIED VOTERS OF LUMPKIN COUNTY:

NOTICE IS HEREBY GIVEN THAT at the request of Lumpkin County, Georgia (the "County"), the Board of Elections of Lumpkin County (the "Board of Elections") has called an election in all of the election districts of the County on November 8, 2022 (the "Election"). At the Election, there will be submitted to the qualified voters of the County for their determination the question of whether a sales and use tax of one percent for transportation purposes shall be levied on all sales and uses in the County for a period of time of five years for the raising of approximately $20,000,000. If the imposition of such tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of the County in the principal amount of $7,000,000.

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Lumpkin County, Georgia

Finance Department

Date: September 20, 2022

Agenda Item: Resolution to Amend the FY2022 Budget

Item Description: Resolution to Amend the FY2022 Budget. Consideration of an FY2022 Budget Amendment.

Facts & Historical Information:

With the approval of the Enotah Judicial Circuit Superior Court Reporter Independent Contract Agreement and the Enotah Judicial Circuit budget increase, it is necessary to amend the County's FY2022 General Fund Budget.

Staff asks the Board of Commissioners to consider decreasing the Superior Court expense budget by $28,016 and increasing the Enotah Circuit expense budget by $28,016. This change will have a net zero effect on the FY2022 Budget.

Potential Courses of Action:

A. Amend the FY2022 Budget

B. Do not amend the FY2022 Budget

Budget Impact: There is a net zero effect on the FY2022 Budget.

Staff Recommendation: COA A

LUMPKIN COUNTY RESOLUTION No. 2022 – 47

A RESOLUTION AMENDING
THE LUMPKIN COUNTY BUDGET FOR FISCAL YEAR 2022

Whereas, due to a change in the court reporting services for the Enotah Judicial Circuit, funds for court reporting services will be paid from the Enotah Judicial Circuit expense budget instead of the Superior Court expense budget; and

Whereas, the Lumpkin County Board of Commissioners finds it necessary to amend its Budget for Fiscal Year 2022;

Now, therefore, it is hereby resolved that the Lumpkin County Budget for Fiscal Year 2022 is amended as follows:

The Superior Court expense budget is decreased by $28,016 and the Enotah Judicial Circuit expense budget is increased by $28,016.

Resolved, adopted and effective this 20th day of September, 2022.

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Lumpkin County, Georgia

Finance Department

Date: September 20, 2022

Agenda Item: Resolution to Amend the FY2023 Budget

Item Description: Resolution to Amend the FY2023 Budget. Consideration of an FY2023 Budget Amendment.

Facts & Historical Information:

With the approval of the Enotah Judicial Circuit Superior Court Reporter Independent Contract Agreement and the Enotah Judicial Circuit budget increase, it is necessary to amend the County's FY2023 General Fund Budget.

Staff asks the Board of Commissioners to consider decreasing the Superior Court expense budget by $110,000 and increasing the Enotah Circuit expense budget by $110,000. This change will have a net zero effect on the FY2023 Budget.

Potential Courses of Action:

A. Amend the FY2023 Budget

B. Do not amend the FY2023 Budget

Budget Impact: There is a net zero effect on the FY2023 Budget.

Staff Recommendation: COA A

LUMPKIN COUNTY RESOLUTION No. 2022 – 48

A RESOLUTION AMENDING
THE LUMPKIN COUNTY BUDGET FOR FISCAL YEAR 2023

Whereas, due to a change in the court reporting services for the Enotah Judicial Circuit, funds for court reporting services will be paid from the Enotah Judicial Circuit expense budget instead of the Superior Court expense budget; and

Whereas, the Lumpkin County Board of Commissioners finds it necessary to amend its Budget for Fiscal Year 2023;

Now, therefore, it is hereby resolved that the Lumpkin County Budget for Fiscal Year 2023 is amended as follows:

The Superior Court expense budget is decreased by $110,000 and the Enotah Judicial Circuit expense budget is increased by $110,000.

Resolved, adopted and effective this 20th day of September, 2022.

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Lumpkin County, Georgia

Animal Shelter Department

Date: September 20, 2022

Agenda Item: Animal Shelter Professional Vet Services

Item Description: Animal Shelter Professional Vet Services. Request to consider the Animal Shelter Professional Veterinarian Services contract renewal.

Facts & Historical Information: The Lumpkin County Animal Shelter is required to operate under the guidance and DEA controlled substance registration certificate of a state licensed veterinarian. The veterinarian provides a higher level of medical care for the animals than staff can provide, and the doctor also has oversight of the shelter's medical practices. Additionally, the veterinarian's DEA controlled substance registration certificate allows access to certain medications that the shelter would otherwise be prohibited from using and keeping on-premise. Since the shelter does not have a full or part time veterinarian on staff, the DEA license must be obtained through a designated veterinarian with whom we contract. The service provided by our current contractor has met every shelter need and the doctor works well with staff. This type of relationship is crucial to shelter operations and allows us to provide a superior level of care to our shelter animals. As with everything, the cost incurred by providing services has increased and, for 2023, our veterinarian has passed along a modest increase from $1,250.00 per month to $1,400.00 per month or $16,800.00 a year. It should be noted that the last increase was prior to 2017.

Since this contract falls under professional services, the Board of Commissioners is requested to approve the renewal of this contract with Dr. Emily J. Wallin, DVM, to be effective January 1, 2023. Dr. Wallin owns and operates Hemlock Animal Hospital here in Lumpkin County and has an existing relationship with our shelter. Dr. Wallin currently serves as the shelter's contracted veterinarian and continues to provide exceptional serves. She has extensive experience in shelter medicine and large-scale animal spay neuter services. This contract renewal would also allow continued access to a veterinarian who lives in this county and could provide necessary after-hours and/or emergency field work as may be needed in the event of cruelty cases which sometimes require quick responses, as well as access to nearby diagnostic equipment.

Potential Courses Of Action:

A. Consider approving the renewal of this contract with Dr. Emily Wallin DVM, as presented with cost increase.

B. Consider searching for a new provider.

Compare and Contrast: Course of Action A will allow the shelter to continue to work with a veterinarian who we know provides a consistent high level of service while providing the animal shelter with a DEA controlled substance registration certificate. Additionally, this would allow staff access to a veterinarian who could be on call to assist our animal control officer with necessary field operations. Course of Action B would likely mean that, the

shelter would have to find a service provider unfamiliar with our shelter operations as well as create the need to apply for a new controlled substance registration DEA certificate. Any resulting break in service could mean that the shelter's access to certain drugs and veterinary services may prevent the shelter from providing necessary levels of service.

Budget Impact: Course of Action A will increase the contracted amount from $15,000.00 a year to $16,800.00. This increase was included in the animal shelter 2023 budget request. The impact of Course of Action B is unknown.

Staff Recommendation: **Staff request the contract be renewed as presented with DR. Emily Wallin, DVM, Course of Action A.**

Attachments:
2023 Animal Shelter Professional Vet Services Contract

LUMPKIN COUNTY
CONTRACT AGREEMENT - ANIMAL SHELTER VETERINARY SERVICES 2023

THIS AGREEMENT entered into as of September 20, 2022, with an effective date of January 1, 2023, by and between Lumpkin County, a political subdivision of the State of Georgia, hereinafter referred to as the "County," and Emily J. Wallin, DVM, hereinafter referred to as the "Contractor."

WHEREAS, the County desires to obtain veterinary services for the Lumpkin County Animal Shelter hereinafter referred to as the "Shelter;" and,

WHEREAS, the Contractor desires to provide the County with veterinary services at the Shelter,

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. **DESCRIPTION OF SERVICES**. The Contractor will provide veterinary services including approximately one to two visits to the Shelter per week, generally, two (2) to four (4) hours per visit and emergency services as needed.

Additionally, at Contractor's expense, the Contractor shall maintain a DEA controlled substance certificate to cover Schedules 2, 2N, 3, 3N, 4 and 5 Drugs. The certificate must list the Shelter's address of 1363 Red Oak Flats Rd, Dahlonega, GA 30533. The certificate must be active as of January 1, 2023, and must remain active for the duration of this contract.

2. **PERFORMANCE OF SERVICES**. The manner in which the Services are to be performed and the specific hours to be worked shall be determined by the Contractor. The County will rely on the Contractor to work as many hours as may be reasonably necessary to fulfill the Contractor's obligations under this agreement.

3. **PAYMENT**. The County will pay a fee to the Contractor for the Services in the amount of $16,800.00 per year, which shall be paid in monthly installments of $1,400.00 no later than the 15th day of each month. In addition, the County shall pay for any and all hospital expenses, including pharmaceuticals, surgical and diagnostic services, supplies, equipment, and other expenses related to the care and treatment of animals owned by the Shelter and for treatment of its animals upon prior approval of the Shelter Director.

4. **TERMS OF AGREEMENT**. This agreement is for a period of one year from January 1, 2023 to December 31, 2023; absent notice by either party on or before December 1 of the current contract year, this contract will automatically renew for the following year, on the same terms and conditions as set out herein. Any amendment to the terms and conditions set out herein shall be in writing and signed by each of the parties. This agreement may be terminated at any time by

Attachment: 2023 Animal Shelter Professional Vet Services Contract (2022-056 : Animal Shelter Professional Vet Services)

mutual written consent or upon thirty days advance written notice by either party. If terminated by the County, any payments previously made will be retained by the Contractor.

5. **TAXES**. The Contractor understands that it is responsible for any tax liability arising from this Agreement specifically, including any tax withholding for its employees. The County shall not be responsible for, nor indemnify the Contractor for, any federal, state, or local taxes, which may be imposed or levied upon the subject matter of this Agreement.

6. **RELATIONSHIP OF PARTIES**. It is understood by the parties that Contractor is an independent contractor and not an employee of the County. The County will not provide any benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the Contractor.

7. **EMPLOYEES**. The Contractor's employees, if any, who perform services under this Agreement shall also be bound by the provisions of this Agreement. At the request of the County, the contractor shall provide adequate evidence that such persons are the Contractor's employees.

8. **INJURIES**. The Contractor acknowledges its obligation to obtain appropriate insurance coverage for the benefit of the Contractor (and the Contractor's employees, if any). The Contractor waives any rights to recovery from the County for any injuries that the Contractor (and/or the Contractor's employees) may sustain while performing services under this Agreement and that are a result of the negligence of the Contractor or the Contractor's employees.

9. **COMPLIANCE WITH LAWS**. The Contractor shall comply with all state and federal laws, County ordinances, rules, regulations, policies, and directives relating to the services to be performed hereunder. The Contractor understands that absolutely no alcohol and unlawful drugs are allowed on the County's premises at any time.

10. **NONDISCRIMINATION**. The Contractor agrees to not unlawfully discriminate against any person because of race, religion, creed, color, age, sex, disability or national origin of ancestry in the execution and fulfillment of this Agreement.

11. **INDEMNIFICATION**. Neither party will agree to indemnify or hold the other harmless from any claims, losses, expenses, fees including attorney fees, costs, and judgments that may be asserted against the County or the Contractor that result from the acts or omissions of either party or its employees or agents.

12. **ASSIGNMENT**. The Contractor's obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of the County.

13. **RETURN OF RECORDS**. Upon termination of this Agreement, the Contractor shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in the

Attachment: 2023 Animal Shelter Professional Vet Services Contract (2022-056 : Animal Shelter Professional Vet Services)

Contractor's possession or under the Contractor's control and that are the County's property or relate to the County's business. It is specifically agreed by the parties that any veterinary records, reports, and other documents created by the Contractor at the Shelter shall be the County's property and shall remain at the Shelter. Any veterinary records, reports, and other documents created by the Contractor's office or any other veterinary facility shall remain property of the Contractor; however, the County shall be provided a copy of such documents.

14. **NOTICES**. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

If for Contractor:
Emily J. Wallin, DVM
73 Maxwell Lane, Ste B-2
Dahlonega, GA 30533

If for Lumpkin County:
Alan Ours, County Manager
Lumpkin County
99 Courthouse Hill, Suite H
Dahlonega, GA 30533

Such addresses may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

15. **ENTIRE AGREEMENT**. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether written or oral. This Agreement supersedes any prior written or oral agreements between the parties.

16. **AMENDMENT**. This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

17. **SEVERABILITY**. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

18. **WAIVER OF CONTRACTUAL RIGHT**. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this agreement.

19. **APPLICABLE LAW**. The agreement shall be governed by the State of Georgia. Any term of this Agreement that does not comply with applicable law will not be effective if the law does not expressly or impliedly permit variation by agreement. If any part of this Agreement cannot be enforced according to its terms, this fact will not affect the balance of this agreement.

Attachment: 2023 Animal Shelter Professional Vet Services Contract (2022-056 : Animal Shelter Professional Vet Services)

IN WITNESS WHEREOF, the parties have hereto executed this agreement as of the day and year first above written.

LUMPKIN COUNTY

By: _____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

CONTRACTOR:

_____
Emily J. Wallin, DVM

Attachment: 2023 Animal Shelter Professional Vet Services Contract (2022-056 : Animal Shelter Professional Vet Services)

Lumpkin County, Georgia

Planning Department

Date:	September 20, 2022
Agenda Item:	Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment System
Item Description:	Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment System. Payroc provides the credit card processing service for IWorQ permitting software.
Facts & Historical Information:	In June 2022, the BOC approved the iWorQ permitting software. Payroc provides the credit card processing service for iWorQ.
Potential Courses Of Action:	A. Approve the contract with Payroc that allows for online permit payments. B. Deny approval.
Budget Impact:	No impact. 3.5% credit card charge is included in the permitting fees.
Staff Recommendation:	**It is the recommendation of staff to sign the Payroc agreement in order to fully utilize iWorQ permitting software.**

Attachments:
Lumpkin Non-Service Fee App

Attachment: Lumpkin Non-Service Fee App (2022-057 : Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment

MUNICIPALITY ADDENDUM

This Municipality Addendum ("Addendum") is entered into as of the Effective Date and forms a part of the Merchant Processing Agreement and Terms and Conditions (collectively, the "Agreement") between Processor and You.

1. All capitalized terms used but not defined herein shall have the respective meanings given to them in the Agreement.

2. You shall have no obligation to provide a personal guaranty of performance of the Agreement.

3. You do not authorize Processor or Bank to investigate the credit of any person listed on the Agreement.

4. You represent and warrant that You are a governmental unit or political subdivision of a state that is tax-exempt.

5. You shall use Processor as your exclusive provider of the Services only for Card transactions submitted via iWorks.

6. You shall have no obligation to indemnify Processor, Bank, Card Networks or any other party under the Agreement.

7. The Agreement shall be governed by and interpreted according to the laws of the State in which You are located without regard to principles of conflicts of laws.

8. Any arbitration, regardless of the amount in dispute, shall be conducted in the State in which You are located or You can elect to have the hearing take place telephonically.

9. It is expressly understood and agreed that the terms of this Addendum shall take precedence and supersede the contradicting or conflicting terms of the Agreement. Subject to the foregoing, the Agreement shall remain in full force and effect.

Lumpkin County Board of Commissioners
By: Chris Dockery
Its: Chairman

Payroc Payment Systems, LLC
By: Brigette Streeper
Its: Payment Professional

ISG Number	Representative Name	Representative Number	Authorization Platform
4533	Brigette Streeper	0101	TSYS

Referral Partner Number	Referral Partner Name
4533	iWorQ

1. Business Information

Doing Business As (DBA) Name	Telephone Number	Fax Number
Lumpkin County Board of Commissioners	706-864-3742	

Business Street Address	City	State	ZIP Code
99 Courthouse Hill, Suite D	Dahlonega	GA	30533

Merchant Website (URL)	Type of Products/Services Sold	Years of Operation
	Licensing/Permits	

Legal Business Name (if different from above)	Taxpayer Identification Number	Contact Email Address
	58-6000857	abby.branan@lumpkincounty.gov

Billing Street Address (if different from above)	City	State	ZIP Code

Organizational Structure: ☐ Corporation ☐ LLC ☐ Sole Proprietor ☐ 501C ☐ Partnership ☒ Government/Municipality

Due to our Go Green initiative all statements are only available electronically through our partner engage portal at www.payroc.partnerengage.com

2. Payment Processing & Sales

Are you a seasonal business? ○ Yes ◉ No

If yes, what are the months of operation of your business?

☐ JAN ☐ FEB ☐ MAR ☐ APR ☐ MAY ☐ JUN

☐ JUL ☐ AUG ☐ SEP ☐ OCT ☐ NOV ☐ DEC

Average Transaction Amount	Highest Transaction Amount

Average Monthly Volume	Highest Monthly Volume

EMV/Card Present Swiped		Telephone Order		eCommerce	*Must equal
	% +		% +		= 100 %

3. Beneficial Owner / Officer / Principal - *Government / Municipality Contact Info to be entered here*

Control Owner / Officer / Principal *Must include all principals owning 25% or greater of entity and at least one individual who significantly controls the legal entity, if any.

First Name	Last Name	Date of Birth	SSN	Ownership % *
Chris	Dockery			0

Home Street Address	City	State	Zip Code
14 Carriage Court	Dahlonega	GA	30533

Email Address	Business Phone Number	Mobile Number
chris.dockery@lumpkincounty.gov	706-864-3742	

Beneficial Owner / Officer / Principal

First Name	Last Name	Date of Birth	SSN	Ownership % (1)

Home Street Address	City	State	Zip Code

Email Address	Business Phone Number	Mobile Number

(1) If additional owner / beneficiary disclosure is required please use Additional Owner Addendum.

Attachment: Lumpkin Non-Service Fee App (2022-057 : Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment

Merchant Processing Agreement

www.payroc.com 888.477.4510

4. ACH Information & Funding Choices

Name on Bank Account	Transit (ABA Routing) Number	Account Number (Credits & Debits)

Name on Bank Account (Debits only, if applicable)	Transit (ABA Routing) Number (Debits only)	Account Number (Debits only)

Funding Choices: ☐ Standard - included in batch fee ☐ Next Day Funding 0 Per Month ☐ Same Day Money Express[2] Per Month

Please refer to Funding Terms and Conditions in the Terms and Conditions for more detail regarding funding options

(2) 4 a.m. Cut-off CST

5. Payment Card Acceptance

Standard Card Acceptance

☒ Visa Cards ☒ MasterCard Cards ☒ Discover Cards ☒ American Express OptBlue

☐ Debit Cards ONLY

*You may select any card type in accordance with Card Networks Operating Regulations

Specialty Card Acceptance

American Express (retained/ESA)[3]	Electronic Benefits Transfer (EBT)[3]	PIN-based Debit Pricing[3]	WrightExpress(WEX)[3]
Existing AMEX Merchant Number	FNS Number	Per Transaction	Existing WEX Merchant Number
Per Transaction	Per Transaction	Additional Discount (%)	Per Transaction
		Debit Monthly Access	

(3) Only enabled when per transaction fee is populated above

6. Rates & Fees *Only one pricing option available per application

☐ Interchange Plus[4]
☐ Tiered
☐ Flat Rate[6]

	Visa/Mastercard/Discover		American Express OptBlue	
	Processor Assessment % on $ Volume	Per Transaction[5]	Processor Assessment % on $ Volume	Per Transaction[5]
Regulated Check Card	%	$	%	$
Unregulated Check Card	%	$	%	$
Qualifed Rate	%	$	%	$
Mid Qualifed Rate	%	$	%	$
Non Qualifed Rate	%	$	%	$
Premium Rate	%	$	%	$
Flat Rate	3.50 %	$ 0		

account is month to month - no ETF

(4) Only Pricing Model able to use Enhanced Interchange Service Program.

(5) Per transaction rate will be applied to each instance of Batch / Authorization Only / Decline in addition to the amounts set forth above you agree to pay Card Network Fees and other fees as set forth in Section 10A of the Terms and Conditions.

(6) If Flat Rate Pricing plan selected Processor Assessment on Volume & Per Transaction fees apply to ALL card types and includes: IBX Virtual Terminal & Gateway, Platinum Security/PCI, Monthly Maintenance Fee, Next Day Funding (for qualified merchants only). A monthly minimum charge of $25 applies to this program. If your processing fees are less than $25 in any given month, you will be charged the difference between your fees and $25.

Attachment: Lumpkin Non-Service Fee App (2022-057 : Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment

6. Rates & Fees Continued

☐ Consumer Choice*

Monthly Subscription

$_____

Merchant authorized % on volume processed(11) on non-cash transactions	Merchant authorized charge per transaction(11) on non-cash transactions	Discount Rate % on Volume Processed(11) to Merchant	Per Transaction(11) to Merchant

* The Consumer Choice Amendment is required in order to complete setup. Only a % or per transaction rate can be assessed. If both fields are filled Processor will default to %.
(11) % and Per Transaction deducted daily, PIN Debit is not supported by the Consumer Choice Program.

☐ RewardPay(7)

Monthly Subscription

$_____

RewardPay Signature Debit / Prepaid Cards Only

Choose an Option:

☐ Interchange Plus(8): _____ % on debit/prepaid dollar volume + _____ per debit/prepaid transactior

☐ Flat Rate: _____ % on debit/prepaid dollar volume + _____ per debit/prepaid transaction

RewardPay Credit Card Fees

_____ % charged to cardholder at point of sale on credit card dollar volume processed(9) ☐ No Tips ☐ Prompt For Tip ☐ Tip Adjust

_____ % charged to merchant on credit dollar volume processed at month end

(7) PIN Debit not supported by the RewardPay Program.

(8) For Interchange Plus, Merchant also agrees to pay Interchange, Card Network Fees and other fees as set forth in the Terms and Conditions. Per transaction fee will be applied to all transactions including a authorization, batch, authorization only, decline

(9) Cardholder Credit Card charges deducted daily from Merchant Settlement; RewardPay Program is compliant with Card Network surcharge rules and Merchant hereby authorizes Processor or Bank to register Merchant as required by the Card Networks.

☐ CashRewards

Monthly Subscription

$_____

Your CashRewards Pricing Plan includes all Visa/MasterCard/Discover/American Express OptBlue InterChange and Card Network Fees.

Discount Rate % on Volume Processed(10)	Per Transaction(10)

(10) Discount Rate % and Per Transaction deducted daily, Monthly Subscription billed monthly

☐ Municipality

Service fee includes InterChange and Card Network Fees and other fees as set forth in Section 10L of terms and conditions

A service fee of_____% ($_____minimum) will be assessed to the Cardholder on each transaction.

American Express OptBlue

By signing below Merchant agrees to accept American Express Transaction Cards (as defined in the Agreement) pursuant to Processor's Direct Settlement Prog (the "Processor Amex Program"). Merchant hereby agrees with Processor to be bound by the terms and conditions of Processor Amex Program, which shall incl this Agreement, the Terms and Conditions incorporated by reference in this Agreement, the Terms and Conditions for American Express OptBlue, in connec with accepting American Express Transaction Cards. Merchant acknowledges that this agreement regarding the Processor Amex Program is between Processor Merchant. By checking the box below, Merchant opts out of receiving future commercial marketing communications from American Express. Note that you continue to receive marketing communications while American Express updates its records to reflect your choice. Opting out of commercial marketing commur tions will not preclude you from receiving important transactional or relationship messages from American Express.

Name _____ Title _____ Date _____

Sign Here _____

X I choose to opt out of receiving future commercial marketing communications from American Express

Attachment: Lumpkin Non-Service Fee App (2022-057 : Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment

☐ Account Updater[12]

Setup (one-time)

Monthly

Per Update

(12) The Account Updater Amendment is required in order to complete setup

☐ Mobile Processing

Setup (one time)

Per User

Network Monthly

Per Transaction

☐ Enhanced Interchange Service

Enrollment Fee (one time)

EIS Credit Percentage to Merchant

Local Tax Rate[13]

(13) Refer to section 10L of the terms and conditions for details that specify 1.) the monthly calculation of the Enhanced Interchange Service - credit, and, 2.) if the local tax rate is left blank, Merchant authorizes Processor to input the current tax rate from commercially available tax lookup tables using the Merchant's Business Information zip code.

☐ Wireless Processing

Setup (one-time)

Per Transaction

Network Monthly Access

☐ Software Integration

Software Name

Installation, License, Activation (one-time)

Monthly Usage

Per Transaction

Additional User License Fee

Additional Location Fee

☐ Gateway

Gateway Name

Set up (one-time) 0

Gateway Monthly

Per Transaction

Vault/Tokenization Monthly

Vault/Tokenization Per Transaction

Address Verification (AVS) Per Occurrence

Annual Fee

Bill in ☐ June ☐ December

Regulatory Assistance Program[14]

Monthly PCI Non Compliance $19.99

Monthly Payroc Advantage[16]

Monthly Online Portal Access

Platinum Security/PCI

☒ $12.95 Monthly ☐ $155.40 Annually[15]

Monthly Maintenance

Monthly Minimum

Voice Authorization Per Occurrence $0.95

Chargeback Per Occurence $25.00

Retrieval Per Occurence $15.00

(14) Billed annually in March to merchants boarded prior to December 1st of the previous year.
(15) Billed annually on the 3rd month after the merchant's approval date.
(16) Refer to the Payroc Advantage Section in section 10F of the Terms and Conditions.

Early Termination: Refer to Section 15E Terms and Conditions
PCI Non-Compliance: Refer to Section 3I of the Terms and Conditions

Merchant Acceptance

The undersigned represents and warrants to Processor and Bank that all of the terms and conditions of this Merchant Processing Agreement consisting of this entire document in addition to any other documentation or addendum has been received and reviewed in its entirety, is true and correct, and sets forth the Agreement between Processor, Bank and MERCHANT. Also, the undersigned authorizes Processor and Bank (and their representatives) to investigate the credit of each person listed on the Agreement and represents that the undersigned has the authority to provide information and execute this Agreement with Processor and Bank. Processor and Bank shall accept this Agreement at its offices following underwriting and approval, by the assignment to MERCHANT of a merchant processing identification number. As per Sections 6, 8A and 10A of the Terms and Conditions, by signing the Agreement you hereby authorize Processor and Bank (and its vendors and agents), using the ACH system or other electronic means, to initiate such credit and debit entries to the settlement account (or at any other account maintained by you at any institution that is a receiving member of ACH) all in accordance with this Agreement. This authorization is to remain in effect until such time as all of your obligations to Processor and Bank have been paid in full.

IMPORTANT MEMBER BANK RESPONSIBILITIES:
Member Bank: Fifth Third Bank (see Section 19N of the Terms and Conditions for contact information)
1. A Visa Member is the only entity approved to extend acceptance of Visa products directly to a Merchant. 2. A Visa Member must be a principal to the Merchant Agreement. 3. The Visa Member is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply. 4. The Visa Member is responsible for and must provide settlement funds to the Merchant. 5. The Visa Member is responsible for all funds held in reserve that are derived from settlement.

IMPORTANT MERCHANT RESPONSIBILITIES:
1. Ensure compliance with cardholder data security and storage requirements. 2. Maintain fraud and chargeback below thresholds. 3. Review and understand the terms of the Merchant Agreement. 4. Comply with Operating Regulations. The responsibilities listed above do not supersede the terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa Member (Acquirer) is the ultimate authority should the Merchant have any problems.

Please initial to confirm that you have received a copy of the Terms and Conditions and that you consent to receiving electronic 1099-K forms as provided for in Section H(ii). (Terms and Conditions)

Initial Here

*Processor delivers the Terms and Conditions in your Welcome Kit, which is sent to you via email; the Terms and Conditions are also available at www.payroc.partnerengage.com.

Name Title Date

Sign Here

Personal Guaranty

The undersigned guarantees to Processor and Bank the performance of this Agreement and any addendum or amendment thereto, including payment of all sums due and any attorneys fees and costs associated with enforcement of the terms thereof. Neither Processor nor Bank shall be required to first proceed against Merchant or enforce any other remedy before proceeding against the undersigned. This is a continuing guarantee and shall not be discharged or affected by death of the undersigned and shall bind the heirs, administrators, representatives, and assigns and may be enforced by or for the benefit of any successor processor. The term of this guarantee shall be for the duration of the Agreement and any addendum thereto and shall guarantee all obligations which may arise or occur during the term thereof though enforcement shall be sought subsequent to any termination. This guaranty is subject to, and incorporates herein, the Arbitration provisions set forth in Section 18 of the Terms and Conditions and the miscellaneous provisions, including governing law and venue, set forth in Section 19 of the Terms and Conditions.

Sign Here Name Date

Attachment: Lumpkin Non-Service Fee App (2022-057 : Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment

payroc www.payroc.com 888.477.4510

Merchant Name: _____ App #: _____ Teletrain: ☐ PROCESSOR ☐ AGENT

Terminal Set Up Information

☐ Ship ☐ File Only Quantity _____ Terminal Type: _____

☐ Ship ☐ File Only Quantity _____ Terminal Type _____

Pin Debit: ☐ Yes ☐ No

Pin Pad: ☐ Internal ☐ External

Quantity _____ Pin Pad Type: _____

Connection Type: ☐ Dial-Up ☐ Ethernet ☐ Wireless ☐ WiFi ☐ Mobile

EBT: ☐ Yes ☐ No FNS# _____

Application Type: ☐ No Tip ☐ Tip Line/Adjustment ☐ Lodging ☐ Prompt for Tip ☐ Quick Pay/QSR ☐ Fuel

Payment Terms:

☐ Sale ☐ Lease

Choose one of the following payment types.

☐ ACH Merchant ☐ ACH ISG ☐ Residual Payment ISG

If shipping equipment, Please provide information listed below.

Name Phone

Street

City State Zip

Retail / Moto: ☐ AVS ☐ Purchase Card / Level 2 ☐ Invoice # Prompt ☐ CVV 2 ☐ Multi Merchant _____ Parent MID:

Restaurant: ☐ Servers _____ Number of Servers ☐ Suggested Tip _____ % _____ % _____ %

Auto-Close++ ☑ Time midnight **RewardPay** _____ %

Receipt Footer:

VAR / GATEWAY / POS SETUP INFORMATION

VAR Setup: Quantity _____

PC/Internet Software Name iWorQ Version# ___

Gateway/Middleware Name (if Applicable) IBX Version# ___

Direct Reseller Contact Name _____ Phone # _____

Gateway Setup - Virtual Terminal Only

Will the cards be present? ☐ Yes ☐ No Recurring Billing? ☐ Yes ☐ N

Card Reader Type _____

Merchant Email: _____

Gateway Type: ☐ IBX ☐ iTransact ☐ NMI ☐ PayTrace ☐ Auth.net ☐ Other _____

Primary User Email _____ User Type: Admin

Mobile # _____ Carrier _____

Additional Users:

Email _____ User Type: Admin/Member

Email _____ User Type: Admin/Member

Email _____ User Type: Admin/Member

Email _____ User Type: Admin/Member

☐ Customer Vault ☐ Level 2/3 ☐ Tax Rate _____ %

☐ Recurring Billing ☐ Mobile ☐ Auto settle time: _____

Comments:

NON-Service Fee iWorQ account - send me link

Gateway Setup ☐ Processor ☐ Representative

Apply for new account? ☐ Yes ☐ No

Website: _____

Shopping Cart Name: _____

Merchant Email: _____

Web Developer Name & Phone # _____

Billed By: ☐ Processor ☐ 3rd Party Gateway

If Billed by 3rd Party: Setup: $_____

Monthly: $_____ Transaction Fee: $_____

REPRESENTATIVE VERIFICATION

I certify the information in this Agreement is true and correct to the best of my knowledge and is as represented by the Merchant:

Sign Here REPRESENTATIVE VERIFICATION Name Brigette Streeper Title

Attachment: Lumpkin Non-Service Fee App (2022-057 : Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment

Payroc is a registered Merchant Service Provider (MSP) and Independent Sales Organization (ISO) of Fifth Third Bank, N.A., Cincinnati, OH

Reprogram* - Only applicable for select terminals previously deployed directly from Processor

TERMS AND CONDITIONS

This Merchant Processing Agreement ("Agreement") is entered into as of the date the Agreement is executed ("Effective Date") by and among Payroc LLC and/or it's subsidiaries, as Processor, a Delaware limited liability company ("Payroc", "IPS", "Processor"), Fifth Third Bank, a national banking association ("Bank"), and the business or person that executed the Agreement and is to receive card processing services pursuant to this Agreement ("Merchant" or "you"). The Bank is a principal member of Mastercard International Inc. ("MC" or "Mastercard") and Visa USA, Inc. ("Visa"). PROCESSOR participates in programs affiliated with (a) Mastercard, Visa, DFS Services, LLC d/b/a Discover Network ("Discover Network")(including any card issuer whose Cards are processed and settled through the Discover Network) and American Express Travel Related Services Company Inc. ("Amex") and (b) certain similar entities, including without limitation those appearing in the application or pricing section of this Agreement, and any other network supported by PROCESSOR, including without limitation debit networks ("Other Networks" and collectively with the entities listed in subparagraph (a) the "Card Networks"). Your desire to participate in the Card Networks in connection with the provision of goods and services to any person authorized to use the Cards or accounts established in connection with the Cards (the "Cardholder" or "Cardholders", as applicable). The term "Card" or "Cards" shall mean a card or cards that (a) enable Cardholders to purchase goods and services and that access a Cardholder's account within fourteen (14) days of purchase ("Debit Cards") and (b) any other card that enables holders of a Card Network card to purchase goods and services ("Other Cards"). Debit Cards include, without limitation, cards issued by debit networks listed in the application, stored value cards, prepaid cards, payroll cards, electronic benefit transfer cards, gift cards and check cards.

1. Rules, Regulations and Laws.

A. Regulations. You hereby agree to comply with all the certificates of incorporation, by- laws, operating regulations and any other rules, policies or procedures of the Card Networks, including without limitation manuals, guides and bulletins, as amended from time to time (collectively the "Operating Regulations"). Without in any way limiting the foregoing, you hereby agree to comply with the Payment Card Industry Data Security Standard ("PCI- DSS"), the Visa Cardholder Information Security Program ("CISP"), the Mastercard Site Data Protection Program ("SDP"), the Discover Network's Discover Information Security and Compliance ("DISC") and any other similar program mandated by a Card Network (collectively the "Data Security Regulations"). You may review copies of the Operating Regulations for Visa and Mastercard at respectively, http://usa.visa.com/merchants/operations/opregulations.html, http://www.Mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf and/or through each entity's website. You agree that you will take all steps necessary to review the Operating Regulations and to ensure that you and your employees are familiar with and up to date on the applicable Operating Regulations, including without limitation reviewing all information available on the Card Network websites. You agree that you assume the risk of complying with all of the Operating Regulations, regardless of whether you have possession of or have reviewed the Operating Regulations. You agree that you are responsible for demonstrating compliance by your agents with all Data Security Regulations and you agree to fully cooperate with any forensic investigation that is ongoing at the time this Agreement is executed. You are responsible for all of your employees' actions, including without limitation your employees' compliance with this Agreement.

B. Laws. You hereby agree to comply with all applicable federal, state and local laws, statutes and ordinances ("Laws") including without limitation all requirements of the US Patriot Act and all other similar laws.

C. Rules. You hereby agree to comply with any rules promulgated by PROCESSOR or Bank regarding the processing of Card transactions (the "Rules"), including without limitation those rules set forth in the welcome letter. If the Rules change, this Agreement will automatically be amended to conform to the revised Rules.

D. Incorporation of Operating Regulations, Rules and Laws. The Operating Regulations, Rules and Laws are incorporated in this Agreement as if fully set forth herein.

2. Cardholder Data and PCI Compliance

A. Cardholder Data. You shall not sell, purchase, provide or exchange Cardholder names, addresses, account numbers, track-2 data, security verification codes, expiration dates or any other Cardholder information ("Cardholder Data") with any third party, other than the Card Networks for the purpose of completing a sales transaction. You agree that under no circumstances will you or your agents store Cardholder Data in violation of the Operating Regulations, Rules or Laws, including without limitation track-2 data. You agree that you and your agents will not retain magnetic-stripe data after completion of the authorization process.

B. Use of Cardholder Data. You agree that Cardholder Data may only be used for assisting in completing a Card transaction, for fraud control services, for loyalty programs, or as specifically agreed to by Card Networks or as required by applicable law.

C. Reporting Cardholder Data Compromises. In the event of a breach or intrusion of or otherwise unauthorized access to Cardholder Data stored at your location or for you, you shall immediately notify

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PROCESSOR, in the manner required in Data Security Regulations, and provide the Card Networks, the Bank, PROCESSOR and their respective designees access to your premises, facilities and all pertinent records to conduct a review of your compliance with the Data Security Regulations. You shall fully cooperate with any reviews or investigations of their facilities and records provided for in this paragraph.

D. Backup Systems. You shall maintain appropriate business continuity procedures and systems to ensure security of Cardholder Data in the event of a disruption, disaster or failure of PROCESSOR's or merchant's primary data systems.

E. Compliance with Data Security Regulations Post-Termination. You and your successors and assigns shall continue to comply with the PCI requirements after termination of this agreement.

F. Compliance with Data Security Regulations does not Prevent Liability. You agree that compliance with the Data Security Regulations does not relieve you of financial responsibility for any loss or damage that may result in the event of a breach or intrusion regarding Cardholder Data held by you or on your behalf by a third party.

G. PCI Compliance. You agree to take all steps and perform all acts required by the data security vendor ("DSV") retained by PROCESSOR or Bank necessary to validate your compliance with the Data Security Regulations. Compliance with the requirements of the the program established by the DSV (which program may be identified as "365 PCI & Compliance Regulatory", "Easy Breach PCI Protection" or such other branding designation identified by PROCESSOR, DSV or otherwise in this Agreement) will require at least the completion of a self- assessment questionnaire and may require a vulnerability scan and/or the satisfaction of other requirements imposed by the Operating Regulations or the Data Security Regulations. Under certain circumstances as set forth in the Data Security Regulations, you may be required to re-validate your compliance. If re-validation becomes necessary; you agree that you will take all steps deemed necessary by the DSV to re- validate your compliance with the Data Security Regulations. In return for the services performed by the DSV, you agree to pay to PROCESSOR the PCI Compliance Fee contained in the fee schedule that is part of this agreement. To the extent that Processor's losses are covered by insurance obtained by DSV, PROCESSOR will waive up to $100,000 in damages related to mandatory forensic audits, card replacement costs and fines levied by Card Networks. For more information regarding terms, exclusions and limits of insurance program obtained by DSV for the benefit of Processor, please refer to www.royalgroupservices.com/trustwave. This waiver only applies while you are (i) compliant with PCI DSS, (ii) compliant with the requirements of DSV program, and (iii) you are a merchant of Processor.

I. PCI Non-Compliance Fee. In the event that you do not comply with the PCI DSS requirements, PROCESSOR shall be entitled to impose and collect from you a PCI non-compliance fee in the amount $19.95 per month until such time as you are in compliance with the PCI requirements.

3. Honoring Cards.

A. Card Acceptance. (i) You will honor, without discrimination and in accordance with the Rules and Operating Regulations any Card, as indicated on the Application, properly tendered by a Cardholder, without imposing any conditions that are prohibited by the Rules or the Operating Regulations. You acknowledge that if you accept Cards bearing the Visa or Mastercard logo, the Visa and Mastercard Operating Regulations require you to accept any Cards issued by non-U.S. members. You may not do any of the following: (a) add any tax to a transaction, unless applicable law expressly requires Merchant to impose a tax, and in such event the tax amount must be included in the transaction amount and not collected separately; (b) request or use an account number for any purpose other than as payment for goods or services, except as permitted by the Operating Regulations or Laws; (c) disburse funds in the form of travelers checks, if the sole purpose is to allow Cardholder to make a cash purchase of goods or services from you; (d) permit a Cardholder to purchase travelers checks, or other similar item, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from you; (e) accept a Card to collect or refinance an existing debt that had been deemed uncollectible; (f) enter into interchange a transaction that represents collection of a dishonored check; (g) require a Cardholder to waive his/her rights to dispute a transaction as a condition of sale; (h) accept Cardholder payments for previous Card charges incurred at the Merchant location; (i) submit for payment into interchange any transaction that may in the sole discretion of a Card Network damage the goodwill of such Card Network or reflect negatively on a Card Network's brands; (j) enter into interchange any transaction receipt for a transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of Cardholder approval; (k) accept a Card for the purchase of Scrip; or (l) accept a Visa Electron Card or a Visa Travel Money Card for manual cash disbursement. Merchant may establish a minimum sale amount as a condition for honoring Cards, provided that the minimum transaction amount does not differentiate between Card networks and/or issuers and the minimum transaction amount does not exceed $10.00 (or any higher amount established by the Operating Regulations or applicable Laws). Unless otherwise set forth below or otherwise allowed by applicable Laws or the Operating Regulations, Merchant may not establish a maximum sale amount as a condition for honoring Cards.

(ii) Limited Acceptance. You have the option to elect to be a Limited Acceptance Provider and only accept only certain Visa, Mastercard or other Card Network Card

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types ("Limited Acceptance"). PROCESSOR, Bank and their designated vendors have no obligations with regard to Limited Acceptance except those expressly stated in the Operating Regulations or the Laws. PROCESSOR, Bank and their designated vendors have no obligation to police card types accepted by you at the point of sale. If you elect to be a Limited Acceptance Provider, you are solely responsible for implementing your Limited Acceptance and for paying all costs related thereto. Should you submit a transaction involving a Card type you have indicated you do not wish to accept, PROCESSOR, Bank and/or their designated vendors may process that transaction and you will be responsible for all fees, charges and assessments related to that transaction. A general description of Visa/Mastercard card types are: (a) Consumer Credit: a consumer credit card issued by a U.S. Issuer or a commercial credit card issued by a non-U.S. Issuer, this category does not include Visa or Mastercard branded signature-based debit cards; (b) Consumer Debit: a Visa or Mastercard branded signature-based debit card (including certain stored-value and prepaid cards); and (c) Business Credit: a Visa or Mastercard branded credit card issued by a U.S. Issuer that bears the descriptive term "Business Card," "Corporate Card," "Purchasing Card," "Fleet Card," or similar descriptive term indicated pursuant to the Rules. If indicated on the Merchant Application, Provider agrees to elect to be a Limited Acceptance Provider and will accept only the Visa and/or Mastercard types indicated on the Merchant Application.

B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if:

(i) the Card has expired; (ii) the signature on the Sales Draft (as defined in Section 6) does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic stripe (as printed on electronic form); (iv) the account number embossed on the Card is listed on a current Electronic Warning Bulletin file; or (v) the security features on the Card for the applicable Card Network are either not present or incorrect. Unless permitted under the Operating Regulations, Laws and Rules (defined below), you will not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number, as a condition for honoring a Card. You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed. You may not request the Card Verification Value 2 (CVV2) data on any paper order form.

C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) if the printed four digits above the embossed account number, on Visa Cards only, do not match the first four digits of the embossed account number; (ii) if you are advised by Bank (or its designee), the issuer of the Card, or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent, or stolen, or use of the Card has not been authorized by the Cardholder; (iv) the embossed account number, indented printed account number, and/or encoded account number, on Mastercard Cards only, do not agree; or (v) the Card does not have a Visa or Mastercard hologram on the lower right corner of the Card face. All Card recovery, including Discover Network Card recovery, must occur reasonably, lawfully and in accordance with the Operating Regulations, Laws and Rules, including without limitation section 14.2.3 of the Discover Network operating regulations.

D. Surcharges. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, unless permitted by the Operating Regulations or Laws. This paragraph does not prohibit you from offering a discount to induce a person to pay by cash, check, or similar means rather than by using a Card.

E. Return Policy. You will properly disclose to the Cardholder in writing, at the time of the Card transaction and in accordance with the Operating Regulations, Laws and Rules, your return policy and any limitation you have on accepting returned merchandise.

F. No Claim Against Cardholder. You will not have any claim against, or right to receive payment from, a Cardholder unless Bank or PROCESSOR refuses to accept the Sales Draft or revokes its prior acceptance of the Sales Draft (after receipt of a chargeback or otherwise). You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive such payments, you promptly will remit them to PROCESSOR. You may not reimburse a Cardholder in cash or check for any Card transaction.

G. Disputes with Cardholders. All disputes between you and any Cardholder, relating to any Card transaction, will be settled between you and the Cardholder. Neither Bank nor PROCESSOR bears any responsibility for such transactions.

H. Employee Actions. You are responsible for your employees' actions while in your employ.

I. Responsibility for Transactions. You will ensure that the Cardholder is easily able to understand that you are responsible for the transaction, including delivery of the goods or provision of the services that are the subject of the transaction, and for customer service and dispute resolution, all in accordance with the terms applicable to the transaction. You will not deposit a transaction until the transaction is completed or the merchandise or services are shipped or provided, unless the Cardholder has paid a partial or full prepayment. You will only operate and accept transactions in the United States.

J. Cash Advances. Merchant shall not make cash advances on credit cards to Cardholders without the prior written consent of PROCESSOR and Bank.

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4. Authorization.

A. Required on All Transactions. You will obtain a prior authorization via electronic terminal or similar device before completing any transaction. You will follow any instructions received during the authorization process. Upon receipt of authorization, you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder. If you receive a negative response to your request for authorization, you may not complete the sale and you may be requested to recover the Card. Transactions will be deemed invalid on Cards that are expired, whether or not an Authorization has been obtained. For electronic commerce transactions, you must attempt to obtain the Card expiration date and forward it as part of the authorization request.

B. Effect. Authorizations are not a guarantee of acceptance or payment of the Card transaction and will not waive any provision of this Agreement or validate a fraudulent transaction or a transaction involving the use of an expired Card. Notwithstanding any authorization you may receive, you remain fully liable for all chargebacks.

C. Unreadable Magnetic Stripes and/or Manually Keyed Transactions. If you authorize and present Card transactions electronically and your terminal is unable to read the magnetic stripe on the Card, you will obtain an imprint of the Card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Bank and PROCESSOR for processing.

5. Presentment of Sales Drafts.

A. Forms. You will use a sales draft or other form approved by the Bank and PROCESSOR ("Sales Draft") to document each Card transaction. Each Sales Draft will be legibly imprinted with the: (i) Merchant's name and account number; (ii) no more than the last four digits of the Card number and shall not include the expiration date; (iii) date of the transaction, (iv) brief description of the goods or services involved; (v) transaction authorization number; (vi) total amount of the sale (including applicable taxes) or credit transaction; and (vii) if applicable, adjacent to the signature line, a credit policy notation that all sales are final and that special orders will take a period of time, if applicable. You agree to comply with all Fair and Accurate Credit Transactions Act ("FACTA") requirements**.**

B. Signatures. If required by the Rules or Operating Regulations, Sales Drafts must be signed by the Cardholder.

C. Delivery and Retention of Sales Drafts. You will deliver a complete and legible copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum in a secure and limited access area for the periods set forth in the Operating Regulations for the applicable Card Network.

E. Electronic Transmission. If you utilize electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer, electronic point of sale terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed and you will Batch Out your system or terminal every day. "Batch Out" is the process in which all transactions are totaled and settled on each system or terminal and transmitted to PROCESSOR or its designated agent. In all cases you must present the record within 3 business days of the transaction (2 business days for Electron Cards). You will be charged a batch fee for Batch Outs and for batch inquiries. If you provide your own electronic terminal or similar device, or you lease a terminal from a third party, such terminals must meet PROCESSOR's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe-reading terminal will be transmitted by you to PROCESSOR, Bank or its agent in the form PROCESSOR specifies or as required under the Laws or Operating Regulations. If Bank or PROCESSOR requests a copy of a Sales Draft, credit voucher, or other transaction evidence, you will provide it within 24 hours following the request.

6. Merchant Responsibilities.

A. Deposit of Sales Drafts. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. §365, as amended from time to time. Subject to this Section, Bank will deposit to the Merchant Account (defined in Section 8A below) all sales drafts (whether evidenced in writing or by electronic means, hereinafter "Sales Drafts") that comply with the terms of this Agreement and the Operating Regulations and will provide you with provisional credit for such Sales Drafts (less any credits, adjustments and chargebacks). You acknowledge that your obligation to PROCESSOR and Bank for all amounts owed under this Agreement arise out of the same transaction as Bank's obligation to deposit funds to the Merchant Account. Notwithstanding the previous sentence, under no circumstances will Bank or PROCESSOR be responsible for processing credits or adjustments related to original sales transactions not processed by Bank or PROCESSOR. All Sales Drafts and deposits are subject to audit and final checking by Bank and PROCESSOR, and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments in accordance with the Operating Regulations. Bank and PROCESSOR may elect to grant conditional credit for individual or groups of any Sales Drafts. Final credit for those conditional Sales Drafts will be granted within Bank or PROCESSOR's sole discretion.

B. Chargebacks. You are fully liable to PROCESSOR and Bank for all transactions returned to PROCESSOR and Bank for whatever reason, otherwise known as chargebacks,

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or for PIN Debit Cards known as reversals ("chargebacks" and "reversals" shall be collectively referred to herein as "chargebacks"). You will pay PROCESSOR and Bank on demand, the value of all chargebacks. You agree to accept for chargeback, and will be liable to PROCESSOR and Bank in the amount of, any sale for which the Cardholder disputes the validity of the sale. You authorize PROCESSOR and Bank to offset from incoming transactions and to debit the Merchant Account, the Reserve Account (as defined in Section 9B below), or any other account held at Bank or at another financial institution the amount of all chargebacks. You will fully cooperate with PROCESSOR and Bank in complying with the Operating Regulations regarding chargebacks. Guarantors are personally liable for all chargebacks. You are obligated to monitor any and all chargeback related notices and reports provided by PROCESSOR. Your failure to respond to a chargeback within the applicable deadline may result in a forfeiture of any right you may have had to contest the chargeback. You are subject to chargebacks on sales for at least 180 days following the sale transaction.

C. Excessive Activity. Your presentation to PROCESSOR of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period and for any one of your terminal identification numbers or merchant identification numbers or all of your merchant identification numbers in the aggregate, chargebacks and/or retrieval requests in excess of 1% of your average monthly Card transactions or returns in excess of 3% of the average monthly dollar amount of Sales Drafts. You authorize, upon the occurrence of Excessive Activity, PROCESSOR and Bank to take additional actions as either of them may deem necessary including, but not limited to, suspension of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement.

D. Credits. i. Credit Memoranda. You will issue a credit memorandum, instead of making a cash advance, a disbursement or a refund on any Card transaction. PROCESSOR and/or Bank will debit the Merchant Account for the total face amount of each credit memorandum submitted to PROCESSOR. You will not submit a credit relating to any Sales Draft not originally submitted to PROCESSOR and Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will, within the time period specified by applicable law, provide PROCESSOR with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services that was the subject of a Card transaction. **ii. Revocation of Credit.** PROCESSOR or Bank may refuse to accept any Sales Draft or revoke the prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with all terms and conditions of this Agreement, the Laws, and the Operating Regulations;

(b) the Bank or PROCESSOR receives notification that the Cardholder disputes his or her liability to Merchant for any reason including, but not limited to, those chargeback rights enumerated in the Operating Regulations; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Bank and PROCESSOR, as appropriate, any amount previously credited to you for a Sales Draft not accepted by PROCESSOR or, where accepted, that is subsequently revoked.

E. Reprocessing. Notwithstanding any authorization or request from the Cardholder or customer, you will not Re-enter or reprocess any Card transaction that has been charged back.

F. Fraud and Factoring. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not deposit Sales Drafts evidencing sales that were solicited by telemarketers. Perpetrators of fraudulent transactions will be referred to law enforcement officials. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement. You will not deposit any Sales Draft representing the refinancing of an existing obligation of a Cardholder. You agree that PROCESSOR may, within its sole discretion, suspend the disbursement of Sales Draft funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. PROCESSOR and Bank will have no liability for any losses you may attribute to any suspension of funds disbursement.

G. Agreement Information and Tax ID Numbers. You agree, represent and warrant that all information regarding you and your business provided in the Agreement, including without limitation your tax identification number ("TIN"), is true and correct. Furthermore, you represent that the TIN provided in the Agreement is the same TIN you use to file your tax returns. In the event that you change your TIN, you agree to immediately update PROCESSOR and Bank regarding any new TIN you use to file your tax returns. You acknowledge that PROCESSOR and/or Bank may be obligated to provide certain information about you to government entities, including without limitation your entity name, DBAs, TIN, processing volume and principals' social security number. You agree to release PROCESSOR and/or Bank from any claims, liability, damages and losses, including penalties and fines and attorneys' fees, that result from the information you provided in the Agreement (including without limitation your TIN) being incorrect or not complying with your representations in this Section. Furthermore, PROCESSOR shall be entitled to collect a fee from you in the amount of $29.95 each time PROCESSOR determines

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that the current TIN you have provided PROCESSOR is not valid. In addition, Merchant agrees and understands it may be subject to back-up withholding requirements as provided in the Internal Revenue Code of the United States and related regulations.

H. Merchant Financials. Upon receipt of a request from PROCESSOR or Bank, you will provide quarterly and/or annual audited financial statements prepared in accordance with generally accepted accounting principles and such other financial information as PROCESSOR or Bank may reasonably request. Such information shall be provided as soon as possible following the request, but in no event less than thirty (30) days following such request.

I. Review of Statements. You agree to promptly review all statements, receipts and invoices prepared by PROCESSOR and/or Bank and made available to you, including such information provided pursuant to PROCESSOR's on-line reporting tools, for any mistakes or errors. You will notify PROCESSOR in writing of any errors contained in such statements, receipts or invoices within thirty (30) days of such document being made available to you. In the event such notification is not provided within the thirty

(30) day period, then you will be deemed to have accepted such statements, receipts and invoices and waived any claims arising from any inaccuracies in those statements, receipts and invoices.

J. Optional Services. In many instances PROCESSOR may offer and you may elect to use services from third parties that are related to the services provided by PROCESSOR or Bank to you pursuant to this Agreement ("Optional Services"). Even though PROCESSOR may collect the fees related to the Optional Services, you agree that you will use these Optional Services at your own risk and PROCESSOR shall have no liability for the failure of the third parties who provide the Optional Services to provide those services. PROCESSOR and/or Bank shall have no obligation to provide the Optional Services and that the provision of any Optional Services is subject to the availability of the Optional Services from the third party actually providing such Optional Services. The Optional Services may require that you agree to additional terms and conditions or that you enter into an agreement directly with the vendor providing such services. Optional Services shall include, without limitation, check services (including guaranty, conversion and other services) ("Check Services"), Wireless Processing, Mobile Processing, Gateway, and Accounting Integration. If you elect to use any Optional Services, the terms and conditions related to each applicable Optional Service that you have selected will be attached as exhibits to this Agreement and incorporated herein as part of the Agreement. Without limiting any of the foregoing provisions, if you elect to use any form of wireless service in connection with Card Transactions then you agree that PROCESSOR and/or Bank are not responsible, and will not be liable, for (a) verifying wireless service coverage for you, (b) any loss

of coverage in any particular area, (c) for termination of your wireless coverage, or (d) the continued use of your equipment as a wireless terminal if your wireless coverage is terminated or suffers a loss of coverage.

K. Your Agents. In the event that you use a third party to perform any of your obligations under this Agreement or you use a third party to perform services that are related to or interact with the services performed by PROCESSOR, Bank or their agents under this Agreement, then you agree that you will be responsible for the actions of such third party as though you had performed those acts yourself. Furthermore, you agree to cause each such third party to comply with all requirements of the Operation Regulations and Laws, including without limitation all requirements related to due diligence, registration and/or certification and to be responsible for all costs and expenses related thereto. You agree to be responsible for all losses or damages suffered by PROCESSOR or Bank as a result of the actions of any such third party and agree to indemnify PROCESSOR and Bank, pursuant to Section 11B, for the acts of such third party.

L. Disclosure of Merchant Location. You shall prominently and clearly disclose to the Cardholder that you are the merchant, at all points of the interaction, and provide the Cardholder your location (physical address) so that the Cardholder can easily distinguish the you from any other party, such as a supplier of products or services. The Merchant name and location, as disclosed to the Cardholder, must be the same as provided in authorization and clearing Transaction messages.

7. Other Types of Transactions.

A. Mail Order. You may not solicit or accept mail or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") without prior consent from PROCESSOR. Mail/telephone orders completed without prior consent of PROCESSOR will be a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Operating Regulations, Laws and Rules. You may be required to use an address verification service ("AVS") on mail/telephone transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a fraudulent transaction. You will obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or legibly print on the signature line of the Sales Draft the following applicable words or letters: "telephone order" or "TO" or "mail order" or "MO." No Sales Draft shall be submitted for processing prior to the shipping of the product or the provision of the services purchased by the Cardholder

B. Recurring Transactions. For recurring transactions, you must obtain a written request from the Cardholder for

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such goods and services to be charged to the Cardholder's account, the frequency of the recurring charge and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder; (ii) notice from PROCESSOR that authority to accept recurring transactions has been revoked; or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction."

C. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single sales transaction on a single Sales Draft or transaction record unless: (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction; or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Operating Regulations.

D. Partial Completion. i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of PROCESSOR. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed to be a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Operating Regulations. **ii. Acceptance.** If you have obtained prior written consent from PROCESSOR, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Operating Regulations, and the Laws. Cardholders must execute one Sales Draft upon making a deposit with a Card and a second Sales Draft upon paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

E. Future Delivery. You will not present any Sales Draft or other memorandum to PROCESSOR for processing (whether by electronic means or otherwise) that relates to the sale of goods or services for future delivery (including without limitation deposits) without prior written authorization from PROCESSOR. If PROCESSOR has given such consent, you represent and warrant to PROCESSOR that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Sales Drafts or other memoranda taken in connection with future delivery transactions.

F. Internet and ACH Transactions. i. Internet. You must receive consent to process transactions using the internet ("Internet Transactions") from PROCESSOR, and you may process such transactions only if the transactions have been encrypted by a third party vendor acceptable to PROCESSOR. If you submit Internet Transactions without the consent from PROCESSOR, PROCESSOR may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting Internet Transactions, you acknowledge that you have received a copy of the CISP, PCI-DSS, SDP, DISC and other manuals related to the Data Security Regulations. You agree that you are, and will remain, fully compliant with the Data Security Regulations, including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. All Internet transactions must comply with the CISP requirements. You agree that transactions processed via Internet are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to Internet transactions, whether or not: (i) Internet transactions have been encrypted; or (ii) you have obtained consent from PROCESSOR to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure or any other PCI compliant encryption standard. All communication costs related to Internet transactions will be your responsibility. You agree that PROCESSOR will not manage the Internet telecommunications link, and that it is your responsibility to manage that link. Other than a terminal help desk, you also agree that PROCESSOR does not have a seven day per week, 24-hour operation. All Internet transactions will be settled by Bank into a depository institution of the United States in U.S. currency. Use of software or hardware that has connectivity to the Internet or any external network that interacts in any way with the services provided by PROCESSOR or Bank under this Agreement poses an increased risk and Merchant assumes all liability and shall be solely liable for all such losses resulting from the use of such software or hardware. **ii. Requirements.** For goods to be shipped on Electronic Commerce ("EC") transactions, you may obtain authorization up to seven (7) calendar days prior to the shipment date. You need not obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your Web site must contain all of the following information: (a) complete description of the goods or services offered; (b) returned merchandise and refund policy; (c) customer service contact, including electronic mail address and/or telephone number; (d) transaction currency (e.g., U.S. or Canadian dollars); (e) if known, export or legal restrictions; (f) consumer data privacy policy; (g) your security method for transmission of payment data; (h) all

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accepted card brand logos in full color (i) the address of your permanent establishment and your country of domicile on the same screen view as the checkout screen used to present the total purchase amount, or within the sequence of Web pages the Cardholder accesses during the checkout process; and

(j) your delivery policy. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow the Operating Regulations, Laws and Rules, including without limitation PCI-DSS requirements, on securing such data. You agree to indemnify and reimburse PROCESSOR and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section. **iii. ACH Transactions**. You may request PROCESSOR to convert your Internet transactions into a format that can be processed by an automated clearing house ("ACH Transactions"). If PROCESSOR agrees to provide that service, PROCESSOR and Bank will forward such transactions to the relevant automated clearing house ("ACH") for processing. You will follow the procedures established by PROCESSOR and the ACH for ACH Transactions, which procedures are incorporated into this Agreement. You authorize PROCESSOR or Bank to initiate ACH debits, credits, and adjustments to the Merchant Account. Confirmation from PROCESSOR of a credit or debit ACH Transaction does not constitute a warranty that you will be paid for the transaction. All relevant terms of this Agreement apply to ACH Transactions.

G. Amex. Unless you have selected the PROCESSOR Amex Optblue Program in the Application, upon your request, PROCESSOR will provide access to authorization and/or data capture services for Amex directly from Amex ("Amex Direct Program"). If you request the Amex Direct Program you must enter into a separate merchant agreement with Amex. Neither PROCESSOR nor Bank is responsible for funding transactions under the Amex Direct Program. Further, PROCESSOR or Bank may notify you that Amex, or other cards ("Additional Cards") may be

accepted by you. If you do not decline this offer in writing, PROCESSOR or Bank will forward certain information, including, but not limited to, your Merchant Account number, to the Additional Card issuer. The terms of this Agreement will apply to Additional Card transactions. PROCESSOR or Bank will notify you in writing of the fees applicable to Additional Card transactions. Your acceptance of Additional Cards and transmission of Additional Card transactions to PROCESSOR or Bank will constitute your agreement to the terms of this Agreement with regard to Additional Cards.

H. Nonbankcard Services. From time to time, PROCESSOR may offer you certain additional products and services which may or may not be related to the processing of Card transactions. You will indicate your desire to PROCESSOR to decline such offers or be deemed to have accepted the offers and be liable to pay PROCESSOR for the services provided.

8. Merchant Account.

A. Establishment and Authority. You will establish and maintain with Bank and PROCESSOR (or with an ACH-receiving depository institution acceptable to Bank) one or more commercial checking account(s) to facilitate payment for Card transactions (collectively, the "Merchant Account"). You will maintain sufficient funds in the Merchant Account to accommodate all transactions contemplated by this Agreement, including, but not limited to, fees, fines, and chargebacks. You irrevocably authorize PROCESSOR to debit the Merchant Account for chargebacks in accordance with the Operating Regulations and for fees and any other penalties or payments under this Agreement. You also authorize vendors or agents of PROCESSOR or Bank to debit the Merchant Account as appropriate. This authority will remain in effect for two years after termination of this Agreement, whether or not you have notified PROCESSOR of a change to the Merchant Account. You must obtain prior written consent from PROCESSOR to change a Merchant Account. If you change the Merchant Account without PROCESSOR's prior written consent, PROCESSOR may immediately terminate the Agreement and may take any other action it deems necessary to protect PROCESSOR and Bank.

B. Deposits. PROCESSOR or Bank has the right to delay, within their discretion, crediting the Merchant Account with funds evidenced by submitted Sales Drafts. You authorize PROCESSOR to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you conditional credit for any entry. PROCESSOR or Bank will make deposits to the Merchant Account pursuant to this Agreement and the ACH Authorization (defined below). You authorize and appoint PROCESSOR and Bank to act as your agent to collect Card transaction amounts from the Card issuing bank. As the collecting agent, PROCESSOR or Bank, in its sole discretion, may grant you provisional credit for transaction amounts, in the process of collection, subject to receipt of final payment by PROCESSOR or Bank, and subject to all chargebacks, returns, fees, and fines.

C. Asserted Errors. You must promptly examine all statements relating to the Merchant Account and immediately notify PROCESSOR, in writing, of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why you believe an error exists and, if known, the cause of it. That written notice must be received by PROCESSOR or Bank within 30 days after you received the periodic statement containing the asserted error or any claims related to such error will be barred. You may not make any claim against PROCESSOR or Bank for any loss or expense relating to any asserted error for 60 days immediately following PROCESSOR or Bank receipt of your written notice. During that 60-day period,

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PROCESSOR or Bank will be entitled to investigate the asserted error.

D. ACH Authorization. You authorize PROCESSOR or Bank to initiate debit/credit entries to the Merchant Account, the Reserve Account, or any other account maintained by you at any institution that is a receiving member of ACH, all in accordance with this Agreement. This authorization will remain in effect after termination of this Agreement and until all of your obligations to PROCESSOR or Bank has been paid in full. In the event you change the Merchant Account, you will notify PROCESSOR, and this authorization will apply to the new account.

9. Security Interests, Reserve Account, Recoupment, and Set-Off.

A. Security Interests. i. Security Agreement. This Agreement will constitute a security agreement under the Uniform Commercial Code. You grant to Bank and PROCESSOR a security interest in and lien upon: (i) all funds at any time in the Merchant Account, regardless of the source of such funds; (ii) all funds at any time in the

Reserve Account (as defined below), regardless of the source of such funds; (iii) present and future Sales Drafts; and (iv) any amount which may be due to you under this Agreement, including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other security to PROCESSOR and Bank upon request. Upon request of PROCESSOR or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between Merchant, PROCESSOR, and Bank including, but not limited to, your obligation to pay any amount due to PROCESSOR or Bank. This security interest may be exercised by PROCESSOR or Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets. Further, with respect to such security interest and liens, PROCESSOR and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and equity. You will obtain from PROCESSOR or Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment, and PROCESSOR or Bank are not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by PROCESSOR or Bank.

B. Reserve Account. i. Establishment. If requested by PROCESSOR or Bank you will deposit into a non-interest bearing deposit account designated by PROCESSOR or Bank ("Reserve Account") sums sufficient to satisfy your current and future obligations to PROCESSOR or Bank. PROCESSOR or Bank may establish a Reserve Account by depositing incoming items into a Reserve Account if it determines in good faith that a reserve is necessary to protect the interests of PROCESSOR or Bank, including but not limited to a determination that transactions are outside the risk parameters indicated by you in this Agreement. You also authorize PROCESSOR or Bank to debit the Merchant Account to establish or maintain funds in the Reserve Account and to deposit into the Reserve Account funds, for the purpose of establishing or maintaining the Reserve Account, that PROCESSOR or Bank would otherwise be obligated to pay you if PROCESSOR or Bank determines such action is reasonably necessary to protect one or both of their interests. **ii. Authorizations.** PROCESSOR or Bank may in its sole discretion, without notice to you, apply any amounts in the Reserve Account to satisfy any amounts you owe under this Agreement or under any other agreement between you and PROCESSOR or Bank. **iii. Funds.** Funds in the Reserve Account will remain in the Reserve Account, and any other funds being held by PROCESSOR pursuant to this Agreement will be held, until at least 270 days following termination of this Agreement, provided, however, that you will remain liable to PROCESSOR or Bank for all liabilities occurring beyond such 270-day period. PROCESSOR or Bank will have sole control of the Reserve Account. PROCESSOR may be entitled to collect from Merchant, as either a debit to your Merchant Account or charge against funds held in your Reserve Account, a fee necessary to cover the cost related to administration of your Reserve Account.

C. Recoupment and Set-Off. PROCESSOR or Bank has the right of recoupment and set-off. This means that PROCESSOR or Bank may set off against: (i) any amounts PROCESSOR or Bank would otherwise be obligated to deposit into the Merchant Account, and (ii) any other amounts PROCESSOR or Bank may owe you under this Agreement or any other agreement, any amounts that are due and owing from you to PROCESSOR or Bank. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code §362 to PROCESSOR, you must create or maintain the Reserve Account as required by PROCESSOR, and PROCESSOR will have the right to offset against the Reserve Account for any and all obligations which you may owe to PROCESSOR and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. Remedies Cumulative. The rights and remedies conferred upon PROCESSOR or Bank in this Agreement are not intended to be exclusive of each other. Rather, each and every right of PROCESSOR or Bank under this Agreement, at law or equity, will be cumulative and concurrent and in addition to every other right.

10. Rates & Fees and Other Services.

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A. Rates & Fees. You will pay PROCESSOR fees for services, products, equipment or forms in accordance with the rates & fees as set forth and populated in this Agreement, including all schedules and exhibits thereto ("Rates & Fees"). Such Rates & Fees will be calculated and debited from the Merchant Account once each business day or each month, as determined by PROCESSOR, for the previous business days' or monthly activity, or will be netted out from the funds due you under this Agreement. PROCESSOR may adjust the Rates & Fees as set forth in the Agreement. You agree that all Rates & Fees are considered accurate and final unless you dispute them in accordance with the provisions of Section 8.C. Furthermore, Merchant agrees that every credit voucher issued will be subject to a Transaction fee and Processor Assessment fee, as part of Rates & Fees, and there will be no refund of any Rate & Fees or fees or charges associated with the original transaction. In the event that you select InterChange Plus Pricing, you agree to pay to PROCESSOR, in return for the services provided hereunder, (a) the Processor Assessment, plus (b) the Transaction Fee, plus (c) InterChange, plus (d) the Card Networks fees or charges ("Card Network Fees") plus (e) all other Rates & Fees, other than those set forth in subparagraphs (a) – (d) above. The Card Network Fees shall be summarized or listed on your monthly statement and shall include, without limitation (i) assessments, rates, fees, expenses and other charges from the Card Networks, (ii) front-end authorization/network vendor expenses for Amex OptBlue charged to PROCESSOR, (iii) Visa FANF monthly fee equal to the greater of $4.90 per month or the actual fee calculated in accordance with the Visa guidelines. In certain instances PROCESSOR may bundle or combine some or all of the Card Network Fees as a single line item on the statement, which may be designated on your monthly statement, for example, as "Card Access Fees." For purposes of InterChange Plus Pricing, the term "InterChange" shall mean, with regard to each transaction, shall mean the interchange rates, fees, charges or other amounts charged by the applicable Card Networks itself or on behalf of a Card issuer, on Transaction volume, on a per-item basis or other Card Networks or Card issuer charge methodology. In the event that you select tiered pricing ("Tiered Pricing") you agree to pay to PROCESSOR, in return for the services provided hereunder, (w) the Processor Assessment, plus (x) the per Transaction Fee, plus (y) Card Networks Fees, plus (z) all other Rates & Fees, other than those set forth in subparagraphs (w) – (y) above. The Processor Assessment together with the Transaction Fee shall be referred to as the "Processor Fees." In the event that the Processor Fees due from you to PROCESSOR for any given month are less than the monthly minimum set forth in the Rates & Fees, then you will pay to PROCESSOR, in addition to the other amounts due from you under this Agreement for that month, the positive difference between the monthly minimum and the Processor Fees actually due for that month.

B. Other Amounts Owed. You will immediately pay PROCESSOR or Bank any losses incurred by PROCESSOR or Bank attributable to this Agreement, including, but not limited to chargebacks, fines imposed by any Card Network and all non-sufficient fund fees, and ACH debits that overdraw the Merchant Account, the Reserve Account, or any other account you have at Bank or at any other financial institution for any amount you owe PROCESSOR or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and PROCESSOR or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint, or several. In the event such ACH does not fully reimburse PROCESSOR or Bank for the amount owed, you will immediately pay PROCESSOR or Bank such amount.

C. Rate or Fee Amendments. PROCESSOR or Bank, at its discretion, may amend, add to or modify, the Rates & Fees from time to time and upon 30 days' notice, which notice shall be delivered via mail to the billing address on file for you with PROCESSOR or via email transmission. Such notice may be sent separately or may be included as part of your monthly statement. Your continued submission of transactions after the effective date of the amendment of the Rates & Fees will be deemed your consent to the amended Rates & Fees.

D. Taxes. You are also obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement.

E. Other Services. PROCESSOR, other service providers as designated or identified, or Bank will provide those products and services designated as Rates & Fees.

F. Merchant Advantage Club (optional merchant club fee). In the event that you have elected to be enrolled in Merchant Advantage Club by populating the Merchant Advantage Club monthly fee contained in the Rates & Fees ("Merchant Advantage Club Fee"), you will be enrolled in the Merchant Advantage Club (or such other name as designated by PROCESSOR) merchant club program ("Merchant Advantage Club Program") and you agree to pay the monthly Merchant Advantage Club Fee. You agree and acknowledge that the Merchant Advantage Club Fee and the benefits provided by the Merchant Advantage Club Program are subject to change or cancellation as provided in the terms and conditions of the Merchant Advantage Club Program provided to you in the Welcome Kit for the Merchant Advantage Club Program. You will be billed the Merchant Advantage Club Fee on your regular monthly statement beginning with the first billing cycle following thirty (30) days of processing with PROCESSOR, and each month thereafter. If you choose not to participate in Merchant Advantage Club Program any equipment failure not covered under your warranty will be repaired or replaced at your cost. The Merchant Advantage Club Fee, and any other amounts due from you to PROCESSOR related to your participation in the

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Merchant Advantage Club program, shall be debited against the Merchant Account beginning on the month following approval of this Agreement and shall be subject to Merchant's ACH authorization contained in Section 8E of this Agreement. You will not be charged the Merchant Advantage Club Fee for the first month of this service. Thereafter, you will be billed on a monthly basis. To cancel this service, please reference the Credit Card Acceptance Manual you will receive in your Welcome Kit, which is incorporated by reference in this Agreement. In the event of any inconsistency between Credit Card Acceptance Manual and this Agreement, the terms and conditions of this Agreement shall control. The terms and conditions related to Merchant Advantage Club Program are provided in the Welcome Kit.

G. Chargeback Fee. You agree that PROCESSOR or Bank will assess up to $25.00 for each chargeback, and up to
$33.00 for each chargeback that is debited to the Merchants Account and subsequently returned to PROCESSOR or Bank through ACH for insufficient funds or any other reason. Furthermore, PROCESSOR or Bank may assess Merchant for any fines imposed by Card Network plus a fee for processing such fine as may be required by PROCESSOR or Bank at its sole discretion.

H. Transaction Fee. Transaction fee is a fee charged on each sales and credit draft regardless of the total stated and shall also mean a fee charged for any other transaction which utilizes a POS device for transaction or reception of data or information, including but not limited to debit card transactions address verifications, batch closing, authorizations, and any other communication using the POS terminal.

I. Retrieval Fee. You agree that PROCESSOR or Bank will assess up to $15.00 for each retrieval request.

J. Annual Renewal. You agree that PROCESSOR will charge a nonrefundable annual renewal fee in November of each year, or in such month as otherwise designated in the Rates & Fees, in the amount set forth in the Rates & Fees.

K. UCC Fee. In the event that PROCESSOR receives a notice from a secured creditor of yours requesting that funds due to you under this Agreement be paid to the secured creditor or held pending further instruction from the secured creditor, you agree to pay PROCESSOR a fee in the amount of Five Hundred and Ninety-Nine Dollars ($599.00) to cover the time, costs and expenses incurred by PROCESSOR in handling such notice. Such fee shall be in addition to any other fees due to PROCESSOR under this Agreement and in addition to any amounts that are payable to such secured creditor

L. Enhanced Interchange Service (EIS). If Merchant is 1.) boarded on the TSYS Authorization Platform, or such other Authorization Platform as PROCESSOR may designate that this service is available on from time to time, 2.) is enrolled in InterChange Plus Pricing, and 3.) Merchant elects to utilize and enrolls in the Enhanced Interchange Service ("EIS") as part of Rates & Fees, PROCESSOR will augment applicable commercial, business or other similar card transactions with the tax amount percentage that is either input from the Merchant in Rates & Fees, or, if no tax rate is entered by Merchant, Merchant hereby authorizes PROCESSOR to input the current tax rate based on the Business Information dba zip code included in this Agreement and PROCESSOR will obtain the Merchant's tax rate from a commercially available tax lookup table. Except however, PROCESSOR does not guarantee that this tax rate input will always accurately reflect all applicable Merchant tax rates and will use its best efforts to input the accurate tax rate, and update these tax rates on a "good-faith" basis, from time to time, as reasonably determined by PROCESSOR. Merchant hereby agrees to notify PROCESSOR of any tax rate corrections in event tax rate being input is not accurate. PROCESSOR also does not guarantee that all such augmented transactions will qualify for a better or lower interchange rate as other factors can or may also impact interchange qualification for these transactions, including but not limited to all other Level II or other qualification requirements as existing, established or may be established by the Card Networks, and as otherwise may be promulgated in the Operating Regulations, for applicable commercial, business or other similar card transactions. In the event EIS is used for any transaction (each such transaction and all such transactions in the aggregate hereafter "EIS Transactions"), PROCESSOR will provide the Merchant a credit, labelled on its monthly statement as "Enhanced Interchange Service-credit" equal to a.) the total savings equal to the "good-faith" calculated difference between the Interchange amount that the EIS Transactions would have qualified at if not for EIS and the Interchange amount that the EIS Transactions qualified for as a result of EIS, times b.) Interchange Savings Credit % to Merchant, as populated in the Rates & Fees.

11. Application, Indemnification, Limitation of Liability.

A. Application. You represent and warrant to PROCESSOR and Bank that all information in the Application, which is incorporated into this Agreement by reference, is correct and complete. You must notify PROCESSOR in writing of any changes of information in the Application, including but not limited to: any additional location or new business, the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship, partnership), type of goods and services provided and how sales are completed (i.e., by telephone, by mail, in person at your place of business). The notice must be received by PROCESSOR or Bank within five (5) business days of the change. You will provide updated information to PROCESSOR or Bank within a reasonable time upon request. You are liable to PROCESSOR or Bank for all losses

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and expenses incurred by PROCESSOR or Bank arising out of your failure to report changes. PROCESSOR or Bank retains the right to review your processing activity to confirm that you are processing transactions as stated in the Application, and to re-price or terminate its services based on changes to the facts stated in the Application.

B. Indemnification. You agree to indemnify and hold harmless PROCESSOR, the Bank and the Card Networks from and against any and all claims, damages, liabilities, fines, penalties and expenses, including without limitation attorneys' fees and litigation costs, arising from or related to (a) any act or omission by you or your employees, agents, or representatives including but not limited to, any intentional, negligent, fraudulent or deceptive act; (b) any breach by you of the terms of this Agreement; (c) any fine or penalty imposed upon PROCESSOR or Bank by any third party related to any act or omission by you in connection with any Card transaction; (d) any violation by you of any applicable Laws, Operating Regulations or Rules; and (e) any use of Optional Services by you.

C. Limitation of Liability. The aggregate liability of PROCESSOR and Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, will not exceed in the aggregate the difference between (i) the amount of fees PROCESSOR received from you during the month in which the transaction out of which the liability arose and (ii) assessments, chargebacks, and offsets against such fees which arose during that month. If more than one month is involved, the aggregate amount of PROCESSOR and Bank's liability will not exceed the lowest amount determined in accordance with the previous sentence for any one month involved. In no event will PROCESSOR, Bank, or their agents, officers, directors, or employees be liable for loss of profits, indirect, special, or consequential damages. No party will be liable to the other for any failure or delay of its performance of the Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.

D. Disclaimer of Warranties. PROCESSOR AND BANK WILL PERFORM ALL SERVICES IN ACCORDANCE WITH THIS AGREEMENT. PROCESSOR AND BANK MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SERVICES, AND NOTHING CONTAINED IN THE AGREEMENT WILL CONSTITUTE SUCH WARRANTY. PROCESSOR AND BANK DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. Representation, Warranties and Covenants. You represent and warrant to PROCESSOR and Bank, at the time of execution and during the term of this Agreement, the following:

A. Information. All information contained on the Application or any other document submitted to PROCESSOR or Bank is true and complete and properly reflects the business, financial condition, and the principal partners, owners or officers of Merchant. You are not engaged or affiliated with any business, products or methods of selling other than those set forth on the Application.

B. Corporate Power. You and the person signing this Agreement have the power to execute and perform this Agreement. This Agreement will not violate any law or conflict with any other agreement to which you are subject.

C. No Litigation. There is no action, suit, or proceeding pending, or to your knowledge threatened, which, if decided adversely, would impair your ability to carry on your business as it is now conducted or which would adversely affect your financial condition or operations.

D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you and does not involve Cardholder obtaining cash from you unless allowed by the Operating Regulations and agreed to in writing by PROCESSOR.

E. Rule Compliance. You will comply with the Operating Regulations, Laws and Rules.

F. Business. You will not engage in or be affiliated with any business, products or methods of selling other than those set forth in the Application, without the prior written consent of PROCESSOR.

13. Audit, Financial Information and Personal Guarantee

A. Audit. You authorize PROCESSOR, Bank and Card Networks to audit your records to confirm compliance with all of your obligations under the Agreement. You will obtain and submit a copy of an audit of your business when requested by PROCESSOR, Bank or Card Networks.

B. Financial Information. You and the personal guarantors authorize PROCESSOR and Bank to make any credit inquiries regarding you or the guarantors that PROCESSOR or Bank consider necessary to review the acceptance and continuation of this Agreement. You and guarantors also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to PROCESSOR and/or Bank.

14. Third Parties.

A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for assuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. PROCESSOR and Bank have no responsibility for any transaction until that point in time PROCESSOR and Bank receive data about the transaction.

B. Use of Terminals Provided by Others. You will notify PROCESSOR immediately if you decide to use electronic authorization or data capture terminals provided by any entity other than PROCESSOR or its authorized designee

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(third party terminals) to process transactions, including without limitation leasing a terminal from a third party. If you elect to use third party terminals, you agree (i) the third party providing the terminals will be your agent in the delivery of card transactions to PROCESSOR and Bank; and (ii) to assume full responsibility and liability of any failure of that third party to comply with the Operating Regulations, Laws or this Agreement. PROCESSOR and Bank will not be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction of a third party terminal.

15. Terms and Termination.

A. Term. The Agreement will become effective on the date PROCESSOR and Bank approve and assign Merchant Identification Number ("Effective Date"). The Agreement will remain in effect for a period of 48 months ("Initial Term") and will renew for successive 24 month terms ("Renewal Term"), or such shorter period as provided by applicable law, unless terminated as set forth below. You shall maintain a copy of his Agreement on file at your place of business.

B. Termination.

i Without Cause. The Agreement may be terminated by either party to be effective at the end of the Initial Term or Renewal Term by giving written notice of the intention not to renew at least 90 days before the end of the current term. This Agreement may be terminated immediately upon the request of any of the Card Networks' request. Further, this Agreement may be terminated at any time with 30 days' prior notice by PROCESSOR or Bank.

ii. With Cause. The appropriate party or the any of the Card Networks may terminate this Agreement immediately upon the occurrence of an Event of Default, defined below. Notice of a with cause termination by PROCESSOR, Bank or the Card Networks may be given orally or in writing, at the discretion of PROCESSOR and Bank. Any termination by you must be provided in writing to PROCESSOR and Bank. Termination will be effective on the date specified by the notice.

C. Events of Default. The following will constitute an event of default:

i. Adverse Financial Condition. Your financial condition changes adversely.

ii. Garnishment. Your Merchant Account, or any of your property in the possession of PROCESSOR and/or Bank, is garnished, levied upon or attached.

iii. Asset Assignment. You assign your assets generally for the benefit of creditors.

iv. Bankruptcy. A proceeding is commenced by or against you under any bankruptcy, insolvency or similar law seeking an order to adjudicate you bankrupt or insolvent or other relief with respect to you or your debts, or seek appointment of a receiver or similar official for you or any substantial part of your assets.

v. Breach. A party fails to perform a material obligation of this Agreement, and such failure continues for a period of 30 days after the breaching party receives notice of the breach.

vi. False Representation. Any representation and warranty is or becomes false or misleading in any material respect as of the date made or becomes false or misleading at any time during the term of this Agreement.

vii. Fraud. PROCESSOR and Banks' reasonable determination that fraud is occurring.

vii. Prohibited Activity. You shall not: (a) engage in fraudulent activity, (b) present transaction receipts that do not result from an act between you and a Cardholder (laundering), (c) enter into a this Agreement with a new name with the intent to circumvent the Rules, (d) engage in activity that causes PROCESSOR or Bank to violate the Rules, (e) engage in activity that results in the Card Networks prohibiting you from participating in the Card Network program, (f) exceed chargeback thresholds as provided by the Rules, (g) enter illegal or brand-damaging transaction activity into the payment system, (h) engage in any activity that may result in undue economic hardship or damage to the goodwill of PROCESSOR, Bank, and/or any Card Network.

D. Action Upon an Event of Default. Upon the occurrence of an Event of Default, PROCESSOR and Bank may take the following action: i. suspend processing privileges and terminate this Agreement; ii. create a Reserve Account; and/or iii. any other reasonable action deemed necessary by PROCESSOR and/or Bank to protect their interests.

E. Action Upon Termination.

Terminated Merchant File. You acknowledge that PROCESSOR is required to report your business name and the name of Merchant's principals to Visa, Mastercard and Discover Network when Merchant is terminated due to certain reasons listed in the Operating Regulations. You waive and hold harmless PROCESSOR and Bank for all claims and liabilities that may occur as a result of PROCESSOR and/or Bank complying with its reporting obligations under the Operating Regulations or the Laws.

i. Merchant Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Merchant Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, which shall be no less than 270 days, unless otherwise agreed by PROCESSOR and Bank. You authorize PROCESSOR to hold all funds due to you at the time of termination for at least 270 days and to apply those funds to satisfy your obligations under this Agreement. You authorize PROCESSOR and Bank to charge the Merchant Account, or any other account maintained under this Agreement, for all such amounts. If the amounts available in the Merchant Account and Reserve Account are not adequate to satisfy your

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obligations to PROCESSOR or Bank, you will pay PROCESSOR and Bank the amount you owe upon demand, together with all costs and expenses incurred to collect the amount, including reasonable attorneys' fees.

ii. Equipment. Within 14 business days of the date of termination, you must return, at your expense all equipment owned by PROCESSOR, including equipment loaned to you by PROCESSOR and immediately pay PROCESSOR any amounts you owe PROCESSOR for equipment costs and in the event that you do not return such equipment in accordance with this section, you shall be obligated to pay PROCESSOR, in addition to the Early Termination fee set forth below, up to $525 for each piece of equipment that is not returned and PROCESSOR is authorized to debit your Merchant Account for any such amounts due or to invoice you for such amounts, in which case payments shall be due 10 days after the date of the invoice .

iii. Early Termination. If you terminate this Agreement before the end of the Initial Term, you will immediately pay PROCESSOR and Bank as liquidated damages, an early termination fee equal to $595 or the maximum amount allowed by applicable law. If you terminate this Agreement during any succeeding Renewal Terms you will not be charged a termination fee. You agree that the termination fee is not a penalty, but rather is reasonable in the light of the financial harm caused by your early termination.

16. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Visa, Mastercard and Discover Network marks will fully comply with the Operating Regulations. Your use of Visa, Mastercard, Discover Network or any other Card Network's promotional material will not indicate directly or indirectly, that Visa, Mastercard, Discover Network or any other Card Network endorses any goods or services other than their own and you may not refer to Visa, Mastercard, Discover Network or any other Card Network indicating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must, if required by the applicable Card Network, include either appropriate Card Network marks to indicate acceptance of Debit and Other Cards or Card Network approved signage to indicate acceptance of the limited acceptance category you have selected. You will comply with all requirements regarding marks, advertising and signage set forth in the applicable Operating Regulations for each Card Network. Your use of Card Network Marks will terminate effective with the termination of this Agreement or upon notification by the Card Network to discontinue such use or display. Your use or display of any Mark does not give you any ownership or interest in the Mark.

B. Confidentiality.

i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, or as required by the Operating Regulation or Laws. You must keep all material systems and media containing account, Cardholder, or transaction information (physical or electronic, including, but not limited to account numbers, card imprints, Sales Drafts, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy in a manner that will render the data unreadable all such media that you no longer deem necessary or appropriate to store (except for Sales Drafts maintained in accordance with this Agreement, the Operating Regulations, Laws and Rules). Further, you must take all steps reasonably necessary to ensure Cardholder Data is not disclosed or otherwise misused.

ii. Prohibition. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of PROCESSOR and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, unless otherwise provided by laws, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential BIN information to any third party without prior written permission from PROCESSOR, Bank, and Visa.

iii. Transfer. In the event of a failure of your business, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder Data or other Card transaction information to third parties. You must either return this information to PROCESSOR or provide acceptable proof of destruction of this information to PROCESSOR.

C. Return to PROCESSOR. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you by PROCESSOR and/or Bank and not purchased by you or consumed in use will remain the property of PROCESSOR and will be immediately returned to PROCESSOR upon termination of this Agreement. You will be fully liable for any and all loss, cost, and expense suffered or incurred by PROCESSOR and Bank arising out of failure to return or destroy such materials following termination.

D. Passwords. If you receive a password from PROCESSOR to access an PROCESSOR database, you will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password to gain access to the PROCESSOR database;

(iii) be liable for all action taken by any user of the password; and (iv) promptly notify PROCESSOR if you

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believe the confidentiality of the database or your information was compromised by using the password. You will also keep your merchant identification number confidential and maintain it in a secure location and you will not use it for any other purpose other than as authorized by PROCESSOR, Bank or the applicable Card Network.

17. PIN Based Debit

A. Honoring PIN-Debit Cards. You shall not require Cardholders to provide personal information (such as telephone number or address) as a condition for honoring a PIN-Debit Card, unless required by the Rules. You may not require or request the Cardholder's signature or any other means of verifying the Cardholder's identity. Merchant shall place the PIN entry device in an area accessible by all Cardholders and that will reasonably prevent others, including your employees, from observing the PIN.

B. PIN-Debit Card Sales Drafts.

i. Procedures. You shall deliver to the Cardholder at the time of a sale a true and completed copy of the Sales Draft evidencing a sale involving use of a PIN-Debit Card ("PIN-Debit Sales Draft"). The PIN-Debit Sales Draft must comply with the Operating Regulations and Laws. The following information must be included on the PIN-Debit Dales Draft: (i) the PIN- Debit Card account number; (ii) your DBA name; (iii) your city and state; (iv) the amount of sale; and (v) the sale date. A PIN-Debit Sales Draft shall be made available to the Cardholder at each terminal. You may not require or request the Cardholder to provide or disclose their PIN in any oral or written manner to you or your employees. You shall not impose any fee or charge for a PIN-Debit Card transaction without the prior written consent of PROCESSOR or Bank. If surcharging is approved by PROCESSOR or Bank, it must be a separate line item on the PIN-Debit Sales Draft and must be in compliance with all applicable Operating Regulations and Laws.

ii. Reversal. A sale may be reversed or voided electronically, but only if such reversal/void is entered prior to midnight of the calendar day on which the sale was initiated. To effect reversal or void, Cardholder must re-enter the PIN, the magnetic stripe reader must read the card, and you must transmit the trace number and the exact dollar amount of the sale to be reversed or voided. Any reversal or void by you must be initiated with you.

iii. Returns. All returns shall be processed in accordance with your normal procedures except that you or Cardholder shall not attempt to reverse a previously approved POS transaction unless otherwise permitted in accordance with the applicable Card Network's Operating Regulations. Any sale known by you to be erroneous should be canceled and re-billed in the Cardholder's presence.

iv. Balance Inquiry. Balance inquiries may be performed only by the Cardholder at a Cardholder-operated terminal and shall at all times require the Cardholder to enter the PIN and use the magnetic stripe reader.

C. Distribution and Storage of Information. You shall store all such PIN-Debit Sales Drafts in accordance with applicable Operating Regulations and Laws. You shall destroy or make unreadable all material containing Cardholder account numbers. There are no voice authorizations for PIN-Debit Card transactions and no manually imprinted PIN-Debit Sales Drafts. Merchant may not store Cardholder's PIN in any manner.

D. Promotional Materials. You will adequately display promotional materials to inform the public that PIN-Debit Cards will be honored by Merchant.

E. Equipment. You shall take all necessary steps to ensure all POS terminals and PIN entry devices operated in all of its locations:

i. are placed in an area accessible to all Cardholders;

ii. are available for use whenever Merchant is open for business;

iii. will function with minimal error, meeting all applicable technical specifications and security regulations;

iv. will require the Cardholder to enter the Cardholder's PIN at or near the checkout location when initiating a POS transaction; and

v. when PINs are used in conjunction with any store and forward transaction or resubmission you must insure they are encrypted and stored within a tamper-resistant security module and if your authorization system is capable of store and forward, it must comply with the applicable Operating Regulations regarding this function.

PROCESSOR, Bank Card Networks and Card issuers shall not be liable for any losses suffered by you arising from the use of the store and forward function. A PIN must never be logged in any form as a function of software either in the clear or encrypted.

F. Supply of Information. Merchant must submit all information requested by PROCESSOR, Bank or any Card Network including, but not limited to, lists and mailing addresses of terminals. You shall not sell, purchase, provide, or exchange account number information in any form, including, but not limited to, transaction receipts, carbon copies of transaction receipts, mailing lists, or tapes to any third party other than to your agents for the purpose of assisting you in your business, or to the Card Networks, PROCESSOR or Bank or pursuant to a government request.

G. Left PIN-Debit Cards. PIN-Debit Cards that are inadvertently left at your location must be held under dual control during the time they are retained. PIN- Debit Cards inadvertently left at your location may be returned to the Cardholder by you under the following conditions: (A) the Card was inadvertently left by the Cardholder at an on premise location, (B) the Cardholder requests the Card within 1 business day, and (C) the Cardholder provides 2 forms of current identification, at least 1 of which is a photo identification. If the Cardholder has not

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requested the Card within 1 business day, the Card should be destroyed by cutting it in half through the stripe.

18. General Provisions.

A. Entire Agreement. This Agreement, including the completed Application, the Operating Regulations, and any amendment or supplement to this Agreement made in accordance with the procedures set forth in Section 18.J. below, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are terminated and superseded by this Agreement.

B. Governing Law. This Agreement will be governed by the laws of the State of Florida. The parties agree that all performances and transactions under this Agreement will be deemed to have occurred in Florida and that Merchant's entry into and performance of this Agreement will be deemed to be the transaction of business within the State of Florida. Subject to the provision of Section 18E below, all suits by either party shall be instituted exclusively in the Florida courts located in Chicago, Florida or in the United States District Court for the Northern District of Florida and in no other venue or jurisdiction. YOU HEREBY SUBMIT TO THE JURISDICTION AND VENUE OF THE COURTS OF THE STATE OF FLORIDA OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA.

C. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

D. Assignability. This Agreement may be assigned by PROCESSOR, but may not be assigned by Bank or Merchant directly or by operation of law, without the prior written consent of PROCESSOR. If you nevertheless assign this Agreement without the consent of PROCESSOR, the Agreement will be binding on the assignee.

E. Arbitration. All claims or controversies between the parties related to this Agreement, which are not otherwise settled by agreement of parties, shall be submitted to and decided by arbitration held in Chicago, Illinois in accordance with the rules of the American Arbitration Association. ALL CLAIMS OR CONTROVERSIES SUBMITTED TO ARBITRATION SHALL BE BROUGHT ON AN INDIVIDUAL BASIS AND SHALL NOT BE CONSOLIDATED WITH THE CLAIMS OF ANY OTHER PARTY. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS AND CONSOLIDATION WITH OTHER ARBITRATIONS IS NOT PERMITTED AND YOU ARE WAIVING ANY RIGHT TO HAVE ANY DISPUTE WITH PROCESSOR OR BANK DECIDED BY A JURY AND TO PARTICIPATE IN ANY CLASS ACTION AGAINST PROCESSOR OR BANK. The arbitrator will have the authority to award any remedy or relief that a court in Illinois could order or grant, including without limitation specific performance, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process. Costs of the arbitration will be paid by the unsuccessful party to the arbitration. The parties agree that anything communicated, exchanged, said, done, or occurring in the course of arbitration, including any private caucus between the arbitrator and any party before or after any joint arbitration session, will be kept confidential.

F. Notices. Any written notice under this Agreement will be deemed given upon the actual receipt, if to PROCESSOR: such notice will be addressed to: 1700 Higgins Road, Suite 690, Des Plaines, Illinois 60018-5621, and if to

other parties: such notice shall be addressed to the last address shown on the records of the sender.

G. Bankruptcy. You will immediately notify Bank and PROCESSOR of any bankruptcy, receivership, insolvency, or similar action or proceeding initiated by or against the Merchant. You will include Bank and PROCESSOR on the list and matrix of creditors as filed with the bankruptcy court, whether or not a claim may exist at the time of filing, and failure to do so will be cause for immediate termination or any other action available to PROCESSOR under applicable Law. You acknowledge that this Agreement constitutes an executory contract to make a loan or extend other debt financing or financial accommodations to or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

H. Attorneys' Fees. You will be liable for and will indemnify and reimburse Bank and PROCESSOR for all attorneys' fees and other costs and expenses paid or incurred by Bank and PROCESSOR in the enforcement of this Agreement or in collecting any amounts due from Merchant to Bank or PROCESSOR or resulting from any breach by Merchant of this Agreement.

I. Customer Contact. You authorize Bank and PROCESSOR to contact your customers or their card issuing bank if they determine that such contact is necessary to find out information about any Card transaction between you and the customer.

J. Amendments. PROCESSOR may propose amendments or additions to this Agreement. PROCESSOR will inform you of a proposed change in a periodic statement or other written notice. You will be deemed to have agreed to the change if you continue to present transactions to Bank and PROCESSOR after 30 days following the mailing of the notice. Notwithstanding the previous sentence, changes to fees authorized by this Agreement are effective upon notice to you, unless a later effective date is provided. Further, PROCESSOR is entitled to pass through to you any fee increases imposed by Visa, Mastercard, Discover Network or telecommunication vendors without giving you the right to terminate this Agreement.

K. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not

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affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by PROCESSOR or Bank to exercise, or the partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by PROCESSOR.

L. Independent Contractors. PROCESSOR, Bank, and Merchant will be deemed independent contractors and none will be considered agent, joint venture, or partner of the other.

M. Survival. Sections 1, 2, 3.F, 3.G, 3.H, 6.A., 6.B., 6.G, 6. I, 6.J, 6.K, 8, 9, 10, 11, 12, 13, 14, 16, 17 and 18 will survive termination of this Agreement.

N. Bank Contact. Merchant may contact Bank at the following address and telephone number: Fifth Third Bank, 6111 N. River Road, Rosemont IL 60018. Telephone 847-653-2595.

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TERMS AND CONDITIONS FOR AMERICAN EXPRESS OPTBLUE

To the extent Merchant elects at any time to accept American Express Transaction Cards and qualifies for PROCESSOR's Direct Settlement Program for American Express OptBlue (registered trademark), the following terms and conditions shall apply, in addition to the Merchant Agreement, including the general terms and conditions as applicable (the "Agreement"), shall apply to the relationship between PROCESSOR and Merchant covered by this Addendum. In the event of any conflict between the Agreement and this Addendum related to an American Express Transaction Card or transaction related thereto, the terms of this Addendum shall apply.

1. DEFINITIONS. The following capitalized terms shall have the meanings set forth below when used in these Terms and Conditions of PROCESSOR's Direct Settlement Program for American Express. Any terms not defined in this Addendum shall have the meaning given to them in the Agreement):

"American Express Brand" means the American Express name, trademarks, service marks, logos, and other proprietary designs and designations and the imagery owned by American Express or American Express affiliates and the goodwill associated with all of the foregoing and with all the goods and services now and in the future provided, marketed, offered, or promoted by American Express or an American Express affiliate.

"American Express Transaction Card" means (a) any card, account device, or payment device or service bearing an American Express or an American Express affiliate trademark or logo and issued by an Issuer or (b) an account number issued by an Issuer, which can be used to purchase goods or services at merchants on the American Express network.

"Applicable Law" means: (a) any law, statute, regulation, ordinance or subordinate legislation in force from time to time to which a party or its affiliates is subject; (b) the common law as applicable to the parties from time to time; (c) any court order, judgment, or decree that is binding on a party or its affiliates; and (d) any directive, policy, rule or order that is binding on a party or its affiliates and that is made or given by a regulator, or other government or government agency, of, in the case of items (a) through (d) above, any country, or other national, federal, commonwealth, state, provincial or local jurisdiction.

"High CV Merchant" means Merchant has either: (i) greater than $1,000,000 in American Express Transaction Card volume (net of Chargebacks, credits and any other amounts Merchant owes to American Express) in a rolling 12 month period or (ii) greater than $100,000 in American Express Transaction Card volume (net of Chargebacks, credits and any other amounts Merchant owes to American Express) in any 3 consecutive months. For clarification, if Merchant has multiple Locations, the American Express Transaction Card volume from all of Merchant's Locations shall be summed together when determining whether Merchant has exceeded the thresholds above.

"Issuer" means any legally recognized entity or organization (including American Express and American Express affiliates) authorized by American Express or an American Express affiliate to issue an American Express Transaction Card and to engage in the American Express Transaction Card issuing business.

"Location" means any or all of Merchant's locations, outlets, websites, online networks, and all other methods for selling goods and services, including methods that Merchant adopts in the future.

"Other Payment Products" means any charge, credit, debit, stored value or smart cards, account access devices, or other payment cards, services or products other than the American Express Transaction Cards.

2. AMERICAN EXPRESS TRANSACTION CARD ACCEPTANCE. Merchant shall accept the American Express Transaction Card as payment for goods and services (other than those goods and services prohibited under the Agreement, including without limitation, Section 3.A of the Agreement and the paragraph below in this Section 2) sold, or (if applicable) for charitable contributions made, at all of Merchant's Locations, except as expressly permitted by state statute. Merchant is jointly and severally liable for the obligations of all of Merchant's Locations under the Agreement. To accept American Express Transaction Cards, you must clearly and conspicuously disclose all material terms of sale prior to obtaining an Authorization and clearly and conspicuously inform Cardholders at all points of the interactions (e.g., sales conducted in person, over the internet, mobile or via mail or telephone order) what entity is making the sales offer so that the Cardholder can clearly distinguish you from any other party involved in the interaction (e.g. a vender of goods or provider of services you may engage, or another Merchant seeking to conduct business with the Cardholder). The Transaction Data you collect to facilitate the transaction must be, or have been, provided directly to you by the Cardholder.

Merchant must not accept the American Express Transaction Card for any of the following: (a) adult digital content sold via the internet (b) amounts that do not represent bona fide sales of goods or services (or, if applicable, amounts that do not represent bona fide charitable contributions made) at your establishment; (c) amounts that do not represent bona fide, direct sales by your establishments to Cardholders made in the ordinary course of your business; (d) cash or equivalent; for example, purchases of gold, silver, platinum, and palladium bullion and/or bars (collectible coins and jewelry are not prohibited), or virtual currencies that can be exchanged for real currency (loyalty program currencies are not prohibited); (e) charges that the Cardholder has not specifically approved; (f) costs or fees over the normal price

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of goods or services (plus applicable taxes) that the Cardholder has not specifically approved; (g) damages, losses, penalties, or fines of any kind; (h) gambling services (including online gambling), gambling chProcessor, gambling credits, or lottery tickets; (i) unlawful/illegal activities, fraudulent business transactions or when providing the goods or services is unlawful/illegal (e.g., unlawful/illegal online internet sales of prescription medications or controlled substances; sales of any goods that infringe the rights of a "rights-holder" under laws applicable to American Express, you, or the Cardholder; (j) overdue amounts or amounts covering returned, previously dishonored or stop-payment checks (e.g. where the American Express Transaction Card is used as payment of last resort); (k) amounts that represent repayment of a cash advance including, but not limited to, payday loans, pawn loans, or payday advances; (l) sales made by third parties or entities conducting business in industries other than yours; or (m) other items of which American Express, PROCESSOR, or Bank notifies you. You must not use American Express Transaction Cards to verify the age of you customers.

3. SETTLEMENT. PROCESSOR shall settle all American Express Transaction Card transactions processed by PROCESSOR hereunder for Merchant in accordance with the Agreement. Merchant hereby designates the Bank and PROCESSOR as Merchant's agent to receive all payments pertaining to Merchant's American Express Transaction Card transactions. All payments required to be made to Merchant under this Agreement for American Express Transaction Card transactions shall be made by PROCESSOR to the Merchant Account, via electronic funds transfer by ACH (or other electronic means) or by wire transfer, at PROCESSOR's option, as soon as practicable after PROCESSOR's receipt of such funds from American Express.

4. TREATMENT OF THE AMERICAN EXPRESS MARKS. Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate Merchant's acceptance of the American Express Transaction Card and display American Express Marks (including any American Express Transaction Card application forms provided to Merchant) as prominently and in the same manner as any Other Payment Products. Merchant must not use the American Express Marks in any way that injures or diminishes the goodwill associated with the Mark, nor (without prior written consent from PROCESSOR) indicate that American Express endorses Merchant's goods or services. Merchant shall only use the American Express Marks as permitted by the Agreement and shall cease using and shall remove American Express' Marks from Merchant's website and wherever else they are displayed upon termination of the Agreement or Merchants participation in PROCESSOR's Direct Settlement Program for American Express. For additional guidelines on the use of the American Express Marks, contact PROCESSOR.

5. TREATMENT OF AMERICAN EXPRESS CARD MEMBER INFORMATION. Any and all information about Cardholders (including names, addresses, account numbers and card identification numbers) or American Express Transaction Card transactions is confidential and the sole property of the Issuer, American Express or its Affiliates. Except as otherwise specified, Merchant must not disclose any such information, nor use nor store it, other than to facilitate transactions at Merchant's Locations in accordance with the Agreement.

6. CONVERSION IF BECOME A HIGH CV MERCHANT. Merchant will be converted from PROCESSOR's Direct Settlement Program for American Express to a direct card acceptance agreement with American Express if and when Merchant becomes a High CV Merchant (or if Merchant currently is a High CV Merchant). Upon such conversion, (i) Merchant will be bound by American Express' then current Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by Merchant's American Express Transaction Card acceptance.

7. AMERICAN EXPRESS THIRD PARTY BENEFICIARY. American Express shall have the right, but not the obligation, to enforce the terms of the Agreement against Merchant with respect to American Express Transaction Card transactions and PROCESSOR's Direct Settlement Program for American Express.

8. CEASE ACCEPTANCE OF AMERICAN EXPRESS. By contacting PROCESSOR customer service or using some other method established by PROCESSOR, Merchant may opt out of accepting American Express Transaction Cards at any time without directly or indirectly or affecting Merchant's rights to accept other Transaction Cards.

9. REFUNDS. Merchant's refund policies for purchases with an American Express Transaction Card must be at least as favorable as Merchant's refund policy for purchases with any other Transaction Card and the refund policy must be disclosed to Cardholders at the time of purchase and in compliance with Applicable Law.

10. RIGHT TO BILL OR COLLECT FROM CARDHOLDER. Merchant shall not bill or collect from any Cardholder for any purchase or payment made with an American Express Transaction Card unless (i) American Express has exercised Chargeback for such charge, (ii) Merchant has fully paid American Express for such charge, and (iii) Merchant otherwise has the right to do so.

11. INFORMATION RIGHTS. Merchant hereby authorizes (i) PROCESSOR to disclose to American Express transaction data (including without limitation, information obtained at the point of sale, information obtained or generated during authorization and settlement, and any Chargeback or other fee information

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related to a transaction), Merchant data (including without limitation, name, postal and email addresses, tax ID numbers, names and social security numbers of Merchant's authorized signers and similar identifying information), and other information about Merchant; (ii) American Express to use such information disclosed in (i) to perform its responsibilities in connection with PROCESSOR's American Express Direct Settlement Program, promote the American Express network, perform analytics and create reports, and for any other lawful business purposes, including marketing purposes; and (iii) PROCESSOR to share information that Merchant discloses to PROCESSOR with PROCESSOR's agents, subcontractors, affiliates and other parties including industry organizations and reporting agencies, for any purpose permitted by Applicable Law. In addition, American Express may use the information obtained in the setup of Merchant's account to screen and/or monitor Merchant in connection with American Express Transaction Card marketing and administrative purposes. Any person (including Merchant) providing permission to obtain or disclose information in connection with this Agreement hereby releases and waives any right or claim arising out of or related to such disclosure, including defamation claims, even if the information that is disclosed is incorrect or incomplete, Merchant acknowledges that its business name and the name of its principals may be reported to MATCH and hereby consents to such reporting, and waives and holds PROCESSOR harmless from all claims and liabilities it may have as a result of such reporting.

12. AMERICAN EXPRESS MERCHANT REQUIREMENTS. You must abide by and are subject to the American Express Merchant Operating Guide which can be found at www.americanexpress.com/merchantopguide and the American Express Opt Blue Operating Regulations, including without limitation the Data Security Operating Policy contained therein, which may be found at www.americanexpress.com/dsr.

13. TREATMENT OF THE AMERICAN EXPRESS BRAND. Except as expressly permitted by Applicable law, you must not: (i) indicate or imply that you prefer, directly or indirectly, any Other Payment Products over American Express Transaction Cards; (ii) try to dissuade Cardholders from using American Express Transaction Cards; (iii) criticize or mischaracterize American Express Transaction Cards or any of American Express' services or programs; (iv) try to persuade or prompt Cardholders to use Other Payment Products or any other method of payment; (v) impose any restrictions, conditions, disadvantages, or fees when a American Express Transaction Card is accepted that is not imposed equally on all Other Payment Products, except for electronic funds transfer, cash, or check; (vi) suggest or require Cardholders to waive their right to dispute any Transaction; (vii) engage in activities that harm American Express' business or the American Express Brand (or both); (viii) promote any Other Payment Products (except your own private label card that you issue for use solely at your establishments) more actively than you promote American Express Transaction Cards, or (ix) convert the currency of the original sale transaction to another currency when requesting authorization or submitting transactions (or both).

You may offer discounts or in-kind incentives from your regular prices for payments in cash, ACH funds transfer, check, debit card, or credit/charge card, provided that (to the extent required by Applicable Law): (a) you clearly and conspicuously disclose the terms of the discount of in-kind incentive to your customers; (b) the discount or the in-kind incentive is offered to all of your prospective customers, and (c) the discount or in-kind incentive does not differentiate on the basis of the issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provision set forth above in this Section 13.

14. TERMINATION. PROCESSOR may immediately terminate Merchant's right to accept American Express Transaction Cards if (i) Merchant breaches any of the provisions in this Addendum, the Agreement, or the American Express Merchant Operating Guide or (ii) upon American Express' request.

15. ASSIGNMENT OF PAYMENTS. Merchant shall not assign to any third party any payments due to Merchant under the Agreement, and all indebtedness arising from any charges will be for bona fide sales of goods and services (or both) at its Locations and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future transaction receivables to PROCESSOR, its affiliated entities and/or any other cash advance funding source that partners with PROCESSOR or its affiliated entities, without consent of American Express.

ACCOUNTING INTEGRATION TERMS AND CONDITIONS

These terms and conditions are between you and PROCESSOR, and not Bank, and govern your use of the Accounting Integration Services and related software (collectively the "AI Service"). Contact Customer Service for the Accounting Integration Service Provider, which may or may not be PROCESSOR, ("ASP") availability in your market area. Rates and AI Service are subject to change by the ASP. Any such changes shall be posted on ASP's web site.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE AI SERVICE PROVIDED BY ASP. YOUR USE OF THE AI SERVICE, OR SIGNED ACKNOWLEDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE

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FOLLOWING TERMS. If this Agreement is unacceptable to you, do not use the AI Service. ASP is willing to provide the AI Service only if you agree to be bound by the following terms:

1. AI Services and Information

1.1 Neither ASP nor PROCESSOR is responsible for the accuracy or completeness of information sent or received by you through the AI Service. In certain instances, ASP may make available through the AI Service certain information, data, or messages (collectively referred to as "Information") independently obtained by ASP from various sources, their affiliates, and others (collectively referred to as "Information Providers"). Such Information may be the subject of additional terms and conditions of the Information Providers. Your use of and access to the Information shall constitute your acceptance of those terms and conditions. If you do not agree to the additional terms and conditions, do not use and access the Information. The accuracy, completeness, timeliness, or correct sequencing of the Information is not guaranteed by ASP, the Information Providers, or any parties processing Information or payments (the foregoing parties are collectively referred to as the "Disseminating Parties"). The AI Service must be used in compliance with the Federal Communications Commission and other federal, state and local laws, rules and regulations. The AI Service shall not be used to transmit unauthorized or illegal credit card charges and may not be resold or otherwise provided to third parties.

1.2 Although ASP uses commercially reasonable efforts to provide for the secure transmission of information through the AI Service, confidential use of the AI Service by you cannot be guaranteed by ASP, PROCESSOR or the Disseminating Parties. Neither ASP nor PROCESSOR is responsible for any harm that you or any person may suffer as a result of a breach of confidentiality in respect to your use of the AI Service. Subject to these terms and conditions, ASP will provide you with AI Service that enables the transport and reporting of certain data over certain wireless and other carrier networks to and from various credit and debit card payment processors. The AI Service may include network connectivity via providers to the ASP application architecture including access to a variety of external payment processors that ASP arranges from time to time. Since the AI Service integrates third-party vendors as an essential part of the AI Service, availability may vary due to events beyond the control of ASP and PROCESSOR, including but not limited to, routine maintenance and outages by telecommunications carriers and payment processors. You shall be solely responsible for obtaining, installing, supporting, and maintaining hardware, handheld devices and related hardware required to access and use the AI Service. ASP may suspend the AI Service to you to: (i) prevent damages to, or degradation of, its network integrity which may be caused by you, PROCESSOR or their respective employees or agents; (ii) comply with any law, regulation, court order, or other governmental request order which requires immediate action; or (iii) otherwise protect ASP in its good faith judgment from potential legal liability. ASP may also suspend AI Service in the event fees hereunder are not paid when due. To the extent commercially reasonable, ASP shall give notice to you before suspending or terminating the AI Service. In the event of a suspension, ASP shall promptly restore the AI Service after the event giving rise to the suspension has been resolved. ASP reserves the right in its discretion and without notice to make changes to the AI Service and to terminate your access to, and use of, the AI Service to permit other customers to use the radio frequency, or frequencies, on which the AI Service are being provided. You acknowledge that the AI Service is subject to transmission limitations caused by conditions such as your operating characteristics, selected hardware, atmospheric, weather, topographical, operating characteristics of mobile terminal devices, and other like conditions. Additionally, AI Service may be suspended, refused, limited or curtailed due to governmental regulations or orders, system capacity limitations, limitations imposed by an underlying carrier, or because of hardware or software modifications, upgrades, repairs or reallocations or other similar activities necessary or proper for the operation or improvement of ASP's facilities and the Service.

1.3 YOU HAVE NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING ASP AND YOU ARE NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN ASP AND PROCESSOR. YOU UNDERSTAND AND AGREE THAT THE ASP SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO YOU.

1.4 YOU SHALL INDEMNIFY AND HOLD HARMLESS PROCESSOR AND ASP AND THEIR OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THIS AGREEMENT OR THE USE, FAILURE TO USE, OR INABILITY TO USE THE SERVICE AND/OR NUMBER AND/OR THE NEGLIGENCE OF ASP AND PROCESSOR AND THEIR OFFICERS, EMPLOYEES, AND AGENTS EXCEPT WHERE THE CLAIMS RESULT FROM ASP'S OR PROCESSOR'S WILLFUL MISCONDUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

1.5 YOU HAVE NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTAND THAT ANY SUCH NUMBER CAN BE CHANGED FROM TIME TO TIME.

1.6 YOU UNDERSTAND THAT ASP AND PROCESSOR CANNOT GUARANTY THE SECURITY OF WIRELESS OR OTHER TELECOMMUNICATIONS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING

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1.7 You agree not to reproduce, re-transmit, disseminate, sell, distribute, publish, broadcast, circulate or commercially exploit the Information in any manner without the express written consent of ASP and the relevant Information Provider(s). You agree to immediately notify ASP and PROCESSOR if you become aware of any of the following: (a) any loss or theft of your access number(s) and/or password(s) to the AI Service or Information, or (b) any unauthorized use of any of your access number(s) and/or password(s), or of the AI Service or any Information. You agree to abide by all federal, state and local laws, rules, and regulations when utilizing the AI Service and Information. You agree to defend, indemnify, and hold ASP, PROCESSOR and the Disseminating Parties harmless from and against any and all claims, losses, liabilities, costs and expenses (including but not limited to attorneys' fees) arising from your violation of this Agreement or any third party's rights.

1.8 You acknowledge that neither the AI Service nor any of the Information is intended to supply advice of any nature. Although the AI Service may provide Information on a number of topics, none of the Information is endorsed by ASP, PROCESSOR, the underlying wireless service and/or telecommunication carrier(s), or any Disseminating Party. Neither ASP, PROCESSOR nor the Disseminating Parties recommends any service or product offered or advertised in the Information.

2. Pricing and Payment

2.1 You shall make payment to PROCESSOR for all AI Services in accordance with the pricing set forth in the Agreement.

2.2 Prices do not include federal, state, or local taxes, shipping, fees, duties, or licenses. You agree to pay to PROCESSOR all applicable taxes, fees, duties, and licenses and such amounts will be added to the amount due to PROCESSOR from you pursuant to Section 2.1.

3. DISCLAIMER. YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE AI SERVICE AND INFORMATION. NEITHER ASP, PROCESSOR NOR ANY DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION BY ASP, PROCESSOR OR ANY DISSEMINATING PARTY. THE AI SERVICE AND INFORMATION ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. ASP, PROCESSOR AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. ASP AND PROCESSOR MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD PARTY ITEMS.

4. Intellectual Property (IP) Rights and Trademarks. All copyrights, patents, patent rights, trade secrets, trademarks, servicemarks, tradenames, moral rights and other intellectual property and proprietary rights in the AI Service and Information are and will remain the sole and exclusive property of, as applicable, ASP and its vendors/licensors and Disseminating Parties. The AI Service and Information contain material that is protected by United States copyright law and trade secret law, and by international treaty provisions. All rights not expressly granted to you under this Agreement are expressly reserved by ASP and its vendors/licensors and the Disseminating Parties. You may not remove or modify any proprietary notice of ASP and its vendors/licensors and Disseminating Parties from the AI Service or Information.

5. Term and Termination. ASP and PROCESSOR reserve the right to terminate your access to the AI Service and Information or any portion of them in their sole discretion, without notice, and without limitation, for any reason whatsoever, including but not limited to the unauthorized use of your access number(s) and/or password(s), breach of this Agreement, failure to pay amounts due ASP, PROCESSOR and/or the Disseminating Parties, discontinuance of the AI Service, or loss of access to any Information from any of the Disseminating Parties. Upon termination, ASP, PROCESSOR and the Disseminating Parties shall have no liability to you; provided, however, that if the termination is without cause, PROCESSOR shall refund the pro rata portion of any fee which may have been pre-paid by you for the portion of the AI Service not furnished to you as of the date of such termination.

6. LIMITATION OF LIABILITY. IN NO EVENT WILL ASP OR PROCESSOR BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF THE USE OF AI SERVICE), EVEN IF ASP OR PROCESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF

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SUCH DAMAGES OR LOSSES. IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, YOUR EXCLUSIVE REMEDY FOR CLAIMS (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF AI SERVICE PROVIDED HEREUNDER, IS LIMITED TO PAYMENT OF DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED $25.00.

7. Assignment. You may not assign or transfer any right or obligation under this Addendum without the written consent of PROCESSOR.

8. Force Majeure. Neither ASP or PROCESSOR shall be liable for any loss resulting from a cause over which such entity does not have direct control, including but not limited to, failure of electronic or mechanical equipment or communication lines, Internet slowdowns or failures, telephone or other interconnect problems, unauthorized access, theft, operator errors, severe weather, earthquakes, floods, acts of war, and strikes or other labor problems.

9. Incorporation of Terms of Agreement. All terms of the Agreement, except those inconsistent with the terms of this Addendum are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

10. General. You acknowledge that in providing you with the AI Service ASP and PROCESSOR have relied upon your assent to be bound by the terms of this Agreement. Subject to ASP's and PROCESSOR's right to change applicable pricing and AI Service terms by posting such changes on their Web sites, this Agreement and any license or other restrictions provided with the Information constitute the entire agreement between the parties and supersedes all prior or simultaneous representations, negotiations, and agreements, whether written or oral, and all industry customs or trade practices. Neither party has entered into this Agreement by reason of or in reliance on any representations which are not fully stated in this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable laws, it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect. Any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "Dispute"), if not resolved informally through negotiation between the parties, will be submitted to a binding arbitration by a single arbitrator conducted in accordance with and subject to the Commercial Arbitration Rules of the American Arbitration Association then applicable. Any negotiation or arbitration pursuant to this Section will take place in the state in which the ASP's principal place of business is located. These terms and conditions related to the AI Services shall be governed by the law of the state in which the ASP's principal place of business is located. The award of the arbitrator shall be final, binding, and convertible to a court judgment in any appropriate jurisdiction. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court. In any action/arbitration brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

11. Survival. The terms and conditions of Sections 1 through 10, above, shall survive any expiration or termination of this Agreement.

PROCESSOR MOBILE PROCESSING TERMS AND CONDITIONS

These Mobile Processing terms and conditions are between you and PROCESSOR, and not Bank, and govern your use of the Mobile Service, defined below. Contact Customer Service for the Mobile Processing Service Provider ("MSP") availability in your market area. Rates and Mobile Service are subject to change by the MSP. Any such changes may be posted on MSP's web site.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE MOBILE SERVICE PROVIDED BY MSP. YOUR USE OF THE MOBILE SERVICE, OR SIGNED ACKNOWLEDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to you, do not use the Mobile Service. MSP is willing to provide the Mobile Service only if you agree to be bound by the following terms:

1. Mobile Services and Information.

1.1 PROCESSOR, through MSP, will provide you with the ability to process credit and debit card transactions using a mobile device virtual terminal (the "Mobile Service") in accordance with the terms and conditions of this Addendum and the Merchant Processing Agreement (the "Agreement"), by and between PROCESSOR and you.

1.2 PROCESSOR will, or will cause MSP to, make available training tools and videos as generally available on PROCESSOR's or MSP's web site.

1.3 You will identify the mobile device(s) to be used in connection with the Mobile Services and will not change any cell phone used without notice to PROCESSOR. PROCESSOR is not responsible for providing the Mobile Services if you change the mobile device(s)

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used to a mobile device(s) that is not compatible with the Mobile Services.

1.4 You will be required to agree to MSP's terms and conditions before the Mobile Services are available for use.

1.5 Although MSP uses commercially reasonable efforts to provide for the secure transmission of information through the Mobile Services, confidential use of the Mobile Services by you cannot be guaranteed by MSP, PROCESSOR or the Disseminating Parties. Neither MSP nor PROCESSOR is responsible for any harm that you or any person may

suffer as a result of a breach of confidentiality in respect to your use of the Mobile Services. Subject to these terms and conditions, MSP will provide you with Mobile Services that enable the transport and reporting of certain data over certain wireless and other carrier networks to and from various credit and debit card payment processors. The Mobile Services may include network connectivity via providers to the MSP application architecture including access to a variety of external payment processors that MSP arranges from time to time. Since the Mobile Services integrate third-party vendors as an essential part of the Mobile Services, availability may vary due to events beyond the control of MSP and PROCESSOR, including but not limited to, routine maintenance and outages by telecommunications carriers and payment processors. You shall be solely responsible for obtaining, installing, supporting, and maintaining hardware, handheld devices and related hardware required to access and use the Mobile Services. MSP may suspend the Mobile Services to you to: (i) prevent damages to, or degradation of, its network integrity which may be caused by you, PROCESSOR or their respective employees or agents; (ii) comply with any law, regulation, court order, or other governmental request order which requires immediate action; or (iii) otherwise protect MSP in its good faith judgment from potential legal liability. MSP may also suspend Mobile Services in the event fees hereunder are not paid when due. To the extent commercially reasonable, MSP shall give notice to you before suspending or terminating the Mobile Services. In the event of a suspension, MSP shall promptly restore the Mobile Services after the event giving rise to the suspension has been resolved. MSP reserves the right in its discretion and without notice to make changes to the Mobile Services and to terminate the your access to, and use of, the Mobile Services to permit other customers to use the radio frequency, or frequencies, on which the Mobile Services are being provided. You acknowledge that the Mobile Services are subject to transmission limitations caused by conditions such as your operating characteristics, selected hardware, atmospheric, weather, topographical, operating characteristics of mobile terminal devices, and other like conditions. Additionally, Mobile Services may be suspended, refused, limited or curtailed due to governmental regulations or orders, system capacity limitations, limitations imposed by an underlying carrier, or because of hardware or software modifications, upgrades, repairs or reallocations or other similar activities necessary or proper for the operation or improvement of MSP's facilities and the Mobile Services.

1.6 MSP or PROCESSOR may, at any time, make such alterations to the Mobile Services or discontinue support for specific mobile devices, as MSP or PROCESSOR, in its sole discretion, deems appropriate. Provided, however, MSP or PROCESSOR will provide you at least fifteen (15) days written notice of any material change to the Mobile Services provided.

2. Pricing and Payment

1.7 You shall make payment to PROCESSOR for all Mobile Services in accordance with the pricing set forth in the Agreement.

1.8 Prices do not include federal, state, or local taxes, shipping, fees, duties, or licenses. You agree to pay to PROCESSOR all applicable taxes, fees, duties, and licenses and such amounts will be added to the amount due to PROCESSOR from you pursuant to Section 2.1.

2. DISCLAIMER. YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE MOBILE SERVICE AND INFORMATION. NEITHER MSP, PROCESSOR NOR ANY DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF

(I) ANY INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY

(I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION BY MSP, PROCESSOR OR ANY DISSEMINATING PARTY. THE MOBILE SERVICES, INCLUDING THE SOFTWARE, AND INFORMATION ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. MSP, PROCESSOR AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. MSP AND PROCESSOR MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY, HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD PARTY ITEMS.

3. Intellectual Property (IP) Rights and

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Trademarks. All IP Rights evidenced by or embodied in and/or attached/connected/related to the Mobile Services (including the code and documentation) and PROCESSOR's or its MSP's trademarks shall be owned solely by PROCESSOR or the subcontractor, as applicable. You acknowledge that except as expressly provided hereunder in connection with the use of the Mobile Services, PROCESSOR does not convey any IP Rights to you hereunder.

4. 4. Term and Termination.

4.1 Either Party shall have the right to terminate the Mobile Services in the event of a material and continuing breach by the other Party of its obligations hereunder. The non-breaching Party shall send a written notice of termination identifying the breach upon which termination is based, and the notice shall become effective thirty (30) days after delivery thereof to the breaching Party (the "Notice Period") unless the breaching Party shall have cured or commenced to cure the breach during the Notice Period.

4.2 PROCESSOR may terminate the Mobile Services immediately if one or more MSPs providing all or part of the Mobile Services to you cease to provide such Mobile Services to PROCESSOR for any reason.

4.3 PROCESSOR or MSP shall have the right to furnish notice of termination of the Mobile Services in the event you engage in any conduct or practice which, in the reasonable judgment of PROCESSOR or MSP, is detrimental or harmful to the good name, goodwill or reputation of PROCESSOR or MSP, including but not limited to your failure to comply with your obligations under these terms and conditions and/or the Agreement.

4.4 Upon termination for any reason the Mobile Services may be disabled by PROCESSOR or MSP.

5. 5. LIMITATION OF LIABILITY.

5.1 UNDER NO CIRCUMSTANCES SHALL PROCESSOR BE LIABLE TO YOU FOR ANY CLAIM FOR (I) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, (II) COMPENSATION FOR LOSS OF PROFITS, ANTICIPATED REVENUE, SAVINGS OR GOODWILL, OR OTHER ECONOMIC LOSS, (III) EXEMPLARY, AGGRAVATED OR PUNITIVE DAMAGES HOWSOEVER INCURRED, (IV) CONTRIBUTION OR SET- OFF IN RESPECT OF ANY CLAIMS AGAINST YOU, (V) ANY DAMAGES WHATSOEVER RELATING TO THIRD PARTY PRODUCTS OR MOBILE SERVICES OR YOUR MATERIALS, OR (VI) ANY DAMAGES WHATSOEVER RELATING TO INTERRUPTION, DELAYS, ERRORS OR OMISSIONS, IN EACH CASE UNDER ANY THEORY OF LAW OR EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS ADDENDUM OR THE MOBILE SERVICES OR ANY MOBILE SERVICES PROVIDED BY PROCESSOR OR ITS SUBCONTRACTORS IN RELATION TO THE MOBILE SERVICES (FOR GREATER CERTAINTY, INCLUDING IN RELATION TO ANY SUPPORT, TRAINING OR MAINTENANCE OR ANY ENHANCEMENTS, UPGRADES, FIXES, OR REPLACEMENTS TO THE SOFTWARE OR HARDWARE ASSOCIATED WITH THE MOBILE SERVICES), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

5.2 PROCESSOR'S AND ITS MSP'S LIABILITY TO YOU FOR ANY AND ALL DIRECT, COMPENSATORY LOSS OR DAMAGES, UNDER ANY THEORY OF LAW OR EQUITY, WHETHER FOR BREACH OF CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO THIS ADDENDUM OR THE INTENDED FULFILLMENT OF ANY OF ITS OBLIGATIONS UNDER THIS ADDENDUM OR ANY MOBILE SERVICES PROVIDED BY PROCESSOR OR ITS MSP's IN RELATION TO THE MOBILE SERVICES (FOR GREATER CERTAINTY, INCLUDING IN RELATION TO ANY SUPPORT, TRAINING OR MAINTENANCE OR ANY ENHANCEMENTS, UPGRADES, FIXES, OR REPLACEMENTS TO THE MOBILE SERVICES SOFTWARE OR HARDWARE), SHALL BE STRICTLY LIMITED TO THE AGGREGATE OF ANY FEES OR PURCHASE PRICE OR OTHER AMOUNTS PAID BY YOU TO PROCESSOR FOR THE PRIOR 4 MONTHS UNDER THIS ADDENDUM FOR THE MOBILE SERVICES THAT CAUSED SUCH LOSS OR DAMAGES.

6. Assignment. You may not assign or transfer any right or obligation under this Addendum without the written consent of PROCESSOR.

7. Force Majeure. PROCESSOR shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from a natural calamity, act of government, or similar cause beyond the control of PROCESSOR, provided that, in order to be excused from delay or failure to perform, PROCESSOR must act diligently to remedy the effect of such delay or failure.

8. Incorporation of Terms of Agreement. All terms of the Agreement, except those inconsistent with the terms of this Addendum are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

9. Survival. The Parties' rights and obligations under Sections 2, 3, 4, 5, 6, 7, 8, and 9 shall survive expiration or termination of this Addendum for any reason.

GATEWAY TERMS AND CONDITIONS

These Gateway terms and conditions are between you and PROCESSOR, and not Bank, and govern your use of the Gateway Services, defined below. Rates and Gateway Service are subject to change by the Gateway Service Provider, who may or may not be PROCESSOR ("GSP"). Any such changes shall be posted on GSP's web site.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE GATEWAY SERVICE PROVIDED BY GSP. YOUR USE OF THE GATEWAY SERVICE, OR SIGNED ACKNOWLEDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to you, do not use the Gateway Service. GSP is willing to provide the Gateway Service only if you agree to be

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bound by the following terms:

1. Gateway Services and Information.

1.1 PROCESSOR, through GSP, will provide you with the ability to process credit and debit card transactions using GSP's payment processing and gateway services ("Gateway Services") in accordance with these terms and conditions and the Merchant Processing Agreement (the "Agreement"), by and between PROCESSOR and you.

1.2 PROCESSOR will, or will cause GSP to, make available training tools and videos as generally available on PROCESSOR's or GSP's web site.

1.3 You will identify the hardware and software to be used in connection with the Gateway Services and will not change any hardware or software used without notice to PROCESSOR. PROCESSOR is not responsible for providing the Gateway Services if you change the hardware or software used to hardware or software that is not compatible with the Gateway Services.

1.4 You will be required to agree to GSP terms and conditions before the Gateway Services are available for use.

1.5 Although GSP uses commercially reasonable efforts to provide for the secure transmission of information through the Gateway Services, confidential use of the Gateway Services by you cannot be guaranteed by GSP, PROCESSOR or the Disseminating Parties. Neither GSP nor PROCESSOR is responsible for any harm that you or any person may suffer as a result of a breach of confidentiality in respect to your use of the Gateway Services. Subject to these terms and conditions, GSP will provide you with Gateway Services that enable the transport and reporting of certain data over certain networks to and from various credit and debit card payment processors. The Gateway Services may include network connectivity via providers to the GSP application architecture including access to a variety of external payment processors that GSP arranges from time to time. Since the Gateway Services integrate third-party vendors as an essential part of the Gateway Services, availability may vary due to events beyond the control of GSP and PROCESSOR, including but not limited to, routine maintenance and outages by telecommunications carriers and payment processors. You shall be solely responsible for obtaining, installing, supporting, and maintaining hardware, handheld devices and related hardware required to access and use the Gateway Services. GSP may suspend the Gateway Services to you to: (i) prevent damages to, or degradation of, its network integrity which may be caused by you, PROCESSOR or their respective employees or agents; (ii) comply with any law, regulation, court order, or other governmental request order which requires immediate action; or (iii) otherwise protect GSP in its good faith judgment from potential legal liability. GSP may also suspend Gateway Services in the event fees hereunder are not paid when due. To the extent commercially reasonable, GSP shall give notice to you before suspending or terminating the Gateway Services. In the event of a suspension, GSP shall promptly restore the Gateway Services after the event giving rise to the suspension has been resolved. GSP reserves the right in its discretion and without notice to make changes to the Gateway Services and to terminate your access to, and use of, the Gateway Services to permit other customers to use the radio frequency, or frequencies, on which the Gateway Services are being provided. You acknowledge that the Gateway Services are subject to transmission limitations caused by conditions such as your operating characteristics, selected hardware, atmospheric, weather, topographical, operating characteristics of mobile terminal devices, and other like conditions. Additionally, Gateway Services may be suspended, refused, limited or curtailed due to governmental regulations or orders, system capacity limitations, limitations imposed by an underlying carrier, or because of hardware or software modifications, upgrades, repairs or reallocations or other similar activities necessary or proper for the operation or improvement of GSP's facilities and the Gateway Services.

1.6 PROCESSOR or GSP may, at any time, make such alterations to the Gateway Services or discontinue support for specific hardware or software, as PROCESSOR or GSP, in its sole discretion, deems appropriate. Provided, however, PROCESSOR or GSP will provide you at least fifteen (15) days written notice of any material change to the Gateway Services provided.

2. Pricing and Payment

2.1 You shall make payment to PROCESSOR for all Gateway Services in accordance with the pricing set forth in the Agreement.

2.2 Prices do not include federal, state, or local taxes, shipping, fees, duties, or licenses. You agree to pay to PROCESSOR all applicable taxes, fees, duties, and licenses and such amounts will be added to the amount due to PROCESSOR from you pursuant to Section 2.1.

3. DISCLAIMER. YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE GATEWAY SERVICE AND INFORMATION. NEITHER GSP, PROCESSOR NOR ANY DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION BY GSP, PROCESSOR OR ANY DISSEMINATING PARTY. THE GATEWAY SERVICES, INCLUDING THE SOFTWARE, AND INFORMATION ARE PROVIDED "AS IS," WITH ALL

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FAULTS, AND WITHOUT WARRANTY OF ANY KIND. GSP, PROCESSOR AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. GSP AND PROCESSOR MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD PARTY ITEMS.

4. Intellectual Property (IP) Rights and Trademarks. All IP Rights evidenced by or embodied in and/or attached/connected/related to the Gateway Services (including the code and documentation) and PROCESSOR's or its GSP's trademarks shall be owned solely by PROCESSOR or the subcontractor, as applicable. You acknowledge that except as expressly provided hereunder in connection with the use of the Gateway Services, PROCESSOR does not convey any IP Rights to you hereunder.

5. 5. Term and Termination.

5.1 Either Party shall have the right to terminate the Gateway Services in the event of a material and continuing breach by the other Party of its obligations hereunder. The non-breaching Party shall send a written notice of termination identifying the breach upon which termination is based, and the notice shall become effective thirty (30) days after delivery thereof to the breaching Party (the "Notice Period") unless the breaching Party shall have cured or commenced to cure the breach during the Notice Period.

5.2 PROCESSOR may terminate the Gateway Services immediately if one or more GSPs providing all or part of the Gateway Services to y ou cease to provide such Gateway Services to PROCESSOR for any reason.

5.3 PROCESSOR or GSP shall have the right to furnish notice of termination of the Gateway Services in the event you engage in any conduct or practice which, in the reasonable judgment of PROCESSOR or GSP, is detrimental or harmful to the good name, goodwill or reputation of PROCESSOR or GSP, including but not limited to your failure to comply with your obligations under these terms and conditions and/or the Agreement.

5.4 Upon termination for any reason the Gateway Services may be disabled by PROCESSOR or GSP.

6. LIMITATION OF LIABILITY.

6.1 UNDER NO CIRCUMSTANCES SHALL PROCESSOR BE LIABLE TO YOU FOR ANY CLAIM FOR (I) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, (II) COMPENSATION FOR LOSS OF PROFITS, ANTICIPATED REVENUE, SAVINGS OR GOODWILL, OR OTHER ECONOMIC LOSS, (III) EXEMPLARY, AGGRAVATED OR PUNITIVE DAMAGES HOWSOEVER INCURRED, (IV) CONTRIBUTION OR SET-OFF IN RESPECT OF ANY CLAIMS AGAINST YOU, (V) ANY DAMAGES WHATSOEVER RELATING TO THIRD PARTY PRODUCTS OR GATEWAY SERVICES OR YOUR MATERIALS, OR (VI) ANY DAMAGES WHATSOEVER RELATING TO INTERRUPTION, DELAYS, ERRORS OR OMISSIONS, IN EACH CASE UNDER ANY THEORY OF LAW OR EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS ADDENDUM OR THE GATEWAY SERVICES OR ANY GATEWAY SERVICES PROVIDED BY PROCESSOR OR ITS SUBCONTRACTORS IN RELATION TO THE GATEWAY SERVICES (FOR GREATER CERTAINTY, INCLUDING IN RELATION TO ANY SUPPORT, TRAINING OR MAINTENANCE OR ANY ENHANCEMENTS, UPGRADES, FIXES, OR REPLACEMENTS TO THE SOFTWARE OR HARDWARE ASSOCIATED WITH THE GATEWAY SERVICES), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

6.2 PROCESSOR'S AND ITS GSP'S LIABILITY TO YOU FOR ANY AND ALL DIRECT, COMPENSATORY LOSS OR DAMAGES, UNDER ANY THEORY OF LAW OR EQUITY, WHETHER FOR BREACH OF CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR IN ANY WAY RELATED TO THIS ADDENDUM OR THE INTENDED FULFILLMENT OF ANY OF ITS OBLIGATIONS UNDER THIS ADDENDUM OR ANY GATEWAY SERVICES PROVIDED BY PROCESSOR OR ITS GSPS IN RELATION TO THE GATEWAY SERVICES (FOR GREATER CERTAINTY, INCLUDING IN RELATION TO ANY SUPPORT, TRAINING OR MAINTENANCE OR ANY ENHANCEMENTS, UPGRADES, FIXES, OR REPLACEMENTS TO THE GATEWAY SERVICES SOFTWARE OR HARDWARE), SHALL BE STRICTLY LIMITED TO THE AGGREGATE OF ANY FEES OR PURCHASE PRICE OR OTHER AMOUNTS PAID BY YOU TO PROCESSOR FOR THE PRIOR 4 MONTHS UNDER THIS ADDENDUM FOR THE GATEWAY SERVICES THAT CAUSED SUCH LOSS OR DAMAGES.

7. Assignment. You may not assign or transfer any right or obligation under this Addendum without the written consent of PROCESSOR.

8. Force Majeure. PROCESSOR shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from a natural calamity, act of government, or similar cause beyond the control of PROCESSOR, provided that, in order to be excused from delay or failure to perform, PROCESSOR must act diligently to remedy the effect of such delay or failure.

9. Incorporation of Terms of Agreement. All terms of the Agreement, except those inconsistent with the terms of this Addendum are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

10. Survival. The Parties' rights and obligations under

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Sections 2, 3, 4, 5, 6, 7, 8, and 9 shall survive expiration or termination of this Addendum for any reason.

FUNDING TERMS AND CONDITIONS

The funding terms and conditions contained in this Addendum are between you and PROCESSOR, and not Bank, and govern your use of the various funding options and related software, including but not limited to Next Day Funding and Same Day Money Express (individually a "Funding Service" and collectively the "Funding Services") provided by PROCESSOR. Rates, fees and the Funding Services provided by PROCESSOR are subject to change by the PROCESSOR. Any such changes shall either be provided to you by written notification or posted on PROCESSOR's web site. Further, your continued participation in Next Day Funding or Same Day Money Express is subject ongoing credit approval.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE FUNDING OPTION PROVIDED BY PROCESSOR PURSUANT TO THIS AGREEMENT. YOUR USE OF NEXT DAY FUNDING OR SAME DAY MONEY EXPRESS, OR YOUR SIGNED ACKNOWLEDGEMENT REGARDING THE SAME, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. IF THIS AGREEMENT IS UNACCEPTABLE TO YOU, DO NOT USE THE SAME DAY MONEY EXPRESS. PROCESSOR IS WILLING TO PROVIDE THE SAME DAY MONEY EXPRESS ONLY IF YOU AGREE TO BE BOUND BY THE FOLLOWING TERMS:

1. Next Day Funding and Same Day Money Express. PROCESSOR agrees that for Visa, Mastercard and Amex OptBlue Card transaction submitted in accordance with the requirements of the Agreement before (a) before 7:00 PM central time each day if you have elected Next Day Funding or (b) before 4:00 am central time if you have elected Same Day Money Express , PROCESSOR will, subject to the limitation set forth in Section 1.3,

(a) if you have elected Next Day Funding make funds due to you for Card transactions submitted on Friday, Saturday and Sunday available to you on Monday morning central time;

(b) if you have elected Same Day Money Express make funds due to you for Card Transactions submitted on Saturday and Sunday available to you on Monday morning central time;

(c) If you have elected Next Day Funding make funds due to you for Card Transactions submitted on Monday through Thursday available to you on the next business day; and

(d) If you have elected Same Day Money Express make funds due to you for Card Transactions submitted on Monday through Friday available to you on the same business day

For any batches submitted on Holidays or on a day on which the Federal Reserve is closed, the funds for Visa, Mastercard and Amex OptBlue Card transactions will be made available to you on the next business day following the Holiday or the date on which the Federal Reserve is closed.

2. Posting of ACH Receipts. PROCESSOR cannot guarantee that your bank will post ACH receipts the next morning, even though those funds were forwarded to your bank by PROCESSOR on a timely basis.

3. Failure to Timely Fund. In the event that any unforeseen circumstance prevents PROCESSOR from making the funds available in accordance with the provisions of Section 1 above, such funds will then be made available in accordance with PROCESSOR's Standard Funding schedule.

4. Limitation of Liability. IN THE EVENT THAT PROCESSOR FAILS TO FUND IN ACCORDANCE WITH SECTION 1 AND 3 ABOVE, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE LIMITED TO REDCUTION OF THE MONTHLY FEE FOR THE NEXT DAY FUNDING OR SAME DAY MONEY EXPRESS PROGRAM, AS APPLICABLE, PAID BY YOU FOR THE MONTH IN WHICH PROCESSOR FAILED TO SATISFY PROCESSOR'S FUNDING OBLIGATION UNDER SECTIONS 1 AND 2. SUCH REDUCTION SHALL BE EQUAL TO THE NUMBER OF DAYS ON WHICH PROCESSOR DID NOT MEET ITS FUNDING OBLIGATION DIVIDED BY THE NUMBER OF DAYS IN THE APPLICABLE MONTH.

5. DISCLAIMER. YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE FUNDING SERVICES. EXCEPT AS EXPRESLY SET FORTH IN THESE FUNDING TERMS AND CONDITIONS PROCESSOR WILL NOT BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY INFORMATION OR FUNDS OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH FUNDS, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION BY PROCESSOR. THE NEXT DAY FUNDING AND SAME DAY MONEY EXPRESS ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. PROCESSOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. PROCESSOR MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON- INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH

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THIRD PARTY ITEMS.

6. Fee for Next Day Funding or Same Day Money Express. You agree to pay the fee for Next Day Funding or Same Money Express set forth in this Agreement. PROCESSOR may change the fee for Next Day Funding or Same Day Money Express at any time by providing notice to you.

7. ACH Authorization. By signing the Merchant Application and electing to receive Next Day Funding or Same Day Money Express you authorize PROCESSOR to collect the aforementioned fee by electronically debiting the Merchant Account using the ACH System.

8. Termination. PROCESSOR, in its sole discretion, reserves the right to terminate your participation in the Overnight Money Express™ program at any time.

9. Force Majeure. PROCESSOR shall not be liable for any loss resulting from a cause over which PROCESSOR does not have direct control, including but not limited to, failure of electronic or mechanical equipment or communication lines, Internet slowdowns or failures, telephone or other interconnect problems, unauthorized access, theft, operator errors, severe weather, earthquakes, floods, acts of war, and strikes or other labor problems.

10. Incorporation of Terms of Agreement. All terms of the Agreement, except those inconsistent with the terms of this Addendum are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

11. General. This Addendum and the Agreement constitute the entire agreement between the parties and supersedes all prior or simultaneous representations, negotiations, and agreements, whether written or oral, and all industry customs or trade practices. Neither party has entered into this Agreement by reason of or in reliance on any representations which are not fully stated in this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable laws, it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect. Any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "Dispute"), if not resolved informally through negotiation between the parties, will be submitted to a binding arbitration in accordance with the terms of the Agreement. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court. In any action/arbitration brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

12. Survival. The terms and conditions of Sections 1 through 10, above, shall survive any expiration or termination of this Agreement.

WIRELESS SERVICES TERMS AND CONDITIONS

These Wireless Services terms and conditions are between you and PROCESSOR, and not Bank, and govern your use of the Wireless Services (the "Wireless Services"). Contact Customer Service for the Wireless Service Provider ("WSP") availability in your market area. Rates and Wireless Service are subject to change by the WSP. Any such changes shall be posted on WSP's web site.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE WIRELESS SERVICE PROVIDED BY WSP. YOUR USE OF THE WIRELESS SERVICE, OR SIGNED ACKNOWLEDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to you, do not use the Wireless Service. WSP is willing to provide the Wireless Service only if you agree to be bound by the following terms:

1. Wireless Services and Information.

1.1 Neither WSP nor PROCESSOR is responsible for the accuracy or completeness of information sent or received by you through the Wireless Service. In certain instances, WSP may make available through the Wireless Service certain information, data, or messages (collectively referred to as "Information") independently obtained by WSP from various sources, their affiliates, and others (collectively referred to as "Information Providers"). Such Information may be the subject of additional terms and conditions of the Information Providers. Your use of and access to the Information shall constitute your acceptance of those terms and conditions. If you do not agree to the additional terms and conditions, do not use and access the Information. The accuracy, completeness, timeliness, or correct sequencing of the Information is not guaranteed by WSP, the Information Providers, or any parties processing Information or payments (the foregoing parties are collectively referred to as the "Disseminating Parties").

1.2 Although WSP uses commercially reasonable efforts to provide for the secure transmission of information through the Wireless Service, confidential use of the Wireless Service by you cannot be guaranteed by WSP, PROCESSOR or the Disseminating Parties. Neither WSP nor PROCESSOR is responsible for any harm that you or any person may suffer as a result of a breach of confidentiality in respect to your use of the Wireless Service. Subject to these terms and conditions, WSP will provide you with Wireless Services that enable the transport and reporting of certain data over certain wireless and other carrier networks to and from various credit and debit card payment processors. The Wireless Services may include network connectivity via Velocita

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Wireless, Cingular Wireless, AT&T Wireless and other providers to the WSP application architecture including access to a variety of external payment processors that WSP arranges from time to time. Since the Wireless Services integrate third-party vendors as an essential part of the Wireless Services, availability may vary due to events beyond the control of WSP and PROCESSOR including but not limited to routine maintenance and outages by telecommunications carriers and payment processors. You shall be solely responsible for obtaining, installing, supporting, and maintaining the handheld devices and related hardware required to access and use the Wireless Services. WSP may suspend the Wireless Services to you to: (i) prevent damages to, or degradation of, its network integrity which may be caused by you, PROCESSOR or their respective employees or agents; (ii) comply with any law, regulation, court order, or other governmental request order which requires immediate action; or (iii) otherwise protect WSP in its good faith judgment from potential legal liability. WSP may also suspend Wireless Services in the event fees hereunder are not paid when due. To the extent commercially reasonable, WSP shall give notice to you before suspending or terminating the Wireless Services. In the event of a suspension, WSP shall restore the Wireless Services promptly after the event giving rise to the suspension has been resolved.

1.3 YOU HAVE NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) AND YOU ARE NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN WSP, PROCESSOR AND THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S). YOU UNDERSTAND AND AGREE THAT THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO YOU.

1.4 YOU SHALL INDEMNIFY AND HOLD HARMLESS WSP, PROCESSOR AND THE UNDERLYING WIRELESS, AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) AND THEIR OFFICERS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, INCLUDING WITHOUT LIMITATION CLAIMS FOR LIBEL, SLANDER, OR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH, ARISING IN ANY WAY, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THIS AGREEMENT OR THE USE, FAILURE TO USE, OR INABILITY TO USE THE WIRELESS SERVICE AND/OR NUMBER AND/OR THE NEGLIGENCE OF ASP, PROCESSOR AND THE UNDERLYING WIRELESS, AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) AND THEIR OFFICERS, EMPLOYEES, AND AGENTS EXCEPT WHERE THE CLAIMS RESULT FROM WSP'S, PROCESSOR'S OR THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER'S WILLFUL MISCONDUCT. THIS INDEMNITY SHALL SURVIVE THE TERMINATION OF THE AGREEMENT.

1.5 YOU HAVE NO PROPERTY RIGHT IN ANY NUMBER ASSIGNED TO IT, AND UNDERSTAND THAT ANY SUCH NUMBER CAN BE CHANGED FROM TIME TO TIME.

1.6 YOU UNDERSTAND THAT WSP, PROCESSOR AND THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S) CANNOT GUARANTY THE SECURITY OF WIRELESS OR OTHER TELECOMMUNICATIONS TRANSMISSIONS, AND WILL NOT BE LIABLE FOR ANY LACK OF SECURITY RELATING TO THE USE OF THE WIRELESS SERVICES.

1.7 You agree not to reproduce, re-transmit, disseminate, sell, distribute, publish, broadcast, circulate or commercially exploit the Information in any manner without the express written consent of WSP and the relevant Information Provider(s). You agree to immediately notify WSP and PROCESSOR if you become aware of any of the following: (a) any loss or theft of your access number(s) and/or password(s) to the Wireless Service or Information, or (b) any unauthorized use of any of your access number(s) and/or password(s), or of the Wireless Service or any Information. You agree to abide by all federal, state and local laws, rules, and regulations when utilizing the Wireless Service and Information. You agree to defend, indemnify, and hold WSP, PROCESSOR and the Disseminating Parties harmless from and against any and all claims, losses, liabilities, costs and expenses (including but not limited to attorneys' fees) arising from your violation of this Agreement or any third party's rights.

1.8 You acknowledge that neither the Wireless Service nor any of the Information is intended to supply advice of any nature. Although the Wireless Service may provide Information on a number of topics, none of the Information is endorsed by WSP, PROCESSOR, the underlying wireless service and/or telecommunication carrier(s), or any Disseminating Party. Neither WSP, PROCESSOR nor the Disseminating Parties recommend any service or product offered or advertised in the Information.

2. Pricing and Payment

2.1 You shall make payment to PROCESSOR for all Wireless Services in accordance with the pricing set forth in the Agreement.

2.2 Prices do not include federal, state, or local taxes, shipping, fees, duties, or licenses. You agree to pay to PROCESSOR all applicable taxes, fees, duties, and licenses and such amounts will be added to the amount due to PROCESSOR from you pursuant to Section 2.1.

3. DISCLAIMER. YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE WIRELESS SERVICE AND INFORMATION. NEITHER WSP, PROCESSOR NOR ANY DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY

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LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION BY WSP, PROCESSOR OR ANY DISSEMINATING PARTY. THE WIRELESS SERVICE AND INFORMATION ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. WSP, PROCESSOR AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. WSP AND PROCESSOR MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY HARDWARE, PRODUCTS, SOFTWARE, OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD PARTY ITEMS.

4. Intellectual Property (IP) Rights and Trademarks. All copyrights, patents, patent rights, trade secrets, trademarks, servicemarks, tradenames, moral rights and other intellectual property and proprietary rights in the Wireless Service and Information are and will remain the sole and exclusive property of, as applicable, WSP and its vendors/licensors and Disseminating Parties. The Wireless Service and Information contain material that is protected by United States copyright law and trade secret law, and by international treaty provisions. All rights not expressly granted to you under this Agreement are expressly reserved by WSP and its vendors/licensors and the Disseminating Parties. You may not remove or modify any proprietary notice of WSP and its vendors/licensors and Disseminating Parties from the Wireless Service or Information.

5. Term and Termination. WSP and PROCESSOR reserve the right to terminate your access to the Wireless Service and Information or any portion of them in their sole discretion, without notice, and without limitation, for any reason whatsoever, including but not limited to the unauthorized use of your access number(s) and/or password(s), breach of this Agreement, failure to pay amounts due WSP, PROCESSOR and/or the Disseminating Parties, discontinuance of the Wireless Service, or loss of access to any Information from any of the Disseminating Parties. Upon termination, WSP, PROCESSOR and the Disseminating Parties shall have no liability to you; provided, however, that if the termination is without cause, PROCESSOR shall refund the pro rata portion of any fee which may have been pre-paid by you for the portion of the Wireless Service not furnished to you as of the date of such termination.

6. LIMITATION OF LIABILITY. IN NO EVENT WILL WSP, PROCESSOR, ANY UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS WIRELESS SERVICE CARRIER(S), OR ANY DISSEMINATING PARTY BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF THE USE OF WIRELESS SERVICE), EVEN IF WSP, PROCESSOR, THE UNDERLYING WIRELESS AND/OR TELECOMMUNICATIONS SERVICE CARRIER(S), OR ANY DISSEMINATING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. IN ANY EVENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, YOUR EXCLUSIVE REMEDY FOR CLAIMS (WHETHER IN CONTRACT, TORT OR OTHERWISE) ARISING IN ANY WAY IN CONNECTION WITH THIS AGREEMENT, FOR ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY FAILURE OR DISRUPTION OF WIRELESS SERVICE PROVIDED HEREUNDER, IS LIMITED TO PAYMENT OF DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED $25.00.

7. Assignment. You may not assign or transfer any right or obligation under this Addendum without the written consent of PROCESSOR.

8. Force Majeure. Neither WSP, PROCESSOR, the underlying wireless and/or telecommunications service carrier(s), nor any Disseminating Party shall be liable for any loss resulting from a cause over which such entity does not have direct control, including but not limited to, failure of electronic or mechanical equipment or communication lines, Internet slowdowns or failures, telephone or other interconnect problems, unauthorized access, theft, operator errors, severe weather, earthquakes, floods, acts of war, and strikes or other labor problems.

9. Incorporation of Terms of Agreement. All terms of the Agreement, except those inconsistent with the terms of this Addendum are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

10. General. You acknowledge that in providing you

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with the Wireless Service WSP and PROCESSOR have relied upon your assent to be bound by the terms of this Agreement. Subject to WSP's and PROCESSOR's right to change applicable pricing and Wireless Service terms by posting such changes on their Web sites, this Agreement and any license or other restrictions provided with the Information constitute the entire agreement between the parties and supersedes all prior or simultaneous representations, negotiations, and agreements, whether written or oral, and all industry customs or trade practices. Neither party has entered into this Agreement by reason of or in reliance on any representations which are not fully stated in this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable laws, it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect. Any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "Dispute"), if not resolved informally through negotiation between the parties, will be submitted to a binding arbitration by a single arbitrator conducted in accordance with and subject to the Commercial Arbitration Rules of the American Arbitration Association then applicable. Any negotiation or arbitration pursuant to this Section will take place in the state in which the WSP's principal place of business is located. These terms and conditions related to the Wireless Services shall be governed by the law of the state in which the WSP's principal place of business is located. The award of the arbitrator shall be final, binding, and convertible to a court judgment in any appropriate jurisdiction. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court. In any action/arbitration brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorneys' fees and all other litigation costs, including expert witness fees, and all actual attorneys' fees and costs incurred in connection with the enforcement of a judgment arising from any action or proceeding.

11. Survival. The terms and conditions of Sections 1 through 10, above, shall survive any expiration or termination of this Agreement.

ACCOUNT UPDATER TERMS AND CONDITIONS

These Account Updater terms and conditions are between you, PROCESSOR, and Bank, and govern your use of the Account Updater Services. PROCESSOR and Bank reserve the right to allocate their duties in connection with the Account Updater Service amongst themselves as they deem appropriate in their sole discretion. Rates and Service are subject to change by the PROCESSOR. Any such changes shall be posted on PROCESSOR's web site.

IMPORTANT: READ THIS AGREEMENT BEFORE USING THE ACCOUNT UPDATER SERVICE. YOUR USE OF THE SERVICE, OR SIGNED ACKNOWLEDGEMENT, WILL INDICATE YOUR ACCEPTANCE OF ALL OF THE FOLLOWING TERMS. If this Agreement is unacceptable to you, do not use the Account Updater Service. PROCESSOR is willing to provide the Account Updater Service only if you agree to be bound by the following terms:

1. Account Updater Services. The Account Updater Service allows PROCESSOR and Bank to access, or supply to you, the most current cardholder account information to the extent your businesses requires electronic maintenance of customer account data. Using this service PROCESSOR and Bank will be able to obtain updated cardholder account information to support your subscription services, recurring payments, and other account on-file-functions, to the extent applicable to you. You shall only use this service for your own account and you may not submit inquiries on behalf of any other entity.

2. Use of Data. You shall only use the data obtained from the Account Updater Services ("Updated Data") for the purpose of updating Cardholder information in order to complete future pre-authorized Card transactions in accordance with the Rules and Operating Regulations and shall not use the Updated Data for any other purpose, including without limitation in connection with any transactions that are not Card transactions or in connection with the development of any other service or product.

3. Validation. You shall allow PROCESSOR or Bank to validate, which shall include without limitation auditing your books, records and business, (a) that your use of the Updated Data complies with your obligations hereunder and (b) your compliance with the Data Security Standards in connection with the Updated Data.

4. PCI/DSS Compliance. Upon the request of PROCESSOR or Bank you shall provide any documents requested by PROCESSOR or Bank necessary to validate your compliance with the Data Security Standards and any annual re-validation or certification or your compliance with those standards, including without limitation providing Attestations of Compliance and Reports of Compliance prepared in connection with complying with PCI/DSS.

5. Card Network Agreements. You shall enter into any written agreements and submit any forms required by any

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Card Network or requested by PROCESSOR or Bank in connection our receipt of the Account Updater Services.

6. Rights of PROCESSOR and Bank. PROCESSOR, Bank and the applicable Card Networks each reserve the right to:

a. Control access to the Updated Data;

b. Revoke your access to the Updated Data in the event that PROCESSOR, Bank or the applicable Card Network determines that your use of the Updated Data violates this Agreement, any agreement you signed with the applicable Card Network, the Rules or the Operating Regulations; and

c. Determine the content access through the Account Updater Service, including limiting or removing content without prior notice.

7. Compliance with Rules. You agree, in connection with your use of the Account Updater Services to comply with all of the Rules and Operating Regulations applicable to those services, including, without limitation all of the applicable Data Security Standards.

8. Indemnification. You shall, at your sole expense, indemnify, defend and hold harmless PROCESSOR, Bank and the Card Networks and their employees, agents and affiliates from and an against all claims, suits, actions, damages, settlements, losses, liabilities, costs and expenses, including without limitation reasonable attorneys' fees, arising out of or in connection with (a) a breach of your obligations under the Account Updater Terms and Conditions, (b) your failure to comply with the Rules, the Operating Regulations or applicable law, or (c) your, or your employees, agents or representatives, negligent or intentional misconduct in connection with the Account Updater Services or the Updated Data.

9. LIMITATION OF LIABILITY. IN NO EVENT SHALL PROCESSOR OR BANK BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT AND/OR ITS SUBJECT MATTER, REGARDLESS OF THE THEORY OF LIABILITY GIVING RISE TO SUCH DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OR AWARE OF THE POSWSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL PROCESSOR'S OR BANKS LIABILITY, IN THE AGGREGATE, FOR ANY REASONA IN CONNECTION WITH THE ACCOUNT UPDATER SERVICES EXCEED AN AMOUNT EQUAL TO THE PREVIOUS FOUR (4) MONTHS OF FEES PAID BY YOU FOR THE ACCOUNT UPDATER SERVICES.

10. DISCLAIMER. YOU ASSUME TOTAL RISK AND RESPONSIBILITY FOR YOUR USE OF THE SERVICE AND INFORMATION. NEITHER PROCESSOR, BANK, THE CARD NETOWRKS NOR ANY OTHER DISSEMINATING PARTY WILL BE LIABLE IN ANY WAY TO YOU OR ANY THIRD PARTY FOR (A) ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF (I) ANY DATA OR INFORMATION OR (II) THE TRANSMISSION OR DELIVERY OF ANY SUCH INFORMATION, OR (B) ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY (I) ANY SUCH INACCURACY, ERROR, DELAY OR OMISSION, (II) NON-PERFORMANCE, OR (III) INTERRUPTION IN ANY SUCH INFORMATION FOR ANY REASON, INCLUDING BUT NOT LIMITED TO ANY NEGLIGENT ACT OR OMISSION BY PROCESSOR, BANK, THE CARD NETWORKS OR ANY DISSEMINATING PARTY. THE ACCOUNT UPDATER SERVICES, INCLUDING THE SOFTWARE, UPDATED DATA AND INFORMATION ARE PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. PROCESSOR, BANK AND THE DISSEMINATING PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE ACCURACY OF THE UPDATED DATA OR INFORMATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. PROCESSOR AND BANK MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY PRODUCTS, SOFTWARE, DATA, INFORMATION OR PROGRAMMING OBTAINED BY YOU FROM THIRD PARTIES (COLLECTIVELY, THE "THIRD PARTY ITEMS") AND EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE/NON- INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD PARTY ITEMS.

10. Termination. The provision of the Account Updater Services may be terminated by PROCESSOR or Bank (a) without cause upon thirty (30) days' notice or (b) immediately upon any breach of this Agreement by you, as expressly provided herein or in the event PROCESSOR or Bank or no longer able to provide the Account Updater Service.

11. Incorporation of Terms of Agreement. All terms of the Agreement, except those inconsistent with the terms of this Addendum are incorporated and included as part of this Addendum. All capitalized terms not defined in this Addendum shall have the meaning set forth in the Agreement.

11. Survival. The terms and conditions of Sections 2 – 4, 6-9 and 11, above, shall survive any expiration or termination of this Agreement.

Attachment: Lumpkin Non-Service Fee App (2022-057 : Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment

CONVENIENCE FEE PROGRAM
TERMS AND CONDITIONS

1. Merchant shall, in accordance with all applicable Operating Regulations, charge a convenience fee in connection with any credit Card or signature debit Card transaction (the "Convenience Fee"). The amount of the convenience fee shall be equal to the fee set forth in Section 6 of the Merchant Processing Application (the "Service Fee").

2. Any credit Card or signature debit Card transaction shall result in two transactions being processed, a transaction equal to the sale amount plus any applicable taxes (the "Sale Transaction") and a transaction equal to the Convenience Fee amount (the "Convenience Fee Transaction"). The proceeds of the Sale Transaction shall be deposited in the Merchant Account (defined below) and the proceeds of the Convenience Fee Transaction shall be deposited in an account in the name of PROCESSOR (the "Convenience Fee Account").

3.The Service Fee shall be satisfied solely from the Convenience Fee Account. All amounts deposited in the Convenience Fee Account shall belong to PROCESSOR and Merchant shall have no access to, or any ownership interest in, to amounts deposited into the Convenience Fee Account in accordance with the terms and conditions of this Agreement.

4.PROCESSOR shall have the right by ACH debit, to deduct other amounts from the Merchant Account due under this Agreement, including without limitation the amount of any chargebacks. PROCESSOR shall not be entitled to deduct any amounts from the Merchant Account to pay any Service Fees.

5.Merchant agrees to cooperate with PROCESSOR and Bank in connection with registering with any Card Network where registration is required to participate in the convenience fee program or where PROCESSOR and/or Bank deems such registration desirable.

6.Merchant represents and warrants that all of the transactions hereunder will fall within MCC codes 9311 (Tax), 9222 (Fine, 9211 (Court Costs) and 9399 (Miscellaneous) for government merchants and for education related merchants 8220(College Tuition), 8211 (Elementary and Second Schools), 8244 (Business) and 8249 (Trade Schools).

7.Merchant agrees to (a) clearly and conspicuously disclose the Convenience Fee, and that it will be charged as a separate transaction, to all Cardholders prior to completing the transaction, (b) offer the Cardholder another form of payment or the opportunity to opt out of the sale, (c) accept credit and signature debit Cards as a means of payment for all channels pursuant to which payments are accepted and (d) feature the ability to pay with credit and signature debit Cards at least as prominently as other payment methods.

Attachment: Lumpkin Non-Service Fee App (2022-057 : Payroc Merchant Processing Agreement – IWORQ Permitting Software Online Payment

Lumpkin County, Georgia

Development Authority Department

Date: September 20, 2022

Agenda Item: Amendment to the Financial Assistance Award Form CD-451 for Award 13-08-I2210

Item Description: Amendment to the Financial Assistance Award Form CD-451 for Award 13-08-I2210. National Telecommunications & Information Administration (NTIA) Broadband Infrastructure Program Amendment Acceptance.

Facts & Historical Information: On August 16, 2022 staff received an amendment to the original NTIA Federal Assistance Award accepted by the BOC on March 15, 2022. The amendment is a result of descoping certain census blocks to eliminate duplication with the Georgia State Fiscal Recovery Fund (SFRF) broadband infrastructure project.

The final NTIA project budget is $5,172,043, with $3,236,198 in federal funding and $1,935,845 contributed by Windstream.

The final SFRF project budget is $15,235,609, with in $3,713,194 state funding and $11,522,415 contributed by Windstream.

As an award recipient, consideration and acceptance by the BOC is required.

Potential Courses Of Action:
A. Approve the contract.
B. Not approve the contract.

Comparison of Courses of Action: A. COA A allows staff to move forward with the NTIA portion of the broadband infrastructure project.

B. COA B will halt the NTIA portion of the broadband infrastructure project.

Budget Impact: There is no negative impact to the County's operating budget.

Staff Recommendation: **Staff's recommendation is to accept the award amendment.**

Attachments:

GA - I2210-1 CD-451 signed 8.16.22

FORM CD-451
(REV. 11/18)

U.S. DEPARTMENT OF COMMERCE

X GRANT COOPERATIVE AGREEMENT

AMENDMENT TO FINANCIAL ASSISTANCE AWARD

AWARD NUMBER
13-08-I2210

CFDA NO. AND NAME
11.031 - Broadband Infrastructure Program

PROJECT TITLE
Broadband Build Out in County of Lumpkin

RECIPIENT NAME
Lumpkin, County of

AMENDMENT NUMBER
1

STREET ADDRESS
99 Courthouse Hill Suite H

EFFECTIVE DATE

CITY, STATE ZIP
Dahlonega, GA 30533-5041

EXTEND PERIOD OF PERFORMANCE TO
(IF APPLICABLE)

COSTS ARE REVISED AS FOLLOWS:	PREVIOUS ESTIMATED COST	ADD	DEDUCT	TOTAL ESTIMATED COST
FEDERAL SHARE OF COST	$8,154,539.00	$0.00	$4,918,341.00	$3,236,198.00
RECIPIENT SHARE OF COST	$4,640,909.00	$0.00	$2,705,064.00	$1,935,845.00
TOTAL ESTIMATED COST	$12,795,448.00	$0.00	$7,623,405.00	$5,172,043.00

REASON(S) FOR AMENDMENT

This amendment hereby approves 1) the descoping of census blocks to eliminate duplication of funding in accordance with Specific Award Conditions (SAC) #17 No Duplication of Funding and #18 No Overbuilds with Federal Funding; 2) reprogramming of funds, reducing this award by $7,623,405; and 3) revisions of SAC #3 NTIA Program Contact Information, SAC #7 Period of Performance and Funding Limitations, and SAC #20 Federal and Non-Federal Cost Sharing.

All other terms and conditions remain in effect.

This Amendment Document (Form CD-451) signed by the Grants Officer constitutes an Amendment of the above-referenced Award, which may include an obligation of Federal funding. By signing this Form CD-451, the Recipient agrees to comply with the Amendment provisions checked below and attached, as well as previous provisions incorporated into the Award. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Amendment offer and de-obligate any associated funds.

X SPECIFIC AWARD CONDITION(S)

X LINE ITEM BUDGET

OTHER(S)

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

MERCEDES ERNEST MARTINEZ

Digitally signed by MERCEDES ERNEST MARTINEZ
Date: 2022.08.16 18:41:50 -04'00'

Mercedes Ernest Martinez

DATE

TYPED NAME, TYPED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

DATE

Attachment: GA - I2210-1 CD-451 signed 8.16.22 (2022-058 : Amendment to the Financial Assistance Award Form CD-451 for Award 13-08-

Award Number: 13-08-I2210, Amendment Number 1
Federal Program Officer: Emily You
Requisition Number: BIP2216
Employer Identification Number: 586000857
UEI Number: KXJCT7D54GD8
Recipient ID: 1329258
Requestor ID: 1329258

Award ACCS Information

Bureau Code	FCFY	Project-Task	Org Code	Obj Class	Obligation Amount
61	2022	4844003-000	06-00-0000-00-00-00-00	41-19-00-00	$-4,918,341.00

Award Contact Information

Contact Name	Contact Type	Email	Phone
Mrs. Abby C Branan	Administrative	abby.branan@lumpkincounty.gov	706-482-2554

NIST Grants Officer:
Mercedes Ernest Martinez
100 Bureau Drive, MS 1650
Gaithersburg, MD 20899-1650
(301) 975-0000

NIST Grants Specialist:
LaJuan Howard
100 Bureau Drive, MS 1650
Gaithersburg, MD 20899-1650
(301) 975-0000

Attachment: GA - I2210-1 CD-451 signed 8.16.22 (2022-058 : Amendment to the Financial Assistance Award Form CD-451 for Award 13-08-

NIST Financial Assistance Award Number: 13-08-I2210
Amendment: 01
Recipient: County of Lumpkin

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY
BROADBAND INFRASTRUCTURE PROGRAM
FINANCIAL ASSISTANCE
SPECIFIC AWARD CONDITIONS

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3. (REVISED) NTIA Contact Information:

Federal Program Officer
Emily You
National Telecommunications and Information Administration
US Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230
Email: eyou@ntia.gov

7. (REVISED) Period of Performance and Funding Limitations:

The period of performance and budget incorporated into this award cover a **1**-year period of performance and provide for a maximum total amount of **$3,236,198** in Federal funding. This award is being fully funded via this award action.

The maximum amount of NIST funding in support of this award will not exceed the amount specified in the award documents, unless otherwise amended in writing by the NIST Grants Officer. The Department of Commerce is not liable for any obligations, expenditures, or commitments which involve any amount in excess of the Federal funds being made available pursuant to this award.

20. (REVISED) Federal and Non-Federal Cost Sharing:

Pursuant to this award, NIST hereby approves the voluntary committed non-federal cost share in the amount of **$1,935,845** per the proposal's budget on the part of the recipient and becomes a binding requirement under subject award (*see* definition of "voluntary committed cost sharing" in 2 C.F.R. 200.1) . The cost sharing ratio for this award is **62.57%** Federal share and **37.43%** Non-Federal share. See 2 CFR §200.306 and Department of Commerce Financial Assistance Standard Terms and Conditions, Section B.03 for the treatment of cost sharing.

End of Specific Award Conditions

Attachment: GA - I2210-1 CD-451 signed 8.16.22 (2022-058 : Amendment to the Financial Assistance Award Form CD-451 for Award 13-08-I2210)

APPLICANT'S NAME_____

OMB Approval No. 0348-0041

BUDGET INFORMATION - Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case, you will be notified.

COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Columns a-b)
1 Administrative and legal expenses	$171,450	$0.00	$171,450.00
2 Land, structures, rights-of-way, appraisals, etc.	$0	$0.00	$0.00
3 Relocation expenses and payments	$0	$0.00	$0.00
4 Architectural and engineering fees	$537,264	$0.00	$537,264.00
5 Other architectural and engineering fees	$0	$0.00	$0.00
6 Project inspection fees	$0	$0.00	$0.00
7 Site work	$0	$0.00	$0.00
8 Demolition and removal	$0	$0.00	$0.00
9 Construction	$4,080,804	$0.00	$4,080,804.00
10 Equipment	$382,525	$0.00	$382,525.00
11 Miscellaneous	$0	$0.00	$0.00
12 SUBTOTAL	$5,172,043	$0.00	$5,172,043.00
13 Contingencies	$0	$0.00	$0.00
14 SUBTOTAL	$5,172,043	$0.00	$5,172,043.00
15 Project (program) income	$0	$0.00	$0.00
16 TOTAL PROJECT COSTS (*subtract #15 from #14)*	$5,172,043	$0.00	$5,172,043.00
FEDERAL FUNDING			
17 Federal assistance requested, calculated as follows: (Consult Federal agency for Federal percentage share.) Enter the resulting Federal share.	Enter eligible costs from line 16c Multiply X __63_%		$ 3,236,198

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Prescribed by OMB Circular A-102

Attachment: GA - I2210-1 CD-451 signed 8.16.22 (2022-058 : Amendment to the Financial Assistance

Lumpkin County, Georgia

Finance Department

Date: September 20, 2022

Agenda Item: DebtBook Contract

Item Description: DebtBook Contract. Consideration of DebtBook Contract.

Facts & Historical Information:

In 2017, Governmental Accounting Standards Board (GASB) issued Statement No. 87. The objective of Statement No. 87 is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. GASB 87 implementation is required for the County's 2022 audit.

In order to implement GASB 87, all leases, whether the county is the lessee or lessor, must be evaluated and measured against GASB's definition of a lease. Values must be assigned to contracts that meet the definition of a lease and disclosed in the annual audit.

As part of the county's annual audit, staff uses Microsoft Excel to track outstanding debt, debt payments, and accrued interest. The process is manual and time-consuming. As the County's debt structure has become more complex, a debt management system would help by tracking all obligations by type of debt, purposes of issuance, and repayment source.

In looking for a lease/debt management system, DebtBook is the only known source to offer online debt and lease management services. DebtBook provides cloud-based software and meets the needs of all reporting requirements.

Potential Courses Of Action:

A. Approve the contract.
B. Do not approve the contract.

Budget Impact: The annual fee for the software is $9750. There are funds available in the Finance Department's 2022 and 2023 budgets.

Staff Recommendation: **Course of Action A.**

Attachments:
DebtBook Order Form TCs 7.25.22

ORDER FORM

Fifth Asset, Inc., d/b/a DebtBook ("**DebtBook**") is pleased to provide **Lumpkin County, GA**("**Customer**") with the Services subject to the terms established in this Order Form. This Order Form may be modified or replaced from time to time by a subsequent Order Form duly executed and delivered by each party in connection with any Renewal Term.

The Services are subject to DebtBook's General Terms & Conditions (the "**Terms & Conditions**"), which have been provided to Customer, and the Incorporated Documents referenced in the Terms & Conditions. Each capitalized term used but not defined in this Order Form has the meaning given in the Terms & Conditions.

Order Details
Effective Date: 8/31/2022
Initial Term End Date: 8/30/2023
Initial Pricing Tier: Tier 2
Billing Frequency: Annually
Payment Terms: Net 30

Services. Subject to the terms described in this Order Form, DebtBook will grant Customer access to the Application Services during the Initial Term described above and, if applicable, each subsequent Renewal Term. As part of the initial implementation and onboarding process, DebtBook will provide Customer with the Implementation Services. DebtBook will also provide Customer with the Support Services throughout the Term.

Fees. DebtBook will charge Customer (1) a one-time Implementation Fee for its initial Implementation Services and (2) a recurring Subscription Fee for Customer's ongoing access to the Application Services and Support Services.

Generally, DebtBook sets Fees using its standard pricing schedule for the Services based on the Customer's applicable Pricing Tier, which is based on the total number and amount of debt and lease obligations outstanding at the time of determination. The Initial Pricing Tier indicated above is based on Customer's good faith estimate of its total number and amount of debt and lease obligations currently outstanding and will not change during the Initial Term, regardless of (1) the actual number or amount of the Customer's debt and lease obligations implemented as part of the Implementation Services or (2) any changes during the Initial Term to Customer's debt and lease obligations.

Billing. Unless otherwise provided in the Customer Terms, all Fees will be due and payable in advance on the terms indicated above, and each invoice will be emailed to the Customer's billing contact indicated below.

Renewal Term. The Initial Term is subject to renewal on the terms set forth in the Terms & Conditions. The pricing tier applicable for each Renewal Term will be determined based on the aggregate number and amount of the Customer's debt and lease obligations outstanding at the time of renewal.

Termination. The Agreement is subject to early termination on the terms set forth in the Terms & Conditions.

Entire Agreement. By executing this Order Form, each party agrees to be bound by (1) this Order Form, (2) the Terms & Conditions, (3) the Incorporated Documents, and (4) any Customer Terms.

This Order Form, the Customer Terms, the Terms & Conditions, and the Incorporated Documents constitute the complete "Agreement" between the parties and supersede any prior discussion or representations regarding the Customer's purchase and use of the Services.

Intellectual Property. Except for the limited rights and licenses expressly granted to Customer under this Order Form and the Terms & Conditions, nothing in the Agreement grants to Customer or any third party any intellectual property rights or other right, title, or interest in or to the DebtBook IP.

Important Disclaimers & Limitations. EXCEPT FOR THE WARRANTIES SET FORTH IN THE TERMS & CONDITIONS, DEBTBOOK IP IS PROVIDED "AS IS," AND DEBTBOOK DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF

Attachment: DebtBook Order Form TCs 7.25.22 (2022-059 : DebtBook Contract)

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IN ADDITION, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES' LIABILITIES UNDER THE AGREEMENT ARE LIMITED AS SET FORTH IN THE TERMS & CONDITIONS.

Notices. Any Notice delivered under the Agreement will be delivered to the address below each party's signature below.

Authority; Execution. Each of the undersigned represents that they are authorized to (1) execute and deliver this Order Form on behalf of their respective party and (2) bind their respective party to the terms of the Agreement. This Order Form and any other documents executed and delivered in connection with the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. To the extent permitted by applicable law, electronic signatures may be used for the purpose of executing the Order Form by email or other electronic means. Any document delivered electronically and accepted is deemed to be "in writing" to the same extent and with the same effect as if the document had been signed manually.

FIFTH ASSET, INC., D/B/A DEBTBOOK

By: _____
Name: Tyler Traudt
Title: CEO

Notice Address

300 W. Summit Avenue, Suite 110
Charlotte, NC 28203
Attention: Chief Executive Officer
tyler.traudt@debtbook.com

LUMPKIN COUNTY, GA

By: _____
Name: _____
Title: _____

Notice Address

99 Courthouse Hill
Dahlonega, GA 30533
Attention: Abby Branan
abby.branan@lumpkincounty.gov

Billing Contact

99 Courthouse Hill
Dahlonega, GA 30533
Attention: Abby Branan
abby.branan@lumpkincounty.gov

Attachment: DebtBook Order Form TCs 7.25.22 (2022-059 : DebtBook Contract)

DEBTBOOK'S GENERAL TERMS & CONDITIONS

Please carefully read these General Terms and Conditions (these "**Terms & Conditions**") which govern the Customer's access and use of the Services described in the Order Form.

By executing the Order Form and using any of the Services, the Customer agrees to be bound by these Terms.

1. Definitions.

"**Aggregated Statistics**" means data and information related to Customer's use of the Services that is used by DebtBook in an aggregate and anonymized manner, including statistical and performance information related to the Services.

"**Agreement**" means, collectively and to the extent applicable, the Order Form, any Customer Terms, these Terms & Conditions, and the Incorporated Documents, in each case as may be amended from time to time in accordance with their terms.

"**Application Services**" means DebtBook's debt and lease management software-as-a-service application.

"**Appropriate Security Measures**" means, collectively, commercially reasonable technical and physical controls and safeguards intended to protect Customer Data against destruction, loss, unauthorized disclosure, or unauthorized access by employees or contractors employed by DebtBook.

"**Authorized User**" means any of Customer's employees, consultants, contractors, or agents who are authorized by Customer to access and use any of the Services.

"**Customer**" means the person or entity purchasing the Services as identified in the Order Form.

"**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is transmitted by or on behalf of Customer or an Authorized User through the Services.

"**Customer Terms**" means any terms or agreements provided by Customer and applicable to the Services but only to the extent such terms or agreements are expressly referenced and incorporated into the Order Form. For the avoidance of doubt, "Customer Terms" does not include any purchase order or similar document generated by Customer unless such document is expressly referenced and incorporated into the Order Form.

"**DebtBook**" means Fifth Asset, Inc., d/b/a DebtBook, a Delaware corporation, and its permitted successor and assigns.

"**DebtBook IP**" means (1) the Services, Documentation, and Feedback, including all ideas, concepts, discoveries, strategies, analyses, research, developments, improvements, data, materials, products, documents, works of authorship, processes, procedures, designs, techniques, inventions, and other intellectual property, whether or not patentable or copyrightable, and all embodiments and derivative works of each of the foregoing in any form and media, that are developed, generated or produced by DebtBook arising from or related to the Services, Documentation, or Feedback; and (2) any intellectual property provided to Customer or any Authorized User in connection with the foregoing other than Customer Data.

"**Documentation**" means DebtBook's end user documentation and content, regardless of media, relating to the Services made available from time to time on DebtBook's website at https://support.debtbook.com.

"**Feedback**" means any comments, questions, suggestions, or similar feedback transmitted in any manner to DebtBook, including suggestions for new features, functionality, or changes to the DebtBook IP.

"**Governing State**" means, if Customer is a governmental entity, the state in which Customer is located. Otherwise, "Governing State" means the State of North Carolina.

"**Implementation Services**" means onboarding and implementation services, including entry of relevant data, as necessary to make the Application Services available to the Customer during the Initial Term.

"**Incorporated Documents**" means, collectively, the Privacy Policy, the Documentation, the SLA, and the Usage Policy, as each may be updated from time to time in accordance with their terms. The Incorporated

Attachment: DebtBook Order Form TCs 7.25.22 (2022-059 : DebtBook Contract)

Documents, as amended, are incorporated into these Terms & Conditions by this reference. Current versions of the Incorporated Documents are available at https://www.debtbook.com/legal.

"**Initial Term**" means the Initial Term of the Services beginning on the Effective Date and ending on the Initial Term End Date, as established in the Order Form.

"**Order Form**" means (1) the order document executed and delivered by DebtBook and Customer for the Initial Term or (2) to the extent applicable, any subsequent order document executed and delivered by DebtBook and Customer for any Renewal Term, including, in each case, any applicable Order Form Supplement.

"**Order Form Supplement**" means any Order Form Supplement expressly referenced and incorporated by reference into any Order Form.

"**Privacy Policy**" means, collectively, DebtBook's privacy policy and any similar data policies generally applicable to all users of the Application Services, in each case as posted to DebtBook's website and as updated from time to time in accordance with their terms.

"**Renewal Term**" means any renewal term established in accordance with the terms of the Agreement.

"**Services**" means, collectively, the Application Services, the Implementation Services, and the Support Services.

"**SLA**" means the Service Level Addendum generally applicable to all users of the Application Services, as posted to DebtBook's website and as updated from time to time in accordance with its terms.

"**Support Services**" means the general maintenance services and technical support provided in connection with the Application, as more particularly described in the SLA.

"**Term**" means, collectively, the Initial Term and, if applicable, each successive Renewal Term.

"**Usage Policy**" means, collectively, DebtBook's acceptable usage policy, any end user licensing agreement, or any similar policy generally applicable to all end users accessing the Application Services, in each case as posted to DebtBook's website and as updated from time to time in accordance with its terms.

Each capitalized term used but not otherwise defined in these Terms & Conditions has the meaning given to such term in the applicable Order Form.

2. Access and Use.

(a) Provision of Access. Subject to the terms and conditions of the Agreement, DebtBook grants Customer and Customer's Authorized Users a non-exclusive, non-transferable (except as permitted by these Terms) right to access and use the Application Services during the Term, solely for Customer's internal use and for the Authorized Users' use in accordance with the Agreement. DebtBook will provide to Customer the necessary passwords and network links or connections to allow Customer to access the Application Services.

(b) Documentation License. Subject to the terms and conditions of the Agreement, DebtBook grants to Customer and Customer's Authorized Users a non-exclusive, non-sublicensable, non-transferable (except as permitted by these Terms) license to use the Documentation during the Term solely for Customer's and its Authorized User's internal business purposes in connection with its use of the Services.

(c) Customer Responsibilities. Customer is responsible and liable for its Authorized Users' access and use of the Services and Documentation, regardless of whether such use is permitted by the Agreement. Customer must use reasonable efforts to make all Authorized Users aware of the provisions applicable to their use of the Services, including the Incorporated Documents.

(d) Use Restrictions. Customer may not at any time, directly or indirectly through any Authorized User, access or use the Services in violation of the Usage Policies, including any attempt to (1) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (2) sell, license, or otherwise transfer or make available the Services or Documentation except as expressly permitted by the Agreement; or (3) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part. Customer will not knowingly transmit any personally identifiable information to DebtBook or any other third-party through the Services.

Attachment: DebtBook Order Form TCs 7.25.22 (2022-059 : DebtBook Contract)

(e) Suspension. Notwithstanding anything to the contrary in the Agreement, DebtBook may temporarily suspend Customer's and any Authorized User's access to any or all of the Services if: (1) Customer is more than 45 days late in making any payment due under, and in accordance with, the terms of the Agreement, (2) DebtBook reasonably determines that (A) there is a threat or attack on any of the DebtBook IP; (B) Customer's or any Authorized User's use of the DebtBook IP disrupts or poses a security risk to the DebtBook IP or to any other customer or vendor of DebtBook; (C) Customer, or any Authorized User, is using the DebtBook IP for fraudulent or other illegal activities; or (D) DebtBook's provision of the Services to Customer or any Authorized User is prohibited by applicable law; or (3) any vendor of DebtBook has suspended or terminated DebtBook's access to or use of any third-party services or products required to enable Customer to access the Services (any such suspension, a "**Service Suspension**"). DebtBook will use commercially reasonable efforts to (i) provide written notice of any Service Suspension to Customer, (ii) provide updates regarding resumption of access to the Services, and (iii) resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. DebtBook is not liable for any damage, losses, or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f) Aggregated Statistics. Notwithstanding anything to the contrary in the Agreement, DebtBook may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between DebtBook and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by DebtBook. DebtBook may compile Aggregated Statistics based on Customer Data input into the Services. DebtBook may (1) make Aggregated Statistics publicly available in compliance with applicable law, and (2) use Aggregated Statistics as permitted under applicable law so long as, in each case, DebtBook's use of any Aggregated Statistics does not identify the Customer or disclose Customer's Confidential Information.

3. Service Levels and Support. Subject to the terms and conditions of the Agreement, DebtBook will use commercially reasonable efforts to make the Application Services and Support Services available in accordance with the SLA.

4. Fees and Payment.

(a) Fees. Customer will pay DebtBook the fees ("**Fees**") set forth in the Order Form. DebtBook will invoice Customer for all Fees in accordance with the invoicing schedule and requirements set forth in the Order Form. Customer must pay all Fees in US dollars, and all Fees are fully earned once paid. To the extent permitted by applicable law, if Customer fails to make any payment when due, DebtBook may, without limiting any of its other rights, charge interest on the past due amount at the lowest of (1) the rate of 1.5% per month, (2) the rate established in any Customer Term, or (3) the maximum rate permitted under applicable law.

(b) Taxes. All Fees and other amounts payable by Customer under the Agreement are exclusive of taxes and similar assessments. Unless Customer is exempt from making any such payment under applicable law or regulation, Customer is responsible for all applicable sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer under the Agreement, other than any taxes imposed on DebtBook's income.

5. Confidential Information.

(a) From time to time during the Term, either party (the "**Disclosing Party**") may disclose or make available to the other party (the "**Receiving Party**") information about the Disclosing Party's business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether in written, electronic, or other form or media, that is marked, designated, or otherwise identified as "confidential", or which a reasonable person would understand to be confidential or proprietary under the circumstances (collectively, "**Confidential Information**"). For the avoidance of doubt, DebtBook's Confidential information includes the DebtBook IP and the Application Services source code and specifications. As used in the Agreement, "Confidential Information" expressly excludes any information that, at the time of disclosure is (1) in the public domain; (2) known to the receiving party at the time of disclosure; (3) rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (4) independently developed by the Receiving Party.

(b) To the extent permitted by applicable law, the Receiving Party will hold the Disclosing Party's Confidential Information in strict confidence and may not disclose the Disclosing Party's Confidential

Attachment: DebtBook Order Form TCs 7.25.22 (2022-059 : DebtBook Contract)

Information to any person or entity, except to the Receiving Party's employees, officers, directors, agents, subcontractors, financial advisors, and attorneys who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations under the Agreement or otherwise in connection with the Services. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (1) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order must first give written notice to the other party and make a reasonable effort to obtain a protective order; or (2) to establish a party's rights under the Agreement, including to make required court filings.

(c) On the expiration or termination of the Agreement, the Receiving Party must promptly return to the Disclosing Party all copies of the Disclosing Party's Confidential Information, or destroy all such copies and, on the Disclosing Party's request, certify in writing to the Disclosing Party that such Confidential Information has been destroyed.

(d) Each party's obligations under this Section are effective as of the Effective Date and will expire three years from the termination of the Agreement; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of the Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

6. Intellectual Property.

(a) DebtBook IP. As between Customer and DebtBook, DebtBook owns all right, title, and interest, including all intellectual property rights, in and to the DebtBook IP.

(b) Customer Data. As between Customer and DebtBook, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to DebtBook a non-exclusive, royalty-free, worldwide license to reproduce, distribute, sublicense, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary or appropriate for DebtBook to provide the Services to Customer.

(c) Effect of Termination. Without limiting either party's obligations under Section 5, on written request by Customer made within 30 days after the effective date of termination of the Agreement, DebtBook, at no further charge to Customer, will (1) provide Customer with temporary access to the Application Services to permit Customer to retrieve its Customer Data in a commercially transferrable format and (2) use commercially reasonable efforts to assist Customer, at Customer's request, with such retrieval.

7. Limited Warranties.

(a) Functionality & Service Levels. During the Term, the Application Services will operate in a manner consistent with general industry standards reasonably applicable to the provision of the Application Services and will conform in all material respects to the Documentation and service levels set forth in the SLA when accessed and used in accordance with the Documentation. Except as expressly stated in the SLA, DebtBook does not make any representation, warranty, or guarantee regarding availability of the Application Services, and the remedies set forth in the SLA are Customer's sole remedies and DebtBook's sole liability under the limited warranty set forth in this paragraph.

(b) Security. DebtBook has implemented Appropriate Security Measures and has made commercially reasonable efforts to ensure its licensors and hosting providers, as the case may be, have implemented Appropriate Security Measures intended to protect Customer Data.

(c) EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, DEBTBOOK IP IS PROVIDED "AS IS," AND DEBTBOOK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. DEBTBOOK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION, DEBTBOOK MAKES NO WARRANTY OF ANY KIND THAT THE DEBTBOOK IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

Attachment: DebtBook Order Form TCs 7.25.22 (2022-059 : DebtBook Contract)

(d) DebtBook exercises no control over the flow of information to or from the Application Service, DebtBook's network, or other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt connections to the Internet. Although DebtBook will use commercially reasonable efforts to take all actions DebtBook deems appropriate to remedy and avoid such events, DebtBook cannot guarantee that such events will not occur. ACCORDINGLY, DEBTBOOK DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATING TO ALL SUCH EVENTS, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, ANY OTHER ACTIONS OR INACTIONS CAUSED BY OR UNDER THE CONTROL OF A THIRD PARTY.

8. Indemnification.

(a) DebtBook Indemnification.

(i) DebtBook will indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) (collectively, "**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Application Services, or any use of the Application Services in accordance with the Agreement, infringes or misappropriates such third party's US patents, copyrights, or trade secrets, provided that Customer promptly notifies DebtBook in writing of the Third-Party Claim, reasonably cooperates with DebtBook in the defense of the Third-Party Claim, and allows DebtBook sole authority to control the defense and settlement of the Third-Party Claim.

(ii) If such a claim is made or appears possible, Customer agrees to permit DebtBook, at DebtBook's sole expense and discretion, to (A) modify or replace the DebtBook IP, or component or part of the DebtBook IP, to make it non-infringing, or (B) obtain the right for Customer to continue use. If DebtBook determines that neither alternative is reasonably available, DebtBook may terminate the Agreement in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, so long as, in each case, DebtBook promptly refunds or credits to Customer all amounts Customer paid with respect to the DebtBook IP that Customer cannot reasonably use as intended under the Agreement.

(iii) DebtBook's indemnification obligation under this Section will not apply to the extent that the alleged infringement arises from Customer's use of the Application Services in combination with data, software, hardware, equipment, or technology not provided or authorized in writing by DebtBook or modifications to the Application Services not made by DebtBook.

(b) Sole Remedy. SECTION 8(a) SETS FORTH CUSTOMER'S SOLE REMEDIES AND DEBTBOOK'S SOLE LIABILITY FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT WILL DEBTBOOK'S LIABILITY UNDER SECTION 8(a) EXCEED $1,000,000.

(c) Customer Indemnification. To the extent permitted by applicable law, Customer will indemnify, hold harmless, and, at DebtBook's option, defend DebtBook from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with the Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's negligence or willful misconduct or use of the Services in a manner not authorized by the Agreement.

9. Limitations of Liability. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS SECTION, IN NO EVENT WILL THE AGGREGATE LIABILITY OF DEBTBOOK ARISING OUT OF OR RELATED TO THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO DEBTBOOK UNDER THE AGREEMENT IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION DO NOT APPLY TO CLAIMS PURSUANT TO SECTION 8.

Attachment: DebtBook Order Form TCs 7.25.22 (2022-059 : DebtBook Contract)

10. Term and Termination.

(a) Term. Except as the parties may otherwise agree in the Order Form, or unless terminated earlier in accordance with the Agreement:

(i) the Initial Term of the Agreement will begin on the Effective Date and end on the Initial Term End Date;

(ii) the Agreement will automatically renew for successive 12-month Renewal Terms unless either party gives the other party written notice of non-renewal at least 30 days before the expiration of the then-current term; and

(iii) each Renewal Term will be subject to the same terms and conditions established under the Agreement, with any Fees determined in accordance with DebtBook's then-current pricing schedule published on DebtBook's website and generally appliable to all users of the Services, as provided to Customer at least 60 days before the expiration of the then-current term.

(b) Termination. In addition to any other express termination right set forth in the Agreement:

(i) DebtBook may terminate the Agreement immediately if Customer breaches any of its obligations under Section 2 or Section 5;

(ii) Customer may terminate the Agreement in accordance with the SLA;

(iii) either party may terminate the Agreement, effective on written notice to the other party, if the other party materially breaches the Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach;

(iv) if (1) Customer is a governmental entity and (2) sufficient funds are not appropriated to pay for the Application Services, then Customer may terminate the Agreement at any time without penalty following 30 days prior written notice to DebtBook; or

(v) either party may, to the extent permitted by law, terminate the Agreement, effective immediately on written notice to the other party, if the other party becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law.

(c) Survival. Only this Section and Section 1 (Definitions), Sections 4 through 6 (Fees; Confidential Information; Intellectual Property), Section 7(c) (Disclaimer of Warranties), and Sections 8, 9 and 12 (Indemnification; Limitations of Liability; Miscellaneous) will survive any termination or expiration of the Agreement.

11. Independent Contractor. The parties to the Agreement are independent contractors. The Agreement does not create a joint venture or partnership between the parties, and neither party is, by virtue of the Agreement, authorized as an agent, employee, or representative of the other party.

12. Miscellaneous.

(a) Governing Law; Submission to Jurisdiction. The Agreement will be governed by and construed in accordance with the laws of the Governing State, without regard to any choice or conflict of law provisions, and any claim arising out of the Agreement may be brought in the state or federal courts located in the Governing State. Each party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding.

(b) Entire Agreement; Order of Precedence. The Order Form, any Customer Terms, the Terms & Conditions, and the Incorporated Documents constitute the complete Agreement between the parties and supersede any prior discussion or representations regarding the Customer's purchase and use of the Services.

To the extent any conflict exists between the terms of the Agreement, the documents will govern in the following order or precedence: (1) the Order Form (2) the Customer Terms, (3) the Terms & Conditions, and (4) the Incorporated Documents. No other purchasing order or similar instrument issued by either party in connection with the Services will have any effect on the Agreement or bind the other party in any way.

Attachment: DebtBook Order Form TCs 7.25.22 (2022-059 : DebtBook Contract)

(c) Amendment; Waiver. No amendment to the Order Form, the Terms & Conditions, or the Customer Terms will be effective unless it is in writing and signed by an authorized representative of each party. DebtBook may update the Incorporated Documents from time-to-time following notice to Customer so long as such updates are generally applicable to all users of the Services. No waiver by any party of any of the provisions of the Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, delay in exercising, or any partial exercise of any rights, remedy, power, or privilege arising from the Agreement will in any way waive or otherwise limit the future exercise of any right, remedy, power, or privilege available under the Agreement.

(d) Notices. All notices, requests, consents, claims, demands, and waivers under the Agreement (each, a "**Notice**") must be in writing and addressed, if to Customer, to the recipients and addresses set forth on the Order Form (or to such other address as Customer may designate from time to time in accordance with this Section). All Notices to DebtBook must be addressed to the recipients and addresses set forth at https://www.debtbook.com/legal. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid).

(e) Force Majeure. In no event will either party be liable to the other party, or be deemed to have breached the Agreement, for any failure or delay in performing its obligations under the Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including acts of God, flood, fire, earthquake, pandemic, epidemic, problems with the Internet, shortages in materials, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(f) Severability. If any provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(g) Assignment. Either party may assign its rights or delegate its obligations, in whole or in part, on 30 days prior written notice to the other party, to an affiliate or an entity that acquires all or substantially all of the business or assets of such party, whether by merger, reorganization, acquisition, sale, or otherwise. Except as stated in this paragraph, neither party may assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned, or delayed. The Agreement is binding on and inures to the benefit of the parties and their permitted successors and assigns.

(h) Marketing. Neither party may issue press releases related to the Agreement without the other party's prior written consent. Either party may include the name and logo of the other party in lists of customers or vendors.

(i) State-Specific Certifications & Agreements. To the extent required under the laws of the Governing State, DebtBook hereby certifies and agrees as follows:

(i) DebtBook has not been designated by any applicable government authority or body as a company engaged in the boycott of Israel under the laws of the Governing State;

(ii) DebtBook is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Agreement by any governmental department or agency of the Governing State;

(iii) DebtBook will not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state, or local law; and

(iv) DebtBook will verify the work authorization of its employees using the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security and, if applicable, will require its subcontractors to do the same.

Attachment: DebtBook Order Form TCs 7.25.22 (2022-059 : DebtBook Contract)

(j) Execution. Any document executed and delivered in connection with the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. To the extent permitted by applicable law, electronic signatures may be used for the purpose of executing the Order Form by email or other electronic means. Any document delivered electronically and accepted is deemed to be "in writing" to the same extent and with the same effect as if the document had been signed manually.

Attachment: DebtBook Order Form TCs 7.25.22 (2022-059 : DebtBook Contract)

Lumpkin County, Georgia

Public Works Department

Date: September 20, 2022

Agenda Item: Contract Award Pinetree Way/Memorial Drive Improvements

Item Description: Contract Award Pinetree Way/Memorial Drive Improvements. Approve contract for the improvements to Pinetree Way and the intersection of Pinetree Way/Memorial Dr/Morrison Moore Pkwy to Colditz Trucking Inc.

Facts & Historical Information: In September of 2021, an IGA was signed between the BOE and the BOC in which the County is responsible for upgrades to Pinetree Way. As a result of this IGA County Staff had developed plans for the improvements which have been approved by the City of Dahlonega and GDOT. On September 1, 2023 the County received 3 bids for construction of this project (see attached bid tabulation). Colditz Trucking was the low bidder at $1,003,101.66.

Potential Courses Of Action:

1. Award contract to Colditz Trucking Inc.
2. Do not award contract.

Budget Impact: $1,000,000 for this project is included in the 2022 TSPLOST work plan. Also, GDOT has awarded $500,000 to help pay for this project. The total cost of the project will be less that the allocated funds.

Staff Recommendation: **Staff Recommends That Colditz Trucking Inc. be awarded the contract for this project.**

Attachments:
ITB 2022-005 PINETREE WAY MEMORIAL DRIVE IMPROVEMENTS BID TABULATION
Colditz submission
Pinetree Way - Memorial Drive Road Improvements Contract

Bib Opening Tabulation

Project# 2022-005 Pinetree Way-Memorial Drive Road Improvements September 1, 2022 @ 2:05 PM	North GA Concrete	Grizzle Grading & Excavating	Colditz				
Information Form	✓	✓	✓				
Execution of Proposal Form	✓	✓	✓				
Non-Collusion Form	✓	✓	✓				
Drug Free Workplace Form	✓	✓	✓				
Addenda Acknowledgement Form	✓	✓	✓				
E-verify	✓	✓	✓				
SAVE Affidavit	✓	✓	✓				
W-9	✓	✓	✓				
Bid Bond	✓	✓	✓				
Bidder's Certification	✓	✓	✓				
Price Proposal Form	1,522,070.50	1,182,315.70	1,003,101.66				

Ryan McDuffie

Ryan McDuffie, Purchasing Agent

Witness

VENDOR'S CHECKLIST AND BID SUBMITTAL PACKET

Company Name: Colditz Trucking Inc.

Please indicate you have completed the following documentation; and submit them in the following order

- ☑ Information Form
- ☑ Execution of Proposal Form
- ☑ Price Proposal Form
- ☑ Bid Bonds
- ☑ Certification and Non-Collusion Form
- ☑ Drug-Free Workplace Form
- ☑ Addenda Acknowledgment Form
- ☑ Georgia's Security and Immigration Compliance Act Affidavit
- ☑ SAVE Affidavit
- ☑ Completed W9

Teresa Colditz
Authorized Signature

President
Title

Colditz Trucking Inc. CORPORATE SEAL 1994 GEORGIA

Teresa Colditz
Print Name

08/29/2022
Date

THIS PAGE MUST BE COMPLETED AND SUBMITTED WITH BID

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

INFORMATION FORM

1. Legal Business Name Colditz Trucking Inc.
2. Street Address 191 Bill Donaldson Circle
3. City, State & Zip Blairsville Georgia 30512
4. Type of Business: State of Registration: Corporation, Georgia
   (Association, Corporation, Partnership, Limited Liability Company, etc.)
5. Name & Title of Authorized Signer: Teresa Colditz, President
6. Primary Contact Alecia Graves
7. Phone Fax 706 745 8573
8. E-mail Colditztrucking1@aol.com
9. Company Website www.colditztruckinginc.com

Colditz Trucking Inc. CORPORATE SEAL 1994 GEORGIA

10. Has your company ever been debarred from doing business with any federal, state or local agency?

Yes_____ No X

If yes, please state the agency name, dates and reason for debarment.

_____

_____

_____

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

EXECUTION OF PROPOSAL FORM

DATE: 8/29/2022

The potential Contractor certifies the following by placing an "X" in all blank spaces:

X That this proposal was signed by an authorized representative of the firm.

X That the potential Contractor has determined the cost and availability of all materials and supplies associated with performing the services outlined herein.

X That all labor costs associated with this project have been determined, including all direct and indirect costs.

X That the potential Contractor agrees to the conditions as set forth in this Invitation to Bid with no exceptions.

Therefore, in compliance with the foregoing **Invitation for Bids**, and subject to all terms and conditions thereof, the undersigned offers and agrees, if this proposal is accepted within sixty (60) days from the date of the opening, to furnish the services for the prices quoted within the timeframe required.

Colditz Trucking Inc.
Business Name

Teresa Colditz
Authorized Signature

08/29/2022
Date

Teresa Colditz, President
Typed Name & Title

Colditz Trucking Inc. CORPORATE SEAL 1994 GEORGIA

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR BID

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

PRICE PROPOSAL FORM

Company Name: Colditz Trucking, Inc.

Total Bid: 1,003,101.66

I certify the above bid as all-inclusive and final per document specifications.

Teresa Colditz — President
Authorized Signature — **Title**

Teresa Colditz — President
Print Name — **Title**

Colditz Trucking Inc. CORPORATE SEAL 1994 GEORGIA

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR BID

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

CERTIFICATION AND NON-COLLUSION FORM

I Teresa Colditz certify that this proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a proposal for the same services and is in all respects fair and without collusion or fraud. I understand that collusive bidding is a violation of state and Federal law and can result in fines, prison sentences and civil damages awards.

I certify that this proposal has been prepared independently and the price submitted will not be disclosed to another person.

I certify that there has been no contact or communication by the proposer or the proposer's associates with any County staff, or elected officials since the date this **BID #2022-005, PINE TREE WAY/MEMORIAL DRIVE ROAD IMPROVEMENTS,** issued except: 1) through the Purchasing Department 2) at the Pre-Bid Conference (if applicable) or 3) as provided by existing work agreement(s). **The County reserves the right to reject the bid submitted by any proposer violating this provision.**

I agree to abide by all conditions of this bid and certify that I am authorized to sign this proposal.

Colditz Trucking Inc.
COMPANY NAME:

Teresa Colditz 08/29/2022
Authorized Representative (Signature) Date

Teresa Colditz, President
Authorized Representative/Title

Teresa Colditz
(Print or Type)

Colditz Trucking Inc. CORPORATE SEAL 1994 GEORGIA

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR BID

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

DRUG- FREE WORKPLACE FORM

I hereby certify that I am a principle and duly authorized representative of: _____

Colditz Trucking, Inc.

Whose address is: 191 Bill Donaldson Circle Blairsville Georgia

And it is also that:

1. The provisions of Section § 50.24.1 through § 50.24.6 of the Official Code of Georgia Annotated relating to the "Drug Free Workplace Act" and have been complied with in full, and

2. A drug free workplace will be provided for the CONTRACTOR'S employees during the performance of the contract; and,

3. Each subcontractor hired by the CONTRACTOR shall be required to ensure that the subcontractor's employees are provided a drug free workplace. The CONTRACTOR shall secure from that subcontractor the following written certification: "As part of the subcontracting agreement with

Colditz Trucking Inc.

certifies to the CONTRACTOR that a drug free workplace will be provided for the subcontractor's employees during the performance of this contract pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated Section § 50.24.3"; and,

4. It is certified that the undersigned will not engage in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract.

Colditz Trucking Inc. CORPORATE SEAL 1994 GEORGIA

Teresa Colditz
Signature

08/29/2022
Date

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR BID

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

ADDENDA ACKNOWLEDGEMENT FORM

The vendor has examined and carefully studied the Invitation for Bid and the following Addenda, receipt of all of which is hereby acknowledged:

Addendum No. 1

Addendum No. _____

Addendum No. _____

Addendum No. _____

Teresa Colditz
Authorized Representative (Signature)

08/29/2022
Date

Teresa Colditz. President
Authorized Representative/Title
(Print or Type)

Colditz Trucking Inc. CORPORATE SEAL 1994 GEORGIA

Vendors must acknowledge any issued addenda. Proposals which fail to acknowledge the vendor's receipt of any addendum will result in the rejection of the offer if the addendum contained information which substantively changes the Owner's requirements.

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR BID

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

ITB #2022-005 PINETREE WAY/ MEMORIAL DRIVE ROAD IMPROVEMENTS

ADDENDUM 1

Return to:	Lumpkin County Board of Commissioners Ryan McDuffie, Purchasing Agent 99 Courthouse Hill, Suite D Dahlonega, GA 30533
Bid Closing Date:	September 1, 2022 at 2:00 PM, EDT
Bid Issue Date:	July 27, 2022
Addendum Issue Date:	August 18, 2022 at 5:00 PM, EDT
Pages:	3
By:	Ryan McDuffie, Purchasing Agent

Vendor Name: Colditz Trucking Inc

(A copy must be attached to the Addenda Acknowledgement)

QUESTIONS AND CLARIFICATIONS

1. Reminder- Please include the Bidder's Certification and the Unit Pricing Sheet in your submission in addition to the Price Proposal Sheet.
2. Is all the right of way secured?
   a. Yes.
3. Will DOT be doing the inspections or will the County?
   a. Lumpkin County.
4. Is the vendor tapping where the water connection is labeled on the plan?
   a. Contractor will provide new tap on existing 12" DIP pipe.
5. What size is the existing line for water connection?
   a. 12" DIP.
6. Will there be a substitute for the Class 52? There is an extensive lead time on Class 52.
   a. Ductile Iron Pipe (DIP) conforming to AWWA C 151 (ANSIA21.5) minimum of pressure Class 350 or thickness Class 50 may be substituted.
7. Is there going to be an erosion control plan? Better define the erosion control.
   a. The disturbed area for this project is less than 1 acre. No erosion control plan will be provided. Erosion control items will include outlet protection at the pipe outlet and inlet sediment traps and silt fence located as directed by county staff. No water quality monitoring/sampling or water quality inspections will be required.
8. Will there be a need for storm water monitoring?
   a. No.

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

9. Is there a cost estimate to move the power pole belonging to Georgia Power that is behind the fire department?
    a. One has not been provided at this time.
10. Verify process for abandoning the existing water line?
    a. Water line may be capped and left in place.
11. Provide benchmark elevation.
    a. See attached.
12. Will vendor need to phase traffic for construction to continue on the school construction project?
    a. No. A construction entrance will be created for them to use.
13. Is there any lighting in the project?
    a. No lighting.

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

Lumpkin County Engineering
1642 RED OAK FLATS RD.
DAHLONEGA, GEORGIA 30533
PHONE: (706) 864-3122

REVISIONS:
DATE: DESCRIPTION

CONSTRUCTION STAKING PLAN

PINETREE WAY/MEMORIAL DR ROAD WIDENING

LAND LOT 998 - 12 TH. DISTRICT
CITY OF DAHLONEGA, LUMPKIN COUNTY, GEORGIA

DATE: AUG. 15 2022
DRAWN BY: LR
FILE NAME:
STAKING PLAN
SCALE: 1"=20'
SHEET: ST-001

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

Georgia Security & Immigration Compliance (GSIC) Act Affidavit

As per the Georgia Senate Bill 529 and Senate Bill 447, the Georgia Department of Labor has promulgated new rules for the implementation of Section 2. O.C.G.A. §13-10-91 and Chapter
300-10-01-.02 state that no Georgia Public Employer shall enter into a contract for *the physical performance of services within the State of Georgia* unless the Contractor registers and participates in a federal work authorization program to verify the work eligibility information of all of its new employees.

The Employment Eligibility Verification "E-Verify" site operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security is the electronic federal work authorization program to be utilized for these purposes.

The website is https://e-verify.uscis.gov/enroll/

By executing the attached Contractor Affidavit, Contractor verifies its compliance with O.C.G.A. §13-10-91 stating affirmatively that the individual, firm or corporation which is contracting with the Lumpkin County Board of Commissioners has registered and is participating in this federal work authorization program in accordance with the applicability provisions and deadlines established in this Statute.

Contractor further agrees that should it employ or contract with any Sub-Contractor(s) for the physical performance of services pursuant to the contract with the Lumpkin County Board of Commissioners, Contractor will secure from the Sub-Contractor(s) verification of compliance with O.C.G.A. §13-10-91 on a Sub-Contractor Affidavit and shall provide a copy of each such verification to the Lumpkin County Board of Commissioners at the time the Sub-Contractor(s) is retained to perform such services.

PLEASE COMPLETE THE ATTACHED AFFIDAVIT AND RETURN IT TO:

Ryan McDuffie
Lumpkin County Purchasing Agent
99 Courthouse Hill, Suite D
Dahlonega, GA 30533
Fax: (706) 482-2201
Email: ryan.mcduffie@lumpkincounty.gov

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

LUMPKIN COUNTY BOARD OF COMMISSIONERS
SAVE Affidavit
(Systematic Alien Verification for Entitlements)

Affidavit for a Public Benefit as required by the Georgia Immigration Reform and Enforcement Act of 2011

By executing this affidavit under oath, as an applicant for a public benefit as referenced in the Georgia Illegal Immigration Reform and Enforcement Act of 2011 [O.C.G.A. § 50-36-1(e)(2)], I am stating the following:

X **I am a United States citizen; or**

_____ **I am a legal permanent resident of the United States*; or**

_____ **I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States. ***

*Alien registration number for non-citizens issued by the Department of Homeland Security or other federal immigration agency is: _____

At least one secure and verifiable document for identification purposes must be provided as required by O.C.G.A. § 50-36-1 (e) (1). See list on page 2 of this document.

****

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of Code Section 16-10-20 of the Official Code of Georgia and face criminal penalties as allowed by such criminal statute.

Colditz Trucking Inc.
Applying on behalf/Name of associated business

Teresa Colditz — 08/29/2022
Signature of Applicant — Date

Teresa Colditz
Printed Name

Colditz Trucking Inc. CORPORATE SEAL 1994 GEORGIA

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE 29 DAY OF August 2022

Judy Gail Adams
Notary Public

Judy Gail Adams NOTARY PUBLIC Union County, Georgia [NOTARY SEAL]

My Commission Expires: 02/23/2024

***NOTE:** O.C.G.A. 50-36-1(e)(2) requires that aliens under the Federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the federal definition of "alien", legal permanent residents must also provide their alien registration number.

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR BID

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

SECURE AND VERIFIABLE DOCUMENTS UNDER O.C.G.A. §50-36-2
[Issued August 1, 2011 by the Office of the Attorney General, Georgia]

The following list of secure and verifiable documents, published under the authority of O.C.G.A. §50-36-2, contains documents that are verifiable for identification purposes, and documents on this list may not necessarily be indicative of residency or immigration status.

INDICATE AND ATTACH A COPY OF THE DOCUMENT (Front and back)

- ☐ United States passport or passport card
- ☐ United States military identification card
- ☐ Merchant Mariner Document or Merchant Mariner Credential issued by the United States Coast Guard
- ☐ Secure Electronic Network for Travelers Rapid Inspection (SENTRI) card
- ☐ Driver's license issued by one of the United States, the District of Columbia, the Commonwealth of the Northern Marianas Islands, the United States Virgin Island, American Samoa, or the Swain Islands, provided that it contains a photograph of the bearer or lists sufficient identifying information regarding the bearer, such as name, date of birth gender, height, eye color, and address to enable the identification of the bearer.

- ☐ Identification card issued by one of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Marianas Islands, the United States Virgin Island, American Samoa, or the Swain Islands, provided that it contains a photograph of the bearer or lists sufficient identifying information regarding the bearer, such as name, date of birth gender, height, eye color, and address to enable the identification of the bearer.

- ☐ Tribal identification card issued by one of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Marianas Islands, the United States Virgin Island, American Samoa, or the Swain Islands, provided that it contains a photograph of the bearer or lists sufficient identifying information regarding the bearer, such as name, date of birth gender, height, eye color, and address to enable the identification of the bearer.

- ☐ Passport issued by a foreign government
- ☐ Free and Secure Trade (FAST) card
- ☐ NEXUS card
- ☐ United States Permanent Resident Card or Alien Registration Receipt Card
- ☐ Employment Authorization Document that contains a photograph of the bearer.
- ☐ Certificate of Citizenship issued by the United States Department of Citizenship and Immigration Services (USCIS) [Form N-560 or Form N-561]
- ☐ Certificate of Naturalization issued by the United States Department of Citizenship and Immigration Services (USCIS) [Form N-550 or Form N-570]

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR BID

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

IMMIGRATION AND SECURITY FORM
(GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT

CONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the Contractor identified above has registered with and is participating in a federal work authorization program*, in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the County, Contractor will secur from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the County at the time the subcontractor(s) is retained to perform such service.

47362
EEV / E-Verify™ Company Identification Number

Colditz Trucking Inc.
BY: Authorized Officer or Agent
(Contractor Name)

July 13, 2007
Date

Teresa Colditz President
Title of Authorized Officer or Agent of Contractor

Teresa Colditz
Printed Name of Authorized Officer or Agent

Colditz Trucking Inc. CORPORATE SEAL GEORGIA 1994

SUBSCRIBED AND SWORN BEFORE ME ON THIS 29th
THE DAY OF 20 22, August

Judy Gail Adams
Notary Public

Judy Gail Adams NOTARY PUBLIC Union County, Georgia

(NOTARY SEAL)

My Commission Expires: 02/23/2024

*any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR BID

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

Form **W-9**
(Rev. August 2013)
Department of the Treasury Internal

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type See Specific Instructions on page 2.

Name (as shown on your income tax return)
Colditz Trucking INC.

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:
Individual/sole proprietor | C Corporation | S Corporation | Partnership
Trust/estate | Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▸

Exemptions (see instructions):
Exempt payee code (if any)
Exemption from FATCA reporting code (if any)

Address (number, street, and apt. or suite no.)
191 Bill Donaldson Circle

Requester's name and address (optional)

City, state, and ZIP code
Blairsville Georgia 30512

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
[redacted]

Employer identification number
58 - 2110563

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Colditz Trucking Inc. Corporate Seal Georgia 1994

Sign Signature of U.S. person Teresa Colditz Date ▸ 08/28/2017

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on IRS.gov for information about Form W-9, at *www.irs.gov/w9*. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business.
Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

BIDDER'S CERTIFICATION

BIDDER INFORMATION
(TYPE OR PRINT)

Colditz Trucking
NAME OF COMPANY

191 Bill Donaldson Circle
ADDRESS

Blairsville Georgia 30512
CITY, STATE, & ZIP CODE

706 745-6247
PHONE NUMBER

706 745-8573
FAX #

58-2118563
TAX ID NUMBER

OR

NAME AND MAILING ADDRESS
(WHERE TO SEND PAYMENT)

Colditz Trucking Inc.
NAME OF COMPANY

191 Bill Donaldson Circle
ADDRESS

Blairsville Georgia 30512
CITY, STATE, & ZIP CODE

(706) 745 6247
PHONE NUMBER

Colditz-trucking1@aol.com
EMAIL ADDRESS

SOCIAL SECURITY NUMBER

NAME & TITLE OF PERSON AUTHORIZED TO SIGN

Teresa Colditz
NAME Teresa Colditz

Teresa Colditz
SIGNATURE

TITLE President

Colditz Trucking Inc. CORPORATE SEAL 1994 GEORGIA

SWORN TO AND SIGNED BEFORE ME, A NOTARY PUBLIC, THIS 29 DAY OF August, IN THE YEAR 2022. NOTARY PUBLIC IN AND FOR THE COUNTY OF Union, STATE OF Georgia.

NOTARY PUBLIC SIGNATURE AND SEAL: Judy Gail Adams

MY COMMISSIONER EXPIRES: 02/23/2024

Judy Gail Adams NOTARY PUBLIC Union County, Georgia

PROPOSALS OR BIDS NOT SIGNED SHALL BE DECLARED AS "NON-RESPONSIVE" AND MAY NOT BE CONSIDERED FOR AWARD.

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

PINE TREE WAY/MEMORIAL DRIVE

PRICING SHEET

LINE NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNITS	UNIT PRICE DOLLARS/CENTS	TOTAL DOLLARS/CENTS
150-1000	TRAFFIC CONTROL - 10016	1.00	LS	70,000	70,000
163-0232	TEMPORARY GRASSING	1.75	AC	900.00	1,575.00
163-0240	MULCH	3.00	TN	400.00	1,200.00
163-0301	CONSTRUCT AND REMOVE CONSTRUCTION EXITS	1.00	EA	2,500.00	2,500.00
163-0550	CONSTRUCT AND REMOVE INLET SEDIMENT TRAP	9.00	EA	500.00	4,500.00
165-0030	MAINTENANCE OF TEMPORARY SILT FENCE, TP ns	725.00	LF	2.00	1,450.00
165-0101	MAINTENANCE OF CONSTRUCTION EXIT	1.00	EA	1,200.00	1,200.00
165-0105	MAINTENANCE OF INLET SEDIMENT TRAP	9.00	EA	125.00	1,125.00
167-1000	WATER QUALITY MONITORING AND SAMPLING	6.00	EA	50.00	300.00
167-1500	WATER QUALITY INSPECTIONS	18.00	M	400.00	7,200.00
171-0030	TEMPORARY SILT FENCE, TYPE ns	1450.00	LF	3.25	4,712.50
210-0100	GRADING COMPLETE	1.00	LS	118,065.00	118,065.00
310-1101	GR AGGR BASE CRS, INCL MATL	1120.00	TN	48.27	54,062.40
402-1812	RECYCLED ASPH CONC LEVELING, INCL BITUM MATL & H LIME	130.00	TN	138.57	18,014.10
402-3121	RECYCLED ASPH CONC 25 MM SUPERPAVE, GP 1 OR 2, INCL BITUM MATL & H LIME	55.00	TN	141.67	7,791.85
402-3190	RECYCLED ASPH CONC 19 MM SUPERPAVE, GP 1 OR 2, INCL BITUM MATL & H LIME	512.00	TN	122.88	62,914.56
402-4510	RECYCLED ASPH CONC 12.5 MM SUPERPAVE, GP 2 ONLY, INCL POLYMER-MODIFIED BITUM MATL & H LIME	625.00	TN	125.04	78,150.00
413-0750	TACK COAT	760.00	GL	8.00	6,080.00
432-5010	MILL ASPH CONC PVMT, VARIABLE DEPTH	2280	SY	7.50	17,100.00

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

439-0052	PLAIN PC CONC PVMT, CL HES CONC, 10 INCH THK (INCL. TYPES 7 AND 9 CURB)	272.00	SY	224.00	60,928.00
441-0104	CONC SIDEWALK, 4 IN	905.00	SY	47.00	42,535.00
441-6012	CONC CURB & GUTTER, 6 IN X 24 IN, TP 2	1630.00	LF	21.00	34,230.00
441-6222	CONC CURB & GUTTER, 6 IN X 30 IN, TP 2	95.00	LF	20.00	1,900.00
500-9999	CLASS B CONC, BASE OR PVMT WIDENING	17	CY	386.00	6,592.00
550-1180	STORM DRAIN PIPE, 18 IN, HDPE	1320.00	LF	88.50	116,820.00
603-2181	STN DUMPED RIP RAP, TP 3, 18 IN	10.00	SY	100.00	1,000.00
636-1033	HIGHWAY SIGNS, TP 1 MATL, REFL SHEETING, TP 9	5.25	SF	25.00	131.25
636-2070	GALV STEEL POSTS, TP 7	24	LF	25.00	600.00
652-2501	Solid Traffic Stripe, 5" White	0.85	LM	2,600.00	2,210.00
652-2502	Solid Traffic Stripe, 5" Yellow	0.85	LM	2,600.00	2,210.00
652-3501	Skip Traffic Stripe, 5" White	0.7	LM	1,700.00	1,190.00
653-0120	THERMOPLASTIC PVMT MARKING, ARROW, TP 2	4.00	EA	150.00	600.00
653-1501	THERMOPLASTIC SOLID TRAF STRIPE, 5 IN, WHITE	1320.00	LF	.50	660.00
653-1804	THERMOPLASTIC SOLID TRAF STRIPE, 8 IN, WHITE	1025.00	LF	4.00	4,100.00
653-6006	THERMOPLASTIC TRAF STRIPING, YELLOW	118	SY	10.00	1,180.00
656-0080	REMOVE EXIST SOLID TRAF STRIPE, 8 IN, THERMOPLASTIC	1	LS	3,500.00	3,500.00
668-1100	CATCH BASIN, GP 1	9.00	EA	10,000	90,000.00
668-1110	CATCH BASIN, GP 1, ADDL DEPTH	5.00	LF	750.00	3,750.00

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

668-2100	DROP INLET, GP 1	1.00	EA	6,000.00	6,000.00
668-2110	DROP INLET, GP 1, ADDL DEPTH	1.00	LF	750.00	750.00
668-4300	STORM SEWER MANHOLE, TP 1	1.00	EA	5,000.00	5,000.00
668-4311	STORM SEWER MANHOLE, TP 1, ADDL DEPTH, CL 1	1.00	LF	750.00	750.00
670-1080	WATER MAIN, 8 IN	800	LF	152.00	121,600.00
670-2080	GATE VALVE, 8 IN	3	EA	2,500.00	7,500.00
670-4000	FIRE HYDRANT	2	EA	3,500.00	7,000.00
670-4510	CONCRETE THRUST COLLAR,8 IN PIPE	4	EA	2,500.00	10,000.00
700-6910	PERMANENT GRASSING	1.75	AC	2,000.00	3,500.00
700-7000	AGRICULTURAL LIME	3.00	TN	200.00	600.00
700-8000	FERTILIZER MIXED GRADE	1.00	TN	2,750.00	2,750.00
700-8100	FERTILIZER NITROGEN CONTENT	95.00	LB	3.00	285.00
999-5200	DETECTABLE WARNING SURFACE	140.00	SF	38.00	5,320.00
				TOTAL	1,003,101.66

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A310

Bid Bond

Bond Number N/A

KNOW ALL MEN BY THESE PRESENTS, that we **Colditz Trucking, Inc.**
191 Bill Donaldson Circle
Blairsville, GA 30512
(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called the Principal, and **Berkley Insurance Company**
475 Steamboat Road
Greenwich, CT 06830
(Here insert full name and address or legal title of Surety)

a corporation duly organized under the laws of the State of **Delaware**
as Surety, hereinafter called the Surety, are held and firmly bound unto **Lumpkin County Board of**
99 Courthouse Hill, Suite D
Dahlonega, GA 30533
(Here insert full name and address or legal title of Owner)
Commissioners

as Obligee, hereinafter called the Obligee, in the sum of 5 % of the amount bid not to exceed **Five Percent of Amount Bid**********Dollars ($ **5% of Amount Bid********),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, Jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for **Pintree Way Memorial Drive Road Improvements**
Lumpkin County, GA
(Here insert full name and address and description of project)

Project No. **Invitation No. 2022-005**

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this **1st** day of **September** , **2022**

Alecia Graves
(Witness)

Colditz Trucking, Inc.
(Principal)

Teresa Colditz, President
(Title)

Colditz Trucking Inc. CORPORATE SEAL (Seal) 1994 GEORGIA

Kristin D. Meeks
(Witness)

Berkley Insurance Company
(Surety)

A.M. DiGeronimo
Anthony M. DiGeronimo (Title) **Attorney-In-Fact**

BERKLEY INSURANCE COMPANY CORPORATE (Seal) SEAL 1975 DELAWARE

AIA DOCUMENT A310 * BID BOND * AIA® * FEBRUARY 1970 ED * THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 N.Y.AVE., N.W., WASHINGTON, DC. 200069/93

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

No. BI-10127c-ef

Bond No.: N/A

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: ***Anthony M. DiGeronimo; Michael R. DiGeronimo; or Colin Tumy of National Surety Services, Inc. of Norcross, GA*** its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed **Fifty Million and 00/100 U.S. Dollars (U.S.$50,000,000.00),** to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 28th day of April, 2020.

BERKLEY INSURANCE COMPANY CORPORATE SEAL 1975 DELAWARE

Attest:

By _____
Ira S. Lederman
Executive Vice President & Secretary

Berkley Insurance Company

By _____
Jeffrey M. Hafter
Senior Vice President

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 28th day of April, 2020, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

MARIA C RUNDBAKEN
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES
APRIL 30, 2024

_____
Notary Public, State of Connecticut

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

BERKLEY INSURANCE COMPANY CORPORATE SEAL 1975 DELAWARE

Given under my hand and seal of the Company, this 1st day of September, 2022.

_____
Vincent P. Forte

BERKLEY INSURANCE COMPANY CORPORATE SEAL 1975 DELAWARE

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

Please **verify the authenticity** of the instrument attached to this power by:

Toll-Free Telephone: (866) 768-3534; or

Electronic Mail: BSGInquiry@berkleysurety.com

Any written notices, inquiries, claims or demands to the Surety on the bond attached to this power should be directed to:

Berkley Surety Group
412 Mount Kemble Ave.
Suite 310N
Morristown, NJ 07960
Attention: Surety Claims Department

Or

Email: BSGClaim@berkleysurety.com

Please include with all communications the bond number and the name of the principal on the bond. Where a claim is being asserted, please set forth generally the basis of the claim. In the case of a payment or performance bond please also identify the project to which the bond pertains.

Berkley Surety Group is an operating unit of W. R. Berkley Corporation that underwrites surety business on behalf of Berkley Insurance Company and Berkley Regional Insurance Company

Attachment: Colditz submission (2022-061 : Contract Award Pinetree Way/Memorial Drive Improvements)

Contract for
Pinetree Way/Memorial Drive Road Improvements
Project # 2022-005

This agreement is made and entered into between the **Lumpkin County Board of Commissioners**, hereinafter referred to as "Lumpkin County", a political subdivision of the State of Georgia, and **Colditz Trucking, Inc.**, hereinafter referred to as "Contractor".

Whereas, in consideration of the mutual benefits accruing to each party, the parties hereby agree as follows:

A. Summary of Work and Payment:

1. Contractor shall provide all necessary equipment, material and labor to perform the following work: the installation of a third lane, roundabout, sidewalks, utilities, and all items to complete improvements on Pinetree Way/Memorial Drive in accordance with the Bid Documents for this project, the 2021 State of Georgia Standard Specifications and by the Special Provisions contained in the Bid Documents for this project. The Bid Documents for this project consist of the Invitation to Bid # 2022-005 issued July 27, 2022, by the Lumpkin County Board of Commissioners for Pinetree Way/Memorial Drive Road Improvements, Addendum 1 issued August 18, 2022, and the Pine Tree Way/Memorial Drive Road Widening Project plans dated MAY 10, 2021 REVISED JULY 12, 2022.

Lumpkin County personnel will be supervising construction of this project but will also be subject to inspections and audits by the Georgia Department of Transportation.

2. Contractor shall be authorized to begin work upon the issuance of a Notice to Proceed from Lumpkin County. All work shall be completed no later July 1, 2023.

3. The Contractor shall employ and assign only qualified and competent personnel to perform any service or task involved in this project. The Contractor shall designate one such person as a Project Manager, and the Project Manager shall be deemed to be the Contractor's authorized representative, who shall be authorized to receive and accept any and all communications from the County. The County shall name a Project Manager who shall be authorized to generate, receive and accept communication as an authorized representative of the County.

4. The Contractor hereby agrees to replace any personnel or sub-contractor, at no cost or penalty to the County, if the County reasonably determines that the performance of any sub- contractor or personnel is unsatisfactory.

5. Contractor shall be paid for work performed under this Contract on a unit price basis as set forth on the Pricing Sheet attached hereto as Exhibit 'A'.

Attachment: Pinetree Way - Memorial Drive Road Improvements Contract (2022-061 : Contract Award Pinetree Way/Memorial Drive

Payment shall be made according to the terms contained in the Bid Documents.

B. Bonds:

Contractor shall, prior to commencing work, provide and shall maintain, during the continuance of all work under the Contract, all Bonds required in the Bid.

C. Liability:

Contractor shall be responsible for his work and every part thereof, and for all materials, tools, equipment, appliances, and properties of any and all description used in connection with this Contract.

Contractor assumes all risks of direct and indirect damage or injury to the property of persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

Contractor shall be liable for any collateral damage (such as broken curbs, crushed sidewalks, broken water meters, etc.) caused as a result of its work under this Contract. Contractor shall restore and/or repair, at Contractor's cost, any and all collateral damage, including, but not limited to, damage to infrastructure, back to its pre-existing condition if the damage was caused by Contractor's activities.

D. Insurance:

The Contractor shall, during the continuance of all work under the Contract, provide and maintain all insurance policies required by the Invitation to Bid.

E. Assignment of Contractual Rights and Subcontracting:

It is agreed that the Contractor will not assign, transfer, convey, or otherwise dispose of this contract or its right, title, or interest in or to the same, or any part thereof, without written consent of the County.

Contractor shall not subcontract any work without the express written consent of the County. The County must approve all subcontractors.

F. Indemnity:

To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold Lumpkin County harmless from and against any and all claims, damages, losses, and expenses, including, but not limited to, fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the negligent acts, negligent omissions, willful misconduct, or reckless misconduct of the Contractor or anyone for whom the Contractor is responsible.

Attachment: Pinetree Way - Memorial Drive Road Improvements Contract (2022-061 : Contract Award Pinetree Way/Memorial Drive

G. Documents Deemed Part of Contract:

The Invitation to Bid # 2022-005 issued July 27, 2022, by the Lumpkin County Board of Commissioners for Pinetree Way/Memorial Drive Road Improvements, Addendum 1 issued August 18, 2022, the Pine Tree Way/Memorial Drive Road Widening Project plans dated MAY 10, 2021 REVISED JULY 12, 2022, and the 2021 State of Georgia Standard Specifications shall be deemed part of the contract. No documentation or information provided by the Contractor shall be deemed part of the contract unless expressly incorporated herein.

H. Severability:

It is understood and agreed by the parties hereto that if any part, term, or provision of this Contract is held illegal or in conflict with any law of the State or Georgia, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provisions held to be invalid.

I. Dispute Resolution:

Lumpkin County and the Contractor agree to resolve through negotiation or mediation prior to filing any cause of action. The venue for any litigation arising from this contract shall be Lumpkin County, Georgia.

J. Cancellation:

Lumpkin County reserves the right to terminate the contract immediately in the event that the Contractor discontinues or abandons operations, is adjudged bankrupt, or is reorganized under any bankruptcy law; or fails to keep in force any required insurance policies or bonds.

Failure of the Contractor to comply with any section or part of the contract will be considered grounds for immediate termination of the contract by the County without penalty to Lumpkin County. Lumpkin County shall pay for services rendered up to the point of termination.

Notwithstanding anything to the contrary contained herein, the County may, without prejudice to any other rights it may have, terminate the contract for convenience and without cause, by giving thirty (30) days written notice to the Contractor.

If the termination clause is used by the County, the Contractor will be paid by the County for all scheduled work completed satisfactorily by the Contractor up to the termination date set forth in the written termination notice.

Attachment: Pinetree Way - Memorial Drive Road Improvements Contract (2022-061 : Contract Award Pinetree Way/Memorial Drive

Attachment: Pinetree Way - Memorial Drive Road Improvements Contract (2022-061 : Contract Award Pinetree Way/Memorial Drive

K. Safe Working Environment and Drug Free Workplace

Contractor shall provide a safe working environment.

Contractor certifies that the provisions of Code Sections 5024-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-free Workplace Act", have been complied with in full. The Contractor further certifies that:

1. A drug-free workplace will be provided for the Contractor's employees during performance of the contract; and

2. If Contractor hires a Sub Contractor to work in a drug-free work place, Contractor shall secure from that Sub Contractor the following written certification:

> As part of the subcontracting agreement with (Contractor's name), (Sub Contractor's name) certifies to the Contractor that a drug-free workplace will be provided for the Sub Contractor's employees during the performance of this Contract pursuant to Paragraph (7) of Sub-section (b) of Code Section 50-24-3".

The Contractor further certifies that it will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

L. Amendments or Modifications:

All contract amendments or modifications must be in writing and signed by all parties.

M. Notices:

Any notice, order, instruction, claim, or other written communication required or permitted under this contract shall be deemed to have been delivered or received:

1. Upon personal delivery to the Contractor or his authorized representative, which delivery may be accomplished by in person hand delivery, via bona fide overnight express service or telephonic facsimile transmission; or

2. Three (3) days after depositing in the United States mail a letter which is either certified or registered, with return receipt requested, addressed to the Contractor at the following address:

Colditz Trucking, Inc.
Attn: Teresa Colditz
191 Bill Donaldson Circle
Blairsville, GA 30512

and to Lumpkin County at the following address:

Lumpkin County Board of Commissioners
Attn: Alan Ours, County Manager
99 Courthouse Hill, Ste A
Dahlonega, Georgia 30533

This Contract is made and entered into this 20th day of September, 2022.

Lumpkin County:

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Contractor:

Colditz Trucking, Inc.

By:

_____
Teresa Colditz, President

Attachment: Pinetree Way - Memorial Drive Road Improvements Contract (2022-061 : Contract Award Pinetree Way/Memorial Drive

EXHIBIT 'A'

PINE TREE WAY/MEMORIAL DRIVE

PRICING SHEET

LINE NO.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNITS	UNIT PRICE DOLLARS/CENTS	TOTAL DOLLARS/CENTS
150-1000	TRAFFIC CONTROL - 10016	1.00	LS	70,000	70,000
163-0232	TEMPORARY GRASSING	1.75	AC	900.00	1,575.00
163-0240	MULCH	3.00	TN	400.00	1,200.00
163-0301	CONSTRUCT AND REMOVE CONSTRUCTION EXITS	1.00	EA	2,500.00	2,500.00
163-0550	CONSTRUCT AND REMOVE INLET SEDIMENT TRAP	9.00	EA	500.00	4,500.00
165-0030	MAINTENANCE OF TEMPORARY SILT FENCE, TP ns	725.00	LF	2.00	1,450.00
165-0101	MAINTENANCE OF CONSTRUCTION EXIT	1.00	EA	1,200.00	1,200.00
165-0105	MAINTENANCE OF INLET SEDIMENT TRAP	9.00	EA	125.00	1,125.00
167-1000	WATER QUALITY MONITORING AND SAMPLING	6.00	EA	50.00	300.00
167-1500	WATER QUALITY INSPECTIONS	18.00	M	400.00	7,200.00
171-0030	TEMPORARY SILT FENCE, TYPE ns	1450.00	LF	3.25	4,712.50
210-0100	GRADING COMPLETE	1.00	LS	118,065.00	118,065.00
310-1101	GR AGGR BASE CRS, INCL MATL	1120.00	TN	48.27	54,062.40
402-1812	RECYCLED ASPH CONC LEVELING, INCL BITUM MATL & H LIME	130.00	TN	138.57	18,014.10
402-3121	RECYCLED ASPH CONC 25 MM SUPERPAVE, GP 1 OR 2, INCL BITUM MATL & H LIME	55.00	TN	141.67	7,791.85
402-3190	RECYCLED ASPH CONC 19 MM SUPERPAVE, GP 1 OR 2, INCL BITUM MATL & H LIME	512.00	TN	122.88	62,914.56
402-4510	RECYCLED ASPH CONC 12.5 MM SUPERPAVE, GP 2 ONLY, INCL POLYMER-MODIFIED BITUM MATL & H LIME	625.00	TN	125.04	78,150.00
413-0750	TACK COAT	760.00	GL	8.00	6,080.00
432-5010	MILL ASPH CONC PVMT, VARIABLE DEPTH	2280	SY	7.50	17,100.00

Attachment: Pinetree Way - Memorial Drive Road Improvements Contract (2022-061 : Contract Award Pinetree Way/Memorial Drive

439-0052	PLAIN PC CONC PVMT, CL HES CONC, 10 INCH THK (INCL. TYPES 7 AND 9 CURB)	272.00	SY	224.00	60,928.00
441-0104	CONC SIDEWALK, 4 IN	905.00	SY	47.00	42,535.00
441-6012	CONC CURB & GUTTER, 6 IN X 24 IN, TP 2	1630.00	LF	21.00	34,230.00
441-6222	CONC CURB & GUTTER, 6 IN X 30 IN, TP 2	95.00	LF	20.00	1,900.00
500-9999	CLASS B CONC, BASE OR PVMT WIDENING	17	CY	386.00	6,592.00
550-1180	STORM DRAIN PIPE, 18 IN, HDPE	1320.00	LF	88.50	116,820.00
603-2181	STN DUMPED RIP RAP, TP 3, 18 IN	10.00	SY	100.00	1,000.00
636-1033	HIGHWAY SIGNS, TP 1 MATL, REFL SHEETING, TP 9	5.25	SF	25.00	131.25
636-2070	GALV STEEL POSTS, TP 7	24	LF	25.00	600.00
652-2501	Solid Traffic Stripe, 5" White	0.85	LM	2,600.00	2,210.00
652-2502	Solid Traffic Stripe, 5" Yellow	0.85	LM	2,600.00	2,210.00
652-3501	Skip Traffic Stripe, 5" White	0.7	LM	1,700.00	1,190.00
653-0120	THERMOPLASTIC PVMT MARKING, ARROW, TP 2	4.00	EA	150.00	600.00
653-1501	THERMOPLASTIC SOLID TRAF STRIPE, 5 IN, WHITE	1320.00	LF	.50	660.00
653-1804	THERMOPLASTIC SOLID TRAF STRIPE, 8 IN, WHITE	1025.00	LF	4.00	4,100.00
653-6006	THERMOPLASTIC TRAF STRIPING, YELLOW	118	SY	10.00	1,180.00
656-0080	REMOVE EXIST SOLID TRAF STRIPE, 8 IN, THERMOPLASTIC	1	LS	3,500.00	3,500.00
668-1100	CATCH BASIN, GP 1	9.00	EA	10,000	90,000.00
668-1110	CATCH BASIN, GP 1, ADDL DEPTH	5.00	LF	750.00	3,750.00

Attachment: Pinetree Way - Memorial Drive Road Improvements Contract (2022-061 : Contract Award Pinetree Way/Memorial Drive

668-2100	DROP INLET, GP 1	1.00	EA	6,000.00	6,000.00
668-2110	DROP INLET, GP 1, ADDL DEPTH	1.00	LF	750.00	750.00
668-4300	STORM SEWER MANHOLE, TP 1	1.00	EA	5,000.00	5,000.00
668-4311	STORM SEWER MANHOLE, TP 1, ADDL DEPTH, CL 1	1.00	LF	750.00	750.00
670-1080	WATER MAIN, 8 IN	800	LF	152.00	121,600.00
670-2080	GATE VALVE, 8 IN	3	EA	2,500.00	7,500.00
670-4000	FIRE HYDRANT	2	EA	3,500.00	7,000.00
670-4510	CONCRETE THRUST COLLAR,8 IN PIPE	4	EA	2,500.00	10,000.00
700-6910	PERMANENT GRASSING	1.75	AC	2,000.00	3,500.00
700-7000	AGRICULTURAL LIME	3.00	TN	200.00	600.00
700-8000	FERTILIZER MIXED GRADE	1.00	TN	2,750.00	2,750.00
700-8100	FERTILIZER NITROGEN CONTENT	95.00	LB	3.00	285.00
999-5200	DETECTABLE WARNING SURFACE	140.00	SF	38.00	5,320.00
				TOTAL	1,003,101.66

Attachment: Pinetree Way - Memorial Drive Road Improvements Contract (2022-061 : Contract Award Pinetree Way/Memorial Drive

Lumpkin County, Georgia

Public Works Department

Date: September 20, 2022

Agenda Item: Transfer Station & Recycling Program Contract

Item Description: Transfer Station & Recycling Program Contract. Approve contract for the operating of Lumpkin County's transfer station and recycling program.

Facts & Historical Information:

In the November 2021 BOC meeting, the board asked that staff release a Request for Proposal (RFP) for the operation of the transfer station and the recycling program. In July of 2022, staff released the request for proposal. On August 31, 2023 the County received proposal back from 2 prospective venders (BFI Waste Systems of Georgia, LLC and Mark Robinson Hauling, LLC). Staff reviewed and scored these proposals. BFI's proposal did not address the operating of the transfer station or the recycling program. Their proposal included only the disposal of waste from the transfer station at their facility (attached is BFI proposal fee form).

The Mark Robinson Hauling, LLC proposal included the operation of both the transfer station and the recycling program. This proposal provided 2 options for the operation of the recycling program. The first option is to continue the existing operation at the same cost (attached Mark Robinson proposal fee form option #1). The second option is to continue the operation of the transfer station with no change, but to implement a per bag/per ton cost for recyclables at the same cost to the user as per waste (attached Mark Robinson proposal fee form option #2).

Potential Courses Of Action:

1. Award contract to Mark Robinson Hauling for fee proposal #1
2. Award contract to Mark Robinson Hauling for fee proposal #2
3. Award contract to BFI and negotiate additional cost for operation of transfer station and recycling program.
4. Do not award contract.

Discussion of COA's:

1. This option would continue the operation of the programs at the same level with no change in cost to the county.

2. This option would continue the operation with the cost of operating the recycling program being paid by the user instead of the county. This option would reduce the cost to the county by $72,000 per year.
3. This option would increase the cost to the user for waste disposal from the current rate to $56 per ton to $59.25 per ton plus an additional negotiated cost for the operation of both the transfer station and the recycling program.
4. This option will require that the county resume the operation of both the transfer station and the recycling program.

Budget Impact:

Each COA will have a unique impact on the budget.

COA #1 will result in no change to the current budget.
COA #2 will result in a savings to the county of $72,000/yr.
COA #3 will result in an additional cost to the county that would have to be negotiated with the vendor.
COA #4 would result in the county having to staff the programs which would result in a cost that exceed the current cost of the programs. This would also increase the work load of the finance department in billing and accounts payable. This option would generate revenue from tipping fees for the program, but it is anticipated that costs would exceed the current costs to the county for operations.

Staff Recommendation:

Staff will update this analysis with a recommendation after the proposals are opened and reviewed.

Attachments:
BFI proposal fee form
Mark Robinson proposal fee form option 1
Mark Robinson proposal fee form option 2
Transfer-Station Contract 2022-2023

PROPOSAL FEE FORM

I have read and understand the requirements of this **RFP # 2022-003 TRANSFER STATION AND RECYCLING PROGRAM OPERATIONS** and agree to provide required services in accordance with this proposal and all other attachments, exhibits, etc. I understand that the County will not be responsible for the reimbursement of any costs not specifically set forth in this proposal.

ATTACH COST PROPOSAL

I hereby certify that this Financial Proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a Proposal for the same services and is in all respects fair and without collusion or fraud. I certify that I am authorized to sign this Financial Proposal.

Company Name BFI Waste Systems of Georgia, LLC

Authorized Signature _____

Print Name Anthony Gregory Date 8.25.22

Proposal : Per TON
Disposal Only

Attachment: BFI proposal fee form (2022-062 : Transfer Station & Recycling Program Contract)

REPUBLIC

Republic Services Disposal Agreement
(Not for Special Waste)

Billing Information		
Customer Business Name		
Address		
City	State	Zip Code
Contact Name	Phone #	

Republic Contract Disposal Facilities:
BFI Waste Systems of GA, LLC

Richland Creek Landfill

5691 South Richland Creek Road

Buford, GA 30518

RSG Contact Information:
Monica Moseley – 404-202-1536

Unit of Measure		
Disposal Fee-$59.25 MSW **$59.25 C/D** **$50.00 per Mattress**		Per Ton
Host Fee-$3.25 GA State and Local includes	**Applicable**	YES Per Ton Per
Administrative Fee	$ 0	Month
Environmental Fee-$ 0 annually	**Applicable** per load	No Per Load
Fuel Recovery Fee YES	**Applicable**	Yes %
Other Fees		
Minimum Volume	1 TON	Unit of measure above
Maximum Volume		Unit of measure above
True up Period for Minimum Volume - N/A		Monthly Quarterly Annual
Special Instructions		

Waste Types

MSW / CD - Circle One

Invoice Period
Weekly Semi – Monthly
Monthly x

Contract Effective Date:

All Payments are due within 30 days of Invoice Date

Customer agrees to the above rate and the terms and conditions on the following pages of the agreement.

By: _____ By: _____
Republic Services of Georgia

Signature: _____ Date: _____ Signature: _____ Date: _____

Print Name: _____ Print Name: _____

Title: _____ Title: _____

Attachment: BFI proposal fee form (2022-062 : Transfer Station & Recycling Program Contract)

TERMS AND CONDITIONS

1. **Delivery of Acceptable Waste.** Customer ("Hauler") shall deliver at least the minimum volume of Acceptable Waste (as defined below) indicated on the cover of this Agreement (the "Minimum Volume") to the landfill indicated on the cover of this Agreement (the "Landfill"). Hauler shall not deliver in excess of the maximum volume of Acceptable Waste indicated on the cover of this Agreement to the Landfill.

2. **Delivery Procedures; Operation of the Landfill.**
(a) **Acceptance of Acceptable Waste.** Republic shall have the right in its sole discretion to reject delivery of any waste offered for acceptance by Hauler that does not constitute Acceptable Waste. "Acceptable Waste" means all waste that is authorized to be disposed of at the Landfill under then applicable federal, state and local laws, regulations, ordinances, rules, permits, licenses, and governmental orders or directives (collectively "Applicable Laws") and that is not Unacceptable Waste (as defined below).
(b) **Operation of the Landfill/Procedures.** Hauler's delivery of Acceptable Waste to the Landfill, which shall occur only during the Landfill's posted hours, shall be governed by the procedures applicable generally to haulers utilizing the Landfill as Republic may modify such procedures from time to time. Notwithstanding anything in this Agreement to the contrary, Republic shall have the right, in its sole discretion, to close the Landfill, in whole or in part, either temporarily or permanently, at any time for any reason and the delivery of Acceptable Waste shall be suspended or adjusted accordingly. Upon any such permanent closure, Republic shall have the right to terminate this Agreement.
(c) **Hauler's Compliance with Applicable Laws**. Hauler shall collect, transport and deliver waste to the Landfill in compliance with all Applicable Laws and the procedures referenced in Section 2(b).
(d) **Title to Waste.** Hauler represents and warrants to Republic that either Hauler or its customer shall hold clear title, free of all liens, claims and encumbrances, to the waste delivered by Hauler to the Landfill. Title to, and risk of loss and responsibility for, Acceptable Waste delivered to the Landfill by Hauler shall pass at the time such Acceptable Waste is removed from the delivery vehicle at the Landfill. Title to Unacceptable Waste shall remain with Hauler or its customer and shall never be deemed to pass to Republic.

3. **Term.** Unless sooner terminated pursuant to Section 6, this Agreement shall commence as of the contract effective date indicated on the cover of this Agreement and shall remain in full force and effect for a **period of month to month.** Upon expiration or termination of this Agreement, the obligations of Hauler to deliver and of Republic to accept Acceptable Waste shall terminate; provided, however, that all other rights and obligations of the parties under this Agreement (including those with respect to payment and indemnification) shall survive termination.

4. **Disposal Fees.**
(a) **Fees.** Hauler shall pay Republic a disposal fee (the "Disposal Fee') for all Acceptable Waste Hauler delivers to the Landfill as set forth on the cover of this Agreement. In addition to the Disposal Fee, Hauler shall pay such fees as Republic may impose from time to time by notice to Hauler (including, by way of example only, administrative fees and environmental fees), with Republic to determine the amounts of such fees in its discretion up to the maximum amount allowed by Applicable Law. Without limiting the foregoing, Hauler shall pay Republic a fuel recovery fee in the amount shown on each Republic invoice, which amount Republic may increase or decrease from time to time by showing the amount on the invoice. The initial fee amounts for administrative fees, environmental fees, fuel recovery fees and other fees are set forth on the cover of this Agreement, but are subject to change from time to time as described in this Section 4(a).
(b) **Payment; Deposit.** Republic shall transmit an itemized invoice to Hauler of all Disposal Fees and other charges under this Agreement on a periodic basis as indicated on the cover page of this Agreement. Hauler shall pay all invoices within 30 days from date of invoice, If Hauler does not make payment by such date, Hauler shall pay a late payment fee in an amount equal to the lesser of (i) the greater of $5 per month or one and one-half percent (1.5%) per month or portion thereof on the amount past due or the maximum amount allowed by Applicable Law. Hauler also shall pay a fee of $50 (which Republic may increase from time to time by notice to Hauler) for each check submitted by Hauler that is an insufficient funds check or is returned or dishonored. At any time after Republic becomes concerned about Hauler's creditworthiness or after hauler has made any late payment, Republic may request, and if requested Hauler shall pay, a deposit in an amount equal to one month's charges under this Agreement.
(c) **Taxes and Other Charges; Cost Increases.** In addition to the Disposal Fee, Hauler shall pay all federal, state, local or other taxes, fees (including host fees), surcharges or similar charges related to the acceptance or disposal of Acceptable Waste or the operations or activities of the Landfill that are imposed by law, ordinance, regulation, agreement with a governmental authority, governmental audit or otherwise (collectively, "Taxes/Host Fees/Charges"). The initial amount of Taxes/Host Fees/Charges is set forth on the cover of this Agreement, but is subject to change from time to time pursuant to the preceding sentence. In addition, Republic shall have the right to increase the Disposal Fee from time to time by the pro rata amount (determined by relative tonnage of Acceptable Waste delivered by Hauler and accepted by Republic for processing at the Landfill divided by the total tonnage of waste processed at the Landfill) of any increase in operating costs or capital costs of the Landfill as a result of a change in Applicable Laws. Any such increase shall be effective immediately upon written notice by Republic to Hauler.
(d) **CPI Adjustment.** In addition to the adjustments described in Section 4(c), the Disposal Fee shall be increased on the first anniversary of this Agreement by the percentage increase, if any, in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, All items, for urban wage earners and clerical workers, 1982-84 = 100 (the "Consumer Price Index"). If the Consumer Price Index ceases to be available, Republic shall use the most closely comparable index then available.
(e) **Shortfall Fee.** At the end of each true-up period indicated on the cover of this Agreement (the "True-Up Period"), Republic shall determine the total volume of Acceptable Waste delivered by Hauler to the Landfill during such True-Up Period. If the total volume of Acceptable Waste delivered during such True-Up Period is less than the volume required to be delivered during such True-Up Period based on the Minimum Volume, Hauler shall pay Republic a fee (the "Shortfall Fee") equal to the Disposal Fee multiplied by the volume by which Hauler was deficient during the True-Up Period. Republic shall invoice Hauler for, and Hauler shall pay Republic, any Shortfall Fee in accordance with Section 4(b).
(f) **Price Adjustments.** In addition to any other price increases pursuant to this Section 4, Republic shall have the right to request an increase in the Disposal Fee, from time to time and for any reason, by giving written notice of the amount and effective date of the increase (the "Price Increase Notice") to Hauler at least 30 days before the effective date of the increase. If Hauler does not object in writing (the "Objection Notice") to the price increase within 30 days after the date of the Price Increase Notice or if Hauler accepts the price increase, the price increase shall go into effect on the date stated in the Price Increase Notice and this Agreement shall be deemed amended accordingly. If Hauler gives an Objection Notice within 30 days after the date of the Price Increase Notice, Republic shall have 15 days after receipt of the Objection Notice to determine whether to (i) drop its request for a price increase and have the Agreement continue in full force and effect or (ii) terminate this Agreement effective as of the proposed effective date of the price increase (or any later date specified by Republic). If Republic does not give notice of this determination within 15 days after receipt of the Objection Notice, Republic shall be deemed to have dropped its request for a price increase and the Agreement shall continue in full force and effect.

5. **Unacceptable Waste.**
(a) **Delivery of Unacceptable Waste.** Hauler agrees that it shall not deliver any Unacceptable Waste to the Landfill. If Hauler delivers waste that contains both Acceptable Waste and Unacceptable Waste, the entire delivery shall constitute Unacceptable Waste if the Unacceptable Waste cannot be separated from the Acceptable Waste through the reasonable efforts of Republic, as Hauler's agent to cause such separation, with the cost of such separation to be paid by Hauler.

Attachment: BFI proposal fee form (2022-062 : Transfer Station & Recycling Program Contract)

(b) **Weighing and Inspection of Waste by Republic.** Republic shall weigh all waste at the Landfill and the weight so determined shall be final and conclusive on both Hauler and Republic. Republic shall have the right, but not the obligation, to inspect any of Hauler's trucks to determine whether the waste delivered is Acceptable Waste or Unacceptable Waste. Hauler acknowledges and agrees that any failure by Republic to perform any such inspection or to detect Unacceptable Waste despite such inspection shall in no way relieve Hauler from its obligation to deliver only Acceptable Waste or from its other obligations under this Section 5.

(c) **Rejection of Unacceptable Waste.** If Hauler delivers Unacceptable Waste to the Landfill, Republic may, in its sole discretion: (i) reject such Unacceptable Waste at Hauler's expense; or (ii) if Republic does not discover such Unacceptable Waste in time to reject and reload such Unacceptable Waste, after giving Hauler telephonic notice thereof and a reasonable opportunity to dispose of such Unacceptable Waste, Republic may, as Hauler's agent, dispose of such Unacceptable Waste at a location authorized to accept such Unacceptable Waste in accordance with all Applicable Laws and charge Hauler all direct and indirect costs incurred due to handling, delivery and disposal of such Unacceptable Waste, unless Hauler otherwise elects to arrange for disposal of the Unacceptable Waste. If Hauler elects to dispose of such Unacceptable Waste, it shall do so within such time period as Republic reasonably deems necessary or appropriate in connection with the operation of the Landfill, including the preservation of the health and safety of its employees. If after electing to do so Hauler does not dispose of the Unacceptable Waste within such time period, Republic may dispose for such Unacceptable Waste as Hauler's agent, without further notice to Hauler, and Hauler shall pay the direct and indirect costs set forth above. Notwithstanding the foregoing, no notice shall be required by Republic to Hauler for Republic to dispose of Unacceptable Waste as Hauler's agent in emergency situations where in Republic's reasonable judgment a delay in such disposal could constitute a hazard to the Landfill or any person on, about or near the premises.

(d) **Definition of Unacceptable Waste.** For the purposes of this Agreement, "Unacceptable Waste" means: (i) any material that is not Acceptable Waste; (ii) any material that by reason of its composition, characteristics or quantity is defined as a "hazardous material," "hazardous waste," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "toxic substance," "toxic waste," "toxic pollutant," "contaminant," "pollutant," "infectious waste," "medical waste," "radioactive waste," or "sewage sludge" under any Applicable Law; (iii) any material that requires other than normal handling, storage, management, transfer or disposal; or (iv) any other material that may present a substantial endangerment to public health or safety, may cause applicable air quality or water effluent standards to be violated by the normal operation of the Landfill, or because of its size, durability or composition cannot be disposed of at the Landfill or has a reasonable possibility of otherwise adversely affecting the operation or useful life of the Landfill.

6. **Default.**

(a) **Events of Default.** Each of the following shall be an event of default by Hauler under this Agreement: (i) Hauler fails to pay any amount due as and when the same becomes due under this Agreement; or (ii) Hauler fails to perform any other material term, covenant or agreement contained in this Agreement on its part to be performed and such failure continues for a period of 30 days after written notice to Hauler specifying the nature of such failure and requesting that it be remedied.

(b) **Remedies on Default.** Whenever any event of default by Hauler shall have occurred and be continuing, Republic shall have the following rights and remedies, which shall be in addition to any other remedies provided by Applicable Law or this Agreement: (i) upon the end of any applicable grace period in this Section 6, Republic shall have the option to immediately terminate this Agreement unless during such period Hauler has taken remedial steps the effect of which would be to enable Hauler to cure such event of default within an additional 15 day period following the expiration of such grace period; and (ii) if Hauler is then in default, Republic shall have the option, without terminating this Agreement, to stop accepting Acceptable Waste delivered by Hauler until such default is cured or this Agreement is terminated.

7. **Indemnification.** Hauler shall indemnify, defend (upon request by Republic) and hold harmless Republic and its shareholders, partners, officers, directors, divisions, subdivisions, affiliates, agents, employees, successors and assigns (the "Republic Indemnified Parties") from and against any and all liabilities, losses, assessments, fines, penalties, forfeitures, damages, costs, expenses and disbursements, including reasonable legal fees, expert witness fees, litigation related expenses, and court costs in any litigation, investigation or proceeding (collectively, "Losses"), whether arising out of a claim or loss of or damage to property or injury to or death of any person, including any Indemnified Party, or otherwise, caused by or arising out of (a) Hauler's breach of this Agreement, or (b) Hauler's negligence or willful misconduct.

8. **Insurance.** During the term of this Agreement, Hauler shall maintain the following insurance coverage:

Workers' Compensation:	
Coverage A	Statutory
Coverage B – Employer's Liability	$1,000,000 each Bodily Injury by Accident
	$1,000,000 policy limit Bodily Injury by Disease
	$1,000,000 each occurrence Bodily Injury by Disease
Automobile Liability:	
Bodily Injury/Property Damage	$3,000,000
Combined – Single Limit	Coverage applies to all owned, non-owned, hired and leased vehicles (including trailers) and must include MCS-90 endorsement for pollution liability coverage
Commercial General Liability:	
Bodily Injury/Property Damage	$2,000,000 each occurrence
Combined – Single Limit	$3,000,000 general aggregate (including products/completed operations)
Pollution Legal Liability:	$1,000,000

All policies required herein shall be written by insurance carriers with a rating of A.M. Bests of at least "A-" and a financial size category of at least VIII. Hauler shall deliver the Certificates of Insurance evidencing the forgoing policies to Republic before Hauler delivers any waste to the Landfill pursuant to this Agreement. The Certificates and the insurance policies required by this Section 8 shall contain a provision that provides that the insurance coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to Republic. With the exception of the workers' compensation policy, Republic and the Republic Indemnified Parties shall be shown as additional insured's under all of the insurance policies required by this Section 8. The policies required by this Section 8 shall be primary and the insurance providers shall agree to waive their rights of subrogation against Republic.

9. **General.**

(a) **Independent Contractor.** Hauler and Republic shall perform their obligations under this Agreement as independent contractors. Neither party nor any of its employees, agents or subcontractors shall be, purport to be, or be deemed, the agent of the other party.

(b) **Assignment; Binding Effect.** Hauler may not assign this Agreement without Republic's prior written consent, which Republic may grant or withhold in its sole discretion. Republic may assign this Agreement without the consent of Hauler, and Hauler acknowledges and agrees that any such assignment by Republic shall release Republic from any liability under this Agreement from and after the date of the assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assignees.

(c) **Entire Agreement.** This Agreement supersedes all prior agreements, written or oral, with respect to the subject matter of this Agreement. Only a written instrument signed by both parties hereto may modify this Agreement.

(d) **Severability.** If any one or more of the provisions contained in this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and all other provisions shall remain in full force and effect.

(e) **Waiver.** No delay or omission by a party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by a party on any occasion is effective only on that occasion and not any other.

Attachment: BFI proposal fee form (2022-062 : Transfer Station & Recycling Program Contract)

(f) **Governing Law; Waiver of Jury Trail; Attorneys' Fees.** This Agreement shall be governed by the laws of the state where Republic Landfill is located except for its conflicts of laws rules. By execution and delivery of this Agreement, each of the parties knowingly, voluntarily and irrevocably: (i) waives any right to trial by jury; and (ii) agrees that any dispute arising out of this Agreement shall be decided by court trial without a jury. If any legal action or any other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs (including litigation related costs and expert witness fees) leading up to or incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

Attachment: BFI proposal fee form (2022-062 : Transfer Station & Recycling Program Contract)

Volume Two- Cost Proposal and Required County Documents

Cost Proposal

Mark Robinson Hauling LLC proposes the following prices to run the Lumpkin County Transfer Station:

Proposal One

- The bag fee would continue to be the same as current pricing.
  - $1.00 for kitchen bags less than 30 gallon.
  - $2.00 for bags 30 gallon or larger.
- The per ton rate would be $56.00 per ton, with the minimum fee remaining at $5.00 We would also continue to charge an additional $5.00 fee for large furniture items such as couches, loveseats, recliners, mattresses, box springs, etc.
- We would continue to provide Lumpkin County with up to $100.00 per month in free dump fees.
- We would continue to support the "Keep Lumpkin County Beautiful Program" by allowing the free dumping of bags collected with the stickers provided by Lumpkin County.
- Mark Robinson Hauling LLC would pay Lumpkin County $1500.00 per month for leasing the Lumpkin County Transfer Station.
- We will continue with the clean up-days as we have in the past and as listed in the proposal.
- In regards to recycling, we would continue to charge Lumpkin County $6000.00 to manage the operations of recycling collected at 490 Barlow Road.

Attachment: Mark Robinson proposal fee form option 1 (2022-062 : Transfer Station & Recycling Program Contract)

These prices that have been submitted in this proposal are accurate through today's market. Any future price increases that occur will be sent to Lumpkin County for approval.

Please see the second proposal with another option regarding recycling.

Attachment: Mark Robinson proposal fee form option 1 (2022-062 : Transfer Station & Recycling Program Contract)

Volume Two- Cost Proposal and Required County Documents

Cost Proposal

Mark Robinson Hauling LLC proposes the following prices to run the Lumpkin County Transfer Station:

Proposal Two

- The bag fee would continue to be the same as current pricing.
  - $1.00 for kitchen bags less than 30 gallon.
  - $2.00 for bags 30 gallon or larger.
- The per ton rate would be $56.00 per ton, with the minimum fee remaining at $5.00 We would also continue to charge an additional $5.00 fee for large furniture items such as couches, loveseats, recliners, mattresses, box springs, etc.
- We would continue to provide Lumpkin County with up to $100.00 per month in free dump fees.
- We would continue to support the "Keep Lumpkin County Beautiful Program" by allowing the free dumping of bags collected with the stickers provided by Lumpkin County.
- Mark Robinson Hauling LLC would pay Lumpkin County $1500.00 per month for leasing the Lumpkin County Transfer Station.
- We will continue with the clean up-days as we have in the past and as listed in the proposal.
- Mark Robinson Hauling LLC would like to submit a second option in regards to recycling in which we would not charge the county for the management of the recycling at 490 Barlow Road, but would charge the customers. We would

Attachment: Mark Robinson proposal fee form option 2 (2022-062 : Transfer Station & Recycling Program Contract)

charge the same ratios for recycling trash. It would have a $5.00 minimum with a $56.00 per ton.

These prices that have been submitted in this proposal are accurate through today's market. Any future price increases that occur will be sent to Lumpkin County for approval.

Attachment: Mark Robinson proposal fee form option 2 (2022-062 : Transfer Station & Recycling Program Contract)

CONTRACT FOR THE OPERATION AND MANAGEMENT OF THE SOLID WASTE TRANSFER STATION AND THE COUNTY'S RECYCLING PROGRAM

This agreement is made and entered into this 20th day of September, 2022, between the governing authority of **Lumpkin County**, hereinafter referred to as "Lumpkin County", a political subdivision of the State of Georgia, and **Mark Robinson Hauling, L.L.C.**, of Lumpkin County, Georgia, hereinafter referred to as "Contractor".

Whereas, in consideration of the mutual benefits accruing to each party, the parties hereby agree as follows:

A. Operation and Management of the Solid Waste Transfer Station:

1. Lumpkin County shall lease to Contractor the solid waste transfer station, including the scale house, scales and computer system currently in place, located on Barlow Road in Dahlonega, Georgia, for the amount of $18,000.00 per year, payable as follows:

$1,500.00 per month, in advance. The first lease payment shall be due on December 1, 2022, and shall be payable on the first day of each month thereafter until the termination of this Contract.

2. Contractor shall operate and manage the transfer station, including, but not limited to, the receipt of solid waste and the proper disposal thereof. Contractor shall be responsible for removing the solid waste from the transfer station on a regular basis so as not to allow refuse to back up at the transfer station. Contractor shall not allow refuse to remain on the floor of the transfer station overnight. Contractor shall comply with all rules of the Georgia Natural Resources Environmental Protection Division and any other state, local or federal laws, rules and regulations.

3. The County will provide a minimum of 4 front dump containers to be located outside the building. These containers may be used by the public to dispose of their bagged waste without entering the building. The contractor will be responsible for keeping the area around the containers clean and emptying the containers. Contractor shall provide the loader and any other equipment necessary for the receipt and proper disposal of the solid waste.

4. Contractor shall ensure that the transfer station is open to the public every Monday through Saturday, from 8:00 a.m. until 4:30 p.m. Contractor may also open at additional times.

5. The transfer station must be adequately staffed during all hours of operation to ensure prompt and efficient service to the customers. At a minimum, Contractor must ensure that there are two employees on-site during the hours of operation, one in the scale house and one to oversee unloading. When possible, the Contractor will provide reasonable unloading assistance to individuals requesting assistance.

6. Contractor may not increase the current pricing without written approval from the governing authority of Lumpkin County. The current pricing is $56.00 per ton. For individual customers delivering personal garbage, Contractor may charge $1.00 per bag for bags less than 30 gallons, or $2.00 per bag for bags 30 gallons or larger, if customer wishes to pay on that basis, or at the regular pricing on per pound weight or $5.00 per load, whichever is greater. The Contractor may charge an additional $5.00 each for the disposal of large bulky items, such as couches, loveseats, recliners, mattresses, box springs, etc.

7. Contractor shall be responsible for paying all utilities serving the transfer station facility.

Attachment: Transfer-Station Contract 2022-2023 (2022-062 : Transfer Station & Recycling Program Contract)

8. Contractor shall be responsible for the maintenance and upkeep of the transfer station, including, but not limited to, the scale house, scales and computer system, any other buildings used by Contractor.

9. Contractor shall also be responsible for the repair of any damage to the property, both real and personal, during the term of this Contract. At the expiration of this Contract, Contractor shall return the leased property to Lumpkin County in the same condition as it was at the beginning of this Contract.

10. In the event that Lumpkin County desires to sponsor a free "clean up" day for the citizens of Lumpkin County, then Contractor hereby agrees to accept all solid waste from the citizens of Lumpkin County at no charge to the individuals on such day. Lumpkin County hereby agrees to pay Contractor the rate of $20.00 per ton for all solid waste accepted on such day from said citizens of Lumpkin County. Any such "clean up" day shall only apply to individuals and not to commercial solid waste collection companies.

11. Contractor acknowledges Lumpkin County's campaign to decrease the amount of litter on and along its roadways. To this end, Contractor agrees to assist Lumpkin County in this anti-litter campaign by distributing informational/educational brochures (provided by the County) to transfer station customers hauling "unsecured loads". Additionally, in an effort to assist the County in controlling litter and the scattering of trash and debris along County rights of way, Contractor agrees to refuse any unsecured loads from commercial haulers.

12. Contractor shall support the "Keep Lumpkin County Beautiful" program by allowing the free dumping of bags collected with the stickers provided by Lumpkin County.

13. Contractor shall provide Lumpkin County $100.00 per month in dump fee credits each month.

14. Contractor shall provide Lumpkin County with a summary of total tons of solid waste taken in each month.

B. Operation of the County's Recycling Program:

1. The County shall provide the following equipment for use in the County's recycling program:
   - Four 30 yd roll off recycling containers
   - One aluminum recycling trailer
   - Four 4 yd front dump trash containers

2. Contractor shall receive recyclable material in the provided bins and shall be responsible for transporting the material for proper disposition.

3. Contractor shall operate and manage the county's recycling program using the bins provided by the County for a fee of $6,000.00 per month. Contractor agrees that the County may deduct Contractor's monthly lease amount of $1,500.00 per month as set forth in Paragraph A. 1. above from the monthly fee and issue Contractor payment in the amount of $4,500.00 per month.

4. Contractor shall ensure that the recycling bins are accessible to public at all times the transfer station is open to the public.

5. Contractor shall maintain the recycling drop off station in a clean and sanitary condition.

6. Contractor shall provide Lumpkin County with a summary of total tons of each recyclable material and the name and location of the receiving facility for the material each month.

Attachment: Transfer-Station Contract 2022-2023 (2022-062 : Transfer Station & Recycling Program Contract)

C. Liability:

Contractor assumes all liability associated with the receipt of solid waste into the transfer station and the disposal thereof.

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Lumpkin County from and against any and all claims, damages, losses, and expenses, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the negligent acts, negligent omissions, willful misconduct, or reckless misconduct of the Contractor, or anyone for whom the Contractor is responsible.

Without limiting the generality of the foregoing, the above indemnification provision extends to Environmental Impact Claims. "Environmental Impact Claim" is defined as claims, suits, judgments, costs, losses, expenses (including attorney's fees) which arise out of, are related to, or are based on the actual or threatened dispersal, discharge, escape, release or saturation of chemicals, liquids, gasses or any other material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil, (b) water or water course, (c) objects, or (d) any tangible or intangible matter, whether sudden or not.

D. Insurance:

1. Contractor shall provide a certificate of insurance to Lumpkin County for the following coverage and amounts: $1,000,000 general liability; vehicle insurance of $150,000 single occurrence/ $250,000 aggregate vehicle coverage, $500,000 uninsured motorists, worker's compensation as required by law.

2. Contractor shall keep the required insurance in effect throughout the term of this contract.

3. The policy shall contain a requirement that Lumpkin County be notified, at least 30 days in advance, of cancellation or substantial change in the terms of the insurance.

4. Lumpkin County is to be covered as an additional insured with respect to: liability arising out of activities performed by or on behalf of the Contractor; premises occupied or used by Contractor, or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to Lumpkin County.

5. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise approved by Lumpkin County.

6. Contractor shall furnish Lumpkin County with copies of the original endorsements setting out the coverage required by this specification and with a copy of the document affirming that Lumpkin County is a named insured. A certificate of insurance is also required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by Lumpkin County before Contractor takes possession of the property.

E. Termination of Contract

1. This contract may be immediately terminated by Lumpkin County upon the failure of Contractor to perform the required work under the terms of the contract.

Attachment: Transfer-Station Contract 2022-2023 (2022-062 : Transfer Station & Recycling Program Contract)

2. This contract may be immediately terminated by Lumpkin County upon the failure of Contractor to pay the required amounts under the terms of the contract.

F. Term of Contract

This contract shall commence with an effective date of December 1, 2022, and end on November 30, 2023. This contract may be renewed for successive one-year terms upon agreement of both parties.

Owner:	**Contractor:**
Lumpkin County	**Mark Robinson Hauling, L.L.C.**
By:	By:
_____	_____
Chris Dockery, Chairman	**Mark C. Robinson, Member**

Attachment: Transfer-Station Contract 2022-2023 (2022-062 : Transfer Station & Recycling Program Contract)

Lumpkin County, Georgia

LC Airport Authority Department

Date: September 20, 2022

Agenda Item: LC Wimpy Airport Crack Sealing & Runway Remarking - Wall Contract

Item Description: LC Wimpy Airport Crack Sealing & Runway Remarking - Wall Contract. Approve contract with Wall Asphalt Services Inc. to complete crack sealing and remarking of Lumpkin County-Wimpys airport.

Facts & Historical Information: On July, 6th staff released and invitation to bid for the crack sealing and runway remarking project. These projects are both on the approved airport CIP and were combined into one bid package. Four bids were received on August 12th (see bid tabulations). Wall Asphalt Services, Inc. was the low bidder at $44,405.25. This is a unit rate bid. The bid total is based on estimated quantities of each item. The final cost of the contract may very based on actual units completed. GDOT, has informed staff that their reimbursement for the project will be done under a supplemental to the existing contract and a new contract will not be required. GDOT will reimburse 75% of the total cost of the project including staff project management time. See attached total project cost estimate.

Potential Courses Of Action:
1. Award contract Wall Asphalt Services, Inc.
2. Do not award contract.

Budget Impact: GDOT will reimburse 75% of the costs of the contract. The remaining 25% will be paid from the airport budget.

Staff Recommendation: **Staff recommends that the contract be awarded to Wall Asphalt Services, Inc.**

Attachments:
Bid Tabulation
total project cost estimate 8-19-22
Airport Crack Sealing and Remarking

Bib Opening Tabulation

Project# 2022-004 Lumpkin County Airport Runway Sealing and Remarking August 12, 2022 @ 2:05 PM	Hasco	Hi-lite	Wall Asphalt	Axtell's			
Information Form	✓	✓	✓	✓			
Execution of Proposal Form	✓	✓	✓	✓			
Non-Collusion Form	✓	✓	✓	✓			
Drug Free Workplace Form	✓	✓	✓	✓			
Addenda Acknowledgement Form	✓	✓	✓	✓			
E-verify	✓	✓	✓	✓			
SAVE Affidavit	✓	✓	✓	✓			
W-9	✓	✓	✓	✓			
Bid Bond	✓	✓	✓	✓			
Bidder's Certification	✓	✓	✓	✓			
Price Proposal Form	*39,024.90 **48,720.15	63573.25	44,405.25	115931.61			

Ryan McDuffie, Purchasing Agent

Witness

*revise linear total on unit sheet
** updated total

Lumpkin County - Wimpys Airport (9A0) Crack sealing / Remarking Project Cost

Item	item cost	COUNTY 25%	STATE 75%
CONSTRUCTION COMPLETE	$44,405.25	$11,101.31	$33,303.94
PROJECT MANAGEMENT/INSPECTION /FINAL CLOSEOUT	$5,560.58	$1,390.14	$4,170.43
PROJECT TOTALS	$49,965.83	$12,491.46	$37,474.37

Attachment: total project cost estimate 8-19-22 (2022-063 : LC Wimpy Airport Crack Sealing & Runway Remarking - Wall Contract)

CONTRACT
FOR
LUMPKIN COUNTY-WIMPYS AIRPORT
CRACK SEALING AND RUNWAY REMARKING
Project# 2022-004

This agreement is made and entered into between the **Lumpkin County Board of Commissioners**, hereinafter referred to as "Lumpkin County", a political subdivision of the State of Georgia, and **Wall Asphalt Services, Inc.,** hereinafter referred to as "Contractor".

Whereas, in consideration of the mutual benefits accruing to each party, the parties hereby agree as follows:

A. Summary of Work and Payment:

1. Contractor shall provide all labor, equipment and material required to seal the cracks, remove existing marking and remark the runway at Lumpkin County-Wimpys Airport according to the plans dated April 11, 2022, as revised on May 23, 2022, titled Lumpkin County-Wimpys Airport Crack Sealing Runway Remarking Project, Project: PID T007762 LUMPKIN, and the Specifications for Runway Crack Sealing and Remarking Runway provided as a part of the Invitation to Bid issued July 6, 2022, for Lumpkin County-Wimpys Airport Crack Sealing and Runway Remarking Project #2022-004.

2. Lumpkin County personnel will be supervising construction of this project and the project will also be subject to inspections and audits by the Georgia Department of Transportation.

3. Contractor shall be authorized to begin work upon the issuance of a Notice to Proceed from Lumpkin County. All work shall be completed no later than 12 months from the day the Notice to Proceed is issued.

4. The Contractor shall employ and assign only qualified and competent personnel to perform any service or task involved in this project. The Contractor shall designate one such person as a Project Manager, and the Project Manager shall be deemed to be the Contractor's authorized representative, who shall be authorized to receive and accept any and all communications from the County. The County shall name a Project Manager who shall be authorized to generate, receive and accept communication as an authorized representative of the County.

5. The Contractor hereby agrees to replace any personnel or sub-contractor, at no cost or penalty to the County, if the County reasonably determines that the performance of any sub- contractor or personnel is unsatisfactory.

6. Contractor shall be paid for work performed under this Contract on a unit price basis as follows:

Attachment: Airport Crack Sealing and Remarking (2022-063 : LC Wimpy Airport Crack Sealing & Runway Remarking - Wall Contract)

Item	Item Description:	Unit Price:
1	Mobilization (Lump Sum)	$5,000.00
2	Asphalt-Rubber Joint and Crack Seal Type S (LF)	$1.25
3	Removal of Pavement Markings (SQ YD)	$12.00
4	Paint Makings White with Glass Beads (SQ FT)	$1.40
5	Paint Makings Yellow with Glass Beads (SQ FT)	$1.50
6	Paint Makings Black (SQ FT)	$1.00

Payment shall be made according to the terms contained in the Invitation to Bid.

B. Bonds:

Contractor shall, prior to commencing work, provide and shall maintain, during the continuance of all work under the Contract, all Bonds required in the Invitation to Bid.

C. Liability:

Contractor shall be responsible for his work and every part thereof, and for all materials, tools, equipment, appliances, and properties of any and all description used in connection with this Contract.

Contractor assumes all risks of direct and indirect damage or injury to the property of persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

Contractor shall be liable for any collateral damage (such as broken curbs, crushed sidewalks, broken water meters, etc.) caused as a result of its work under this Contract. Contractor shall restore and/or repair, at Contractor's cost, any and all collateral damage, including, but not limited to, damage to infrastructure, back to its pre-existing condition if the damage was caused by Contractor's activities.

D. Insurance:

The Contractor shall, during the continuance of all work under the Contract, provide and maintain all insurance policies required by the Invitation to Bid.

Attachment: Airport Crack Sealing and Remarking (2022-063 : LC Wimpy Airport Crack Sealing & Runway Remarking - Wall Contract)

E. Assignment of Contractual Rights and Subcontracting:

It is agreed that the Contractor will not assign, transfer, convey, or otherwise dispose of this contract or its right, title, or interest in or to the same, or any part thereof, without written consent of the County.

Contractor shall not subcontract any work without the express written consent of the County. The County must approve all subcontractors.

F. Indemnity:

To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold Lumpkin County harmless from and against any and all claims, damages, losses, and expenses, including, but not limited to, fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the negligent acts, negligent omissions, willful misconduct, or reckless misconduct of the Contractor or anyone for whom the Contractor is responsible.

G. Documents Deemed Part of Contract:

1. Unless otherwise modified by this Contract, Lumpkin County's Invitation to Bid issued July 6, 2022, for Lumpkin County-Wimpys Airport Crack Sealing and Runway Remarking Project #2022-004, and any addendums issued thereto, and the plans dated April 11, 2022, as revised on May 23, 2022, titled Lumpkin County-Wimpys Airport Crack Sealing Runway Remarking Project, Project: PID T007762 LUMPKIN, and the Specifications for Runway Crack Sealing and Remarking Runway provided as a part of the Invitation to Bid shall be deemed part of the contract. No documentation or information provided by the Contractor shall be deemed part of the contract unless expressly incorporated herein.

H. Severability:

It is understood and agreed by the parties hereto that if any part, term, or provision of this Contract is held illegal or in conflict with any law of the State or Georgia, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provisions held to be invalid.

I. Dispute Resolution:

Lumpkin County and the Contractor agree to resolve through negotiation or mediation prior to filing any cause of action. The venue for any litigation arising from this contract shall be Lumpkin County, Georgia.

J. Cancellation:

Lumpkin County reserves the right to terminate the contract immediately in the event that the Contractor discontinues or abandons operations, is adjudged bankrupt, or is reorganized under any bankruptcy law; or fails to keep in force any required insurance policies

Attachment: Airport Crack Sealing and Remarking (2022-063 : LC Wimpy Airport Crack Sealing & Runway Remarking - Wall Contract)

or bonds.

Failure of the Contractor to comply with any section or part of the contract will be considered grounds for immediate termination of the contract by the County without penalty to Lumpkin County. Lumpkin County shall pay for services rendered up to the point of termination.

Notwithstanding anything to the contrary contained herein, the County may, without prejudice to any other rights it may have, terminate the contract for convenience and without cause, by giving thirty (30) days written notice to the Contractor.

If the termination clause is used by the County, the Contractor will be paid by the County for all scheduled work completed satisfactorily by the Contractor up to the termination date set forth in the written termination notice.

K. Safe Working Environment and Drug Free Workplace

Contractor shall provide a safe working environment.

Contractor certifies that the provisions of Code Sections 5024-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-free Workplace Act", have been complied with in full. The Contractor further certifies that:

1. A drug-free workplace will be provided for the Contractor's employees during performance of the contract; and

2. If Contractor hires a Sub Contractor to work in a drug-free work place, Contractor shall secure from that Sub Contractor the following written certification:

> As part of the subcontracting agreement with (Contractor's name), (Sub Contractor's name) certifies to the Contractor that a drug-free workplace will be provided for the Sub Contractor's employees during the performance of this Contract pursuant to Paragraph (7) of Sub-section (b) of Code Section 50-24-3".

The Contractor further certifies that it will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

L. Amendments or Modifications:

All contract amendments or modifications must be in writing and signed by all parties.

M. Notices:

Any notice, order, instruction, claim, or other written communication required or permitted under this contract shall be deemed to have been delivered or received:

Attachment: Airport Crack Sealing and Remarking (2022-063 : LC Wimpy Airport Crack Sealing & Runway Remarking - Wall Contract)

1. Upon personal delivery to the Contractor or his authorized representative, which delivery may be accomplished by in person hand delivery, via bona fide overnight express service or telephonic facsimile transmission; or

2. Three (3) days after depositing in the United States mail a letter which is either certified or registered, with return receipt requested, addressed to the Contractor at the following address:

Wall Asphalt Services, Inc.
Attn: Jon W. Wall
62 School Lane
Franklin, GA 30217

and to Lumpkin County at the following address:

Lumpkin County Board of Commissioners
Attn: Alan Ours, County Manager
99 Courthouse Hill, Ste A
Dahlonega, Georgia 30533

This Contract is made and entered into this_____day of September, 2022.

Lumpkin County:

_____
Chris Dockery, Chairman
Lumpkin County Board of Commissioners

Attest:

_____
Melissa Z. Witcher
Lumpkin County Clerk

Contractor:

Wall Asphalt Services, Inc.
By:

_____
Jon W. Wall, COO

Attachment: Airport Crack Sealing and Remarking (2022-063 : LC Wimpy Airport Crack Sealing & Runway Remarking - Wall Contract)

Lumpkin County, Georgia

Public Works Department

Date: September 20, 2022

Agenda Item: GDOT Crack Sealing and Runway Remarking Supplemental Agreement

Item Description: GDOT Crack Sealing and Runway Remarking Supplemental Agreement. Approve supplemental agreement with GDOT for funding for the crack sealing and remarking of Lumpkin County-Wimpys airport.

Facts & Historical Information: On May 27, 2021 Lumpkin County executed an agreement with GDOT to fund 75% of the airport improvements. On August 31, 2022 staff received a draft supplemental to that agreement to fund the additional cost associated with the Crack Sealing and Runway Remarking Project. This supplement increased the amount of GDOT funding by $15,503.57 to a total of $276,343.59.

Potential Courses Of Action:
1. Approve the supplement to the May 27, 2021 agreement
2. Do not approve.

Budget Impact: GDOT will reimburse 75% of the costs of the contract. The remaining 25% will be paid from the airport budget and in-kind work.

Staff Recommendation: **Staff recommends that the supplement be approved.**

Attachments:
T006962 SA #1 Draft 8_31_2022 supplimental agreement

SUPPLEMENTAL AGREEMENT #1

BETWEEN

DEPARTMENT OF TRANSPORTATION

STATE OF GEORGIA

AND

LUMPKIN COUNTY

Project Number: AP021-9000-12(187) Lumpkin
PID – T006962

This agreement is made and entered into on _____, by and between the DEPARTMENT OF TRANSPORTATION, an agency of the State of Georgia, hereinafter referred to as the "DEPARTMENT", and LUMPKIN COUNTY, hereinafter called the "SPONSOR".

DRAFT

WHEREAS, the DEPARTMENT and the SPONSOR heretofore on May 27, 2021, entered into an Agreement, hereinafter called the "ORIGINAL CONTRACT", whereby the DEPARTMENT agreed to participate in the SPONSOR'S desire for the construction of certain work at the Lumpkin County Airport for LUMPKIN COUNTY; and

WHEREAS, the DEPARTMENT has determined that additional line items and funds are needed for completion of the PROJECT. This will provide the ability to carry out the full scope of work as identified in the Exhibit A-Revised 8/29/2022, in the ORIGINAL CONTRACT dated May 27, 2021. This Supplemental Agreement will increase the budget; and

Attachment: T006962 SA #1 Draft 8_31_2022 supplimental agreement (2022-064 : GDOT Crack Sealing and Runway Remarking Supplemental

NOW THEREFORE, THE PARTIES HERETO mutually agree that for and in consideration of the mutual benefits to flow from each other to the other, the ORIGINAL CONTRACT dated May 27, 2021, is hereby modified as follows:

I. Paragraphs two (2) and three (3) of item 4, on page 2 are hereby deleted in its entirety and the following is substituted in lieu thereof:

The total estimated cost of the Project is THREE HUNDRED SIXTY-EIGHT THOUSAND FOUR HUNDRED FIFTY-EIGHT and 10/100 Dollars ($368,458.10). The total estimated cost of the Project as described herein is shown on the Summary of Construction Items in Exhibit A, which is hereby made a part of this Agreement as fully and to be the same effect as if the same had been set forth at length in the body of this Agreement.

It is further agreed that the DEPARTMENT'S obligation will include state funds in the amount of TWO HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED FORTY-THREE and 59/100 Dollars ($276,343.59) for the Project as summarized in Exhibit A. It is further agreed that the maximum amount the DEPARTMENT shall be obligated to pay is the total amount of the state share of the project which is TWO HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED FORTY-THREE and 59/100 Dollars ($276,343.59). However, if the sum total of the actual cost of the Project is less than the amounts indicated in Exhibit A, the DEPARTMENT shall be obligated to pay 75% of the actual project cost as verified from the records of the SPONSOR or actual measured quantities of the items listed in the Summary of Construction Items (Exhibit A), whichever is less. It is further understood the sponsor's local share of the project is in the amount of NINETY-TWO THOUSAND ONE HUNDRED FOURTEEN and 51/100 Dollars ($92,114.51).

DRAFT

II. The Exhibit A is hereby deleted in its entirety and the following is substituted in lieu thereof: Exhibit A-Revised 8/29/2022.

Except as modified, changed, or amended, all the terms and conditions of the Original contract dated, May 27, 2021, as amended by the Supplemental Agreement shall remain in full force and effect. The covenants herein contained shall except as otherwise provided accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

Attachment: T006962 SA #1 Draft 8_31_2022 supplimental agreement (2022-064 : GDOT Crack Sealing and Runway Remarking Supplemental

IN WITNESS THEREOF said parties have hereunto set their hands and affixed their seals the day and year above first written.

DEPARTMENT OF TRANSPORTATION: LUMPKIN COUNTY

_____ (SEAL) DATE: _____
Commissioner

ATTEST: _____ _____
Treasurer CHAIRMAN (SEAL)

_____
PRINTED NAME

DRAFT

Federal Employment Identification

Number: 586000857

Attachment: T006962 SA #1 Draft 8_31_2022 supplimental agreement (2022-064 : GDOT Crack Sealing and Runway Remarking Supplemental

LUMPKIN COUNTY - WIMPY'S AIRPORT
DAHLONEGA, GA

DRAFT

EXHIBIT A-Revised 8/29/2022

SUMMARY OF CONSTRUCTION ITEMS - LIMITED PARTICIPATION

GDOT PROJECT NUMBER: AP021-9000-12(187) Lumpkin
PID - T006962

Install Perimeter Fence and Gates; Terminal Area Improvements Phase I; Crack Seal/Remark Airfield; Relocate Thresholds

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
Part 1 State Funds FY21					
1	LIMITED PARTICIPATION PROJECT. THE AMOUNT SHALL NOT EXCEED $260,840.02 OR 75.0%, WHICHEVER IS LESS OF THE ACTUAL COST OF $347,786.69. INSTALL PERIMETER FENCE AND GATES; TERMINAL AREA IMPROVEMENTS PHASE I; CRACK SEAL/REMARK AIRFIELD; RELOCATE THRESHOLDS - LIMITED PARTICIPATION	EA	260,840.02	$1.00	$260,840.02
	Total Part 1 State Funds FY21				**$260,840.02**
Part 2 State Funds FY 22					
2	LIMITED PARTICIPATION PROJECT. THE AMOUNT SHALL NOT EXCEED $15,503.57 OR 75.0%, WHICHEVER IS LESS OF THE ACTUAL COST OF $20,671.41. CRACK SEAL/REMARK AIRFIELD; RELOCATE THRESHOLDS - LIMITED PARTICIPATION	EA	15,503.57	$1.00	$15,503.57
	Total Part 2 State Funds FY22				**$15,503.57**
	TOTAL PROJECT COST				**$276,343.59**

Federal Grant # and FAIN #	Federal Award Date	Original Contract	Supplemental Agreement #1	New Contract Amount	Fund Source
FY21 STATE	N/A	$260,840.02	$0.00	260,840.02	01211
FY22 STATE	N/A	$0.00	$15,503.57	15,503.57	01225
TOTAL MAXIMUM OBLIGATION OF STATE FUNDS THIS CONTRACT:				$276,343.59	

CFDA: 20.106; UEI:KXJCT7D54GD8
Indirect Cost Rate-N/A: Research and Development Contract -No

Attachment: T006962 SA #1 Draft 8_31_2022 supplimental agreement (2022-064 : GDOT Crack Sealing

LUMPKIN COUNTY - WIMPY'S AIRPORT
DAHLONEGA, GA

DRAFT

EXHIBIT A-Revised 8/29/22

SUMMARY OF CONSTRUCTION ITEMS - DETAIL

GDOT PROJECT NUMBER: AP021-9000-12(187) Lumpkin
PID-T006962

Install Perimeter Fence and Gates; Terminal Area Improvements Phase I; Crack Seal/Remark Airfield; Relocate Thresholds

ITEM	SPEC	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	%	STATE FUNDS
Part 1 State Funds FY21								**01211**
1	GDOT	Design Primary Surface Improvements	EACH	0	$1.00	$0.00	75%	$0.00
2	GDOT	Construction Phase Services	EACH	33,855	$1.00	$33,855.00	75%	$25,391.25
3	643-1152	Gavl. Chain Link Fence, 6', wire gauge: 9, incl 1-12'gates and 1-4'gates	FEET	2,962	$27.66	$81,928.92	75%	$61,446.69
4	210-0100	Grading Complete	LS	1	$45,675.00	$45,675.00	75%	$34,256.25
5	310-1201	Graded Aggregate Base including material	TON	519.63	$51.94	$26,989.58	75%	$20,242.19
6	402-3190	Recycled asph conc. 19MM superpave GP 2 only incl Bitum material and H Lime	TON	220	$193.49	$42,567.80	75%	$31,925.85
7	402-3130	Recycled asph conc. 12.5MM superpave GP 2 only incl Bitum material and H Lime	TON	135	$193.49	$26,121.15	75%	$19,590.86
8	550-1240	24" Smooth Line Corrugated HDPE	LF	50	$88.13	$4,406.50	75%	$3,304.88
9	652-2501	Solid 5" White Parking Strips and 1 Blue H.C. Symbol	LS	1	$840.00	$840.00	75%	$630.00
10	700-6910	Permanent Grassing	LS	1	$2,400.00	$2,400.00	75%	$1,800.00
11	643-8300	Ornamental Fence	FEET	296	$75.02	$22,205.92	75%	$16,654.44
12	643-8050	Ornamental Gate 16' wide; Automatic Opener; 6' High	EACH	1	$31,502.40	$31,502.40	75%	$23,626.80
13	GDOT	Construction Administration/Inspection	EACH	5,560.58	$1.00	$5,560.58	75%	$4,170.44
14	C-105	Mobilization	LS	5,000	$1.00	$5,000.00	75%	$3,750.00
15	GDOT - 407	Asphalt-Rubber Joint and Crack Seal Type S	LF	10,809	$1.25	$13,511.25	75%	$10,133.44
16a	GDOT - 656	Removal of Paint Markings	SY	435.22	$12.00	$5,222.59	75%	$3,916.93
		Total Part 1 State Funds FY21				**$347,786.69**		**$260,840.02**

Attachment: T006962 SA #1 Draft 8_31_2022 supplimental agreement (2022-064 : GDOT Crack Sealing

LUMPKIN COUNTY - WIMPY'S AIRPORT
DAHLONEGA, GA

DRAFT

EXHIBIT A-Revised 8/29/22

SUMMARY OF CONSTRUCTION ITEMS - DETAIL

GDOT PROJECT NUMBER: AP021-9000-12(187) Lumpkin
PID-T006962

Install Perimeter Fence and Gates; Terminal Area Improvements Phase I; Crack Seal/Remark Airfield; Relocate Thresholds

ITEM	SPEC	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL	%	STATE FUNDS
Part 2 State Funds FY22								**01225**
16b	GDOT - 656	Removal of Paint Markings	SY	389.78	$12.00	$4,677.41	75%	$3,508.07
17	P-620	Paint Markings White w/ Glass Beads	SF	7350	$1.40	$10,290.00	75%	$7,717.50
18	P-620	Paint Markings Yellow w/ Glass Beads	SF	700	$1.50	$1,050.00	75%	$787.50
19	P-620	Paint Markings Black	SF	4654	$1.00	$4,654.00	75%	$3,490.50
		Total Part 2 State Funds FY22				**$20,671.41**		**$15,503.57**
		Total Project Cost				**$368,458.10**		**$276,343.59**

FAA Grant # and FAIN #	Federal Award Date	Original Contract	Supplemental Agreement #1	New Contract Amount	Fund Source
FY21 STATE	**N/A**	**$260,840.02**	**$0.00**	**$260,840.02**	**01211**
FY22 STATE	**N/A**	**$0.00**	**$15,503.57**	**$15,503.57**	**01225**
TOTAL MAXIMUM OBLIGATION OF STATE FUNDS THIS CONTRACT:				**$276,343.59**	

Attachment: T006962 SA #1 Draft 8_31_2022 supplimental agreement (2022-064 : GDOT Crack Sealing

Lumpkin County, Georgia

Public Works Department

Date: September 20, 2022

Agenda Item: Proposed LMIG FY2023 Road Resurfacing List

Item Description: Proposed LMIG FY2023 Road Resurfacing List. Presentation of the proposed list of roads to be resurfaced in the 2023 paving season.

Facts & Historical Information: Each year staff scores several roads to rank the roads for resurfacing. The higher a road scores, the more in need of resurfacing the road is. For 2023, staff scored 70 road sections of which 21 of the roads scored at a level (greater than 25) which indicates a current need to be resurfaced. Of the 21 highest scoring roads, staff is proposing that 7 be resurfaced in 2023. (See attached scoring list) Staff is proposing that the three roads in blue highlighting (4.93 miles estimated cost $807,067) be resurfaced with LMIG funds using TSPLOST funds as a match and the four roads in green highlighting (6.67 miles estimated cost $994,373) will be resurfaced with TSPLOST funds. The total estimated resurfacing cost for 2023 is $1,801,440 for 11.6 miles of road. Staff is now submitting the recommended list of roads to be resurfaced for comment by the BOC.

Potential Courses Of Action: Sources of funding and estimated amounts are:

- DOT LMIG grant: $600,382.15
- TSPLOST: $1,200,000

- Total Funds available: $1,800,382.15

Staff Recommendation: **Staff's intent is to use all available funds for resurfacing of roads from the priority list. Staff asks that the BOC review the attached list of roads for resurfacing in 2023 and approve with any changes the BOC wishes to make.**

Attachments:
2023 SCORING LIST revision 8-23-22
2023 proposed resurfacing list rev 8-23-22

Lumpkin County 2023 Scoring List

FUNDS	ROAD NAME	2023 SCORE	START	END	WIDTH (ft)	LENGTH (Mi.)	12.5 mm tons	total cost
LMIG	Anderson dr	28	US 19 Bus	0.40 miles	20	0.40	469.33	$62,713
LMIG	Ben Higgins Rd	27	Bear Slide Hollow	SR 9	21	2.40	2956.80	$439,269
LMIG	Little Mountain Rd	35	SR 52	Sheep Wallow Rd	20	2.13	2061.84	$305,086
TSPLOST	Mill Creek Rd	35	Little Mountain Rd	Sheep Wallow Rd	20	1.77	1713.36	$253,273
TSPLOST	Robinson Rd	31	Long Branch Rd	Early dr.	20	0.70	821.33	$110,325
TSPLOST	Rocktree Rd	30	Rock House Rd	Mountain Path	20	0.91	1067.73	$160,002
TSPLOST	Sheep Wallow Rd	35	Little Mountain Rd	Mill Creek Rd	20	3.29	3184.72	$470,773
	Jay Bridge Rd	29	river bridge	Oak Grove Rd	19	1.25	1393.33	$210,507
	Gold Cove Dr	30	Sr 115 /Long Branch rd	cul de sac	20	0.67	786.13	$105,597
	Gold Vw	29	Gold Cove Dr	Buckeye Ln N/S	18	0.33	348.48	$46,807
	Holly Ln	29	Sr 115 /Long Branch rd	cul de sac	18	0.30	316.80	$42,652
	Acorn Dr	27	Holly Ln	50' past Gooseberry Ln	11	0.12	77.44	$11,411
	Clay Creek Falls Rd	29	SR 9	Oak Grove Rd	20	2.19	2569.60	$384,719
	Homer Edwards	28	Clay Creek Falls Rd	Oak Grove Rd	20	1.26	1478.40	$221,265
	Lee Mashburn	28	Ben West	End	12	1.00	704.00	$103,534
	Nimblewill Gap Rd	28	Nimblewill Church Rd	end of pavement	15	2.26	1988.80	$283,628
	Nimblewill Church Rd	27	Church	SR 52 west end	20	2.35	2757.33	$412,916
	Honey Tree Ter	26	Bear slide path	cul de sac	20	0.10	117.33	$15,423
	Station Trl	26	Auraria Rd	cul de sac	21	0.73	899.36	$117,934
	Gold Crest Dr	36	Gold Cove Dr	cul de sac	19	0.62	691.09	$93,177
	Cane Creek Church Rd	31	Black Mtn rd	Church parking lot	13	0.80	610.13	$85,085
	River view trl west	25	Copper Ridge Dr	Overlook Pl	12	1.03	725.12	$100,846
	Laurel Circle	25	Carlton Seitz	River Dr.	17	0.81	807.84	$108,959
	Lucy Ln	25	Pat Gooch rd	end	12	0.20	140.80	$20,707
	Edwards Parkway	25	US 19	End	13	0.87	663.52	$96,445
	Martins Groove Rd	25	Oak Grove Rd	Martins Groove Rd	19	1.20	1337.60	$195,492
	Oak Grove Park Dr	25	Oak Grove Rd	end	19	0.11	122.61	$16,160
	Ruby Rd	25	Martins Ford Rd	end	12	0.20	140.80	$19,132
	Bear slide Path	24	Bear slide Rd	cul de sac	20	0.10	117.33	$15,623
	Jay Bridge Rd	24	SR 52	river bridge	17	1.70	1695.47	$244,099
	Fern Park Dr	23	Greenway Rd	cul de sac	20	0.55	645.33	$84,828
	TS Jarrad	23	Us 19	end	12	0.45	316.80	$43,047
	Woods Dr	23	Little Mountain Rd	End	20	0.25	293.33	$40,527
	Copper Mines Rd	22	Chestatee River bridge	Cavenders Creek Rd	22	1.28	1652.05	$236,480
	Corinth Church rd	22	Us 19	end	12	0.50	352.00	$51,767
	Nottingham Ln	21	Robin Hood Ln	cul de sac	21	0.22	271.04	$35,542
	Grindle Brothers	21	SR 115	Copper Mines Rd	19	1.00	1114.67	$168,445
	Oak Grove Park Ln	21	Oak Grove Park Dr	end	18	0.03	31.68	$4,188
	Oak Grove Rd	21	Clay creek falls Rd	Silome Church	21	1.60	1971.20	$280,086
	Norman Bell Rd	21	Copper Mine	Long Branch Ext	20	1.00	1173.33	$175,907
	Coolidge Way	20	SR 52	end	12	0.32	225.28	$31,431
	Frair Tuck Trl S	19	Robin Hood Ln	cul de sac	21	0.10	123.20	$16,155
	Cherokee Trce	19	SR 52 E	End	20	0.36	422.40	$56,334
	Edmonson Dr	19	Wash Rider	End	13	0.27	205.92	$29,324
	Elliot Ln	19	Seven Mile Hill Rd	End	18	0.40	422.40	$56,736
	Guy Wimpy W	19	Camp Wahsega	gate	13	0.22	167.79	$23,646
	Halls Mill Rd	19	SR 52	end of pavement	16	1.15	1079.47	$152,844
	Fern Park Ln	18	Fern Park Dr	cul de sac	20	0.16	187.73	$24,677
	Little John Ln	18	Frair Tuck trl n	cul de sac	21	0.15	184.80	$27,233
	Claude Parks Rd	18	Sr 52	Hall County line	22	1.95	2516.80	$371,208
	Ben Higgins Rd	18	Auraria Rd	Bear Slide Hollow	21	0.90	1108.80	$164,836
	Black Mountain Rd	17	Cain Creek Church rd	Pat Gooch rd	22	3.45	4452.80	$660,244
	Winfield Blf	16	Station Trl	cul de sac	21	0.48	591.36	$77,546
	Buckeye Ln N/S	15	cul de sac	Buckeye Rdg E/W	20	0.42	492.80	$64,777
	Copper Ridge Dr	15	Long Branch Rd	River View Tr	20	0.08	93.87	$12,519
	Nimblewill Church Rd	15	SR 52 east end	church	20	1.20	1408.00	$204,158
	Ridley Rd	15	US 19 N	Yahoola Rd	20	2.28	2675.20	$370,204
	Deer Path	14	River view trail	end	15	0.07	61.60	$8,391
	Lake Laurel Court e&w	14	cul de sac	cul de sac	20	0.12	140.80	$18,508
	Choctaw Rdg N & S	13	Amicalola Trl	End	20	0.40	469.33	$61,693

Attachment: 2023 SCORING LIST revision 8-23-22 (3497 : Proposed LMIG FY2023 Road Resurfacing List)

Lumpkin County 2023 Scoring List

FUNDS	ROAD NAME	2023 SCORE	START	END	WIDTH (ft)	LENGTH (Mi.)	12.5 mm tons	total cost
	Williams Ln	13	Coolidge Way	end	11	0.07	45.17	$6,184
	Guy Wimpy E	12	Black Mountain	Gate	16	0.30	281.60	$38,159
	Rocktree Rd	12	Mountain Path	end of pavement	15	0.46	404.80	$56,177
	Buckeye Rdg E/W	11	cul de sac	cul de sac	20	0.26	305.07	$40,100
	Sequoya Pl	11	Choctaw Rdg N	End	20	0.20	234.67	$30,846
	Old Cherokee Way	11	Station Trl	cul de sac	21	0.30	369.60	$48,466
	Amicalola Trl	10	Cherokee Trce	End	20	0.14	164.27	$21,592
	Yonan Pl	8	Cherokee Trce	End	20	0.10	117.33	$15,423
	Briar Patch Rd	6	Sequoya Pl	End + cul de sac	20	0.06	120.40	$15,494
	Maple Ridge Rd	5	River Flow Dr	cul de sac	20	0.12	140.80	$19,048
				total scored		55.17		

Attachment: 2023 SCORING LIST revision 8-23-22 (3497 : Proposed LMIG FY2023 Road Resurfacing List)

Lumpkin County 2023 Proposed Resurfacing List

FUNDS	ROAD NAME	2023 SCORE	START	END	WIDTH (ft)	LENGTH (Mi.)	#/sy	12.5 mm tons	12.5 mm (ton)	total cost	cumulative cost	cumulative length (mi)	comment	estimated cost per project
LMIG	Anderson dr	28	US 19 Bus	0.40 miles	20	0.40	200	469.33	$56,320.00	$62,713	$62,713	0.40	Noahs Mountain SD	
LMIG	Ben Higgins Rd	27	Bear Slide Hollow	SR 9	21	2.40	200	2956.80	$354,816.00	$439,269	$501,981	2.80		
LMIG	Little Mountain Rd	35	SR 52	Sheep Wallow Rd	20	2.13	165	2061.84	$247,420.80	$305,086	807067.40	2.13	widening project	$807,067
TSPLOST	Mill Creek Rd	35	Little Mountain Rd	Sheep Wallow Rd	20	1.77	165	1713.36	$205,603.20	$253,273	$1,060,340	3.90	widening project	
TSPLOST	Robinson Rd	31	Long Branch Rd	Early dr.	20	0.70	200	821.33	$98,560.00	$110,325	$1,170,665	4.60		
TSPLOST	Rocktree Rd	30	Rock House Rd	Mountain Path	20	0.91	200	1067.73	$128,128.00	$160,002	$1,330,668	5.51		
TSPLOST	Sheep Wallow Rd	35	Little Mountain Rd	Mill Creek Rd	20	3.29	165	3184.72	$382,166.40	$470,773	$1,801,440	8.80	widening project	$994,373
													total estimated cost	$1,801,440
												11.60	estimated cost per mile	$155,297

Attachment: 2023 proposed resurfacing list rev 8-23-22 (3497 : Proposed LMIG FY2023 Road Resurfacing

Lumpkin County, Georgia

Water & Sewerage Authority Department

Date: September 20, 2022

Agenda Item: Request use of SPLOST or ARPA Funds for LCWSA System Improvements

Item Description: Request use of SPLOST or ARPA Funds for LCWSA System Improvements. LCWSA request for use of SPLOST or ARPA funds to complete water and sewer system improvements. Additional funds are needed to meet budget shortfall based on bids received for construction.

Facts & Historical Information:

LCWSA recently received bids to construct the "Chestatee Industrial Park 2021 Water & Sewer System Improvements" project. The project includes water and sewer improvements at multiple locations along the HWY 400 corridor. An exhibit describing the scope of the project is attached.

Construction costs have increased substantially in the past two years and LCWSA is currently facing a budget shortfall for the project. The table below shows the approximate breakdown.

Low Bid for Construction	($ 5,275,000)
Available balance of LCWSA Revenue Bond Acct	$ 2,600,000
EDA Grant Award	$ 2,000,000
Budget Shortfall	**($675,000)**

LCWSA Funding Request:

LCWSA is requesting $675,000 from one of the potential funding sources listed below to complete the construction of improvements to the water and sewer system.

Potential Funding Sources:

1. LCWSA's allocation of 2020 SPLOST Program Collections

2. America Rescue Plan Act (ARPA) funds that have been received by Lumpkin County

LCWSA Analysis:

BOC approval of the LCWSA's request for funds will not impact the operating budget for the County. The scope of the project matches a spending priority for either funding source.

Through coordination with the Lumpkin County Finance Department, LCWSA understands that there are sufficient funds in LCWSA's allocation of the 2020

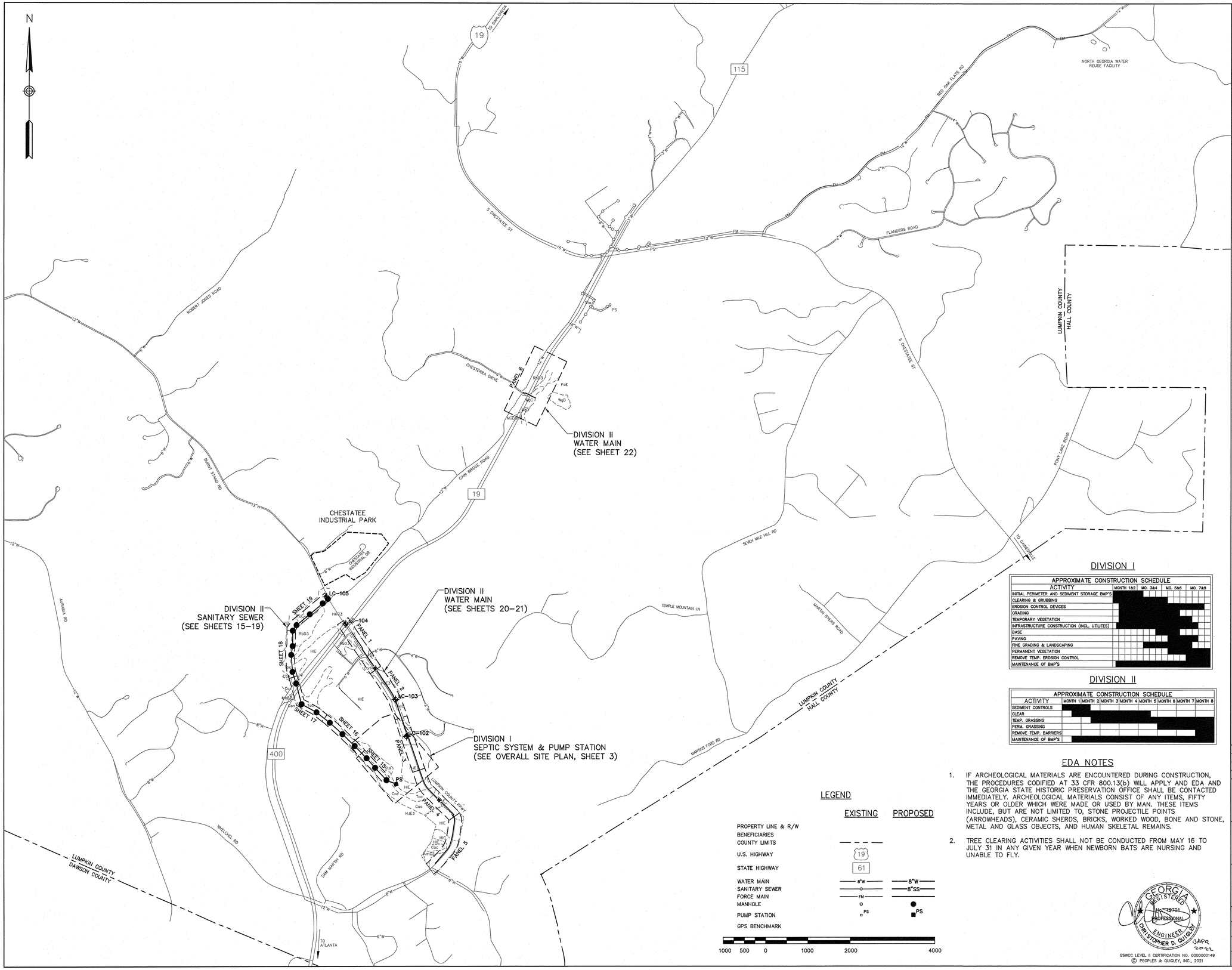
SPLOST program that are readily available and sufficient to cover the budget shortfall. As an alternative, Lumpkin County has existing ARPA funds that are readily available and sufficient to cover the budget shortfall.

Potential Courses of Action (COA):

1. BOC approves LCWSA's request for $675,000 with funds available from LCWSA's allocation under the 2020 SPLOST Program.
2. BOC approves LCWSA's request for $675,000 with funds available from Lumpkin County's ARPA.
3. BOC elects not to approve LCWSA's request for funding at this time.

Staff Recommendation: **LCWSA Staff recommends COA #1.**

Attachments:
LCWSA Project Map Exhibit



GENERAL NOTES

1. THIS DRAWING, AS AN INSTRUMENT OF SERVICE, WAS PREPARED BY PEOPLES & QUIGLEY, INC. FOR THE EXCLUSIVE USE OF THE CLIENT NAMED HEREON. NO WARRANTY, EXPRESSED OR IMPLIED IS INTENDED TO EXTEND TO ANY UNNAMED THIRD PARTY. THIS DRAWING, REMAINS THE PROPERTY OF PEOPLES & QUIGLEY, INC., IS COPYRIGHTED, AND SHALL NOT BE REPRODUCED OR COPIED IN WHOLE OR IN PART WITHOUT THE WRITTEN PERMISSION OF PEOPLES & QUIGLEY, INC.
2. THIS DRAWING WAS CREATED FROM INFORMATION PROVIDED BY OTHERS AND FIELD MEASUREMENTS TAKEN BY PEOPLES & QUIGLEY, INC.
3. GPS BENCHMARKS:

LC–102: METAL DISK IN CONCRETE
NORTHING: 1614383.6180
EASTING: 2351795.2150
ELEVATION: 1132.17

LC–103: METAL DISK IN CONCRETE
NORTHING: 1615248.4310
EASTING: 2351536.2870
ELEVATION: 1144.55

LC–104: METAL DISK IN CONCRETE
NORTHING: 1617020.0360
EASTING: 2350358.5780
ELEVATION: 1188.77

LC–105: METAL DISK IN CONCRETE
NORTHING: 1617656.4960
EASTING: 2349904.2000
ELEVATION: 1203.87

EROSION CONTROL NOTES

1. THE SOIL CLASSIFICATIONS FOR THIS PROJECT INCLUDE:
AmC2 – APPLING SANDY LOAM
Coc – CARTECAY COMPLEX
Con – CONAGREE AND STARR SOILS
FaE – FANNIN SANDY LOAM
HIC, HIE – HAYESVILLE SANDY LOAM
HJE3 – HAYESVILLE SANDY CLAY LOAM
HKC3 – HAYESVILLE AND RABUN CLAY LOAMS
MoB2, MoC2 – MASADA FINE SANDY LOAM
MuE2 – MUSELLA GRAVELLY CLAY LOAM
RbD3, RbE3 – RABUN CLAY LOAM
Sta – STARR FINE SANDY LOAM
TbE – TALLAPOOSA COBBLY FINE SANDY LOAM
Toc – TOCCOA SANDY LOAM
WgC, WgD – WICKHAM FINE SANDY LOAM
2. WATERS OF THE STATE WITHIN 200 FEET OF THE PROJECT ARE CANE BRANCH, AND UNNAMED TRIBUTARIES OF CHESTATEE RIVER.
3. THERE ARE NO WETLANDS ON THE PROJECT SITE.
4. EROSION CONTROL PHASES:
INITIAL PHASE–INSTALL LONGITUDINAL SILT FENCE BEFORE PIPE INSTALLATION.
INTERMEDIATE PHASE–ADD HAY BALE SEDIMENT BARRIERS AND TEMPORARY GRASS AS WORK PROGRESSES.
FINAL PHASE–PROVIDE PERMANENT VEGETATION. REMOVE STRUCTURAL MEASURES AFTER FINAL STABILIZATION.
5. **THE ESCAPE OF SEDIMENT FROM THE SITE SHALL BE PREVENTED BY THE INSTALLATION OF EROSION AND SEDIMENT CONTROL MEASURES AND PRACTICES PRIOR TO, LAND DISTURBING ACTIVITIES.**
6. **EROSION CONTROL MEASURES WILL BE MAINTAINED AT ALL TIMES. IF FULL IMPLEMENTATION OF THE APPROVED PLAN DOES NOT PROVIDE FOR EFFECTIVE EROSION CONTROL, ADDTIONAL EROSION AND SEDIMENT CONTROL MEASURES SHALL BE IMPLEMENTED TO CONTROL OR TREAT THE SEDIMENT.**
7. **ANY DISTURBED AREA LEFT EXPOSED FOR A PERIOD OF GREATER THAN 14 DAYS SHALL BE STABILIZED WITH MULCH OR TEMPORARY SEEDING.**

DIVISION I

APPROXIMATE CONSTRUCTION SCHEDULE

ACTIVITY	MONTH 1&2	MO. 3&4	MO. 5&6	MO. 7&8
INITIAL PERIMETER AND SEDIMENT STORAGE BMP'S				
CLEARING & GRUBBING				
EROSION CONTROL DEVICES				
GRADING				
TEMPORARY VEGETATION				
INFRASTRUCTURE CONSTRUCTION (INCL. UTILITES)				
BASE				
PAVING				
FINE GRADING & LANDSCAPING				
PERMANENT VEGETATION				
REMOVE TEMP. EROSION CONTROL				
MAINTENANCE OF BMP'S				

DIVISION II

APPROXIMATE CONSTRUCTION SCHEDULE

ACTIVITY	MONTH 1	MONTH 2	MONTH 3	MONTH 4	MONTH 5	MONTH 6	MONTH 7	MONTH 8
SEDIMENT CONTROLS								
CLEAR								
TEMP. GRASSING								
PERM. GRASSING								
REMOVE TEMP. BARRIERS								
MAINTENANCE OF BMP'S								

EDA NOTES

1. IF ARCHEOLOGICAL MATERIALS ARE ENCOUNTERED DURING CONSTRUCTION, THE PROCEDURES CODIFIED AT 33 CFR 800.13(b) WILL APPLY AND EDA AND THE GEORGIA STATE HISTORIC PRESERVATION OFFICE SHALL BE CONTACTED IMMEDIATELY. ARCHEOLOGICAL MATERIALS CONSIST OF ANY ITEMS, FIFTY YEARS OR OLDER WHICH WERE MADE OR USED BY MAN. THESE ITEMS INCLUDE, BUT ARE NOT LIMITED TO, STONE PROJECTILE POINTS (ARROWHEADS), CERAMIC SHERDS, BRICKS, WORKED WOOD, BONE AND STONE, METAL AND GLASS OBJECTS, AND HUMAN SKELETAL REMAINS.
2. TREE CLEARING ACTIVITIES SHALL NOT BE CONDUCTED FROM MAY 16 TO JULY 31 IN ANY GIVEN YEAR WHEN NEWBORN BATS ARE NURSING AND UNABLE TO FLY.

LEGEND

	EXISTING	PROPOSED
PROPERTY LINE & R/W		
BENEFICIARIES		
COUNTY LIMITS		
U.S. HIGHWAY	19	
STATE HIGHWAY	61	
WATER MAIN	8"W	8"W
SANITARY SEWER	8"SS	8"SS
FORCE MAIN	FM	
MANHOLE		
PUMP STATION	PS	PS
GPS BENCHMARK		

1000 500 0 1000 2000 4000

GSWCC LEVEL II CERTIFICATION NO. 0000000149

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GEORGIA REGISTERED No. 33701 PROFESSIONAL ENGINEER CHRISTOPHER D. QUIGLEY APR 2022

NO.	DATE	BY	REVISION
3	04/13/2022	LCH	REVISED PER NRCS COMMENTS
2	02/01/2022	LCH	REVISED PER EPD, LDP, & EASEMENT COMMENTS

LUMPKIN COUNTY WATER AND SEWERAGE AUTHORITY

CHESTATEE INDUSTRIAL PARK 2021 WATER & SEWERAGE SYSTEM IMPROVEMENTS

PROJECT MAP

DESIGNED BY JDC	P&Q PEOPLES & QUIGLEY, INC. CONSULTING ENGINEERS 6059 BOYLSTON DRIVE, NE SANDY SPRINGS, GEORGIA 30328 TELEPHONE (404) 255–2650		SHEET 2 OF 26
DRAWN BY JCP			
CHECKED BY LCH			
APPROVED BY CDQ	SCALE AS SHOWN	DATE APRIL 30, 2021	DRAWING NO. 494–08A3–02

Attachment: LCWSA Project Map Exhibit (3507 : Request use of SPLOST or ARPA Funds for LCWSA System Improvements)

Lumpkin County, Georgia

Water & Sewerage Authority Department

Date: September 20, 2022

Agenda Item: LCWSA – Request for recommitment of County to Provide ARPA Matching Funds for WWTP

Item Description: LCWSA – Request for recommitment of County to Provide ARPA Matching Funds for WWTP. LCWSA is requesting a recommitment by the Board of Commissioners to provide $3,000,000 in local matching funds from the Lumpkin County's Local Fiscal Recovery Funds in support of LCWSA's application for State Fiscal Recovery Funds (ARPA) to construct a WWTP.

Facts & Historical Information: The Governor's Office of Planning and Budget is accepting applications for State Fiscal Recovery Funds as part of the America Rescue Plan Act. This is effectively the second round of a grant program that was initiated in 2021. LCWSA submitted an application for funding in the initial round, but it was not awarded.

LCWSA intends to submit an update of its 2021 application for grant funds to be used for the construction of a waste water treatment plant. The waste water treatment plant will support the phased buildout of the NGMC Lumpkin Hospital at HWY 400, as well as future economic development in the vicinity of the Gateway Corridor District in southern Lumpkin County.

LCWSA is requesting a recommitment by the Board of Commissioners to provide $3,000,000 in local matching funds from the County's Local Fiscal Recovery Funds in support of LCWSA's current application for State Fiscal Recovery Funds (ARPA) to construct a WWTP.

Potential Courses Of Action:
1. LC BOC approves a recommitment of $3,000,000 in matching funds for LCWSA's 2022 application.
2. LC BOC elects not to commit matching funds to LCWSA's 2022 application.

Staff Recommendation: **Staff recommends COA #1.**

Lumpkin County, Georgia

Finance Department

Date: September 20, 2022

Agenda Item: Enotah Judicial Circuit Superior Court Reporter Independent Contractor Agreement

Item Description: Enotah Judicial Circuit Superior Court Reporter Independent Contractor Agreement. Consideration of an Independent Contract Agreement for the Enotah Judicial Circuit Superior Court.

Facts & Historical Information:

The Enotah Judicial Circuit currently uses Appalachian Court Reporting for court reporting services. These services are paid by each of the four member counties' operating budgets. Judges were recently notified that they will no longer be able to provide court reporting services to the Enotah Judicial Circuit.

The Enotah Judicial Circuit's Superior Court Judges have been working towards a viable solution and have requested funding from the four Enotah Judicial Circuit counties: Lumpkin, White, Union, Towns, to appoint court reporters. The cost of the court reporters is estimated to be $370,000 per year, and Lumpkin County's share would be paid through the Enotah Judicial Circuit. As a result, Lumpkin County will no longer pay for court reporting out of the Superior Court's General Fund budget.

The Enotah Judicial Circuit counties met with the Superior Court judges on Monday, September 12, to discuss this change along with options to fund the positions. Options based on **annual costs** were:

1. Lumpkin, White, Union each pay $100,000 for a court reporter for one Superior Court Judge. Towns pays $70,000 for a court reporter for one Juvenile Court Judge.
2. Lumpkin, White, Union, Towns each pay an equal share of $92,500.
3. Lumpkin, White, Union, Towns each pay their share, based on population.

All options could be funded without the use of the Enotah Judicial Circuit's Fund Balance, using $30,000 of the Circuit's Fund Balance, or using $40,000 of the Circuit's Fund Balance.

Since court reporters will not be appointed until at least October 1, the

options should be considered at 75% of the annual costs. Enotah Judicial Circuit counties' consensus was to move forward with Option 3, while using $30,000 of the Enotah Judicial Circuit's Fund Balance. The expected cost for the remaining nine months of the Circuit's fiscal year is $247,500 after the use of the Circuit's Fund Balance. Lumpkin County's population share is 33.96%, resulting in a nine-month cost to Lumpkin County of $84,049.

For the remainder of the County's FY22 budget, the cost is expected to be $28,016. As of 09/14/22, the remaining balance in the Superior Court reporting budget is $56,033.

The Superior Court reporting budget in FY23 is $110,000. The expected cost of the court reporters from January 1 – June 30, 2023 is $56,033, which is slightly over what the court reporting budget should be halfway through FY23.

The Independent Contractor Agreement draft is attached for consideration by the Board of Commissioners. This agreement is not between Lumpkin County and any individual and do not require the signature of the Chairman.

Potential Courses Of Action:

A. Approve use of the Independent Contractor Agreement.

B. Disapprove use of the Independent Contractor Agreement.

Budget Impact:

For the remainder of the County's FY22 budget, the cost is expected to be $28,016. As of 09/14/22, the remaining balance in the Superior Court reporting budget is $52,889.

The Superior Court reporting budget in FY23 is $110,000. The expected cost of the court reporters from January 1 – June 30, 2023 is $56,033, which slightly over what the court reporting budget should be halfway through FY23. Funding for July 1, 2023 – December 31, 2023 will be determined at the Enotah Judicial Circuit meeting held in Spring 2023.

Staff Recommendation:

Attachments:
Court Reporter Contract Commission Draft

Enotah Judicial Circuit
Superior Court Reporter

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT (the "Agreement") is being made on _____,2022, by and between The Hon. T. Buckley Levins, Judge of Superior Court, on behalf of the Superior Court of the Enotah Judicial Circuit, whose chambers are located at 65 Courthouse St, Blairsville, Georgia 30512, in the County of Union (the "**COURT**"), and _____, (the "**INDEPENDENT CONTRACTOR**"). This Agreement is being made in furtherance of certification of the Independent Contractor as the appointed and designated Court Reporter for Judge T. Buckley Levins.

ARTICLE I - ABILITY TO CONTRACT

Paragraph 1.0. Pursuant to O.C.G.A. Section 15-14-1, “the judges of the superior courts SHALL have the power to appoint, and, at their pleasure, to remove a court reporter, as defined in Article 2 of [the relevant] chapter [concerning court reporters].”

Paragraph 1.1. Furthermore, and pursuant to O.C.G.A. Section 15-14-4(b), “each of the judges [the Enotah Judicial Circuit],” SHALL have the power, with the approval of the county commissioners, to employ such [Court Reporters] as [the judges] may deem necessary.” “The compensation of the [Court Reporter] is declared to be an expense of the Court and payable out of the [respective] County Treasury as such.”

Paragraph 1.2. By their respective signatures at the bottom of this document both parties hereby acknowledge that they have read and understood all the terms contained herein and that they have the authority to bind themselves to the terms contained in this Agreement. Executed concurrently with this document, and as attached as Contract Exhibits “1” and “2” respectively are

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

the following: 1) the required "Certification of Court Reporter," and, 2) "Court Reporter Contact Information." These required forms, as promulgated by the Council of Superior Court Judges of Georgia ("CSCJ"), will be transmitted to the CSCJ and will enable said Independent Contractor to be eligible for the "Contingent Expense and Travel Allowance" pursuant to O.C.G.A. Section 15-14-6.

ARTICLE II – INDEPENDENT CONTRACTOR SERVICES

Paragraph 2.0. The Court retains Independent Contractor, and the Independent Contractor accepts retention by the Court to render the services as hereinafter defined and required, to perform such services solely in the manner and to the extent required by the parties herein, and as may be hereafter amended or extended in writing by mutual agreement of the parties. The Court shall have the right to terminate Independent Contractor's services at any time it deems appropriate pursuant to Paragraphs 4.0 – 4.2 below. The Independent Contractor agrees to devote the necessary amount of time, energy and attention required to satisfactorily complete, conclude, or achieve the following duties and responsibilities as defined in the "Scope of Duties" within this Agreement and in compliance with the "Superior Court Reporting Protocol" Standing Order of the Enotah Judicial Circuit.

Paragraph 2.1. The Court acknowledges that it will engage FIRST NAME, LAST NAME as an Independent Contractor to render the services defined and required herein.

Paragraph 2.2. This agreement shall be for the term of one (1) year and shall renew automatically for an additional twelve (12) months on an annual basis until such time that either Independent Contractor or the Court terminate the agreement pursuant to the termination procedure outlined in Paragraphs 4.0 – 4.2 below.

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

ARTICLE III – SCOPE OF DUTIES

Paragraph 3.0. The Superior Court Reporting Protocol for the Enotah Judicial Circuit, attached hereto as Exhibit "3" is adopted by the Court and the Contractor as express provision of this Agreement. It shall be the duty of the Contractor to comply fully with said protocol at all time.

Paragraph 3.1. Upon execution of the Agreement, Independent Contractor is obligated to provide the following services for the Court: stenographically record and transcribe verbatim court proceedings or other hearings before the Court; properly receive, secure, transfer, and manually or electronically file evidence and exhibits; prepare official record of reported proceedings as required; and transcribe, proof, and prepare transcriptions for distribution and required e-filing (collectively referred to as "Court Reporter Services"). Independent Contractor shall perform the Court Reporter Services in accordance with all relevant and current Georgia law, Georgia Judicial Council Policies and Fees, all Georgia Board of Court Reporting Rules and Regulations and the Superior Court Reporting Protocol for the Enotah Judicial Circuit, as well as the requirements of the Enotah Judicial Circuit Clerks' Offices (respectively the Office of the Clerk of Superior Court for Lumpkin, Towns, Union, and White Counties).

Paragraph 3.2. Independent contractor shall provide services for all court and every daily session of court scheduled on the calendar of Superior Court Judge T. Buckley Levins of the Enotah Judicial Circuit.

Paragraph 3.3. Independent contractor is permitted to engage in freelance work outside of the agreement set forth herein provided that freelance work does not conflict with the work to be performed pursuant to this Agreement for Judge T. Buckley Levins.

Paragraph 3.4. In the event of an emergency or any reason that Independent Contractor is unable to fulfill a scheduled assignment, Independent Contractor shall be responsible for finding coverage for that assignment or daily session of court.

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

Paragraph 3.5. In non-domestic, civil cases (except habeas corpus cases) the court reporters perform similar duties as in domestic cases. They are available for take-down as directed by the Court, and shall be allowed to charge a statutory "take-down" fee to the litigants. Likewise, transcription and copying of transcripts in such cases is charged to the litigants at the statutory rate.

Paragraph 3.6. As discussed herein, the duties of the court reporter includes attendance to civil and domestic matters for which they are entitled to “take-down” and transcription fees as established by law. Preparation of transcripts in such matters is not prohibited as “outside employment” or “freelance work”; however, preparation of transcripts in criminal proceedings involving indigent defendants must receive priority in allocation of the usual work day such that the compensation paid by the Enotah Judicial Circuit is not compromised by independent contractor services.

Paragraph 3.7. The Enotah Judicial Circuit Judges, specifically Judge T. Buckley Levins, along with the Court Coordinator, are responsible for the supervision of Independent Contractor. Independent Contractor serves at the pleasure of the assigned judge to whom he/she is designated as the official court reporter and is primarily accountable to that judge regarding all matters of job performance. Independent Contractor must conform to Judge T. Buckley Levins’ courtroom schedule, method of courtroom management, and travel. Independent Contractor shall support the judicial process and the judge by proper preparation and punctual attendance at all proceedings, and by performing all duties in accordance with the standards established by the Judicial Council of Georgia Court Reporters.

Paragraph 3.8. Independent Contractor shall always remain neutral regarding all parties throughout the course of proceedings. It must be remembered that litigation frequently requires multiple appearances by the parties and by counsel and that counsel will likely represent future litigants before the court. Any display of partiality, bias, or prejudice for or against a party or his/her counsel will inevitably erode the relationship between the court and the parties, frustrating the ability of the court to foster confidence in the impartial administration of justice. Independent Contractor should ensure that there is not even an appearance of impropriety in the judicial process. Independent Contractor should never

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

endeavor to communicate with the court on behalf of a party to any proceeding, except when that communication is on the record and in the presence of all other parties.

Paragraph 3.9. Independent Contractor should be aware of the need for good public relations and should attempt to work efficiently and cooperatively with all people who come into contact with the judicial system. Court reporters must endeavor to protect the dignity and solemnity of the proceedings, thereby upholding the desired image and positive perception of the judicial process.

Paragraph 3.10. Independent contractor must conduct himself/herself as a professional at all times, understanding that his/her conduct, inside and outside of the courtroom, reflects on the judicial process and all persons who serve within it.

Paragraph 3.11. Independent Contractor acknowledges he/she may receive confidential information and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, consultants, and/or staff, and then only if so authorized to have subcontractors per the controlling clauses of this Agreement which are contained in Paragraph 6.12 hereinbelow, to likewise protect such confidential information. Independent Contractor agrees that confidential information it receives or such reports, information, opinions or conclusions that Independent Contractor creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the Court. Independent Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of information learned during the course of performance of its duties under this Agreement, whether specifically deemed confidential or not.

ARTICLE IV - COMPENSATION FOR SERVICES

Paragraph 4.0. The total dollar amount of this agreement is $65,000 annually, to be paid in monthly installments of $5,416.67/month, by check no later than the fifteenth of each month.

Paragraph 4.1. Therefore, as a condition of payment, Independent Contractor shall provide the County with his/her Taxpayer I.D. and invoice the Court on a monthly basis for services performed, as

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

is more specifically described in in Paragraphs 3.2 and 3.3 below. Independent Contractor further agrees to receive payment for Services via check or automatic clearing house (ACH).

Paragraph 4.2. All work performed by, and all invoices submitted by Independent Contractor must receive the written approval of the Court Coordinator for the Enotah Judicial Circuit, who shall be responsible for evaluating all work performed by the Independent Contractor before approval of work and/or payment of invoices permitted.

Paragraph 4.3. Invoices under this Agreement shall be submitted via email to the Court Coordinator for the Enotah Judicial Circuit via email [enotahcircuitcoordinator@gmail.com] with the subject line “Invoice for Court Reporter Services.”

Paragraph 4.4. Independent Contractor shall not charge the Court take down in criminal matters or public matters (i.e.: those matters involving a Department or Office of the Government of Georgia or any governmental entity); the costs associated with criminal cases and public matters is contemplated in the monthly compensation paid to Independent Contractor. However, Independent Contractor may charge for both take down and transcript fees to the parties in civil cases; those costs (take-down fees and costs of transcripts in civil matters) should be handled exclusively between Independent Contractor and the responsible attorneys and parties. Likewise, the Independent Contractor may charge the Court for the transcription of criminal matters and/or public matters subject to the schedule below:

Paragraph 4.5. Takedown in Criminal Proceedings

The following shall be taken down:

a. All Proceedings in death penalty cases;
b. All habeas corpus proceedings;
c. Felony Cases:
    i. Guilty and Nolo Contendere Pleas;
    ii. During trial, all phases of the litigation including, but not limited to, jury impaneling, voir dire, opening statements, colloquies, all evidence including testimony, objections, rulings, motions and rulings thereon, charging conference, closing statements, jury charge, and sentencing
    iii. Motion for New Trial Hearings;
d. Guilty and Nolo Contendere pleas in Misdemeanor Cases.

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

e. All other proceedings in felony or misdemeanor cases, such as pretrial motions, probation revocation proceedings, or any other matter directed by the court, as well as all proceedings on Superior Court criminal non-jury days, such as calendar calls, and or motions and status conference days;
f. All Accountability Court Proceedings Including: S.T.A.R. Court; Adult Felony Drug Court; Parental Accountability Court, and D.R.C. Probation.

Paragraph 4.6. Preparation and Filing of Transcripts in Criminal Proceedings

A transcript shall be prepared and filed in:

a. All Death Penalty Case Proceedings;
b. Felony Trials, whether jury or non-jury, which would include the sentencing hearing resulting from a hearing;
c. All felony Sentencing Hearings.

ARTICLE V – TERMINATION

Paragraph 5.0. In the event that the Court determines it no longer requires or desires the services of Independent Contractor, the Court may terminate this Agreement by ten (10) calendar days prior notices in writing (by email and hand delivery or posting in U.S. Mail) to Independent Contractor. No cause is necessary for termination. Pursuant to O.C.G.A. Section 15-14-1, the Independent Contractor serves at the pleasure of the Court.

Paragraph 5.1. If through any cause, Independent Contractor shall fail to fulfill his/her obligations under this Agreement in a timely and proper manner; or in the event that any of the provisions or stipulations of this Agreement are violated by Independent Contractor, or there is misconduct on the part of Independent Contractor, which reflects upon the good order and services of the Court, the Court shall thereupon have the right to immediately suspend or terminate this Agreement. If the Agreement is terminated by the Court, Independent Contractor will be compensated for the work satisfactorily performed up to the termination date.

Paragraph 5.2. In the event that Independent Contractor determines it is no longer in his/her best interest to continue his/her contractual agreement with the Court, Independent Contractor may likewise terminate this Agreement by giving thirty (30) calendar days' notice in writing (by email and hand delivery or posting in U.S. Mail) to the Court stating the reasons for such termination, as directed in

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Paragraph 5.4 below.

Paragraph 5.3. Should this contract be terminated for any reason whatsoever, Independent Contractor will provide sufficient notice to the Court to ensure any assignments given to Independent Contractor can be reassigned without causing hardship to the Court. Even after termination of this contract, Independent Contractor shall complete all requested transcripts from assignments made under this contract as required by statute and rule, and shall deliver his/her notes and recordings to the Court. Should termination occur, the balance of any funds remaining under this agreement shall be held and Independent Contractor shall only be entitled to that amount for which services have already been rendered.

Paragraph 5.4. All official notices, writings or correspondence as required by this Agreement shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the Parties at the addresses given below, unless a substitute address shall first be furnished to the other Parties by written notice in accordance herewith:

NOTICE TO THE Court shall be sent to:

_____ **(email address)**

_____

_____

_____ (mailing address)

NOTICE TO INDEPENDENT CONTRACTOR shall be sent to:

_____ **(email address)**

_____

_____

_____ (mailing address)

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ARTICLE VI - INDEPENDENT CONTRACTOR STATUS

Paragraph 6.0. Nothing contained herein shall be deemed to create any relationship other than that of an Independent Contractor between the Court or Union County Government and _____. Under no circumstances shall Independent Contractor, his/her employees, associates or agents be deemed employees, agents, partners, successors, assigns, or legal representatives of the Court of the Government of Union County, and this Agreement is not intended to establish an employer/employee relationship with the Enotah Judicial Circuit or the governments of Lumpkin, Towns, Union, or White Counties.

Paragraph 6.1. The Court shall not pay Independent Contractor for any overtime premiums, meals, lodging, per diem, or miscellaneous expenses, above and beyond the compensation outlined above. This includes but is not limited to, automobile, truck, and other travel expenses; vehicle maintenance and repair costs; vehicle and other license fees and permits; insurance premiums; road, fuel, and other taxes; fines; radio, pager, or cell phone expenses; meals; and all salary, expenses, and other compensation paid to employees or contract personnel the Independent Contractor hires to assist on the work contemplated by this Agreement.

Paragraph 6.2. Union County will issue to Independent Contractor a Form 1099 for the Services performed as an Independent Contractor.

Paragraph 6.3. The Independent Contractor acknowledges that this relationship is not a joint venture and that the parties do not have any shared business interest other than that the Independent Contractor should successfully complete the contracted for services.

Paragraph 6.4. Independent Contractor acknowledges that he/she shall have no right of redress pursuant to Union County Personnel Policies and Procedures or other policies, procedures, and/or regulations applicable to County employees.

Paragraph 6.5. Independent Contractor acknowledges that he/she shall have no right to accrue sick or vacation leave or to accrue other rights or any employee benefits, including but not limited to,

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pension, worker's compensation coverage or health coverage. Nor will the Court or any County Government pay for any professional licenses required by Independent Contractor to perform the contracted Services.

Paragraph 6.6. Independent Contractor agrees that he/she is responsible for his/her own income tax withholding and Social Security self-employment taxes, professional liability insurance and excess coverage.

Paragraph 6.7. Independent Contractor agrees that this Agreement is subject to, but not limited to, Independent Contractor meeting the minimum qualifications of Court Reporter as set forth in Article VII below.

Paragraph 6.8. Independent Contractor agrees at all times to fulfill his/her professional duties and to protect all privileged and confidential information along with the privileged and confidential information of any person he/she is retained to render services for under this Agreement.

Paragraph 6.9. Independent Contractor will return all Enotah Judicial Circuit documents, including all copies of any documents coming under his/her possession during performance of the Agreement, upon expiration or termination of the Agreement.

Paragraph 6.10. Independent Contractor shall not hold himself/herself out to any party as an employee of the Enotah Judicial Circuit, the Court, or any of the governments of Lumpkin, Towns, Union or White Counties.

Paragraph 6.11. Independent Contractor is responsible for providing all of his/her own equipment with which to complete the services contemplated by this Agreement. Likewise, Independent Contractor further agrees that he/she is responsible not only for providing said equipment but also for maintaining said equipment, software, and all other technology needed to properly execute all Court Reporter Services.

Paragraph 6.12. The Independent Contractor has the sole right to control and direct the means, manner, and method by which the services required herein will be performed. Independent Contractor

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shall always perform the work him/herself and does not have the right to refer any given assignment to an employee or subcontractor without prior written approval from Court, unless for the temporary fulfilment of Paragraph 3.4 hereinabove. The Independent Contractor shall not receive any training from the Court in the professional skills necessary to perform the services required by this Agreement.

ARTICLE VII – MINIMUM QUALIFICATIONS

Paragraph 7.0. Independent Contractor shall be required to be certified as a Registered Professional Reporter (RPR) or a Certified Verbatim Reporter (CVR). Independent Contractor shall demonstrate the knowledge, skills, and ability to produce high-quality verbatim records. Independent Contractor shall also be required to maintain his/her respective RPR or CVR certification.

ARTICLE VIII – INDEPENDENT CONTRACTOR REPRESENTATIONS AND WARRANTIES

Paragraph 8.0. The Independent Contractor hereby represents that he/she will comply with all Federal, State and local laws regarding business permits, licenses, reporting requirements, tax withholding requirements, and other legal requirements of any kind that may be required to carry out the services contemplated by this Agreement and shall provide proof of same upon request by the Court.

Paragraph 8.1. The Independent Contractor also represents and warrants that his/her relationship with the Court will not cause or require that he/she breach any obligation or confidence related to any confidential, trade secret and/or proprietary information of any other person, company or entity.

Paragraph 8.2. Furthermore, the Independent Contractor acknowledges that he/she has not brought and will not bring or use in the performance of his or her duties for the Court any proprietary or confidential information, whether or not in writing, of a former contracted company or other entity without that entity's written permission or authorization. The breach of this condition shall result in

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automatic termination of the relationship as of the time of the occurring breach.

ARTICLE IX – PROPRIETARY INFORMATION

Paragraph 9.0. **DEFINITION OF "PROPRIETARY INFORMATION."** For the purpose of this Agreement, "*Proprietary Information*" shall include, but is not limited to, any information, observation, data, written materials, records, documents, drawings, photographs, layouts, computer programs, software, multi-media, social media, firmware, inventions, discoveries, improvements, developments, tools, machines, apparatus, appliances, designs, work products, logo, system, promotional ideas and material, customer lists, customer files, needs, practices, pricing information, process, test, concept, formulas, method, marketing information, technique, trade secrets, products and/or research related to the actual or anticipated research development, products, organization, marketing, advertising, business or finances of the Court, its affiliates, subsidiaries or other related entities.

Paragraph 9.1. The Independent Contractor herein acknowledges that the Court has made, or may make, available to the Independent Contractor its Proprietary Information including, without limitation, trade secrets, inventions, patents and copyrighted materials. The Independent Contractor acknowledges that this information has economic value, actual or potential value, that is not generally known to the public or to others who could obtain economic value from its disclosure or use, and that this information is subject to a reasonable effort by the Court to maintain its secrecy and confidentiality. The Independent Contractor shall comply with any reasonable rules established from time to time by the Court for the protection of the confidentiality of any Proprietary Information.

Paragraph 9.2. **RETURN OF PROPRIETARY INFORMATION.** Any and all documents, records and books which may be related to the Description of Services as set forth in this Agreement, or any other Proprietary Information shared with Independent Contractor, shall be maintained by the Independent Contractor at his/her principal place of business and be open to inspection by the Court during regular working business hours. The documents, records and books which the Court shall have

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the right to inspect and receive copies of include, but are not limited to, any and all contract documents, any change or purchase orders, and any other items related to the work which has been authorized by the Court on an existing or a potential project related to the services contemplated by this Agreement. Upon termination of this Agreement, or upon the request of the Court, the Independent Contractor shall promptly and immediately deliver to the Court any and all property in its possession or under its care and control, including but not limited to, documents, records, or books, or any other Proprietary Information such as customer names and lists, trade secrets and intellectual property, or items such as computers, equipment, pass keys, tools, plans, recordings, software, and all related records or accounting/financial information. Independent Contractor acknowledges that any breach or threatened breach of this Section of the Agreement will result in irreparable harm to Court for which monetary damages could be an inadequate remedy. Therefore, the Court shall be entitled to equitable relief, including an injunction, in the event of such breach or threatened breach by Independent Contactor as outlined in this Agreement. Such equitable relief shall be in addition to Court's rights and remedies otherwise available at law.

ARTICLE X - INDEMNIFICATION

Paragraph 10.0. Independent Contractor hereby agrees to release, indemnify, defend and hold harmless the Court, the Enotah Judicial Circuit, and the Governments of Lumpkin, Towns, Union, and White Counties, their officers, employees, subcontractors, successors, assigns, and agents, and the County Boards of Commissioners, their officers, employees, subcontractors, successors, assigns, and agents from and against any and all losses (including death), claims, damages, liabilities, costs, and expenses (including but not limited to all actions, proceedings, or investigations in respect thereof and any costs of judgments, settlements, court costs, attorney's fees, regardless of the outcome of any such action, proceeding, or investigation), caused by, relating to, based upon or arising out of any act or omission by Independent Contractor, his/her directors, officers, employees, subcontractors,

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successors, assigns, or agents, or otherwise in connection with his/her acceptance, or the performance, nonperformance, of his/her obligations under this Agreement. Independent Contractor further agrees to release, indemnify, defend and hold harmless the Governments of Lumpkin, Towns, Union, and White Counties, their officers, employees, subcontractors, successors, assigns, and agents, and the County Boards of Commissioners, their officers, employees, subcontractors, successors, assigns, and agents from liability of any nature or kind based upon Independent Contractor's use of any copyrighted or non-copyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in the performance of this Agreement, for which Independent Contractor is no the assignee or licensee.

Paragraph 10.1. Independent Contractor further agrees to release, indemnify, defend and hold harmless the Court, the Enotah Judicial Circuit, its officers, employees, subcontractors, successors, assigns, agents, and the County Board of Commissioners, its officers, employees, subcontractors, successors, assigns, and agents from injury (including death), loss, claim, demand, liability or damage sustained by Independent Contractor, his/her directors, officers, employees, subcontractors, successors, assigns or agents. Independent Contractor shall expressly indemnify and hold harmless the Governments of Lumpkin, Towns, Union, and White Counties, their officers, employees, subcontractors, successors, assigns, agents, and County Boards of Commissioners, their officers, employees, subcontractors, successors, assigns and agents from any claims, demands, actions and causes of actions arising from any act of Independent Contractor, his/her directors, officers, employees, subcontractors, successors, assigns or agents while under the terms of this Agreement.

ARTICLE XI - VARIATIONS OR MODIFICATIONS TO AGREEMENT

Paragraph 11.0. This Agreement constitutes the entire Agreement between the County and Independent Contractor, and there are no further written or oral agreements with respect thereto. No variation or modifications of this Agreement, and no waiver of itsprovisions, shall be valid unless in

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writing and signed by the Court and Independent Contractor.

ARTICLE XII - SEVERABILITY OF TERMS

Paragraph 12.0. If any part or provision of this Agreement is held invalid, theremainder of this Agreement shall not be affected thereby and shall continue in full force and effect.

ARTICLE XIII- CAPTIONS

Paragraph 13.0. The captions are inserted herein only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the intent of the provisions thereof.

ARTICLE XIV- GOVERNING LAW

Paragraph 14.0. This Agreement shall be governed in all respects, as to validity,construction, capacity, performance or otherwise, by the laws of the State of Georgia. This Agreement is to be construed pursuant to the current laws of the State of Georgia without giving effect to any conflict of laws principle. Jurisdiction and venue for any claim arising out of this Agreement shall be made in the State of Georgia, in the County of Union.

ARTICLE XV – COURT'S RIGHT OF INSPECTION

Paragraph 15.0. The Court shall have the right, at its sole discretion, to inspect and review Services provided by Independent Contractor hereunder to determine their acceptability. The Court shall also have the right to review all of Independent Contractor's records pertaining to this Agreement and Independent Contractor agrees to properly maintain his/her records so as to allow the Court to audit his/her fees, standards, and services. Independent Contractor shall make such records available to the Court or its designee upon seventy-two (72) hours written notice.

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ARTICLE XVI - COOPERATION BY INDEPENDENT CONTRACTOR WITH THE COURT

Paragraph 16.0. Independent Contractor shall maintain regular communications with Circuit Coordinator, and Judge T. Buckley Levins. Independent Contractor shall actively cooperate in all matters pertaining to this Agreement including, without limitation, assisting the Court in investigating and responding to any and all complaints, inspections, or investigations, arising in connection with Independent Contractor's provision of Services under this Agreement.

ARTICLE XVII - COMPLIANCE WITH APPLICABLE LAWS

Paragraph 17.0. Independent Contractor shall at all times observe and comply with all federal, state, local and municipal ordinances, rules, regulations and professional codes of responsibilities relating to the provision of the Services contracted to be provided by Independent Contractor hereunder or which in any manner affect this Agreement.

ARTICLE XVII - NO CONFLICT

Paragraph 18.0. Independent Contractor represents and warrants that he/she presently has no interest, direct or indirect and covenants and agrees that he/she will not, during the term of this Agreement, acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of his/her duties and obligations hereunder. However, nothing herein shall be construed as limiting or preventing Independent Contractor from performing services for other persons or entities, including private clients, so long as they do not conflict with this Agreement. Independent Contractor further agrees for himself/herself, his/her agents, employees, directors, and officers to comply fully with the provisions of this Official Code of Georgia (O.C.G.A. Section[s] 45-10-20 *et seq*.). Independent Contractor represents and warrants that such provisions are not and will not be violated by this Agreement of Independent Contractor's performance hereunder.

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ARTICLE XIX - FORCE MAJEURE

Paragraph 19.0 Neither Independent Contractor nor the Court shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (a) any cause beyond their respective reasonable control; (b) any act of God; (c) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (d) earthquake, fire, explosion or flood; (e) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of the Independent Contractor; (f) delay or failure to act by any governmental or military authority; or (g) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts and all other obligations shall remain intact.

ARTICLE XX - SOVEREIGN IMMUNITY

Paragraph 20.0. Nothing contained in this Agreement shall be construed to be a waiver of the Court's sovereign immunity or any individual's qualified good faith or official immunities. Nor shall anything contained in this Agreement be construed to be a waiver of the Sovereign Immunity of the governments of the Lumpkin, Towns, Union, and White Counties or their respective Boards of Commissioners.

ARTICLE XXI - CONFIDENTIALITY CLAUSE

Paragraph 21.0. Except as otherwise essential to the Independent Contractor's obligations in accordance with this Agreement, the Independent Contractor shall not make any disclosure or divulge any aspect of this Agreement, including the terms and conditions hereof, or any of the Proprietary Information contemplated herein, except as considered essential to the Independent Contractor's

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obligations in accordance to his/her relationship with the Court. The Independent Contractor shall not make any duplication or other copy of any Proprietary Information without prior written authorization from the Court. The Independent Contractor also shall not remove any Proprietary Information, property or documents, without obtaining prior consent or authorization from the Court. The Independent Contractor shall have the affirmative duty to notify each person to whom any disclosure is made that such disclosure was made in confidence and shall be kept in confidence by that individual, and that said individual shall be legally bound by the provisions of this Agreement to the same extent as the Independent Contractor. Moreover, the Independent Contractor agrees not to reveal any of this information to anyone, nor to use this information to the detriment of the Court in any way. Failure on Independent Contractor's part to comply with this Section shall constitute a breach of this Agreement and entitle Court to all remedies under the law as well as those specifically outlined in this Agreement.

ARTICLE XXII - EXCLUSIVITY, MARKETING AND ADVERTISING

Paragraph 22.0. Independent Contractor understands that while working on an assignment provided by the Court, he or she represents the Court and not any other business, including his own business. While on assignment for the Court, the Independent Contractor shall not advertise his own or her business, shall not solicit work for him/herself, and shall only distribute the Court's business cards, name, and materials. While not on one of the Court's assignments, Independent Contractor may pursue other work for him/herself as long as it does not directly compete with the Court as described in this Agreement with specific reference being given to Paragraph 3.3.

ARTICLE XXIII – INJUNCTIVE RELIEF

Paragraph 23.0. The Independent Contractor hereby acknowledges (i) the unique nature of the protections and provisions established and contained within this Agreement; (ii) that the Court will suffer irreparable harm if the Independent Contractor were to breach any of said protections or

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

provisions or his/her obligations under this Agreement; and (iii) that monetary damages may be inadequate to compensate the Court for such a breach. Therefore, if Independent were to breach any of the provisions of this Agreement, then the Court shall be entitled to injunctive relief, in addition to any other remedies at law or equity, to enforce such provisions.

ARTICLE XXIV - LIABILITY

Paragraph 24.0. The Independent Contractor warrants and acknowledges that he/she shall be liable for any loss or any other financial liability suffered by the Court due to Independent Contractor's failure to perform an assignment as contemplated by this Agreement. Other than a documented medical emergency or an "Act of Nature," as contemplated in Paragraph 19.0 above, beyond Independent Contractor's control, the Independent Contractor shall be solely responsible for any loss caused by Independent Contractor's failure to perform. In addition, the Court shall not be liable for any loss or damage to Independent Contractor's equipment under the terms of this Agreement.

ARTICLE XXV – CONTINUING EFFECTS

Paragraph 25.0. The CONTRACTOR's obligations with regards to all trade secrets and confidential information contained in this Agreement, shall continue to be in effect beyond the scope of the relationship as aforementioned, and said obligations shall continue to be binding upon not only the Independent Contractor, but also the spouse, affiliates, assigns, heirs, executors, administrators and/or other legal representatives as well.

ARTICLE XXVI - CONSENT TO BACKGROUND CHECK

Paragraph 26.0. The Independent Contractor hereby acknowledges and provides his/her consent for the Court to perform a complete verification of Independent Contractor's criminal, education, driving and/or employment background. This Agreement can be rescinded immediately and without further notice to Independent Contractor based upon any unsatisfactory data received during

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

said verification.

INDEPENDENT CONTRACTOR INITIAL (HERE) _____

ARTICLE XXVII - MEDIATION AND LITIGATION

Paragraph 27.0. If a dispute arises out of or in relation to this Agreement, or the alleged breach thereof, and if the dispute is not settled through negotiation, the parties agree first to try in good faith to settle the dispute through mediation. The mediation process shall be administered by the Georgia Mediation Services, or another administrator mutually agreed between the parties, and shall be a condition precedent to resorting to arbitration, litigation, or some other dispute resolution procedure. If the mediation process is unsuccessful, either party shall have the option of filing a legal action in a court of competent jurisdiction. If the aggrieved party seeks to file an action in court, then the action must be brought a court of competent jurisdiction in the State of Georgia.

ARTICLE XXVIII - LEGAL FEES

Paragraph 28.0. Should any party initiate litigation, mediation or any other legal proceeding ("Proceeding") against another party to enforce, interpret or otherwise seek to obtain legal or judicial relief in connection with this Agreement, the prevailing party in said proceeding shall be entitled to recover from the unsuccessful party any and all legal fees, cost, expenses, attorney's fees and any other cost or expense and fees arising from (i) such proceeding, whether or not such proceeding progresses to judgment, and (ii) any post-judgment or post-award proceeding, including without limitation, one to enforce any judgment or award resulting from any such Proceeding. Any such judgment or award shall contain a specific provision for the recovery of all such attorney's fees, costs, and expenses, as well as specific provisions for the recovery of all such subsequently incurred costs, expenses and actual attorney's fees.

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ARTICLE XXIX - ENTIRE UNDERSTANDING

Paragraph 30.0. This document and any schedules attached hereto constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and carry no further force or effect. This Agreement shall be considered a separate and an independent document of which it shall supersede any and all other Agreements, either oral or written, between the parties hereto, except for any separately signed Confidentiality, Trade Secret, Non-Compete or Non-Disclosure Agreements to the extent that these terms are not in conflict with those set forth herein.

ARTICLE XXX - HEADINGS.

Paragraph 31.0. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

ARTICLE XXXI - SEVERABILITY

If any part of this Agreement is determined to be void, invalid, inoperative or unenforceable by a court of competent jurisdiction or by any other legally constituted body having jurisdiction to make such determination, such decision shall not affect any other provisions hereof and the remainder of this Agreement shall be effective as though such void, invalid, inoperative or unenforceable provision had not been contained herein.

ARTICLE XXXII - COUNTERPARTS

Paragraph 32.0 This Agreement, at the discretion of the parties herein, may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute a single integrated document.

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

ARTICLE XXXIII - WAIVER

Paragraph 33.0. If either party fails to enforce any provision contained within this Agreement, it shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

ARTICLE XXXIV - DRAFTING AMBIGUITIES

Paragraph 34.0. All parties to this Agreement have reviewed and had the opportunity to revise this Agreement and have had the opportunity to have legal counsel review and or revise this Agreement. The rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits herein.

ARTICLE XXXV - COPIES

Paragraph 35.0. Both the Independent Contractor and the Court hereby acknowledges that they have received a signed copy of this Agreement.

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

IN WITNESS THEREOF, the parties hereto have set their hands this _____ day of _____, 2022.

INDEPENDENT CONTRACTOR:	**JUDGE OF SUPERIOR COURT:**
_____	_____
Print Name:	Print Name:
_____	_____
Date: _____	Date: _____

WITNESSETH:

_____	_____
Print Name:	Print Name:
_____	_____
County Manager, Union County	Court Coordinator, Enotah Judicial Circuit
Date: _____	Date: _____

Attachment: Court Reporter Contract Commission Draft (3525 : Enotah Judicial Circuit Superior Court Reporter Independent Contractor

Lumpkin County, Georgia

Finance Department

Date: September 20, 2022

Agenda Item: Enotah Judicial Circuit Budget Increase

Item Description: Enotah Judicial Circuit Budget Increase. Consideration of a budget increase for the Enotah Judicial Circuit.

Facts & Historical Information:

The Enotah Judicial Circuit currently uses Appalachian Court Reporting for court reporting services. These services are paid by each of the four member counties' operating budgets. Judges were recently notified that they will no longer be able to provide court reporting services to the Enotah Judicial Circuit.

The Enotah Judicial Circuit's Superior Court Judges have been working towards a viable solution and have requested funding from the four Enotah Judicial Circuit counties: Lumpkin, White, Union, Towns, to appoint court reporters. The cost of the court reporters is estimated to be $370,000 per year, and Lumpkin County's share would be paid through the Enotah Judicial Circuit. As a result, Lumpkin County will no longer pay for court reporting out of the Superior Court's General Fund budget.

The Enotah Judicial Circuit counties met with the Superior Court judges on Monday, September 12, to discuss this change along with options to fund the positions. Options based on **annual costs** were:

1. Lumpkin, White, Union each pay $100,000 for a court reporter for one Superior Court Judge. Towns pays $70,000 for a court reporter for one Juvenile Court Judge.
2. Lumpkin, White, Union, Towns each pay an equal share of $92,500.
3. Lumpkin, White, Union, Towns each pay their share, based on population.

All options could be funded without the use of the Enotah Judicial Circuit's Fund Balance, using $30,000 of the Circuit's Fund Balance, or using $40,000 of the Circuit's Fund Balance.

Since court reporters will not be appointed until at least October 1, the options should be considered at 75% of the annual costs. Enotah Judicial Circuit counties' consensus was to move forward with Option 3, while using $30,000 of the Enotah Judicial Circuit's Fund Balance. The expected cost for the remaining nine months of the Circuit's fiscal year is $247,500 after the use of the Circuit's Fund Balance. Lumpkin County's population share is 33.96%, resulting in a nine-month cost to Lumpkin County of $84,049.

For the remainder of the County's FY22 budget, the cost is expected to be $28,016.

As of 09/14/22, the remaining balance in the Superior Court reporting budget is $56,033.

The Superior Court reporting budget in FY23 is $110,000. The expected cost of the court reporters from January 1 – June 30, 2023 is $56,033, which is slightly over what the court reporting budget should be halfway through FY23.

Potential Courses Of Action:

A. Approve the budget increase for the Enotah Judicial Circuit

B. Disapprove the budget increase for the Enotah Judicial Circuit

Budget Impact:

For the remainder of the County's FY22 budget, the cost is expected to be $26,885. As of 09/14/22, the remaining balance in the Superior Court reporting budget is $52,889.

The Superior Court reporting budget in FY23 is $110,000. The expected cost of the court reporters from January 1 – June 30, 2023 is $53,770, which is in line with the court reporting budget for FY23. Funding for July 1, 2023 – December 31, 2023 will be determined at the Enotah Judicial Circuit meeting held in Spring 2023.

Staff Recommendation:

Attachments:
Court Reporting Amendment Info 09092022

Enotah Judicial Circuit
Court Reporter Funding Options - Circuit Budget

		Yearly Totals	For 9 remaining months of FY2023 (75%)
	No Fund Balance Used	Using $40,000 Fund Balance	$30,000 Fund Balance
Superior Court Judge 1	$100,000.00	$90,000.00	$67,500.00
Superior Court Judge 2	$100,000.00	$90,000.00	$67,500.00
Superior Court Judge 3	$100,000.00	$90,000.00	$67,500.00
Juvenile Court Judge 4	$70,000.00	$60,000.00	$45,000.00
	$370,000.00	$330,000.00	$247,500.00
Share % Based on 2020 Census			
Lumpkin County - 33.96%	$125,648.30	$112,064.70	$84,048.53
White County - 28.40%	$105,013.40	$93,660.60	$70,245.45
Union County - 24.98%	$92,422.30	$82,430.70	$61,823.03
Towns County - 12.68%	$46,916.00	$41,844.00	$31,383.00
	$370,000.00	$330,000.00	$247,500.00

FY2021 Fund Balance	$46,167.67	$370,000 x 75% = $277,500
FY2022 Estimated Fund Balance	$30,328.37	County Contributions - $247,500
Estimated Available Fund Balance	$76,496.04	Fund Balance - $30,000

Attachment: Court Reporting Amendment Info 09092022 (3526 : Enotah Judicial Circuit Budget Increase)