



## CITY OF STONECREST, GEORGIA

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*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1*

*Council Member Rob Turner- District 2*

*Council Member Jazzmin Cobble – District 3*

*Council Member George Turner- District 4*

*Council Member Tammy Grimes – District 5*

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### CITY COUNCIL SPECIAL CALLED MEETING

VIRTUAL MEETING

February 7, 2021 at 6:00 p.m.

Citizen Access: <https://www.youtube.com/channel/UCp3rYzHzhZvd9Y7Ruf1O6kg>

#### **I. CALL TO ORDER:** Mayor Jason Lary

#### **II. AGENDA ITEMS:**

1. 2nd read and adoption of the proposed gas station moratorium
2. Approve the updated Purchasing Policy and designate a Purchasing Agent
3. Investigative inquiry and action related to the program administration of the CARES Act Relief Fund
4. Stonecrest Convention and Visitors Bureau
5. Stonecrest Development Authority
6. Contract Management
7. Contract Amendment
8. Legal Services-Assistant City Attorney and such other assistant and special city attorney
9. Request to immediately receive recommendation for award of external audit firm for purchasing card audit
10. Resolution on ending virtual meetings
11. Hire independent legal representation for city councilmembers

#### **III. ADJOURNMENT**

#### *Americans with Disabilities Act*

*The City of Stonecrest does not discriminate on the basis of disability in its programs, services, activities and employment practices.*

*If you need auxiliary aids and services for effective communication (such as a sign language interpreter, an assistive listening device or print material in digital format) or reasonable modification to programs, services or activities contact the ADA Coordinator, Megan Reid, as soon as possible, preferably 2 days before the activity or event.*



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

☒ **ORDINANCE**                      ☐ **POLICY**                      ☐ **STATUS REPORT**  
☐ **DISCUSSION ONLY**           ☐ **RESOLUTION**           ☐ **OTHER**

**Date Submitted: February 5th, 2021    Work Session:    Special Called Council Meeting: X**

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**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** 2<sup>nd</sup> read and adoption of the proposed gas station moratorium

**HISTORY:** See previous meeting videos and agenda minutes for full discussion details

**FACTS AND ISSUES:** Same as above; See ordinance attached

**OPTIONS:** Approve, Deny, Defer

**RECOMMENDED ACTION:** Approve

**AN ORDINANCE OF THE CITY OF STONECREST, GEORGIA  
IMPOSING A MORATORIUM ON THE ACCEPTANCE OF ANY  
APPLICATION FOR SPECIAL USE PERMIT OR BUILDING PERMIT  
FOR WHICH A SPECIAL USE PERMIT HAS NOT BEEN APPLIED FOR,  
FOR PROPOSED GASOLINE SERVICE STATIONS; AND FOR OTHER  
PURPOSES.**

**WHEREAS**, there has been a proliferation of gas stations, categorized as “gasoline service stations” in the City of Stonecrest; and

**WHEREAS**, a gasoline service station is defined as a building, lot, structure, or facility having pumps and storage tanks where fuel, gasoline, oil or other similar products are dispensed, sold or offered for retail sale; and

**WHEREAS**, the Stonecrest City Council desires to develop regulations to address the concentration of gasoline service stations in the City and to promote a diversity of land uses in the City of Stonecrest; and

**WHEREAS**, the Stonecrest City Council finds that placing a moratorium on gasoline service stations will not negatively impact the intent of the City of Stonecrest Zoning Ordinance; and

**WHEREAS**, it is necessary to impose a moratorium to maintain the status quo while the zoning process is completed; and

**WHEREAS**, a proliferation of gasoline service stations would negatively affect the public health, safety and general welfare and frustrate the zoning process; and

**WHEREAS**, moratoria are a well-recognized and court-sanctioned land use tool in furtherance of local planning and zoning powers by preserving the status quo while the governing authority formulates a more permanent development strategy. Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302 (2002); City of Roswell v. Outdoor Systems, Inc., 274 Ga. 130 (2001); and

**WHEREAS**, the enhancement of the aesthetic appeal of a community is a proper exercise of police power. Stone v. Maitland, 446 F.2d 83 (5<sup>th</sup> Cir. 1971); Standard Oil Co. v. City of Tallahassee, 183 F.2d 410 (5<sup>th</sup> Cir. 1950); and

**NOW THEREFORE THE CITY COUNCIL OF THE CITY OF STONECREST, GEORGIA, HEREBY ORDAINS AS FOLLOWS:**

**Section 1.** A moratorium is imposed on, and the Director of City Planning shall accept no application for special use permit, land disturbance permit, or building permit for proposed new construction of gasoline service stations, defined as a building, lot, structure, or facility having

STATE OF GEORGIA  
COUNTY OF DEKALB  
CITY OF STONECREST

ORDINANCE 2021-\_\_\_\_\_

pumps and storage tanks where fuel, gasoline, oil or other similar products are dispensed, sold or offered for retail sale.

**Section 2.** For the purposes of this ordinance, new construction shall be defined as any construction which would result in one or more new buildings, increased lot coverage, and/or modification of the existing building footprint. Additions to existing buildings shall constitute new construction.

**Section 3.** The moratorium imposed by this ordinance will expire one-hundred twenty (120) days from the date that this ordinance becomes effective. Notwithstanding the foregoing, if there is a final vote of the City Council on the proposed amendment before the expiration of the one-hundred twenty (120) days, the moratorium will expire on the date when the proposed amendment becomes effective or on the date when the City Council votes to deny the proposed amendment.

**Section 4.** This moratorium shall not preclude the Director of City Planning from accepting or issuing a land disturbance or building permit for which a special use permit has been applied for or issued for proposed new construction of gasoline service stations prior to the effective date of this ordinance.

**Section 5.** This ordinance shall become effective immediately upon its adoption.

**SO ORDAINED AND EFFECTIVE** this the \_\_\_\_ day of \_\_\_\_\_, 2021.

Approved:

\_\_\_\_\_  
Jason Lary, Sr., Mayor

As to form:

\_\_\_\_\_  
City Attorney

Attest:

\_\_\_\_\_  
Megan Reid, City Clerk



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

☐ ORDINANCE                      ☒ POLICY                      ☐ STATUS REPORT  
☐ DISCUSSION ONLY           ☐ RESOLUTION           ☐ OTHER

**Date Submitted: February 5th, 2021    Work Session:    Special Called Council Meeting: X**

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**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** Approve the updated Purchasing Policy and designate a Purchasing Agent

**HISTORY:** See previous meeting videos and agenda minutes for discussion details

**FACTS AND ISSUES:** Same as above; See policy attached

**OPTIONS:** Approve, Deny, Defer

**RECOMMENDED ACTION:** Approve policy and designate the purchasing agent as the procurement officer/manager.



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# PURCHASING POLICY

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LAST REVISED: \_\_\_\_\_

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**DISCLAIMER OF LIABILITY FOR IMPROPER PURCHASING: THE CITY DISCLAIMS ANY AND ALL RESPONSIBILITY AND LIABILITY FOR ANY PURCHASE, EXPENDITURE, PROMISE OR AGREEMENT FOR EXPENDITURE ARISING FROM ANY PROCUREMENT MADE IN ITS NAME OR IN THE NAME OF ANY AGENCY, AUTHORITY, COMMISSION, OR OTHER GOVERNMENTAL BODY UNDER ITS AUTHORITY, BY AN UNAUTHORIZED PERSON OR ANY PERSON ACTING IN VIOLATION OF THIS PURCHASING POLICY OR OUTSIDE OF THE AUTHORIZATION OR DELEGATION AS PROVIDED BY THIS POLICY. THE EXPENSE OF ANY SUCH TRANSACTION SHALL BECOME THE PERSONAL LIABILITY OF THE INDIVIDUAL AT FAULT UNLESS OTHERWISE RATIFIED OR EXEMPTED BY MAYOR AND COUNCIL.**

## SECTION I – GENERAL PROVISIONS

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### (1) PURPOSE AND OBJECTIVE

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The purpose of this policy is to state the City's position regarding the responsibility and authority for the acquisition and contracting for Goods, Services, Professional Services, Real Estate, and Capital Assets. This policy will clarify purchasing functions and outline purchasing policies, as well as describe departmental relationships, responsibilities and participation in the procurement cycle. Moreover, this policy will provide control functions, assure proper record keeping and confirm purchases in writing to allow the City to meet the following goals:

- A. Ensure that tax dollars are spent in the most economical way;
- B. Maintain at all times and under all conditions a continuous supply of Goods and Services necessary for the operation of the City;
- C. Encourage and promote fair and equal opportunity for all persons doing, or seeking to do, business with the City;
- D. Safeguard the quality and integrity of the City's procurement process;
- E. Ensure compliance with laws and regulations pertaining to procurement;
- F. Manage procurement and inventories of purchased Goods to meet the use requirements of City departments at the most advantageous cost to the City;
- G. Administer procurement contracts and contract amendments; and
- H. Properly dispose of all material and equipment declared to be surplus or obsolete.

In addition, this policy is to set a standard of environmentally preferable procurement and demonstrate the City's commitment to environmental, economic, and social stewardship. The City has a unique opportunity to further expand its leadership in the area of environmentally preferable purchasing, and through its actions, elicit changes in the marketplace. By further incorporating environmental considerations into public purchasing, the City will positively impact human health and the environment, remove unnecessary hazards from its operations, reduce costs and liabilities, and improve the environmental quality of the region. This policy will guide the City's efforts in procuring environmentally preferable Goods and Services.

The philosophy behind this policy is one of separating the need for Goods and Services from the function of negotiation and executing the necessary contractual purchase agreement.

The Purchasing Policy outlined herein shall be used in conjunction with the Purchasing Card Policy.

## (2) SCOPE OF POLICY

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This policy and the award of bid provisions herein are solely for the fiscal responsibility and benefit of the City of Stonecrest, and confer no rights, duties or entitlements to any vendor, bidder or proposer.

The scope of this purchasing policy covers the procurement of most Goods and Services for non-construction purposes without regard to the past method by which the material or service has been or is customarily procured. The policy covers all contractual and purchase agreements between the City and another Person. The procurement function includes the initial agreement/purchase, changes and/or re-negotiations. This policy establishes the specific responsibility and authority of the procurement of materials and services.

As part of the audit process, the internal controls and accounting processes outsourced to municipal services Vendors will be evaluated and a measure of assurance given as a requirement of completion of the City's annual audit. The staff of outsourced municipal services Vendors assigned to work at City offices and perform purchasing activities on behalf of the City is not exempt from the City's adopted Purchasing Policy. Furthermore, unless due to the lack of competitive options, the City will not typically procure Goods and Services from outsourced municipal services Vendors not expressly stated in their contract to provide municipal services or which do not have a direct impact on the Vendor's ability to provide those contracted services.

The provisions of this policy do not apply to procurements for the following:

- A. Public works construction contracts to the extent governed by O.C.G.A. §36-91-1 *et seq.*;
- B. Services and construction whose procurement falls under a conflicting federal or Georgia statute;
- C. Works of art for public places, or other creative/artistic endeavors that require a particular and demonstrated skill or talent to include, but not limited to, artists, musicians, and writers;
- D. Antiques and other unique assets of historical value, including restoration of these items;
- E. Real Property, including but not limited to transactions governed by O.C.G.A. § 36-37-1 *et seq.*, real estate brokerage and appraising, abstract of titles for real property, title insurance for real property, and other related costs of disposition and/or acquisition of real property, except as provided in Section VII(F)(Real Estate Acquisitions);
- F. Employee Benefits and health related services procured through a quotation and negotiating process conducted by an expert in the field, or to maintain continuity of employee-health records;
- G. Travel, conferences, training, speakers, instructors, facilitators, and meeting expenses, or other expenditures only if covered by another City policy;

- H. Dues, memberships, and board member fees established during the budget process;
- I. Insurance procured through a negotiating process;
- J. Legal services, litigation, experts and materials, and related legal expenses;
- K. Items or services procured for resale or to generate a revenue;
- L. Advertisements including, but not limited to, bid/proposal solicitations and legal advertisements required by law or by City policy;
- M. Financial Instruments: Professional services and instruments/products related to the City's financial well-being, including but not limited to the following areas: marketing of bonds and other forms of debt or debt management, investments, banking, assets, and pension assets;
- N. Subscriptions and dues established during the budget process;
- O. Utilities;
- P. Seized Property included in a court order authorizing disposal;
- Q. Grant awards or agreements that require certain firms or individuals to perform the work;
- R. Contracts involving federal funding whose procurement falls under a conflicting federal or Georgia statute or regulation, except as provided in Section VIII.

### **(3) DEFINITIONS**

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When used in this policy, the following words, terms and phrases, and their derivations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. **ADDENDUM** means a change, clarification or correction in the Solicitation Documents, prior to the award of a Contract.
- B. **AMENDMENT** means an agreed upon change order, addition to, deletion from, correction or modification of a Contract including a Contract Extension or a Contract Renewal.
- C. **BID / PROPOSAL BOND** means a form of bid security executed by the Bidder (or Proposer) as principal and by a Surety, to guarantee that the Bidder (or Proposer) will enter into a Contract within the time specified in the Invitation for Bid or Request for proposals, and will furnish the necessary bonds and insurance, and meet any other requirements of those documents.
- D. **BIDDER** means a person or entity submitting a bid or quote to the City for the supply of Goods or Services.

- E. CAPITAL ASSET is an item of personal property having a normal life expectancy of three years or more other than components.
- F. CITY means the City of Stonecrest and, as the context warrants, those persons or bodies authorized to act on its behalf, including, but not limited to, the City Council, committees, boards and staff.
- G. CITY ETHICS POLICY shall mean Article X, Ethics, of Chapter 2, Administration, of the Code of the City of Stonecrest, Georgia.
- H. CITY FINANCE DIRECTOR/FINANCE DIRECTOR means the department head of the City Finance Department, if such a department is in existence.
- I. COMPETITIVE AWARD means a procurement based upon the outcome of one of the competitive processes set forth in this Policy, where award is made based on the lowest quotation or Bid submitted by a responsible and responsive Bidder or to the most qualified or advantageous Proposer based on the qualitative and/or quantitative factors identified for the procurement. A Competitive Award can be made even if only a single bid or proposal has been received from a Bidder or Proposer who is determined to be responsible and responsive.
- J. CONSTRUCTION means the process of building, altering, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property including the provision of materials therefor. The term "Construction" does not include the routine operation, repair and/or maintenance of existing structures, buildings or real property.
- K. CONSTRUCTION SERVICES means services rendered by an independent and licensed contractor having expertise in Construction.
- L. CONTRACT means all types of City agreements for the purchase or disposal of Goods, Real Estate or Capital Assets, and the procurement of Services, Professional Services or Construction Services regardless of what they may be called, including contracts for a fixed price, cost plus a fixed fee, incentive contracts, and contracts providing for the issuance of job or task orders, leases, letter contracts and purchase orders. Contracts also include Amendments, modifications and supplemental agreements with respect to any of the foregoing. Every Contract must be duly authorized and approved prior to execution.
- M. CONTRACT EXTENSION means an Amendment to a Contract that includes an increase in the term of a Contract, for which no options to renew the Contract beyond the current expiration date exist.
- N. CONTRACT RENEWAL means an exercise of an approved, existing option to increase the term of a Contract. Options to renew a Contract are often done in annual increments.

- O. COOPERATIVE PURCHASE means a group of public entity purchasers organized for the purpose of creating contracts or pricing agreements in order to take advantage of group or quantity buying discounts or special pricing from which members of the group can benefit.
- P. EMPLOYEE means an individual drawing a salary or wage from the City whether on a full-time or part-time basis. The term shall encompass all members of the City Council without regard to whether or not such individuals are compensated. For purposes of this Purchasing Policy the term “employee” shall include, any Vendor or any employee of such Vendor who has entered into a Contract with the City to provide administrative and department services contemplated in Section 2.12 of the Charter of the City.
- Q. EMERGENCY PROCUREMENT means any procurement of Goods, Capital Assets, Services or Professional Services in the context of an Emergency as defined in Section VII Subsection C.
- R. EMERGENCY means a situation that occurs suddenly and unexpectedly and demands immediate action to prevent delays which may vitally affect the health, safety or welfare of the public or City Employees and affects the continuation of services to the citizens, and/or serious loss or injury to the City. Emergency shall also mean a condition, malfunction, or occurrence in which the immediate procurement of an item (i.e. Good, Services, or Professional Service) is essential to comply with regulatory requirements to include declared emergencies of the state or federal government.
- S. ENVIRONMENTALLY PREFERABLE GOODS AND SERVICES means Goods and Services that have a lesser or reduced negative effect on human health and the environment when compared with competitive Goods and Services that serve the same purpose.
- T. GEORGIA PROCUREMENT REGISTRY means the state’s central bid registry established by the Department of Administrative Services, which provides a public listing of solicitations posted by state entities and local governments.
- U. GIFTS or FAVORS means anything of any service or value. Value shall as defined in any City of Stonecrest ethics policy.
- V. GOODS or COMMODITIES means supplies, apparatus, materials, equipment and other forms of tangible personal property used by a City department in the accomplishment of its responsibilities other than Capital Assets.
- W. GOVERNING AUTHORITY means the Mayor and City Council of the City of Stonecrest.
- X. INFORMAL WRITTEN QUOTES (IWQ) means all documents utilized for soliciting quotations for Goods, Services, or Professional Services, in which award is made based on the lowest responsive and responsible quotation and in which the type or cost of the procurement does not require a more formal Bid or proposal process.

- Y. INVITATION FOR FORMAL BID (IFB) means all documents utilized for soliciting bids, including those attached or incorporated by reference. These include a scope of work and all contractual terms and conditions applicable to the procurement. Bids are requested when requirements are clearly defined, price is the major determining factor for award, and a formal sealed submittal is required.
- Z. LATE BID/PROPOSAL means a Bid or proposal received after the time or date such bid or proposal was due, as stated in the Solicitation Documents.
- AA. LIFE CYCLE COST ASSESSMENT means the comprehensive accounting of the total cost of ownership, including initial costs, energy and operational costs, longevity and efficacy of service and disposal costs.
- BB. MULTIPLE AWARD CONTRACT means a Contract based upon one solicitation awarded to two or more Vendors to supply Goods or Services.
- CC. NEGOTIATED AWARD means a procurement made as the result of negotiations between the City and a Supplier, such as a Sole Source Procurement or Single Source Procurement or another instance, including competitive Invitation to Negotiate, where a Contract award based on direct negotiations with a Supplier of Goods or Services is appropriate.
- DD. OFFICIAL means any City elected or appointed person who holds office or any person appointed by the mayor and council of the City to serve on (1) the planning commission of the City, (2) any board or commission of the City having quasi-judicial authority; and, (3) any authority created by the City, either individually or jointly with other local governments pursuant to Georgia law.
- EE. ORDINANCE means related Administration Ordinance in Chapter 2 of the City's Municipal Code.
- FF. PAYMENT TERMS means the established due date for payments by the City to pay an invoice. Absent any agreement otherwise stated, the City's payment term will be Net 30.
- GG. PERFORMANCE BOND means a bond provided by a contractor/supplier in which a surety guarantees to the City that the Goods or Capital Assets are delivered or the Services or Construction Services are performed in accordance with the Contract documents. A letter of credit issued by a financial institution that meets the City's requirements may, at the reasonable discretion of the City, be substituted for the performance bond.
- HH. PERSON means any business, entity, company, firm, individual, union, committee, club or other organization or group of individuals.
- II. PRACTICABLE means satisfactory and within reason when considering price, performance, availability, compatibility with specified operation, and public safety.

- JJ. PRE-QUALIFICATION means the part of a competitive procurement process in which the City determines, based on standards developed for a specified product or service, which interested Vendors meet those standards and are eligible for further consideration in the purchasing process.
- KK. PROFESSIONAL SERVICES means services rendered by an independent contracting individual or firm having expertise in a particular industry or subject matter due to specialized education, training, licensure or skill, and consisting primarily of advice reports, conclusions, recommendations or other outputs resulting from the time and effort of the service provider, as opposed to the acquisition of specific commodities, or of services not requiring any specialized education, licensing, training or skill (e.g. janitorial services). Professional Services include, but are not limited to, evaluations, consultations, management systems, management consulting, compiling statistical data, support of planning and operating activities, appraisal services, and research and development studies or reports.
- LL. PROPOSER means a Person submitting a proposal or qualifications to the City for the supply of Goods, Capital Assets, Real Estate, Construction Services, Services, or Professional Services.
- MM. PURCHASE ORDER means a document approved and issued by the Purchasing Agent or designee and accepted by the Vendor to obtain Goods, Capital Assets, and Services.
- NN. PURCHASING is the process of securing real estate, capital assets, materials, services, repairs, leases and rentals necessary for the operation and support of the City. The renewal, renegotiations and changes to Contracts, leases and agreements are functions of purchasing.
- OO. PURCHASING AGENT means the principal purchasing official of the City who is authorized and appointed to purchase a range of Goods, Capital Assets, Real Estate, Services, Construction Services, or Professional Services on a routine basis.
- PP. REAL ESTATE means land and any improvements and appurtenances thereto.
- QQ. REAL ESTATE ACQUISITION means the acquisition of a fee interest, estate for years or usufruct in Real Estate by purchase or lease.
- RR. REQUEST FOR PROPOSALS (RFP) means all documents utilized for soliciting proposals for Goods, Capital Assets or Services, including those attached or incorporated by reference. These include a scope of work and all contractual terms and conditions applicable to the procurement. This method is used when factors in addition to price are considered for award.
- SS. REQUEST FOR QUALIFICATIONS (RFQ) means all documents utilized for soliciting qualifications for Goods, Services, Capital Assets, Construction Services or Professional Services.

- TT. REQUISITION means an internal document, provided by a department to the Purchasing Agent that contains the fund source, approvals, descriptions, quantities and other information about the Goods, Capital Assets, Real Estate, Services, Construction Services or Professional Services in order to proceed with the procurement. The Requisition becomes valid when properly completed and approved.
- UU. RESPONSIBLE BIDDER OR PROPOSER means a Person, who, in the exclusive judgment of the City, (a) has the capability in all respects to fully perform the Contract requirements; and (b) the integrity, experience, qualification, and reliability which assures good faith performance.
- VV. RESPONSIVE BIDDER OR PROPOSER means a Person, who, in the exclusive judgment of the City, has submitted a bid or proposal that conforms in all material respects to the Solicitation Documents.
- WW. SERVICES mean any performance of effort or labor, for which the City has contracted other than Professional Services or Construction Services. Services include, but are not limited to, janitorial, landscaping, and street striping.
- XX. SHORTLISTING means the part of a competitive procurement process in which the City determines, based on criteria developed for a specified Good, Service, or Professional Service which of the interested Vendors are the best qualified to be eligible for further consideration in the purchasing process.
- YY. SINGLE-SOURCE PROCUREMENT means identifying and using, without first completing a competitive process, one source for Goods, Capital Assets, Real Estate, Services, Professional Services or Construction Services among others in a competitive marketplace, which, for justifiable reasons, is found to be most advantageous for the purpose of fulfilling a given Purchasing need of the City.
- ZZ. SOLE-SOURCE PROCUREMENT means identifying and using, without first completing a competitive process, one source for Goods, Capital Assets, Real Estate, Services, Professional Services or Construction Services when that source is the only one available that can fulfill a given Purchasing need of the City.
- AAA. SOLICITATION DOCUMENTS means an Invitation for Bids, Request for proposals, Request for Qualifications, Request for Quotations, or an Invitation to Negotiate including all of the associated forms and documents of each solicitation, or any other types of documents used by the City to procure Goods, Services, Capital Assets, Real Estate, Construction Services or Professional Services.
- BBB. SPECIFICATION OR SCOPE OF WORK means any description of the physical or functional characteristics, or of the nature of Goods, Services, Capital Assets, Real Estate, Construction Services or Professional Services. Specifications or Scope of Work may

include any function and other criteria that will be required to perform the work and a description of any requirement for inspection, testing, or delivery.

CCC. SUPPLIER, MERCHANT OR VENDOR means a Person currently supplying or in the business of supplying Goods, Services, Capital Assets, Real Estate, Construction Services or Professional Services.

DDD. SURETY means an organization who, for a consideration, promises in writing to make good the debt or default of another organization. The Surety must be satisfactory to the City and licensed to do business in Georgia.

EEE. THE USING DEPARTMENT/DIVISION (User) is defined as the department which has the authority and responsibility for determining the need for an item or service, its related specifications, and need date. The User is responsible for funding the need and advising Purchasing of the approved funding and the specific budget account number. The User is responsible for authorizing the purchases of all materials, services, repairs, leases and rentals in which the negotiated price exceeds the approved funding.

## **SECTION II – ETHICS IN PROCUREMENT**

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Every person, business, or entity involved in the procurement process must adhere to a high standard of ethics. Each will be bound by the City Code of Ethics and this Section II. Whenever this Section II conflicts with the City Code of Ethics, the City Code of Ethics shall control.

### **A. Employee Conflict of Interest**

It shall be unethical for any City Employee or Official to transact any business or participate directly or indirectly in a procurement Contract when the Employee or Official knows that:

1. The Employee or Official or immediate family of such Employee or Official has a substantial interest pertaining to the procurement Contract to include the purchase of real estate and/or land, except that the purchase of Goods and Services from businesses which a member of the City Council or other City Employee has a substantial interest is authorized as per O.C.G.A. § 36-1-14, or the procurement Contract is awarded pursuant to O.C.G.A. § 45-10-22 and § 45-10-24, or the transaction is excepted from said restrictions by O.C.G.A. § 45-10-25, interpreting such statutes as if they were applicable to a municipality.
2. Any other person, business or organization with whom the Employee, Official or immediate family of such Employee or Official is negotiating or has an arrangement concerning prospective employment is involved in the procurement Contract.
3. An Employee, Official or any immediate family of such Employee or Official who holds a substantial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that substantial interest.
4. All Employees and Officials will be asked to sign a disclosure document indicating his or her compliance with the City Ethics Policy.

5. The terms “immediate family” and “substantial interest” shall have the meaning given to such terms in the City Code of Ethics.

**B. Gratuities, Rebates or Kickbacks**

1. *Gratuities and other benefits.* It shall be unethical for any Employee or Official to directly or indirectly solicit, demand, receive, accept, or agree to receive any gratuity, reward, offer of employment, services, or thing of value from any person, business, or entity in connection with any award, decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a Contract or subcontract, or to any solicitation or proposal.

It shall further be unethical for any person, business, or entity to offer, give, or agree to give or offer to give any Employee or Official any gratuity, reward, offer of employment, services, or thing of value with the purpose of influencing any award, decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a Contract or subcontract, or to any solicitation or proposal.

i. A “thing of value” shall not include:

- a. Any gift with a value less than \$100.00;
- b. Food or beverage consumed at a single meal or event;
- c. An award, plaque, certificate, memento, or similar item given in recognition of the recipient's civic, charitable, political, professional, or public service;
- d. Promotional items generally distributed to the general public or to public officers;
- e. Rebates normally or routinely offered to customers in the ordinary course of business of such person, business or entity for the purchase of their Goods and Services are acceptable and are the property of the City; and
- f. Educational events, materials, and meals as described in subparagraph (ii).

- ii. *Educational Events.* Nothing in this section shall preclude an Employee or Official of the City from attending seminars, courses, lectures, briefings, or similar functions at any person, business, or entity’s facility or at any other place if any such seminar, course, lecture, briefing, or similar function is for the purpose of furnishing the Official, Employee, or Agent with knowledge and information relative to the person, business, or entity’s products or

services and is one which the City Manager determines would be of benefit to the City. In connection with any such seminar, course, lecture, briefing, or similar function, nothing shall preclude the Employee or Official from receiving meals or educational materials and business related items of not more than nominal value from a person, business, or entity. However, no Employee or Official shall accept or receive free travel or lodging for less than the value thereof from a person, business, or entity.

2. *Kickbacks and Rebates.* It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a Contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.
3. *Contract Clause.* The prohibition against gratuities, rebates and kickbacks prescribed in this Section shall be referenced in every Contract and Solicitation.

C. Prohibition Against Contingent Fees

It shall be unethical for any Person to be retained, or to retain a Person, to solicit or secure a Contract upon any agreement or understanding for a contingent fee, except for agreements with manufacturer representatives, or agents, including, but not limited to, commercial services sales agents engaged in the business of soliciting contracts on behalf of Vendors. A “contingent fee” as used in this subsection C, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a Person has in securing a city Contract.

D. Use of Confidential Information

It shall be unethical for any Employee or Official to knowingly disclose or use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

E. Unauthorized Purchases

No purchases of Goods and Services shall be made in the name of the City or one of its departments, except such as is required for official use by the City or one of its departments. Purchases in the name of the City or a department for personal use by an individual or for other than official use are prohibited, and no City funds will be expended or advanced therefore.

F. Penalties and Sanctions

1. *Legal or disciplinary action by City Council.* The City Council may take appropriate legal and/or disciplinary actions pursuant to the City Code of Ethics against any Employee, Official or other Person in violation of these ethical standards.
2. *Legal or disciplinary action by City Manager.* The City Manager is authorized to take any appropriate legal and/or disciplinary actions, including dismissal, of any Employee violating this Ethics Policy.

3. *Administrative penalties for Employees.* The City Manager may impose any one or more of the following penalties or sanctions on an Employee for violations of the ethical standards in this Section as appropriate to the situation, subject to the Personnel Manual or other appropriate appeals procedures:
  - a) Oral or written warnings or reprimands.
  - b) Suspensions with or without pay for specified periods of time.
  - c) Termination of employment.
4. *Administrative penalties for outside contractors/Vendors.* The City may impose any one or more of the following penalties or sanctions on a Vendor or other Person or organization for violations of these ethical standards:
  - a) Written warnings or reprimands.
  - b) Termination of Contracts.
  - c) Debarment or suspension.

G. Vendor Contact During Open Solicitations

Persons seeking an award of a City contract may not initiate or continue any verbal or written communications regarding a solicitation with any Official, Employee or other City representative other than the Purchasing Agent named in the solicitation between the date of the issuance of the solicitation and the date of the final contract award. The City Manager or designee will review violations. If determined that such communication has compromised the competitive process, the offer submitted by the individual, firm or business may be disqualified from consideration for award.

## **SECTION III – PURCHASING AGENT**

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The City Council appoints the Purchasing Agent for the City, to serve under the direction of the City Manager in accordance with this Purchasing Policy, City Code of Ethics, Georgia Law and other city policies related to purchasing/procurement. If the City Council appoints the City Manager as the Purchasing Agent, he/she serves under the direction of the City Council.

A. Duties and Responsibilities

The Purchasing Agent shall faithfully discharge the following duties and powers of said office:

1. Direct efforts to procure Goods, Capital Assets, Real Estate, Services, Construction Services, Leases, Service Agreements and Professional Services in accordance with the requirements of this Purchasing Policy, the Code of the City of Stonecrest and Georgia law.
2. Arrange and negotiate the purchase or Contract for all equipment, supplies and contractual services for the City or any using agency; arrange and negotiate for the sale or otherwise dispose of all surplus equipment and supplies or real estate of the City or any using agency, in accordance with the requirements of this Purchasing Policy, the Code of the City of Stonecrest and Georgia law, subject to proper approval as defined throughout this Purchasing Policy.
3. Manage and supervise purchasing staff.
4. Control and supervise all City storerooms and warehouses.
5. Maintain and adhere to all City purchasing procedures and the Purchasing Policy.
6. Recommend revisions to the Purchasing Policy and related procedures to provide for compliance with laws related to bidding, Contracting and Purchasing as set forth in the State of Georgia Code and Regulations, by examining the applicable laws and developing procedures for bidding, Contracting and procurement processes. Revisions to this Purchasing Policy shall be subject to the approval of City Council.
7. Plan and implement processes for the ongoing protection of the City's interests.
8. Establish guidelines, within the Purchasing Policy, governing the review and approval of specifications for procurement of Goods, Capital Assets and Services based on recyclability, energy and water conservation, life cycle cost, and other environmental considerations.
9. Maintain an inventory record of all materials, supplies, software, or equipment stored in city storerooms, warehouses, and elsewhere, including monthly reports to the Finance Director (or to the City Manager if the Purchasing Agent is the Finance Director) that include:
  - a) Titles of all formal solicitations and the method of source selections to be used.
  - b) Contracts authorized by the City Council, the method of source selection used and the total dollar amount.
  - c) Emergency Contracts awarded pursuant to Section 1.03 of the City's Charter.
  - d) Change orders or Contract modifications authorized by the City Council and the dollar amount and reason.

- e) Amendments or change orders authorized by the Purchasing Agent and the dollar amount and reason.
  - f) Explanation of any changes, and the costs involved, in the scope of services made between the time a Contract is awarded and the time that the Contract is authorized by the City Council.
  - g) Documentation of the types, quantities, and dollar amounts of environmentally preferable Goods (including the percentage of post-consumer and total recovered material content) and Services purchased. The report shall also include dollar amounts of non-environmental or conventional Goods and Services, identify and discuss instances where this policy is waived or its requirements found impracticable, and highlight barriers to the procurement of environmentally preferable Goods and Services, if applicable.
10. Secure all necessary approvals of the City Manager or its designee, and the City Council prior to execution of a Contract or purchase agreement.
  11. Determine the most advantageous method of procurement in accordance with the requirements of this Purchasing Policy, the Code of the City of Stonecrest and Georgia law. This would include an evaluation of the need for each procurement to determine rather a good or service can be delivered by an existing city department or a current vendor.
  12. Ensure that all Contracts are reviewed and approved by the City Attorney pursuant to Section 3.08 of the City Charter.
  13. Ensure Council is notified as soon as reasonably possible of all upcoming and active competitive procurements.
  14. Whenever possible, utilize City-generated and City Attorney-approved standard goods/services purchasing agreements.
  15. Consult with the City Attorney if a contracting party breaches or is reasonably anticipated to breach its Contract with the City.
  16. Where in the best interest of the City, require Bid/Proposal Bonds, insurance and other forms of protection for the City on the process of procuring Goods, Capital Assets, Services and Construction Services for the City.
  17. Terminate solicitations for bids for any Goods, Capital Assets, Services, Construction Services and Professional Services when, in the opinion of the Purchasing Agent, it is in the City's best interest to do so.
  18. Reject any and all bids, when in the opinion of the Purchasing Agent it is in the City's best interest to do so.

19. Advise the Finance Director and/or City Manager on the status of negotiations, as well as Contract provisions and their impacts on the City.
20. Make recommendations on Contract approval, rejection, Amendment, and cancellation.
21. Provide Contract administration and supervision of Contracts. Such tasks shall include, but not be limited to, monitoring Amendments, obtaining applicable insurance certificates and monitoring applicable progress.
22. Provide and update all forms to procure Goods, Services, and Professional Services, as needed.
23. Administer the use of city purchasing cards in compliance with the Purchasing Card Policy which is attached as Appendix B hereto and incorporated herein by reference. The use of all city issued purchasing cards shall be governed by the Purchasing Card Policy.
24. Ensure procurement by leasing, long-term financing, advance payments or deposits or any other special non-routine method must be approved in advance by the City Council.

## **SECTION IV – PROCUREMENT PROCESS**

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The procurement process begins when the need to obtain goods or services is identified. All functions that pertain to the acquisition, including competitive procurement, contract negotiation and award, and all phases of contract administration are included in the procurement process.

### **A. Purchase Requisition**

Requisitions are necessary to initiate the procurement process. A Requisition is essentially a request to purchase Goods, Capital Assets, Services, Construction Services or Professional Services. *See* Appendix C for sample Requisition form. It lets the Purchasing Agent know, in detail, what the Using Department/Division (“User”) needs and whether the purchase or expenditure is authorized. In general, Users must prepare Requisitions for all procurements within the scope of this policy that exceed \$2,499.99.

The following steps shall be completed to initiate the procurement process:

1. *Determine Need:* The User is responsible for determining the need for a good or service and providing appropriate documentation and justification therefor, including a purchase requisition. The need is subject to evaluation by the Purchasing Agent to determine if the good or service can be delivered by an existing city department or a current vendor.

2. *Determine Funding:* The User is responsible for ensuring budget availability. Specific budget account numbers must be on the purchase requisition.
3. *Determine Specifications:* The User is responsible for determining the quantity, quality, dimensions, duration and all other necessary specifications essential to the determination of what is to be procured. The specifications must, where applicable, conform to the approved City standards for identity and continuity.
4. *Prepare Requisition:* Requisitions shall be prepared far enough in advance that the Purchasing Agent can obtain competitive prices and the Vendor has enough time to make the delivery. A Requisition must contain the following information, where applicable to the goods or services sought:
  - a) User's information – name and contact information of the department/division and Employee preparing the purchase Requisition.
  - b) Date issued – the date the Requisition is prepared.
  - c) Need date – must state a definitive delivery date or date/duration of service (lead time of at least one week, must be allowed).
  - d) Complete description and specifications of goods or services.
  - e) Quantity.
  - f) Estimated cost.
  - g) Delivery destination.
  - h) Complete budget account number.
  - i) Previous purchase information, quotation, or contract (if known).
  - j) Known or suggested Vendor(s).
  - k) Authorized Approval – must include signature from department director and Finance Director.
5. *Routing the Requisition.* After preparing the Requisition, Users shall transmit the Requisition to the following stations:
  - a) Departmental Authorization- the department director shall certify that the Requisition is authorized.
  - b) Finance Department- the Finance Director shall certify, by signature, that the proper account was listed and the availability of budgetary funds.

- c) Purchasing Office - the Purchasing Agent shall process the Requisition and obtain all necessary approvals.
6. *Acceptance of Procured Item or Service:* Within 48 hours, the User is responsible for advising the Purchasing Office in writing on a receiving report the receipt of the Goods procured and whether or not such Goods are found to be unsatisfactory. All returns of Goods or Capital Assets must be initiated by the User through the Purchasing Agent. Additionally, all Amendments or cancellation to any agreements must be made by the Purchasing Agent.

#### B. Purchase Orders and Contracts

1. The Purchasing Agent shall issue Purchase Orders for all approved Requisitions.
2. If a Contract is required or appropriate, all negotiations of agreements for Goods and Services shall be conducted by the Purchasing Agent. It is recognized that special situations may exist where there is a special need for the User to be involved in the negotiation process. This must be in conjunction with the Purchasing Agent at all times. The Purchasing Agent will make final recommendation for agreements.
3. The Purchasing Agent will review the Contract for form, completeness, insurance considerations, legal implications, and any other items dictated by each situation. The Contract will then be sent to the User and approved by the Department Director and returned to Purchasing.
4. All Contracts not arising out of the proprietary functions of the City shall conform with O.C.G.A § 36-60-13.
5. It is the responsibility of the Purchasing Agent to secure all necessary approvals prior to execution of a Contract or purchase agreement.
6. Once the Contract is officially executed, the original of the Contract will be filed in the City Clerk's office.
7. Once a Contract is awarded by the City, the Contract may be amended, without the necessity of rebidding such Contract, provided the original Contract amount and the scope of the Contract is not substantially altered however prior approval must be obtained from the City Council. The Purchasing Agent will review all change orders. Change orders will be processed to correct the account distribution, quantity, addition/deletion of line items, change in description and unit price. If a quoted price of the change order more than \$2,500.00, or 5% of the contract amount, shall require additional Requisition and approval from all necessary parties pursuant to the Purchasing Thresholds. The Purchasing Agent cannot use the change order process to circumvent the Purchasing Policy. Change orders cannot substantially change the scope of the Contract.

8. All returns of Goods or Capital Assets must be initiated by the User through the Purchasing Agent.
9. All amendments or cancellation to any agreement must be made through the Purchasing Agent.

## SECTION V – PURCHASING THRESHOLDS

The following dollar amounts and approvals apply to all city departments.

### (1) PURCHASING THRESHOLDS MATRIX

|                                                                                                                                                                                                                                                                                                                                                                                                                  | Procurement Method*                                                                                                                   | Required Approvals**                                                                                                                         | Amendments/Change Orders                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| ≤ \$2,499.99                                                                                                                                                                                                                                                                                                                                                                                                     | No Requisition/Purchase Order necessary.                                                                                              | 1. Department Director                                                                                                                       | Increases greater than 5% or \$2,500 (excluding any contingency) require additional Requisition and approval from all necessary parties |
| \$2,500 - \$9,999.99                                                                                                                                                                                                                                                                                                                                                                                             | Three quotes<br>- Requisition, Purchase Order, and/or Contract as appropriate                                                         | 1. Department Director<br>2. Finance Department<br>3. Purchasing Agent<br>4. City Attorney (contracts)                                       |                                                                                                                                         |
| \$10,000 - \$24,999.99                                                                                                                                                                                                                                                                                                                                                                                           | Competitive Procurement: Informal Solicitation<br>- Requisition, Purchase Order, and/or Contract as appropriate                       | 1. Department Director<br>2. Finance Department<br>3. Purchasing Agent<br>4. City Manager<br>5. City Attorney (contracts)                    |                                                                                                                                         |
| \$25,000 & >                                                                                                                                                                                                                                                                                                                                                                                                     | Competitive Procurement: Formal Solicitation<br>- Requisition, Purchase Order, and/or Contract as appropriate Contract as appropriate | 1. Department Director<br>2. Finance Department<br>3. Purchasing Agent<br>4. City Manager<br>5. City Attorney (contracts)<br>6. City Council |                                                                                                                                         |
| * The Procurement Methods listed above are not applicable to Sole Source Procurement, Single Source Procurement, Emergency Procurement, Cooperative Purchasing, and Real Estate Acquisition. See Section VII (Noncompetitive Procurements). Notwithstanding this exclusion, the Required Approvals must still be obtained based on the applicable purchasing threshold unless otherwise provided in Section VII. |                                                                                                                                       |                                                                                                                                              |                                                                                                                                         |
| ** City Council approval always required if purchase not within annual budget.                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                       |                                                                                                                                              |                                                                                                                                         |

### (2) PURCHASING THRESHOLDS EXPLAINED

Though competitive procurement may not be required under the applicable purchasing threshold, the Purchasing Agent may require the purchase to be competitively procured if he or she deems it necessary to best serve the interests of the City.

- A. Small purchases may be made up to **\$2,499.99** without bids. Department Director may approve said small purchases if within annual budget. User shall attempt to obtain the Goods, Capital Assets, Services, Construction or Professional Services most advantageous to the City, price and other factors considered. A Purchase Order is not necessary unless the vendor requires such. In the event a Purchase Order is required, the User must provide a Requisition to the Purchasing Agent for processing. This must be approved by the Purchasing Agent and Finance Department. If a contract is involved, it may be executed by the City Manager or Mayor without need of review by the City Attorney.
- B. Purchases from **\$2,500 - \$9,999.99** will require a Requisition, Purchase Order, and a minimum of three quotes. If after due diligence, the User cannot reasonably find a third quote, the Purchasing Agent can waive the quote requirement if presented with sufficient written justification from User. The Department Director, Purchasing Agent, and Finance Director must approve the purchase. The Purchasing Agent shall attempt to obtain the Goods, Capital Assets, Services, Construction or Professional Services most advantageous to the City, price and other factors considered. If a contract is involved, it must be reviewed and approved by the City Attorney and may be executed by the City Manager or Mayor. The City Council shall be notified no later than the next regular scheduled council meeting.
- C. Purchases from **\$10,000 - \$24,999.99** will require a Requisition, Purchase Order, and a minimum of three informal quotes/bids/proposals. *See* Informal Solicitations, Section VI (1). If after due diligence, the User cannot reasonably find the required quotes/bids/proposals, the Purchasing Agent can waive the quote requirement if presented with sufficient written justification from User. The Department Director, Purchasing Agent, Finance Director and City Manager must approve the purchase. If a contract is involved, it must be reviewed and approved by the City Attorney and may be executed by the City Manager or Mayor.
- D. Purchases from **\$25,000 and greater** will require a Requisition, Purchase Order, and formal solicitation. *See* Formal Solicitations, Section VI (2). The Department Director, Purchasing Agent, Finance Director, City Manager, and City Council must approve the purchase. If a contract is involved, it must be reviewed and approved by the City Attorney and executed by the Mayor.
- E. *State/Federal Grants or Funds.* Periodically, the City may be given private/public grants and donations from sources such as the State and Federal Government and private corporations. These types of solicitations are more restrictive and may dictate the procurement process and methodology that the City is to follow for an award. *See* Projects Using Federal Aid Highway Program (FAHP) Funding, Section VIII. Both federal and state procurement supersedes the purchasing requirements of the City when buying goods and services using federal or state grant monies. Departments should refer to the Federal Acquisition Regulations for guidance on specific federal procurement policies.

## SECTION VI – COMPETITIVE PROCUREMENTS

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### (1) INFORMAL SOLICITATIONS

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Requests for informal quotes, bids, and proposals are Informal Solicitations (“IS”) that are prepared and issued with the goal of obtaining competitive responses. Informal Solicitations shall be used for all Purchases from **\$10,000 - \$24,999.99**, unless otherwise provided by this policy. The steps to complete an IS are outlined below. Unless otherwise provided, the responsibility for these steps shall fall on the User:

- A. Prepare Requisition and Develop specifications, scope of work, etc. for all goods and services being requested. Upon finalization of the specifications, prepare any documents required by the IS and send to Purchasing Agent for approval.
- B. Use the Formal Solicitation Process if the Purchasing Agent deems it necessary to serve the best interests of the City.
- C. After specifications are approved by the Purchasing Agent, send a copy of the specifications to the identified Vendors.
- D. *Public Notice*. The Purchasing Agent shall, at a minimum, post a copy of the IS on the City’s website, and provide any additional public advertisement if required by law.
- E. Purchasing Agent and User shall evaluate the responses to the IS. On or after the due date indicated in the IS, the Purchasing Agent shall determine which quote, bid, or proposal best serves the City’s interests. Tie informal quotes/bids shall be handled in the same way as tie formal bids. A split or partial award may be given to the lowest cost provider of each item or reasonable grouping of items if:
  1. The IS requires multiple Goods or Services;
  2. More than one Vendor provides a quote/bid/proposal that meets the specifications for the Goods or Services;
  3. A price comparison can be made between the Goods or Services; AND
  4. An acquisition, delivery, and other requirements can be reasonably administered.
- F. Amend Requisition and include authorized approvals.
- G. Purchasing Agent shall prepare and issue Purchase Order or Contract, where appropriate.

### (2) FORMAL SOLICITATIONS

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All purchases from **\$25,000 and greater** require a formal solicitation. The Purchasing Agent shall determine the method of formal solicitation is appropriate for the subject purchase. A Bid/ Proposal Bond or Performance Bond may be required for any solicitation.

#### A. Invitation for Formal Bids

Invitation for Formal Bids (IFB) are prepared and issued with the goal of obtaining competitive responses in the procurement of Goods, Capital Assets, Services and Construction Services. The process to initiate and complete an IFB is outlined below:

1. User prepares Requisition and develops specifications, scope of work, etc. for all goods and services being requested.
2. Upon finalization and approval of the specifications, Purchasing Agent shall prepare any documents required for the IFB.
3. *Public Notice.* The Purchasing Agent shall advertise the IFB on the City's website, at City Hall, and provide additional public advertisement if required by law. Said public notice shall include such details and specifications as will enable the public to know the extent and character of the IFB, and shall be advertised a minimum of thirty (30) calendar days prior to the date set for bid opening, unless it can be demonstrated that an Emergency exists, pursuant to Section VII (D) Emergency Procurement. In such event, the requirement for public notice may be reduced by the Purchasing Agent.
4. *Correction/Withdrawal of Bids.* Correction or withdrawal of inadvertently erroneous bids is permitted in accordance to the terms indicated within the IFB; however, minor irregularities may be waived by the Purchasing Agent. No bid may be withdrawn for a period of ninety (90) days after the time scheduled for bid opening, or as otherwise stated in the IFB.
5. *Opening Sealed Bids.* Bids shall be opened in the presence of the Purchasing Agent or the designee of the Purchasing Agent and at least one other witness at the time and place designated in the Invitation for Bids. All relevant information, including each Bid amount and Bidder's name, will be recorded on a summary sheet. Late bids will be rejected and returned unopened. Interested persons shall have access to information regarding procurement transactions of the City in accordance with City policy and the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*
6. *Evaluation of Bids.* Bids will be evaluated based on the qualification factors set forth in the IFB, which may include criteria to determine acceptability of Goods or Capital Assets (for example, inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose). Criteria for the acceptability of Goods or Capital Assets shall be used to determine whether particular Goods are responsive to the IFB, and not to determine the relative desirability between acceptable Goods or Capital Assets. The City reserves the right to waive any informalities or irregularities of bids, to request clarification of information submitted in any bid, to further negotiate with the Responsive and Responsible Bidder selected for Contract award, or to reject any or all bids for any reason whatsoever.

7. *Contracts.* The Bid may require a Contract. Once the proposed contract terms, exceptions, and/or modifications are reviewed and approved by the City Attorney, the Purchasing Agent may submit his or her recommendation and the proposed Contract to the City Council for approval and award.
8. *Award of Bids.* The Purchasing Agent shall submit his or her recommendation and proposed Contract to the City Council for approval and award. The Bid will be awarded, if an award is made, to the Responsible and Responsive Bidder offering the lowest price whose bid meets the requirements and criteria set forth in the IFB. The Contract shall be approved by City Council prior to execution and/or performance.
9. Upon the award of bid, User amends Requisition and Purchasing Agent shall prepare a Purchase Order or Contract, if appropriate.
10. *Split/Partial Awards.* Split or partial bid awards may be awarded with the same guidelines and restrictions as those provided for split or partial Informal Solicitations.
11. *Tie Bids.* In the event two or more identical bids are received, the following procedure will be used when the basis of award is low bid:
  - (i) A tie Bidder whose products are manufactured in Georgia would be recommended to the City Council for an award, over a Tie Bidder without products manufactured in Georgia. *See Section IX (1).*
  - (ii) If the procedures in (i) above do not result in an award, then the tie Bidder who has environmentally preferable goods and services would be recommended to the City Council for an award. *See Section IX (2).*
  - (iii) If the procedures in (i) and (ii) above do not result in an award, then to the extent permitted by law, a tie Bidder having an office within the limits of the City would be recommended to the City Council for an award over one without an office in the City. A Person within the state of Georgia would be recommended to the appropriate approving authority for an award over one without an office in Georgia.
  - (iv) If the procedures in (i) through (iii) above do not result in an award, the tie Bidders will be contacted and advised of the tie and asked if they wish to reduce their bid in writing submitted in a sealed envelope to be opened at the time and place stated by the Purchasing Agent or the designee of the Purchasing Agent. If one or more of the tied Bidders agrees to participate, award will be made to the new low bid. If none of the tied Bidders agree to participate or if the new bids are tied, then City staff shall break the tie by following the procedures described below, as necessary.
  - (v) If all of the procedures above do not result in an award, then, the Purchasing Agent or the designee of the Purchasing Agent in the presence of at least two witnesses will flip a coin one time. Award to the winner of the coin flip will be recommended to the City Council.

## B. Request for Proposals (RFP)

When the Purchasing Agent determines the use of an Invitation for Bids is not practical or not advantageous because of existing market conditions or the type of items required, the City may procure Goods, Capital Assets, Services, or Construction Services through receipt of competitive sealed proposals. Competitive sealed proposals are solicited through the use of an RFP, with the goal of obtaining competitive responses. The process to initiate and complete RFP is outlined below:

1. User prepares Requisition and develops specifications, scope of work, etc. for all goods and services being requested.
2. Upon finalization and approval of the specifications, Purchasing Agent shall prepare any documents required for the RFP.
3. *Public Notice.* The Purchasing Agent shall advertise the RFP on the City's website, at City Hall, and provide additional public advertisement if required by law. Said public notice shall include such details and specifications as will enable the public to know the extent and character of the RFP, and shall be advertised a minimum of thirty (30) calendar days prior to the date set for opening proposals, unless it can be demonstrated that an Emergency exists, pursuant to Section VII (D). In such event, the requirement for public notice may be reduced by the Purchasing Agent.
4. *Correction or Withdrawal of Proposals.* Correction or withdrawal of proposals is permitted in accordance with instructions contained within the RFP. No proposal may be withdrawn for a period of ninety (90) days after the time scheduled for proposal opening, or as otherwise stated in the RFP.
5. *Opening Sealed Proposals.* Proposals shall be opened publicly by the Purchasing Agent, in the presence of one or more witnesses at the time and place designated in the RFP. A register of proposals is prepared that lists each Proposer's name. Late proposals will be rejected and returned unopened.
6. *Evaluation of Proposals.* The RFP will identify the criteria to be considered and evaluated as the basis of award. Proposals submitted by Responsible and Responsive Proposers are evaluated by Purchasing Agent or the designee of the Purchasing Agent based upon the criteria applicable to the RFP. All proposals (or the most acceptable proposals in the discretion of any committee evaluating proposals) will be ranked in order of their acceptability to the City, giving consideration to the criteria.
7. *Contract Award.* Once the proposed contract terms, exceptions, and/or modifications are reviewed and approved by the City Attorney, the Purchasing Agent may submit his or her recommendation and the proposed Contract to the City Council for approval and award. The Contract award will be awarded, if award is

made, by the City Council to the Responsive and Responsible Proposer whose proposal is determined, in the City's exclusive discretion, to be the most advantageous to the City, taking into consideration price, qualifications, and other factors as indicated in the RFP. Unless otherwise provided by law, the City has no obligation to award the Contract to the Proposer who proposes the lowest price.

8. *Public Access to Proposal Documents.* Interested persons shall have access to information regarding procurement transactions of the City in accordance with City policy and the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.* All meetings of the City's Council are duly noticed public meetings and all documents submitted to the City as a part of or in connection with a Proposal may constitute public records under Georgia law regardless of any person's claim that proprietary or trade secret information is contained therein. Unless otherwise provided herein, by submission to the City, Proposers waive any claim to the proprietary nature of submitted information. The Proposer may designate in the smallest increments possible, that part of the qualifications which is deemed to be proprietary, which, subject to the City's reasonable determination, shall be redacted for purposes of the public agenda. Proposals and all related correspondence are governed by the Georgia Open Records Act and shall be provided to anyone properly requesting same, after contract award. The City cannot protect proprietary data submitted in vendor proposals unless provided for under the open records law and clearly marked as proprietary by the Proposer. In the event the Proposer deems certain information to be exempt from the disclosure requirements, the Proposal must specify what content is considered exempt and cite the applicable provision of the law to support that assessment. In the event such information is requested under the open records law, the Proposer's assessment will be examined by the City Attorney who will make a determination. The decision to withhold or release the information will be at the City Attorney's sole discretion.

#### C. Request for Qualifications

Requests for Qualifications (RFQ) may be used if the Purchasing Agent determines that it is in the City's best interest to evaluate the experience and qualifications of a Service, Construction Service or Professional Service provider, without regard to price or prior to considering price.

The procedure for soliciting, opening and evaluating statements of qualifications shall be the same as described herein for competitive sealed proposals. Such service providers whose qualifications meet the criteria established in the RFQ, at the sole discretion of the City, may be considered for Contract award by participation in the completion price negotiation. The City shall attempt to negotiate a fee with the highest ranked firm. If no agreement is reached, the City shall begin negotiations with the next highest ranked firm. Negotiations will proceed in this manner until an agreement is reached. The City reserves the right to reject any or all responses for any reason. Clarification of information may be requested by the City.

#### D. Multi-step Solicitation

The City may initiate the multi-step solicitation process described below when: (a) the Purchasing Agent determines it is impractical to prepare an adequate or complete description of the Goods, Capital Assets, Services or Construction Services desired (due to insufficient data, uncertain requirements, unfamiliar market options, etc.), (b) the Purchasing Agent desires to identify a field of qualified Bidders, Proposers, Goods or Services, out of a broader field of Bidders, Proposers, Goods or Services, or (c) the Purchasing Agent determines that a multi-step process would best serve the City's interests.

1. The City may request that priced proposals be submitted in two separate envelopes, with pricing information contained in one envelope and all other requested information contained in the other envelope. In such case, proposals will be evaluated in accordance with the requirements set forth in the RFP, initially without regard to price and without opening the envelope containing pricing information. Based on such evaluation, the City will establish a field of at least three (if possible and available) qualified or most qualified Proposers. The City may conduct interviews with Proposers to aid in the identification of qualified or most qualified Proposers. In the event the City conducts interviews with Proposers, the City is not required to interview any Proposers deemed by the City to be unqualified or less qualified than other Proposers.
2. After establishing a field of qualified or most qualified Proposers, the City will open the pricing envelopes of only the qualified or most qualified Proposers, and evaluate such pricing information in the manner described in the RFP for purposes of recommending/making an award (e.g. most advantageous proposal, price and other factors considered or low price submitted by qualified Proposers). In the absence of specific instructions to the contrary in the RFP, pricing information will be evaluated together with all other information required by the RFP for purposes of selecting among the qualified field of Proposers the most advantageous proposal, price and other factors considered.

### **(3) SOLICITATIONS REQUIRING PUBLIC NOTICE IN GEORGIA PROCUREMENT REGISTRY (GPR)**

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The GPR is the state's central bid registry established by the Department of Administrative Services (DOAS) and managed by the agency's State Purchasing Division (SPD). The registry provides for the advertising of bid opportunities by state and local governments to ensure transparency and offer market competition.

- A. The City shall advertise all bid or proposal opportunities for **goods, services, or both** that are valued at **\$100,000.00 or more** in the GPR for a minimum of thirty (30) calendar days prior to the date set for opening bids/proposals. Each advertisement shall include such details and specifications as will enable the public to know the extent and character of the bid or proposal opportunity. *See O.C.G.A. § 36-80-27.*

- B. The City shall advertise all contract opportunities for **public works construction** that are valued at **\$100,000.00 or more** in the GPR for at least four continuous weeks prior to the opening of the sealed bids or proposals, unless otherwise provided by O.C.G.A. § 36-91-20.
- C. The Purchasing Agent may adopt procedures requiring additional bid or proposal opportunities to be advertised on the GPR.

## **SECTION VII – NON-COMPETITIVE PROCUREMENTS**

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The provisions of this policy section shall apply to the procurement of Goods, Capital Assets, Services, Construction Services or Professional Services, when the purchase does not exceed **\$9,999.99** or when the Purchasing Agent determines that competitive procurement is not practical, feasible, or possible. Notwithstanding any other provision, any Contract or subcontract entered into by the City with any Person for the construction, reconstruction, or maintenance of all or part of a public road in the City including, but not limited to, a Contract or subcontract for the purchase of materials, for the hiring of labor, for professional services, or for other things or services incident to such work, shall be entered into in accordance with O.C.G.A. § 32-4-114.

### **A. Sole Source Procurement**

The City may acquire Goods, Capital Assets, Services, Construction Services or Professional Services pursuant to a Sole Source Procurement. Sole Source Procurement is available when Goods, Services, or Professional Services are limited to one source, or when they must be obtained from a specific manufacturers' dealer and valid competition among dealers does not exist. No Sole Source Procurement shall be valid without the prior authorization of the City Council. For each instance in which the use of Sole Source Procurement is proposed, the User must provide to the City Council a written report that identifies the specific reasons justifying such use and shows the requirements stated herein are satisfied. The City Council may authorize the use of Sole Source Procurement only if it determines that such use fully complies with the requirements stated herein.

### **B. Single Source Procurement**

The City may acquire Services or Professional Services pursuant to a Single Source Procurement. A Single Source Procurement is a procurement made from one Person among others in a competitive market place which, for justifiable reasons, is found to be most advantageous for the purpose of fulfilling the given purchasing need. Single Source Procurement is available only if the following conditions exist:

1. The proposed use of Single Source Procurement concerns any of the following situations:

- a. To obtain the Services or Professional Services of any Person for the purpose of serving in any appointed position identified in Article III of the City Charter; or
- b. To obtain the Professional Services of any Person where such Person establishes to the User that:
  - i. Regarding the provision of such Professional Services, he has significantly more experience than other prospective providers or has unique knowledge and experience that no other prospective provider possesses;
  - ii. He has more historical knowledge of the particular issue/subject to be addressed by the procurement while other prospective providers have failed to demonstrate to the User that they have the same level of historical knowledge;
  - iii. In comparison to other prospective providers, he is particularly suited to provide the procurement as he and the City had a satisfactory business relationship in his earlier provision of such Professional Services to the City; or
  - iv. He has the capacity and willingness to provide such Professional Services to the City in an emergency situation while other prospective providers have failed to demonstrate to the User that they have such capacity and willingness.
2. The Person desiring to provide the procurement has agreed, in writing, that he will not disclose to any third party any confidential information, trade secret or financial information of the City that he may obtain in the course of providing the procurement to the City.
3. The User has analyzed the current open, competitive market conditions regarding the provision of such Services or Professional Services and has determined that the price to be paid to the proposed provider is substantially similar to the current price in the open, competitive market for such Services or Professional Services.

No Single Source Procurement shall be valid without the prior authorization of the City Council. For each instance in which the use of Single Source Procurement is proposed, the User must provide to the City Council a written report that identifies the specific reasons justifying such use and shows the requirements stated herein are satisfied. The City Council may authorize the use of Single Source Procurement only if it determines that such use fully complies with the requirements stated herein

### C. Emergency Procurement

The City may acquire Goods, Capital Assets, Services, Construction Services or Professional Services by directly negotiating an award in the event of an Emergency. An Emergency exists when a situation occurs suddenly and unexpectedly and demands immediate action to prevent delays which may vitally affect the health, safety or welfare of the public or City Employees and affects the continuation of services to the citizens, and/or serious loss or injury to the City. Emergency also exists if a condition, malfunction,

or occurrence in which the immediate procurement of an item (i.e. Good, Services, or Professional Service) is essential to comply with regulatory requirements.

The City Manager shall make the determination when an Emergency exists. Such emergency procurements shall be made with as much competition as is practicable under the circumstances.

When the need for an emergency purchase occurs during normal working hours, the User shall request approval from the City Manager or the City Council in the absence of the City Manager. If an Emergency situation should arise after office hours which requires immediate action on the part of the agency involved for the protection of the best interest of the City or if a like situation arises on a weekend or holiday and when it is not possible or convenient to reach the City Manager or Purchasing Agent, any purchase necessary shall be made by the official in charge of such department or agency, and such purchase reported to the Purchasing Agent within 24 hours.

As soon as practicable, a record of each Emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the Contract, a listing of the item procured under the Contract, and the identification number of the Contract file. Moreover, written determination of the basis for declaring the Emergency and for the selection of the particular person for the provision of Goods, Capital Assets, Services, Construction Services or Professional Services shall be included in the Contract file. If the cost of the procurement is \$25,000 or more, City Council approval must be obtained at the next meeting following the emergency procurement.

#### D. Cooperative Purchasing

The City may acquire Goods, Capital Assets and Services by from a Supplier having a requirements Contract/Annual Agreement with any public entity (e.g., federal, state, county, city, authority, school board, Buying Cooperative, etc.) for Goods, Capital Assets or Services described in such contract and at prices or discounts no less favorable than any set forth in such Contracts.

*Use of State/Co-Op Contracts:* The Purchasing Agent may procure supplies, services or construction items through the Contract established through competitive means by the purchasing division of the State of Georgia, national Co-Ops (i.e.-U.S. Communities), and collaborative purchasing agreements with other local governments when deemed to be in the best interest of the City.

Prior to making any purchase, the Purchasing Agent or User shall obtain approval from all necessary parties pursuant to the applicable purchasing threshold.

#### E. Real Estate Acquisitions<sup>1</sup>

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<sup>1</sup> Reference Note- See O.C.G.A. § 36-37-1 et seq. for provisions governing the disposition of municipal property or acceptance of gifts, grants, or donations of property

## 1. Compliance with Applicable Regulations

All real estate acquisition activities shall conform to applicable federal, state (e.g. O.C.G.A § 36-80-18 and O.C.G.A § 36-60-13) and local laws and regulations and shall be subject to the provisions of the City Code of Ethics.

## 2. Confidentiality

The City Council and City staff shall maintain the confidentiality of potential and on-going real estate acquisitions and related information subject to the provisions of the Open Meetings and Open Records Acts.

## 3. Formal Approval

All real estate transactions shall be formally approved by the City Council in a public meeting prior to the City entering a sales contract. This shall not prohibit or interfere with the City Council's ability to discuss same and negotiate terms in Executive Session subject to the requirements of the Open Meeting and Open Records Acts.

## 4. Appraisals

For any piece of real estate, for which a sales contract has been signed, the City will conduct at least one appraisal by an independent third-party who holds the Member of the Appraisal Institute (MAI) membership designation.

## 5. Land Acquisition Procurement Process

- a. City staff will investigate and identify properties for purchase that generally meet an approved plan or strategy. Furthermore, land purchased with a specific funding source will only be used for such purposes anticipated and/or authorized. If the City determines that the land cannot be used for its intended purpose, the City may dispose of the property in a manner consistent with Georgia law and funds raised through the sale of the property will be used for future land purchases consistent with the purposes authorized.
- b. City staff may work with a Real Estate broker to gather information and make site visits related to properties under consideration for acquisition. This Real Estate broker must be approved by City Council prior to city staff beginning work with the Real Estate broker.
- c. City staff will regularly brief the City Council in Executive Session on properties the city is considering purchasing to receive direction on "terms and price" from the City Council.
- d. City staff will negotiate "Letters of Intent" with land owners on properties the City Council has provided staff with direction on "terms and price".

- e. City staff will conduct due diligence on the real estate to be purchased including at a minimum but not limited to:
  - i. Environmental testing (Phase I required, Phase II and specialized testing if warranted);
  - ii. Production of an ALTA survey of the property;
  - iii. Production of a MAI appraisal of the property;
  - iv. Complete title work on the property; and
  - v. Other reasonable due diligence activities as warranted.
- f. City staff will present the findings of the due diligence on the property to be purchased in executive session and may request a Resolution from the City Council authorizing the City Manager to execute any and all closing documents to complete the purchase of the property. (PUBLIC HEARING REQUIRED).
- g. City staff will publish the executed sales contract or lease on the city website.

## **SECTION VIII – PROJECTS USING FEDERAL AID HIGHWAY PROGRAM (FAHP) FUNDING**

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The City shall use the competitive negotiation method for the procurement of engineering and design related services when FAHP funds are involved in the contract (as specified in 23 U.S.C. § 112(b)(2)(A) and 23 CFR § 172.5(a)(1)). The solicitation, evaluation, ranking, selection, and negotiation shall comply with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. § 1101 *et seq.*, commonly referred to as the Brooks Act. *See* Appendix A.

## **SECTION IX – PREFERABLE GOODS AND SERVICES**

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### **(1) PREFERENCE FOR PRODUCTS MANUFACTURED IN GEORGIA**

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When contracting for or purchasing supplies, materials, equipment, or agricultural products, excluding beverages for immediate consumption, the City shall give preference, as far as may be reasonable, economical, and practicable, to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in the State of Georgia. Such preference shall not sacrifice quality.

In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds \$100,000.00, the City shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. The City shall not divide a contract or purchase which exceeds \$100,000.00 for the sole purpose of avoiding these requirements.

## **(2) ENVIRONMENTALLY PREFERABLE GOODS AND SERVICES**

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- A. In determining which Goods, Capital Assets and Services to purchase, the City shall integrate environmental factors into the City's procurement decisions, when available and commercially practicable in the reasonable discretion of the User. Whenever possible or practicable, the City shall:
1. Purchase copy, computer, and fax paper with at least 30 percent post- consumer recycled content;
  2. Purchase non-emergency fleet vehicles that provide the best available net reduction in vehicle fleet emissions including, but not limited to, the purchase of alternative fueled and hybrid vehicles;
  3. Consider purchasing lower emission emergency fleet vehicles with comparable specifications for performance, safety, and fuel availability during emergencies as conventionally-powered emergency fleet vehicles;
  4. Purchase at least Energy Star rated equipment and appliances for use in local government facilities when practicable based upon considerations of Life Cycle Costs;
  5. Purchase water-saving products, including WaterSense labeled, whenever practicable, including but not limited to, high performance fixtures such as toilets (1.28 gallons per flush or less), urinals (0.5 gallons per flush or less), low-flow faucets (1.5 gallons per minute or less), aerators, and upgraded high-efficiency irrigation systems;
  6. Replace disposable with re-usable, recyclable, or compostable Goods;
  7. Consider Life Cycle Cost Assessment; and
  8. Evaluate, as appropriate, the environmental performance of Vendors in providing Goods and Services.
- B. The analysis to determine environmentally preferable Goods and Services may include raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, disposal of products, or service delivery. Specifically, factors that should be considered by the User when determining that Goods have environmentally preferable attributes include, but are not limited to:
1. Minimization of virgin, unrecycled material used in Goods;

2. Maximization of recycled materials used in Goods;
3. Life cycle economics of Goods and Services;
4. Reuse of existing Goods or materials in Goods;
5. Recyclability, biodegradability and compostability of Goods;
6. Minimization of packaging;
7. Reduction of energy and fuel consumption;
8. Reduction of water consumption;
9. Toxicity reduction or elimination;
10. Durability and maintenance requirements; and
11. Ultimate disposal of the Goods.

## **SECTION X – PROTESTS, SUSPENSION, AND DEBARMENT**

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### **A. Right to Protest.**

Any actual Bidder or Proposer who is aggrieved in connection with the formal solicitation or award of a Contract may protest to the City. Protestors shall seek resolution of their protests/complaints initially with the City Manager.

#### **1. *Timeliness.***

- a. Protests arising from factual or legal basis that the protestor knew or should have known prior to the submission of the bid/proposal must be submitted within three business days of the submission of the bid/proposal.
- b. Protests arising from factual or legal basis that the protestor knew or should have known subsequent to the date the bid/proposal was submitted must be submitted within ten business days after the protestor knew or should have known of such basis, but in no event shall any protest be submitted more than ten business days after the award of the contract.
- c. Untimely protests are invalid and shall be denied as such.

2. *Contents of Protest.* The protest shall, at a minimum, be in writing and include the following information:
  - a. Identity and contact information of protestor;
  - b. Appropriate identification of the subject solicitation or award;
  - c. Detailed statement of the legal and factual grounds of the protest;
  - d. Documentation supporting the protest and/or allegations;
  - e. Statement of the specific relief requested; and
  - f. Signed by an officer or person authorized to sign contracts on behalf of the protestor.
3. *Submission of Protests.* All protests shall be submitted to the City Manager via registered mail, overnight delivery, or hand delivery.
4. *Protest Resolution.* If a protest complies with subsections (1) through (3) above, the City Manager shall request a response from the Purchasing Agent. The Purchasing Agent's response will be returned to the City Manager within seven (7) business days from the submission of the protest. The City Manager is empowered to decide to uphold, dismiss or amend the decision of the Purchasing Agent.
5. *Decision on Protest.* The City Manager shall inform the protestor of the decision in writing within fifteen (15) business days of the submission of the protest or, if the City Manager requires more time to render a decision, the City Manager will advise the protestor within the initial ten (10) days of the additional amount of time required to render a decision.
6. *Appeals.* Any actual Bidder or Proposer who is aggrieved by the decision of the City Manager in connection with a protest shall file a notice of appeal with the City Manager and City Clerk within seven (7) days of receipt of the decision.
  - a. *Hearing.* The City Manager shall set a hearing date before City Council not more than thirty (30) days from the date of receipt of the notice. The City Clerk shall cause notice of the hearing date, time, and location to be served upon the parties by registered mail. At the hearing, all parties shall be provided a fair and impartial hearing and shall be allowed to offer argument as to whether the City Manager's decision should be affirmed or overturned. Said hearing will not be de novo, but shall be of an appellate nature.
  - b. *Decision.* Within seven (7) days of the hearing, the City Council shall issue a written decision on the appeal, which shall either affirm or reject the City Manager's decision. The City Clerk shall send a copy of the decision to the protestor(s) by registered mail.

- c. *Finality.* A decision by the City Council under subsection 6(b) above shall be final and conclusive as to the City's appeal process. Any further action shall be through the court.

7. *Stay of Procurement.* In the event a protest complies with subsections (1) through (3) above, the Purchasing Agent shall not proceed with the further solicitation or award of the Contract until all administrative remedies have been exhausted, or the City Manager or City Attorney makes a determination that the award of the contract without delay is necessary to protect the interests of the City.

## B. Suspension and Debarment

1. *Authority to Suspend or Debar.* After reasonable notice to the Person involved and reasonable opportunity for that Person to respond, the Purchasing Agent shall have the authority to initiate proceedings to suspend or debar a Person from doing business with the City. The City Manager shall have the authority to order suspension or debarment as provided herein.
2. *Causes for Suspension or Debarment.* The causes for suspension or debarment include:
  - a. Conviction for commission of a criminal offense as an incident to obtain or attempting to obtain a public or private contractor subcontract, or in performance of such contract or subcontract;
  - b. Conviction of state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor;
  - c. Conviction of state or federal antitrust statutes arising out of the solicitation and submission of bids or proposals;
  - d. Violation of contract provisions of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension action, which includes but is not limited to the following:
    - i. Failure to perform in accordance with the specifications within a time limit provided in a city contract;
    - ii. A recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Person shall not be considered to be a basis for suspension; or
    - iii. Falsification of any documents.

- e. Commission or solicitation of any act that would constitute a violation of the ethical standards set forth in this Purchasing Policy and the City's Code of Ethics.
  - f. Any other cause that is serious and compelling as to affect the Person's responsibility as a city vendor, including debarment or suspension by another government entity.
3. *Initiation of Suspension or Debarment Action.* When the Purchasing Agent receives information from any source concerning a cause for suspension or debarment, he or she will promptly investigate the matter. If the Purchasing Agent finds cause that suspension or debarment is warranted, the Purchasing Agent shall prepare a written determination detailing the grounds for and length of the proposed suspension or debarment. Written notice of a proposed suspension or debarment action shall be sent by registered mail to the Person subject to the action, and shall also be sent to the City Manager and City Attorney.
4. *Review of Proposed Suspension or Debarment.* Within fifteen (15) days of receiving said notice, the Person subject to the action shall submit any and all responsive records or documents in defense of the proposed suspension or debarment to the City Manager. Failure to submit a timely written response shall result in a waiver of review.
5. *Final Decision.* After consultation with the City Attorney, the City Manager shall issue a final decision, which shall adopt, amend, or reject the proposed suspension or debarment. When suspension or debarment is ordered, the length of the suspension or debarment, the reasons for such action and to what extent affiliates are affected shall be set forth in writing and sent by registered mail to the Person subject to the action.
6. *Effect of Suspension or Debarment.* A suspension or debarment decision shall take effect upon issuance and mailing of written notice of such decision to the Person subject to the action. After the suspension or debarment takes effect, the Person shall remain suspended or debarred until the period specified in the decision expires.
7. *Duration of Suspension/Debarment.* Suspensions shall be for a period not to exceed 120 days. Debarment shall be for a period not to exceed three years, unless cause is based on a felony conviction for an offense related or associated with fraudulent contracting or misappropriation of funds. In such event, the debarment shall be for a period not to exceed seven years.
8. *List of Suspended/Debarred Persons.* The Purchasing Agent shall create and maintain a list of all suspended and debarred Persons. All departments shall be routinely supplied with said list.

## **SECTION XI – PROPERTY DISPOSAL**

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### **A. Compliance with Applicable Regulations**

The disposal of municipal property shall conform to applicable federal, state (*e.g.* O.C.G.A § 36-37-6) and local laws and regulations and shall be subject to the provisions of the City Code of Ethics.

B. Excess, Surplus, and Obsolete Materials

It shall be the duty of the User to report all excess, surplus or obsolete materials to the Purchasing Agent. At this point, the Purchasing Agent will examine alternatives as to the most advantageous disposition of the items. Items could be refurbished or reconditioned, transferred, traded in on new equipment or sold by auction or sealed bid, or destroyed. For property over \$5,000 in aggregate or \$1,000 individually, the City Council shall approve the request to have the property declared surplus. For other property, the Purchasing Agent shall present a list to the City Manager for approval.

1. *Transfer or Re-use.* The most gainful method for handling an item no longer needed by a department is to transfer it to another department that has a use for the item.
2. *Trade-In.* In replacing obsolete equipment, it may be financially advantageous to trade-in the old equipment. The invitation for bids on the replacement item should call for bid prices with or without trade-in and provide that award may be made either way.
3. *Sale.* Excess, surplus and obsolete items not transferred or traded-in may be consolidated and offered for sale to the highest responsible bidder either by auction or by sealed bid method. Auctions can be traditional or contemporary including online auctions such as [www.Govdeals.com](http://www.Govdeals.com) or similar websites. The consolidated list will be submitted to City Council for approval before an auction or sealed bid is organized. The property offered for sale will be on an "AS IS/WHERE IS" basis. Sealed bids will be opened at the time and place announced with the City, retaining the right to reject any and all. A tabulation of all bids received shall be available for public inspection following the opening of all bids. Said bids shall be retained and kept available for public inspection for a period not less than sixty (60) days from the date the bids were opened.
4. *Public Notice of Sale:* For the sale of personal property with an estimated value exceeding \$500.00, the City shall cause legal notice to be published in the official legal organ or newspaper of general circulation not less than fifteen (15) but no more than sixty (60) days preceding the day of the auction or the last day for the receipt of bids/proposals. The notice shall include a general description of the property to be sold.
  - a. The notice for sale by auction shall also contain the conditions of the proposed sale and shall state the date, time, and place of the proposed sale.
  - b. The notice for sale by sealed bids shall also contain an invitation for proposals and shall state the conditions of the proposed sale, the address at which bid blanks and

other written materials connected with the proposed sale may be obtained, and the date, time, and place for the opening of bids.

C. Sale to Employees

To avoid any appearance of impropriety in the disposition program, it is the City's policy to prohibit the direct sale of surplus property to any City Employee, Official or Agent. This policy does not prohibit any City Employee, Official or Agent from extending an offer at a public auction or in the form of a sealed bid.

D. Allocation of Proceeds

Proceeds from the sale of excess or surplus property will go into the City's Fund that held the asset.

## APPENDICES

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### APPENDIX A:

### PROJECTS USING FAHP FUNDING

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In accordance with the requirements of the Brooks Act, (40 U.S.C. § 1101 *et seq.*), the following competitive negotiation procedures shall apply to City procurements for architectural, engineering, and related design services when Federal Aid Highway Program (FAHP) funds are involved in the project:

#### A. Solicitation.

The solicitation process shall be by public announcement, public advertisement, or any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. Procurement procedures may involve a single step process with issuance of a request for proposal (RFP) to all interested consultants or a multiphase process with issuance of a request for statements or letters of interest or qualifications (RFQ) whereby responding consultants are ranked based on qualifications and request for proposals are then provided to three or more of the most highly qualified consultants. Minimum qualifications of consultants to perform services under general work categories or areas of expertise may also be assessed through a prequalification process whereby statements of qualifications are submitted on an annual basis. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under an RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

#### B. Request for Proposal (RFP).

The RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP shall:

1. Provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered. The scope of work should detail the purpose and description of the project, services to be performed, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies;
2. Identify the requirements for any discussions that may be conducted with three (3) or more of the most highly qualified consultants following submission and evaluation of proposals;
3. Identify evaluation factors including their relative weight of importance in accordance with Sections C and D;
4. Specify the contract type and method(s) of payment to be utilized;

5. Identify any special provisions or contract requirements associated with the solicited services;
6. Require that submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals as these shall not be considered in the evaluation, ranking, and selection phase; and
7. Provide a schedule of key dates for the procurement process and establish a submittal deadline for responses to the RFP which provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal, which except in unusual circumstances shall be not less than 14 days from the date of issuance of the RFP.

C. Evaluation Factors.

Criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.

Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

In-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement which attests to the minimum qualifications and competence of a consultant to perform the solicited services.

The following non-qualifications based evaluation criteria are permitted under the specified conditions and provided the combined total of these criteria do not exceed a nominal value of ten percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection:

1. A local presence may be used as a nominal evaluation factor where appropriate. This criterion shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

2. The participation of qualified and certified Disadvantaged Business Enterprise (DBE) sub-consultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR Part 26.

**D. Evaluation, Ranking, and Selection.**

1. Consultant proposals shall be evaluated by the City based on the criteria established and published within the public solicitation.
2. While the contract will be with the prime consultant, proposal evaluations shall consider the qualifications of the prime consultant and any sub-consultants identified within the proposal with respect to the scope of work and established criteria.
3. Following submission and evaluation of proposals, the City shall conduct interviews or other types of discussions to determine three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFP. Discussions may be written, by telephone, video conference, or by oral presentation/interview. Discussions following proposal submission are not required provided proposals contain sufficient information for evaluation of technical approach and qualifications to perform the specific project, task, or service with respect to established criteria.
4. From the proposal evaluation and any subsequent discussions which have been conducted, the City shall rank, in order of preference, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria.
5. Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.
6. The City shall retain acceptable documentation of the solicitation, proposal, evaluation, and selection of the consultant in accordance with the provisions of 49 CFR 18.42.

**E. Negotiation.**

1. Independent estimate. Prior to receipt or review of the most highly qualified consultant's cost proposal, the City shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation and ensuring the consultant services are obtained at a fair and reasonable cost.
2. If concealed cost proposals were submitted in conjunction with technical/qualifications proposals, only the cost proposal of the consultant with which negotiations are initiated may be considered. Concealed cost proposals of consultants with which negotiations are not initiated should be returned to the

respective consultant due to the confidential nature of this data (as specified in 23 U.S.C. 112(b)(2)(E)).

3. The City shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 49 CFR 18.42.

F. Small Purchases.

The small purchase method involves procurement of engineering and design related services where an adequate number of qualified sources are reviewed and the total contract costs do not exceed an established simplified acquisition threshold. The City may use the State's small purchase procedures which reflect applicable State laws and regulations for the procurement of engineering and design related services provided the total contract costs do not exceed the Federal simplified acquisition threshold (as specified in 48 CFR 2.101). When a lower threshold for use of small purchase procedures is established in State law, regulation, or policy, the lower threshold shall apply to the use of FAHP funds as allowed by Federal law. The following additional requirements shall apply to the small purchase procurement method:

1. The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures.
2. A minimum of three consultants are required to satisfy the adequate number of qualified sources reviewed.
3. Contract costs may be negotiated in accordance with State small purchase procedures; however, the allow ability of costs shall be determined in accordance with the Federal cost principles.
4. The full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold would be ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

G. Noncompetitive.

The noncompetitive method involves procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procurement methods. The following requirements shall apply to the noncompetitive procurement method:

1. The City may use their own noncompetitive procedures which reflect applicable State and local laws and regulations and conform to applicable Federal requirements.
2. The City shall establish a process to determine when noncompetitive procedures will be used and shall submit justification to, and receive approval from, the FHWA before using this form of contracting.

3. Circumstances under which a contract may be awarded by noncompetitive procedures are limited to the following:
  - i. The service is available only from a single source;
  - ii. There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
  - iii. After solicitation of a number of sources, competition is determined to be inadequate.
4. Contract costs may be negotiated in accordance with the City noncompetitive procedures; however, the allow ability of costs shall be determined in accordance with the Federal cost principles.

#### H. Additional Procurement Requirements.

##### 1. Common Grant Rule.

- i. The City must comply with procurement requirements established in State and local laws, regulations, policies, and procedures which are not addressed by or in conflict with applicable Federal laws and regulations (as specified in 49 CFR 18.36).
- ii. When State and local procurement laws, regulations, policies, or procedures are in conflict with applicable Federal laws and regulations, the City must comply with Federal requirements to be eligible for Federal-aid reimbursement of the associated costs of the services incurred following FHWA authorization (as specified in 49 CFR 18.4).

##### 2. Disadvantaged Business Enterprise (DBE) program.

- i. The City shall give consideration to DBE consultants in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR part 26. When DBE program participation goals cannot be met through race-neutral measures, additional DBE participation on engineering and design related services contracts may be achieved in accordance with the City's FHWA approved DBE program through either:
  - a. Use of an evaluation criterion in the qualifications-based selection of consultants; or
  - b. Establishment of a contract participation goal.
- ii. The use of quotas or exclusive set-asides for DBE consultants is prohibited (as specified in 49 CFR 26.43).

3. Suspension and Debarment. The City must verify suspension and debarment actions and eligibility status of consultants and sub-consultants prior to entering into an agreement or contract in accordance with 49 CFR 18.35 and 2 CFR part 180.

**A. Authority**

The Georgia General Assembly established guidelines and penalties into the Official Code of Georgia Annotated (“O.C.G.A.”) which provides that no municipal corporation shall issue government purchasing cards or government credit cards to elected officials on or after January 1, 2016, until the governing authority of the municipal corporation, by public vote, has authorized the issuance and has promulgated specific policies regarding the use of such government purchasing cards or government credit cards for elected officials of such municipal corporation.

**B. Purpose**

The purpose of this policy is to set requirements and standards for the City of Stonecrest, Georgia Purchasing Card Program. The policy is not intended to replace current State of Georgia statutes but is intended to comply with such state laws and establish more efficient guidelines for elected officials using such purchasing cards. At no time should a city issued purchasing card or credit card be used for personal purchases regardless of the circumstances. Utilizing the purchasing card or credit card for personal use or for any item or service not directly related to such official’s public duty may result in disciplinary action including, but not limited to, felony criminal prosecution. All purchases utilizing a government purchasing card or government credit card must be in accordance with these guidelines and with state law.

**C. Scope**

This purchasing card policy, as required by state law under O.C.G.A. § 36-80-24(c), applies to the use of government purchasing cards or government credit cards used by elected officials authorized to be issued such government purchasing cards or government credit cards. The below list of officials have been authorized by the governing authority of the City to use such government purchasing cards or government credit cards and must abide by all of the applicable state laws and this purchasing card policy. Mandatory training must be completed before purchasing card is issued.

1. Mayor
2. City Councilmembers
3. City Manager
4. City Chief Financial Officer
5. Purchasing Agent

**D. Public Inspection**

In accordance with O.C.G.A. § 36-80-24(c) any documents related to purchases using government purchasing cards or government credit cards incurred by elected officials shall be available for public inspection.

**E. Transaction Limits**

Transaction limits are hereby established to insure compliance with state purchasing laws, maintain proper budgetary controls, and to minimize excessive use of any individual credit line. Individual monthly card limits cannot exceed those established by the municipal governing authority. The established single transaction limit for each card must be less than \$1,000.00. The established monthly card limit is based upon the city's budgetary constraints and is not to exceed \$5,000.00 per month. Any exceptions to the standardized limits must have express written approval by the municipal governing authority and must be added to this policy by amendment or addendum.

#### **F. Purchasing Restrictions**

1. Elected Officials may not use a government purchasing card or government credit card for the following:
  - a. Any purchases of items for personal use.
  - b. Cash refunds or advances.
  - c. Any transaction amount greater than the transaction limits set for by this policy.
  - d. Items specifically restricted by this policy, unless a special exemption is granted by the municipal governing authority.
  - e. Alcohol or liquor of any kind. Such purchases should not be made with the purchasing card and may not be reimbursed by the city.
  - f. Purchases or transactions made with the intent to circumvent the city purchasing policy, transactional limits, or state law.
  - g. Food, fuel, non-alcoholic beverages.
  - h. Entertainment of any kind.
2. Elected Officials may use government purchasing cards or government credit cards to purchase goods and/or services not prohibited by this policy or state law. Such purchases include, but are not limited to:
  - a. Purchases of items for official city use which fall within the transactional restrictions of this policy.
  - b. Purchase of lodging, education and training materials while on city business outside of the city or county limits.
  - c. Emergency purchases necessary to protect city property.

#### **G. Administrator**

The city designates the Purchasing Agent as the program administrator of government purchasing cards or government credit cards. Such administrator shall:

1. Serve as a liaison between the city's cardholders and the issuers of such cards.
2. Maintain the cardholder agreement for all cardholders.
3. Provide mandatory instruction, training, and assistance to cardholders
4. Maintain account information and secure all cardholder information.

5. Keep cardholders up-to-date on new or changing information.
6. Upon receipt of information indicating fraudulent use or lost/stolen cards immediately report it to appropriate parties, including the issuer.
7. Ensure all card accounts are being utilized properly as set forth by state law and this policy.
8. Define the city's policy and procedures for proper documentation and storage of receipts, logs, and approvals required under this policy.
9. Identify any changes to named persons authorized to use a government purchasing card or government credit card.
10. Any other duties assigned by the municipal governing authority.

#### **H. Accounting and Auditing**

The Administrator, in an effort to ensure compliance with city policy and state law, will conduct monthly and/or quarterly reviews and audits of all government purchasing card or government credit card transactions. The review is designed to ensure compliance, identify non-compliance issues and misuse, and through corrective measures assist the city with improving compliance. The monthly and/or quarterly review and audit should happen within 15 days of the start of a new month or quarter. After completing the monthly/quarterly audit, the Administrator shall notify cardholders of any violations or questions the Administrator has that occurred within that previous month/quarter. Depending on the severity of the violation, the Administrator may suspend or revoke the use of the government purchasing card or government credit card after notification to the cardholder and to the municipal governing authority, but only after consultation with the city attorney. Any unresolved violations should be reported to the municipal governing authority and the city attorney in writing within 5 business days.

#### **I. Violations**

The use of a government purchasing card or government credit card may be suspended or revoked when the Administrator, after consultation with the city attorney, determines that the cardholder has violated the approved policies or state law regarding the use of the government purchasing card or government credit card. The government purchasing card or government credit card shall be revoked whenever a cardholder is removed from office with the city and shall be suspended if such elected official has been suspended from office.

#### **J. Agreement**

Before being issued a government purchasing card or government credit card under this policy and state law, all authorized users of government purchasing cards or government credit cards shall sign and accept below indicating that such user will use such cards only in accordance with the policies of the city and with the requirements of state law.

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Name Printed

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Signature

Date:

**PURCHASE REQUISITION****Date issued** *(date requisition prepared)***Need Date** *(date delivery is needed)***Department** *(name of using department)***Requisitioner** *(signature of requesting person)***Department Head** *(signature of department head)*

Suggested vendors:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**Req. No.** *(department file number)***To be purchased from:***(This area to be filled in by Purchasing)***To be delivered to:** *Give specific**delivery instructions, including the name of the person designated to receive the item(s), department and street address.*

| ITEM<br>NUMBER | QUANTITY | UNIT | DESCRIPTION | ACCOUNT TO<br>BE CHARGED | UNIT<br>PRICE | AMOUNT |
|----------------|----------|------|-------------|--------------------------|---------------|--------|
|                |          |      |             |                          |               |        |
|                |          |      |             |                          |               |        |
|                |          |      |             |                          |               |        |
|                |          |      |             |                          |               |        |
|                |          |      |             |                          |               |        |
|                |          |      |             |                          |               |        |
|                |          |      |             |                          |               |        |

**Specifications:**

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**Competitive Prices:** *(To be filled in by Purchasing)*      **Approved:**

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\_\_\_\_\_  
Finance Officer\_\_\_\_\_  
Purchasing Agent



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

- |                                          |                                     |                                           |
|------------------------------------------|-------------------------------------|-------------------------------------------|
| <input type="checkbox"/> ORDINANCE       | <input type="checkbox"/> POLICY     | <input type="checkbox"/> STATUS REPORT    |
| <input type="checkbox"/> DISCUSSION ONLY | <input type="checkbox"/> RESOLUTION | <input checked="" type="checkbox"/> OTHER |

**Date Submitted:** February 5th, 2021    **Work Session:**    **Special Called Council Meeting:** X

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**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** Investigative inquiry and action related to the program administration of the CARES Act Relief Grant

**HISTORY:** 4 checks roughly totaling \$6 million of the Cares Act Relief grant was paid to Municipal Resource Partners. Municipal Resources Partners was created on 5/4/2020 with the registered agent listed as Thompson Kurrie of Coleman Talley, LLP. Currently, Coleman Talley, LLP serves as the assistant attorney/special city attorney for the city.

**FACTS AND ISSUES:** The majority of the city council was unaware that the decision was made to release \$6 million of Cares Act Relief funds solely to Municipal Resource Partners. Multiple requests were made to staff members by city council members via email, phone and during council meetings for reports from the Cares Act Relief fund activity which have yet to be received. Since recently becoming aware of the activities with MRP, additional requests for information have been asked of the staff members that worked alongside MRP to administer the grant funds. Those requests have also gone unanswered.

**OPTIONS:** Direct the city attorney to investigate the program administration of the Cares Act Relief Grant and report back to the city council his findings.

**RECOMMENDED ACTION:** Approve

## COVID FUND CHECK REGISTER

| DATE       | VENDOR                                             | CHECK/EFT # | AMOUNT         |                       |
|------------|----------------------------------------------------|-------------|----------------|-----------------------|
| 11/5/2020  | New Birth Missionary Baptist Church                | 9010        | \$40,000.00    | Food giveaway         |
| 11/6/2020  | Municipal Resource Partners                        | 9011        | \$2,000,000.00 | COVID Program         |
| 11/30/2020 | New Birth Missionary Baptist Church                | 9012        | \$40,000.00    | Food giveaway         |
| 12/1/2021  | Municipal Resource Partners                        | 9013        | \$2,000,000.00 | COVID Program         |
| 12/9/2020  | New Birth Missionary Baptist Church                | 9015        | \$40,000.00    | Food giveaway         |
| 12/11/2021 | Municipal Resource Partners                        | 9017        | \$1,800,000.00 | COVID Program         |
| 12/17/2020 | New Birth Missionary Baptist Church                | 9016        | \$40,000.00    | Food giveaway         |
| 12/17/2020 | Municipal Resource Partners                        | 9018        | \$200,000.00   | COVID Program         |
| 12/22/2020 | Occ Consulting Group                               | 1107        | \$20,980.00    | Standup temperature : |
|            |                                                    |             | \$6,180,980.00 |                       |
|            | Reimbursement to the General Fund for expenditures |             | \$46,118.00    |                       |
|            | Total                                              |             | \$6,227,098.00 |                       |

# STATE OF GEORGIA

## Secretary of State

Corporations Division

313 West Tower

2 Martin Luther King, Jr. Dr.

Atlanta, Georgia 30334-1530

### CERTIFICATE OF INCORPORATION

I, **Brad Raffensperger**, the Secretary of State and the Corporation Commissioner of the State of Georgia, hereby certify under the seal of my office that

**Municipal Resource Partners Corporation**  
a Domestic Nonprofit Corporation

has been duly incorporated under the laws of the State of Georgia on **05/04/2020** by the filing of articles of incorporation in the Office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated.

WITNESS my hand and official seal in the City of Atlanta  
and the State of Georgia on **05/06/2020**.



*Brad Raffensperger*

Brad Raffensperger  
Secretary of State

**ARTICLES OF INCORPORATION  
OF  
MUNICIPAL RESOURCE PARTNERS CORPORATION**

**ARTICLE I  
NAME**

The name of the corporation is Municipal Resource Partners Corporation (the "Corporation").

**ARTICLE II  
REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the initial registered office of the Corporation is 109 South Ashley Street, Valdosta, Lowndes County, Georgia 31601 and the name of its initial registered agent at that office is Thompson Kurrie, Jr.

**ARTICLE III  
INCORPORATOR**

The name and address of the incorporator is Thompson Kurrie, Jr., 109 South Ashley Street, Valdosta, Georgia 31601.

**ARTICLE IV  
MEMBERS**

The Corporation will not have members.

**ARTICLE V  
INITIAL PRINCIPAL OFFICE**

The address of the initial principal office of the Corporation is 109 South Ashley Street, Valdosta, Georgia 31601.

**ARTICLE VI  
AUTHORITY**

The Corporation is organized pursuant to the provisions of the Georgia Nonprofit Corporation Code, as amended, and shall have perpetual duration.

**ARTICLE VII  
CORPORATE PURPOSE**

The objective and purpose of the Corporation is to promote the social welfare of the citizens of municipalities by identifying, attracting, and locating new business, industry and housing into

the municipality to improve trade, industry, agribusiness, commerce, tourism, employment opportunities and affordable housing within the municipality and to otherwise promote the general welfare of the municipality.

## **ARTICLE VIII PERSONAL LIABILITY**

Personal liability of all directors of the Corporation to the Corporation for monetary damages for breach of duty of care or other duty as a director is hereby eliminated to the extent allowed by the §14-3-202(b)(4) of the Georgia Nonprofit Corporation Code or any successor statute.

## **ARTICLE IX NON-PROFIT/DEVOTION OF EARNINGS**

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay expenses and reasonable compensation for services rendered by directors, officers, employees and consultants. The net earnings of the Corporation are devoted to exclusively to charitable, educational or recreational purposes.

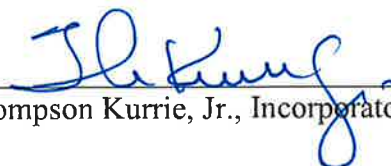
## **ARTICLE X DISTRIBUTION OF ASSETS ON DISSOLUTION**

On dissolution, assets of the Corporation remaining after the payment or discharge of all liabilities of the Corporation; the return, transfer, or conveyances of assets held on conditions requiring the same; and the transfer or conveyance of assets received and held subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes shall be distributed as follows: the residual assets of the Corporation will be turned over to one or more organizations which themselves are exempt as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding sections of any prior or future Internal Revenue Code, or to the federal, state, or local government for exclusive public purpose.

## **ARTICLE XI BOARD OF DIRECTORS**

The affairs of the Corporation shall be managed by a Board of Directors. The number and method of electing the Board of Directors shall be determined by the bylaws of the Corporation.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation this 4th day of May, 2020.

  
\_\_\_\_\_  
Thompson Kurrie, Jr., Incorporator



Secretary of State

OFFICE OF SECRETARY OF STATE  
CORPORATIONS DIVISION  
2 Martin Luther King Jr. Dr. SE  
Suite 313 West Tower  
Atlanta, Georgia 30334  
(404) 656-2817  
sos.ga.gov

\*Electronically Filed\*  
Secretary of State  
Filing Date: 5/4/2020 1:53:55 PM

TRANSMITTAL INFORMATION FORM  
GEORGIA PROFIT, NONPROFIT OR PROFESSIONAL CORPORATION

Primary Email Address: **tom.kurrie@colemantalley.com**

1. Entity Type (check one only) ☐ Profit Corporation ☒ Nonprofit Corporation ☐ Professional Corporation

Corporate Name Reservation Number (if one has been obtained; if articles are being filed without prior reservation, leave this line blank)

**Municipal Resource Partners Corporation**

Corporate Name (List exactly as it appears in articles.)

2. **Thompson Kurrie, Jr.**

Name of Person Filing Articles of Incorporation

**109 South Ashley Street**

Address

**Valdosta**

City

**GA**

State

**31601**

Zip Code

3. **109 South Ashley Street**

Principal Office Mailing Address of Profit/Non Profit Corporation (Unlike registered office address, this may be a post office box.)

**Valdosta**

City

**GA**

State

**31601**

Zip Code

4. **Thompson Kurrie, Jr.**

Name of Registered Agent in Georgia

**109 South Ashley Street**

Registered Office Street Address in Georgia (Post office box or mail drop not acceptable for registered office address.)

**Valdosta**

City

**Lowndes**

County

**GA**

State

**31601**

Zip Code

**tom.kurrie@colemantalley.com**

Registered Agent's Email Address

5. Name and Address of Each Incorporator

**Thompson Kurrie, Jr.**

Incorporator

**109 South Ashley Street**

Address

**Valdosta**

City

**GA**

State

**31601**

Zip Code

6. ANNUAL REGISTRATION AGREEMENT

- n Georgia corporations incorporated between January 1 – October 1 must file its annual registration with the Secretary of State within 90 days after the date its articles of incorporation are filed with the Secretary of State.
- n Georgia corporations incorporated between October 2 – December 31 must file its annual registration with the Secretary of State between January 1 and April 1 of the next year succeeding the calendar year of its incorporation.

7. Submitted with this filing is a filing fee of \$100.00 payable to "Secretary of State". Filing fees are non-refundable.

I certify that a Notice of Incorporation or Notice of Intent to Incorporate with a publication fee of \$40.00 has been or will be mailed or delivered to the official organ of the county where the initial registered office of the corporation is to be located. (The clerk of superior court can advise you of the official organ in a particular county.) I understand that this Transmittal Information Form is included as part of my filing, and the information on this form will be entered in the Secretary of State business entity database. I certify that the above information is true and correct to the best of my knowledge.

**Thompson Kurrie, Jr.**

Signature of Authorized Person



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

- |                                          |                                     |                                           |
|------------------------------------------|-------------------------------------|-------------------------------------------|
| <input type="checkbox"/> ORDINANCE       | <input type="checkbox"/> POLICY     | <input type="checkbox"/> STATUS REPORT    |
| <input type="checkbox"/> DISCUSSION ONLY | <input type="checkbox"/> RESOLUTION | <input checked="" type="checkbox"/> OTHER |

**Date Submitted: February 5th, 2021    Work Session:    Special Called Council Meeting: X**

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**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** Stonecrest Convention and Visitors Bureau

**HISTORY:** N/A

**FACTS AND ISSUES:** An independent entity has incorporated a non-profit organization named Stonecrest Convention and Visitors Bureau and is acting on behalf of the city without any official action of the city council to activate such CVB. Nor has the city council approved a contract with the independent entity to provide services on behalf of the city. As it is currently understood, hotel/motel taxes have been identified as funds available for use by this independent entity however no such authorization has been given by the city council. 40% of the city's hotel/motel taxes have been allocated for tourism as prescribed by law however no authorization has been given for these funds to be released or used by this independent entity.

The registered agent of this independent entity is an attorney representing Coleman Talley, LLP. The articles of incorporation were submitted to the GA Secretary of State including its bylaws. Members of this independent entity include Susanne Frick, Maria Hampton, Susan Lee, Althier Eady and Stacy Thibodeaux who are not representative of the tourism, restaurant, retail, hotel, entertainment, and hospitality industry of the city. Additionally, an employee representing the city has taken on the role of Director for this independent entity,

which at face value provides a conflict for the city should it need to take legal action against the independent entity.

#### **OPTIONS:**

**RECOMMENDED ACTION:** Based on the legal opinion from the city attorney:  
Deny activation of the Stonecrest Convention and Visitors Bureau. Ratify that the city council has not contracted with any entity to provide these services on behalf of our taxpayer and tourism/hotel industry stakeholders. Nullify any pending expenses incurred by the independent CVB and withhold payments for said expenses.

Because there isn't an existing contract for these services, all 40% (\$226, 218) of the hotel/motel tax revenue should be withheld until such time as action is taken by the city council to activate the SCVB, approve bylaws and members and/or contract these services out. Direct the city attorney to draft a formal request that all city funds released to the independent SCVB in 2020 and 2021 to be refunded and/or returned to the city as soon as possible.

**ARTICLES OF INCORPORATION  
OF  
STONECREST CONVENTION AND VISITORS BUREAU, INC.**

**ARTICLE I  
NAME**

The name of the corporation is **STONECREST CONVENTION AND VISITORS BUREAU, INC.** (the “Corporation”).

**ARTICLE II  
REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the initial registered office of the Corporation is 3475 Lenox Road NE, Suite 400, Atlanta, Georgia 30326 and the name of its initial registered agent at that office is Anamaria Hazard.

**ARTICLE III  
INCORPORATORS**

The principal mailing address of the Corporation is 3475 Lenox Road NE, Suite 400, Atlanta, Georgia 30326. The name of the incorporator is Anamaria Hazard.

**ARTICLE IV  
MEMBERS**

The Corporation will not have members.

**ARTICLE V  
AUTHORITY**

The Corporation is organized pursuant to the provisions of the Georgia Nonprofit Corporation Code, as amended, and shall have perpetual duration.

**ARTICLE VI  
CORPORATE PURPOSE**

The Corporation is a nonprofit corporation organized under the Georgia Nonprofit Corporation Code and is organized for the following purposes:

- a. To promote tourism, conventions and trade shows in the Stonecrest, Georgia area to improve the business conditions for such activities therein;

- b. To acquire, own, lease, manage and market real and personal property;
- c. To receive and disburse donations, contributions and funds realized from the imposition of the hotel/motel tax authorized by O.C.G.A. § 48-13-50 et. seq. or any subsequent amendments thereto;
- d. To make and assign contracts;
- e. To employ individuals or lease employees;
- f. To perform any other activity permitted to be carried on by Corporations exempt from Federal Income Tax under Section 501(c)(6) of the Internal Revenue Code of 1986 or any amendments thereto.

## **ARTICLE VIII PERSONAL LIABILITY**

Personal liability of all directors of the Corporation to the Corporation for monetary damages for breach of duty of care or other duty as a director is hereby eliminated to the extent allowed by the §14-3-202(b)(4) of the Georgia Nonprofit Corporation Code or any successor statute.

## **ARTICLE IX NON-PROFIT**

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay expenses and reasonable compensation for services rendered.

## **ARTICLE X DISTRIBUTION OF ASSETS ON DISSOLUTION**

On dissolution, assets of the Corporation remaining after the payment or discharge of all liabilities of the Corporation; the return, transfer, or conveyances of assets held on conditions requiring the same; and the transfer or conveyance of assets received and held subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes shall be distributed as follows: the residual assets of the Corporation will be turned over to one or more organizations which themselves are exempt as organizations described in Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, or corresponding sections of any prior or future Internal Revenue Code, or to the federal, state, or local government for exclusive public purpose.

## **ARTICLE XI BOARD OF DIRECTORS**

The affairs of the Corporation shall be managed by a Board of Directors. The number and method of electing the Board of Directors shall be determined by the bylaws of the Corporation.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation this 13<sup>th</sup> day of November 2020.



Anamaria Hazard

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Anamaria Hazard, Incorporator

Coleman Talley LLP  
3475 Lenox Road, NE  
Suite 400  
Atlanta, Georgia 30326

**BYLAWS OF  
STONECREST CONVENTION AND VISITORS BUREAU, INC.  
A NONPROFIT CORPORATION**

**ARTICLE ONE  
INTRODUCTION**

1.1 **Definition of Bylaws.** These Bylaws constitute the code of rules adopted by **STONECREST CONVENTION AND VISITORS BUREAU, INC.**, a Georgia non-profit corporation (“Corporation”), for the regulation and management of its affairs.

1.2 **Purposes and Powers.** This Corporation will have the purposes or powers as may be stated in its Articles of Incorporation, and such powers as are now or may be granted hereafter by law.

**ARTICLE TWO  
OFFICES AND AGENCY**

2.1 **Principal Office.** The principal office for the transaction of the business of the corporation shall be located at 3120 Stonecrest Boulevard, Suite 190, Stonecrest, Georgia 30038, or at such place as may be fixed from time to time by the Board of Directors.

2.2 **Location of Registered Office.** The location of the initial registered office of this Corporation is 3475 Lenox Road NE, Suite 400, Atlanta, GA, 30326, and the initial registered agent of the Corporation at such address shall be Anamaria Hazard. Such office will be continuously maintained in the State of Georgia for the duration of this Corporation. The Board of Directors may from time to time change the address of its registered office by duly adopted resolution and filing the appropriate statement with the State.

**ARTICLE THREE  
DIRECTORS**

3.1 **Definition of Board of Directors.** The Board of Directors is that group of persons vested with the management of the business and affairs of this Corporation subject to the law, the Articles of Incorporation, and these Bylaws.

3.2 **Number of Directors.** The number of Directors of this Corporation will not be less than three voting members at any time. Until further amendment of these Bylaws, the number of Directors presently will be five (5) voting members. Non-voting ex-officio members of

the board shall be determined by the Mayor of the City of Stonecrest and confirmed by the Board of Directors.

3.3 **Terms of Directors.** The President, Vice President, Secretary and Treasurer shall hold office for a term of three (3) years. All remaining Directors shall hold a term of office for a term of two (2). Each Director shall hold office until the annual meeting of the Board of Directors held on the year their term expires and until a qualified successor shall be elected by a majority of the Board of Directors, or until his or her earlier death, resignation, incapacity to serve, or removal.

3.4 **Vacancies on the Board.** If any vacancy shall occur among the Directors by reason of death, resignation, incapacity to service, increase in the number of Directors, or otherwise, the remaining Directors shall continue to act, and such vacancies may be filled by appointment by the Mayor of the City of Stonecrest, Georgia.

3.5 **Place of Directors' Meetings.** Meetings of the Board of Directors, regular or special, will be held at such place or places as the Board of Directors designates by resolution duly adopted.

3.6 **Regular Directors' Meetings.** The Directors shall meet at the same time in accordance with its notice procedures.

3.7 **Notice of Special Directors' Meetings.** Written or printed notice stating the place, day, and hour of any special meeting of the Board of Directors will be delivered to each Director not less than two (2) nor more than five (5) days before the date of the meeting, either personally, by electronic mail, or by first class mail, by or at the direction of the President, or the Secretary, or the Directors calling the meeting. If mailed, such notice will be deemed to be delivered when deposited in the United States mail by certified mail addressed to the Director at his address as it appears on the records of this Corporation, with postage prepaid. Such notice need not state the business to be transacted at, nor the purpose of, such meeting.

3.8 **Call of Special Board Meetings.** A special meeting of the Board of Directors may be called by either:

- (1) The Mayor of the City of Stonecrest, Georgia,
- (2) The President; or
- (3) The majority of the Board of Directors.

3.9 **Waiver of Notice.** Attendance of a Director at any meeting of the Board of Directors will constitute a waiver of notice of such meeting except where such Director attends a

meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

3.10 **Quorum of Directors.** A majority of the whole Board of Directors will constitute a quorum. The act of a majority of the Directors present at a meeting at which a quorum is present will be the act of the Board of Directors unless a greater number is required under the provisions of the Articles of Incorporation of this Corporation, or any provision of these Bylaws.

## **ARTICLE FOUR** **OFFICERS**

4.1. **Roster of Officers.** The Officers of this Corporation will consist of the following personnel:

- (1) A President/Chairman.
- (2) Vice President
- (3) A Secretary.
- (4) A Treasurer.

4.2 **Selection of Officers.** Each of the Officers of this Corporation will be elected and appointed annually by the Board of Directors. Each Officer will remain in office until a successor to such office has been selected and qualified. Such election will take place at the regular meeting of the Board of Directors taking place as required by Section 3.06.

4.3 **Multiple Officeholders.** In any election of Officers, the Board of Directors may elect and appoint a single person to any two or more offices simultaneously, except that the offices of President and Secretary must be held by separate individuals. Officers of this Corporation may serve ex-officio as Directors of this Corporation.

4.4 **President.** The President shall serve as the Chairman of the Board and shall be the Chief Executive Officer of this Corporation and will, subject to the control of the Board of Directors or Directoral Committees, supervise and control the affairs of the Corporation. The President will perform all duties incident to such office and such other duties as may be provided in these Bylaws or as may be prescribed from time to time by the Board of Directors.

4.4 **Vice President.** The Vice President shall perform such duties as are generally performed by vice presidents, and in the event of the absence or disability of the President, the Vice President shall perform the duties of, and exercise the authority of, the President. The Vice President shall also perform such other duties and exercise such other powers as the Board of Directors shall request or delegate.

4.5 **Secretary.** The Secretary will keep minutes of all meetings of the Board of Directors, will be the custodian of the corporate records, will give all notices as are required by law or by these Bylaws, and, generally, will perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be assigned from time to time by the Board of Directors.

4.6 **Treasurer.** The Treasurer will have charge and custody of all funds of this Corporation, will deposit the funds as required by the Board of Directors, will keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, will render reports and accountings to the Directors as required by the Board of Directors or by law, and will perform in general all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be assigned from time to time by the Board of Directors.

4.7 **Removal of Officers.** Any Officer elected or appointed to office may be removed by the persons authorized under these Bylaws to elect or appoint such Officers whenever in their judgment the best interests of this Corporation will be served. However, such removal will be without prejudice to any contract rights of the Officer so removed.

## **ARTICLE FIVE** **MEMBERS**

The Corporation shall have no members.

## **ARTICLE SIX** **INFORMAL ACTION**

6.1 **Waiver of Notice.** Whenever any notice is required to be given under the provisions of the law, the Articles of Incorporation of this Corporation, or these Bylaws, a waiver of such notice in writing signed by the person or persons entitled to notice, whether before or after the time stated in such waiver, will be deemed equivalent to the giving of such notice.

6.2 **Action by Consent.** Any action required by law or under the Articles of Incorporation of this Corporation or these Bylaws, or any action which otherwise may be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the persons entitled to vote with respect to the subject matter of such consent, or all Directors in office, and filed with the Secretary of the Corporation.

## **ARTICLE SEVEN** **COMMITTEES**

7.1 **Definition of Directorial Committees.** This Corporation may have certain Committees, each of which will consist of two (2) or more Directors. Such Directorial Committees will have and exercise some prescribed authority of the Board of Directors in the management of this Corporation. However, no such Committee will have the authority of the Board in reference to affecting any of the following:

- (1) Filling of vacancies in the Board.
- (2) Adoption, amendment, or repeal of Bylaws.
- (3) Amendment or repeal of any resolution of the Board.
- (4) Action on matters committed by Bylaws or resolution of the Board to another Committee of the Board.

7.2 **Appointment of Committees.** The Board of Directors, by resolution duly adopted by a majority of the Directors in office may designate and appoint one or more Directorial Committees and delegate to such Committees specific and prescribed authority of the Board of Directors to exercise in the management of this Corporation. However, the creation of such Directorial Committees will not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed on such personnel otherwise by law.

## **ARTICLE EIGHT** **OPERATIONS**

8.1 **Fiscal Year.** The fiscal year of this corporation will be the calendar year.

8.2 **Execution of Documents.** Except as otherwise provided by law, checks, drafts, promissory notes, orders for the payment of money, and other evidences of indebtedness of this Corporation will be signed by the President, Secretary or Treasurer of the Corporation. Contracts, leases, or other instruments executed in the name of and on behalf of the Corporation will be signed by the Secretary and countersigned by the President and will have attached copies of the resolutions of the Board of Directors certified by the Secretary authorizing their execution.

8.3 **Books and Records.** This Corporation will keep correct and complete books and records of account and will also keep minutes of the proceedings of its Board of Directors and Directorial Committees. The Corporation will keep at its principal place of business the original or a copy of its Bylaws including amendments to date certified by the Secretary of the Corporation.

8.4 **Nonprofit Operations-Compensation.** The Corporation will not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code, as amended. This Corporation will not have or issue shares of stock. No dividends will be paid, and no part of the

income of this Corporation will be distributed to its Directors or Officers. However, the Corporation may pay compensation in a reasonable amount to Officers or Directors for services rendered.

8.5      **Loans to Management.** This Corporation will make no loans to any of its Directors or Officers or to any of its key management or other personnel.

8.6      **Disposition of Assets.**

(1)      No Incorporator of this Corporation may have any vested right, interest, or privilege of, in, or to the assets, functions, affairs, or franchises of the Corporation, or any right, interest, or privilege which may be transferable or inheritable.

(2)      Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of §501(c)(6) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

**ARTICLE NINE**  
**AMENDMENTS**

9.1      **Amendment of Articles of Incorporation.** The power to alter, amend, or repeal the Articles of Incorporation of this Corporation is vested in the Board of Directors.

9.2      **Modification of Bylaws.** The power to alter, amend, or repeal these Bylaws, or adopt new Bylaws, insofar as is allowed by law, is vested in the Board of Directors.

**CONSENT OF THE INCORPORATOR OF  
STONECREST CONVENTION AND VISITORS BUREAU, INC.  
TO ELECT INITIAL DIRECTORS**

In accordance with Section 14-3-205 of the Georgia Nonprofit Corporation Code (the "Georgia Act"), the undersigned being the Incorporator of **STONECREST CONVENTION AND VISITORS BUREAU, INC.**, a Georgia nonprofit corporation (the "Corporation"), consent to the following action in accordance with Section 14-3-205(2)(B) of the Georgia Act and directs that a copy of this consent be placed in the minutes of the proceedings of the Board of Directors of the Corporation:

RESOLVED THAT, the following are elected as the Directors of the Corporation to serve until their term is expired or until his or her successor has been elected and qualified, to wit:

Susanne Frick  
Stacy Thibodeaux  
Althier Eady  
Susan Lee  
Maria Hampton  
Jimmy Clanton

SO CONSENTED, this the 8th day of December, 2020.

  
Anamaria Hazard



**Stonecrest Convention & Visitors Bureau  
Inaugural Committee Meeting**

**December 8, 2020, 11:00 AM**

**Meeting began at 11:10 am via ZOOM.**

**Minutes**

**In Attendance:**

**Mayor Jason Lary**  
**Clarence Boone, Sr. Economic Development Director**  
**Iris Settle, Chief of Staff & Chief Liaison Officer, Office of Mayor**  
**William Settle, Director of Business Development**  
**Anamaria Hazard, Attorney**  
**Tom Kurrie, Attorney**  
**Jimmy Clanton, Councilman – District 1**  
**Tee Fox, Marketing PR for the City**  
**Susanne Frick, President**  
**Stacy Thibodeaux**  
**Althier Eady**  
**Susan Lee**  
**Maria Hampton, absence**

**Mr. Boone, welcomed all and thanked them for being a part of this event.**

**This committee will not receive funding from the city. The only money they will get will come from Tourism.**

**The number of Directors (per the by-laws) will be five at this time: The following were voted in by the committee members.**

- 1. Susanne Frick, President**
- 2. Maria Hampton, Vice President**
- 3. Susan Lee, Treasurer**
- 4. Althier Eady, Secretary**
- 5. Stacy Thibodeaux, Member**

**Anamaria Hazard, presented an overview of the, BYLAWS OF STONECREST CONVENTION AND VISITORS BUREAU, INC. CONSENT OF THE INCORPORATOR OF STONECREST CONVENTION AND VISITORS BUREAU, INC and ARTICLES OF INCORTATION OF STONECREST CONVENTION AND VISITORS BUREAU,INC. CONFLICT OF INTEREST DOCUMENT**

**A copy of these Documents will be sent to the attendees.**

**Mr. Boone presented Tee Fox, she is responsible for special eventsand PR in the city. She will be used to handle marketing for our Convention and Visitors Bureau. She comes with lots of experience in Public Relations and Marketing.**

**Ms. Fox background started in TV and radio broadcasting. States she is excited about being part of the SCVD.**

**Neal Hibbert President of Son Son Enterpriseswas not able to be here today but Mr. Boone stated his services can be utilized. He has a strong background in hotel sales and convention bureaus. He will be working with us from the standpoint of sales.**

Mr. Boone: One of the industries that have suffered the most during this pandemic has been the tourist and hospitalities industry. Hotels around the Mall and Panola Road are not doing very well. As Stonecrest is looking to support small businesses, Mr. Boone is allocating from the COVID funds, awards of \$50,000 to be given to each hotel around the Mall and \$25,000 to the hotels on Panola Road. The larger hotels with meeting space among other things will receive the \$50,000. All combined \$300,000 will be given to the hotels. The Red Roof Inn is not operational due to a recent fire. Mr. Boone is looking to have a meeting with the Hotels General Managers this Friday and to be able to make those awards available as quickly as possible.

Restaurants in the city will be a priority for support.

Monies from COVID funds will also be use to help and maintain staff, etc to keep their businesses operational.

All the SCVD Directors expressed that it is a good idea to give this financial support to these hotels to keep them operational so we do not lose them.

Mr. Boone will give his strategies for helping to grow and expand the tourism bureau. He will provide this information in the next few meetings.

Our key asset is Arabian Mountain.

One other thing at our exposure is that we have I -20 running right in the middle of our city. He will be looking at other means of attracting those that use this route. Tee Fox can take a look at how we can influence the traffic both eastbound and westbound. 125, 000 people travel daily via this route.

Mr. Boone has initialed a report through a company that has conducted an analysis of Stonecrest against US cities. We can look at that information to gauge how we stand against other areas. Mr. Boone asked that they do preliminary work on a document for the city of Stonecrest. Their report was prepared before the COVID-19 pandemic and the company will update the document. Other organizations have paid \$50,000 for similar a report. But due to the relationship that Mr. Boone has with them a substantial report will be discounted for Stonecrest for \$25,000. This report is based on a competitive analysis of Stonecrest against 15 cities around the Country with similar demographics. Additionally, the report will include a marketing plan for Stonecrest analyzing neighboring cities and municipalities.

Mr. Boone is prepared to have the company produce it for us based on the board's approval. It is a State of the Arts report. It states where we are, and a kind of road map for Stonecrest.

Mrs. Frick, President: from a marketing standpoint it sounds like something we can use. She called for a motion to vote and to spend \$25,000 to approve the purchase of the Marketing Report. (This Report would compare our city versus 15 other cities around us). Motion made by Susan Lee and seconded by Suzanne Frick.

The vote was a unanimous for approval.

Mr. Boone: At the next meeting we will look at a logo for the SCVB.

Mrs. Fritz: I will need contact information to send out information.

Mr. Boone is presently working on a Rooster for the committee.

It was agreed that the Committee will meet every 2<sup>nd</sup> Tuesday of the month at 11:00 AM.

All meetings will be recorded after this one, will be made public and notices sent out.

Notice will be published on "On Common Grounds". They will need 24 hour advance.

Mrs. Frick 's suggestions for advertising who and where we are: Need billboards, City of Stonecrest on all overpasses, interstate signs, as enter and leave etc.

Mr. Boone, we are looking at those opportunities. With Tourism dollars we can work on City limits signs.

Mrs. Frick: We need to work on a SCVB Website.

Per the city, an Agenda for SCVB meetings must be posted. It can be posted on the board at city hall and on the city hall web-site.

Mrs. Frick: Each Director can become an area specialist in a certain areas of Tourism. They can dig deep, to gather as much information as possible, for example, in areas of Music, Arts, Hotels, Dining, Sports, (biking, hiking), etc.

This information can be placed on the SCVB Website.

Faith community that exists in Stonecrest. Several churches, three Monasteries (would like to have a Faith Tour, Dining Tour, Educational component. Music, Art, Museums.

Mr. Boone: would like to speak with Mr. Walker. He is a Well Known Artist in Stonecrest.

(Some of this information has been gathered already and some have been placed on social media.

LIVE, WORK, PLAY, EDUCATE, WORSHIP, SHOP and EDUCATE, all six components will be in play.

Aware is The Atlanta Wildlife and Rescue Effort, (near Klondike Road) they might consider a RV and Campground,

Members of the committee can go around and visit all the attractions in Stonecrest.

Mayor Lary: Thanks to the SCVB Committee as well as Mr. Boone for his commitment. This Committee is very important in promoting our City.

Meeting adjourned @ 1:06 PM

Next meeting date January 12, 2021 @ 11:00 via Zoom

Submitted by:

Althier Eady, Secretary



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

- |                                          |                                     |                                           |
|------------------------------------------|-------------------------------------|-------------------------------------------|
| <input type="checkbox"/> ORDINANCE       | <input type="checkbox"/> POLICY     | <input type="checkbox"/> STATUS REPORT    |
| <input type="checkbox"/> DISCUSSION ONLY | <input type="checkbox"/> RESOLUTION | <input checked="" type="checkbox"/> OTHER |

**Date Submitted:** February 5th, 2021   **Work Session:**   **Special Called Council Meeting:** X

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**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** Stonecrest Development Authority

**HISTORY:** According to the resolution passed in March 2018, 4 members were to serve a 2-year term and 3 members were serve a 4-year term (see attached resolution). The initial members serving the 2-year term should have expired as of March 2020. New appointments must be residents of the city and requires a Mayor appointment and City Council approval according to the city charter section 2.14 (a). Additionally, two ex-officio members can be appointed by the mayor, including the mayor, without a vote on the authority for an expiring term of December 31<sup>st</sup> (see charter section 2.14 b). Lastly, no member shall assume office until he/she has an executed and filed oath, such oath shall be prescribed by ordinance of the city council and administered by the mayor or a judicial officer authorized to administer oaths (see charter section 2.14 d).

No minutes were found that reflect any changes to the initial members of the Development Authority. The item was added to the July 22, 2019 council meeting agenda but removed during the meeting. The item then appears again on the February 24<sup>th</sup>, 2020 meeting but appears to have been removed from this agenda as well as it has a strikethrough on the item in the minutes.

**FACTS AND ISSUES:** During the January 14<sup>th</sup>, 2021 Stonecrest Development Authority (SDA) meeting, new members were appointed and/or replaced without the required City

Council approval in the city charter section 2.14(a). Jeff Dickerson, Nathan Alexander and Michele Emanuel were added to the SDA without city council approval. These 3 improperly appointed members seem to have replaced 3 of the 4 members whose 2-year term expired in March 2020 (Samuel Stuckey, Jim Kelly and Antonio Render). Thus, still leaving the 4<sup>th</sup> expiring term member, Dr. Cynthia Elliot, still on the SDA.

Additionally, any action taken by the 3 improperly appointed members remains inconsistent with the charter. Lastly, the ex-officio members whose term expired on December 31<sup>st</sup> but continues to serve in the role without reappointment is not in compliance with the charter. These ex-officio members voting during SDA meetings is also inconsistent with the charter provision.

#### **OPTIONS:**

**RECOMMENDED ACTION:** Withhold all funding and city resources from the Stonecrest Development Authority including but not limited to payment of attorney fees, administrative services, technology services and physical and virtual locations for public meetings until the proper review of the recent activities have been completed by the city attorney. This includes but is not limited to:

1. Appointment, approval and swearing in of new appointees
2. Any binding agreements and/or financial obligations required of the city such as revenue bonds, IGAs, MOUs, contracts, etc.
3. Review the validity of any official actions taken by any of the expired SDA members and ex-officio non voting members.

Additionally, the following actions are needed before the funded is restored:

1. An executed IGA between the city and the SDA is approved
2. Establish an official reporting requirement for the SDA to keep the city council informed of its action.

**A RESOLUTION OF THE CITY OF STONECREST, GEORGIA,  
ACTIVATING THE STONECREST DEVELOPMENT AUTHORITY AND  
APPOINTING THE INITIAL BOARD OF DIRECTORS OF THE STONECREST  
DEVELOPMENT AUTHORITY**

**WHEREAS,** the City of Stonecrest was created by Senate Bill 208, passed in the Georgia General Assembly during the 2016 Session and subsequently confirmed by referendum; and

**WHEREAS,** Senate Bill 208 provided a charter for the City of Stonecrest (the “City Charter”); and

**WHEREAS,** in accordance with Ordinance 2017-11-01 of the City of Stonecrest, the mayor and City Council desire to activate the Stonecrest Development Authority; and

**WHEREAS,** Section 2.14(a) of the City Charter provides that all members of boards, commissions and authorities of the city shall be...appointed by the mayor subject to confirmation by the city council; and

**WHEREAS,** Section 2.14(b) of the City Charter provides that up to two (2) members of the city council, including the mayor, may be appointed by the mayor to serve as ex officio members of such boards, commissions, or authorities, without a vote, for a term expiring December 31 following the date of appointment; and

**WHEREAS,** the Mayor desires to appoint and the City Council desires to confirm the following initial members of the Stonecrest Development Authority Board of Directors subject to the terms of office as provided in Ordinance 2017-11-01 incorporated herein and the City Charter.

**NOW THEREFORE BE IT RESOLVED** by the Mayor and Council of the City of Stonecrest, Georgia, as follows:

**Section I:** That the Stonecrest Development Authority is hereby activated.

**Section II:** That the initial seven (7) members of the Stonecrest Development Authority Board of Directors shall be as follows:

1. Leighton Hull
2. Antonio Render
3. Bill Allen
4. Belinda Hull
5. Dr. Cynthia Elliot
6. Jim Kelly
7. Samuel Stuckey
8. Sabrina Wright - Ex officio
9. Jason Lary - Ex officio
10. Joe Coleman – Ex officio
11. Julius Lee – Ex officio

**Section III:** That the following initial members of the Stonecrest Development Authority Board of Directors shall serve an initial term of two (2) years:

1. Antonio Render
2. Dr. Cynthia Elliot
3. Jim Kelly
4. Samuel Stuckey

**Section IV:** That the following initial members of the Stonecrest Development Authority Board of Directors shall serve an initial term of four (4) years:

1. Leighton Hull
2. Bill Allen
3. Belinda Hull

This Resolution shall be effective immediately upon its adoption.

**SO RESOLVED** this the 19th day of March, 2018.

Approved:

\_\_\_\_\_  
Jason Lary, Sr., Mayor

Attest:

\_\_\_\_\_  
Brenda James, City Clerk

## SECTION 2.14.

### Boards, commissions, and authorities.

(a) All members of boards, commissions, and authorities of the city shall be residents of the city and appointed by the mayor subject to confirmation by the city council for such terms of office and such manner of appointment as provided by ordinance, except where other appointing authority, term of office, or manner of appointment is prescribed by this charter or by applicable state law.

(b) No member of any board, commission, or authority of the city shall hold any elective office in the city or DeKalb County. However, up to two members of the city council, including the mayor, may be appointed by the Mayor to serve as ex officio members of such boards, commissions, or authorities, without a vote for a term expiring December 31 following the date of appointment.

(c) Any vacancy in office of any member of a board, commission, or authority of the city shall be filled for the unexpired term in the manner prescribed for original appointment, except as otherwise provided by this charter or any applicable law of the State of Georgia.

(d) No member of any board, commission, or authority shall assume office until he or she shall have executed and filed with the designated officer of the city an oath obligating himself or herself to faithfully and impartially perform the duties of his or her office, such oath to be prescribed by ordinance of the city council and administered by the mayor or a judicial officer authorized to administer oaths.

(e) Any member of a board, commission, or authority may be removed from office for cause by a vote of a majority of the councilmembers in accordance with state laws.



## CITY OF STONECREST, GEORGIA

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*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1*

*Council Member Rob Turner- District 2*

*Council Member Jazzmin Cobble – District 3*

*Council Member George Turner- District 4*

*Council Member Diane Adoma – District 5*

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### CITY COUNCIL MEETING MINUTES

July 22, 2019

7:00 p.m.

3120 Stonecrest Blvd. Suite 190

Stonecrest, Georgia

- I. CALL TO ORDER:** Mayor Jason Lary
- II. ROLL CALL:** All members were present.
- III. INVOCATION:** Invocation was led by Council Member Rob Turner and a moment of silence was observed in memory of Todd Muhammed of the Film Committee who recently passed away unexpectedly.
- IV. PLEDGE OF ALLEGIANCE**
- V. AWARDS AND HONORS**
- VI. APPROVAL OF THE COUNCIL AGENDA:**

**Motion 1-** was made by Council Member Diane Adoma to approve the agenda with the changes as follows:

- 1. Remove Item 1. Development Authority under X. Appointments
- 2. Remove Item 5.

A second was provided by Council Member Robert Turner.

**Motion passed unanimously.**

- VII. MINUTES:**

**Motion 2-** was made by Council Member Rob Turner to approve the Council Meeting Minutes from July 8, 2019.

**Motion passed unanimously.**

**VIII. PRESENTATIONS:**

None.

**IX. PUBLIC COMMENTS:**

- Faye Coffield- Has concerns with Code Enforcement.
- Renee Cail- Questions about the Cell Tower Moratorium and would still like the Cell Tower removed
- Dave Marcus- Complemented the Code Enforcement department and the success of cleaning up Covington Highway. Concerned about the newspaper article concerning land acquisition and would like to challenge the Mayor and Council to work on being in the newspaper for something positive.

**X. APPOINTMENTS:**

None

**XI. PUBLIC HEARINGS:**

**1. RZ-19-005 Land Use Petition (2193 Panola Rd) (R100 to C-1)**

**Motion 3-** was made by Council Member Diane Adoma to open the Public Hearing and seconded by Council Member Rob Turner.

**Motion passed unanimously.**

Mr. Tip Horne spoke in favor of the rezoning application.

There was no opposition from the public.

**Motion 4-** was made by Council Member George Turner to close the Public Hearing and was seconded by Council Member Diane Adoma.

**Motion passed unanimously.**

**XII. NEW BUSINESS:**

**1. City of Stonecrest 2038 Comprehensive Plan Resolution**

**Motion 5-** was made by Council Member Rob Turner to approve RZ-19-005 Land Use Petition (2193 Panola Rd) (R100 to C-1) and was seconded by Council Member Diane Adoma.

**Motion passed unanimously.**

**2. Recommendation for Youth Services Vendor for the Upcoming School Year's Afterschool Program**

There was much discussion as to if this should be a contract or a Memorandum of Understanding.

**Motion 6-** was made by Council Member Diane Adoma to vote for the Professional Service Contract to be replaced with a Memorandum of Understanding describing and defining the terms of all parties for the YMCA and seconded by Council Member Jimmy Clanton.

**Motion passed unanimously.**

**3. SPLOST Paving Phase II**

**Motion 7-** was made by Mayor Jason Lary to approve the contract for Blount Construction in the amount of \$2,227,851.27 and was seconded by Council Member Jimmy Clanton.

**Motion passed unanimously.**

Council Member Diane Adoma requested a report for the SPLOST accounts and Deputy City Manager acknowledged her request and will send an updated report.

**4. Parks IGA**

**Motion 8-** was made by Mayor Lary to approve the Parks IGA as presented and seconded by Council member Jimmy Clanton.

**Motion passed unanimously.**

The purchase will approximately cost \$34,950.

**XIII. OLD BUSINESS:**

**1. SLUP- 19-001 Personal Care Home- (3317 Panola Rd.)**

**Motion 9-** was made by Council member Jazzmin Cobble to approve SLUP- 19-001 Personal Care Home- (3317 Panola Rd.) and Council Member Rob Turner provided the second.

**Motion passed 5-1 with Council Member Diane Adoma opposing.**

**2. Hotel Motel Tax Ordinance- 2<sup>nd</sup> Reading**

Read aloud by City Attorney Denmark.

**Motion 10-** was made by Mayor Lary to approve the Hotel/Motel Ordinance to increase the tax from 5% to 8% and was seconded by Council member Adoma.

**Motion approved unanimously.**

**XIV. EXECUTIVE SESSION:**

**WHEN AND EXECUTIVE SESSION IS REQUIRED, ONE WILL BE CALLED FOR THE FOLLOWING ISSUES: 1) PERSONNEL, 2) LITIGATION, 3) REAL ESTATE**

**None.**

**XV. CITY MANAGER COMMENTS:**

Thanked the Mayor and Council on the approval of the Parks IGA.

**XVI. CITY ATTORNEY COMMENTS:**

No comments

**XVII. MAYOR AND COUNCIL COMMENTS:**

**Council Member Diane Adoma-** 100 women \$100 Million Project is hosting a workshop on August 9, 2019 and working with Women Entrepreneurs at Salem Panola Library from 10am-2pm

**Council Member George Turner** Honored the late Brandall Adams, President of the Harbor Mills Homeowner's Association. His funeral is July 23 at Green Forest.

Salem Middle School Band was invited to the Macy's Day Parade and they are raising money. The Salem Middle School Baseball team was invited to the Cooperstown Hall of Fame Tournament and it is a great honor to be invited. Council member Rob Turner and Council member George Turner both went to the sending off ceremony and would like to invite them to the next Council meeting to recognize them.

**Council Member Jimmy Clanton-** Recognized Al Franklin and his team for organizing a Church Summit and having a great turnout. Will have the District 1- Community

Leaders Meeting meeting on the 1<sup>st</sup> Saturday in August at the AEI Start Up Factory from 10:00am -12:30pm.

**Mayor Jason Lary-** On July 30 the American Red Cross will be accepting Blood Donations at City Hall.

Thanked the Senior Staff of City Hall for all their hard work.

**XVIII. ADJOURNMENT:**

**Motion 16-** was made by Diane Adoma to adjourn the Council meeting at 9:33pm and a second was provided by Council Member Rob Turner.

**Motion passed unanimously.**

**Read and adopted in the regular meeting of the City Council held on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.**

\_\_\_\_\_  
**Mayor Jason Lary**

**ATTEST:**

\_\_\_\_\_  
**Megan P. Reid, City Clerk**



## CITY OF STONECREST, GEORGIA

---

*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1*

*Council Member Rob Turner- District 2*

*Council Member Jazzmin Cobble – District 3*

*Council Member George Turner- District 4*

*Tammy Grimes – District 5*

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### CITY COUNCIL MEETING MINUTES

February 24, 2020

7:00 p.m.

3120 Stonecrest Blvd. Suite 190

Stonecrest, Georgia

- I. **CALL TO ORDER:** Mayor Jason Lary
- II. **ROLL CALL:** All members present.
- III. **INVOCATION:** Invocation was led by Council Member Rob Turner.
- IV. **PLEDGE OF ALLEGIANCE**
- V. **APPROVAL OF THE COUNCIL AGENDA:**
  - Mayor Lary asked to remove the Appointments.
  - Council Member George Turner asked to add the Code Enforcement Discussion Only under New Business.
  - Council Member Rob Turner asked to add under new business Resolution for Charter Amendment for Discussion. The Mayor asked if it was for Discussion and Council Member Rob Turner replied yes.

**Motion 1-** was made by Council Member George Turner approve the amended agenda and was seconded by Council Member Rob Turner.

**Motion passed unanimously.**

- VI. **MINUTES:**
  - a. **January 27, 2020 City Council Minutes**

**Motion 2-** was made by Council Member George Turner to approve the minutes with a correction to change to his comments pertaining to Countywide SPLOST and change it to Countywide Census and was seconded by Council Member Tammy Grimes.

**Motion passed unanimously.**

**b. February 10, 2020 Special Called Meeting**

**Motion 3-** was made by Council Member Jazzmin Cobble to defer to the next Council Meeting to clarify “Motion 1 to state that the Mayor instructed Council Member Grimes and Council Member Cobble that they were not eligible to vote and that City Attorney Denmark advised them not to vote” and seconded by Council Member Grimes.

**Motion passed unanimously.**

**c. February 10, 2020 Council Meeting**

**Motion 4-** was made by Council Member Rob Turner to approve the minutes from the City Council Meeting on February 10, 2020 and was seconded by Council Member George Turner.

**Motion passed unanimously.**

**d. February 13, 2020 Special Called Meeting**

**Motion 4-** was made by Council Member Rob Turner to approve the minutes from the Special Called Meeting on February 13, 2020 and was seconded by Council Member Jimmy Clanton.

**Motion passed unanimously.**

**VII. PRESENTATIONS:**

**a. Mayor Jason Lary made the following presentations**

**Acknowledged Tiffany Adams’ resignation and wished her well and thanked her for being an employee from the start.**

**Recognized DaKarta Richardson as the new Court Clerk.**

**Recognized Sean Jones, Senator Vernon Jones, Plez Joyner, Attorney Bernard Knight, Attorney Thom Kurrie, and Joel Thibodeaux for their efforts in the creation of Stonecrest.**

**VIII. APPOINTMENTS:**

**~~Consent Agenda~~**

**~~a. Development Authority~~**

**~~b. 2020 Complete Count census Committee~~**

- ~~c. Post Office Committee~~
- ~~d. Public Safety Committee~~
- ~~e. Parks Committee~~
- ~~f. SPLOST Citizens Oversight Advisory Committee~~
- ~~g. Film Committee~~
- ~~h. Education Committee~~
- ~~i. Sports Authority Committee~~
- ~~j. Commercial Industrial District Committee (CID)~~
- ~~k. Browns Mill Panola Overlay Committee~~
- ~~l. Stonecrest Technology Committee~~
- ~~m. Stonecrest Connect Committee~~

## IX. PUBLIC COMMENTS

1. **Harriet Harris**- Asked for Council to settle their personal issues outside of the public eye and disappointed in the walk out on 2/10/2020.
2. **Jeremy-Scott**- Code Enforcement needs to observe the violations in District  
Also very disappointed and embarrassed by the walk out because there were 2 High Schools here to present their project that they have worked on for Parks and Recreation
3. **Faye Coffield**- Stated she believes in protest sometimes. Would like for the City to investigate the study provided for Atlanta Police Department called Midnight Blue. Also stated she was against the construction of a gas station on Turner Hill Road.
4. **Dave Marcus**- Would like to compliment the Mayor for listening to the Council and removing the Committees from the Agenda. Would like to see measurable goals in the Comprehensive Plan.
5. **Bill Bruckner**- Disappointed in those members of the Council who walked out on 02/10/2020 Council Meeting.
6. **Susan Lee**- Disappointed and embarrassed by those members of the Council who walked out on 02/10/2020 Council Meeting. She asked the Council that walked out to invite the High Schoolers back and apologize and see their presentation.
7. **Renee Cail**- was called up in error and wanted to speak at the Public Hearing.

## X. PUBLIC HEARING

1. Ordinance for Rezoning Application RZ-19-010/SLUP-19-009

Chris Wheeler, Planning and Zoning Director, advised the Mayor and Council that the applicant has asked for an approval to withdraw the application.

**Motion 5-** was made by Council Member Jimmy Clanton to open the public Hearing for RZ-19-010/SLUP-19-009 and was seconded by Council Member George Turner.

**Motion passed unanimously.**

Mayor called for those in favor of denying the application:

Renee Cail, Nichelle Stephens-Smith, Faye Coffield, Dave Marcus all spoke in favor of denial of the Rezoning Application.

Mayor called for those in favor of approving the Withdrawal of the application: Bernard Knight and Michelle Battle both spoke in favor of approving the withdrawal of the application.

**Motion 6-** was made by Council Member Jimmy Clanton to close the Public Hearing and was seconded by Council Member George Turner.

**Motion passed unanimously.**

**Motion 7-** was made by Council Member Jimmy Clanton to approve the withdrawal of the application and was seconded by Council member George Turner.

**Motion passed unanimously.**

## **XI. NEW BUSINESS**

### **a. Code Enforcement Discussion**

1. Alcohol Sales Hours for Consumption on Premises Sales
2. Shopping Cart Ordinance
3. Donation Box Ordinance

Alejandro Ferrell, Code Enforcement Manager, advised the Mayor and Council that he has concerns about the Hours that the Late Night Establishments are staying open and may be casing criminal activity. Mayor and Council asked for more information and statistics.

The other 2 items were not discussed due to time constraints and were asked to be put on to the next Work Session for discussion.

### **b. Resolution for Charter Amendment for Discussion Only**

There was much discussion as to either approve a resolution to clear up the ambiguity relating the unexcused absences or approve a resolution to add all the charter changes that were sent in earlier.

**Motion 8-** was made by Council Member Jazzmin Cobble to approve the resolution of support for the General Assembly to clear up ambiguity in the Charter.

The Mayor said he did not recognize the Motion because it was put on the agenda for discussion only. Council Member Jazzmin Cobble asked Council Member Rob Turner if when he added the item was the intention to vote and Council Member Rob Turner replied yes.

Council member Rob Turner seconded the motion.

Council Member Jimmy Clanton did not want to vote on a resolution that he hasn't seen. He said that this should be treated the same was as the committees and the Council needs to be able to have the chance to read and give input on the resolution.

The Mayor asked for a copy of the resolution in writing and Council Member Cobble stated she would send him a copy. He asked to see it immediately and she did not respond.

Council Member George Turner stated that the Council was invited to the State Capitol for the Senate Meeting and they were given a copy of the draft senate bill entitled An Act to Amend the Articles of Incorporation and it is LC470399 and all five Council Members received it and read it and have a reasonable understanding of the bill.

Council Member Jimmy Clanton disagreed that they had the final bill ready and were still making changes to it when he left the meeting.

Council Member Jazzmin Cobble then stated that Bill has already dropped.

Council Member Jimmy Clanton states that the ambiguity of the “failure to attend 1/3 of the meetings” portion of the Charter is still left in the Bill. He is not satisfied with the draft or sending a resolution of support for the bill.

Council Member Cobble reiterated that the bills has been dropped and that the ambiguity that was brought up was to be used against council and to remove them from their seat.

Council Member George Turner stated that once the bills are dropped that they can still be amended several times before they will be final. He is ready to move forward and set it into motion with a resolution of support for the bill.

Council Member Jimmy Clanton stated that it doesn't matter if they send a support of a resolution or not as Council Member Cobble stated the bill has already dropped. He also mentioned the he felt the Council would be setting a precedence of how they conduct business. He strongly suggested that this subject should have been discussed at the work session and the resolution should have been made available.

Council Member Cobble stated that the litigation did not follow that procedure.

Mayor Lary stated that he took extraordinary efforts to make sure the litigation was handled quietly so that it would not be out in the general public and in the news.

Council Member Cobble stated that she never received notification of the litigation until it was drafted and given to her by Attorney Denmark. She also reiterated that this is just a resolution to clear up ambiguity in the Charter under the General Assembly and it's in support of changing the Charter and it's not earth shattering.

Mayor Lary disagreed and said that the bill was more than just the unexcused absences. He also stated that the General Assembly has had very important bills sitting there for 3 years and they didn't do anything with them, and he doesn't understand why they decided to pick this? He stated again that he met with Council two on two as to not break the Sunshine Laws and stated that the other Council Members broke the sunshine laws by meeting and discussing this bill. He also stated again that he tried to go about the litigation eloquently to let the Court decide on the ambiguity of the Charter and that once the Court decided if an infraction had taken place there would have been options. Mayor Lary said he didn't have anything else to say about the topic except that the Senator is

bringing forth this bill is mad that the City was created. He agrees with Council Member Jimmy Clanton that they shouldn't vote on a resolution that isn't available especially if they can't vote on Committees for the same reason.

Council Member Cobble asked for a call for the question with the motion on the floor.

Council Member Clanton stated that inn Robert's Rules of Order the Chair doesn't have to recognize the Call for Question. He also stated that the Resolution needs to be clear as to what they are voting on and as of now the bill wasn't even complete. He believes there needs to be a Called Meeting to discuss this with the Resolution available.

Council Member George Turner stated that Robert's Rules of Order calls for two-thirds of the Council to override the Call for a Question that isn't recognized by the Mayor.

**Substitute Motion** was made by Mayor Jason Lary to add to the resolution to the things they want for with regards to the council and the citizens and was seconded by Council Member Jimmy Clanton.

Council member Rob Turner questioned when this would be discussed.

Mayor Lary stated that he would be open to a Called Meeting or Regular Meeting or Workshop.

Council Member George Turner stated that this was time sensitive matter.

Council Member Jimmy Clanton suggested combining two documents for the resolution.

There was much discussion about the resolution that was sent in prior years.

**Substitute Motion Failed- 2-4 with Council Member Rob Turner, Council Member Jazzmin Cobble, Council Member George Turner and Council member Grimes all voting nay.**

Mayor Lary instructed Council Member George Turner as the Mayor Pro-tem to call for the original Motion.

Mayor Pro-Tem George Turner restated the motion to support the charter changes relative to attendance. He asked Council member Cobble if that was accurate and she stated yes. He reaffirmed that their was already a second on the table and that was confirmed. He then called for the vote.

**Motion 7 passed 4-1 Council Member Jimmy Clanton voted nay. Mayor Jason Lary did not vote.**

Mayor Lary stated that he would not sign the resolution.

## **XII. OLD BUSINESS**

### **a. Tax Anticipation Note- 1<sup>st</sup> Read**

Read aloud by Deputy City Manager Plez Joyner.

**b. Urban Redevelopment Agency**

1. Schedule

City Attorney Winston Denmark gave the information regarding the schedule.

2. Appointments

**Motion 8-** was made by Council Member George Turner to appoint Mayor Lary at the Chair of the Urban Redevelopment Agency and was seconded by Council member Jimmy Clanton.

**Motion passed unanimously.**

**Motion 9-** was made by Mayor Jason Lary to appoint Council Member Jimmy Clanton as the Vice- Chair of the Urban Redevelopment Agency and was seconded by Council Member George Turner.

**Motion passed unanimously.**

**Motion 10-** was made by Mayor Jason Lary to appoint Council Member George Turner as the Secretary of the Urban Redevelopment Agency and was seconded by Council Member Jimmy Clanton.

**Motion passed unanimously.**

**c. Final Plat for Flat Rock Hills Phase 2B**

**Motion 11-** was made by Council Member George Turner to approve the Final Plat for Flat Rock Phase 2B and was seconded by Council Member Jimmy Clanton.

**d. Memorandum of Agreement for Summer Camp**

**Motion 12-** was made by Mayor Jason Lary to approve the MOA for Summer Camp and was seconded by Council Member Rob Turner.

**Motion passed unanimously.**

**e. Parks and Recreation Camera System at Browns Mill Recreation & Aquatic Centers, License Plate Readers at five (5) Parks**

**Motion 13-** was made by Council Member Jimmy Clanton to approve the bid for \$94,982 out of SPLOST proceeds and was seconded by Council Member Tammy Grimes.

**Motion passed unanimously.**

**f. SLUP-19-007-3620 Klondike Road**

**Motion 14-** was made by Council Member Jimmy Clanton to approve SLUP-19-007 at 3620 Klondike Road with the conditions outlined in the staff report.

**Motion passed unanimously.**

### **XIII. EXECUTIVE SESSION**

**Motion 15-** was made by Council Member Jimmy Clanton to go into Executive Session for Real Estate and Personnel Matters and was seconded by Council Member George Turner.

**Motion passed unanimously.**

**Motion 16-** was made by Council Member George Turner to go back into Regular Session and was seconded by Council Member Jimmy Clanton.

**Motion passed unanimously.**

Deputy City Manager gave an update on the city's basketball team, the GA Kangaroos.

Council Member Cobble thanked everyone who came to the District 3 Community Meeting.

Council Member Rob Turner invited everyone to a Town Hall Meeting on Thursday, February 27.

Council Member Jimmy Clanton reminded everyone of the District 1 Community Meetings on the first Saturday of every month at the AEI Start Up Factory. He also gave his condolences to the Kobe Bryant Family.

Council Member George Turner was invited to attend Big Miller Grove Church on March 8 to celebrate Bishop Fowler for his 80<sup>th</sup> Birthday. New Birth Missionary Baptist Church is going to become a Census Center and he is trying to get other churches to follow suit. Spreading the word to the schools and even getting the census to be taught in civics.

Council Member Tammy Grimes- asked everyone to keep the family of Tesfaye Birru, owner of the Tic Toc Convenience Store who was murdered over the weekend. District 5 has lots of going on , but she has updated her Facebook page for updates.

Mayor Jason Lary so glad to be able to promote from within and would like to recognize Iris Settle for her great work on the executive level.

### **XIV. ADJOURNMENT**

**Motion 17-** was made by Council Member Jimmy Clanton to adjourn and was seconded by Council Member George Turner.

**Motion passed unanimously.**

**Signatures on following page**

**Read and adopted in the regular meeting of the City Council held on this \_\_\_\_ day  
of \_\_\_\_\_, 2020.**

\_\_\_\_\_  
**Mayor Jason Lary**

**ATTEST:**

\_\_\_\_\_  
**Megan P. Reid, City Clerk**



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

- |                                          |                                     |                                           |
|------------------------------------------|-------------------------------------|-------------------------------------------|
| <input type="checkbox"/> ORDINANCE       | <input type="checkbox"/> POLICY     | <input type="checkbox"/> STATUS REPORT    |
| <input type="checkbox"/> DISCUSSION ONLY | <input type="checkbox"/> RESOLUTION | <input checked="" type="checkbox"/> OTHER |

**Date Submitted: February 5th, 2021    Work Session:    Special Called Council Meeting: X**

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**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** Contract Management

**HISTORY:** Contracts for Brenda Cornelius and Sean DePalma were cancelled at the October 14<sup>th</sup>, 2020 council meeting. Since that time, a check for \$2,500 dated 12/04/2020 was issued to Mr. DePalma and two checks have been issued for Ms. Brenda Cornelius dated 11/12/20 and 01/05/21 for \$5,000 each. According to the Purchasing Policy, both sole and single source procurements need city council approve since the city manager position is currently vacant. Additionally, procurements between \$5,000-\$25,000 require 3 quotes and an authorized requisition.

**FACTS AND ISSUES:** No new sole or single source contracts for Mr. DePalma nor Ms. Cornelius has been presented to the city council for approval. Payments are still being made to each despite their previous contracts being cancelled. If the services provided by Mr. DePalma and Ms. Cornelius are being paid for without a contract to charge against, there should be documentation of 3 quotes and a requisition for procurements \$5,000 and over to comply with the purchasing policy. There should also exist documentation of the new services being rendered to the city by Mr. DePalma and Ms. Cornelius with the cost listed seeing that the city council voted that the services previously contracted were no longer needed as indicated by the cancellation of the contracts for services.

## **OPTIONS:**

**RECOMMENDED ACTION:** Withhold future payments to both Mr. DePalma and Ms. Cornelius. Require proper documentation of services and purchasing policy compliance for all services procured by the city.

Additionally, nullify all contracts of the city that expired/ended in 2020. Each contract for services in fiscal year 2021 will be a new procurement established according to the purchasing policy requirements. This shall include contracts established in and prior to 2021 with options to renew as the options should be considered not exercised for the remaining years listed in the current contract. All payments towards expired contracts shall be held until updated procurements have been completed in compliance with the purchasing policy. Additionally, any payments for invoices of services without an executed contract in 2020 and 2021 should be held until updated procurements have been completed in compliance with the purchasing policy.



## CITY OF STONECREST, GEORGIA

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*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1*

*Council Member Rob Turner- District 2*

*Council Member Jazzmin Cobble – District 3*

*Council Member George Turner- District 4*

*Tammy Grimes – District 5*

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### SPECIAL CALLED MEETING

#### VIRTUAL MEETING

October 14, 2020 at 6:00 p.m.

Citizen Access: URL

I. **CALL TO ORDER:** Mayor Jason Lary

II. **AGENDA ITEMS:**

1. Contract Management

- i. Sean de Palma-Parks and Recreation Consultant  
Mayor agreed to supply council with letter ending Sean DePalma's contract at the end of the year, to the next meeting.
- ii. Brenda Cornelius-External Liaison Consultant  
Mayor made recommendation to stay where we are today and continue to move forward – with the 6 month contract.

**Motion 1** – made by Mayor Jason Lary to continue to move forward with contract with Cornelius Group. Seconded by Council Member Jimmy Clanton.

**Motion denied - No votes.**

**Motion 2** – Amended motion made by Mayor Jason Lary to ratify the contract of the Cornelius Group. Seconded by Council Member Jimmy Clanton.

**Motion denied 2-4** – Nay/Council Members Rob Turner, Jazzmin Cobble, George Turner, Tammy Grimes

**Motion 3** – made by Mayor Jason Lary to ratify the contract of Sean DePalma. Seconded by Council Member Jimmy Clanton.

**Motion denied** – Nay/ Council Members Rob Turner, Jazzmin Cobble, George Turner, Tammy Grimes.

**Motion 4** – made by Council Member Jazzmin Cobble to move that the contract for Sean DePalma is cancelled. Seconded by Council Member George Turner.

**Motion passed 4-2** – Nay/Mayor Jason Lary, Council Member Jimmy Clanton

2. Contract with an external auditing firm to conduct a comprehensive audit of the government purchasing/credit cards

**Motion 5** – made by Council Member Jazzmin Cobble to contract with an external auditing firm to conduct a comprehensive audit of the government purchasing/credit cards. Seconded by Council Member Rob Turner.

**No votes.**

**Motion 6** – to withdraw previous motion to contract with an external auditing firm to conduct a comprehensive audit of the government purchasing/credit cards. Seconded by Council Member Tammy Grimes.

**Motion passed unanimously.**

**Motion 7** - made by Council Member Jazzmin Cobble to contract with an external auditing firm to conduct a comprehensive audit of the government purchasing/credit cards for years 2017-2020, that should be executed within 30 days of affirmative action of council. Seconded by Council Member Rob Turner.

**Motion passed 4-1.** Nay/Council Member Jimmy Clanton

**Motion 8** – substitute motion made by Council Member Jimmy Clanton to amend previous motion and that there will be no single point of contact for the comprehensive audit but to add the entire city council as points of contact.

**Motion denied with no 2<sup>nd</sup> motion.**

3. Create job descriptions and advertise for Finance Director and Internal Auditor

**Motion 9** – made by Council Member Jazzmin Cobble asking staff to create a job description and advertise for both Finance Manager and Internal Auditor. Seconded by Council Member Tammy Grimes.

**No votes.**

**Motion 10** – substitute motion made by Council Member Jazzmin Cobble asking staff to create job descriptions and advertise for Finance Director and Internal Auditor and noting that both positions are City Council approved positions and should be kept independent of current Jacobs contract. Seconded by Council Member Tammy Grimes.

**Motion passed 4-1.** Nay/Council Member Jimmy Clanton

4. Approve Georgia Outdoor Stewardship Program Resolution

**Motion 11** – made by Council Member Rob Turner to approve Georgia Outdoor Stewardship Program Resolution. Seconded by Jimmy Clanton.

**Motion passed unanimously.**

**Motion 12** – made by Council Member Jazzmin Cobble to cancel the contract for the Cornelius Group. Seconded by Council Member Tammy Grimes.

**Motion passed 4-1.** Nay/Council Member Jimmy Clanton.

## **ADJOURNMENT**

**Read and adopted in the regular meeting of the City Council held on this \_\_\_\_ day of \_\_\_\_\_, 2020.**

\_\_\_\_\_  
**Mayor Jason Lary**

**ATTEST:**

\_\_\_\_\_  
**Megan P. Reid, City Clerk**

# Purchasing Policy

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A written basis for declaring the Emergency and for the selection of the particular Person for the provision of Goods, Capital Assets, Services, Construction Services or Professional Services shall be included in the Contract file. As soon as practicable, a record of each Emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the Contract, a listing of the item procured under the Contract, and the identification number of the Contract file.

If an Emergency situation should arise after office hours which requires immediate action on the part of the agency involved for the protection of the best interest of the City or if a like situation arises on a weekend or holiday and when it is not possible or convenient to reach the City Manager or Purchasing Agent, any purchase necessary shall be made by the official in charge of such department or agency, and such purchase reported to the Purchasing Agent within 24 hours.

## E. Costs Under the Competitive Threshold

The Purchasing Agent with the consent of the City Manager, where applicable, may acquire Goods, Capital Assets, Construction Services and Professional Services appropriated by the City Council in the City budget or otherwise by Direct Negotiation or by some other non-competitive method, when the dollar value of the purchase does not exceed \$25,000.00 and a properly executed and authorized Requisition is received. Under this non-competitive method, the Purchasing Agent shall attempt to obtain the Goods, Capital Assets, Services, Construction or Professional Services most advantageous to the City, price and other factors considered. For Goods and Services under the competitive threshold but over \$5,000.00, the Purchasing Agent or User shall obtain, where possible, at least three quotes using the IWQ method as outlined in Section VII (A).

The User may acquire by Requisition Goods, Services, Construction Services and Professional Services appropriated by the City Council in the City budget or otherwise by Direct Negotiation or by some other non-competitive method, when the dollar value of the purchase does not exceed \$5,000.00. Under this non-competitive method, the User shall attempt to obtain the Goods, Capital Assets, Services, Construction or Professional Services most advantageous to the City, price and other factors considered.

## F. Direct Negotiation and Other Public Entities and Co-ops

The City may acquire Goods, Capital Assets and Services by Direct Negotiation or other method involving limited or no competition from a Supplier having a requirements Contract/Annual Agreement with any public entity (e.g., federal, state, county, city, authority, school board, Buying Cooperative, etc.) for Goods, Capital Assets or Services described in such contract and at prices or discounts no less favorable than any set forth in such Contracts.

Use of State/Co-Op Contracts: The Purchasing Agent may, independent of the requirements of bid process of this article, procure supplies, services or construction items through the Contract established through competitive means by the purchasing division of the State of Georgia, national Co-Ops (i.e.-U.S. Communities), and collaborative purchasing agreements with other local governments when deemed to be in the best interest of the City.

## G. Real Estate Acquisition

### 1. Compliance with Applicable Regulations



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

- |                                          |                                     |                                           |
|------------------------------------------|-------------------------------------|-------------------------------------------|
| <input type="checkbox"/> ORDINANCE       | <input type="checkbox"/> POLICY     | <input type="checkbox"/> STATUS REPORT    |
| <input type="checkbox"/> DISCUSSION ONLY | <input type="checkbox"/> RESOLUTION | <input checked="" type="checkbox"/> OTHER |

**Date Submitted:** February 5th, 2021    **Work Session:**    **Special Called Council Meeting:** X

---

**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** Contract Amendment-amend definitions section 1.2 “City Representative”

**HISTORY:** The original contract from CH2M Hill dated June 15, 2017 states, “City Representative” shall mean the senior City representative assigned the responsibility of overseeing the administration of this Agreement for the City and the provision of Services by Contractor along with other City-assigned responsibilities. The City Representative shall be the City Manager; provided, however, during any period of time the City Manager is a Contractor Employee, the Mayor of the City shall be the City Representative.

**FACTS AND ISSUES:** The responsibility for overseeing the administration of financial obligations of the city rests with the city council. This helps avoid conflicts of interest and/or potential abuse of power. When the city manager is provided by the contractor, the full governing body is the city representative.

**OPTIONS:** Approve, Deny, Defer

**RECOMMENDED ACTION:** Direct the attorney to amend section 1.2 to read, “The City Representative shall be the City Manager; provided, however, during any period of time the City Manager is a Contractor Employee, the City Council of the City shall be the City Representative. The City Representative shall represent the will of the governing body when decisions and/or requests are referred to the Contractor. The Contractor shall send a summary correspondence to the city council confirming the decision or request by the City Representative.

**PROFESSIONAL SERVICES AGREEMENT  
FOR MUNICIPAL GOVERNMENT SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT FOR MUNICIPAL GOVERNMENT SERVICES ("Agreement") dated June 15, 2017, is entered into by and between the CITY OF STONECREST, a Georgia municipal corporation ("City"), whose address is c/o Coleman Talley LLP, 3475 Lenox Rd., N.E., Suite 400, Atlanta, GA 30326, and CH2M HILL ENGINEERS, INC., a Delaware corporation whose business address is 9191 South Jamaica Street, Englewood, CO 80112 (the "Contractor"). The City and the Contractor may be collectively referred to as the "Parties" and each individually a "Party".

**1. DEFINITIONS**

- 1.1. "Contractor Employee(s)" shall mean person(s) under the direct supervision and control of the Contractor who perform Services hereunder, whether employees, contract employees or volunteers.
- 1.2. "City Representative" shall mean the senior City representative assigned the responsibility of overseeing the administration of this Agreement for the City and the provision of Services by Contractor along with other City-assigned responsibilities. The City Representative shall be the City Manager; provided, however, during any period of time the City Manager is a Contractor Employee, the Mayor of the City shall be the City Representative.
- 1.3. "Data", as used in this Agreement, shall include commercial proprietary written reports, studies, drawings, trademarks, specifications, designs, models, processes, systems, photographs, computer CADD discs, reports, surveys, software, or other graphic, electronic, chemical or mechanical representations of the Contractor. Data does not include public records information compiled on the City's behalf for the purpose of Service delivery under this Agreement. For purposes of this Agreement, "commercial proprietary" shall not include any written reports, studies, drawings, trademarks, specifications, designs, models, processes, systems, photographs, computer CADD discs, reports, surveys, software, or other graphic, electronic, chemical or mechanical representations of the Contractor that have been or are required to be provided to the City pursuant to this Agreement
- 1.4. "Effective Date" shall mean June 15, 2017.
- 1.5. "Employer Obligations", as used in this Agreement, means all obligations of any kind imposed customarily or by law or agreement on persons acting in the capacity of an employer in relation to persons acting in the capacity of an employee. These include, without limitation: (a) responsibility for hiring, assigning, compensating and terminating personnel and employees; (b) withholding and paying taxes; (c) verification of employment eligibility, including compliance with IRCA, FCRA, DOT drug and alcohol regulations, and all DOD and DOC export licensing and control requirements; (d) providing workers' compensation insurance and complying with all applicable workers compensation laws; (e) compliance with all federal, state and local laws (both common and statutory) and regulations relating to employment and the rights of personnel and employee(s), including but not limited to FICA and FUTA withholding; the Fair Labor Standards Act; wage and hour laws, including overtime, and benefits requirements; workers' compensation; safety and health; payment of wages; unemployment compensation; COBRA; immigration; compliance with

laws relating to employment, illegal employment discrimination and retaliation; leaves; benefits; the Immigration Reform Act of 1986; and all record keeping requirements.

- 1.6. "Exhibits" to this Agreement include the following:

Exhibit A – Services

Exhibit B – Compensation

- 1.7. "Project Manager" shall mean the Contractor Employee who shall serve as the primary point of contact with oversight and administration of the Services to be provided hereunder. Contractor Employee designated as the Project Manager shall be in concurrence with the Mayor of the City, which concurrence shall not be unreasonably withheld.
- 1.8. "Services" shall mean those services as fully described in Exhibit A to be provided by Contractor to City, within the City, all of which shall performed in accordance with Section 2 hereof.
- 1.9. "Subcontractor" shall mean any individual or entity retained, affiliated, or engaged by or under contract with Contractor to undertake any Services to be performed hereunder.
- 1.10. "Term" shall be the Initial Term and any Renewal Term, or any extension of either pursuant to Section 11.2
- 1.11. "Compensation Amount" shall be that amounts set forth on Exhibit B of this Agreement for each year or partial year of the Agreement and shall be the total maximum amount to be paid for Services for the applicable period. The Compensation Amount may also be referred to herein as "Compensation".

## 2. **SERVICES AND PERFORMANCE**

- 2.1. Services. The Contractor shall provide to the City, under the direction of the City Representative, the Services defined in Exhibit A, within the boundaries of the City, which boundaries may be modified from time to time by mutual agreement between the Contractor and the City, and which generally include municipal services of the type coming within the jurisdiction of and customarily rendered by municipalities (other than those provided by other contract providers or special districts). Notwithstanding, Contractor acknowledges that in order to provide the Services required hereunder, Contractor or Contractor Employees may be required to perform or coordinate tasks or attend meetings outside the boundaries of the City, and that such shall not constitute an addition to the scope of Services provided hereunder. As an independent contractor, the Contractor offers to perform and/or deliver the Services in accordance with the terms and conditions of this Agreement.
- 2.2. Qualifications. Contractor represents to the City that the Contractor and the Contractor Employees and any Subcontractor performing Services hereunder possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement. Contractor acknowledges that City has relied upon these representations in entering in to this Agreement.
- 2.2.1. Professional Services; Licensing. All Contractor Employees, Subcontractors, or other persons engaged in providing Services to the City under this Agreement shall be duly certified by the federal, state, or local jurisdiction, federal or national association, or other state or nationally recognized authority for the performance of the duties to which such person is assigned, if such certification is offered to and required of members of the

profession. This shall include, but not be limited to those employees or subcontractors in the following classifications: engineers, building inspectors, development inspectors, arborists, and landscape architects. Contractor represents to the City that the Contractor is, and the Contractor Employees or any Subcontractors performing Services are, properly licensed and/or registered within the State of Georgia for the performance of the Services (if licensure and/or registration is required by applicable law), and that such professional Services as may be provided hereunder shall be performed using that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing in the State of Georgia.

- 2.3. Boundary Change. In the event of (i) a boundary change for the City, or (ii) a change in the area upon which Services are to be provided hereunder, or (iii) a material change in the City population, or other demographic, market or service changes, which result in increases or decreases the Service obligations of Agreement or hereunder, the Parties shall mutually agree to a proportionate change in the Services and Compensation Amount to be paid hereunder, in accordance with Section 8 hereof.
- 2.4. Changes to Services. From time-to-time, either Party may identify new services that were not included in Exhibit A, or events that may warrant modification to the Services. Within a reasonable period of time, the identifying Party will notify the other Party of the Services modification opportunity. If such new services are identified and/or requested by the City, Agreement or will, within ten (10) business days, provide to the City in writing a price and modification to Services for the proposed addition to Services. If such new services are identified by Contractor, the Contractor shall, within a reasonable time, provide to City in writing a price and modification to Services for the proposed addition to Services. Any changes that are mutually agreed upon between the City and the Contractor shall be made in writing and, upon execution by both Parties, shall become an amendment to the Services described in this Agreement (a "Contract Adjustment"). To be effective, such amendment must be signed by the Contractor and by the City in conformity with the authority provisions for amendments as set forth in Section 22.12. Unless otherwise stated in the amendment, Contractor will invoice the City on the next billing cycle after completion of the addition to Services or, if the change involves an ongoing new addition to Services, Contractor will include the associated adjustment to the Compensation Amount and will pro rate the billing in accordance with provisions of Section 8.1 of this Agreement. All Disputes will be handled in accordance with Section 24 of this Agreement.
- 2.5. Allocation of Resources. The parties recognize that this Agreement is intended to provide flexibility to the City in order to meet its evolving challenges in the delivery of municipal services to the City residents. Subject to approval of the City Representative, which approval shall not be unreasonably withheld, the Contractor may reasonably allocate Contractor and Subcontractor resources for the performance among the Services in accordance with the priorities agreed-to with the City Representative so long as such allocations do not affect either: (1) increase in Compensation Amount under this Agreement; or (2) Service quality to the public, without mutual agreement. Contractor shall remain solely responsible for ensuring that any Subcontractors engaged to perform services hereunder by Contractor shall perform such services in accordance with the terms and conditions of this Agreement.
- 2.6. Required Permits and Licenses. Throughout the Term, the Contractor shall be responsible at the Contractor's expense for obtaining and maintaining in a valid and effective status, all licenses and

permits required by governmental entities by certifying organizations necessary to perform the Services as required by law. The City agrees to timely provide to Contractor in writing copies of all City obtained permits and/or required compliance information from third parties. Should the City fail to timely provide this information, Contractor shall not be obligated to comply with the new permit requirements until the permit and/or compliance information is provided to it.

The City shall waive any requirement that the Contractor obtain a right of way permit from the City for Services performed hereunder but the Contractor shall comply with all conditions and standards otherwise applicable to such work or permit unless a waiver is obtained in advance from the City Representative.

- 2.7. Implementation of Innovations. The Parties mutually desire that the Services delivered hereunder are rendered in a manner that is highly efficient, effective and that utilizes innovative processes and technology. To that end, Contractor, in its normal course of Service delivery, will stay abreast of new technologies or processes related to Service delivery hereunder, and upon discovery, will present such new technologies or processes to the City. Before implementation, the Parties shall mutually agree, through negotiations in good faith, to determine whether implementation is mutually beneficial and, if so, shall negotiate appropriate changes to the Services and, if applicable, to the Compensation. Under no circumstances is the Contractor required by the City to invest, fund or incur costs associated in the exploration, development or testing of new innovative processes or technologies that are the subject of this provision. Notwithstanding, Contractor shall, at a minimum, utilize all modern technologies and processes in the performance of the Services hereunder which do not otherwise increase the cost or expense to Contractor, and which are generally utilized in the performance of similar services among other municipalities of similar size and location to City.
- 2.8. Obligation to Acquire Necessary Information. The Contractor shall become fully acquainted with the available information, laws, and regulations related to the Services. The Contractor is obligated to affirmatively request from the City and other available resources such information that the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services. Contractor is not responsible for the accuracy of the information provided by the City, except to the extent to which Contractor assisted City in the preparation of such information. City will use its best efforts to affirmatively obtain from third parties such information that the Contractor may request and which the Contractor, based on the Contractor's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services. Other than information received by the City from third parties, City will warrant the accuracy of any information provided to Contractor by City or a by a City contractor.
- 2.9. Ambiguity Concerning Services. The Contractor shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to the Contractor's performance that are not addressed by the Agreement. In interpreting the Services and level of Services required hereunder, the Parties shall apply the principle that the City desires to provide the Services within the City at a service level at least comparable to similar sized cities in the greater Atlanta metropolitan area as described in detail in Exhibit A.
- 2.10. City Compliance with Laws. The City shall comply with all applicable federal, state and local laws, ordinances, regulations and resolutions. Without limiting the foregoing, City shall comply with all wage and hour laws and other applicable federal and state statutes, regulations and

standards for work place safety. As to any facilities in which the Parties are co-located, the City shall comply with all applicable laws regarding hazardous materials and maintain all required MSDS forms on site.

- 2.11. Contractor Compliance with Laws. The Contractor shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions. Without limiting the foregoing, Contractor shall comply with all wage and hour laws and OSHA and other applicable federal and state statutes, regulations and standards for work place safety. Contractor shall comply with all applicable laws regarding hazardous materials and maintain all required Manufacturer's Safety Data Sheets (MSDS) forms on site in the City. The City shall have the right (but not the obligation) to contest or challenge by any means whatsoever any law, regulation, rule or directive which in any way affects or otherwise impacts upon the Contractor's performance of its obligations and functions hereunder; and the Contractor shall cooperate to the fullest extent and will use its best efforts to take action the City should reasonably request in connection with any such challenge or contest by the City so long as such request does not have an adverse effect on Contractor with regards to costs or service quality.

The Contractor shall be responsible for the prompt payment of any fines, fees or penalties imposed on the City or the Contractor by any other federal, state or local governmental agency as a result of the Contractor's, or its subcontractor's (or the officers', directors', employees' or agents' of either), failure to comply with the requirements of any law or any governmental agency rule, regulation, order or permit. The liability of the Contractor under this Section 2.11 is in addition to and in no way a limitation upon any other liabilities and responsibilities which may be imposed by applicable law or by the indemnification provisions of Section 14 hereof, and such liability shall survive the expiration or earlier termination of this Agreement.

- 2.12. Change in Laws. Any change in law, regulation, rule, requirement, interpretation, statute, permit requirement or ordinance adopted, promulgated, issued or otherwise specifically modified or changed by any local, state, federal or other governmental body which impacts Service delivery may necessitate a change in Compensation. If such change materially affects Contractor's cost of or time required for performance of the Services, the parties agree to meet and agree to an equitable adjustment through executing an amendment to this Agreement in accordance with Section 22.12.
- 2.13. City Obligations. In performance of the Services, Contractor shall require and City shall provide the following for Contractor's use:
- 2.13.1. A designated work space and appropriate office space for Contractor's employees performing the Services ("**Work Location**"), which Contractor will keep in a neat and orderly manner and free from accumulation of any waste;
  - 2.13.2. Furniture, fixture and equipment for the Work Location,
  - 2.13.3. Computer equipment and software systems, telephone and internet services, and printers;
  - 2.13.4. An uninterruptable power supply and all other utilities at the Work Location; and
  - 2.13.5. Parking for Contractor's employees at the Work Location.

### 3. **CONTRACTOR'S PERSONNEL**

- 3.1. Compliance with Employment Laws. The Contractor will abide by all applicable State and Federal regulations on wages and hours of an employee dealing with the employment relationship between the Contractor (and its subsidiaries or related parties and its employees), including but not limited to the Federal National Labor Relations Act, the Federal Fair Labor Standards Act, the Federal Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act. Contractor shall require the same of all Subcontractors providing Services hereunder.
- 3.2. Verification of Citizenship. The Contractor shall comply with all applicable Georgia state laws regarding the verification of citizenship of all Contractor Employees, including, but not limited to, O.C.G.A. §50-36-1, O.C.G.A. 13-10-90, O.C.G.A. 13-10-91, and Chapter 300-10-1 of the Rules and Regulations of the State of Georgia. As such, Contractor shall require all Contractor Employees or prospective employees to show proof of citizenship, or proof from the United States Immigration and Naturalization Service of valid entry permits and/or work permits for legal aliens and proof that such legal aliens are eligible to be employed in the United States.

Should the Contractor, or any of its Subcontractors, engage employees who are non-fluent in the English language, it will be the Contractor's responsibility and obligation to train such employees to be able to identify and understand all signs and notices in and/or around the areas that relate to them or the services being performed by them pursuant to this Agreement. In addition, the Contractor will have someone in attendance at all times who can communicate instructions to said non-English speaking persons.

- 3.3. Drug Free Workplace Policy. Contractor shall adopt and enforce, and require all Subcontractors to adopt and enforce, a policy for a drug-free workplace applicable to all persons delivering Services under this Agreement consistent with the Georgia Drug-Free Workplace Act. All Contractor Employees performing Services hereunder shall be screened and satisfactorily pass drug testing prior to assignment to perform any Services under this Agreement. In addition, Contractor Employees must be subject to drug testing by the Contractor upon reasonable suspicion of drug use. Results of all such drug tests are to be retained by the Contractor and copies shall be provided to the City, if requested. The drug testing laboratory or service and the methodology of testing, reporting, and pass/fail determination shall be acceptable to the City. In the event any Contractor Employee fails such drug testing, Contractor shall immediately remove any such person from providing Service to the City. The cost of drug testing shall be borne by the Contractor.
- 3.4. Relationships and Public Interactions. All persons providing Services under this Agreement shall, at all times, foster and maintain professional and harmonious relationships with all employees of the City, all employees of the City's contract services providers and all City's residents and customers, and shall represent the City in the best light possible to members of the public, staff, elected and appointed officials and media. The Contractor recognizes that its conduct during the performance of the Services hereunder reflects upon its reputation in the community as well as upon the public perception of the City. Therefore, the Contractor offers and warrants to the City that the Contractor, its agents and employees will conduct all of their interactions with the citizens, customers and the public relating to the performance of the Services hereunder in such a manner as to provide customer service that reflects positively upon its reputation and the City's public image.
- 3.5. Attire. While working on City property all Contractor's Employees, and all Subcontractors of Contractor, shall wear neat-appearing business casual attire or uniforms with the Contractor or City

name and/or logo and footwear of a style that complies with all legal and safety requirements, including and without limitation, the requirements of OSHA.

- 3.6. Performance Issues with Contractor Employees. The City Representative shall have the right to reasonably request any Contractor Employee be prohibited or reasonably limited, in any manner, from performing Services for the City. The City Representative shall notify the Contractor should any personnel or employment problem arise with regard to any such person performing Services under this Agreement. The notification shall include the known facts which give rise to the problem, and may include a request by the City that the Contractor transfer or otherwise reassign such employee out of service to the City.

Thereafter, representatives of the Contractor and the City shall meet to discuss possible remedies the Contractor might voluntarily offer to address the problems experienced by the City in accordance with the dispute resolution provisions of Section 24. If problems persist after the conclusion of any such resolution meeting, and provided the City Representative has notified the Contractor of the City's continuing dissatisfaction, the Contractor shall remove any Contractor Employee or Subcontractor employee from performing any work for the City. The Contractor shall thereafter replace the Contractor Employee with a Contractor Employee of similar experience. The City reserves the right to concur with any proposed or replacement Contractor Employee, with or without cause, at any time during the duration of the project, which concurrence shall not be unreasonably withheld.

Nothing in this Agreement shall be construed to abrogate in whole or in part the right of the Contractor to hire, discipline, terminate, assign or otherwise manage or control its workforce.

- 3.7. Gratuities/Kickbacks. Contractor's Employees shall be instructed by Contractor that no gratuities or kickbacks shall be solicited or accepted for any reason whatsoever from anyone doing business, or attempting to do business, with the City, or from the residents of the City, or any other employee or subcontractor of the City. Evidence of such shall be grounds for immediate termination of this Agreement, and all Contractor Employees shall be made aware of their obligations under Section 25.1 hereof.
- 3.8. Waste Generator. Hazardous waste materials and/or nonhazardous waste materials may be encountered by Contractor or its Subcontractors in the performance of the Services. Contractor, in order to facilitate the proper disposal of hazardous waste materials associated with the Services may, at the request of the City and upon receipt of advance written authorization from the City Representative or his/her designee, act as the City's agent for the sole purpose of executing required manifests for containment and/or disposal of hazardous waste materials on behalf of the City. At no time shall title, risk of loss or any other incidents of ownership of the hazardous waste materials be transferred to Contractor and/or its Subcontractors.

#### 4. **SUBCONTRACTORS.**

- 4.1. Performance by Subcontractors. The Contractor shall perform all of its obligations and functions under this Agreement by means of its own employees, or by a duly qualified Subcontractor which is approved in advance by the City, which approval shall not be unreasonably withheld. Any Subcontractor which is an affiliate, parent, or subsidiary company, or has principal owners, relatives, management, or employees common to the Contractor, or any other party that has the ability to significantly influence the management or daily business operations of the Subcontractor must be disclosed in writing to the City Representative. In the event a Subcontractor is employed,

the Contractor shall continuously monitor the Subcontractor's performance, shall remain fully responsible to ensure that the Subcontractor performs as required and itself perform or remedy any obligations or functions which the Subcontractor fails to perform properly. Nothing contained herein shall be construed to prevent the Contractor from using the services of a common carrier for delivering goods to the City.

- 4.2. Incorporation of Terms in Subcontracts. This Agreement shall be referred to within any contractual arrangement between the Contractor and a Subcontractor. To the fullest extent feasible, the terms and conditions of this Agreement shall apply to any such Subcontractor in the same manner as they apply to the Contractor. However, such application shall neither make any Subcontractor a party to this Agreement, nor make such subcontractor a third party beneficiary hereof. Contractor shall require and ensure that all Subcontractors abide by the all of the requirements set forth in Section 4 of this Agreement.
- 4.3. Liens and Encumbrances. The Contractor warrants to the City that no work performed or materials purchased pursuant to the Agreement, whether by, from, or through the Contractor or a Subcontractor, shall cause any claim, lien or encumbrance to be made against any property of the City, and the Contractor shall indemnify and save the City harmless from and against any and all losses, damages and costs, including attorneys' fees, with respect thereto. If any such claim, lien or encumbrance shall be filed, the Contractor shall, within thirty (30) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. This provision shall survive the expiration or termination of the Agreement.
- 4.4. Verification of Citizenship by Subcontractors. Contractor shall not knowingly engage services with a Subcontractor that fails to certify that the Subcontractor does not knowingly employ or contract with any illegal aliens. If the Contractor obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Contractor shall be required to notify the Subcontractor and the City within three (3) business days that the Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien. The Contractor shall terminate the subcontract if the Subcontractor does not stop employing or contracting with the illegal alien within three (3) business days of receiving the notice regarding Contractor's actual knowledge. The Contractor shall not terminate the subcontract if, during such three (3) business days, the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien. The Contractor is required to comply with any reasonable request made by the Department of Labor and Employment made in the course of an investigation undertaken to determine compliance with this provision and applicable state law. If the Contractor violates this provision, the City may terminate this Agreement, and the Contractor may be liable for actual damages incurred by the City, notwithstanding any limitation on such damages provided by such agreement.

## **5. CITY AND CONTRACTOR COORDINATION**

- 5.1. City Representative. The City Representative shall be the City's primary representative and point of contact for all regular reports, work orders and requests for amendments to Services pursuant to this Agreement in the agreed-upon format between the City and the Contractor. Except as otherwise provided herein, the City Representative has the general authority and authorization to monitor the Contractor's performance, respond to Contractor's questions, assist Contractor in understanding City policies, procedures and practices, and supervise the performance of any City

obligations under this Agreement. In no event shall the City Manager if acting as the City Representative under this Agreement have authority to modify or terminate this Contract, or make final decisions with respect to amendments, time extensions, assignments, cost or payment adjustments or payment disputes.

- 5.2. Contractor Project Manager. The Contractor will assign a Project Manager who shall be the Contractor's primary representative and the point of contact for all Service matters and amendments to Services allowable under this Agreement.

5.2.1. The Project Manager shall be the primary representative for the Contractor. The Project Manager shall provide the City with all appropriate and relevant reports related to the performance of the Services, as may be required hereunder or requested from time to time by the City Representative or City Manager.

5.2.2. The Project Manager shall be available, as reasonably required, to be on-site during necessary times. Such times shall be discussed between the Project Manager and the City, but the final required times will be at the City's discretion.

5.2.3. In the event that the designated Project Manager terminates employment with the Contractor, or is requested by the City to be removed from the role of Project Manager (as provided in Section 3.6), the position shall be assumed by an individual with equivalent qualifications, experience, and knowledge. Such replacement shall require the concurrence of the Contractor and the City, which shall not be unreasonably withheld.

- 5.3. Coordination of Activities. The Contractor shall perform all of its obligations and functions under the Agreement in accordance with the Agreement specifications and industry standards. The Contractor shall use good faith efforts to adjust and coordinate its activities to the needs and requirements of the City and perform its activities so as not to annoy, disturb, endanger, unreasonably interfere with or delay the other operations or activities of the City.

## 6. **RELATIONSHIP OF PARTIES**

- 6.1. Independent Contractor. The Contractor and any Subcontractor providing Services hereunder shall perform the Services as independent contractors to the City and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with the City other than as a contracting party and independent contractor.

This Agreement does not require the Contractor or any Subcontractor providing Services hereunder to work exclusively for the City. This Agreement shall not be interpreted as the City dictating or directing the Contractor's or any Subcontractor's performance or the time of performance beyond the requirements for the Services set forth herein.

Subject to conformance with City-adopted policies and procedures and full conformance with Contractor's representations set forth in this Agreement, the Contractor shall have and maintain the requisite judgment, discretion, and responsibility for and control of the performance of the Services, the discipline of the Contractor's employees and other matters incidental to the performance of the Services, duties and responsibilities as described and contemplated in this Agreement. Unless specifically stated otherwise herein, Contractor shall provide and bear the cost of all tools, and any other items, wages, or services required in the performance of the Services, and the City shall not

provide any other assistance or benefits to Contractor for performance of the Services under this Agreement.

Contractor acknowledges that it does not have any authority to incur any obligations or responsibilities on behalf of the City except as may be authorized by the City Council or pursuant to this Agreement, and agrees not to hold itself out as having any such authority. Nothing contained in this Agreement shall be construed to create a joint employer relationship between the City and the Contractor with respect to any employee of the Contractor or of its subcontractors.

- 6.2. Contractor Employees. Each Contractor Employee shall perform such Services as an independent supplier and not as an employee or agent of City. As such, Contractor employees shall not be entitled to nor shall they claim any benefits or rights accorded to employees of City. Contractor shall be solely responsible for all employer obligations including, but not limited to, provision of employee benefits and compliance with state and federal laws including the Fair Labor Standards Act for their employees. The fact that Contractor Employees may provide direct or indirect supervision of City's employees shall not alter the employment relationship for purposes of workers compensation and unemployment compensation. Under no circumstances are employees of Contractor to be considered the City's employees, loaned employees or borrowed servants and vice versa. The parties agree that Contractor shall remain solely responsible for all Employer Obligations with respect to all Contractor Employees even if a court, administrative agency, or other body deems the Contractor's employees to be City employees.
- 6.3. Liability for Employment Related Rights and Compensation. Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any Contractor Employee providing Services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor or any Subcontractor, as the case may be, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment. The Contractor and any Subcontractor providing Services hereunder will comply with all laws, regulations, municipal codes, and ordinances and other requirements and standards applicable to the Contractor's employees, including, without limitation, federal and state laws governing wages and overtime, equal employment, safety and health, employees' citizenship, withholdings, reports and record keeping. Accordingly, the City shall not be called upon to assume any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits or any other amenities of employment to any of the Contractor's or any subcontractor's employees, sub-consultants, Subcontractors, agents, volunteers or representatives, or any other liabilities whatsoever, unless otherwise specifically provided herein.
7. **CITY'S EMPLOYEES AND THIRD PARTY CONTRACTORS**
  - 7.1. All employees furnished by City shall be employees of City and SHALL NOT BE EMPLOYEES OF Contractor. As such, City employees shall not be entitled to nor shall they claim any benefits or rights accorded to employees of Contractor. The parties agree that City shall remain solely responsible for all Employer Obligations with respect to all City employees even if a court, administrative agency, or other body deems the City employees to be Contractor's employees.
  - 7.2. Contractor may terminate the Interim City Manager services for its convenience, without penalty, upon the occurrence of any of the following events:

- 7.2.1. City not implementing suggested Contractor recommendations for safety or compliance items.
- 7.2.2. City not implementing suggested Contractor recommendations for vulnerability situations, safety, or compliance matters that Contractor reasonably determines may cause City and/or Contractor to violate any applicable regulation, laws, codes or permits.
- 7.3. To the fullest extent permitted under Georgia law, City hereby agrees to indemnify and hold Contractor, its directors, officers, agents and employees, harmless from all claims, charges, demands, complaints, damages, losses or liability of any kind (including attorney's fees and reasonable expenses) (collectively, "Liabilities") that arise from or relate in any way to:
  - 7.3.1. Claims by City's employees, current or former for wages and overtime pay arising under the Fair Labor Standards Act or any other federal, state or local labor or wage-hour laws, workers' compensation or unemployment compensation for services performed under this Agreement;
  - 7.3.2. Claims by City's employees, current and former, alleging entitlement to City's pension, health and welfare, profit sharing, 401(k) and other benefit plans by reason of employment with City; or
- 7.4. Employment-related claims, charges and demands alleged against City or Contractor by City's employees, current or former, or any applicant for employment with City as related to the services provided under this Agreement.

## **8. COMPENSATION**

- 8.1. Compensation for Services. In consideration for the provision of Services described herein, and subject to any authorized deductions or off-sets herein, the City agrees to pay the Contractor the amount set forth in Exhibit B, being designated therein as the "Compensation Amount", for each full year of this Agreement, or such prorated portion of the Compensation Amount as may be owed for any partial year as set forth on Exhibit B. The timing for all invoices shall be as set forth in this Section 8. Except as otherwise provided for in this Agreement, Contractor agrees that payment by City of the Compensation Amount, or any applicable proration thereof, shall constitute full compensation and consideration for the Services provided under this Contract. Pursuant to O.C.G.A. 36-60-13(a)(3), the Compensation Amount shall be the total obligation of the City for any full year in which Services are provided hereunder unless such obligation is increased by amendment to this Agreement.
- 8.2. Payment Processing.
  - 8.2.1. The Compensation Amount shall be allocated over the number of months of Services in the relevant calendar year and invoiced to the City equally over a twelve-month period for every calendar year this Agreement remains in effect and any partial year shall be prorated and invoiced equally over the number of months of each partial year.
  - 8.2.2. Any prorated Compensation Amount will be billed monthly by the Contractor on the first business day of the month prior to which the Services shall be rendered. The Contractor shall invoice the City for amounts owed hereunder, and such invoice shall be accompanied by such supporting documentation and other backup material as the City Representative may reasonably require. Following receipt of a Contractor's invoice, the City shall promptly review the Contractor's invoice and documentation, and approve the amount

stated therein, or such other, uncontested portion of the amount stated therein, as the case may be, for payment.

8.2.3. Any uncontested Compensation Amount shall be due and payable by the City to the Contractor within thirty (30) business days of invoice receipt.

8.2.4. The City Representative or his/her designee shall contact the Project Manager should there be any discrepancies in the invoice or invoices submitted, identifying the specific cost which is in dispute. The City shall pay the Contractor as provided in Section 8.2.3 for any undisputed charges or, if the City disputes an invoice, within thirty (30) calendar days of resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement.

8.2.5. City shall pay interest at an annual rate at one percent (1%) (said amount of interest not to exceed any limitation provided by law) on payments not paid and received within the payment deadlines set forth in this Section 8, such interest being calculated from the due date of the payment, so long as said delay is not caused in whole or in part by Contractor.

8.3 Compensation Amount Annual Increase. For contract years beginning January 1, 2018 and every January thereafter, the Total Annual Fees as set forth in Exhibit B shall be negotiated annually, by September 1 of each year. City and Contractor shall use good faith negotiations resulting in mutual agreement as to the preferred methodology to be used to determine changes in the Compensation Amount annually. In the event the City and Contractor fail to agree, the Compensation Amount shall be an amount as determined by the following formula:

[CPI Adjustment x (25% x Compensation Amount which is the current year compensation to be adjusted)] + [ECI Adjustment x (75% x Compensation Amount which is the current year compensation to be adjusted)]

CPI Adjustment = Consumer Price Index for all items, in Atlanta, GA, all urban consumers, not seasonally adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report (the "CPI") for the month June of the contract year presently operating in divided by the CPI for the month June of the immediately preceding year Series ID: CUURA319SA0.

ECI Adjustment = Compensation for Civilians Workers, Not Seasonally Adjusted (Employment Cost Index) as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report (the "ECI") for the second quarter of the contract year presently operating in divided by the ECI for the second quarter of the immediately preceding year Series ID: CUURA319SA0.

Subject to the foregoing paragraph regarding annual adjustments, in no event shall the total upward adjustment of the Compensation Amount pursuant to this Article exceed the sum of five percent (5%) nor fall below zero percent (0%) in any given annual period.

8.4 Increases in Compensation or Reimbursable Expenses. Any increases or modification of Compensation or reimbursable expenses shall be subject to the approval of the City Council and shall be made only by written amendment of Agreement executed by both Parties in accordance with Section 22.12.

- 8.5 Payments to Subcontractors. The Contractor shall be obligated to pay promptly all proper charges and costs incurred by the Contractor for labor and expenses incurred for the work performed hereunder upon receipt of monthly Compensation Amount by Contractor from the City.
- 8.6 Adjustments and Modifications to Services. Notwithstanding any provision herein to the contrary, the City reserves the right to modify at any time the nature, method, scope, frequency, or timing of the Contractor's obligations under this Agreement (a "Contract Adjustment") in whatever manner it determines to be reasonably necessary. Both parties agree that, should any Contract Adjustments be made, Contractor's Compensation will be adjusted accordingly, in such amount or amounts as will be mutually agreed to by means of good faith negotiation by the City and the Contractor. Without exception, all deletions or additions to the scope of work will be set forth in a written amendment to this Agreement in accordance with Section 22.12 of this Agreement. Contractor shall not be entitled to receive payment for additional work or services rendered nor shall Contractor be required to perform such additional work or services prior to the proper execution of an amendment authorizing the additional work. Notwithstanding the foregoing, the City shall have the right to terminate this Agreement in accordance with Section 10.6 should the Contractor and the City fail to reach agreement on the adjusted Compensation within thirty (30) days after the date of the Contract Adjustment. Notwithstanding the foregoing, there shall be no upward adjustment of the Compensation on account of any Contract Adjustment made necessary or appropriate as a result of any negligence or willful misconduct of the Contractor, its employees, agents, or its Subcontractors to properly perform its obligations and functions under this Agreement.

## 9. **TERM**

- 9.1. Term and Effective Date. This Agreement shall be for a five (5) year and seven (7) month term and as provided in Section 9.2 and in accordance with O.C.G.A. §36-60-13 terminates each December 31 unless renewed for the succeeding calendar year by the City. This Agreement shall be effective on the 1<sup>st</sup> day of June, 2017, at 12:01 a.m., (the "**Effective Date**").
- 9.2. Option to Renew; Renewal Terms; Termination by Contractor. This Agreement may be automatically renewed for five (5) additional twelve-month terms commencing January 1, 2018 ("**Renewal Term(s)**"), upon the same terms and conditions, as provided for in this Agreement, unless terminated by the City, by notice to Contractor of termination and non-renewal by August 1 of the applicable year of the term; and, the Agreement may be terminated by Contractor by notice to City by August 1 of the applicable Term. Contractor agrees to give City notice of its option to renew no earlier than June 1 and no later than July 1 of the applicable year of the term.
- 9.3. Statutory Termination. Notwithstanding anything herein to the contrary, unless renewed as provided in Section 9.2, this Agreement shall terminate absolutely and without further obligation on the part of the City on December 31, 2017, and each December 31 of each succeeding Renewal Term, as required by O.C.G.A. §36-60-13, as amended, unless terminated earlier in accordance with the provisions of this Agreement.
- 9.4. Annual Appropriation. Notwithstanding anything to the contrary herein, this Agreement is contingent upon sufficient appropriation and authorization being made annually by the Mayor and City Council of the City for the performance of the Services provided in this Contract. If sufficient appropriations or authorization are not made, this Agreement shall terminate upon expiration of the Initial Term or at the expiration of any Renewal Term. This provision shall supersede and control over any other provisions to the contrary in this Agreement.

10. **DEFAULT AND TERMINATION**

10.1. Contractor's Default. The following events shall constitute an "Event of Default" by Contractor under this Agreement:

- 10.1.1. the Contractor shall fail to comply with the provisions set forth in this Agreement, and such failure shall continue for a period of more than thirty (30) days after delivery to the Contractor of a written notice of such breach or default; or
- 10.1.2. the Contractor's occupational or business license shall terminate or the Contractor shall fail to provide the City with evidence of insurance as required by this Agreement, for any reason; or
- 10.1.3. the Contractor fails for any reason to provide the City with an acceptable renewal or replacement insurance within the time period specified by a provision of this Agreement; or
- 10.1.4. the Contractor shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal Bankruptcy laws, or under any other law or statute of the United States or any State thereof, or shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or
- 10.1.5. the Contractor shall have a petition under any part of the Federal Bankruptcy laws, or an action under any present or future insolvency laws or statute filed against it, which petition is not dismissed within thirty (30) days after the filing thereof; or
- 10.1.6. there is any assignment by the Contractor of this Agreement or any of the Contractor's rights and obligations hereunder for which the City has not consented in writing; or
- 10.1.7. the Contractor shall default on any other contract entered into by and between Contractor and the City.

10.2. Remedies Upon Contractor's Default. The City may terminate this Agreement for Contractor's Default upon thirty (30) days prior written notice to the Contractor of the Contractor's default in the performance of any term of this Agreement. In the event that the City terminates this Agreement for default, or the Contractor abandons or wrongfully terminates the Agreement, the Contractor shall be paid for compensation earned to the date of termination or abandonment (but the City shall have the right to reduce by off-set any amounts owed to the Contractor hereunder or under any other contract or obligation by the amount of the City's damages and any amounts owed by the Contractor to the City), but the Contractor shall not be compensated for any profits earned or claimed after the receipt of the City's notice of termination by default or after abandonment or wrongful termination. The City's election to terminate or not to terminate this Agreement in part or whole for the Contractor's default shall in no way be construed to limit the City's right to pursue and exercise any other right or remedy available to it pursuant to the terms of the Agreement or otherwise provided by law or equity. Notwithstanding the foregoing, City may terminate this Agreement immediately upon the occurrence of the Events of Default described in subsections 10.1.3, 10.1.4, 10.1.5, 10.1.6, or 10.1.7 above, and without further notice to Contractor.

- 10.3. City's Rights Upon Default Caused by Bankruptcy and Liquidation. In the event the Contractor (1) makes an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commences any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (3) has had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days or more; (4) takes any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (5) permits any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more causing the Contractor or any third party, including, without limitation, a trustee in bankruptcy, to be empowered under state or federal law to reject this Agreement or any agreement supplementary hereto, the City shall have the following rights:
- 10.3.1. In the event of a rejection of this Agreement or any agreement supplementary hereto, the City shall be permitted to retain and use any back-up or archival copies of the software licensed hereunder under this Agreement for the purpose of enabling it to mitigate damages caused to the City because of the rejection of this Agreement. The City shall exert reasonable efforts to mitigate such damages by use of such back-up or archival copies.
- 10.3.2. In the event of rejection of this Agreement or any agreement supplementary hereto, the City may elect to retain its rights under this Agreement or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code.
- 10.3.3. In the event of rejection of this Agreement or any agreement supplementary hereto, the City may elect to retain its rights under this Agreement or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code without prejudice to any of its rights of setoff with respect to this Agreement under the Bankruptcy Code or applicable non-bankruptcy law; or In the event of a rejection of this Agreement or any agreement supplementary hereto, the City may retain its rights under this Agreement or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code without prejudice to any of its rights under Section 503(b) of the Bankruptcy Code.
- 10.4. City's Right to Cure Default by Contractor. The City may, but shall not be obligated to, cure, following Contractor's right to cure period in accordance with Section 10., upon ten (10) days written notice to the Contractor (provided, however, that in any emergency situation the City shall be required to give only such notice as is reasonable in light of all the circumstances), any default by Contractor under this Agreement; whenever the City so cures a default by the Contractor, all costs and expenses incurred by the City in curing the default, including, but not limited to, reasonable attorneys' fees, shall be paid by the Contractor to the City on demand.
- 10.5. Contractor's Right to Terminate. In the event City has (i) failed to make payments to Contractor in accordance with Section 8 hereof, where such amounts are not otherwise in dispute or otherwise excused under this Agreement, or (ii) failed, refused, or defaulted in its duties under Section 2.12, this Agreement may be terminated by Contractor after ten (10) days of issuing a written Notice of Default and Termination to City, and City's subsequent failure to cure said default within such period.

- 10.6. Right to Terminate for Convenience. Notwithstanding anything herein to the contrary, either party may terminate this Agreement for its convenience at any time upon one hundred and eighty (180) days written notice to the other party. In the event of the City's termination of this Agreement for convenience, the Contractor will be paid for those services actually performed. Partially completed performance of the Agreement will be compensated based upon a signed statement of completion to be submitted by the Contractor who shall itemize each element of performance.
- 10.7. City's Right to Terminate for Lack of Funding. The City may unilaterally terminate this Agreement due to a lack of funding at any time by thirty (30) day advanced written notice to the Contractor. In the event of the City's termination of this Agreement for fund appropriation, the Contractor will be paid for those services actually performed. Partially completed performance of the Agreement will be compensated based upon a signed statement of completion to be submitted by the Contractor which shall itemize each element of performance.
- 10.8. Final Invoice. In the event of receipt of a notice of Default and termination, and upon the date of the resulting termination for Default, the Contractor shall prepare and deliver to City a final accounting and final invoice of charges for all performed but unpaid Services, and allowable charges under this Agreement and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the City within forty-five (45) calendar days of the date of termination. Thereafter, no other invoice, bill, or other form of statement of charges owing to the Contractor shall be submitted to or accepted by the City. The final invoice shall be paid in conformity with the times allowed for paying monthly invoices under this Agreement. In the event payment has been made for Services not completed, Contractor shall return these sums to the City within thirty (30) business days after receipt of notice that these sums are due.
- 10.9. No Limitation on Actions. Provided that notice of Default and termination is provided in accordance with this Section and its subsections, nothing contained herein shall prevent, preclude, or limit any claim or action for Default or breach of this Agreement resulting from non-performance by a Party. Either Party may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy specifically given or otherwise existing and may be exercised from time to time as often and in such order as may be deemed expedient by the Party. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. The Parties' rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to either Party in law or in equity.

## **11. TRANSITION UPON TERMINATION**

- 11.1. Transition upon Termination. Upon termination or prior to expiration of the Initial Term or any applicable Renewal Term, the City shall begin transition efforts and Contractor shall assist with such transition. Contractor and City shall cooperate in good faith in order to effectuate a smooth and harmonious transition from Contractor to City, or to any other person or entity City may designate, and to maintain during such period of transition the same quality of Services otherwise afforded to the residents of the City pursuant to the terms hereof.
- 11.2. Extension of Services. In the event of the full termination, or expiration of this Agreement, and in the further event that the City is not in breach of this Agreement and is unable to provide the same level of services at the time of such termination or expiration, the then pending term of this Agreement may be extended by the City for a period of ninety (90) calendar days or until City or a contractor of the City is capable, in the City's sole discretion, of rendering such Services, whichever

occurs later providing the City has provided Contractor thirty (30) calendar days' notice of such need for contract extension. The remuneration to be paid to Contractor during the transition period shall be based upon actual cost of providing such services during the transition period plus a mutually agreed upon fee, provided, however such fee shall not exceed the pro-rated Compensation Amount which would be due and owing to the Contractor for the provision of said services pursuant to the terms of this Agreement. In no event shall the extension of Services under this provision be extended beyond one hundred and eighty (180) calendar days.

- 11.3. Records to be Delivered. During any transition period as described in this Section 11, and its subsections, Contractor shall timely share with the City and deliver to the City all records in the possession of Contractor that concern or relate to the Services and that are not "Data" as such term is defined in Section 1.3.

## 12. **EMERGENCIES**

- 12.1. Emergency Reimbursement Funds. In the event of an emergency or disaster declared by law enforcement or a governmental agency for which reimbursement funds are made available by a third party funding agency or source, Contractor will be entitled to reimbursement for all work performed and/or material losses on a pro rata basis with the City determined by the proportion for which the reimbursement was for Services rendered by the Contractor in remedying or responding to the emergency or disaster over the total reimbursement amount so that the City receives its pro rata share of such reimbursement for City losses or materials expenses paid as a result of the disaster or emergency. Any reimbursement provided for administrative costs directly related to any declared emergency or disaster shall be equally proportionally shared between the Parties. Contractor shall not make claims for extra costs associated with responding to any such disaster or emergency beyond the reimbursement set forth in this provision.

## 13. **AUDIT AND INSPECTION RIGHTS**

- 13.1. Audits. The City may, at reasonable times, and for a period of up to three (3) years following the delivery of the Services in question by Contractor under this Agreement, audit, or cause to be audited, those books and records of Contractor that are related to Contractor's performance under this Agreement, excluding all financial records unless related to direct cost reimbursable expenses or other matters contemplated herein, including buyout provisions, unless a court of competent jurisdiction orders disclosure of such information. Contractor agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement. Within thirty (30) days of a written request from City, all applicable books, records, or reports related to the Services shall be made available by Contractor for inspection, examination, audit, and copying by City.
- 13.2. Inspection of Facilities and Materials. The City may, at reasonable times and upon reasonable notice during the Initial Term or any Renewal Term hereof, inspect Contractor's facilities and materials stored therein, and perform such inspections and process reviews and sample materials as the City deems reasonably necessary, to: (1) determine whether the Services required to be provided under this Agreement conform to the terms of this Agreement; and/or (2) determine whether the materials to be provided hereunder meet the quality standards required hereunder; and/or (3) verify inventory; and/or (4) balance load sheets; and/or (5) ensure materials purchased by the City are used only for Services under this Agreement. Within thirty (30) days of written request from City, Contractor shall make available to the City all reasonable facilities and assistance to facilitate the performance of inspections by the City or its representatives.

- 13.3. Condition Assessment. If applicable to the scope of Services, City and Contractor shall perform a condition assessment of the assets and infrastructure within sixty (60) days prior to the Contractor commencing performance of such Services to establish the existing condition of the assets and infrastructure of the City. The City shall be responsible for any costs, claims, liabilities and expenses related to the condition of the assets and infrastructure.

14. **INDEMNIFICATION**

- 14.1. Non-Professional Services Indemnity. The Contractor shall indemnify and hold harmless the City, and the members (including, without limitation, members of the City's Council, and members of the boards and of the City), officers, employees, from and against any and all liabilities, losses, suits, claims, demands, judgments, fines, damages, costs and expenses (including reasonable attorneys' fees) which may be incurred by, charged to or recovered from any of the foregoing by (i) reason or on account of loss of any property of the City, or any property of, injury to or death of any person resulting from the negligent acts or omissions of the Contractor's directors, officers, agents, employees, subcontractors, licensees or invitees, in connection with the performance of this Agreement, unless such liability, loss, suit, claim, demand, judgment, fine, damage, cost or expense was caused by the City's negligence or by the joint negligence of the City and any of its, officers, agents, employees, Subcontractors, licensees, or invitees of the City, or (ii) arising out of or in connection with a material breach by the Contractor of the terms and conditions in this Agreement, or (iii) arising out of or in connection with any claim, suit, assessment or judgment prohibited by Section 14.3, Section 14.4, or Section 14.6 below by or in favor of any person described in Section 14.5 below.. The City agrees to give the Contractor reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow the Contractor or its insurer to compromise and defend the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. The indemnification provisions of this Section 14.1 shall survive the expiration or earlier termination of this Agreement with respect to any negligent acts or omissions occurring during the Term of the Agreement. This Section 14.1 shall not apply to any professional services, as defined in the following paragraph, nor to any act, error, or omission arising out of such professional services.
- 14.2. Professional Services Indemnity. Notwithstanding anything contained in the forgoing indemnity, any claim for indemnity by the City for claims of third parties alleging harm due to the professional services provided by Contractor, to the fullest extent permitted by law, Contractor shall indemnify City from and against losses, damages, and judgments arising from such claims by third parties, but only to the extent they are found to have been caused by a negligent act, error or omission of Contractor or its sub-Contractors in the performance of professional services under this Agreement. For the purposes of this Professional Services Indemnity, "professional services" means those services performed by a licensed professional employed by Contractor or a person performing such services under the direct supervision of a licensed professional.
- 14.3. Intellectual Property Indemnity. In addition to indemnification provisions stated above, if the City's use of any service, software, firmware, programming, or other item provided by or on behalf of the Contractor is enjoined due to infringement of another person or entity's intellectual property rights, the Contractor shall promptly, at its sole cost and expense, modify the infringing item so that it no longer infringes, procure for the City the legal right to continue using the infringing item, or procure for the City a non-infringing item, or procure for the City a non-infringing replacement item having equal or greater functional capabilities as the infringing item.

- 14.4. Claims by Contractor's Employees or Contractor's Subcontractors. In any and all claims against the City, or any of their officers, members, agents, servants or employees, by any employee of the Contractor, any Contractor subcontractor, the indemnification obligation of the Contractor under this Section 14 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Contractor or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.
- 14.5. Waiver of Claims Other than City. No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or any other agreement or document pertaining to the work or services of the Contractor hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or any judgment obtained against the City, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this Agreement, shall be had against any member (including, without limitation, members of the City's Council, or members of the citizens advisory committees of each), any officer, employee or agent, as such, past, present, or future of the City, either directly or through the City or otherwise for any claim arising out of or in connection with this Agreement or the work or services conducted pursuant to it, or for any sum that may be due and unpaid by the City. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, officer, employee, or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of or in connection with this Agreement or the work or services conducted pursuant to it, or for the payment for or to the City, or any receiver therefore or otherwise, of any sum that may remain due and unpaid by the City, is expressly waived and released as a condition of and in consideration of the execution of this Agreement and the promises made to the Contractor pursuant to this Agreement.
- 14.6. City Indemnification. To the extent allowable by Georgia law, and without waiving the City's sovereign immunity, City shall indemnify, defend and hold harmless the Contractor, its officers, agents, employees, and subcontractors from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property, to the proportionate extent arising out of an invalid or unconstitutional ordinance or resolution or alleged to be or resulting from any errors, omissions, willful misconduct or negligent acts of City, its officials, agents, servants, or subcontractors in the performance by the City of its obligations under this Agreement, whether from and against any orders, judgments, or decrees which may be entered thereon and from and against all costs, damages of every kind and nature, attorneys' fees, expenses and liabilities incurred in and about the defense of any such claim and investigation thereof.
- 14.7. Special Damages. In disputes between City or its affiliates and the Contractor or its affiliates, in no event shall either party or their affiliates be liable to the other party for any special, indirect or consequential damages, whether such liability arises in breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action, provided, however, such limitation does not include any liability for which Contractor is obligated to indemnify City based upon special, indirect or consequential damages suffered by any third-parties.
- 14.8. Notice of Third Party Claims. In the event that either Party receives any form of notice that a third party asserts against the City or any City affiliate or the Contractor or any Contractor affiliate any claim, liability, suit, action, damage, cost, loss, or expense for personal injury, bodily injury,

sickness, diseases or death or damage or destruction of tangible property arising out of the performance of the Services under this Agreement (a "Third Party Claim"), the Party receiving notice of such Third Party Claim shall immediately and without delay notify the other party in writing of such Third Party Claim and transmit any written documents received by such Party to the other party.

14.9. Nothing in this Section 14 and its subsections shall:

14.9.1. Limit or prevent the City or the Contractor from determining positions and actions relative to settlement or defense on any matter for which the City or the Contractor are responsible; or

14.9.2. Limit or prevent either Party from joining the other Party or any affiliate of a Party in any claim, suit, action, or proceeding involving a Third Party Claim through interpleading, third-party claim, cross-claim, or otherwise limit or prevent a Party from voluntarily joining any claim, suit, action, or proceeding through intervening or as may otherwise be permitted by law or rule; or

14.9.3. negate, abridge, or otherwise reduce any other right of indemnity that the City may have as to any party or person described herein.

**15. INSURANCE**

15.1. Insurance Generally. The Contractor shall obtain and shall continuously maintain during the Initial Term and any Renewal Term of this Agreement insurance of the kind and in the minimum amounts specified as follows:

15.1.1. Statutory Worker's Compensation Insurance in the amount required by applicable law for all employees and other persons as may be required by law.

15.1.2. Employer's Liability Insurance with limits not less than \$100,000 for "each accident," \$500,000 for "disease policy limit," and \$100,000 for "disease each employee."

15.1.3. Comprehensive Commercial General Liability insurance with combined single limits of Two Million Dollars (\$2,000,000) each occurrence and in the aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests' provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

15.1.4. Comprehensive Automobile Liability insurance with combined single limits for bodily injury and property damage of not less than of One Million Dollars (\$1,000,000) each occurrence with respect to each of the Contractor's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests' provision. Such insurance coverage must extend to all levels of Subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on and off any work site, and such coverage shall include non-ownership and hired cars (vehicles and equipment) coverage. Such insurance

shall be endorsed to name the City, and its elected officials, officers, employees and agents as additional insured parties.

- 15.1.5. Professional Liability (errors and omissions) Insurance with a limit of coverage of Two Million Dollars (\$2,000,000) per claim and annual aggregate. Such insurance must contain tail coverage to include work performed by the Contractor from the project's inception date and for a period of two (2) years following completion of the project.

15.2. Requirements of Insurance.

- 15.2.1. Insurance shall be procured and maintained with insurers with an A- or better rating as determined by Best's Key Rating Guide. All insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor.
- 15.2.2. All policies of insurance shall be primary insurance, and any insurance carried by the City, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor. The Contractor shall not be an insured party for any City-obtained insurance policy or coverage. By naming the City as an additional insured on Contractor's insurance policy, the City is only securing protection from liabilities arising out of Contractor's negligence as per the applicable policy.
- 15.2.3. Contractor's policies of insurance required by this Section 15 may require the Contractor's payment of a deductible, provided the Contractor's insurer is required to pay claims from the first dollar at 100% of the claim value without any requirement that the Contractor pay the deductible prior to its insurer's payment of the claim. Contractor shall be solely responsible for any deductible losses.
- 15.2.4. No policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.
- 15.2.5. Proof of required insurance shall be maintained in all equipment and motor vehicles insured in accordance with the provisions of this Agreement.
- 15.2.6. Contractor shall provide the City with at least thirty (30) days' prior written notice of any adverse material change in the Contractor's required insurance coverage except that ten (10) days' notice of cancellation for non-payment is required. For purposes of this Section 15.2.6, an "adverse material change" shall mean any reduction in the limits of the insurer's liability below the minimum limits of insurance required by this Section 15, non-renewal, or cancellation of any insurance coverage. Prior to the expiration of any such policy, the Contractor shall provide the City a certificate of insurance showing that such insurance coverage has been renewed. In the event of an adverse material change, the Contractor shall, within five (5) days after such adverse material change, provide the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies approved by the City.

- 15.3. Failure to Obtain or Maintain Insurance. The Contractor's failure to obtain and continuously maintain policies of insurance in accordance with this Section 15 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance of this Agreement. Failure on the part of the Contractor to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement.

- 15.4. Insurance Certificates. Prior to commencement of the Services, the respective party shall submit to the other party certificates of insurance for all required insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 15 and its subsections shall be indicated on each certificate of insurance.
- 15.5. City Provided Insurance. The City shall obtain and shall continuously maintain during the term of this Agreement insurance of the kind and in the minimum amounts specified as follows:
  - 15.5.1. Comprehensive General Liability insurance with combined single limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate. Such insurance shall be endorsed to name the Contractor, and its officers, employees and agents as additional insured parties.
  - 15.5.2. Property Insurance for all City property, including City supplied vehicles and equipment for the full market value for such property. Such insurance shall be endorsed to name the Contractor, and its officers and employees as additional insured parties.

City shall supply certificate of insurance to Contractor thirty (30) calendar days of Agreement signing and on an annual basis thereafter.

## 16. **NON-DISCRIMINATION**

- 16.1. Compliance with Regulations. The Contractor shall comply with all application Federal and State laws and regulations regarding discrimination, as they may be amended from time to time (hereafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.
- 16.2. Non-Discrimination. During the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, or disability which does not preclude the applicant or employee from performing the essential functions of the position. The Contractor will also, in all solicitations or advertisements for employees placed by qualified applicants, consider the same without regard to race, creed, color, sex, national origin, age, or disability which does not preclude the applicant from performing the essential functions of the job. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provision will be binding upon each Subcontractor, providing that the foregoing provisions shall not apply to contracts or Subcontractors for standard commercial supplies of raw materials.
- 16.3. Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources or information, and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the City, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 16.4. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the City shall impose such Agreement sanctions as it may determine to be appropriate, including but not limited to:
  - 16.4.1. Withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or

16.4.2. Cancellation, termination or suspension of the Contract, in whole or in part.

- 16.5. Incorporation of Provisions. The Contractor shall include the provisions of subsections 16.1, 16.2 and 16.5 in every subcontract, including procurement of materials and leases of equipment, unless exempt by law or regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interest of the City and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**17. RECORDS AND OWNERSHIP OF DOCUMENTS**

- 17.1. Retention and Open Records Act Compliance. All records of the Contractor related to the provision of Services hereunder and records produced or maintained in accordance with this Agreement, shall be retained and stored in accordance with the City's records retention and disposal policies, O.C.G.A. 50-18-92, *et seq.* and the Georgia Administrative Code. Those records which constitute "public records" under Georgia law are to be at the City offices or accessible and opened for public inspection in accordance with applicable law and City policies. Public records requests for such records shall be processed in accordance with City policies. Contractor agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

- 17.2. Ownership. As per Section 18, any work product, materials, and documents produced by the Contractor for the City under this Agreement shall become property of the City upon delivery and shall not be made subject to any copyright unless authorized by the City. Other materials, methodology and proprietary work used or provided by the Contractor to the City not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by the Contractor and the Contractor reserves all rights granted to it by any copyright. The City shall not knowingly reproduce, sell, or otherwise make copies of any copyrighted material, except pursuant to law, regulation, or court order. The Contractor waives any right to prevent its name from being used in connection with the Services.

**18. RIGHTS IN DATA; COPYRIGHT; INTELLECTUAL PROPERTY; DISCLOSURE; CONFIDENTIALITY**

- 18.1. Rights in Data, Drawing. All Data shall be the property of the Contractor. The licensed software code copyrights and licensed software documentation are licensed to the Contractor for use by the City for the term of this Agreement. No title or ownership or any intellectual property or proprietary rights are transferred to the City under this Agreement. City shall have the full right to use such Data for any official purpose required by law. Such use shall be without any additional payment to or approval by the Contractor, and the purpose of the use of the Data under this Agreement shall be limited to provision of the Services. The Contractor shall not be responsible for the use of the Data for any other purpose and the City or any third party users do so at their own risk.

- 18.2. Copyrights. No Data developed or prepared in whole or in part under this Agreement shall be subject to copyright protection owned by a third party in the United States of America or other country, except to the extent such copyright protection is available for the City. Contractor shall not include in the Data any copyrighted matter owned by a third party unless Contractor obtains the written approval of the City Manager or designee and provides said City Representative or designee with written permission of the copyright owner for Contractor to use such copyrighted matter in the manner provided herein.

18.3. Right to Data Upon Early Termination. If this Agreement is terminated for any reason prior to completion of the Term, the Contractor shall provide for a fee to the City the right of use for any Data, prepared hereunder which are reasonably required for the City to sustain operation. However, such right shall not be transferable to third parties without Contractor's written approval.

18.4. Non-Disclosure of Data. City will treat Data and any information received under or through this Agreement in strictest confidence and will not disclose such information to third parties except where such information: (a) was part of the public domain when received, or becomes a part of the domain through no action or lack of action by City, or (b) prior to disclosure was already in City's possession and not subject to an obligation of confidence imposed in another relationship, (c) subsequent to disclosure is obtained from a third party whom is lawfully in possession of such information and not subject to a contractual relationship to Contractor with respect to such information, (d) is in the form of a record which is otherwise subject to required disclosure as an open record under applicable Federal and state laws, or (e) is ordered to be disclosed by a court of competent jurisdiction. City agrees that access to and dissemination of such information shall be limited to its employees having a need to know. City shall continue to maintain appropriate internal policies and procedures which in its judgment are reasonably sufficient to protect the confidential nature of such information.

## 19. **CONFLICTS OF INTEREST**

19.1. Refraining from Creating Conflicts. The Contractor shall refrain from knowingly providing services to other persons, firms, or entities that would create a conflict of interest for the Contractor with regard to providing the Services pursuant to this Agreement. As soon as the Contractor becomes aware of a potential, perceived or real conflict of interest, the Contractor shall immediately inform the City of that conflict. If first notification to the City is verbal, a written notification of the potential conflict will be made within twenty-four (24) hours after verbal notification is made. Said conflict notification will include a recommended approach to mitigating the conflict. If the City concurs with the Contractor's recommended approach, Contractor will immediately implement the conflict mitigation resolution. The Contractor shall update the City on a regular basis regarding the status of the conflict mitigation resolution. If the City believes the recommended approach to the conflict mitigation resolution is insufficient to resolve the conflict, the City shall suggest modifications to the conflict mitigation resolution. The Parties shall endeavor to work out a mutually agreeable resolution. At no time shall the City approve a resolution that permits a management Contractor Employee to be involved in a third party project or contract which could give rise to a conflict or potential conflict with the City. If the Parties are unable to reach agreement as to the conflict mitigation resolution, the matter shall proceed to resolution of the matter pursuant to Section 24 hereof.

19.2. Public Trust. The Contractor shall not offer or provide anything of benefit to any City official or employee that would place the official or employee in a position of violating the public trust, or any City-adopted Code of Conduct or ethical principles.

19.3. Participation in Other City RFPs. Nothing in this Agreement shall prohibit Contractor from being eligible to participate in any additional requests for proposals, statements of qualifications, or any other bids the City may request. If the Contractor is awarded any of these additional bids, Contractor agrees to enter into a separate agreement for those services to be provided.

19.4. Costs for Conflict Resolution. Any reasonable costs incurred by the City related to resolution of any matter addressed by this subsection shall be reimbursed to the City by the Contractor or off-set against compensation otherwise owing the Contractor.

## 20. **MUTUAL NON-SOLICITATION**

The Contractor agrees that during the Initial Term and any Renewal Term of the Agreement and for a period of one year following the termination or non-renewal of the Agreement, Contractor shall not either directly or indirectly solicit, induce, recruit or encourage any of the City's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage, take away or hire employees of the City, either for Contractor or any other person or entity. Nothing contained in this provision shall prohibit the hiring of any City employee if such hire was not induced and the employee independently and without notice of opportunity by the Contractor applied for the position and the position was both open to the public for application and the employee was subject to a competitive process.

Unless mutually agreed, during the term of the Agreement and for a period of one year following the termination or non-renewal of the Agreement, the City shall not solicit for employment any of Contractor's management employees. Nothing contained in this provision shall prohibit the hiring of any employee if such hire was not induced and the employee independently and without notice of opportunity by the City applied for the position and the position was both open to the public for application and the employee was subject to a competitive process.

**21. FORCE MAJEURE.**

Neither Party shall be liable for damages, delays, or failure to perform its obligations under this Agreement if performance is made impractical or impossible, or unpredictably and abnormally difficult or costly, as a result of any unforeseen occurrence, including but not limited to fire, flood, acts of God, civil unrest, failure of a third party to cooperate in providing services other than Contractor's Subcontractors, or other occurrences beyond the reasonable control of the party invoking this Force Majeure clause. The Party invoking this Force Majeure clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within five (5) business days after its occurrence or discovery of its occurrence, and shall take reasonable measures to mitigate any impact of the event that triggered the invoking of this Force Majeure clause. If the Force Majeure event shall impact schedule or increase the costs incurred by Contractor, such items shall be handled in accordance with Section 2.4.

**22. MISCELLANEOUS PROVISIONS**

- 22.1. No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.
- 22.2. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the laws of the state of Georgia.
- 22.3. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section shall not authorize assignment.
- 22.4. No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of Contractor. Absolutely no third party

beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

- 22.5. Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Georgia. Any suit or proceeding initiated for the purpose of interpreting or enforcing any provision of this Agreement or any matter in connection therewith shall be brought exclusively in a court of competent jurisdiction in DeKalb County, Georgia, and the Contractor waives any venue objection, including, but not limited to, any objection that a suit has been brought in an inconvenient forum. The Contractor agrees to submit to the jurisdiction of the Georgia courts and irrevocably agrees to acknowledge service of process when requested by the City. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.
- 22.6. Attorney's Fees and Costs. If either party is required to enforce the terms of this Agreement by court proceedings or otherwise due to breach of contract, whether or not formal legal action is required, the prevailing party shall recover its attorney's fees and costs incurred due to such. This provision shall survive the expiration or termination of the Agreement.
- 22.7. Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 22.8. Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by Contractor without the express written consent of the City. Any written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by the City. No assignment shall release the Party from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment.
- 22.9. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 22.10. Computation of Time. In computing any period of time established under this Contract, except as otherwise specified herein the word "days," when referring to a period of time that is ten (10) days or less means business days, and when referring to a period of time that is more than ten (10) days means calendar days. The day of the event, from which the designated period of time begins to run shall not be included. A business day is any day other than Saturday, Sunday, or Federal, State of Georgia or City holidays.
- 22.11. Integration. This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 22.12. Amendment. Any amendments to this Agreement, including any exhibits hereto, must be in writing and be signed by both the City and the Contractor.

- 22.13. Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 22.14. Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.
- 22.15. Further Assurances. The Contractor agrees to perform all acts and execute all supplementary instruments or documents which may be reasonably necessary to carry out or complete the transaction(s) contemplated by this Agreement.
- 22.16. Notices. Unless otherwise stated herein, all notices or other writings which either City or the Contractor is required or permitted to give to each other may be (i) hand delivered by the Contractor to the Mayor and by City to the Project Manager, (ii) mailed via U.S. Certified Mail, Return Receipt Request, or (iii) sent next-day delivery by a nationally-recognized overnight delivery service. Any such notice shall be deemed to have been delivered upon actual delivery, or one (1) day following submission to a nationally-recognized overnight delivery service for next day delivery to City, or three (3) days following submission to the City by U.S. Certified Mail. Any such notice shall be sent to:

**If to the City:**

CITY OF STONECREST  
ATTN: City Attorney  
Coleman Talley LLP  
3475 Lenox Road, N.W.  
Atlanta, GA 30326  
FAX: 770-698-9729

**If to Contractor:**

CH2M HILL ENGINEERS, INC.  
9191 S. Jamaica Street,  
Englewood, CO 80112  
ATTN: O&M Contracts  
FAX: 720-286-8453

By written notice by either party to the other, the address and recipient for the delivery of notices, other than hand delivery may be changed; provided, however that once City establishes its physical place of business ("City Hall"), the notices by the Contractor shall thereafter be delivered or mailed to the street address of City Hall to the attention of the Mayor without further notice by City to the Contractor.

- 22.17. Negotiation. The Parties acknowledge that the terms of this Agreement were jointly negotiated between the Parties, that both Parties were represented by attorneys and that, and in the case of any dispute regarding the terms of this Agreement, the terms should not be construed in favor of or against either Party.
- 22.18. Entire Agreement. This Agreement (including the Exhibits hereto) (a) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersede other prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof.

**23. AUTHORITY**

- 23.1. Authority. The person executing this Agreement on behalf of Contractor, by execution hereof, hereby represents to the City that such person has full power and authority to make and execute this Agreement and that the making and execution hereof shall create a legal obligation upon Contractor, enforceable according and to the extent of the provisions hereof. The Mayor, by his execution hereof, represents to Contractor that he has full power and authority to make and execute this Agreement on behalf of the City, pursuant to the Resolution of the City Council of the City, and that the making and execution hereof shall create a legal obligation upon the City, enforceable according and to the extent of the provisions hereof.
- 23.2. Obligations Not Contrary to Insurance Requirements. Nothing contained herein or any obligation on the part of Contractor to be performed hereunder shall in any way be contrary to or in contravention of any policy of insurance or surety bond required of Contractor pursuant to the laws of the State of Georgia.
- 23.3. Service by Affiliates. Contractor shall perform this Agreement under the name of CH2M HILL ENGINEERS, Inc., provided, however that CH2M HILL ENGINEERS, Inc. may perform services under this Agreement through any wholly owned affiliates of CH2M HILL Limited and if so, such affiliates shall be bound by the terms and conditions of this Agreement to the same extent as if they had been a signatory hereof. It shall be the duty of Contractor to insure: (1) that any affiliates who conduct business for the City pursuant to this Agreement have executed all documents necessary to be legally bound to the City regarding said business; and (2) that any affiliates who conduct business for the City pursuant to this Agreement are in full compliance with the terms hereof.
24. **DISPUTES**
- 24.1. Key Personnel Resolution Meeting. In the event that a Party believes there is a controversy or dispute regarding this Agreement or any of its terms, conditions or obligations, the Project Manager and the City Representative shall within a reasonable timeframe meet and attempt to reach resolution on such dispute within the timeframe requested by the aggrieved Party.
- 24.2. Upper Management Resolution Meeting. If, following the Key Personnel Resolution Meeting, either Party remains aggrieved, such Party may request a meeting between the City Representative to represent the City and Vice President for the Operations and Maintenance Business Group of CH2M, to represent the Contractor, who shall jointly convene to discuss such dispute and shall make a good faith effort to fully resolve any issues within a reasonable period.
- 24.3. Mediation. If resolution is not reached as provided in Section 24.2, the Parties shall refer the matter to non-binding mediation. The mediator shall be selected by joint agreement of the Parties within thirty (30) calendar days of the date of the Upper Management Resolution Meeting and such mediation shall be scheduled to occur as soon as is reasonably possible, depending on the nature of the dispute. Each Party shall pay 50% of the third party costs of mediation.
- 24.4. Litigation. If resolution is not reached following mediation, the Parties may proceed to make such claims as they may have in a court of competent jurisdiction, per the terms of Section 22.5.
- 24.5. Continuation of Services. Unless otherwise agreed in writing, Contractor shall continue to provide Services during any dispute resolution proceedings. If Contractor continues to perform, City shall continue to make payments in accordance with this Agreement, subject to applicable withholdings for amounts in dispute.
- 24.6. Emergency Action Not a Waiver. Under certain emergency circumstances related to the Services hereunder, either Party may from time to time take immediate action to remedy such problem. Such

action shall not be deemed a waiver of such Party's right to seek reimbursement or exercise any other remedy available to such Party hereunder.

**25. GRATUITIES, REBATES, OR KICKBACKS.**

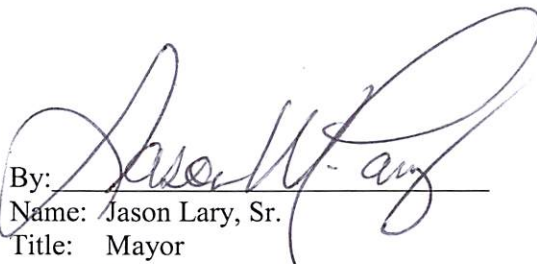
- 25.1. Gratuities. It shall be unethical for any person to offer, give or agree to give any employee or official of the City or for any employee or official of the City to solicit, demand, accept from another person, a gratuity, rebate, loan, offer of employment or other services or property of value in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase request, including the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore in any manner inconsistent with the State of Georgia's Department of Administrative Services Gratuity Policy. Rebates normally or routinely offered to customers in the ordinary course of business for the purchase of goods and services are acceptable and are the property of the City.
- 25.2. Kickback and Rebates. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor to this Agreement to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontractor or order.

The Parties, intending to be legally bound, indicate their approval of the Agreement by their signatures below.

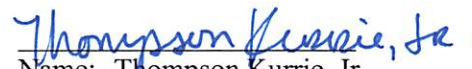
**CH2M HILL ENGINEERS, INC.:**

**CITY OF STONECREST, GEORGIA:**

By:   
Name: ANDREW APPLETON  
Title: SENIOR VICE PRESIDENT  
Date: 6/15/2017

By:   
Name: Jason Lary, Sr.  
Title: Mayor  
Date: June 14, 2017

Approved as to form:  
Coleman Talley LLP, City Attorney

By:   
Name: Thompson Kurrie, Jr.  
Title: Partner

## **EXHIBIT A- SERVICES**

### **GENERAL**

1. Provide services under the direction of the City Manager or designee.
2. Provide the City with a primary contact who shall be available to the City in person or by telephone on a twenty-four (24) hour basis, seven (7) days per week.

### **COMMUNITY DEVELOPMENT SERVICES**

#### **A. Planning and Zoning**

1. Administer all aspects of the City's Zoning Ordinance and other related ordinances, including, but not limited to, reviewing and recommending revisions and updates to the City and providing interpretations of the provisions of the ordinance(s).
2. Respond to inquiries from the general public regarding land development activities and allowed zoning activities within the City.
3. Provide information to the public and to applicants on the public hearing and development process.
4. Provide information to builders, designers, homeowners, and others concerning development codes and other zoning regulations.
5. Recommend policies and procedures regarding planning, zoning and other development related activities. Prepare and recommend schedules and time frames for processing such matters.
6. Prepare analysis for each zoning modifications, variance application, administrative modification or administrative variance filed based on the standards of the City Ordinance and the approved schedule. Process each application, coordinating with applicants, owners, and contractors.
7. Provide support to the City Attorney on all Zoning related litigation.
8. Coordinate and administer the printing and delivery of signs and other notifications required by law regarding requests for zoning, use permits, variances, and any other actions requiring advertising.
9. Process applications for public hearings, prepare staff reports, and assist the city attorney to prepare advertisements and notifications.
10. Manage plans, paper files, and electronic files to ensure proper labeling and storage for archival purposes.
11. Coordinate with DeKalb County on site-specific zoning conditions and establish database to be used in the City's GIS system.
12. Coordinate and facilitate meetings of appointed boards.

## **B. Land Development**

1. Receive, process, and review submitted site development plans for compliance with all applicable codes and regulations within the time limits established by the City.
2. Coordinate development plan review and permitting with other agencies, including but not limited to, DeKalb County Traffic and Transportation, Georgia Department of Transportation, DeKalb Health Department, DeKalb County Fire Marshal, Georgia Environmental Protection Division, and applicants' engineering consultants.
3. Under the direction of the City Manager, for submitted site development plans, provide letter stipulating plan corrections required in order to obtain a land disturbance permit, or issue land disturbance permits when plans comply with applicable codes and regulations.
4. Review and coordinate the processing of applications for temporary outdoor activities, zoning certifications, and address assignments regulated by the City's Zoning Code.
5. Perform preliminary site evaluations as needed and meet with applicants on site to review proposed projects.
6. Respond to complaints in a timely manner concerning drainage, water runoff, erosion, tree removal and other site related matters.
7. Inspect and approve location of tree protection fencing, erosion control measures, and other pre-construction protection and site stabilization activities.
8. Inspect and approve land disturbance activities during construction.
9. Conduct soil erosion and sedimentation control inspections.
10. Assess condition of trees and other plant material in response to development activity and permit applications. Evaluate trees and tree preservation areas, including determination of specimen trees to be saved.
11. Review, provide comments, and approve landscape plans and buffer plans. Respond to questions and provide interpretations regarding the buffer and tree regulations.
12. Review, inspect, and approve completed development activities for compliance with zoning code, development regulations, and overlay district regulations prior to issuance of certificates of occupancy.

## **C. Plan Review and Permitting**

1. Review all submitted building plans for compliance with applicable codes and regulations.
2. Manage the City's system for the issuance of permits, certificates of use and certificates of occupancy in accordance with City ordinances.
3. Coordinate plan review and permitting with other agencies including, but not limited to, DeKalb County Traffic and Transportation, GA DOT, DeKalb Health Department, DeKalb County Fire Marshal.

4. Receive, process and complete the review of submitted plans within the approved time limits established by the City and either issue a permit or issue a letter stipulating corrections required in order to issue a permit.
5. Review and coordinate the processing of applications for signs, temporary uses, construction trailers, and other building and zoning related permits regulated by the City's Zoning Code.
6. Provide information to builders, designers, homeowners, and others concerning building codes and other construction regulations.
7. Manage plans, paper files, and electronic files to ensure proper labeling and storage for archival purposes.
8. Take inspection calls, coordinate inspection scheduling, and provide inspections within the approved time lines established by the City.
9. Inspect all building construction within the City to ensure compliance with applicable local, state and national codes, including all provisions of the issued permit.
10. If required by the City, provide assessment of existing buildings and structures for code compliance including, but not limited to, energy code, ADA regulations, and building codes.
11. Assist the City with its Emergency Management Plan by implementing all responsibilities assigned to building inspectors such as ensuring that construction sites are secured prior to a forecast weather event, assessing damage after a severe weather event, and taking inventory per FEMA requirements.

#### **D. Code Enforcement**

1. Enforce all City ordinances relating to real properties, trees, and signs. Such ordinances include regulations pertaining to zoning and property maintenance, but are not limited to conditions such as:
  - a. Abandoned vehicles.
  - b. Trash.
  - c. Illegal dumping.
  - d. Overgrown properties.
  - e. Deforestation or tree removal.
  - f. Outdoor storage.
  - g. Erosion or sedimentation violations.
  - h. Use of property inconsistent with zoning.
  - i. Illegal signs.
  - j. Building code violations.
  - k. Zoning violations or construction without an approved permit
  - l. Vacant properties.
  - m. Unlicensed business activity.
2. Create case files and maintain daily activity logs for all code enforcement activities.
3. Issue Notices, process violations, and present City's case in court.

4. Respond to complaints and investigate reports regarding conditions within the City including, but not limited to, the following:
  - a. Residential conditions.
  - b. Animals.
  - c. Abandoned vehicles.
  - d. Potholes.
  - e. Graffiti.
  - f. Nuisance.
  - g. Traffic signals.
  - h. Street lights.
  - i. Sidewalk repairs.
  - j. Unlicensed business activity.
  - k. General complaints.
5. Respond to inquiries from the general public regarding property maintenance codes and code enforcement procedures.
6. Team up with Building Inspectors, Land Development Inspectors, and Fire Inspectors to implement an exterior sweep of multi-family properties, service stations, convenience stores, or specific neighborhoods to address abs, health, and code violations. At the City's request, Contractor will prepare a comprehensive report listing conditions that require abatement and present to the property owners or property management. Contractor will monitor the property until conditions reach full compliance.

## **ADMINISTRATIVE SERVICES**

### **A. Licenses and Revenue**

1. Provide information and respond to inquiries regarding business licenses, alcoholic beverage licenses, and alcohol excise taxes.
2. Receive and process applications for business licenses and alcoholic beverage licenses in compliance with all applicable regulations.
3. Issue renewal business license and alcoholic beverage license notices and process renewal applications.
4. Manage the City's business license data and maintain associated records.
5. Receive and process applications for Special Event Alcohol Permits.
6. Process payments for Outdoor Activity Permits, public hearings, Open Records Requests, commercial solid waste franchise fees, and zoning applications.
7. Maintain electronic files, manage information, perform research, and generate reports concerning business and alcoholic beverage licenses and alcohol excise taxes in the City.

### **B. Financial Management**

Assist the City Manager with the following:

1. Maintain financial records for the City and component units and joint ventures of the City in accordance with applicable laws, guidelines, standards and best practices for municipal accounting, including, but not limited to, General Accepted Accounting Principles (GAAP), pronouncements of the Governmental Accounting Standards Board (GASB), best practices and advisories of the Governmental Finance Officers Association (GFOA) and the City's accounting manual.1. Perform journal entries for transfers and deposits. Maintain General Ledger accounts.
2. Prepare monthly bank reconciliations and general ledger account reconciliations.
3. Prepare daily bank deposits.
4. For local code violations, prepare municipal court dockets, assist judge with administration of court sessions, and collect and record fines.
5. Prepare routine reports on the status of City accounts and finances, including monthly financial statements.
6. Process invoices presented with proper approval for payment; process only invoices presented with proper approval.
7. Promptly identify and pay City bills and obligations, including payroll, in accordance with Georgia law and sound business practices.
8. Properly code and record financial transactions of the City under the direction of the City Finance Director.
9. Prepare and review journal entries, direct pays and wire transfers.
10. Maintain capital asset records.
11. Maintain accounting subsidiary ledgers and supporting schedules to support account balances in the general ledger.
12. Maintain cash and investments in accordance with approved investment policies and applicable laws.
13. Assist the City Manager as directed with budget preparation and preparation of reports and schedules.

#### **C. Public Communications**

1. Work with all City departments to develop communications activities that address the concerns and issues of the public, both proactively and as a reaction to unexpected events.
2. Utilize social media outlets to post information on the City's activities.
3. Respond to public and press inquiries as directed by the City.
4. Promote City sponsored programs and events.

5. Document important City events for future use in City publications.
6. Maintain the City's website, including regular backups, file and software updates, and posting City approved content updates and additions.
7. Oversee contracts and initiatives related to external communications on behalf of the City.
8. Maintain relations with external organizations in the City, including civic, business, and resident associations.
9. Advise the Mayor and City Manager on response to events and issues that may require public communications, and provide guidance and recommendations for promoting, protecting, and enhancing the City's public relations.

#### **D. IT Services**

1. Provide purchasing assistance, install, configure, and maintain any hardware and software required to satisfy all City's operational needs.
2. Create, maintain and improve the major content of the City's website. The City will pay for upgrades separately.
3. Provide server, desktop application support and workstation administrative services. Perform minor desktop application support. Monitor workstation, server, and network asset life. Manage installation of all new infrastructure and software products. Manage all email accounts for users.
4. Maintain and regularly update hardware and software utilized by the City for efficient service delivery and administrative functions. Hardware includes, but is not limited to, desktop computers, laptop computers, peripherals, cell phones, mobile devices, copiers, printers, scanners, faxes, plotters, cameras, projectors, and audio recorders. Software includes, but is not limited to, systems for accounting, human resources, work order tracking, public works, capital planning, court management, police force, agenda and document management, and coordinate geospatial information system (GIS) integration with the Community Development Department.
5. Provide all users with email for internal and external communications, common contact lists, and scheduling.
6. Maintain all communications systems including VOIP, VOIP Fax, and wireless systems.
7. Create a new GIS system for the City, as well as for the service, update and maintenance of the GIS databases on not less than a monthly basis.

8. Maintain one employee available during business hours capable of operating, printing, and extracting information, including maps, from the GIS System in a timely manner as directed by the City Representative.
9. Provide the public with access to limited City GIS files through the City website as directed.

#### **E. Facilities Management**

1. Coordinate routine facilities maintenance and facilities upgrades.
2. Respond twenty-four (24) hours a day, seven (7) days a week to any facilities issues.
3. Procure City vendors for any facilities upgrades, and coordinate repair and maintenance work done on the facilities.

#### **F. Citizen Response Center**

1. Provide central resource for receiving and handling citizen requests for information and service 24 hours each day, seven days per week.
2. Answer incoming phone calls to the City and provide callers with answers and resources requested, using documented protocols and procedures for City functions and departments.
3. Create work orders for service requests that are called in and provide regular reports on types of requests, call volume by department and function, and other critical management information.

#### **G. Administrative Support**

1. Provide dedicated clerical and administrative support for the office of the City Manager, as well as clerical and administrative support for elected officials and City departments.
2. Receive and screen visitors and telephone calls at the reception station to be staffed by the firm at all times during the City's business hours (expected to be 8 am – 5 pm, except for holidays), providing first- tier responses to customer inquiries.
3. Contractor will use City equipment and software to scan and categorize documents for electronic record-keeping.

#### **H. City Clerk**

1. Maintain and administer the City's system of archiving documents, records, and contracts for all City departments.
2. Respond appropriately to open records requests on behalf of the City as directed by the City Manager.
3. Duplicate and distribute materials for City meetings.
4. Post public notices as directed.

5. Attend all City Council meetings, taking attendance and recording motions and votes, and prepare required minutes and summaries for meetings.
6. Assist in the coordination of municipal and special elections, disclosure requirements, and qualifications, including, but not limited to, addressing polling station issues, preparation of ballot questions, or any other related issues arising from election matters.

#### **I. Environmental Court Support**

1. Provide administrative services and the services of the Clerk, Environmental Court, appointed by the Mayor and confirmed by the City Council.
2. Assist in the development of forms, administrative and financial procedures.

#### **J. Interim City Manager**

1. Contractor shall provide an Interim City Manager to City on a month to month basis, until terminated by either Party. City shall provide Contractor with at least thirty (30) days' notice prior to termination of the Interim City Manager services.
2. The Interim City Manager shall perform the following services:
  - Act as the chief administrative officer of the government of the City.
  - See that laws and ordinances are enforced.
  - Propose a budget for city operations.
  - Exercise supervision and control of all departments created by the City Council.
  - Attend meetings of the City Council, without a right to vote, and take part in the discussions as seen fit by the chairperson.

#### **K. Economic Development Support**

1. Provide support to the City's economic development program by attending meetings, preparing reports, conducting research, gathering data, assessing and updating existing plans, and analyzing business and industry sector trends and market dynamics.
2. Assist the City in developing an economic development plan by coordinating, monitoring, and overseeing work of consultants, assisting with scheduling meetings, identifying stakeholders, and other support activities.
3. Support business retention through proactive contacts with major employers and responding to inquiries and concerns raised by local business owners.

**L. Optional Services.** The Parties may, at any time through mutual agreement and in accordance with Section 2.4 – Change of Services, add the following services to be performed by Contractor under the existing terms and conditions of this Agreement, including, but not limited to, the scope described in this section below. Such changes for optional services will require an equitable adjustment in Compensation to be made in accordance with Sections 2.4.

1. Parks and Recreation Services

2. Public Works Services

3. Transportation Planning

4. Traffic Court Services

5. Comprehensive Plan – create the City’s first Comprehensive Plan that exceeds the minimum standards for local comprehensive planning of the Georgia Department of Community Affairs. The Plan will be developed using an extensive community input process which includes the seven required elements of the Comprehensive Plan that include Community Goals, Needs and Opportunities, Land Use, Transportation, Economic Development, Housing, and the Community Work Program.

6. Economic Development Strategic Plan – create a comprehensive Economic Development Strategic Plan for the City through engagement with residents, business owners, developers, and neighborhood leaders as well as elected officials. The Plan will include a thorough assessment of current conditions in the City, will document identification and prioritization of key issues, will identify target industries, and will develop specific recommendations and steps to attract targeted businesses.

## EXHIBIT B---COMPENSATION

**Compensation Amounts.** The City shall pay to Contractor as full compensation for the Services performed under this Agreement the amounts set forth in Exhibit B ("Compensation Amount"). One-twelfth (1/12) of the Compensation Amount shall be invoiced by the first of the month in which services are to be performed. The first invoice shall be due on July 1, 2017 and subsequent invoices shall be due thirty (30) days from receipt. Such Compensation Amount shall be adjusted on an annual basis as per Section 8.3 (Compensation Amount Annual Increase), to take effect on January 1, 2018 of the new contract year in which Contractor is performing services.

The first year Compensation Amount includes all reasonable costs associated with delivery of the Services under this Agreement.

The Contractor shall perform the Services at the following lump sum rate:

|                                                                                                        | <b>Subtotal Compensation Amount</b> | <b>Monthly Rate</b> |
|--------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------|
| <b>Seven Months ended December 31, 2017*</b>                                                           | \$1,692,818                         |                     |
| June 2017 Fee                                                                                          |                                     | \$130,217           |
| Remaining 6 Months of 2017                                                                             |                                     | \$260,434           |
| *June 2017 monthly fee prorated based on actual start date of services on June 15 <sup>th</sup> , 2017 |                                     |                     |
| <b>Calendar Years 2018 thru 2022</b>                                                                   |                                     |                     |
| Subject to annual adjustment formula per Section 8.3. All fees in 2017 dollars.                        |                                     |                     |
| <b>2018</b>                                                                                            | \$2,997,923                         | \$249,827           |
| <b>2019</b>                                                                                            | \$2,997,923                         | \$249,827           |
| <b>2020</b>                                                                                            | \$2,997,923                         | \$249,827           |
| <b>2021</b>                                                                                            | \$2,997,923                         | \$249,827           |
| <b>2022</b>                                                                                            | \$2,997,923                         | \$249,827           |
| Base fee amounts do not include price for Optional Services                                            |                                     |                     |



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

- |                                          |                                     |                                           |
|------------------------------------------|-------------------------------------|-------------------------------------------|
| <input type="checkbox"/> ORDINANCE       | <input type="checkbox"/> POLICY     | <input type="checkbox"/> STATUS REPORT    |
| <input type="checkbox"/> DISCUSSION ONLY | <input type="checkbox"/> RESOLUTION | <input checked="" type="checkbox"/> OTHER |

**Date Submitted:** February 5th, 2021    **Work Session:**    **Special Called Council Meeting:** X

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**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** Legal Services- Assistant City Attorney and such other assistant and special city attorney

### **HISTORY:**

**FACTS AND ISSUES:** Relieve from their services, Coleman Talley, LLP, as assistant city attorney and/or special city attorneys to the city.

Section 2.11 of the city charter gives power and authority to the city council to adopt and provide for the execution of such ordinances, resolutions, policies, rules and regulations, not inconsistent with the charter and the constitution and the laws of the State of Georgia, which it shall deem necessary, expedient, or helpful for the peace, good, order, protection of life and property, health, wellness, sanitation, comfort, convenience, prosperity, or well-being of the inhabitants of the City and may enforce such ordinances by imposing penalties for violations thereof.

Section 2.12 of the city charter gives the city council the authority to establish, abolish, merge, or consolidate offices not specified in the charter, positions of employment, departments and agencies of the city as it shall deem necessary for the proper

administration of the affairs and government of the city except for the office of the city manager and the elected positions provided for in the charter.

Section 2.10 of the city charter constitutes 4 councilmembers as having a quorum and shall be authorized to transact business of the city council. For any ordinance, resolution, motion, or other action of the city council to be adopted, shall receive at least 3 affirmative votes and shall receive the affirmative votes of the majority of those voting.

**OPTIONS:** Approve, Deny, Defer

**RECOMMENDED ACTION:** Approve

## SECTION 2.11.

### General power and authority of the city council.

(a) Except as otherwise provided by law or by this charter, the city council shall be vested with all the powers of government of the City of Stonecrest as provided by Article I of this charter.

(b) In addition to all other powers conferred upon it by law, the city council shall have the authority to adopt and provide for the execution of such ordinances, resolutions, policies, rules, and regulations, not inconsistent with this charter and the Constitution and the laws of the State of Georgia, which it shall deem necessary, expedient, or helpful for the peace, good order, protection of life and property, health, welfare, sanitation, comfort, convenience, prosperity, or well-being of the inhabitants of the City of Stonecrest and may enforce such ordinances by imposing penalties for violation thereof.

## SECTION 2.12.

### Administrative and service departments.

(a) Except for the office of city manager and the elected positions provided for in this charter, the city council, by ordinance, may establish, abolish, merge, or consolidate offices not specified in this charter, positions of employment, departments, and agencies of the city as it shall deem necessary for the proper administration of the affairs and government of the city. The city council shall prescribe the functions and duties of existing departments, offices, and agencies or of any departments, offices, and agencies hereinafter created or established; may provide that the same person shall fill any number of offices and positions

**SECTION 2.10.**

**Quorum; voting.**

(a) Four councilmembers shall constitute a quorum and shall be authorized to transact business for the city council. The mayor shall be counted toward the making of a quorum. Voting on the adoption of ordinances shall be taken by voice vote and the yeas and nays shall be recorded in the minutes, but on the request of any member there shall be a roll-call vote. In order for any ordinance, resolution, motion, or other action of the city council to be adopted, the measure shall receive at least three affirmative votes and shall receive the affirmative votes of a majority of those voting. Neither any councilmember nor the mayor shall abstain from voting on any matter properly brought before the city council for official action except when such councilmember has a reason which is disclosed in writing prior to or at the meeting and made a part of the minutes. The mayor and each councilmember when present at a meeting shall have one vote on all matters brought before the council.

(b) The following types of actions require an ordinance in order to have the force of law:

- (1) Adopt or amend an administrative code or establish, alter, or abolish a department, office not specified in this charter, or agency;
- (2) Provide for fine or other penalty;
- (3) Levy taxes;
- (4) Grant, renew, or extend a franchise;
- (5) Regulate a rate for a public utility;
- (6) Authorize the borrowing of money;
- (7) Convey, lease, or encumber city land;



## CITY OF STONECREST, GEORGIA

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*Honorable Mayor Jason Lary, Sr.*

*Council Member Jimmy Clanton, Jr. – District 1*

*Council Member Rob Turner- District 2*

*Council Member Jazzmin Cobble – District 3*

*Council Member George Turner- District 4*

*Council Member Diane Adoma – District 5*

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City Manager

City Clerk

City Attorney

Michael Harris

Brenda James

Winston Denmark

### CITY COUNCIL MEETING MINUTES

January 2, 2019

9:00 a.m.

3120 Stonecrest Blvd. Suite 190

Stonecrest, Georgia

- I. **CALL TO ORDER:** Mayor Jason Lary
- II. **ROLL CALL:** All members were present
- III. **INVOCATION:** Council Member Rob Turner
- IV. **PLEDGE OF ALLEGIANCE:**
- V. **ADOPTION OF THE CITY COUNCIL AGENDA:**

Council Member Adoma made a motion to adopt the agenda with Council Member Rob Turner providing the second. **The motion carried unanimously.**

- VI. **MINUTES:** Approval of Minutes of the City Council Special Called Meeting of December 12, 2018 and Regular Council Meeting of December 17, 2018.

Council Member George Turner made a motion to approve the Special Called Meeting Minutes of December 12, 2018 with Council Member Adoma providing the second. **The motion carried unanimously.**

Council Member Rob Turner made a motion to approve the minutes of the December 17, 2018 Regular Council Meeting with Council Member George Turner providing the second. **The motion carried unanimously.**

## VII. PUBLIC COMMENTS:

Mera Cardenas spoke in favor of the Historic Cultural Landmark ordinance. She said this will start the process.

Faye Coffield spoke on the cutting of trees in Stonecrest and thanked Council Member Adoma for hosting the Christmas Dinner for the Police at the East Precinct.

## VIII. AGENDA ITEMS:

### 1. Appointment of the City Attorneys for the City of Stonecrest

Mayor Lary said “In accordance with Section 3.08 of the Charter, I hereby appoint and request that the council confirm the following: Winston Denmark of the law firm Fincher Denmark LLC as city attorney for the City of Stonecrest at the hourly rate currently being earned, effective immediately; and Coleman Talley LLP as assistant city attorney and such other assistant and special city attorneys as may from time to time be necessary to carry out the city’s business and legal affairs.” Council Member Clanton seconded the motion.

Council Member Adoma inquired about Attorney client privilege.

Council Member George Turner asked is this because of vacancy or is this a new appointment. Mayor Lary responded this is changing Fincher Denmark from assistant city attorneys to city attorneys.

Council Member Rob Turner inquired about the rate of pay.

Council Member Cobble said there should be a new engagement letter making Fincher and Denmark the City Attorneys.

Attorney Denmark replied and said the attorney client privilege belongs to the entire council and his job is to represent the city. He said he serves at the pleasure of the Mayor and Council. He said in response to the rate of pay it is stated in the motion. He also said he will get a new engagement letter for council. After much discussion **the motion carried unanimously,**

### 2. Ordinance Setting Work Session and City Council Meeting dates and times

Mayor Lary made a motion to approve the Ordinance setting Work Session and City Council Meeting dates and time. He said the meetings will change to the second and fourth Mondays with Work Session at 6:00p.m. and Council Meeting

at 7:00p.m. Council Member Adoma provided the second. **The motion carried unanimously.**

3. An Ordinance for the Creation of the Stonecrest Youth Council

Attorney Emily M. Preston gave an overview of the ordinance for the creation of the Stonecrest Youth Council. She explained there are a few blanks in the ordinance where information is needed.

Council Member Adoma made a motion to defer this item to the next City Council Meeting with Council Member Rob Turner providing the second. **The motion carried with Mayor Lary, Council Members Cobble, Rob Turner, George Turner and Adoma voting yes. Council Member Clanton voted no.**

4. An Ordinance for the Creation of the Stonecrest Youth Council Advisory

Council Member Adoma made a motion to defer this item to the next City Council Meeting with Council Member George Turner providing the second. **The motion carried with Mayor Lary, Council Member Cobble, Rob Turner, George Turner and Adoma voting yes. Council Member Clanton voted no.**

5. An Ordinance for the Creation of the Historic and Cultural Landmarks Commission

Attorney Emily M. Preston gave an overview regarding the ordinance to create the Historic and Cultural Landmarks.

Council Member Adoma said this ordinance is aligned with State Law and this ordinance will help with federal funding and Council needs to put good policy over bad politics.

Council Member Adoma made a motion to defer and wait on further information on funding at the January 14, 2019 meeting. Council Member Rob Turner provided the second.

Council Member George Turner said for the record he is in favor of the historic properties, but he does not want to handicap the city regarding blighted properties.

Council Member Adoma said for the record this legislation is a good policy and the personal opinions have been vetted and council needs to approve this ordinance.

City Manager, Michael Harris said no one has come to the city looking for any funding.

Mayor Lary said he does not recall the city has to be the way a nonprofit can receive money.

The City Attorney Denmark said this is only one way an organization can obtain funding.

Council Member Clanton said for the record the words bad politics has been said on many occasions. He said there is nothing that says council must do this and there are many issues with this item. He said bad politics is just doing things or voting just to vote. He said at some point going back and forth looks like an argument.

Council Member Adoma made a substitute motion to defer this item until the first meeting in February with Council Member Rob Turner providing the second. **The motion carried unanimously.**

6. An Ordinance to Amend the Charter for the Purpose of Amending the Expense Limitations for Mayor and Council

**Frist Read and sent to next Work Session in January.**

7. An Ordinance to Amend Chapter 2 Article II Adding New Departments

**First Read and sent to Work Session in January.**

8. LD Square Professional Services

City Manager, Michael Harris gave an overview of the contract for professional services with LD Square Professional Services.

Mayor Lary made a motion to approve the contract with LD Square Professional Services with Council Member Clanton providing the second. **The motion carried with Mayor Lary, Council Members Clanton, Rob Turner and George Turner voting yes. Council Members Adoma and Cobble voted no.**

9. Amendment to Jacobs Contract

City Manager, Michael Harris gave an overview of the amendment to the Jacobs Contract.

Council Member Rob Turner inquired about item #6 Capital Project Management.

Council Member George Turner asked since most of things in the contract do not take place right away is there any reason the contract has to be approved today. He said he needed additional input regarding the acquisition of facilities.

Mr. Wainwright of Jacobs Engineering said the contract renews with your fiscal year and the amendment to the contract matches what was adopted in the budget.

Council Member Adoma asked when will an audit be done on contractual contracts for amendments or modifications. She said she cannot find a clear comprehensive procurement policy that address the need for a sound audit process for contracts. Council Member Adoma said council should consider and pass a resolution that will act as a temporary authority to grant sole source awards until the policy is in place.

City Manager said we have a procurement policy in place and the city has an Internal Auditor who reports directly to the council.

City Auditor, Joel Thibodaux said the City of Stonecrest is a city managed by fee for service and CH2M Jacobs is our staff. He said when the city expands its employee base, we adjust the contract and enable the fee for service contractor to expand their services to hire. He said his role is to examine the contract and make sure it is in compliance with all laws. He said after May the setup to purchase the parks for \$100.00 per acre will change.

Council Member Cobble asked why the City Manager is listed in the contract.

Mr. Wainwright said the City Manager was listed in the previous contract as interim and this one removed the interim.

Council Member Adoma asked that council consider a resolution for a contract audit with legal compliance.

Mayor Lary made a motion to approve the Amendment to the Jacobs Contract with Council Member Clanton providing the second. **The motion carried with Mayor Lary, Council Members Clanton, Rob Turner and George Turner voting yes. Council Member Adoma and Cobble voted no.**

#### **IX. CITY MANAGER COMMENTS:**

Michael Harris thanked the Mayor and Council for all of the support to the staff during the first year and half. He said we are developing our Work Plan.

#### **X. CITY ATTORNEY COMMENTS:**

City Attorney Winston Denmark wished everyone a Happy New Year and thanked the Mayor and Council for appointing him City Attorney. He also said he is a resident of the City of Stonecrest, so this means a lot to him.

**XI. MAYOR AND COUNCIL COMMENTS:**

Council Member Adoma thanked Mrs. Coffield and Cardenas. She announced on January 29, 2019 she will have her second Business League Meeting.

Council Member George Turner wished everyone a Happy New Year. He said please continue to put Stonecrest on your mail.

Council Member Clanton announced District 1 will have its regular monthly meeting on Saturday, January 5, 2019 at 10:00am at the Stonecrest Library.

Council Member Rob Turner announced District 2 will have a Prayer Breakfast on January 12, 2019 from 9:00am to 11:00a.m.

Council Member Cobble wished everyone a Happy New Years and said she is looking for good things from Council in 2019.

Mayor Lary wished everyone a Happy New Year.

**XII. ADJOURNMENT:**

Council Member Cobble made a motion to adjourn the meeting at 11:00a.m. with Council Member Rob Turner providing the second. The motion carried unanimously.

**XIII. EXECUTIVE SESSION:**

**WHEN AN EXECUTIVE SESSION IS REQUIRED, ONE WILL BE CALLED FOR THE FOLLOWING ISSUES: 1) PERSONNEL, 2) LITIGATION, 3) REAL ESTATE**



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

- |                                          |                                     |                                           |
|------------------------------------------|-------------------------------------|-------------------------------------------|
| <input type="checkbox"/> ORDINANCE       | <input type="checkbox"/> POLICY     | <input type="checkbox"/> STATUS REPORT    |
| <input type="checkbox"/> DISCUSSION ONLY | <input type="checkbox"/> RESOLUTION | <input checked="" type="checkbox"/> OTHER |

**Date Submitted: February 5th, 2021    Work Session:    Special Called Council Meeting: X**

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**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** Request to immediately receive recommendation for award of External Audit Firm for Purchasing Card Audit.

**HISTORY:** See previous meeting videos and agenda minutes for full discussion details

**FACTS AND ISSUES:** Now that the solicitation is closed and scoring is completed, council is ready to hear recommendations for award.

**OPTIONS:** Approve, Deny, Defer

**RECOMMENDED ACTION:** Approve



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

☐ ORDINANCE                      ☐ POLICY                      ☐ STATUS REPORT  
☐ DISCUSSION ONLY           ☒ RESOLUTION                      ☐ OTHER

**Date Submitted: February 5th, 2021    Work Session:    Special Called Council Meeting: X**

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**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** Approve Virtual Meeting Protocol Resolution

**HISTORY:** On multiple occasions, meetings of the city council have been abruptly terminated without having a majority affirmative vote. Additionally, meetings have been terminated without having all agenda matters satisfied.

**FACTS AND ISSUES:**

**OPTIONS:** Approve, Deny, Defer

**RECOMMENDED ACTION:** Approve

**STATE OF GEORGIA**

**CITY OF STONECREST**

**RESOLUTION NO. 2020-\_\_**

**A RESOLUTION BY THE MAYOR AND COUNCIL OF THE CITY OF STONECREST, GEORGIA ESTABLISHING PROTOCOL IN ACCORDANCE WITH ROBERT'S RULES OF ORDER FOR THE TERMINATION OF A VIRTUAL OR VIDEO MEETING DURING THE COVID-19 PUBLIC HEALTH EMERGENCY FOR THE PURPOSE OF PROTECTING THE HEALTH, SAFETY, AND WELFARE OF THE RESIDENTS, EMPLOYEES, BUSINESSES, AND VISITORS IN THE CITY; TO PROVIDE AN EFFECTIVE DATE; TO PROVIDE FOR SEVERABILITY; AND FOR OTHER LAWFUL PURPOSES.**

**WHEREAS**, the governing authority of the City of Stonecrest ("City") is the Mayor and Council thereof; and

**WHEREAS**, according to the Georgia Department of Public Health ("DPH") COVID-19 update at 3:57 p.m. on December 07, 2020, Georgia now has 448,683 confirmed cases of COVID-19 and 9,007 Georgians have died from COVID-19;

**WHEREAS**, Executive Order No. 07.31.20.02 specifically ordered that, "no business, establishment, corporation, non-profit corporation, organization, or county or municipal government shall allow Gatherings of persons." The Order defines a "Gathering" as more than fifty (50) persons physically present at a single location, if such gathering requires persons to stand or to be seated within six (6) feet of any other person;

**WHEREAS**, the City has continued to conduct City affairs with teleconference meetings pursuant to O.C.G.A. § 50-14-1(g) during this state of emergency;

**WHEREAS**, O.C.G.A. § 36-35-3 allows city governments to establish rules for use of and access to its own property for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto;

**WHEREAS**, the City has made and continues to make efforts to reduce the need for members of the public to physically visit City Hall by conducting council meetings over electronic means including, but not limited to Zoom, YouTube, and Facebook; and

**WHEREAS**, the City desires to establish protocol consistent with Section 2-353 of City Code of Ordinances for concluding such teleconference meetings, to provide guidance, and maintain decorum during such virtual gatherings; and

**WHEREAS**, the following actions are necessary and appropriate to balance the public's interest in having access to City officials and other purposes with the compelling public interest of

providing for the health, safety and welfare of the City's employees and preventing an outbreak of COVID-19 in the City and the surrounding community;

**NOW THEREFORE BE IT AND IT IS HEREBY RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF STONECREST, GEORGIA** that the protection of members of the public and other City employees, the City will continue conducting City affairs with teleconference meetings via Zoom, YouTube, Facebook amongst other means with the protocol established herein and in accordance with the City Charter, and Code of Ordinances, specifically Chapter 2, Article IX, Section 2-353, Robert's Rules of Order.

**BE IT FURTHER RESOLVED**, that once a virtual meeting has been called to order, it shall proceed according to the approved agenda of record.

**BE IT FURTHER RESOLVED**, that the virtual meeting shall only be terminated by a majority affirmative vote of the Council or by a failure to maintain a quorum.

**BE IT FURTHER RESOLVED**, that the Chair must declare the meeting adjourned by acclamation only after all agenda matters have been satisfied.

**BE IT FURTHER RESOLVED**, that the Preamble of this Resolution is fully incorporated by reference herein.

**BE IT FURTHER RESOLVED**, that the effective date of this Resolution shall be the same as the date of execution.

**RESOLVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY OF STONECREST, GEORGIA**

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**JASON LARY**, Mayor

**ATTEST:**

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**MEGAN REID**, City Clerk

**APPROVED AS TO FORM:**

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City Attorney



## **SPECIAL CALLED MEETING CITY COUNCIL AGENDA ITEM**

### **SUBJECT:**

- |                                          |                                     |                                           |
|------------------------------------------|-------------------------------------|-------------------------------------------|
| <input type="checkbox"/> ORDINANCE       | <input type="checkbox"/> POLICY     | <input type="checkbox"/> STATUS REPORT    |
| <input type="checkbox"/> DISCUSSION ONLY | <input type="checkbox"/> RESOLUTION | <input checked="" type="checkbox"/> OTHER |

**Date Submitted: February 5th, 2021    Work Session:    Special Called Council Meeting: X**

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**SUBMITTED BY:** George Turner, Rob Turner, Jazzmin Cobble, Tammy Grimes

**PURPOSE:** Hire independent legal counsel for city council members for litigation matters

**HISTORY:** The executive branch has continued to deny the city council members its authority to govern and properly represent the constituency who elected them.

**FACTS AND ISSUES:** A clarification of power is needed to determine the delineation of power and what constitutes the overreaching of the authority of the executive branch.

**OPTIONS:** Approve, Deny, Defer

**RECOMMENDED ACTION:** Approve the city council members the hire independent legal counsel for litigation matters