

**CITY OF TUCKER**  
**MAYOR & CITY COUNCIL AGENDA**  
**REGULAR MEETING**

**FRANK AUMAN**

*Mayor*



**Pat Soltys**  
*District 1, Post 1*

**Matt Robbins**  
*District 2, Post 1*

**Michelle Penkava**  
*District 3, Post 1*

**William (Bill) Rosenfeld**  
*District 1, Post 2*

**Noelle Monferdini**  
*District 2, Post 2*

**Anne Lerner**  
*District 3, Post 2*

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**August 10, 2020**

**City Hall Annex**  
**4228 1st Ave, Suite 2-4**  
**Tucker, GA 30084**

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**7:00 PM**

This meeting is being held electronically pursuant to O.C.G.A. Section 50-14-1(g).

Zoom Link: <https://us02web.zoom.us/j/82542002455>

iPhone: +13017158592,,82542002455#

Telephone: 888-788-0099 (Toll Free) Webinar ID: 825 4200 2455

- A. CALL TO ORDER**
- B. ROLL CALL**
- C. PLEDGE OF ALLEGIANCE**
- D. MAYOR'S OPENING REMARKS**
- E. PUBLIC COMMENTS**
- F. APPROVAL OF MEETING AGENDA**
- G. MINUTES**
  - 1. Work Session Meeting - July 13, 2020
  - 2. Regular Meeting - July 13, 2020
  - 3. Special Called Meeting - July 20, 2020

**H. STAFF REPORTS**

None

**I. OLD BUSINESS**

- 1. R2020-07-100  
Tami Hanlin
- A Resolution Calling for a Municipal Special Election for a Referendum to Amend the City Charter to add Public Works to the Services Offered by the City And to Increase the Maximum of 1 Mill To (Xx) Mills on all Property Subject to Taxation; and for Other Purposes

**J. NEW BUSINESS**

1. Action Item  
Ken Hildebrandt Contract Award for Engineering Services for a Traffic Scoping Study at the Intersection of Lavista Road @ Fellowship / Chamblee Tucker Road.
2. Action Item  
Ken Hildebrandt MOA with the Tucker Summit CID for Engineering Services - Hugh Howell Road @ Flintstone Dr
3. Action Item  
Carlton Robertson Contract Award for Trail Upgrade for the Construction and Installation of 3 Bridges/Boardwalks in Henderson, Cofer and Smoke Rise Parks
4. Action Item  
Carlton Robertson Contract Award for the Development of the Construction Plans for the Field and Infrastructure for the Fitzgerald Stadium
5. R2020-08-102  
Frank Auman Resolution to Appoint a Member to the Urban Redevelopment Agency
6. R2020-08-101  
Toni Jo Howard Resolution to Authorize Investment in Georgia Fund One
7. O2020-08-18  
Toni Jo Howard First Read and Public Hearing of an Ordinance to Amend the Fiscal Year 2020 Budget
8. O2020-08-19  
Courtney Smith First Read of an Ordinance Amending Chapter 22 Land Development and Subdivisions for Tucker, GA to Address Changes and Clarifications to Scope and Applicability, Soil Erosion and Sedimentation Control, Tree Protection, and Stream Buffer Protection.

**K. MAYOR AND COUNCIL COMMENTS**

**L. EXECUTIVE SESSION**

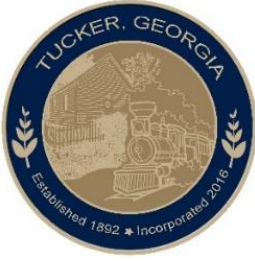
- If required for litigation, personnel or real estate.

**M. ACTION ITEM AFTER EXECUTIVE SESSION**

- As Needed

**N. ADJOURNMENT**

- Motion to Adjourn



# City of Tucker, GA

## Mayor & City Council Minutes

### Work Session Meeting

July 13, 2020 at 5:45 PM

City Hall Annex, 4228 1st Ave, Suite 2-4, Tucker, GA 30084

This meeting was held electronically pursuant to O.C.G.A. Section 50-14-1(g).

Zoom Link: <https://us02web.zoom.us/j/81199282831>

#### I. CALL TO ORDER

Mayor Frank Auman called the meeting to order at 5:45 PM.

#### II. ROLL CALL

The following were in attendance:

| Attendee Name            | Title              | Status  | Arrived |
|--------------------------|--------------------|---------|---------|
| Frank Auman              | Mayor              | Present |         |
| Pat Soltys               | District 1, Post 1 | Remote  |         |
| William (Bill) Rosenfeld | District 1, Post 2 | Remote  |         |
| Matt Robbins             | District 2, Post 1 | Remote  |         |
| Noelle Monferdini        | District 2, Post 2 | Remote  |         |
| Michelle Penkava         | District 3, Post 1 | Present |         |
| Anne Lerner              | District 3, Post 2 | Present |         |

#### III. AGENDA APPROVAL

##### 1. Agenda of July 13, 2020 5:45 PM Work Session

Motion to rearrange the order of the agenda to move topic #4 Discussion of Tucker Recreation Center Reopening to #1. Motion to approve the agenda as amended. Vote carried unanimously in favor.

**RESULT:** APPROVED AS AMENDED [UNANIMOUS]

**MOVER:** Anne Lerner, District 3, Post 2

**SECONDER:** Noelle Monferdini, District 2, Post 2

**AYES:** Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

#### IV. MAYOR'S COMMENTS

#### V. BUSINESS

##### 1. Discussion on Tucker Recreation Center Reopening

Parks and Recreation Director Carlton Robertson discussed with Council when to open the Recreation Center to the public safely. A plan has been created that adheres to the CDC Guidelines. Program instructors will submit a plan to keep participants safe. Set a limit to the class size, with no senior programs. Staff will wear masks and disinfect between programs. Council suggestion: UV filters for HVAC units to filter the air. A report will be emailed to Council with a recommended plan to open the Recreation Center.

##### 2. Discussion of Public Works Referendum

Minutes Acceptance: Minutes of Jul 13, 2020 5:45 PM (MINUTES)

John McHenry, Asst. City Manager, and Ken Hildebrandt, City Engineer, spoke on the procedure and calendar for a referendum to amend the Charter to add public works to the services offered by the city and the millage increase for the service. Discussion on taking on the roads and sidewalks and stormwater and the dams, including the maintenance. There is a 90 day advertising deadline to the newspaper for the November election.

3. Discussion on Special Events Ordinance

Topic not discussed at work session.

4. Discussion on Fitzgerald Field

Topic not discussed at work session.

**VI. EXECUTIVE SESSION - NONE**

**VII. ACTION ITEMS AFTER EXECUTIVE SESSION - NONE**

**VIII. ADJOURNMENT** – 6:50 PM

Motion to Adjourn

|                  |  |
|------------------|--|
| <b>RESULT:</b>   | <b>APPROVED [UNANIMOUS]</b>                                    |
| <b>MOVER:</b>    | Noelle Monferdini, District 2, Post 2                          |
| <b>SECONDER:</b> | Pat Soltys, District 1, Post 1                                 |
| <b>AYES:</b>     | Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner |

Approved,

Attest:

\_\_\_\_\_  
Frank Auman, Mayor

\_\_\_\_\_  
Bonnie Warne, City Clerk

(Seal)

APPROVED

\_\_\_\_\_

Minutes Acceptance: Minutes of Jul 13, 2020 5:45 PM (MINUTES)



# City of Tucker, GA

## Mayor & City Council Minutes

### Regular Meeting

July 13, 2020 at 7:00 PM

City Hall Annex, 4228 1st Ave, Suite 2-4, Tucker, GA 30084

This meeting was held electronically pursuant to O.C.G.A. Section 50-14-1(g).

Zoom Link: <https://us02web.zoom.us/j/81199282831>

#### A. CALL TO ORDER

Mayor Frank Auman called the meeting to order at 7:00 PM.

#### B. ROLL CALL

The following were in attendance:

| Attendee Name            | Title              | Status  | Arrived |
|--------------------------|--------------------|---------|---------|
| Frank Auman              | Mayor              | Present |         |
| Pat Soltys               | District 1, Post 1 | Remote  |         |
| William (Bill) Rosenfeld | District 1, Post 2 | Remote  |         |
| Matt Robbins             | District 2, Post 1 | Remote  |         |
| Noelle Monferdini        | District 2, Post 2 | Remote  |         |
| Michelle Penkava         | District 3, Post 1 | Present |         |
| Anne Lerner              | District 3, Post 2 | Present |         |

#### C. PLEDGE OF ALLEGIANCE

#### D. MAYOR'S OPENING REMARKS

Oath of Office:

Mayor Auman administered the Oath of Office to Police Chief Mirtha V. Ramos.

#### E. PUBLIC COMMENTS

No public comments.

#### F. AGENDA APPROVAL

- Agenda for July 13, 2020 7:00 PM Regular Meeting

Correction made to agenda due to scriveners error on J2 to change Commission to Board of Appeals. Motion to approve the agenda as amended. Vote carried unanimously in favor.

**RESULT:** APPROVED AS AMENDED [UNANIMOUS]  
**MOVER:** Michelle Penkava, District 3, Post 1  
**SECONDER:** Anne Lerner, District 3, Post 2  
**AYES:** Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

#### G. MINUTES

Minutes Acceptance: Minutes of Jul 13, 2020 7:00 PM (MINUTES)

1. Minutes of Mayor & City Council - Special Called Meeting - Jun 22, 2020 11:00 AM

Motion to approve the minutes as presented. Vote carried unanimously in favor.

**RESULT:**      **APPROVED [5 TO 0]**  
**MOVER:**        Noelle Monferdini, District 2, Post 2  
**SECONDER:**   Michelle Penkava, District 3, Post 1  
**AYES:**          Soltys, Rosenfeld, Robbins, Monferdini, Penkava  
**ABSTAIN:**      Frank Auman, Anne Lerner

2. Minutes of Mayor & City Council - Work Session Meeting - Jun 22, 2020 5:45 PM

Motion to approve the minutes as presented. Vote carried unanimously in favor.

**RESULT:**      **APPROVED [UNANIMOUS]**  
**MOVER:**        Noelle Monferdini, District 2, Post 2  
**SECONDER:**   Michelle Penkava, District 3, Post 1  
**AYES:**          Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

3. Minutes of Mayor & City Council - Special Called Meeting - Jun 22, 2020 6:45 PM

Motion to approve the minutes as presented. Vote carried unanimously in favor.

**RESULT:**      **APPROVED [UNANIMOUS]**  
**MOVER:**        Noelle Monferdini, District 2, Post 2  
**SECONDER:**   Michelle Penkava, District 3, Post 1  
**AYES:**          Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

4. Minutes of Mayor & City Council - Regular Meeting - Jun 22, 2020 7:00 PM

Motion to approve the minutes as presented. Vote carried unanimously in favor.

**RESULT:**      **APPROVED [UNANIMOUS]**  
**MOVER:**        Noelle Monferdini, District 2, Post 2  
**SECONDER:**   Matt Robbins, District 2, Post 1  
**AYES:**          Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

5. Minutes of Mayor & City Council - Special Called Meeting - Jun 29, 2020 5:30 PM

Motion to approve the minutes as presented. Vote carried unanimously in favor.

**RESULT:**      **APPROVED [UNANIMOUS]**  
**MOVER:**        Noelle Monferdini, District 2, Post 2  
**SECONDER:**   Matt Robbins, District 2, Post 1  
**AYES:**          Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

## H. STAFF REPORTS

- |  |   |
|--|---|
| 1. Information Item<br>Ken Hildebrandt | Presentation of Draft Lawrenceville Highway Corridor<br>Study |
|--|---|

City Engineer Ken Hildebrandt introduced VHB to discuss a draft study of the Lawrenceville Highway corridor. The purpose of this project is to develop alternatives for improving the safety and operations

Minutes Acceptance: Minutes of Jul 13, 2020 7:00 PM (MINUTES)

along the US 29 / Lawrenceville Highway corridor. VHB looked at crash data, traffic volumes, performed field analysis, and conducted an online survey for residents. The study is looking at existing deficiencies and recommending short-term and long-term improvements to meet the needs of the vehicular and pedestrian traffic along the corridor. The area of the study are from just west of Hugh Howell Road in the south to just east of the signalized intersection at the Cofer Crossing Shopping center entrance in the north. The study assesses transportation problems and identifies potential improvements. As Lawrenceville Highway is on the state route system, the ultimate goal of this study is to present the findings to GDOT and initiate a project with state/federal funding opportunities. This update is on the analysis and proposed recommendations before the study is finalized.

**RESULT: PRESENTED**

## I. OLD BUSINESS

1. O2020-06-17 Ordinance      Public Hearing and Third Read of an Ordinance to Levy a Tax on  
Toni Jo Howard      Property Subject to Taxation (Millage Rate); and for Other Purposes.

Finance Director Toni Jo Howard spoke on the requirements for the millage rate of three public hearings for a property tax increase. State law requires advertisement of the millage rate history and a notice of property tax increase, which was advertised in the Champion Newspaper on June 11th. The calculated rollback millage rate was 0.868. Adopting a millage rate of 0.900 mills is thus considered a property tax increase of 3.69%. Mayor Auman held a public hearing, where nobody spoke in favor or opposition. This is the third public hearing and final read to be adopted by ordinance. Motion to adopt the millage rate by ordinance O2020-06-17 to levy a tax for 2020 ad valorem tax year. Vote passed unanimously in favor.

**RESULT: ADOPTED [UNANIMOUS]**  
**MOVER:** Michelle Penkava, District 3, Post 1  
**SECONDER:** Matt Robbins, District 2, Post 1  
**AYES:** Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

## J. NEW BUSINESS

1. Action Item      Bid Award for Sidewalk on Cowan Road and Lynburn Drive  
Ken Hildebrandt

City Engineer Ken Hildebrandt spoke on the bid award for the construction of two sidewalk projects: along the north side of Cowan Road from Idlewood Road to Hugh Howell Road, and along both sides of Lynburn Drive from Main Street to 1<sup>st</sup> Avenue. Bids were received from 9 companies. Motion to award the contract to Construction 57 for \$247,660. Vote carried unanimously in favor.

**RESULT: APPROVED [UNANIMOUS]**  
**MOVER:** Matt Robbins, District 2, Post 1  
**SECONDER:** Anne Lerner, District 3, Post 2  
**AYES:** Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

2. R2020-07-97 Resolution      Resolution to Appoint Members to the Zoning Board of Appeals  
Frank Auman

Mayor Auman recommended Keith Easterling and Joe Singleton as Board Members to the Zoning Board of Appeals. Motion to appoint member as recommended. Vote carried unanimously in favor.

**RESULT:** ADOPTED [UNANIMOUS]  
**MOVER:** Frank Auman, Mayor  
**SECONDER:** Anne Lerner, District 3, Post 2  
**AYES:** Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

3. R2020-07-98 Resolution Resolution to Appoint Members to the Planning Commission  
 Frank Auman

Mayor Auman recommended Frank Sapp as a Board Member to the Planning Commission and to reappoint Jessica Vargas. Motion to appoint and reappoint the members as recommended with the terms listed. Vote carried unanimously in favor.

**RESULT:** ADOPTED [UNANIMOUS]  
**MOVER:** Frank Auman, Mayor  
**SECONDER:** Anne Lerner, District 3, Post 2  
**AYES:** Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

4. R2020-07-99 Resolution Resolution Activating the Urban Redevelopment Agency of Tucker, Delegating Urban Redevelopment Project Powers and Appointment of Members, and for other Purposes  
 Frank Auman

Mayor Auman recommended Derek West as the First at Large Member to the Urban Redevelopment Agency for a two-year term. The Second at Large Member to be determined. Motion to appoint the First at Large Member as recommended. Vote carried unanimously in favor.

**RESULT:** ADOPTED [UNANIMOUS]  
**MOVER:** Frank Auman, Mayor  
**SECONDER:** Matt Robbins, District 2, Post 1  
**AYES:** Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

5. R2020-07-100 Resolution A Resolution Calling for a Municipal Special Election for a Referendum to Amend the City Charter to add Public Works to the Services Offered by the City And to Increase the Maximum of 1 Mill To (Xx) Mills on all Property Subject to Taxation; and for Other Purposes  
 Tami Hanlin

Discussion on the first draft of the language for a resolution calling for a Municipal Special Election for a referendum to amend the Charter of the City of Tucker to add public works to the services offered by the city in Section 103(b) and to increase the maximum of 1 mill to (xx) mills on all property subject to taxation in Section 1.03(a)(38).

Motion made by Council Member Rosenfeld to adopt the resolution to name the new cap in the Charter to 2.75 mills and authorize the Mayor to adopt language substantially similar and submit to DeKalb County Board of Elections. Second by Council Member Matt Robbins.

Motion made to TABLE the current motion until the Special Called Meeting on Monday, July 20, 2020 at 8:00 AM.



**RESULT:** TABLED [UNANIMOUS]

Next: 7/20/2020 8:00 AM

**MOVER:** Michelle Penkava, District 3, Post 1**SECONDER:** Noelle Monferdini, District 2, Post 2**AYES:** Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner**K. MAYOR AND COUNCIL COMMENTS**

Mayor and Council thanked staff for all they do, the July 27th is cancelled due to nothing on the agenda, since June 26th there were 25 new business licenses issued, congratulations on passing the first court audit with 100%, encouraged residents to complete the 2020 Census, and the new city hall build out is almost complete. For the Special Called Council meeting on July 20th, add Fitzgerald Field discussion, Special Events Ordinance discussion along with the Resolution to Call for a Special Election. Also check out the Mayor's Blog on the Tucker website.

**L. EXECUTIVE SESSION - NONE****M. ACTION ITEM AFTER EXECUTIVE SESSION - NONE****N. ADJOURNMENT** – 8:39 PM

Motion to Adjourn

**RESULT:** APPROVED [UNANIMOUS]**MOVER:** Michelle Penkava, District 3, Post 1**SECONDER:** Anne Lerner, District 3, Post 2**AYES:** Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

Approved,

Attest:

\_\_\_\_\_  
Frank Auman, Mayor\_\_\_\_\_  
Bonnie Warne, City Clerk

(Seal)

APPROVED  
\_\_\_\_\_

Minutes Acceptance: Minutes of Jul 13, 2020 7:00 PM (MINUTES)



# City of Tucker, GA

## Mayor & City Council Minutes

### Special Called Meeting

July 20, 2020 at 8:00 AM

Video Conference, via zoom, Tucker, GA 30084

This meeting was held electronically pursuant to O.C.G.A. Section 50-14-1(g).

Zoom Link: <https://us02web.zoom.us/j/85302575496>

#### I. CALL TO ORDER

Mayor Frank Auman called the meeting to order at 8:00 AM.

#### II. ROLL CALL

The following were in attendance:

| Attendee Name            | Title              | Status | Arrived |
|--------------------------|--------------------|--------|---------|
| Frank Auman              | Mayor              | Remote |         |
| Pat Soltys               | District 1, Post 1 | Remote |         |
| William (Bill) Rosenfeld | District 1, Post 2 | Remote |         |
| Matt Robbins             | District 2, Post 1 | Remote |         |
| Noelle Monferdini        | District 2, Post 2 | Remote |         |
| Michelle Penkava         | District 3, Post 1 | Remote |         |
| Anne Lerner              | District 3, Post 2 | Remote |         |

#### III. PLEDGE OF ALLEGIANCE

#### IV. MAYOR'S COMMENTS

#### V. AGENDA APPROVAL

- Agenda for the July 20, 2020 Special Called Meeting at 8:00 AM

Motion to approve the agenda as presented. Vote carried unanimously in favor.

**RESULT:** APPROVED [UNANIMOUS]

**MOVER:** Noelle Monferdini, District 2, Post 2

**SECONDER:** Matt Robbins, District 2, Post 1

**AYES:** Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

#### VI. BUSINESS

- R2020-07-100  
Tami Hanlin

A Resolution Calling for a Municipal Special Election for a Referendum to Amend the City Charter to add Public Works to the Services Offered by the City And to Increase the Maximum of 1 Mill To (Xx) Mills on all Property Subject to Taxation; and for Other Purposes

Discussion on the language for a resolution calling for a Municipal Special Election for a referendum to amend the Charter of the City of Tucker to add public works to the services

Minutes Acceptance: Minutes of Jul 20, 2020 8:00 AM (MINUTES)

offered by the city in Section 103(b) and to increase the maximum of 1 mill to (xx) mills on all property subject to taxation in Section 1.03(a)(38).

Motion made by Council Member Rosenfeld and seconded by Council Member Soltys to remove the Motion to Table from the previous meeting.

The City Clerk read the current motion: To adopt the resolution, to name the new cap in the Charter to 2.75 mills, and to authorize the Mayor to adopt language substantially similar and submit to DeKalb County Board of Elections.

Further discussion on ballot language, defining public works, include stormwater or not, millage cap, and the targeted election date November 2020 or March 2021.

Motion to amend the motion to take out stormwater, change the language to match the Charter to add maintenance of roads and sidewalks with the inclusion of roadways to the services directly provided by the city, to move to the March 2021 election and to clarify the language at the next Council meeting based on discussion.

Motion by Council Members Rosenfeld / Monferdini to amend to move forward in November 2020 election: withdrawn, no consensus.

Vote carried in favor 6-1 Council Member Monferdini opposed to move call to the March 2021 election and to clarify the language at the next Council meeting.

|                  |  |
|------------------|--|
| <b>RESULT:</b>   | <b>TABLED [6 TO 1] Next: 8/10/2020 5:45 PM</b>     |
| <b>MOVER:</b>    | Michelle Penkava, District 3, Post 1               |
| <b>SECONDER:</b> | Pat Soltys, District 1, Post 1                     |
| <b>AYES:</b>     | Auman, Soltys, Rosenfeld, Robbins, Penkava, Lerner |
| <b>NAYS:</b>     | Noelle Monferdini                                  |

## 2. Special Events Ordinance Discussion

Communications Manager Sonja Szubski spoke on reassessing and revamping the City's Special Event Ordinance. Discussion on current process and the minimal information obtained on existing permit. Request to discuss further and add to the August Council Meeting.

## 3. Fitzgerald Field Discussion

Parks and Recreation Director Carlton Robertson spoke on Fitzgerald Field. Discussion on moving forward with the funding in the capital funds for the design and engineering study of the field and infrastructure. A scope will be submitted to the on-call engineering firms for an approval of the quote at the August 10th Council Meeting.

## VII. EXECUTIVE SESSION - NONE

## VIII. ACTION ITEMS AFTER EXECUTIVE SESSION - NONE

## IX. ADJOURNMENT – 10:18 AM

Motion to Adjourn

Minutes Acceptance: Minutes of Jul 20, 2020 8:00 AM (MINUTES)

**RESULT:**     **APPROVED [UNANIMOUS]**

**MOVER:**     Michelle Penkava, District 3, Post 1

**SECONDER:** Matt Robbins, District 2, Post 1

**AYES:**     Auman, Soltys, Rosenfeld, Robbins, Monferdini, Penkava, Lerner

Approved,

Attest:

\_\_\_\_\_  
Frank Auman, Mayor

\_\_\_\_\_  
Bonnie Warne, City Clerk

(Seal)

APPROVED  
\_\_\_\_\_

Minutes Acceptance: Minutes of Jul 20, 2020 8:00 AM (MINUTES)

**STATE OF GEORGIA  
CITY OF TUCKER**

**Resolution R2020-XX-XX**

A RESOLUTION CALLING FOR A MUNICIPAL SPECIAL ELECTION FOR A REFERENDUM TO AMEND THE CITY CHARTER TO ADD MAINTAINING STREETS AND SIDEWALKS WITH THE INCLUSION OF ROADWAYS TO THE SERVICES OFFERED BY THE CITY AND TO INCREASE THE MAXIMUM TO 2.65 MILLS ON ALL PROPERTY SUBJECT TO TAXATION; AND FOR OTHER PURPOSES

**WHEREAS**, the Charter of the City of Tucker in section 1.03(c) authorizes the city council to pass a resolution to add additional city services and submit such a resolution for ratification by the electors of the city in a referendum; and

**WHEREAS**, the Mayor and City council desires to add maintenance of roads and sidewalks with the inclusion of roadways to the services directly provided by the city; and

**WHEREAS**, the residents of the City of Tucker paid 0.983 mills to DeKalb County in 2020 pursuant to the DeKalb County Special Services Tax District for maintaining streets and roads including maintenance of curbs, sidewalks, streetlights, and devices to control the flow of traffic on streets and roads, or any combination thereof; and

**WHEREAS**, the residents of the City of Tucker will be removed from the DeKalb County Special Services Tax District and will no longer pay this millage after the City assumes the service; and

**WHEREAS**, in order to directly provide the public works service, the Mayor and City Council is proposing to increase the millage cap stated in section 1.03(a)(38) of the City Charter to 2.65 mills.

**WHEREAS**, the voting on such a referendum will be handled by the DeKalb County Board of Registrations and Elections; and,

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Tucker shall enter into an agreement with the DeKalb Board of Registrations and Elections to conduct a special election referendum as authorized by section 1.03(c) of the City Charter to submit the electors a referendum amending section 1.03(b) to add “, and roadways” immediately after the phrase “parks and recreation” and to amend section 1.03(a)(38) to increase the stated maximum of 1 mill to 2.65 mills; said referendum to be called in accordance with Title 21 Chapter 2 of the Official Code of Georgia and all other applicable laws, and the elections superintendent shall issue the call and conduct the Tucker special election on March 16, 2021, in such manner so authorized.

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

Shall the Charter of the City of Tucker be amended to:

- |       |  |
|-------|--|
| (YES) | add maintenance of roads and sidewalks with the inclusion of roadways to the services offered by the City, and increase the city’s maximum to 2.65 |
| (NO)  | mills on all property subject to taxation and be removed from the DeKalb Special Tax District?   |

**BE IT FURTHER RESOLVED**, provided more than one-half of the votes cast on the question

approval, the City Charter of City of Tucker shall be amended, as stated above, effective upon certification of the election and satisfaction of all other requirements stated in law.

**ADOPTED by the Mayor and City Council, this XX<sup>th</sup> day of \_\_\_\_\_, 2020**

Approved:

\_\_\_\_\_  
Frank Auman, Mayor

Attest:

\_\_\_\_\_  
Bonnie Warne, City Clerk (SEAL)



# City of Tucker

## MEMO

**To:** Honorable Mayor and City Council Members  
**From:** Tami Hanlin, City Manager  
**By:** Ken Hildebrandt, City Engineer  
**Date:** August 10, 2020  
**RE:** Contract Award for Engineering Services: Lavista Road @ Fellowship / Chamblee Tucker Road

### Issue:

Contract award for engineering services for a traffic scoping study at the intersection of Lavista Road @ Fellowship / Chamblee Tucker Road.

### Background:

This intersection improvement was identified as a Tier 2 project in our Transportation Master Plan. It is anticipated that any significant improvement to this intersection will be very costly. Therefore, we will be pursuing significant federal / state funding. A traffic scoping study is recommended as a first step to increase the likelihood of obtaining this future funding. The scope of this study includes gathering and analyzing traffic data, developing future traffic forecasts, analyzing alternatives, developing concepts and projected costs, and coordinating with GDOT.

We received three proposals from our on-call engineering list and CHA Consultant was the lowest responsive proposal.

### Recommendation:

Staff recommends that the traffic scoping study be awarded to CHA Consultants in the amount of \$52,300.

### Financial Impact:

This will be funded from the SPLOST Major Road Improvements account.

### Attachments:

Scope of Services  
 Task Order #17  
 CHA Proposal

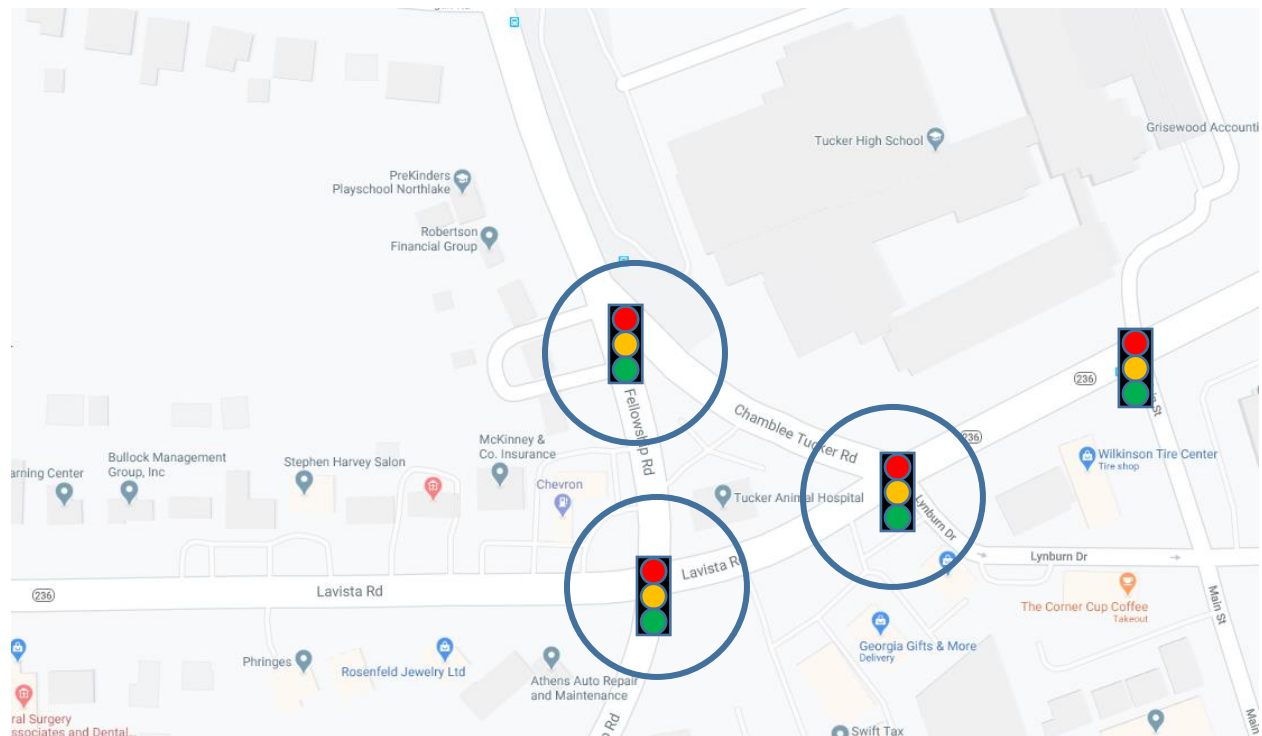
## Project Understanding

The purpose of this project is to develop a plan for operational transportation improvements at the intersections of Chamblee Tucker Road, LaVista Road and Fellowship Road in Tucker, Georgia. The study will analyze the existing and future multimodal operational and capacity needs of these intersections.

The limits of the study will be on Lavista Road from just west of Fellowship Road to Main Street, and on Fellowship / Chamblee Tucker Road from Lawrenceville Highway to just north of Tucker High School. The study will assess transportation problems area wide and identify necessary improvements.

The Chamblee Tucker Road, LaVista Road and Fellowship Road is located adjacent to the Tucker High School. It is northwest the City of Tucker downtown area. The study will include operations all three intersections. Marta route 124 runs on Chamblee Tucker Road and LaVista Road as well as significant pedestrian activity. Fellowship Road is one of the only roads that cross the CSX rail line at a grade separation south of the study area. The study should identify both short term and long-term solutions to the operational challenges. The city is looking for the best solution to address the triangle within the constraints of right of way, terrain, and traffic demands. As LaVista Road is a State Route, all work will need to conform to GDOT Plan Development Process standards.

The ultimate goal for this project is to use it as supporting data for a successful TIP application and state/federal funding for engineering design, right of way acquisition, and construction.



## Scope of Work

### Phase 1: Data Gathering and Problem Definition

- Obtain and review the ARC travel demand model outputs



- Gather and review Traffic data to include:
  - Traffic counts were collected as part of a retiming project (*city to provide*)
  - Historical GDOT traffic volumes
  - Traffic signal operations including phasing, timing plans, and other relevant features
  - Traffic controls such as lane and turn restrictions and other controls
  - Traffic crash data
  - Locations of transit stops
  - Pedestrian facility inventory
  - Existing ITS facilities
  - Site observations
- Obtain traffic simulation model (*city to provide*)
- Preliminary analysis of operational conditions in the study area based on observations and simulation
- Review previous studies and proposed development plans (Intersection Safety Study, Transportation Master Plan, Trails Master Plan, Comprehensive Plan, transit studies, etc.) (*city to provide*)
- Obtain land use and zoning (*city to provide*) and assess impacts
- Obtain and review transit information (transit routes, stops, and planned projects in the area)
- Develop a detailed problem definition of issues in the study area. Definition to include discussion of issues, problems, concerns, and desired outcomes.

#### Phase 2: Assessment of future traffic conditions

- Develop future traffic forecasts using ARC model data.
- Develop future simulation model using forecasted data
- Assess future no-build condition

#### Phase 3: Development of Alternatives

- Identify and screen improvements: Develop a list of candidate improvements and recommendations and select those that are the most likely to contribute to the solution of the problems. This screening process will rely on the problem definition, simulation results, preliminary analyses, and input from the city. Candidate improvements may include:
- Develop potential improvements to include:
  - concept layouts
  - preliminary costs
  - Cost benefit of impacts due to the proposed improvement.
- Complete GDOT ICE analysis as appropriate
- Prepare and submit a draft report that includes study methodologies, analyses, results, recommendations, and an implementation plan. The report will include the recommended configurations with their associated costs, impacts, and benefits.
- Finalize the draft study with comments and input from the city, submit a final document of the area study.

#### Phase 4: Meetings

The scope of work and corresponding cost proposal is based on the following number of anticipated meetings:

- Biweekly coordination conference calls with City of Tucker staff
- Presentation of draft report at a City Council Work Session
- Meeting with GDOT to discuss the final report and potential funding sources.

Additional meetings, called for by the city beyond the above anticipated meetings, will be billed to the city on a time and material basis.



July 24, 2020

Mr. Ken Hildebrandt, P.E., PTOE  
City Engineer  
City of Tucker

Subject: Proposal for LaVista Road at Chamblee Tucker and Fellowship Improvements Study

Dear Mr. Hildebrandt:

CHA Consulting (CHA) is pleased to submit this engineering services proposal for the study for improving traffic operations at the intersections of Lavista Road, Chamblee Tucker Road, and Fellowship Road. CHA reserves the right to review and subsequently revise this proposal in the event of change to this scope.

## PROJECT UNDERSTANDING

CHA's scope will be to develop alternatives for improving the safety and operations at the intersections of Lavista Road at Chamblee Tucker Road, Lavista Road at Fellowship Road, and Chamblee Tucker Road at Fellowship Road. The study will look for short-term and long-term improvements that fit within the constraints of right of way and terrain and meet the needs of the vehicular and pedestrian traffic within the study area.

The limits of the study will be on Lavista Road from just west of Fellowship Road to Main Street and on Fellowship/Chamblee Tucker Road from Lawrenceville Highway to just north of Tucker High School. The study will assess area-wide transportation problems and identify potential improvements. As Lavista Road is on the state route system, the ultimate goal of this study is to present the findings to GDOT and initiate a project with state/federal funding opportunities.

### Phase 1: Data Gathering

The initial phase of the project will include traffic data collection along the study area. CHA will obtain and review the ARC travel demand model outputs for the study area. Traffic counts are to be provided by the City of Tucker. Historical traffic counts will be obtained from the GDOT TADA website. Crash data will be obtained from the GEARS database and will include collisions reported during the most recent five years of available data. The crash data will be evaluated to identify any crash patterns and safety concerns within the study area. Tasks associated with this phase include:

- Obtain and review the ARC travel demand model outputs
- Obtain traffic counts from the City of Tucker
- Obtain historical GDOT traffic volumes from TADA web application
- Obtain existing signal phasing, timing plans, and other relevant features
- Perform site visit
  - Perform traffic control inventory of lane and turn restrictions and any other controls
  - Identify locations of transit stops
  - Perform inventory of pedestrian facilities within the study area
  - Identify land uses within the study area
  - Observe peak hour traffic operations and document vehicular travel patterns, pedestrian activity, queuing, safety concerns, and any other relevant information

- Obtain crash history for most recent five years of available data
  - Evaluate intersection crash histories (rates, manner of collision, severity)

## Phase 2: Assessment of Future Traffic Conditions

Traffic volumes will be developed for the existing year and two horizon years (Opening Year and Design Year, to be determined in discussions with the city). Volumes will be balanced as appropriate and rounded based on GDOT Office of Planning standards; however, the full GDOT traffic volume forecasting process will not be completed. Diagrams will be prepared showing daily, AM Peak, and PM peak vehicular and pedestrian volumes within the study area. Future traffic forecasts will consider background growth, additional traffic expected from programmed projects, and permitted development in the study area in coordination with the city. Traffic simulation models will be developed using the future traffic projections to evaluate future No Build traffic conditions in the Opening and Design Years.

Tasks associated with this phase include:

- Growth rate development based on the following data sources:
  - ARC Travel Demand Model data
  - Historic GDOT count data
  - Population data
  - Future programmed improvements
  - Future permitted development
- Future Volume development for the following years:
  - Short term Opening Year
  - Long term Design Year
- Development of simulation models for the following scenarios:
  - Existing Year
  - Opening Year No Build
  - Design Year No Build
- Analysis of AM and PM peak hour traffic operations in the following scenarios:
  - Existing Year
  - Opening Year No Build
  - Design Year No Build

## Phase 3: Development of Alternatives

Based on the safety and operational concerns and existing study area constraints identified in earlier phases of the project, a list of potential improvements will be developed. The alternatives will be screened based on the problem definition, simulation results, preliminary analyses, and input from the City. GDOT ICE procedures will be implemented as needed. A report will be prepared to summarize the methodologies of the study and the results of the analyses as well as recommendations and an implementation plan.

Tasks associated with this phase include:

- Develop potential improvements including:
  - Concept layouts for up to 3 alternatives, each alternative includes all 3 intersections
  - Preliminary costs for up to 3 alternatives
  - Cost/Benefit analysis of impacts associated with the proposed improvement
- Complete GDOT ICE analysis as appropriate
- Prepare and submit a draft report to include:
  - Summary of existing conditions
  - Summary of study area needs and concerns

- Study methodologies
  - Summary of analysis and results
  - Recommendations for improvements
  - Implementation Plan
- Finalize the draft study based on input from the City and submit final document

#### Phase 4: Meetings and Coordination

The scope of work and corresponding cost proposal is based on the following number of anticipated meetings:

- Biweekly coordination conference calls with City of Tucker staff
- Presentation of draft report at a City Council Work Session
- Meeting with GDOT to discuss the final report and potential funding sources

Additional meetings requested by the City, beyond the above anticipated meetings, will be billed to the City on a time and material basis.

## FEES

| <b>Phase 1 - Data Gathering</b>                          | Hours           | Rate               | Cost                |
|--|-----------------|--------------------|---------------------|
| Project Manager  | 2               | \$ 160.00          | \$ 320.00           |
| Senior Engineer  | 8               | \$ 140.00          | \$ 1,260.00         |
| Engineer   | 6               | \$ 110.00          | \$ 660.00           |
| Direct Cost (Expenses)                                   |                 |                    | \$ 100.00           |
|  |                 | <b>Phase Total</b> | <b>\$ 2,240.00</b>  |
| <b>Phase 2 - Assessment of Future Traffic Conditions</b> |                 |                    |                     |
| Project Manager  | 4               | \$ 160.00          | \$ 760.00           |
| Senior Engineer  | 8               | \$ 140.00          | \$ 1,120.00         |
| Engineer   | 24              | \$ 110.00          | \$ 2,640.00         |
|  |                 | <b>Phase Total</b> | <b>\$ 4,480.00</b>  |
| <b>Phase 3 - Development of Alternatives</b>             |                 |                    |                     |
| Project Manager  | 20              | \$ 160.00          | \$ 3,200.00         |
| Senior Engineer  | 50              | \$ 140.00          | \$ 7,000.00         |
| Engineer   | 190             | \$ 110.00          | \$ 20,900.00        |
|  |                 | <b>Phase Total</b> | <b>\$ 31,100.00</b> |
| <b>Phase 4: Meetings and Coordination</b>                |                 |                    |                     |
| Project Manager  | 42              | \$ 160.00          | \$ 6,720.00         |
| Senior Engineer  | 42              | \$ 140.00          | \$ 5,880.00         |
| Engineer   | 8               | \$ 110.00          | \$ 880.00           |
| Direct Cost (Expenses)                                   |                 |                    | \$ 1,000.00         |
|  |                 | <b>Phase Total</b> | <b>\$ 14,480.00</b> |
|  |                 |                    |                     |
|  | <b>TO Total</b> |                    | <b>\$ 52,300.00</b> |

Mr. Ken Hildebrandt, P.E., PTOE

Page 5

July 24, 2020

This proposal was prepared with the intent of addressing your specific needs and concerns thus far identified. CHA appreciates the opportunity to submit this proposal for engineering services.

Sincerely,



Clay Smith, P.E.

Project Team Leader – Traffic Studies & Designs

KCF/cs

Attachment: CHA Lavista Road Proposal 7 24 2020 (Contract Award for a Traffic Study at Lavista Road and Fellowship Road)





**PROFESSIONAL ENGINEERING SERVICES  
CONTRACT AGREEMENT (RFQ #2018-016)  
TASK ORDER #174**

**TRAFFIC SCOPING STUDY~~SAFETY IMPROVEMENT CORRIDOR~~  
~~STUDY~~  
LA VISTA ROAD~~WRENCEVILLE HIGHWAY (US 29)~~ @ FELLOWSHIP  
/ CHAMBLEE TUCKER ROAD  
ENGINEERING  
SCOPE OF SERVICES**

This TASK ORDER between the parties is entered pursuant to the CONTRACT AGREEMENT (RFQ #2018-016), and shall serve as authorization by the City of Tucker to = CHA Consulting ("CONSULTANT") to perform the services described herein pursuant to the terms and conditions, mutual covenants and promises provided herein and in the CONTRACT AGREEMENT (RFQ #2018-016). Now therefore, the parties agree as follows:

**Location of Project:**

Lavista Road from just west of Fellowship Road to Main Street, and on Fellowship / Chamblee Tucker Road from Lawrenceville Highway to just north of Tucker High School. Lawrenceville Highway from just west of Hugh Howell Road to just east of Cofer Crossing Shopping Center.

**Description of Services:** The services to be performed by the CONSULTANT pursuant to this TASK ORDER (the "WORK") are described in the attached Scope of Services.

**Design Specifications and Guidelines:** The database preparation, concept plans, and report will be performed on an hourly basis utilizing the previously approved rates from RFQ #2018-016 with a Not to Exceed amount as follows:

**Total Not to Exceed Fee** \$ \$52,300

This TASK ORDER is subject to the terms and conditions of the original CONTRACT AGREEMENT (RFQ #2018-016) entered between the parties.

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**General Scope of Service:** The WORK under this TASK ORDER is to be commenced upon receipt of “Notice to Proceed” (NTP). The WORK will be completed within 90 calendar days after Notice to Proceed.

The CONSULTANT shall prepare a schedule showing milestone completion dates based on completing the WORK within 10 calendar days (hereinafter referred to as the “Schedule for Completion”), excluding City review time. The Schedule for Completion will be revised to reflect the actual NTP date and will be updated as required throughout the project duration.

Every 30 days commencing with the execution of the TASK ORDER, the CONSULTANT shall submit a report which shall include, but not be limited to, a narrative describing actual work accomplished during the reporting period, a description of problem areas, current and anticipated delaying factors and their impact, explanations of corrective actions taken or planned, and any newly planned activities or changes in sequence (hereinafter referred to as “Narrative Report”). No invoice for payment shall be submitted and no payment whatsoever will be made to the CONSULTANT until the Schedule for Completion, and the completion of Narrative Reports are updated and submitted to the City. In no event shall payment be made more often than once every 30 days.

The CONSULTANT shall coordinate and attend periodic meetings with the CITY regarding the status of the TASK ORDER. The CONSULTANT shall submit transmittals of all correspondence, telephone conversations, and minutes of project meetings. The CONSULTANT shall accomplish all of the pre-construction activities for the TASK ORDER as part of the WORK. The pre-construction activities shall be accomplished in accordance with the all local codes and ordinances (where applicable), the applicable guidelines of the American Association of State Highway and Transportation Officials (AASHTO), current edition, the GDOT’s Standard Specifications Construction of Roads and Bridges, current edition, the Manual on Uniform Traffic Control Devices (MUTCD), current edition, TASK ORDER schedules, and applicable guidelines of the Georgia Department of Transportation.

The CONSULTANT agrees that all reports, plans, drawings studies, specifications, estimates, maps, computations, computer diskettes and printouts and any other data prepared under the terms of this TASK ORDER shall become the property of the City. This data shall be organized, indexed, bound and delivered to the City no later than the advertisement of the PROJECT for letting. The City shall have the right to use this material without restriction or limitation and without compensation to the CONSULTANT.

The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of interpreting all designs, drawings, specifications, and other services furnished by or on behalf of the City pursuant to this TASK ORDER. The CONSULTANT shall correct or revise, or cause to be corrected or revised, any errors or deficiencies in the designs, drawings, specifications, and other services furnished for this TASK ORDER. All revisions shall be coordinated with the CITY prior to issuance. The CONSULTANT shall also be responsible for any claim, damage, loss or expense resulting from the incorrect interpretation of provided designs, drawings, and specifications pursuant to this

## TASK ORDER.

For each "Phase" enumerated in "Design Specifications and Guidelines," the fees shall be paid for such phase as provided however, CONSULTANT agrees that fees are earned pursuant to the WORK performed, which in no event shall exceed the amount set forth in the attached Fee Schedule and which hourly rate shall in no event exceed that provided in the Contract Agreement. Accordingly, invoices shall be submitted pursuant to completion of the Work performed based upon percentage completion of the relevant Phase.

**Attachments:**

Attachments ~~A~~ – Scope of Services  
~~CHA consultant~~ Proposal

CONSULTANT:

CITY:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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



# City of Tucker

## MEMO

**To:** Honorable Mayor and City Council Members  
**From:** Tami Hanlin, City Manager  
**By:** Ken Hildebrandt, City Engineer  
**Date:** August 10, 2020  
**RE:** Memorandum of Agreement with the Tucker Summit Community Improvement District for Engineering Services – Hugh Howell Road @ Flintstone Drive

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### Issue:

This MOA is for engineering design services for a traffic study and intersection improvement: Hugh Howell Road @ Flintstone Drive.

### Background:

The city has been working with DeKalb County Schools, the Georgia Department of Transportation, abutting business owners, and the Tucker Summit CID to improve the access to the new Smoke Rise Elementary School. The current plan is for the school to have a single, unsignalized entrance on Hugh Howell Road. Potential improvements at Flintstone Drive may include an additional curb cut on the north side, interparcel access between the school and the adjacent businesses, and a traffic signal. These improvements are contingent on funding partnerships, right-of-way acquisition, and GDOT approval.

This MOA establishes a partnership with the Tucker Summit CID for engineering services for the above referenced intersection improvement. The City has received a fee proposal from Atlas Technical Consultants in the amount of \$44,000. Services will include a survey, preparation of right-of-way deeds, a traffic signal warrant study, coordination with GDOT, and a final engineering design.

### Recommendation:

Staff recommends that Council approve this MOA.

### Financial Impact:

The Tucker Summit CID will fund \$20,000. The remaining \$24,000 will be funded from the FY 2021 Capital Project – Smoke Rise Elementary School Road Improvements.

STATE OF GEORGIA

COUNTY OF DEKALB

**AGREEMENT**

**THIS AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into effective the date last signed below, by and between the **CITY OF TUCKER**, a municipal corporation of the State of Georgia, (hereinafter referred to as the "City") and the **TUCKER SUMMIT COMMUNITY IMPROVEMENT DISTRICT BOARD** (hereinafter referred to as the "CID").

**WHEREAS**, the intersection of Hugh Howell Road and Flintstone Drive is an intersection that lies within the boundaries of both the City and the CID; and

**WHEREAS**, the City and the CID agree that the intersection of Hugh Howell Road and Flintstone Drive will experience heavy traffic delays during peak hours due to the opening of Smoke Rise Elementary School and several adjacent commercial/industrial developments; and

**WHEREAS**, the City and CID desire to make traffic improvements to include a shared access public driveway, interparcel access, and a traffic signal to increase the level of service and improve safety; and

**WHEREAS**, Hugh Howell Road is State Route 236 and is under the authority of the Georgia Department of Transportation (GDOT);

**NOW, THEREFORE**, in consideration of the mutual covenants and benefits flowing to the parties, the City and the CID Board do agree as follows:

1. The City shall contract with Atlas Technical Consultants for the engineering design of improvements at the intersection of Hugh Howell Road and Flintstone Drive. This design shall include survey for right-of-way and easement acquisition, coordination with the Georgia Department of Transportation for permitting and funding allocation, a traffic study to include a traffic signal warrant analysis, and detailed road design plans for the permitting and construction of said improvements.
2. The City shall be responsible for the oversight of the project including construction and engineering procurement, managing the engineering consultant & construction administration, coordination with GDOT, right-of-way administration including fee simple, permanent and temporary easement acquisitions, negotiations with Sears and Crespac

owners for acquisition of fee simple and easement acquisitions, project scheduling, processing invoices and payment to the engineering consultant & construction contractor for said transportation improvements.

3. The CID shall be granted input in the details associated with the design and construction documents and shall be invited to attend all meetings with the engineering consultant, GDOT, and the public.

4. The CID shall reimburse the City for fifty percent (50%), not to exceed \$20,000, of the cost of engineering design services. The CID shall issue payment to the City within thirty (30) days of authorization of purchase orders or subsequent change orders from the engineering consultant.

5. If the City chooses not to proceed with the project improvements, the City will reimburse the CID for all costs associated with engineering and surveying services that were incurred up to the date in which such services are no longer required due to project cancellation. This reimbursement of CID incurred costs can be in the form of infrastructure projects located in the district that are not currently advertised or under construction and/or under contract and the value of this infrastructure shall, at a minimum, be of equal value to the cost of the CID services incurred as described in this section. Alternatively, a cash payment to the CID for these incurred engineering/surveying services is acceptable.

6. The maximum financial participation by the CID for the construction phase will be \$100,000.

**WHEREFORE**, the parties have caused this Agreement to be executed under seal by authorized representatives of each entity effective on the day and year above set forth.

**CITY OF TUCKER, GEORGIA**

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MAYOR

TUCKER SUMMIT COMMUNITY IMPROVEMENT DISTRICT

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CHAIRMAN

ATTEST:

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CITY CLERK



## CONTRACT AGREEMENT

### Engineering Design – Hugh Howell Road @ Flintstone Drive

This Agreement made and entered into this 30<sup>th</sup> day of July in the year **2020**; by and between the City of Tucker, Georgia, having its principal place of business at 1975 Lakeside Parkway, Suite 350, Tucker, Georgia 30084 and Atlas Technical Consultants, LLC ("Contractor"), located at 2450 Commerce Avenue, Suite 100, Duluth, GA 30096.

WHEREAS, the City of Tucker is charged with the responsibility for the establishment of contracts for the acquisition of goods, materials, supplies and equipment, and services by the various departments of the City of Tucker; and

WHEREAS, the City of Tucker has requested a proposal from the Contractor to furnish all items, labor services, materials and appurtenances called for by them in accordance with this proposal. Selected ("Contractor") is required to provide the services as called for in the specifications; and

WHEREAS, the Contractor submitted a response to the request for a proposal; and

WHEREAS, the City of Tucker the Contractor to be the most qualified firm to perform the scope of services.

NOW THEREFORE, in consideration of the mutual covenant and promises contained herein, the parties agree as follows:

#### **1.0 Scope of Work**

That the Contractor has agreed and by these present does agree with the City to furnish all equipment, tools, materials, skill, labor of every description, and all things necessary to carry out as delineated in "Exhibit A" (Scope of Services) and complete in a good, firm, substantial and workmanlike manner, the Work in strict conformity with the specifications which shall form an essential part of this agreement. In addition to the foregoing, and notwithstanding anything to the contrary stated herein, the following terms and conditions, amendments, and other documents are incorporated by reference and made a part of the terms and conditions of this Agreement as is fully set out herein:

**EXHIBIT A – SCOPE OF SERVICE**

**EXHIBIT B – COST PROPOSAL**

**EXHIBIT C – W-9**

**EXHIBIT D – CERTIFICATE OF INSURANCE**

**EXHIBIT E – IMMIGRATION & SECURITY FORM**



**EXHIBIT F – CONTACT INFORMATION****EXHIBIT G – ADDENDUMS****EXHIBIT H – PERFORMANCE AND PAYMENT BOND (if applicable)****2.0 Key Personnel**

The City of Tucker enters into this Agreement having relied upon Contractor's providing the services of the Key Personnel, if any, identified as such in the body of the Agreement. No Key Personnel may be replaced or transferred without the prior approval of the City's authorized representative. Any Contractor personnel to whom the City objects shall be removed from City work immediately. The City maintains the right to approve in its sole discretion all personnel assigned to the work under this Agreement.

**3.0 Compensation**

3.1. Pricing. The Contractor will be paid for the goods and services sold pursuant to the Contract. Unless clearly stated otherwise in the Standard Contract, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. The prices quoted and listed on the attached Cost Proposal, a copy of which is attached hereto as **Exhibit "B" (Cost Proposal)** and incorporated herein, shall be firm throughout the term of this Contract.

3.2. Billings. If applicable, the Contractor shall submit, on a regular basis, an invoice for goods and services supplied to the City under the Contract at the billing address specified in the Purchase Instrument or Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The City shall pay all approved invoices in arrears and in accordance with applicable provisions of City law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the City for any goods or services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract. Standard payment terms: Net-30. **Invoices are to be emailed to [khildebrandt@tuckerga.gov](mailto:khildebrandt@tuckerga.gov).** A W-9 Request for Taxpayer Identification Number and Certification Form must be submitted **"Exhibit C" (W-9)**.

3.3. Delay of Payment Due to Contractor's Failure. If the City in good faith determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such service or product is performed or delivered. In this event, the City may withhold that portion of the Contractor's compensation which represents payment for services or products that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the City to incur costs, the City may deduct the amount of such incurred costs from any amounts payable to Contractor. The City's authority to deduct such incurred costs shall not in any way affect the City's authority to terminate the Contract.

3.4. Set-Off Against Sums Owed by the Contractor. In the event that the Contractor owes the City any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the City may set off the sum owed to the City against any sum owed by the City to the Contractor in the City's sole discretion.

**4.0 Duration of Contract**



4.1. **Contract Term.** The Contract between the City and the Contractor shall begin and end on the dates specified, unless terminated earlier in accordance with the applicable terms and conditions. Pursuant to O.C.G.A. Section 50-5-64, this Contract shall not be deemed to create a debt of the City for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal. The term of this contract shall begin on August 15, 2020 and shall be from commencement of services and until all services are rendered. All invoices postmarked by the City during said term shall be filled at the contract price.

4.1.1 **Option to renew:** Unless either party gives one hundred eighty days (180) notice of its intent to not renew, this Agreement upon signing a renewal agreement will automatically renew for up to four (4) additional one (1) year renewal periods, (each, a "Renewal Term") at the expiration of the Term. Thereafter, both Parties must agree to renew via an amendment to this Agreement.

4.2. **Contract Extension.** In the event that this Standard Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified goods and ancillary services, the City may, with the written consent of Contractor, extend this Contract for such period as may be necessary to afford the City a continuous supply of the identified goods and ancillary services.

The City will determine the basic period of performance for the completion of any of Contractor's actions contemplated within the scope of this Agreement and notify Contractor of the same via written notice. If no specific period for the completion of Contractor's required actions pursuant to this Agreement is set out in writing, such time period shall be a reasonable period of time based upon the nature of the activity. If the completion of this Contract is delayed by actions of the City, then and in such event the time of completion of this Contract shall be extended for such additional time within which to complete the performance of the Contract as is required by such delay.

This Contract may be extended by mutual consent of both the City and the Contractor for reasons of additional time, additional services and/or additional areas of work.

## **5.0 Independent Contractor**

5.1. The Contractor shall be an independent Contractor. The Contractor is not an employee, agent or representative of the City of Tucker. The successful Contractor shall obtain and maintain, at the Contractor's expense, all permits, license or approvals that may be necessary for the performance of the services. The Contractor shall furnish copies of all such permits, licenses or approvals to the City of Tucker Representative within ten (10) day after issuance.

5.2 Inasmuch as the City of Tucker and the Contractor are independent of one another neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. The Contractor agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the City of Tucker without the express knowledge and prior written consent of the City.

## **6.0 Indemnification**

6.1 The Contractor agrees to indemnify, and hold harmless the City, its public officials, officers, employees, and agents from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including reasonable attorney's fees) to the extent rising out of any negligent, reckless, or intentionally wrongful act or omission of the Contractor, its agents, subcontractors or employees in the performance of this Contract except for such claims that arise from the City's sole negligence or willful misconduct.

6.2 Notwithstanding the foregoing indemnification clause, the City may join in the defense of any claims raised against it in the sole discretion of the City. Additionally, if any claim is raised against the City, said claim(s) cannot be settled or compromised without the City's written consent, which shall not be unreasonably withheld.

## **7.0 Performance**

Performance will be evaluated on a monthly basis. If requirements are not met, City of Tucker Procurement will notify the Contractor in writing stating deficiencies, substitutions, delivery schedule, and/or poor workmanship.

A written response from the Contractor detailing how correction(s) will be made is required to be delivered to the City. Contractor will have thirty (30) days to remedy the situation. If requirements are not remedied City of Tucker has the right to cancel this Agreement with no additional obligation to Contractor.

### **7.1 Final Completion, Acceptance, and Payment**

- A. Final Completion shall be achieved when the work is fully and finally complete in accordance with the Contract Documents. The City shall notify Contractor once the date of final completion has been achieved in writing.
- B. Final Acceptance is the formal action of City acknowledging Final Completion. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the City's right under any warranty or guarantee. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents submit to City a Notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, final payment shall release Contractor or its sureties from any obligations of these Contract Documents or the bond, or constitute a waiver of any claims by City arising Contractor's failure to perform the work in accordance with the Contract Documents.
- C. Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to City of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of City relating to or arising out of the work, except for those Claims made in accordance with the procedures, including the time limits, set forth in section 8.

## **8.0 Changes**

City, within the general scope of the Agreement, may, by written notice to Contractor, issue additional instructions, require additional services or direct the omission of services covered by this Agreement.

In such event, there will be made an equitable adjustment in price, but any claim for such an adjustment must be made within thirty (30) days of the receipt of said written notice.

## **9.0 Change Order Defined**

Change order shall mean a written order to the Contractor executed by the City issued after the execution of this Agreement, authorizing and directing a change in services. The Price and Time may be changed only by a Change Order.

## **10.0 Insurance**

10.1 The Contractor shall, at its own cost and expense, obtain and maintain worker's compensation and commercial general liability insurance coverage covering the period of this Agreement, such insurance to be obtained from a responsible insurance company legally licensed and authorized to transact business in the State of Georgia. The minimum limit for Worker's Compensation Insurance shall be the statutory limit for such insurance. The minimum limits for commercial general liability insurance, which must include personal liability coverage will be \$2,000,000 per person and \$2,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage.

10.2 Contractor shall provide certificates of insurance evidencing the coverage requested herein before the execution of this agreement, and at any time during the term of this Agreement, upon the request of the City, Contractor shall provide proof sufficient to the satisfaction of the City that such insurance continues in force and effect. **"Exhibit D" (Certificate of Insurance).**

## **11.0 Termination**

11.1. Immediate Termination. Pursuant to O.C.G.A. Section 50-5-64 and 36-60-13, this Contract will terminate immediately and absolutely if the City determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the City cannot fulfill its obligations under the Contract, which determination is at the City's sole discretion and shall be conclusive. Further, the City may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:

- (i) In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
- (ii) The City determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
- (iii) The Contractor fails to comply with confidentiality laws or provisions; and/or
- (iv) The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

11.2. Termination for Cause. The occurrence of any one or more of the following events shall constitute cause or the City to declare the Contractor in default of its obligations under the Contract:

(i) The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

(ii) The City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;

(iii) The Contractor fails to make substantial and timely progress toward performance of the contract;

(iv) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

(v) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;

(vi) The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion; or

(vii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the City, or a third party.

11.3. Notice of Default. If there is a default event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the City may:

(i) Immediately terminate the Contract without additional written notice; and/or

(ii) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,

(iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

11.4. Termination for Convenience. The City may terminate this Agreement for convenience at any time upon thirty (30) day written notice to the Contractor. In the event of a termination for convenience, Contractor shall take immediate steps to terminate work as quickly and effectively as possible and shall terminate all commitments to third-parties unless otherwise instructed by the City. Provided that no damages are due to the City for Contractor's failure to perform in accordance with this Agreement, the City shall pay Contractor for work performed to date in accordance with Section herein. The City shall have no further liability to Contractor for such termination.

11.5. Payment Limitation in the event of Termination. In the event termination of the Contract for any reason by the City, the City shall pay only those amounts, if any, due and owing to the Contractor goods

and services actually rendered up to and including the date of termination of the Contract and for which the City is obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the City under the Contract in the event of termination. The City shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.

11.6. The Contractor's Termination Duties. Upon receipt of notice of termination or upon request of the City, the Contractor shall:

(i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the City may require;

(ii) Immediately cease using and return to the City, any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;

(iii) Comply with the City's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;

(iv) Cooperate in good faith with the City, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and

(v) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

## **12.0 CLAIMS and DISPUTE RESOLUTION**

### **12.1 Claims Procedure**

A. If the parties fail to reach agreement regarding any dispute arising from the Contract Documents, including a failure to reach agreement on the terms of any Change Order for City-directed work as provided in section 8, or on the resolution of any request for an equitable adjustment in the Contract Sum or the Contract Time, Contractor's only remedy shall be to file a Claim with City as provided in this section.

B. Contractor shall file its Claim within the earlier of: 120 Days from City's final in accordance with section 8; or the date of Final Acceptance,

C. The Claim shall be deemed to cover all changes in cost and time (including direct, indirect impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. The Claim shall contain a detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of work affected by the Claim.

D. If an adjustment in the Contract Time is sought: the specific Days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be



granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time.

E. If any adjustment in the Contract Sum is sought: the exact amount sought and a breakdown of that amount into the categories; and a statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes City is liable.

F. After Contractor has submitted a fully-documented Claim that with all applicable provisions of section 8, City shall respond, in writing, to Contractor with a decision within sixty (60) Days of the date the Claim is received, or with notice to Contractor of the date by which it will render its decision.

## 12.2 Arbitration

A. If Contractor disagrees with City's decision rendered in accordance with section 12. If, Contractor shall provide City with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than thirty (30) Days after the date of City's decision on such Claim, failure to demand arbitration with said thirty (30) Day period shall result in City's decision being final and binding upon Contractor and its Subcontractors.

B. Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provided to City. The parties shall negotiate or mediate under the Voluntary Construction Mediation Rules of the AAA, or mutually acceptable service, before seeking arbitration in accordance with the Construction Industry Arbitration Rules of AAA as follows:

1. Disputes involving \$30,000 or less shall be conducted in accordance with the Southeast Region Expedited Commercial Arbitration Rules; or
2. Disputes over \$30,000 shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA, unless the parties agree to use the expedited rules.

C. All Claims arising out of the work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may occur, in the Superior Court of DeKalb County.

D. If the parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

E. Choice of Law and Forum. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of State law. The Superior Court of DeKalb County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract. In the event any proceeding

of a quasi-judicial or judicial nature is commenced in connection with this Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within DeKalb County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the City.

F. All Claims filed against City shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractor of any tier, to maintain and retain sufficient records to allow City to verify all or a portion of the Claim or to permit City access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

### **13.0 Confidential Information**

13.1. Access to Confidential Data. The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the City to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the City. If it is reasonably likely the Contractor will have access to the City's confidential information, then:

(i) The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;

(ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

(iii) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and

(iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract. The private or confidential data shall remain the property of the City at all times. Some services performed for the City may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

13.2. No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the City, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the City. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.

13.3. Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.

13.4. Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.

13.5. Survives Termination. The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

#### **14.0 Inclusion of Documents**

Contractor's response submitted in response thereto, including any best and final offer, are incorporated in this Agreement by reference and form an integral part of this agreement. In the event of a conflict in language between this Agreement and the foregoing documents incorporated herein, the provisions and requirements set forth in this Agreement shall govern. In the event of a conflict between the language of the RFP, as amended, and the Contractor's submittal, the language in the former shall govern.

14.1 Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

#### **15.0 Compliance with All Laws and Licenses**

The Contractor must obtain all necessary licenses and comply with local, state and federal requirements. The Contractor shall comply with all laws, rules and regulations of any governmental entity pertaining to its performance under this Agreement.

##### **15.1 Federal Requirements.**

##### **15.1.1 Federal Compliance Regulations**

Federal regulations apply to all City of Tucker contracts using Federal funds as a source for the solicitation of goods and services. Successful bidders must comply with the following Federal requirement as they apply to:

1. Equal Employment Opportunity — The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall comply with Executive Order 1 1246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
2. Reports - The submission of reports to the City on behalf of the U.S. Department of Housing and Urban Development as may be determined necessary for the activities covered by this contract, which is federally funded;
3. Patents - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable right to use, and to authorize others to use, for Federal Government purposes:
  - a. Any patent that shall result under this contract; and



- b. Any patent rights to which the Contractor purchases ownership with grant support
- 4. Copyrights - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
  - a. The copyright in any work developed under this contract; and
  - b. Any rights of copyright to which the Contractor purchases ownership with grant support.
- 5. Access to books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purposes of making audit, examination, excerpts and transcriptions by Federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives; and
- 6. Retention of all required records for three years after the City makes final payment and all other pending matters are closed.

#### 15.2 Georgia Security and Immigration Compliance Act

- a. The parties certify that Contractor has executed an affidavit verifying that Contractor has registered and participates in the federal work authorization program to verify information of all new employees, per O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02. The appropriate affidavit is attached hereto as "**Exhibit E" (Immigration and Security Form)** and incorporated herein by reference and made a part of this contract.
- b. The Contractor further certifies that any subcontractor employed by Contractor for the performance of this agreement has executed an appropriate subcontractor affidavit verifying its registration and participation in the federal work authorization program and compliance with O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02, and that all such affidavits are incorporated into and made a part of every contract between the Contractor and each subcontractor.
- c. Contractor's compliance with O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02 is a material condition of this agreement and Contractor's failure to comply with said provisions shall constitute a material breach of this agreement.

#### 16.0 Assignment

The Contractor shall not assign or subcontract the whole or any part of this Agreement without the City of Tucker's prior written consent.

#### 17.0 Amendments in Writing

No amendments to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of the parties.

### **18.0 Drug-Free and Smoke-Free Work Place**

18.1 A drug-free and smoke-free work place will be provided for the Contractor's employees during the performance of this Agreement; and

18.2 The Contractor will secure from any sub-contractor hired to work in a drug-free and smoke-free work place a written certification so stating and in accordance with Paragraph 7, subsection B of the Official Code of Georgia Annotated Section 50-24-3.

18.3 The Contractor may be suspended, terminated, or debarred if it is determined that:

18.3.1 The Contractor has made false certification herein; or

18.3.2 The Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia Annotated Section 50-24-3.

### **19.0 Additional Terms**

Neither the City nor any Department shall be bound by any terms and conditions included in any Contractor packaging, Invoice, catalog, brochure, technical data sheet, or other document which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.

### **20.0 Antitrust Actions**

For good cause and as consideration for executing this Contract or placing this order, Contractor acting herein by and through its duly authorized agent hereby conveys, sells, assigns, and transfers to the City of Tucker all rights, title, and interest to and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Georgia relating to the particular goods or services purchased or acquired by the City of Tucker pursuant hereto.

### **21.0 Reporting Requirement**

Reports shall be submitted to the Project Manager on a quarterly basis providing, as a minimum, data regarding the number of items purchased as well as the total dollar volume of purchases made from this contract.

### **22.0 Governing Law**

This Agreement shall be governed in all respects by the laws of the State of Georgia. The Superior Court of DeKalb County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract.

### **23.0 Entire Agreement**

This Agreement constitutes the entire Agreement between the parties with respect to the subject matter contained herein; all prior agreements, representations, statement, negotiations, and undertakings are suspended hereby. Neither party has relied on any representation, promise, or inducement not contained herein.

#### 24.0 Special Terms and Conditions

(Attached are any special terms and conditions to this contract, if applicable:)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

#### CITY OF TUCKER:

By: [Signature]  
 Title: City Manager  
 Name: Tami Hanlin  
 Date: 7/27/20

Attest: [Signature]  
 City Clerk



(Seal)

#### CONTRACTOR:

By: [Signature]  
 Title: GA Division Lead  
 Name: TODD LONG  
 Date: 7/30/20  
 Company Name: ATLAS Technical Consultants, LLC

## EXHIBIT A SCOPE OF SERVICE

Preparation of letter from Mayor to GDOT with cost estimate and follow up meeting with GDOT

Survey and deed preparation for right-of-way deed needed for stub road, and for inter parcel access on Branch/Banjee/Crestpac

Detailed Traffic Signal Warrant Study (ICE Analysis)

Traffic Signal Design and assisting City in obtaining the signal permit from GDOT

Final Engineering Drawings for driveway stub and roadway work

Provide assistance as needed to the City to obtain the new Encroachment Permit from GDOT on driveway and roadwork on SR 236 (City will lead effort)

Construction Bidding assistance to the City (City will lead effort) – assistance as needed, answering questions, etc

Utility Coordination by City

## EXHIBIT B COST PROPOSAL AND SCHEDULE

Preparation of letter from Mayor to GDOT with cost estimate and follow up meeting with GDOT - \$1000  
(within 3-4 weeks of NTP)

Survey and deed preparation for right-of-way deed needed for stub road, and for inter parcel access on  
Branch/Banjee/Crestpac - \$14,000  
(within 3-4 weeks of NTP)

Detailed Traffic Signal Warrant Study (ICE Analysis) - \$5500  
(within 6 weeks of NTP)

Traffic Signal Design and assisting City in obtaining the signal permit from GDOT - \$4500  
(within 8 weeks of NTP)

Final Engineering Drawings for driveway stub and roadway work - \$17,000  
(within 10 weeks of NTP)

Provide assistance as needed to the City to obtain the new Encroachment Permit from GDOT on driveway and  
roadwork on SR 236 (City will lead effort) - \$1000  
(within 16 weeks of NTP)

Construction Bidding assistance to the City (City will lead effort) – assistance as needed, answering questions, etc  
- \$1000

Utility Coordination by City

**TOTAL - \$44,000**

1. R/W Services, CEI services and other additional work can be added as requested by the City at the following rates:

|  |          |
|--|----------|
| Principal .....  | \$225.00 |
| Senior Professional/Department Head/Program Manager .....                              | \$165.00 |
| Registered Professional/Senior Engineer/Proj Manager/GIS Manager .....                 | \$150.00 |
| Registered Land Surveyor .....   | \$140.00 |
| Right of Way Review and Appraiser .....  | \$125.00 |
| Engineer (Traffic, Roadway, bridge) .....  | \$110.00 |
| Professional (Ecologist, Historian, Appraiser, Relocation Specialist, Geologist) ..... | \$100.00 |
| Construction Mgr .....   | \$100.00 |
| Designer/GIS Specialist .....  | \$85.00  |
| Bridge Inspector .....   | \$95.00  |
| Senior Inspector .....   | \$75.00  |

|   |          |
|---|----------|
| Inspector .....   | \$65.00  |
| Design/Survey Technician/CADD Operator/GIS Field Technician ..... | \$72.00  |
| Clerical .....  | \$55.00  |
| Paralegal .....   | \$70.00  |
| Senior Field Technician .....                                     | \$75.00  |
| Field Technician .....  | \$65.00  |
| Survey Crew (2 person) .....                                      | \$110.00 |
| Survey Crew (2 person and robotic instrument) .....               | \$100.00 |
| Survey Crew (3 person) .....                                      | \$135.00 |
| Survey Crew with GPS .....  | \$115.00 |
| Utility Locator .....   | \$80.00  |
| Acquisition Specialist .....                                      | \$80.00  |
| Hydrologist .....   | \$100.00 |



## MEMO

**To:** Honorable Mayor and City Council Members  
**From:** Tami Hanlin, City Manager  
**CC:** Toni Jo Howard, Assistant City Manager/Finance Director  
**By:** Rip Robertson, Director, Parks & Recreation  
**Date:** August 10, 2020  
**RE:** Consideration of the approval of a contract for the Trail Upgrade project

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### Issue:

The City of Tucker Parks and Recreation Department continues to strive to improve our services to our community. It is our goal to provide quality programming, facilities, and parks to Tucker citizens. To enable the City to provide these quality facilities and services, it is necessary to continue to repair, replace and renovate parks, trails, park venues and facilities.

### Recommendation:

Staff recommends approval of the contract with Steele & Associates, INC for the construction of and the installation of 3 bridges/boardwalks in Henderson, Cofer and Smoke Rise Parks for the contracted price of \$165,499.00 (\$150,499.00 bid + 10% contingency).

### Background:

The Department's Master Plan had a clear message that hiking and trails was an important to our citizens and to our park system. There are trail crossings in each of our parks that need new or improved bridges and boardwalks. These improvements help alleviate an on-going erosion issue along streams or traverse wet/marsh areas providing a continuous trail around and through the park and there are also a number of bridges that are in decline and need to be repaired and replaced. This project is part of the Departments on-going efforts to make those necessary improvements and upgrades. This project includes the addition of a bridge to connect the Red trail to the White trail at Henderson Park, to add an improved boardwalk through the marsh area on the Cofer Park trail and to make repairs to one of the existing bridges in Smoke Rise Park.

### Summary:

This project was designed by Keck & Wood Collaboration. We received 5 qualified bids, ranging from \$150,499.00 to \$357,342.00. The low bidder was also very well qualified and after verifying their experience in trail and bridge construction in several well-known parks, we are confident that Steele & Associates will complete this project successfully.

### Financial Impact:

This project is partially funded with a DNR grant (\$50,000.00 – 320-6210-54-12000 - #SP1914) and is in the Departments FY2020 General Fund CIP (300-6210-52-12000 - #PR2006).





## MEMO

**To:** Honorable Mayor, City of Tucker  
**From:** Tami Hanlin, City Manager  
**CC:** Toni Jo Howard, Assistant City Manager (Finance), John McHenry, Assistant City Manager  
**By:** Rip Robertson, Director, Parks & Recreation  
**Date:** August 10, 2020  
**RE:** Fitzgerald Park/Stadium Design & Engineering project

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### Issue:

The City of Tucker has been working on a plan to develop a stadium within our park system. We were initially contacted by several sports organizations (soccer, rugby, lacrosse) about the possibility of stadium construction in Fitzgerald Park. This could be a great opportunity to make Tucker a regional destination for major tournaments and high-level league play in numerous sports. This type of attraction would bring all the positive economic benefits of having many visitors in the City patronizing the Downtown, shops and restaurants.

### Background:

The City was contacted by Discover DeKalb about the possibility of hosting adult (pro-level) Soccer and Rugby (MLR). Once the talks began, we became aware that the Atlanta Lacrosse (MLL) team could also be a possibility. We also recognize the possible opportunity to host the Tucker High School athletics program in a home stadium. There will also be opportunities to attract additional high-level tournaments, leagues, events and city-wide activities and events. This would also enhance our existing and any additional youth athletic programs.

We have engaged with several consulting firms: Barge Design Solutions completed a feasibility study on stadium configuration on this site with cost estimates for both full build out and a phased approach and CPS completed a financial impact study. We have continued working on several key aspects for the phased approach and have received some initial estimates for construction.

These initial costs include a startup capacity of approximately 1500 with the opportunity to expand in capacity with accommodating facilities:

- Stadium with available on-site parking and infrastructure for future permanent facilities (A/E, OH&P, contingency)
  - Lighting to accommodate any future expansion and requirements
  - Video scoreboard with sound
  - Seating for 1500 with H/C accessibility (temporary and could be used in several future locations and configurations)
  - Facilities: players locker rooms, restrooms, concessions, official's locker room (temporary and leased for 12 mos.)
  - Driveway/road access for stadium only
- **Traffic/Parking:** with a phased approach, parking and traffic control could be accommodated with no additional acquisition of property or easements. Hwy 29 (Lawrenceville Hwy) and Jimmy Carter/Mountain Industrial are main arteries into and out of

the area, traffic would be only minimally impacted due to the time of games and events. These two main arteries should be able to handle the rush of traffic on specific game dates. The traffic increase would be temporary during games.

This phased approach would provide time, coordination and planning for future expansion and possible available funding. We could initially work with the existing church to provide additional parking and access without acquisition. This would also provide time to assess the need for future agreements with Royal Atlanta Industrial Park (located adjacent to the rear of the new park) for parking and pedestrian access during larger events and games needing additional parking.

- **Stadium Seating/Field Surface/Lighting:** The stadium would have natural turf and could be upgraded if needed to artificial in future expansion plans depending on use. The lighting would accommodate any future requirements for high level use by HS, college or professional organizations. The initial seating could be accommodated with the purchase of bleacher seating that could be moved and used in other parks and fields. If desired, stadium seating could be upgraded initially and provide any expansion requirements. Specifics will be finalized in plans and documents prepared for construction and completion.
- **Concessions/Restrooms/Locker Rooms:** These features would be leased for temporary use for the initial 12 months or could be planned into the phased construction. Either alternative will be finalized in plans prepared for construction. The current pricing does include the 12-month lease of these facilities.

**Summary:** We have completed the initial fit and financial feasibility studies and have also completed an in-house analysis to determine the City's desire to move forward with establishing a multi-use Tucker Stadium. We asked 3 of the City's "on-call" park planner/engineer/design vendors to submit quotes for this project. These quotes are for the design and engineering for the field, infrastructure to accommodate future facilities and expansion and on-site parking. They also included bid documents for the construction phase of the stadium field.

#### Financial Impact:

This venture is quite exciting. **Costs** of the improvements: investment from city, investment from each organization, sponsors/donations/foundations. **Revenue** from these improvements: parking, concessions, ticket sales, sponsorships, tournaments, expansion of youth programs, etc.

|   |        |
|---|--------|
| ➤ Stadium with available on-site parking and infrastructure     | \$2.7M |
| ➤ Lighting  | \$500K |
| ➤ Video scoreboard with sound                                   | \$325K |
| ➤ Seating for 1500 with H/C accessibility                       | \$250K |
| ➤ Temporary facilities – annual lease (locker rooms, restrooms) | \$225K |

Clearly, the addition of a professional level stadium and all of the programming associated with it in Tucker would have a significant impact on the City's local economy and with its proximity, be a major boost for downtown businesses. From a branding standpoint, a professional level stadium would build on the existing energy found in the City and expand the authentic local engagement.

There are multiple opportunities to off set the cost of the stadium. There are available grants, sponsorship of the stadium, video scoreboard as well as seasonal sponsorships that would be created with the video board as opposed to static banners.

#### Financial Considerations added by Toni Jo:

As Rip indicated scaling the project to 1,500 seats allows for a lower up-front capital investment of \$4M versus \$7.25M. In considering this option there are two primary financial issues. The first is the feasibility of the operations. CPS performed this work based on a 5,000-seat stadium. In short, the analysis concluded that the stadium would be profitable in year 3. I utilized the same data and scaled

it to a 1,500-seat stadium. To accomplish this, I had to make some assumptions as to the likelihood of similar revenues and costs for a smaller stadium. Again, the numbers would indicate profitability in year 3 although obviously at a lower amount.

The second financial consideration is the capital investment. There are a few options that could be considered for financing. The first is a cash investment by the City. There are currently several Parks projects in both the capital projects fund and SPLOST that could be repurposed and utilized for this project to provide about \$1.3M. Rip has also indicated a DNR grant that could provide \$500K of funding. Additionally, there is approximately \$1M in the capital project fund for project contingencies. The remaining \$1.2M could be provided from fund balance of the general fund.

Another possible option is to utilize debt financing for all or part of the project. In looking at the ten-year proforma the net operating income would not provide enough for debt service payments. However, the City could consider redirecting Hotel/Motel taxes to provide additional funding. In prior years, the 40% of the overall receipts provided approximately \$460K. This would cover the anticipated debt service on \$4M over 10 years after the first 2 years. The shortage in the first two years would be less than \$40k.

A combination of the two proposed options utilizing both cash and debt could be implemented at varying degrees to still achieve the necessary funding. Of course, all these projections come with the caveat that there is a degree of uncertainty on any financial forecasting in the current environment. However, the stadium would not be set to open until Spring of 2021. The timing would increase the chances that this type of venue would again be utilized at a rate more in-line with these projections.

**Recommendation:**

Staff recommends approval of the contract with Keck & Wood Collaboration by Design for the development of the construction plans for the field and infrastructure for the Fitzgerald Stadium for the contracted price of \$105,500.00 (\$91,700.00 bid + 15% contingency).

**Financial Impact:**

This projected is in the Departments FY2020 General Fund CIP (300-6210-52-12000 - #PR2005). This funding is for project development and management and will not impact any other existing or planned project.





August 4, 2020

Rip Robertson  
Parks and Recreation Director  
City of Tucker  
4898 Lavista Rd  
Tucker, GA 30084

Re: Scope Description and Fee Estimate  
Fitzgerald Field

Dear Mr. Robertson:

The City of Tucker intends to construct a new multi-use field, parking lots, and utility infrastructure at Fitzgerald Field in the City of Tucker (The "City"), Georgia. Keck & Wood, Inc. (The "Engineer") intends to provide the City with professional engineering services for the implementation of this project. The various improvements will include demolition of existing buildings and infrastructure, grading, utility installation, and paving. We propose the following scope of services:

**Utility Coordination Phase** – Utility coordination phase scope includes the following:

1. Analysis of the City's GIS utilities data and survey data in the project area to verify the existing locations.
2. Identify potential utility conflict locations.
3. Send proposed layout to utility companies to confirm no conflict with proposed design.
4. If conflicts exist with other utility providers, a meeting with those providers is needed to coordinate relocations.

**Design & Permitting Phase** – GDOT coordination / permitting is not anticipated and not included in the proposed scope. Final design & permitting phase scope includes the following:

1. Based on the concept provided by the City, the Engineer will prepare Preliminary 60% Plans including the following: Cover Sheet, Index, General Notes, Existing Conditions Plan, Demolition Plan, Site Plan, Dimension Plan, Overall Grading Plan, Retaining Wall Plan, Grading Plan – Spot Grades, Overall Storm Sewer System Plan, Storm System Plan & Profiles, Underground Detention, Overall Sanitary Sewer and Water System Plan, Sanitary Sewer and Water Plan and Profiles, Striping & Signage Plan, Landscape Plan, Irrigation Plan, Hardscape Plan, Electrical / Lighting Plan, Initial Erosion Control Plan.
2. The Engineer will utilize GeoHydro to perform the geotechnical phase scope of services. The scope includes obtaining soil test borings to determine groundwater readings and obtain soil samples. The samples will be physically examined and given a classification and properties. A geotechnical engineering report detailing the results will be provided including recommendations for foundation elements and other design considerations.
3. The Engineer will analyze the Preliminary Plans for conflicts with the City owned utilities, and make the City aware of any conflicts. Utility relocation design is not expected in this project design scope.
4. The Engineer will prepare a revised construction cost estimate.
5. The Engineer will provide the City with the Preliminary Plans for review and comment.
6. The Engineer will make corrections to the Preliminary Plans per City review comments.
7. The Engineer will prepare 90% Plans including the following: Cover Sheet, Index, General Notes, Existing Conditions Plan, Demolition Plan, Site Plan, Dimension Plan, Overall Grading Plan, Retaining Wall Plan, Grading Plan – Spot Grades, Overall Storm Sewer System Plan, Storm System Plan &



Mr. Rip Robertson  
August 4, 2020  
Page 2 of 3

Profiles, Underground Detention, Overall Sanitary Sewer and Water System Plan, Sanitary Sewer and Water Plan and Profiles, Striping & Signage Plan, Landscape Plan, Irrigation Plan, Hardscape Plan, Electrical / Lighting Plan, Construction Details, Erosion Control Cover Sheet, Erosion Control Legend, Erosion Control Notes, Phase 1 Erosion Control Plan, Phase 2 Erosion Control Plan, Phase 3 Erosion Control Plan, Impervious Area Plan, Drainage Area Map, Erosion Control Checklist, Erosion Control Details.

8. The Engineer will provide the City with the 90% Plans for review and comment.
9. The Engineer will provide EPD with the 90% Plans for review and comment.
10. The Engineer will make revisions to the 90% Plans per City review comments.
11. The Engineer will make revisions to the 90% Plans per EPD review comments.
12. The Engineer will prepare a NOI letter for submittal by City to EPD.
13. The Engineer will provide Final plans to providers of utilities not owned/operated by the City to resolve or confirm there are no additional utility conflicts.
14. The Engineer will provide the City with construction documents consisting of the Final Plans and a Bid Manual containing contract documents and detailed specifications suitable for bidding.
15. The Engineer will prepare an updated construction cost estimate for the City.
16. The Engineer will develop and submit the necessary permits and notifications for the construction of the proposed utility lines to be relocated/replaced.

**Bidding & Construction Administration Phase (hourly, as needed basis)** – Should the City wish to employ the Engineer for bidding and construction administration phase services, these services will be performed on an hourly rate basis.

#### **Project Delivery Schedule**

The Engineer will begin work immediately upon authorization from the City. The proposed project delivery schedule will resemble the following:

|  |         |
|--|---------|
| Receive Notice to Proceed                  | 8/10/20 |
| Complete Utility Coordination              | 8/21/20 |
| Complete Design & Permitting Phase         | 10/5/20 |
| Advertise Project to Bid                   | 10/6/20 |
| Bid Opening                                | 11/3/20 |
| Execute Construction Contracts             | 12/1/20 |
| Issue Notice to Proceed with Construction  | 12/1/20 |
| Complete Construction (weather permitting) | 3/1/21  |

#### **Fee Schedule**

Compensation for work performed shall be billed on a **lump sum** basis. Once per month during the existence of this contract, the Engineer shall submit to the City an invoice for payment based on the actual work performed for the Project through the invoice period. All advertising, permitting and application fees are the responsibility of the City. Bidding and Construction Administration Phase services have not been estimated and will be available at our standard hourly rates (attached).

|                            |                 |
|----------------------------|-----------------|
| Utility Coordination Phase | \$6,500         |
| Design & Permitting Phase  | \$85,200        |
| <b>Total Fees</b>          | <b>\$91,700</b> |

Mr. Rip Robertson  
August 4, 2020  
Page 3 of 3

\*Note: Excluded from this proposal is the cost for any additional survey that might be needed, and pump station design services that might be needed.

If you have any questions or would like additional information, don't hesitate to contact me at 678-417-4025. We appreciate the opportunity to work with the City on this project.

Sincerely,  
KECK & WOOD, INC.



Adam Shelton, P.E.  
Associate Vice President

ACCEPTED by the CITY OF TUCKER  
This \_\_\_\_\_ day of \_\_\_\_\_, 2020.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attachments: KW Standard Hourly Rates



### 2020 STANDARD RATE SCHEDULE

|                             |          |
|-----------------------------|----------|
| Principal                   | \$225.00 |
| Senior Engineer 2           | \$210.00 |
| Senior Engineer 1           | \$185.00 |
| Staff Engineer 4            | \$165.00 |
| Staff Engineer 3            | \$145.00 |
| Staff Professional 3        | 145.00   |
| Staff Professional 2        | \$130.00 |
| Staff Professional 1        | \$120.00 |
| Landscape Architect         | 150.00   |
| Landscape Designer          | \$115.00 |
| Design Technician           | \$100.00 |
| GIS Technician              | \$85.00  |
| Staff Designer 1            | \$75.00  |
| Staff Designer 2            | \$85.00  |
| Registered Land Surveyor    | \$135.00 |
| Senior Survey Party Chief   | \$100.00 |
| Survey Technician 2         | \$100.00 |
| Survey Technician 1         | \$70.00  |
| Construction Observer       | \$85.00  |
| 2 Man Survey Crew           | \$140.00 |
| 2 Man Mapping Crew          | \$110.00 |
| 1 Man Survey Crew           | \$100.00 |
| 1 Man Mapping Crew          | \$55.00  |
| IT Specialist               | \$130.00 |
| Office Administrator        | \$110.00 |
| Clerical / Administrative 2 | \$80.00  |
| Clerical / Administrative 1 | \$70.00  |

Attachment: Keck & Wood Proposal (Contract Award for Fitzgerald Stadium Design & Engineering)



**STATE OF GEORGIA  
CITY OF TUCKER**

**RESOLUTION R2020-08-102**

**RESOLUTION TO APPONT A MEMBER TO THE URBAN REDEVELOPMENT  
AGENCY FOR THE CITY OF TUCKER, GEORGIA**

**WHEREAS**, Chapter 61 of Title 36 of the Official Code of Georgia Annotated, known as the “Urban Redevelopment Law,” creates in each municipality in the State of Georgia a public body corporate and politic to be known as the "urban redevelopment agency" of the municipality, for the purpose of exercising the “urban redevelopment project powers” defined in Section 36-17(b) of the Official Code of Georgia Annotated; and

**WHEREAS**, the Mayor and City Council previously elected to have the Urban Redevelopment Agency of Tucker exercise the “urban redevelopment project powers” for the City of Tucker with Resolution R2020-07-99;

**WHEREAS**, the Mayor and City Council previously appointed three members of the Urban Redevelopment Agency of Tucker in the same Resolution R2020-07-99;

**WHEREAS**, the Mayor and City Council desire to appoint the final member of the Urban Redevelopment Agency of Tucker; and

**NOWTHEREFOR BE IT RESOLVED** that the Mayor and City Council hereby appoint the second at large member as show below to serve a one-year term:

Second at Large Member \_\_\_\_\_ is hereby appointed to a one-year term.

**BE IT FURTHER RESOLVED** that any and all resolutions in conflict with this resolution are hereby repealed.

**SO RESOLVED, ADOPTED, and EFFECTIVE**, this 10<sup>th</sup> day of August, 2020.

APPROVED:

\_\_\_\_\_  
Frank Auman, Mayor

ATTEST:

\_\_\_\_\_  
Bonnie Warne, City Clerk (seal)

Attachment: R2020-08-102 Appoint an Urban Redevelopment Agency Member (R2020-08-102 : Resolution to Appoint a Member to the Urban

For Customer Use:

I have an existing Acct. #

This resolution is for:

New Account

Change to Existing Acct. #

For OTFS Use Only:

Acct Approved

Auth Entered.

Audit

Wire Instructions

Addr Entered

Wire Templates

Approval:

AD1

AD2

Res. form 2000A

GEORGIA FUND 1  
(local government investment pool)  
RESOLUTION TO AUTHORIZE INVESTMENT

WHEREAS, Ga. Code Ann. §§36-83-1 to 36-83-8 authorizes Georgia local governments and other authorized entities to invest funds through the local government investment pool, and  
WHEREAS, from time to time it may be advantageous to the

City of Tucker, Georgia to deposit funds available for  
(Name of Local Government, Political Subdivision or State Agency)  
investment in Georgia Fund 1 (hereinafter referred to as the local government investment pool) as it may deem appropriate; and

WHEREAS, to provide for the safety of such funds deposited in the local government investment pool, investments are restricted to those enumerated by Ga. Code Ann. §36-83-8 under the direction of the State Depository Board, considering first the probable safety of capital and then the probable income to be derived; and WHEREAS, such deposits must first be duly authorized by the governing body of the local government or authorized entity and a certified copy of the resolution authorizing such investment filed with the Treasurer of the Office of the State Treasurer; and

WHEREAS, such resolution must name the official(s) authorized to make deposits or withdrawals of funds in the local government investment pool; and

WHEREAS, Ga. Code Ann. §36-83-8 requires a statement of the approximate cash flow requirements of the participating government pertaining to the funds to accompany the authorization to invest such funds at the time such deposits are duly authorized;

NOW, THEREFORE BE IT RESOLVED by the Council  
(Board, Council or other Governing Body)  
that funds of the City of Tucker, Georgia may be deposited from time to time in the manner prescribed by law and the applicable policies and procedures for the local government investment pool.

BE IT FURTHER RESOLVED THAT:

1. Any one of the following individuals shall be authorized to deposit and/or withdraw funds from the local government investment pool on behalf of such government or other authorized entity (if a listed individual is employed by an entity other than the depositor, indicate employer):

|  |                          |
|--|--------------------------|
| Toni Jo Howard, Finance Director       | 678-502-6961             |
| Name, Title, (Employer, if applicable) | (Area Code) Phone Number |
| Email: tjhoward@tuckerga.gov           |                          |
| Tami Hanlin, City Manager              | 470-273-3102             |
| Email: thanlin@tuckerga.gov            |                          |
| Frank Auman                            | 678-597-9040             |
| Email: FAuman@tuckerga.gov             |                          |
|  |                          |
| Email:                                 |                          |
|  |                          |
| Email:                                 |                          |

All withdrawals from the local government investment pool shall be wired to the following participant’s demand deposit account: *(Many banks have separate instructions for wires and ACH deposits. Please verify both sets of instructions with your bank and provide them below. This will ensure accurate delivery of your funds to the designated bank account).*

(For ACH) (Local Bank Name) (Account Title)

(ABA Number) (Account Number) (City, State)

(For WIRE) (Local Bank Name) (Account Title)

(ABA Number) (Account Number) (City, State)

(Bank Name)

(City)

(ABA Number)

(Account Number)

Additional Bank Account (if applicable):

(For ACH)

(Local Bank Name)

(Account Title)

(ABA Number)

(Account Number)

(City, State)

(For WIRE)

(Local Bank Name)

(Account Title)

(ABA Number)

(Account Number)

(City, State)

Correspondent Bank (if applicable):

(Bank Name)

(City)

(ABA Number)

(Account Number)

3. The local government investment pool shall mail the monthly statements of account to:

(Attention)

(Address)

(Address)

(City, State & Zip)

4. Changes in the above authorization shall be made by cancellation or replacement resolution delivered to the Office of the State Treasurer. Until such a replacement resolution is received by the Office of the State Treasurer, the above authorized individuals, local government demand account instructions and statement mailing address(es) shall remain in full force and effect.

5. The following schedule represents the period in which existing balances are currently expected to remain invested in the local government investment pool:

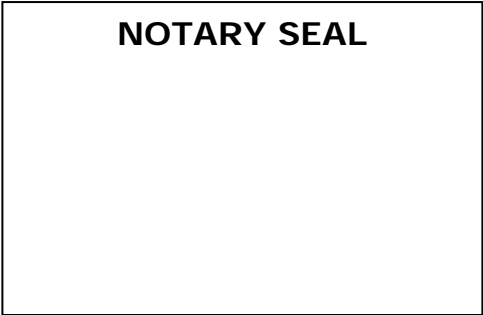
\_\_\_\_\_ % 30 days or less;

\_\_\_\_\_ % more than 30 days but less than 90 days;

\_\_\_\_\_ % 90 days or longer.

100 %

Entered at \_\_\_\_\_ , Georgia this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.



(Signature of Head of Governing Authority)

(Please Print or Type - Head of Governing Authority)

(Title)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Notary Public)

Please complete and return an original copy to:

Georgia Fund 1  
Office of the State Treasurer  
200 Piedmont Avenue  
Suite 1204, West Tower  
Atlanta, GA 30334-5527

Telephone: (404) 651-8964 or (404) 656-2993  
Toll Free: (800) 222-6748  
Fax: (404) 656-9048



**Office of the State Treasurer**  
 200 Piedmont Ave, Suite 1202, West Tower  
 Atlanta, Georgia 30334-5527

Steve McCoy  
 State Treasurer

(404) 656-2168  
 Fax (404) 656-9048

**ACH TRANSFER AUTHORIZATION FORM**

CUSTOMER NAME:

|   | Georgia Fund 1<br>Account # | Bank Account<br>Title | Bank<br>ABA # | Bank Account<br>Number |
|---|-----------------------------|-----------------------|---------------|------------------------|
| 1 |                             |                       |               |                        |
| 2 |                             |                       |               |                        |
| 3 |                             |                       |               |                        |
| 4 |                             |                       |               |                        |
| 5 |                             |                       |               |                        |
| 6 |                             |                       |               |                        |
| 7 |                             |                       |               |                        |
| 8 |                             |                       |               |                        |
| 9 |                             |                       |               |                        |

If you wish to be included in the ACH funds transfer program, please complete the bank information for each of the accounts that appear on the resolution for each Georgia Fund 1 account. This form authorizes the Office of the State Treasurer (OST) to **DEBIT** the bank accounts listed for **LGIP contributions**.

**Please verify ACH instructions with your financial institution before completing this form and verify that an ACH Debit Block is NOT placed on your account. If there is a block on the account, please provide your bank our two Company IDs: 1581125844 & 2581125844. This will allow OST to debit the account. If you have any questions, please email [accounting@treasury.ga.gov](mailto:accounting@treasury.ga.gov).**

☐ We **DO NOT** wish to participate in the ACH funds transfer program for ☐ all of our accounts or ☐ for the following accounts: \_\_\_\_\_. We understand that we will be responsible for sending a wire for any contributions made to a Georgia Fund 1 account not included in the ACH funds transfer program.

This form does not need to be notarized, but the authorizing signature must be someone on the current resolution. Any changes to this form can be faxed to 404-657-9066 or emailed to [accounting@treasury.ga.gov](mailto:accounting@treasury.ga.gov). The original form does not need to be mailed.

\_\_\_\_\_  
 Authorizing Signature

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Date

STATE OF GEORGIA  
CITY OF TUCKER

ORDINANCE O2020-08-18

**AN ORDINANCE TO AMEND THE 2020 FISCAL YEAR BUDGET**

**WHEREAS**, the City of Tucker may amend an operating and capital budget in accordance with Section 5.04 of the Charter;

**WHEREAS** the City of Tucker held a public hearing on the amendment to the 2020 Operating and Capital Budget on August 10, 2020; and

**NOW THEREFORE BE IT ORDAINED** by the Mayor and Council of the City of Tucker while at a regular meeting on August 24, 2020 that the attached 2020 amendment to the operating and capital budget is hereby adopted for the fiscal year 2020 and becomes effective upon its adoption;

**SO ORDAINED AND EFFECTIVE** this 24<sup>th</sup> day of August 2020.

Approved:

---

Frank Auman, Mayor

Attest:

---

Bonnie Warne, City Clerk

(Seal)

Attachment: FY20 Final Budget Amendment Ordinance (O2020-08-18 : Ordinance to Amend the FY20 Budget)

## FY20 Budget Amendment

| Account                   | Description                             | Increase  | Decrease |
|---------------------------|---|-----------|----------|
| 300-1320-52.12000-CM2001  | Survey & Environmental Services         |           | 43,255   |
| 300-1320-52.12000-CM2002  | Jacobs                                  |           | 14,011   |
| 300-1330-52.12000-CC1901  | Municode                                |           | 22,418   |
| 300-1330-54.24000-CC1902  | LaserFiche                              |           | 853      |
| 300-1500-54.12000-FB2001  | Resurface and Stripe Parking Lots       |           | 20,000   |
| 300-1500-54.13000-FB2002  | Rec Center Server Room Fire Suppression |           | 15,000   |
| 300-1500-54.13000-FB2003  | Rec Center AC System and Installation   | 3,437     |          |
| 300-1500-54.13000-FB2004  | New Location-HVAC Replacement           |           | 30,000   |
| 300-1500-54.23000-FB2005  | Office Furniture                        |           | 35,000   |
| 300-1500-54.23100-FB2006  | Signs                                   |           | 3,000    |
| 300-1535-54.24000-IT20001 | PC Lifecycle Replacement                |           | 50,048   |
| 300-1535-54.24000-IT2002  | Cell Phone Control Solutions            |           | 5,000    |
| 300-1535-54.24000-IT2003  | DJI Drone Equipment                     |           | 5,000    |
| 300-1535-54.24000-IT2004  | Print Management Contract               |           | 18,000   |
| 300-1535-54.24000-IT2006  | Council Chambers Audio Upgrade          |           | 4,000    |
| 300-1570-52.12000-CO1901  | Branding                                |           | -        |
| 300-1570-52.12000-CO2001  | Banners                                 |           | 12,159   |
| 300-1570-52.12000-CO2002  | Welcome Kit Campaign                    |           | 11,000   |
| 300-1570-52.12000-CO2003  | Ornaments                               |           | 5,000    |
| 300-1570-52.12000-CO2004  | Branding                                |           | 9,139    |
| 300-2650-54.23000-CT2001  | Courtroom Buildout                      |           | 10,000   |
| 300-4100-52.12000-CE1901  | Transportation Master Plan              |           | 17,577   |
| 300-4100-54.12000-CE1910  | Pedestrian Safety                       |           | 23,317   |
| 300-6210-52.12000-PR1901  | Parks Master Plan                       |           | 1,500    |
| 300-6210-54.12000-PR1904  | Park Fencing                            | 50,391    |          |
| 300-6210-54.12000-PR1905  | Athletic Field Renovations              |           | 15,971   |
| 300-6210-54.13000-PR1907  | TRC Kitchen Renovations                 | 18,929    |          |
| 300-6210-54.13000-PR1908  | TRC Bathroom Renovations                |           | 1,568    |
| 300-6210-54.20000-PR1909  | TRC Kitchen Equipment                   |           | 29,038   |
| 300-6210-54.23000-PR1912  | Benches/Trash Cans/Pet Stations         |           | 4,891    |
| 300-6210-52.12000-PR2001  | TRC Feasibility Study                   |           | 50,000   |
| 300-6210-54.13000-PR2011  | Maintenance Bldg                        |           | 89,740   |
| 300-6210-54.22000-PR2013  | Park ATV                                |           | 100      |
| 300-7210-52.12000-CD2001  | Land Development Code Rewrite           |           | 75,000   |
| 300-7210-52.12000-CD2002  | Public Art Master Plan                  |           | 20,000   |
| 300-7210-52.12000-CD2004  | Contingency                             |           | 6,875    |
| 300-7520-52.12000-ED1901  | Downtown Master Plan                    | 360       |          |
| 300-7520-52.12000-ED2003  | Lawrenceville Highway Redevelopment     |           | 50,000   |
| 300-7520-52.12000-ED2004  | Contingency                             |           | 1,125    |
| 300-9000-61.10000         | Transfer to General Fund                | 626,468   |          |
| 100-9000-39.12500         | Transfer from Capital                   | 626,468   |          |
| 100-7210-32.22000         | Building Permits                        | 187,743   |          |
| 100-7520-53.10000         | Operating Supplies                      | 32,338    |          |
| 100-9000-61.31000         | Transfer to City Hall Fund              | 781,873   |          |
| 305-0000-37.10000         | Contributions/Donations                 | 1,379,875 |          |
| 305-9000-39.10000         | Interfund Transfers                     | 781,873   |          |
| 305-1500-52.12000         | Professional Services                   | 111,869   |          |
| 305-1500-54.12000         | Capital - Site Improvements             | 1,821,583 |          |
| 305-1500-54.23000         | Furniture and Fixtures                  | 228,297   |          |
| 320-0000-31.32000         | SPLOST - Roads and Drainage             |           | 67,932   |
| 320-0000-31.32001         | SPLOST - Sidewalks and Trails           |           | 20,902   |
| 320-0000-31.32003         | SPLOST - Site Improvements Parks        |           | 15,676   |
| 320-0000-54.14000-SP2002  | Resurfacing                             |           | 67,932   |
| 320-0000-54.14000-SP2009  | Traid Model Project                     |           | 20,902   |
| 320-0000-54.12000-SP2011  | Entineering Services                    |           | 15,676   |





# City of Tucker

## MEMO

**To:** City Council  
**From:** Courtney Smith, Planning and Zoning Director  
**Date:** August 6, 2020  
**RE:** Minor Land Development Code Edits

---

Staff is proposing to make minor edits to the Land Development Ordinance in order to provide clarifying language to make enforcement of our current provisions easier; to update it per our processes; and to change and/or remove text that is inaccurate.

The changes include:

- Removing the requirement for a paper submission of a land disturbance permit to reflect the fact that we have gone digital!
- Replace “project” with “land-disturbing activity” to avoid confusion that the section only applies to a building project.
- Clarify that a tree removal permit is required unless the exemptions are met. This is the process we have had in place over the past several years.
- Remove reference to an off-site reforestation agreement, as we do not have any of these areas in Tucker.
- Remove the verbal warning portion from the violation section of the tree protection ordinance, as a verbal warning is not effective if the trees have already been removed.
- Add definitions for “point of wrested vegetation” and “state water;” and clarify where a buffer shall be measured from to better align our stream buffer ordinance with state requirements.
- Correct a section reference in the stream buffer provisions.

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF TUCKER, GEORGIA, FOR THE PURPOSE OF AMENDING THE CODE OF CHAPTER 22 LAND DEVELOPMENT AND SUBDIVISIONS TO ADDRESS CHANGES AND CLARIFICATIONS TO SCOPE AND APPLICABILITY, SOIL EROSION AND SEDIMENTATION CONTROL, TREE PROTECTION, AND STREAM BUFFER PROTECTION.**

**WHEREAS**, The Mayor and City Council desires to promote the public health, safety, morals and general welfare of the residents of the city; and,

**WHEREAS**, the Mayor and City Council wish to establish public policies for the protection of the natural environment and to establish requirements, standards and procedures for land development; and

**WHEREAS**, the Mayor and City Council finds that the preservation of existing trees is a public purpose that protects the public health, safety, general welfare and aesthetics of the city and all its citizens; and

**WHEREAS**, the Mayor and City Council wish to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality; and

**WHEREAS**, the Mayor and City Council wish to remove the paper submission requirement for a Land Disturbance Permit in Section 22-25(d) and (e) to allow for electronic submittals; and

**WHEREAS**, the Mayor and City Council desire to replace “project” with “land-disturbing activity “under exemption (h) in Section 22-33(b)(3); and

**WHEREAS**, the Mayor and City Council wish to clarify when a tree removal permit is required and when tree removal is exempt from requiring a permit in Section 22-34(c); and

**WHEREAS**, the Mayor and City Council wish to remove reference to an off-site reforestation agreement in Section 22-34(l)(2); and

**WHEREAS**, the Mayor and City Council desire to remove the verbal warning requirement under Section 22-34(o)(1); and

**WHEREAS**, the Mayor and City Council desire to add the definition of “point of wrested vegetation” and “state waters” to Section 22-50; and

**WHEREAS**, the Mayor and City Council wish to correct a reference to another code section in Section 22-51(a); and

**WHEREAS**, the Mayor and City Council wish to clarify where a buffer shall be measured from in Section 22-52(1); and

**WHEREAS**, this amendment was reviewed by the Mayor and City Council of Tucker on August 10, 2020 and September 14, 2020; and

**WHEREAS**, The Mayor and City Council is the governing authority for the City of Tucker;

**NOW THEREFORE**, the Mayor and City Council of the City of Tucker while in Regular Session on September 14, 2020, hereby ordains and approves the amendment of Chapter 22 as shown in Exhibit A, which is attached to this ordinance.

So effective this 14<sup>th</sup> day of September 2020.

Approved by:

\_\_\_\_\_  
Frank Auman, Mayor

Attest:

\_\_\_\_\_  
Bonnie Warne, City Clerk

SEAL

Sec. 22-25. - Scope and applicability.

- (a) The provisions of this article shall apply to all development activity within the city.
- (b) Sections 22-27, 22-28, 22-29, 22-30, 22-31, 22-32, 22-33, 22-35, 22-36, and 22-37, shall not apply to any portion of a property included within the limits of a valid and complete application for a land-disturbance permit or for preliminary plat approval which are received by the director prior to the effective date of the ordinance from which this article is derived. Such applications will be subject to the provisions of this chapter in effect prior to the effective date of the ordinance from which this article is derived.
- (c) Before filing a land development application on a project for review and approval, the applicant shall meet with the department to discuss the procedure for approval of a land development permit and the requirements as to the general layout of streets, parking, open space/lot coverage, street improvements, drainage, sewage, fire protection and similar matters, as well as the availability of existing services, including schools. The department and the applicant shall review the applicant's stormwater management plans, inspection and maintenance requirements and water quality control requirements. The department may advise the applicant, when appropriate, to discuss the proposed project with those officials who must eventually approve those aspects of the project coming within their jurisdiction. This meeting will also allow city officials to discuss with the applicant the necessary regulations that will properly accomplish the project.
- (d) For purposes of this section, a valid and complete application for a land-disturbance permit shall consist of the following:
  - (1) ~~Six copies of complete~~ Complete civil plans, that include a site plan, a grading and drainage plan, a utility plan, a soil erosion and sedimentation control plan, a landscape plan, and a tree survey;
  - (2) ~~One~~ Hydrology report and completed stormwater quality site development review tool documentation;
  - (3) An application signed by the owner of the property, or a completed indemnification agreement signed by the owner of the property; and
  - (4) Payment of the appropriate development review application fee.
- (e) For purposes of this section, a valid and complete application for a preliminary plat approval shall consist of the following:
  - (1) ~~Four copies of the~~ Preliminary plat site plan that is in conformance with the zoning of the property in effect at the time of the application, and, a tree survey;
  - (2) An application signed by the owner of the property, or if the application is not signed by the owner, a completed indemnification agreement signed by the owner of the property; and
  - (3) Payment of the appropriate development review application fee.
- (f) In no event shall any project excepted from the provisions of this article pursuant to subsection (b) of this section, be extended for a greater time period than 18 months from the effective date of the ordinance from which this article is derived.

(Ord. No. 2016-07-13, att. (14-29), 7-11-2016; Ord. No. 2016-07-20, att. (14-29), 9-1-2016)

Sec. 22-33. - Soil erosion and sedimentation control.

(a) *Policies.* It is hereby declared to be public policy to:

- (1) Minimize the removal of vegetation;
- (2) Minimize the exposure of bare earth to precipitation by encouraging the scheduling of land development in increments of workable size which can be completed within a single construction season or within a time period compatible with the type and size of the project;
- (3) Provide for the reestablishment of vegetation within a reasonable period following completion of final grading and utility installation;
- (4) Give priority to the paving of streets, parking lots and other areas within a reasonable time following completion of final grading; and
- (5) Encourage the use of erosion control and sedimentation techniques found in the Manual for Erosion and Sedimentation Control in Georgia, as published by the state soil and water conservation commission.

(b) *Standards.*

- (1) *Land-disturbing activity.* Any land-disturbing activity permitted under this article shall be carried out in accordance with the Georgia Erosion and Sedimentation Act of 1975, as amended, this chapter, and the permit conditions specified by the director.
- (2) *Issuing authority; adopting rules exceeding minimum requirements.* Nothing contained in state law or this chapter shall prevent the issuing authority from adopting rules and regulations, ordinances, or resolutions which contain requirements that exceed the minimum requirements contained in this section or in state law.
- (3) *Exemptions.* This section shall apply to any land-disturbing activity undertaken by any person on any land except for the following:
  - a. Surface mining, as the same is defined in O.C.G.A. § 12-4-72, the Georgia Surface Mine Act of 1968;
  - b. Granite quarrying and land clearing for such quarrying;
  - c. Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;
  - d. The construction of single-family residences, when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this subsection; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in subsection (b)(4) of this section and this subsection. For single-family residence construction covered by the provisions of this subsection, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to article II of chapter 5 of the Georgia Water Quality Control Act. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the community development director may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of section 22-33(b)(4) and the buffer zones provided by this section shall be enforced by the development department;

- e. Agricultural operations as defined in O.C.G.A. § 1-3-3, to include raising, harvesting or storing of products of the field or orchard; feeding, breeding or managing livestock or poultry; producing or storing feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, and rabbits or for use in the production of poultry, including, but not limited to, chickens, hens and turkeys; producing plants, trees, fowl, or animals; the production of aquaculture, horticultural, dairy, livestock, poultry, eggs and apiarian products; farm buildings and farm ponds;
- f. Forestry land management practices, including harvesting; providing, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in subsection (b)(4)c.15 and 16 of this section, no other land-disturbing activities, except for normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after completion of such forestry practices;
- g. Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;
- h. Any project-land-disturbing activity involving less than 5,000 square feet of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within 200 feet of the bank of any state waters, and for purposes of this subsection, the term "state waters" excludes channels and drainage ways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year-round; provided, however, that any person responsible for a project which involves less than one acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainage way, must prevent sediment from moving beyond the boundaries of the property on which such project is located; and provided, further, that nothing contained herein shall prevent the city from regulating any such project which is not specifically exempted by subsection (b)(3)a, b, c, d, e, f, g, i, or j of this section;
- i. Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the department of transportation, the state highway authority, or the state tollway authority; or any road construction or maintenance project, or both, undertaken by any city or municipality; provided, however, that construction or maintenance projects of the department of transportation or state tollway authority which disturb one or more contiguous acres of land shall be subject to provisions of O.C.G.A. § 12-7-7.2; except where the department of transportation, the state highway authority, or the state road and tollway authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case, a copy of a notice of intent under the state general permit shall be submitted to the local issuing authority, the local issuing authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders;
- j. Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. § 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in O.C.G.A. § 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case

the local issuing authority shall enforce compliance with the minimum requirements set forth in O.C.G.A. § 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders; and

- k. Any public water system reservoir.
- (4) *Minimum requirement for soil erosion and control and sedimentation control using best management practices.*
- a. General provisions. Excessive soil erosion and resulting sedimentation can take place during land-disturbing activities. Therefore, plans for those land-disturbing activities that are not exempted by this chapter shall contain provisions for application of soil erosion and sedimentation control measures and practices. The provisions shall be incorporated into the erosions and sedimentation control plans. Soil erosion and sedimentation control measures and practices shall conform to the minimum requirements of subsection (b)(4)b and c of this section and any other applicable provision of this section. The application of measures and practices shall apply to all features of the site, including street and utility installations, stormwater management facilities, drainage facilities and other temporary and permanent improvements. Measures shall be installed to prevent or control erosion and sedimentation pollution during all stages of any land-disturbing activity in accordance with the requirements of this article and the NPDES general permit. The community development director may require that land-disturbance activity be phased. Soil erosion and sedimentation control plans shall address appropriate measures to effectively control soil erosion during successive phases of construction.
  - b. Minimum requirements.
    - 1. Best management practices as set forth in subsection (b)(4)b and c of this section shall be required for all land-disturbing activities. Proper design by phases, installation and maintenance of best management practices shall constitute a complete defense to any action by the director of the environmental protection division (EPD) or to any other allegation of noncompliance with subsection (b)(2) of this section or any substantially similar terms contained in a permit for the discharge of stormwater issued pursuant to O.C.G.A. § 12-5-30(f), the Georgia Water Quality Control Act. As used in this subsection, the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the Manual for Erosion and Sediment Control in Georgia specified in O.C.G.A. § 12-7-6(b).
    - 2. A discharge of stormwater runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the division pursuant to O.C.G.A. § 12-5-30(f), the Georgia Water Quality Control Act, for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the director of the EPD. This subsection shall not apply to any land-disturbance associated with the construction of single-family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than one acre.
    - 3. Failure to properly design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the division pursuant to O.C.G.A. § 12-5-30(f), the Georgia Water Quality Control Act, for each day on which such failure occurs.



4. The director of the EPD may require, in accordance with regulations adopted by the BNR, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land-disturbing activities occur.
- c. The rules and regulations, ordinances, or resolutions adopted pursuant to this chapter for the purpose of governing land-disturbing activities shall require, at a minimum, protections at least as stringent as the state general permit; and best management practices, including conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the Manual for Erosion and Sediment Control in Georgia published by the Georgia Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:
1. Stripping of vegetation, regrading and other development activities shall be conducted in a manner so as to minimize erosion;
  2. Cut-fill operations shall be kept to a minimum;
  3. Development plans shall conform to topography and soil type so as to create the lowest practical erosion potential;
  4. Whenever feasible, natural vegetation shall be retained, protected and supplemented as provided in sections 22-34 and 22-36;
  5. The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
  6. Disturbed soil shall be stabilized as quickly as practicable;
  7. Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
  8. Permanent vegetation and structural erosion control practices shall be installed as soon as practicable;
  9. To the extent necessary, sediment in runoff water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this subsection, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of O.C.G.A. § 12-7-1 et seq.;
  10. Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping of fills;
  11. Cuts and fills shall not endanger adjoining property;
  12. Fills shall not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
  13. Grading equipment shall cross flowing streams by means of bridges or culverts except when such methods are not feasible, provided, in any case, that such crossings are kept to a minimum;
  14. Land-disturbing activity plans for erosion and sedimentation control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediment on-site or preclude sedimentation of adjacent waters beyond the levels specified in subsection (b)(4)b.2 of this section;
  15. Except as provided in subsection (b)(4)c.16 of this section, there is established a 25-foot state buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the director of the EPD determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the director of the EPD pursuant to O.C.G.A. § 12-2-8, or where a drainage structure or a

roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications, and are implemented; or along any ephemeral stream. As used in this provision, the term "ephemeral stream" means a stream: that under normal circumstances has water flowing only during and for a short duration after precipitation events; that has the channel located above the groundwater table yearround; for which groundwater is not a source of water; and for which runoff from precipitation is the primary source of water flow. Unless exempted as along an ephemeral stream, the buffers of at least 25 feet established pursuant to the Metropolitan River Protection Act, O.C.G.A. § 12-5-440 et seq. (which is part 6 of article 5, chapter 5 of title 12, the Georgia Water Quality Control Act), shall remain in force unless a variance is granted by the director of the EPD as provided in this subsection. The following requirements shall apply to any such buffer:

- (i) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quality to keep shade on the stream bed; and
  - (ii) The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:
    - A. Stream crossings for water lines; or
    - B. Stream crossings for sewer lines;
16. There is established a 50-foot buffer as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as trout streams pursuant to article 2 of chapter 5 of title 12, the Georgia Water Quality Control Act, except where a roadway drainage structure must be constructed; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25-foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the BNR, so long as any such pipe stops short of the downstream landowner's property and the landowner complies with the buffer requirement for any adjacent trout streams. The director of the EPD may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to such buffer:
- (i) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed, state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed: provided, however, that any person constructing a single-family residence,

when such residence is constructed by or under contract with the owner for his own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; and

- (ii) The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:
    - A. Stream crossings for water lines; or
    - B. Stream crossings for sewer lines.
  - d. The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this section or the terms of the permit.
- (5) *Application/permit process.*
- a. *General.* The property owner, developer and designated planners and engineers shall review the general development plans and detailed plans of the local issuing authority that affect the tract to be developed and the area surrounding it. They shall review the zoning ordinance, stormwater management ordinance, subdivision ordinance, flood damage prevention ordinance, this chapter, and other ordinances which regulate the development of land within the jurisdictional boundaries of the local issuing authority. However, the owner and/or operator is the only party who may obtain a permit.
  - b. *Application requirements.*
    - 1. No person shall conduct any land-disturbing activity within the jurisdictional boundaries of the city without first obtaining a permit from the community development director to perform such activity, and providing a copy of the notice of intent, if applicable, to the EPD.
    - 2. The application for a permit shall be submitted to the community development director and must include the applicant's erosion and sedimentation control plan with supporting data, as necessary. Said plans shall include, at a minimum, the data specified in subsection (b)(5)c of this section. Applications for a permit will not be accepted unless accompanied by eight copies of the applicant's soil erosion and sedimentation control plans. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan in accordance with EPD rule 391-3-7-.10.
    - 3. A permitting fee, as determined by the mayor and city council shall be charged for each acre or fraction thereof in the project area.
    - 4. In addition to the local permitting fees, fees will also be assessed pursuant to O.C.G.A. § 12-5-23(a)(5), provided that such fees shall not exceed \$80.00 per acre of land-disturbing activity, and these fees shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development. All applicable fees shall be paid prior to issuance of the land-disturbance permit. In a jurisdiction that is certified pursuant to O.C.G.A. § 12-7-8(a) half of such fees levied shall be submitted to the division; except that any and all fees due from an entity which is required to give notice pursuant to O.C.G.A. § 12-7-17(9) or (10) shall be submitted in full to the division, regardless of the existence of a local issuing authority in the jurisdiction.

5. Immediately upon receipt of an application and plan for a permit, the local issuing authority shall refer the application and plan to the district for its review and approval or disapproval concerning the adequacy of the erosion and sedimentation control plan. A district shall approve or disapprove a plan within 45 days of receipt. Failure of a district to act within 45 days shall be considered an approval of the pending plan. The results of the district review shall be forwarded to the community development director. No permit will be issued unless the plan has been approved by the district, and any variances required by subsection (b)(4)c.15 and 16 of this section and bonding if required by subsection (b)(5)b.7 of this section have been obtained. Such review will not be required if the city and the district enter into an agreement which allows the city to conduct such review and approval of the plan without referring the application and plan to the district. The local issuing authority with plan review authority shall approve or disapprove a revised plan submittal within 45 days of receipt. Failure of the local issuing authority with plan review authority to act within 45 days shall be considered an approval of the revised plan submittal.
  6. If a permit applicant has had two or more violations of previous permits, this chapter, or the Erosion and Sedimentation Act, as amended, within three years prior to the date of filing of the application under consideration, the community development director may deny the permit application.
  7. The community development director shall require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, \$3,000.00 per acre or fraction thereof of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this section or with the conditions of the permit after issuance, the mayor may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.
- c. *Plan requirements.*
1. Plans must be prepared to meet the minimum requirements as contained in subsection (b)(4)b and c of this section, or through the use of more stringent, alternate design criteria which conform to sound conservation and engineering practices. The Manual for Erosion and Sediment Control in Georgia is hereby incorporated by reference into this chapter. The plan for the land-disturbing activity shall consider the interrelationship of the soil types, geological and hydrological characteristics, topography, watershed, vegetation, proposed permanent structures including roadways, constructed waterways, sediment control and stormwater management facilities, local ordinances and state laws. Maps, drawings and supportive computations shall bear the signature and seal of the certified design professional. Persons involved in land development design, review, permitting, construction, monitoring, or inspections or any land-disturbing activity shall meet the education and training certification requirements, dependent on his level of involvement with the process, as developed by the commission and in consultation with the division and the stakeholder advisory board created pursuant to O.C.G.A. § 12-7-20.
  2. Data required for the site plan shall include all the information required from the appropriate erosion, sedimentation and pollution control plan review checklist established by the commission as of January 1 of the year in which the land-disturbing activity was permitted.
- d. *Permits.*
1. Permits shall be issued or denied as soon as practicable but in any event not later than 45 days after receipt by the community development director of a completed application, provided variances and bonding are obtained, where necessary; no permit may be issued unless all applicable fees have been paid.

2. No permit shall be issued by the community development director unless the erosion and sedimentation control plan has been approved by the district and the community development director has affirmatively determined that the plan is in compliance with this chapter, any variances required by subsection (b)(4)c.15 and 16 of this section are obtained, bonding requirements, if necessary, as per subsection (b)(5)b.7 of this section are met and all ordinances and rules and regulations in effect within the jurisdictional boundaries of the city are met. If the permit is denied, the reason for denial shall be furnished to the applicant.
3. Any land-disturbing activity by the governing authority shall be subject to the same requirements of this section, and any other ordinances relating to land development as are applied to private persons, and the director shall enforce such requirements upon the governing authority.
4. If the tract is to be developed in phases, then a separate permit shall be required for each phase.
5. The permit may be suspended, revoked, or modified by the city, as to all or any portion of the land affected by the plan, upon finding that the holder or his successor in the title is not in compliance with the approved erosion and sedimentation control plan or that the holder or his successor in title is in violation of this chapter. A holder of a permit shall notify any successor in title to him as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.
6. No permit shall be issued until the applicant files documents with the community development director demonstrating compliance with all applicable local, state and federal requirements.

(6) *Inspection and enforcement.*

- a. The community development director will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effective in controlling erosion and sedimentation. Also, the city shall regulate primary, secondary and tertiary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. Tertiary permittees shall be responsible for installation and maintenance where the tertiary permittee is conducting land-disturbance activities. If, through inspection, it is deemed that a person engaged in land-disturbing activities as defined herein has failed to comply with the approved plan, with permit conditions, or with the provisions of this section, a written notice to comply shall be served upon that person by the community development director. The notice shall set forth the measures necessary to achieve compliance and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this section.
- b. The community development director shall have the power to conduct such investigations as may reasonably be necessary to carry out duties as prescribed in this section, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigation and inspecting the sites of land-disturbing activities.
- c. No person shall refuse entry or access to any authorized representative or agent of the city, the commission, the district, or the division who requests entry for the purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.



- d. The district or the commission or both shall semi-annually review the actions of the city. The district or the commission or both may provide technical assistance to the city for the purpose of improving the effectiveness of the city's erosion and sedimentation control program. The district or the commission shall notify the division and request investigation by the division if the city's program is found to be deficient or ineffective.
- e. The division may periodically review the actions of the city which has been certified as a local issuing authority pursuant to O.C.G.A. § 12-7-8(a). Such review may include, but shall not be limited to, review of the administration and enforcement of the city's ordinances and review of conformance with an agreement, if any, between the district and the city. If such review indicates that the city has not administered or enforced its ordinances or has not conducted the program in accordance with any agreement entered into pursuant to O.C.G.A. § 12-7-7(e), the division shall notify the city governing authority in writing. Upon receipt of the notification, the governing authority shall have 90 days within which to take the necessary corrective action to retain certification as a local issuing authority. If the city does not take necessary action within 90 days after notification by the division, the division may revoke the certification of the city as a local issuing authority.

(7) *Penalties and incentives.*

- a. *Failure to obtain a permit for land-disturbing activity.* If any person commences any land-disturbing activity requiring a land-disturbing permit as prescribed in this chapter without first obtaining said permit, the person shall be subject to revocation of his business license, work permit or other authorization for the conduct of a business and associated work activities within the city.
- b. *Stop work orders.* Upon notice from the community development director or other city authorized representative, work on any project that is being done contrary to the provisions of this chapter or in a dangerous or unsafe manner, shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property, his authorized agent or the person in charge of the activity on the property, and shall state the conditions under which work may be resumed. Where an emergency exists, no written notice shall be required.
  - 1. For the first and second violations of the provisions of this section on a site, the community development director shall issue a written notice of violation. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the community development director shall issue a stop work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred, provided that if the violation presents an imminent threat to public health or waters of the state, the community development director shall issue an immediate stop work order in lieu of a warning.
  - 2. For a third and each subsequent violation on a site, the community development director shall issue an immediate stop work order.
  - 3. All stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.
  - 4. When a violation in the form of land-disturbance without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the community development director, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order shall be issued by the community development director. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.

- c. *Bond forfeiture.* If, through inspection, it is determined that a person engaged in land-disturbing activities has failed to comply with the approved plan, a written notice to comply shall be served by the community development director upon that person. The notice shall set forth the measures necessary to achieve compliance with the plan and shall state the time within which such measures must be completed. If the person engaged in the land-disturbing activity fails to comply within the time specified, he shall be deemed in violation of this chapter and, in addition to other penalties, shall be deemed to have forfeited his performance bond, if required to post one under the provisions of subsection (b)(5)b.7 of this section. The community development director may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance.
  - d. *Monetary penalties.* Any person who violates any provisions of this section, or any permit condition or limitation established pursuant to this section, or who negligently or intentionally fails or refuses to comply with any final or emergency order of the development director issued as provided in this section shall be liable for a civil penalty not to exceed \$2,500.00 per day, or the maximum amount authorized by section 1-7. Notwithstanding any limitation of law as to penalties which can be assessed for violations of city ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought under city ordinances approved under this section shall be authorized to impose penalties for such violations not to exceed \$2,500.00 for each violation; however the maximum assessment shall not exceed the amount authorized by section 1-7. Each day during which violation or failure or refusal to comply continues shall be a separate violation.
- (8) *Education and certification.*
- a. Persons involved in land development design, review, permitting, construction, monitoring, or inspection of any land-disturbing activity shall meet the education and training certification requirements, dependent on their level of involvement with the process, as developed by the commission in consultation with the division and the stakeholder advisory board created pursuant to O.C.G.A. § 12-7-20.
  - b. For each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in charge of erosion and sedimentation control activities on behalf of said entity or person; said person shall meet the applicable education or training certification requirements developed by the commission, and maintain evidence of the certification present whenever land-disturbing activities are conducted on the site. A project shall herein be defined as any land-disturbance site, or multiple sites within a larger common plan of development or sale, permitted by an owner or operator for compliance with the state general permit.
  - c. Persons or entities involved in projects not requiring a state general permit, but otherwise requiring certified personnel on-site, may contract with certified persons to meet the requirements of this section.
  - d. If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of O.C.G.A. § 12-7-19(b)(1), then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall meet those educational requirements specified in O.C.G.A. § 12-7-19(4), but shall not be required to meet any educational requirements that exceed those specified in said paragraph.
- (9) *Administrative appeal, judicial review.*
- a. *Administrative remedies.* The suspension, revocation, modification or grant with condition of a permit by the city upon finding that the holder is not in compliance with the approved erosion and sediment control plan; or that the holder is in violation of permit conditions; shall entitle the person submitting the plan or holding the permit to an appeal before the



zoning board of appeals pursuant to the procedures and standards set forth in section 22-30(d).

- b. *Judicial review.* Any person aggrieved by administrative appeals from a decision or order of the zoning board of appeals authorized by subsection (b)(9)a of this section shall be as provided for in section 22-30(d).

(10) *Validity and liability.*

- a. *Validity.* If any section, paragraph, clause, phrase, or provision of this section shall be adjudged invalid or held unconstitutional, such decisions shall not affect the remaining portions of this section.
- b. *Liability.*
  - 1. Neither the approval of a plan under the provisions of this section nor the compliance with provisions of this section shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law nor impose any liability upon the city, the district, its officers or employees for damage to any person or property.
  - 2. The fact that a land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this section or the terms of the permit.
  - 3. No provision of this section shall permit any persons to violate the Georgia Erosion and Sedimentation Act of 1975, the Georgia Water Quality Control Act or the rules and regulations promulgated and approved thereunder or pollute any waters of the state as defined thereby.

(Ord. No. 2016-07-13, att. (14-38), 7-11-2016; Ord. No. 2016-07-20, att. (14-38), 9-1-2016)

Sec. 22-34. - Tree protection.

(a) *Statement of purpose.*

- (1) The purpose of these standards is to facilitate the preservation and/or replacement of trees as a part of land development in the city.
- (2) The mayor and city council hereby finds that the preservation of existing trees is a public purpose that protects the public health, safety, general welfare and aesthetics of the city and all its citizens.
- (3) The citizens of the city and their many communities enjoy many benefits that can be directly attributed to our trees.
  - a. Trees produce oxygen, which is essential to the well-being of all animal life, including humans.
  - b. Trees help to reduce the amounts of airborne pollutants. For example, trees remove carbon dioxide that is a major environmental concern due to its current high levels.
  - c. Trees and their foliage intercept dust and particulate matter, thereby helping to purify our air and limiting health risks.
  - d. Trees and their root systems reduce soil erosion and stormwater runoff. This decreases sedimentation problems and improves water quality.
  - e. Trees provide food and shelter for desirable urban wildlife.
  - f. Trees provide screening, which in turns aids in the reduction of noise and glare.
  - g. Trees help moderate our air temperature to provide us with a comfortable environment.
  - h. Trees provide scenic amenities to soften the harshness of city buildings and streets. They are aesthetically pleasing to all that view them.
  - i. Trees may affect property values and can have a positive impact upon the economy of an area.
  - j. Trees can enhance the natural functions of streams and related buffers.
- (4) Protect specimen and historical trees in a manner consistent with the city tree protection administrative standards which shall be promulgated by the director. The director shall maintain a list and map of these trees in the office of the director through the assistance of the following offices:
  - a. County board of education.
  - b. County extension service.
  - c. County chapter, Georgia Conservancy.
  - d. State forestry commission.
- (5) Provide standards for the preservation of trees as part of the land development process.
- (6) Prevent clear-cutting and mass grading of land that results in the loss of mature trees, and to ensure appropriate replanting when tree loss does occur.
- (7) Protect trees during construction to enhance the quality of life in the city.
- (8) Protect trees in construction of public facilities and utilities.

(b) *General applicability.*

- (1) The terms and provisions of the tree protection ordinance shall apply to all real property in the city except as otherwise provided in this section.

- (2) The terms and provisions of the tree protection ordinance shall further apply to any residential or nonresidential development which requires the issuance of a land-disturbance permit, development permit, or building permit, except as otherwise provided in this section.
- (3) The terms and provisions of the tree protection ordinance shall also apply to development on any city-owned property, including property owned by city agencies, boards, and authorities, except as otherwise provided in this section.
- (4) The local issuing authority status of the city shall not impact the enforcement of the tree protection ordinance.
- (c) *Exemptions.* A tree removal permit shall be required unless one or more of the following exemptions is met:
  - (1) Removals.
    - a. The removal of five or fewer trees, other than specimen trees, on any single-family residential property, within a single calendar year.
    - b. The removal of more than five trees, other than specimen trees, from an owner-occupied, single-family lot may be approved by the city arborist if the owner must remove trees in order to build a newly permitted structure, or to build an addition to or make improvements to an existing structure, or to improve the health of other trees in the landscape.
  - (2) Zonings conditioned to a specific site plan prior to adoption of the tree protection ordinance on July 11, 2016, provided that said zoning contains specific conditions for both tree preservation and tree replacement.
  - (3) The removal of trees found to be diseased or insect infested by the county extension service, the state forestry commission, a certified arborist, or urban forester.
  - (4) Grandfathered projects.
    - a. Section 22-34 shall not apply to any portion of a property included within the limits of a valid and complete application for a land-disturbance permit or preliminary plat approval where said application has proceeded through and completed first round red line review by the development department nor to commercial site plans that have been reviewed and red lined by the development department and which were received by the director prior July 11, 2016, provided that all time constraints relating to the permit issued shall be observed.
    - b. The requirements of this section 22-34 may be waived by the director for a land-disturbance permit which is to proceed with development of a larger project, at least 75 percent of the land area of which has already received a permit initiating clearing or grading activities prior to July 11, 2016.
    - c. In no event shall any grandfathered project be extended for a greater time period than 12 months from July 11, 2016.
    - d. The mayor and city council may grandfather a project not specifically covered under the foregoing subsections upon application of an applicant or owner of property, provided that an applicant can demonstrate that:
      - 1. Failure to grandfather the applicant's project will cause the applicant substantial economic hardship;
      - 2. The proposed development activity will not substantially harm the public health, safety, aesthetics and welfare of the citizens of the city;
      - 3. The proposed development activity is otherwise consistent with all pertinent development standards and is compatible with surrounding land uses; and
      - 4. Applicant has on file with the city on the effective date of the ordinance from which this article is derived an application for a building permit, land-disturbance permit or

preliminary plat review or has submitted construction plans for development department review.

Incomplete applications shall not be processed for hearing before the mayor and city council. Any application by an applicant for whom the department of community development did not have on file an application for a building permit, land-disturbance permit preliminary plat review or construction plans on July 11, 2016, shall not be processed for hearing before the board. Such applications shall stand automatically denied.

- e. Upon submission of a written application by the applicant or owner for a hardship waiver to the director, the mayor and city council shall, within 21 days of receipt of such application, schedule a public hearing. At said public hearing, the applicant or owner and any other interested parties shall have the opportunity to be heard with regard to the application, and the mayor and city council shall render its decision either granting, with or without conditions, or denying the application prior to the succeeding regularly scheduled meeting of the mayor and city council.
  - f. In the event a hardship waiver is granted by the board, the applicant shall be required to comply with the vegetation protection ordinance in effect immediately prior to July 11, 2016.
- (5) The removal of trees from horticultural properties, such as farms, nurseries or orchards. This exemption shall not include tree harvesting.
  - (6) The removal of any tree which has become, or threatens to become, a danger to human life or property. In order for this exemption to be considered, a letter must be submitted by a certified arborist and approved by the director of community development.
  - (7) Agricultural activities on land zoned R-200.
  - (8) Approved utility construction within permanent utility easements.
  - (9) Construction, expansion, and operation of county landfills.
  - (10) Building permits that do not require or authorize land-disturbance.
- (d) *Definitions.* See section 22-1.
  - (e) *Procedures.*
    - (1) *Application requirements.*
      - a. *Pre-application conference.* Prior to submission of an application for development, the applicant is encouraged to meet with the city arborist to discuss the tree protection ordinance as it relates to the applicant's property. The purpose of the pre-application conference is to clarify the provisions and procedures of the tree protection ordinance and review applicable standards and guidelines for the submittal of documents and required tree protection, replacement, and maintenance measures.
      - b. *Tree survey.* Except as provided elsewhere in this section, a tree survey shall be required as part of any application for a land-disturbance permit, development permit, building permit or preliminary subdivision plat. Except as provided elsewhere in this section, all trees 18 inches (DBH) and larger shall be identified. Specimen trees shall be identified by size, species and location. Trees larger than two inches (DBH) may be identified and counted for unit credit on the tree protection plan. Single residential lots on which the applicant intends to reside may be exempted from the tree survey requirements at the discretion of the director. With the prior approval of the city arborist sampling methods may be used to determine tree densities for forested areas.
    - (2) *Tree protection plan.* A tree protection plan shall be submitted with other permit drawings as part of the development permits process. This plan may either be a separate drawing, or part of a landscape plan, and shall include the following information:

- a. Definition of spatial limits:
    1. Limits of land-disturbance, clearing, grading, and trenching;
    2. Tree save areas;
    3. Specimen trees; and
    4. Areas of revegetation.
  - b. Detailed drawings of tree protection measures and their location:
    1. Location, species and size (DBH) of existing significant trees and an indication of which significant trees would remain on the site.
    2. Tree fences;
    3. Erosion control fences;
    4. Tree protection signs;
    5. Tree wells;
    6. Aeration systems;
    7. Transplanting specifications;
    8. Staking specifications; and
    9. Other applicable drawings as determined by the director.
  - c. The tree protection plan shall show all utility lines existing and proposed, including irrigation and electric lighting lines. The applicant shall coordinate the location of these utility lines with the utility companies in order to prevent root damage within the critical root zones of protected trees, and to minimize damage to trees located in protected zones.
  - d. Procedures and schedules for the implementation, installation, and maintenance of tree protection measures.
  - e. Calculations of tree density proposed on-site per subsection (f)(4) of this section, tree preservation and replacement requirements.
  - f. Tree protection inspection. Following the receipt of a complete application, the city arborist shall schedule and conduct an inspection of the proposed development site. The applicant or applicant's designee shall be advised as to the date and time of the inspection and given an opportunity to participate.
  - g. Following inspection said plans shall be reviewed by the director for conformance with applicable zoning conditions, the tree protection ordinance, and any applicable administrative guidelines, and will either be approved or denied. Reasons for denial shall be noted on the tree protection plan or otherwise stated in writing.
  - h. No development or building permit shall be issued until the tree protection plan has been approved by the city arborist.
  - i. All tree protection measures shall be installed prior to land-disturbance.
  - j. Single lots in platted residential subdivisions on which the applicant intends to reside may be exempted from the tree protection plan requirements at the discretion of the director.
- (3) *Final inspection.* No certificate of occupancy shall be issued by the director with respect to any permit subject to this section 22-34 unless and until the city arborist shall have inspected the site and confirmed that all existing trees to remain are in healthy condition and all replacement trees have been planted in accordance with this section.

- (4) *Issuance of permit.* Issuance of a building or land development permit shall be conditioned on the approved tree protection plan and conformance to the provisions of these regulations. Any permit may be voided if its terms are violated.
- (f) *Tree preservation and replacement requirements.* The following tree preservation and replacement requirements are hereby established:
- (1) If significant trees exist on a tract of land for which a permit subject to this section is sought, either 120 inches (DBH) per acre or 25 percent of existing significant trees per acre of such significant trees, whichever is less, shall be preserved on the site. Except for zoned C-1, C-2, M, or M-2 sites, trees and tree save areas counting toward this requirement shall not be located in required buffer zones. Trees and tree save areas counting toward this requirement on-sites zoned C-1, C-2, M or M-2 may be located in stream buffers and state buffer zones, transitional buffer zones and designated floodplains. If the city arborist determines that special constraints of a site result in an inability to build or develop without removing significant trees on a site, where there are only 120 inches (DBH) per acre or less of existing significant trees, the arborist may permit the removal of one or more significant trees. Trees removed pursuant to this section must be replaced with trees one times the diameter inches of those removed.
  - (2) There shall be at least two two-inch (DBH) overstory trees in every front yard of properties zoned RE, RLG, R100, and R85. There shall be at least one two-inch (DBH) overstory tree in every front yard of properties zoned R60 and RSM.
  - (3) The applicant shall landscape the areas with trees and other plant materials in accordance with the following standards:
    - a. Residential developments. All residential subdivisions shall have an average density of 15 density units per acre. Required trees may be located on individual lots or in subdivisions in which there is commonly-owned property may be located on such commonly-owned property.
    - b. Nonresidential and multifamily developments. The quantity of total existing/replacement trees on-site must be sufficient so as to produce a total site density factor of no less than 30 density units per acre.
    - c. With the exception of C-1, C-2, M, or M-2 zoned property, the total tree density units required for a parcel or lot shall be computed based on the area of the parcel or lot, excluding all area within the 100-year floodplain. Total tree density units required for C-1, C-2, M, or M-2 zoned property shall be computed based on the area of the parcel or lot, including all area within the 100-year floodplain.
  - (4) Procedures for calculating the required tree density are provided in charts 1, 2 and 3 in subsection (f)(4)a, b and c of this section. Tree unit values are assigned as follows:
    - a. Chart 1. Conversion from diameter to density factor units for existing deciduous trees to remain on-site.

| DBH      | Units | DBH | Units | DBH | Units |
|----------|-------|-----|-------|-----|-------|
| 2 to 3   | 0.8   | 25  | 6.8   | 38  | 15.8  |
| 4 to 6   | 1.6   | 26  | 7.4   | 39  | 16.6  |
| 7 to 9   | 2.4   | 27  | 8.0   | 40  | 17.4  |
| 10 to 12 | 3.2   | 28  | 8.6   | 41  | 18.4  |



|          |     |    |      |    |      |
|----------|-----|----|------|----|------|
| 13 to 15 | 4.0 | 29 | 9.2  | 42 | 19.2 |
| 16 to 18 | 4.8 | 30 | 9.8  | 43 | 20.2 |
| 19 to 21 | 5.4 | 31 | 10.4 | 44 | 21.2 |
| 22 to 24 | 6.0 | 32 | 11.2 | 45 | 22.0 |
|          |     | 33 | 11.8 | 46 | 23.0 |
|          |     | 34 | 12.6 | 47 | 24.0 |
|          |     | 35 | 13.4 | 48 | 25.2 |
|          |     | 36 | 14.2 | 49 | 26.2 |
|          |     | 37 | 15.0 | 50 | 27.2 |

- b. Chart 2. Conversion from diameter to density factor units for evergreens and conifers.

| <i>DBH</i> |                                    |
|------------|------------------------------------|
| 2 to 9     | 0.2 less unit than deciduous trees |
| 10 to 15   | 0.1 less unit than deciduous trees |
| All others | Same as deciduous trees            |

- c. Chart 3. Conversion from caliper diameter to density factor units for deciduous replacement trees.

| <i>Caliper inches</i>                         | <i>Units</i> |
|---|--------------|
| 0.0 to 0.9                                    | Not allowed  |
| 1.0 to 1.9 no replants under 2 caliper inches | Not allowed  |

|                      |     |
|----------------------|-----|
| 2.0 to 2.9           | 0.4 |
| 3.0 to 3.9           | 0.5 |
| 4.0 to 4.9           | 0.7 |
| 5.0 to 5.9           | 0.8 |
| 6.0 to 6.9           | 1.0 |
| 7.0 to 7.9           | 1.1 |
| 8.0 to 8.9           | 1.2 |
| 9.0 to 9.9           | 1.3 |
| 10.0 to 10.9         | 1.5 |
| 11.0 to 11.9         | 1.6 |
| 12 inches or greater | 2.0 |

d. Container-grown pine trees are given a replacement value as follows:

| <i>Size</i> | <i>Units</i> |
|-------------|--------------|
| 7-gallon    | 0.05         |

The use of one- and three-gallon pines will be permitted only with prior approval. There will be no replacement value given for such trees.

- (5) Nothing in these regulations shall be construed to allow the removal of any tree or vegetation in a required stream buffer, transitional buffer zone or state buffer zone except buffer improvements as authorized by the director.
- (6) Tree relocation and credit for existing trees replacement units will be granted to trees relocated on-site. Tree relocation is subject to approval of the city arborist. Existing trees between two caliper inches and 7.9 caliper inches may be used for credit on the tree replacement plan.

- (7) Understory vegetation. Tree preservation areas shall leave intact the naturally occurring ground cover and understory vegetation except where directed otherwise by the city arborist in order to allow the removal of undesirable ground cover or understory vegetation.
- (8) Specimen trees.
- a. Specimen trees shall be identified by a certified arborist, and shall be located on the tree protection plan.
  - b. Standards for the identification, preservation, and protection of specimen trees shall be as follows: Any tree in fair or better condition which equals or exceeds the following diameter sizes:
    1. Large hardwoods, i.e., oaks, hickories, yellow poplars, and similar species: 30 inches DBH.
    2. Large softwoods, e.g., pines, evergreens, and similar species: 30 inches DBH.
    3. Small trees, e.g., dogwoods, redbuds, sourwoods, and similar species: Ten inches DBH.
  - c. A tree in fair or better condition should meet the following minimum standards:
    1. A life expectancy of greater than ten years.
    2. A relatively sound and solid trunk with no extensive decay or hollow, and less than 20 percent radial trunk dieback.
    3. No major insect or pathological problem.
  - d. A lesser-sized tree can be considered a specimen if:
    1. It is a rare or unusual species or of historical significance.
    2. It is specifically used by a builder, developer, or design professional as a focal point in a project or landscape.
    3. It is a tree with exceptional aesthetic quality.
  - e. A certified arborist may identify and require the preservation of a tree stand if it contains one or more specimen trees and the specimen trees are interlocked with other members of the stand in such a way as to imperil the specimen tree if other members of the stand were to be removed.
  - f. It shall be prohibited to cut specimen trees existing on a tract of land that is the subject of a land-disturbance permit, development permit or building permit without a special exception granted by the community development director or his designee if removal of the specimen tree has not been approved by the city arborist.
  - g. Any specimen tree removed from a parcel shall be replaced by 1.5 times the equivalent inches (DBH) of replacement trees or existing trees in excess of the requirements of subsection (g) of this section, tree preservation and replacement requirements, using species with potentials for comparable size and quality at maturity.
- (9) Protection of trees during construction. Methods and standards for tree protection shall be established in administrative guidelines to this section 22-34.
- a. Trees identified to be preserved and counted as credit for meeting required unit density shall have four-foot orange tree protection fencing installed at the outer edge of the critical root zones.
  - b. No person engaged in the construction of any structure or improvement or any activity shall encroach or place solvents, material, construction machinery or temporary soil deposits within six feet of the area outside the critical root zone as defined herein, or any existing

significant tree within a tree save area, transitional buffer zone, stream buffer, or state buffer zone.

- c. All tree protection devices must remain in functioning condition until completion of the project or until the certificate of occupancy is issued.
  - d. Any tree, designated in the plan to be saved, which is negligently damaged during construction or as a result of negligent construction, as determined by the community development director or his designee, shall be treated according to accepted National Arborists Association standards. If fatally damaged, trees shall be replaced with four-inch caliper trees equal to the unit value of the tree removed. However, any specimen tree negligently damaged as described above shall be replaced with four-inch caliper trees equal to 1.5 times the equivalent inches (DBH) of the tree removed or damaged.
- (10) Removal of trees from floodplain not permitted. Trees shall not be cut or removed from the floodplain, except as follows:
- a. Those trees found to be diseased or insect infested by the county extension service, the state forestry commission, a certified arborist, or a certified forester.
  - b. As necessary for construction, repair or maintenance of public roads, utilities or stormwater management facilities.
  - c. As part of an approved wetland mitigation plan.
  - d. Trees in the 100-year floodplain or required stream buffer may not be cut nor shall they be counted, except as otherwise provided in subsection (g) of this section, tree preservation and replacement requirements, for C-1, C-2, M, and M-2 zoned property, to accomplish requirements of the tree protection ordinance.
- (11) The city arborist shall be responsible for distribution of appropriate public educational materials concerning the procedures of the tree protection ordinance, the value of maintaining existing trees, and proper methods of tree planting, preservation, and care.
- (g) *Tree replacement standards.*
- (1) The tree protection plan shall include planting schedules with proposed tree names (botanical and common), quantity, size spacing, and any special planting notes. Trees used for credit on the tree replacement plan must be chosen from the preferred list attached hereto as appendix A to this section. At least 50 percent of replacement trees must be overstory trees; no more than 25 percent may be of any single species, and no more than 25 percent may be of evergreen species.
  - (2) Unless otherwise approved by the city arborist, trees selected for replanting must meet the minimum standards as provided in the American Standard for Nursery Stock (ANSI Z60.1, 1980) and must be on the tree species selection list found in appendix A to this section. Trees selected must be free of injury, pests, disease, nutritional disorders or root defects, and must be in good vigor to ensure a reasonable expectation of survival. Standards for transplanting shall be in keeping with those established in the International Society of Arboriculture Publication Tree and Shrub Planting Manual or a similar publication.
  - (3) It is desirable that replanted trees be ecologically compatible with the site and neighboring sites. When practical, the replanted trees shall be of the same or similar species as those removed.
  - (4) Replacement trees shall be planted in manner that provides adequate space for nourishment, light, and maturation as recommended by the city arborist.
  - (5) Planting and staking details are addressed in the administrative guidelines and shall be specified in the required tree protection plan.
- (h) *Buffers.*

- (1) *Stream buffers.* Stream buffers shall be consistent with the requirements of article III of this chapter.
- (2) *Land use transition buffers.* Buffers shall be provided between dissimilar districts or uses in accordance with the provisions of the zoning ordinance or as a condition of zoning, special land use permit or variance approval.
  - a. Buffer planting shall meet the minimum width requirements contained in chapter 46, except as authorized to be reduced by a condition of zoning, special land use permit or variance approval.
  - b. Disturbance or encroachments.
    1. Ditches, swales, stormwater conveyance facilities, stormwater detention ponds, sanitary sewer conveyance facilities, and any associated easements, shall not encroach into a buffer except that necessary access and utility crossings (e.g., stormwater or sanitary sewer pipes) may encroach into the buffer as near to perpendicular as practical.
    2. Supplemental plantings or replantings of vegetation or authorized non-vegetative screening devices shall be authorized to encroach into a buffer provided there is minimal disturbance of any existing vegetation.
    3. Dying, diseased or dead vegetation may be removed from a buffer provided minimal disturbance occurs. Vegetation thus removed shall be replaced where necessary to meet the screening requirements contained herein.
  - c. Protection during land-disturbing activities.
    1. During authorized land-disturbing activities, transitional buffer zones, stream buffers, and state buffer zones shall be clearly demarcated and protected prior to commencement of, and during, construction.
    2. The method of demarcation and protection utilized shall be in accordance with best management practices or as required by the arborist.
- (i) *Parking lot landscaping.*
  - (1) Off-street parking lots which contain more than 20 off-street parking spaces on any single lot shall contain landscaping and plantings as provided in chapter 46.
  - (2) Variances to reduce required parking spaces may be granted by the zoning board of appeals when necessary to preserve a significant tree that otherwise would be lost if the parking requirements were strictly applied. Such variance may only be granted if the arborist certifies to the zoning board of appeals that such tree will be lost either by necessary removal for construction of the parking lot or as a consequence of construction having an adverse impact on the survivability of the tree by virtue of damage to the root system of the tree.
  - (3) Any variance granted under the provisions of this section shall include a condition that should the subject tree die as a consequence, direct or indirect, of construction, despite granting of the variance, the tree or trees shall be replaced at the property owner's or applicant's expense, in accordance with a tree replacement plan approved by the arborist.
  - (4) The maximum variance allowed under this provision shall be four parking spaces, or ten percent of the total number of parking spaces required by the zoning ordinance, whichever is greater.
- (j) *Street trees.* Street trees and continuous landscape strips shall be provided, in conformance with the design requirements specified in chapter 46, along newly constructed streets, and along existing streets which are widened or realigned subsequent to the adoption of the ordinance from which this article is derived, in all office, commercial, and industrial developments and along newly constructed streets of residential developments with a net residential density exceeding three dwelling units per acre or as otherwise directed by conditions of zoning or special land use permits.

- (k) *Maintenance.* Trees which are used to meet the density requirements for this section 22-34, except on single-family residential lots, shall be maintained for 18 months after the date of final inspection, and a landscape bond shall be required for 100 percent of the cost of the landscape materials and installation. The property owner shall maintain required tree density. The applicant or builder will be responsible for identifying newly planted trees to the homeowner and to inform the homeowner as to their proper maintenance.
- (l) *Alternative compliance.* The city arborist must review and approve all requests for alternative compliance. In no instance shall 100 percent of the required site density be met through alternative compliance. Where the city arborist has determined that special constraints of a site result in an inability to provide the required tree density, the number of trees will be determined by the city arborist based on site review. Such site review shall require the developer to re-landscape each parcel using a density calculated as the maximum number of trees that can be sustained on the parcel less the impervious area of that parcel. The balance of trees shall be provided in common areas. If common areas are not sufficient, any remaining balance of trees may be provided for plantings on public grounds. Tree bank arrangements can be made through the director. The minimum size of trees replanted through the tree bank shall be two caliper inches and shall be planted in accordance with the species list attached as appendix A hereto and in accordance with the requirements in subsection (h) of this section, tree replacement standards.
- (1) *Common area planting.* If trees are to be planted at another location, the following note must appear on the approved tree protection plan: "A tree protection plan addendum for this project shall be submitted to the city arborist at least 30 days prior to requesting a final inspection. This plan shall include the species, size and location of trees to be planted off-site to meet the tree density deficit shown. Issuance of a certificate of occupancy is subject to approval of this plan, as well as verification of the installation of the trees."
- (2) *Tree banking.* If trees cannot be planted on-site and there is insufficient common area for replanting, the balance of trees will be accepted by the director for tree banking within the city. ~~Participants in the tree banking program administered by the director, including the signing of an off-site reforestation agreement.~~
- (m) *Tree harvesting.* Selective tree harvesting may be permitted upon authorization by the zoning board of appeals in consultation with the arborist. Permits authorizing tree harvesting shall be in accordance with the following standards:
- (1) A 75-foot undisturbed buffer shall be provided and maintained along the entire perimeter of the property, including road frontages, during the land-disturbing activity, except for authorized access crossings.
- (2) Notwithstanding the other provisions of this section, no property owner shall be required to preserve an undisturbed buffer that covers more than 25 percent of the total land area of the property, excluding area inside the ten-year floodplain. In any such case, an alternative buffer width shall be provided, as determined by the zoning board of appeals pursuant to its review of the application for a tree harvesting permit.
- (3) The property shall be required to meet a tree density standard of 30 units per acre, not including the 75-foot buffer, upon completion of authorized land-disturbing activities.
- (4) The owner/applicant shall utilize the recommended best management practices as established by the state forestry commission.
- (5) No tree harvesting shall be allowed within the city except after approval of a special exception by the zoning board of appeals as is provided in chapter 46. Further, subsequent to such approval of a special exception, no such tree harvesting shall be undertaken on any nonresidential parcel of land unless the transitional buffer zones required by the zoning regulations of the district in which located, are preserved in a natural and undisturbed state.
- (6) Once tree harvesting takes place in conformity with the above regulations, no development of the property shall be permitted that would require the cutting of trees preserved under



subsection (m)(3) and (n)(5) of this section for a period of five years following authorization of tree harvesting.

(n) *Utility company and public works guidelines.*

- (1) All utility companies shall be required to obtain an annual permit issued by the director. All applications for an annual permit shall include a list of subcontractors with names, addresses, and city business license numbers.
- (2) Periodic work schedules are to be submitted to the arborist showing the proposed location and extent of tree work to be performed.
  - a. All tree trimming and pruning to be performed by public utilities, public agencies, and their subcontractors on trees growing on private or public rights-of-way shall be done according to the National Arborist Association Standards for Pruning of Shade Trees.
  - b. The routing of public and private utility easements shall be subject to review and comment by the city arborist.

(o) *Enforcement.* It shall be the duty of the director to enforce this section, the tree protection ordinance. The director shall have the authority to, and the city arborist may recommend that, the director revoke, suspend or void any land-disturbance permit, development permit or building permit or suspend all work on a site or portion thereof in order to effect compliance with this section.

- (1) *Violation and penalty.* Any person, firm or corporation violating any of the provisions of this section, ~~after having been first issued a warning,~~ shall be deemed guilty of an offense and upon conviction in municipal court shall be punished as is provided in section 1-7. Each tree removed or killed in violation of this section 22-34 shall be considered a separate offense. The owner of any buildings or premises or parts thereof, where anything in violation of this section exists, and any architect, builder, contractor or any other agent of the owner, or any tenant, who commits or assists in the commission of any violation, shall be guilty of a separate offense.
- (2) *Replacement of trees.* Any trees eight inches (DBH) and over which have been removed in violation of this section shall be replaced by the violator with four-inch caliper replacement trees equal to the density unit value of the trees removed. However, any specimen tree removed from a parcel shall be replaced with four-inch caliper trees 1.5 times the equivalent inches (DBH) of replacement trees or existing trees in excess of the requirements of subsection (g) of this section, tree preservation and replacement requirements, using species with potentials for comparable size and quality at maturity.
- (3) *Additional legal remedies.* In addition to all other actions and penalties authorized in this section, the city municipal court is hereby authorized to institute injunctive, abatement or any other appropriate judicial or administrative actions or proceedings to prevent, enjoin, abate, or remove any violations of this section.
- (4) *Appeals; power and duty of the board to hear appeals of decisions of administrative officials.* The zoning board of appeals shall have the power and duty to hear and decide appeals where it is alleged by an aggrieved party that there is an error in any final order, requirement, or decision made by the director based on or made in the enforcement of the tree protection ordinance. All such appeals shall be heard and decided following the notice requirements, criteria and procedural requirements in chapter 46.
- (5) *Administrative variances.* Front, side and rear yard setbacks and parking requirements may be reduced by an amount not to exceed 50 percent where it is determined by the city arborist to be necessary in order to preserve existing specimen or significant trees. Appropriate conditions to said administrative variances shall be imposed so as to ensure the continued health of said trees following the granting of such variances, including mandatory replacement requirements. Such administrative variances shall be considered and decided consistent with the procedures and criteria contained in chapter 46. Appeals of final decisions regarding administrative variances may be taken as provided in subsection (o)(4) of this section.

- (6) *Special exception.* The community development director or his designee is authorized to consider requests for special exception for the removal of an unauthorized specimen tree. No such special exception for the unauthorized removal of a specimen tree shall be granted by the community development director or his designee unless the applicant has demonstrated and the director has found that the property is not capable of earning a reasonable economic return absent the grant of the special exception. In making this determination the community development director or his designee shall consider the following factors:
- Value of the trees in question, considering their age, size, health, and significance;
  - The current level of economic return on the property;
  - The marketability of the property; and the unfeasibility of alternate designs or uses.
- Appeals from final decisions of the community development director or his designee shall be as provided for in chapter 46.

## APPENDIX A

City overstory trees acceptable for replanting credits:

| <i>Scientific Name</i> | <i>Common Name</i>   | <i>Recommended</i>        | <i>Leaf Habit</i> |
|------------------------|----------------------|---------------------------|-------------------|
| Acer rubrum            | Red maple            | October glory, Red sunset | Deciduous         |
| Betula nigra           | Riverbirch           | Duraheat                  | Deciduous         |
| Carpinus betuls        | European hornbeam    |                           | Deciduous         |
| Carya aquatica         | Water hickory        | Availability              | Deciduous         |
| Carya cordiformis      | Bittemut hickory     | Availability              | Deciduous         |
| Carya glabra           | Pignut hickory       | Availability              | Deciduous         |
| Carya illinoensis      | Pecan                |                           | Deciduous         |
| Carya tomentosa        | Mockernut hickory    | Availability              | Deciduous         |
| Cedrus atlantica       | Atlas cedar          |                           | Evergreen         |
| Cedrus libani          | Cedar of Lebanon     |                           | Evergreen         |
| Cedrus deodara         | Deodar cedar         |                           | Evergreen         |
| Cryptomeria japonica   | Japanese Cryptomeria |                           | Evergreen         |

|                                     |                   |  |           |
|-------------------------------------|-------------------|--|-----------|
| <i>Fagus grandifolia</i>            | American beech    |  | Deciduous |
| <i>Fraxinus tomentosa</i>           | Pumpkin ash       |  | Deciduous |
| <i>Ginkgo biloba</i>                | Ginkgo            | Plant male only. Autumn bold, Fairmont | Deciduous |
| <i>Ilex opaca</i>                   | American holly    |  | Evergreen |
| <i>Juniperus virginiana</i>         | Red cedar         | Brodie                                 | Evergreen |
| <i>Liquidambar styraciflua</i>      | Sweetgum          | Limited use—Rotundiloba (Avail.)       | Deciduous |
| <i>Liriodendron tulipifera</i>      | Tulip poplar      | Limited Use                            | Deciduous |
| <i>Magnolia acuminata</i>           | Cucumbertree      |  | Deciduous |
| <i>Magnolia grandiflora</i>         | Southern magnolia | Bracken's brown beauty, Greenback      | Evergreen |
| <i>Magnolia virginiana</i>          | Sweetbay magnolia |  | Deciduous |
| <i>Metasequoia glyptostroboides</i> | Dawn redwood      | Limited use                            | Deciduous |
| <i>Nyssa sylvatica</i>              | Black gum         |  | Deciduous |
| <i>Pinus echinata</i>               | Shortleaf pine    |  | Evergreen |
| <i>Pinus taeda</i>                  | Loblolly pine     |  | Evergreen |
| <i>Platanus occidentalis</i>        | Sycamore          |  | Deciduous |
| <i>Quercus acutissima</i>           | Sawtooth oak      |  | Deciduous |
| <i>Quercus alba</i>                 | White oak         |  | Deciduous |
| <i>Quercus bicolor</i>              | Swamp white oak   |  |           |
| <i>Quercus coccinea</i>             | Scarlet oak       |  | Deciduous |

|                       |                            |                               |           |
|-----------------------|----------------------------|-------------------------------|-----------|
| Quercus falcata       | Southern red oak           |                               | Deciduous |
| Quercus georgiana     | Georgia oak                |                               | Deciduous |
| Quercus imbricaria    | Shingle oak                |                               | Deciduous |
| Quercus lyrata        | Overcup oak                |                               | Deciduous |
| Quercus laurifolia    | Laurel oak                 |                               | Deciduous |
| Quercus michauxii     | Swamp chestnut oak         |                               | Deciduous |
| Quercus macrocarpa    | Bur oak                    |                               | Deciduous |
| Quercus nigra         | Water oak                  |                               | Deciduous |
| Quercus nuttalli      | Nuttall oak                |                               | Deciduous |
| Quercus phellos       | Willow oak                 |                               | Deciduous |
| Quercus prinus        | Chestnut oak               | Availability                  | Deciduous |
| Quercus rubra         | Northem red oak            |                               | Deciduous |
| Quercus shumardii     | Shumard red oak            |                               | Deciduous |
| Quercus stellata      | Post oak                   |                               | Deciduous |
| Quercus velutina      | Black oak                  |                               | Deciduous |
| Taxoduim distichum    | Bald cypress               | Shawnee brave                 | Deciduous |
| Tilia spp.            | Linden                     |                               | Deciduous |
| Thuja × 'Green Giant' | Arborvitae                 | Green giant                   | Evergreen |
| Thuja plicata         | Giant (Western) arborvitae |                               | Evergreen |
| Ulmus americana       | American elm               | Princeton and other resistant | Deciduous |

|                  |                  |                       |           |
|------------------|------------------|-----------------------|-----------|
|                  |                  | varieties             |           |
| Ulmus parviflora | Lacebark elm     | Allee, Athena, Bosque | Deciduous |
| Zelkova serrata  | Japanese Zelkova | Green vase            | Deciduous |

City understory and other small trees acceptable for replanting credits:

| <i>Scientific Name</i>    | <i>Common Name</i>   | <i>Recommended</i>                | <i>Leaf Habit</i> |
|---------------------------|----------------------|-----------------------------------|-------------------|
| Acer barbatum             | Florida maple        |                                   | Deciduous         |
| Acer buergeranum          | Trident maple        | Street wise                       | Deciduous         |
| Acer campestre            | Hedge maple          |                                   | Deciduous         |
| Acer leucoderme           | Chalk maple          |                                   | Deciduous         |
| Acer palmatum             | Japanese maple       |                                   | Deciduous         |
| Acer saccharum            | Sugar maple          |                                   | Deciduous         |
| Aesculus pavia            | Red buckeye          |                                   | Deciduous         |
| Alnus serrulata           | Alder                |                                   | Deciduous         |
| Amelanchier × grandiflora | Serviceberry         | Princess Diana, Autumn brilliance | Deciduous         |
| Aralia spinosa            | Devils walking stick |                                   | Deciduous         |
| Betula nigra              | River birch          | Little king                       | Deciduous         |
| Carpinus caroliniana      | American hornbeam    |                                   | Deciduous         |
| Castanea pumila           | Chinkapin            |                                   | Deciduous         |

|                                 |                       |  |           |
|---------------------------------|-----------------------|--|-----------|
| <i>Celtis tenuifolia</i>        | Georgia hackberry     |  | Deciduous |
| <i>Celtis laevigata</i>         | Sugarberry            |  | Deciduous |
| <i>Cercidiphyllum japonicum</i> | Katsura tree          |  | Deciduous |
| <i>Cercis canadensis</i>        | Eastern redbud        |  | Deciduous |
| <i>Cercis reniformis</i>        | Redbud                | Oklahoma   |           |
| <i>Chioanthus retusus</i>       | Chinese fringetree    |  | Deciduous |
| <i>Chioanthus virginicus</i>    | White fringetree      |  | Deciduous |
| <i>Cladrastis kentukea</i>      | Yellowwood            |  | Deciduous |
| <i>Cornus</i> spp.              | Dogwood               | Florida and Kousa crosses  | Deciduous |
| <i>Cornus florida</i>           | Flowering dogwood     | Aurora   | Deciduous |
| <i>Cornus kousa</i>             | Kousa dogwood         |  | Deciduous |
| <i>Crataegus</i> spp.           | Hawthorn              | Thornless cultivars  | Deciduous |
| <i>Crataegus phaenopyrum</i>    | Washington hawthorn   |  | Deciduous |
| <i>Diospyros virginiana</i>     | Persimmon             |  | Deciduous |
| <i>Halesia carolina</i>         | Silverbell            |  | Deciduous |
| <i>Halesia diptera</i>          | Two winged silverbell |  | Deciduous |
| <i>Hamamelis virginiana</i>     | Witch-hazel           |  | Deciduous |
| <i>Ilex</i> spp.                | Holly                 | Burford, Carolina #2, Foster, Neillie R. Stevens, Savannah, Yaupon | Evergreen |
| <i>Ilex decidua</i>             | Possumhaw             |  | Deciduous |



|  |                              |  |           |
|--|------------------------------|--|-----------|
| <i>Juniperus virginiana</i>                  | Red cedar                    |  |           |
| <i>Koelreuteria paniculata</i>               | Golden raintree              |  | Deciduous |
| <i>Lagerstromia indica</i> × <i>faurieri</i> | Crape myrtle                 | Tree form cultivars, disease resistant and hardy, e.g., Choctaw, Natchez | Deciduous |
| <i>Magnolia grandiflora</i>                  | Southern magnolia            | Alta, Bracken's Brown Beauty, Greenback, Claudia Wannamaker              | Evergreen |
| <i>Magnolia</i> × <i>loebneri</i>            | Loebner magnolia             | Merrill  | Deciduous |
| <i>Magnolia macrophylla</i>                  | Bigleaf magnolia             |  | Deciduous |
| <i>Magnolia soulangiana</i>                  | Saucer magnolia              |  | Deciduous |
| <i>Magnolia stellata</i>                     | Star magnolia                | Star man   |           |
| <i>Magnolia tripetala</i>                    | Umbrella magnolia            |  | Deciduous |
| <i>Magnolia virginiana</i>                   | Sweetbay magnolia            |  | Evergreen |
| <i>Malnus floribunda</i>                     | Japanese flowering crabapple |  | Deciduous |
| <i>Myrica cerifera</i>                       | Waxmyrtle                    |  | Evergreen |
| <i>Osmanthus americanus</i>                  | Devilwood                    |  | Evergreen |
| <i>Ostrya virginiana</i>                     | Eastern hophombeam           |  | Deciduous |
| <i>Oxydendrum arboreurn.</i>                 | Sourwood                     |  | Deciduous |
| <i>Pinus Virginiana</i>                      | Virginia pine                | Slopes, screen   | Evergreen |
| <i>Pistacia chinensis</i>                    | Chinese Pistache             |  | Deciduous |

|                    |              |                   |           |
|--------------------|--------------|-------------------|-----------|
| Prunus spp.        |              | Okame, Autumnalis | Deciduous |
| Sassafras albidum  | Sassafras    |                   | Deciduous |
| Styrax americana   | Snowbell     |                   | Deciduous |
| Ulmus alata        | Winged elm   |                   | Deciduous |
| Vaccinium arboreum | Sparkleberry |                   | Evergreen |

City recommended trees for under powerlines:

| <i>Scientific Name</i>  | <i>Common Name</i>  | <i>Recommended</i>                           |
|-------------------------|---------------------|--|
| Acer buergerianum       | Trident maple       |  |
| Acer palmatum           | Japanese maple      |  |
| Cercis canadensis       | Redbud              |  |
| Chionanthus retusus     | Chinese fringetree  |  |
| Chionanthus virginicus  | White fringetree    |  |
| Cornus spp.             | Dogwood             | Florida and Kousa crosses                    |
| Cornus florida          | Flowering dogwood   | Disease resistant varieties, Aurora          |
| Cornus kousa            | Kousa dogwood       |  |
| Crataegus phaenopyrum   | Washington hawthorn |  |
| Ilex spp.               | Holly               | Nellie R. Stevens, tree-form Burford, Yaupon |
| Koelreuteria paniculata | Golden raintree     |  |
| Magnolia x loebneri     | Loebner magnolia    | Merrill                                      |

|                      |                 |                   |
|----------------------|-----------------|-------------------|
| Magnolia soulangiana | Saucer magnolia |                   |
| Magnolia stellata    | Star magnolia   | Star man          |
| Oxydendrum arboreum  | Sourwood        |                   |
| Prunus spp.          |                 | Okame, Autumnalis |

Recommended trees for parking lots:

| <i>Scientific Name</i>        | <i>Common Name</i>  | <i>Recommended</i>   |
|-------------------------------|---------------------|--|
| Acer buergeranum              | Trident maple       | Street wise  |
| Acer rubrum                   | Red maple           | October glory, Red sunset  |
| Betula nigra                  | River Birch         | Duraheat   |
| Chionanthus virginicus        | Fringetree          |  |
| Cladrastis kentukea           | Yellowwood          |  |
| Crataegus phaenopyrum         | Washington hawthorn |  |
| Juniperus virginiana          | Red cedar           | Brodie   |
| Ilex spp.                     |                     | Tree form Yaupon, Burford, Carolina #2                                   |
| Lagerstromia indica x faurier | Crape myrtle        | Tree form cultivars, disease resistant and hardy, e.g., Natchez, Choctaw |
| Nyssa sylvatica               | Black gum           |  |
| Pistacia chinensis            | Chinese Pistache    |  |
| Quercus michauxii             | Swamp chestnut      |  |

|                    |                  |               |
|--------------------|------------------|---------------|
|                    | oak              |               |
| Quercus nigra      | Water oak        |               |
| Quercus nuttalli   | Nuttall oak      |               |
| Quercus palustris  | Pin oak          |               |
| Quercus phellos    | Willow oak       |               |
| Quercus rubra      | Northem red Oak  |               |
| Taxoduim distichum | Bald cypress     | Shawnee brave |
| Ulmus parvifolia   | Lacebark elm     | Athena        |
| Zelkova serrata    | Japanese Zelkova | Green vase    |

(Ord. No. 2016-07-13, att. (14-39), 7-11-2016; Ord. No. 2016-07-20, att. (14-39), 9-1-2016)

## ARTICLE III. - STREAM BUFFER PROTECTION

## Sec. 22-49. - Findings and purposes.

- (a) *Findings.* Whereas, the mayor and city council finds that buffers adjacent to streams provide numerous benefits including:
- (1) Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources.
  - (2) Removing pollutants delivered in urban stormwater.
  - (3) Reducing erosion and controlling sedimentation.
  - (4) Protecting and stabilizing stream banks.
  - (5) Providing for infiltration of stormwater runoff.
  - (6) Maintaining base flow of streams.
  - (7) Contributing organic matter that is a source of food and energy for the aquatic ecosystem.
  - (8) Providing tree canopy to shade streams and promote desirable aquatic habitat.
  - (9) Providing riparian wildlife habitat.
  - (10) Furnishing scenic value and recreational opportunity.
  - (11) Providing opportunities for the protection and restoration of greenspace.
- (b) *Purposes.* It is the purpose of this article is to protect the public health, safety, environment and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to:
- (1) Create buffer zones along the streams of the city for the protection of water resources; and
  - (2) Minimize land development within such buffers by establishing buffer zone requirements and by requiring authorization for any such activities.

(Ord. No. 2016-07-20, att. (14-44.1), 9-1-2016)

## Sec. 22-50. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Buffer* means, with respect to a stream, a natural or enhanced vegetated area lying adjacent to the stream.

*Floodplain* means any land area susceptible to flooding, which would have at least a one percent probability of flooding occurrence in any calendar year based on the basin being fully developed as shown on the current land use plan; i.e., the regulatory flood.

*Impervious cover* means any manmade paved, hardened or structural surface regardless of material. Impervious cover includes, but is not limited to, rooftops, buildings, streets, roads, decks, swimming pools and any concrete or asphalt.

*Land development* means any land change, including, but not limited to, clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, construction, paving and any other installation of impervious cover.

*Land development activity* means those actions or activities which comprise, facilitate or result in land development.

*Land disturbance* means any land or vegetation change, including, but not limited to, clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, transporting and filling of land, that do not involve construction, paving or any other installation of impervious cover.

*Land-disturbance activity* means those actions or activities which comprise, facilitate or result in land-disturbance.

*Parcel* means any plot, lot or acreage shown as a unit on the latest county tax assessment records.

*Permit* means the permit issued by the city required for undertaking any land development activity

*Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the state, any interstate body or any other legal entity.

*Point of wretsted vegetation means movement of water that removes soil, debris and vegetation, creating a clear demarcation between water flow and vegetative growth.*

*Protection area* or *stream protection area* means, with respect to a stream, the combined areas of all required buffers and setbacks applicable to such stream.

*Riparian* means belonging or related to the bank of a river, stream, lake, pond or impoundment.

*Setback* means, with respect to a stream, the area established by article III of this chapter extending beyond any buffer applicable to the stream.

*State waters means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural and artificial, lying within or forming a part of the boundaries of the State which are not entirely confined and retailed completely upon the property of a single individual, partnership, or corporation, except as may be defined in O.C.G.A. 12-7-17(8) (O.C.G.A 12-7-3(16)).*

*Stream* means any stream, beginning at:

- (1) The location of a spring, seep, or groundwater outflow that sustains streamflow;
- (2) A point in the stream channel with a drainage area of 25 acres or more; or
- (3) Where evidence indicates the presence of a stream in a drainage area of other than 25 acres, the city may require field studies to verify the existence of a stream.

*Stream bank* means the sloping land that contains the stream channel and the normal flows of the stream.

*Stream channel* means the portion of a watercourse that contains the base flow of the stream.

*Watershed* means the land area that drains into a particular stream.

(Ord. No. 2016-07-20, att. (14-44.2), 9-1-2016)

Sec. 22-51. - Applicability.

- (a) This article shall apply to all land development activity on property containing a stream protection area as defined in section 22-4950. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law and approval or exemption from these requirements do not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.

- (1) *Grandfather provisions.* This article shall not apply to the following activities:

- a. Work consisting of the repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of the ordinance from which this article is derived.

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- b. Existing development and on-going land-disturbance activities including, but not limited to, existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land-disturbance activities on such properties will be subject to all applicable buffer requirements.
  - c. Any land development activity that is under construction, fully approved for development, scheduled for permit approval or has been submitted for approval as of the effective date of the ordinance from which this article is derived.
  - d. Land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as for an office park or other phased development that has been previously approved within two years of the effective date of the ordinance from which this article is derived.
- (2) *Exemptions.* The following specific activities are exempt from this article. Exemption of these activities does not constitute an exemption for any other activity proposed on a property.
- a. Activities for the purpose of building one of the following:
    - 1. A stream crossing by a driveway, transportation route or utility line;
    - 2. Public water supply intake or public wastewater outfall structures;
    - 3. Intrusions necessary to provide access to a property;
    - 4. Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
    - 5. Unpaved foot trails and paths;
    - 6. Activities to restore and enhance stream bank stability, vegetation, water quality and/or aquatic habitat, so long as native vegetation and bioengineering techniques are used.
  - b. Public sewer line easements paralleling the creek, except that all easements (permanent and construction) and land-disturbance should be at least 25 feet from the top of the bank. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including, but not limited to, manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses specifically cited in subsection (a)(2)a of this section.
  - c. Land development activities within a right-of-way existing at the time the ordinance from which this article is derived or approved under the terms of this article.
  - d. Within an easement of any utility existing at the time this article takes effect or approved under the terms of this article, land-disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including, but not limited to, manholes, vents and valve structures.
  - e. Emergency work necessary to preserve life or property. However, when emergency work is performed under this section, the person performing it shall report such work to the city community development department on the next business day after commencement of the work. Within ten days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the city community development department to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.
  - f. Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land-disturbance in the buffer that would otherwise be prohibited, then no other

land-disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer.

- (b) After the effective date of the ordinance from which this article is derived, it shall apply to new subdividing and platting activities.
- (c) Any land development activity within a buffer established hereunder or any impervious cover within a setback established hereunder is prohibited unless a variance is granted pursuant to section 22-43.

(Ord. No. 2016-07-20, att. (14-44.3), 9-1-2016)

Sec. 22-52. - Land development requirements.

Buffer and setback requirements. All land development activity subject to this article shall meet the following requirements:

- (1) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on ~~both banks~~ (as applicable) of the ~~stream-state waters~~ as measured from the ~~top-of-the stream-bank~~ point of wretsted vegetation.
- (2) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.
- (3) No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.

(Ord. No. 2016-07-20, att. (14-44.4), 9-1-2016)

Sec. 22-53. - Variance procedures.

Variances from the above buffer and setback requirements may be granted in accordance with the following provisions:

- (1) Where a parcel was platted prior to the effective date of the ordinance from which this article is derived, and its shape, topography or other existing physical condition prevents land development consistent with this article, and the city finds and determines that the requirements of this article prohibit the otherwise lawful use of the property by the owner, the zoning board of appeals of the city may grant a variance from the buffer and setback requirements hereunder, provided such variance require mitigation measures to offset the effects of any proposed land development on the parcel.
- (2) Except as provided above, the zoning board of appeals of the city shall grant no variance from any provision of this article without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the board of appeals. The city shall give public notice of each such public hearing in a newspaper of general circulation within the city. The city shall require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign shall be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way. Variances will be considered only in the following cases:
  - a. When a property's shape, topography or other physical conditions existing at the time of the adoption of the ordinance from which this article is derived prevents land development unless a buffer variance is granted.
  - b. Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.

Variances will not be considered when, following adoption of the ordinance from which this article is derived, actions of any property owner of a given property have created conditions of a hardship on that property.

- (3) At a minimum, a variance request shall include the following information:
  - a. A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey;
  - b. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
  - c. A detailed site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land-disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected shall be accurately and clearly indicated;
  - d. Documentation of unusual hardship should the buffer be maintained;
  - e. At least one alternative plan, which does not include a buffer or setback intrusion, or an explanation of why such a site plan is not possible;
  - f. A calculation of the total area and length of the proposed intrusion;
  - g. A stormwater management site plan, if applicable; and
  - h. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.
- (4) The following factors will be considered in determining whether to issue a variance:
  - a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
  - b. The locations of all streams on the property, including along property boundaries;
  - c. The location and extent of the proposed buffer or setback intrusion; and
  - d. Whether alternative designs are possible which require less intrusion or no intrusion;
  - e. The long-term and construction water-quality impacts of the proposed variance;
  - f. Whether issuance of the variance is at least as protective of natural resources and the environment.

(Ord. No. 2016-07-20, att. (14-44.5), 9-1-2016)

Sec. 22-54. - Compatibility with other buffer regulations and requirements.

This article is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. The requirements of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

(Ord. No. 2016-07-20, att. (14-44.6), 9-1-2016)

Sec. 22-55. - Additional information requirements for development on buffer zone properties.

- (a) Any permit applications for property requiring buffers and setbacks hereunder must include the following:
- (1) A site plan showing:
    - a. The location of all streams on the property;
    - b. Limits of required stream buffers and setbacks on the property;
    - c. Buffer zone topography with contour lines at no greater than five-foot contour intervals;
    - d. Delineation of forested and open areas in the buffer zone; and
    - e. Detailed plans of all proposed land development in the buffer and of all proposed impervious cover within the setback;
  - (2) A description of all proposed land development within the buffer and setback; and
  - (3) Any other documentation that the city community development department may reasonably deem necessary for review of the application and to ensure that the buffer zone ordinance is addressed in the approval process.
- (b) All buffer and setback areas must be recorded on the final plat of the property following plan approval.

(Ord. No. 2016-07-20, att. (14-44.7), 9-1-2016)

Sec. 22-56. - Responsibility.

Neither the issuance of a development permit nor compliance with the conditions thereof, nor with the provisions of this article shall relieve any person from any responsibility otherwise imposed by law for damage to persons or property; nor shall the issuance of any permit hereunder serve to impose any liability upon the city, its officers or employees, for injury or damage to persons or property.

(Ord. No. 2016-07-20, att. (14-44.8), 9-1-2016)

Sec. 22-57. - Inspection.

- (a) The city community development department may cause inspections of the work in the buffer or setback to be made periodically during the course thereof and shall make a final inspection following completion of the work. The permittee shall assist the city community development department in making such inspections. The city shall have the authority to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this article and, to enter at reasonable time upon any property, public or private, for the purpose of investigating and inspecting the sites of any land development activities within the protection area.
- (b) No person shall refuse entry or access to any authorized representative or agent who requests entry for purposes of inspection and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out official duties.

(Ord. No. 2016-07-20, att. (14-44.9), 9-1-2016)

Sec. 22-58. - Violations; enforcement and penalties.

- (a) Any action or inaction which violates the provisions of this article or the requirements of an approved site plan or permit may be subject to the enforcement actions outlined in this section. Any such action or inaction which is continuous with respect to time is deemed to be a public nuisance

and may be abated by injunctive or other equitable relief. The imposition of any of the penalties described below shall not prevent such equitable relief.

- (b) Notice of violation. If the city community development department determines that an applicant or other responsible person has failed to comply with the terms and conditions of a permit, an approved site plan or the provisions of this article, it shall issue a written notice of violation to such applicant or other responsible person. Where a person is engaged in activity covered by this article without having first secured the appropriate permit therefor, the notice of violation shall be served on the owner or the responsible person in charge of the activity being conducted on the site. The notice of violation shall contain:
- (1) The name and address of the owner or the applicant or the responsible person;
  - (2) The address or other description of the site upon which the violation is occurring;
  - (3) A statement specifying the nature of the violation;
  - (4) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit, the approved site plan or this article and the date for the completion of such remedial action;
  - (5) A statement of the penalty that may be assessed against the person to whom the notice of violation is directed; and
  - (6) A statement that the determination of violation may be appealed to the city community development department by filing a written notice of appeal within 30 days after the notice of violation (except that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient).
- (c) Penalties. In the event the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the city community development department shall first notify the applicant or other responsible person in writing of its intended action, and shall provide a reasonable opportunity, of not less than ten days (except that, in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the city community development department may take any one or more of the following actions or impose any one or more of the following penalties.
- (1) *Stop work order.* The city community development department may issue a stop work order which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take necessary remedial measures to cure such violation.
  - (2) *Withhold certificate of occupancy.* The city community development department may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
  - (3) *Suspension, revocation or modification of permit.* The city community development department may suspend, revoke or modify the permit authorizing the land development project. A suspended, revoked or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the city community development department may deem necessary) to

enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.

- (4) *Civil penalties.* In the event the applicant or other responsible person fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days or such greater period as the city community development department shall deem appropriate (except that, in the event the violation constitutes an immediate danger to public health or public safety, 24 hours' notice shall be sufficient) after the city community development department has taken one or more of the actions described above, the city community development department may impose a penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- (5) *Criminal penalties.* For intentional and flagrant violations of this article, the city community development department may issue a citation to the applicant or other responsible person, requiring such person to appear in municipal court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000.00 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

(Ord. No. 2016-07-20, att. (14-44.10), 9-1-2016)

Sec. 22-59. - Administrative appeal and judicial review.

- (a) *Administrative appeal.* Any person aggrieved by a decision or order of the city director of community development, may appeal in writing within 30 days after the issuance of such decision or order to the construction board of appeals and shall be entitled to a hearing before the construction board of appeals within 60 days of receipt of the written appeal.
- (b) *Judicial review.*
  - (1) Any person aggrieved by a decision or order of the city zoning board of appeal, after exhausting all administrative remedies, shall have the right to appeal de novo to the superior court of the county.
  - (2) Any person aggrieved by a decision of order of the city construction board of appeals, after exhausting all administrative remedies, shall have the right to appeal by writ of certiorari to the superior court of the county.

(Ord. No. 2016-07-20, att. (14-44.11), 9-1-2016; Ord. No. O2017-10-77, exh. A(14-44.11), 10-23-2017)

Sec. 22-60. - Severability.

If any article, section, subsection, paragraph, clause, phrase or provision of this article shall be adjudged invalid or held unconstitutional, such decision shall not affect or invalidate the remaining portions of this article.

(Ord. No. 2016-07-20, att. (14-44.12), 9-1-2016)

Sec. 22-61. - Validity of previously issued stream buffer variances.

Any stream buffer variance issued by the county prior to July 11, 2016, is and shall remain valid. Stream buffer variances granted by the county prior to the effective date of the ordinance from which this article is derived shall not be repealed or deemed invalid by the adoption of the ordinance from which this article is derived.



(Ord. No. 2016-07-13, att. (14-44.6), 7-11-2016; Ord. No. 2016-07-20, att. (14-44.13), 9-1-2016; Ord. No. O2017-10-77, exh. A(14-44.12), 10-23-2017)

Secs. 22-62—22-76. - Reserved.