



AGENDA

Gainesville Work Session
Thursday, August 10, 2017, 9:00 AM
Administration Building, Board Room
300 Henry Ward Way, 3rd Floor
Mayor or Mayor Pro Tem Presides

DEPARTMENT ISSUES

Water Resources	Resolution: Midtown Greenway Extension, Stormwater Detention Pond and Watershed Improvement Project	Horace Gee
Water Resources	Resolution: Flat Creek Ecosystem Restoration Project Additional Funding	Horace Gee

CITY MANAGER ISSUES

Resolution: Establish Boundaries Related to Downtown Dining District	Bryan Lackey
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MAYOR/COUNCIL ISSUES

Appointment(s): Chattahoochee Golf Course Advisory Committee	Danny Dunagan
Appointment(s): Gainesville-Hall '96 Board	Danny Dunagan
Appointment(s): Main Street Gainesville Advisory Committee	Danny Dunagan
Appointment(s): Metropolitan Planning Organization Citizens Advisory Committee	Danny Dunagan
Ex-Officio Report(s)	

CITY ATTORNEY ISSUES

CITY CLERK ISSUES

EXECUTIVE SESSION

ADJOURNMENT

Approved: Tuesday, August 8, 2017, 1:54 PM

CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 7/25/2017

Presenter: Horace Gee

Item of Business: Resolution: Midtown Greenway Extension, Stormwater Detention Pond and Watershed Improvement Project

Meeting Date: 8/10/2017

Purpose of Request:

To authorize the purchase of eight (8) separate tax parcels, as well as the design and construction of an extension of the current Midtown Greenway Park.

History/Background:

In January 2009, the Department of Water Resources (DWR) of the City of Gainesville initiated a comprehensive Greenway and Watershed Restoration project within the Midtown area of Gainesville. The first phase consisted of a stream restoration project of a portion of Flat Creek, and included the installation of a Regional Detention Pond; this project was completed in May 2010. To build on this important first step, in August of 2010, DWR partnered with the Community Development Department to start the design of phase two of this comprehensive plan. This phase would include the installation of a number of Stormwater enhancements, the restoration of an additional portion of Flat Creek, and the construction of what is now known as the Midtown Greenway Park. This phase was completed in April 2012.

Facts & Issues for Consideration:

In December 2016, DWR updated its Watershed Improvement Plan (WIP) as required by the Environmental Protection Division (EPD) as a condition of our wastewater discharge permits; this document identified several new watershed projects that would build upon our efforts to improve water quality within our jurisdiction and the Chattahoochee/Lanier Basin. Of these, the highest priority project was identified as FL-5, which is just above the Midtown Greenway Park. This project will consist of a stormwater pond and an additional segment of stream restoration which would complement our Midtown area and extend the current park. To facilitate this project, the City needs to purchase eight (8) parcels of property. This project will extend our efforts to maintain clean, safe water for years to come, while helping to revitalize this area.

Department Recommendation:

The Department of Water Resources believes installing additional stormwater controls within the Flat Creek Watershed and extending the Midtown Greenway will provide multiple benefits to both water quality and quality of life for our community, while also helping spur the revitalization of the Midtown area at the same time. As this project is both required by our wastewater permits and clearly beneficial to our community, DWR highly recommends the support of the City.

Department Director:

Linda MacGregor

If funding is involved, are funds approved within the current budget?

Yes

Amount Requested:

\$2,825,000.00

Source of Funds:

Department of Water Resources Capital Projects Fund

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description		Type
	Midtown Greenway Extension	Resolution
	Attachment-A	Backup Material
	Attachment-B	Backup Material

RESOLUTION PR-2017 - ____

**MIDTOWN GREENWAY EXTENSION, STORMWATER DETENTION POND AND
WATERSHED IMPROVEMENT PROJECT**

WHEREAS, the City of Gainesville (“the City”) wishes to preserve and protect the water quality of Lake Lanier and other local bodies of water; and

WHEREAS, the City is within the Metropolitan North Georgia Water Planning District (MNGWPD), a region identified for special water management objectives by the State of Georgia; and

WHEREAS, in 2016 the Georgia Environmental Protection Division (GA EPD) accepted and approved the updated Watershed Improvement Plan developed by the City; and

WHEREAS, the City’s Watershed Management Plan and the MNGWPD require the development and implementation of watershed improvement projects on impaired bodies of water as required by our two National Pollutant Discharge Elimination System (NPDES) Permits for Flat Creek and Linwood Water Reclamation Facilities; and

WHEREAS, Resolution BR-2010-09 defined the boundaries of the Midtown Redevelopment Area, which has suffered from blighted and/or underdeveloped land, and which is delineated on the map labeled Attachment A. These characteristics contribute to or cause unemployment, limit tax resources of the City while creating a greater demand for government services, and constitutes an economic and social liability; and

WHEREAS, the approved Watershed Improvement Plan identified several watershed improvements within the City of Gainesville, with the highest priority project being identified as FL-5 and which is contained within the boundaries of the Midtown Redevelopment Area as shown on the map labeled Attachment B; and

WHEREAS, the City has identified eight (8) parcels within the Midtown Redevelopment Area which could benefit from growth in the area if it were transformed into an extension of the Midtown Greenway Park, and which would also incorporate a number of watershed improvement components such as a stream restoration project and a stormwater detention pond as identified in the 2016 Watershed Improvement Plan (WIP); and

WHEREAS, City staff has negotiated in good faith with the property owners for the purchase of the eight (8) parcels of properties for the aggregate amount of \$900,000.00; an additional \$75,000.00 is required for the acquisition and demolition activities, as well as for the legal fees and other necessary expenditures in order to proceed with the aforementioned project; and

WHEREAS, the City of Gainesville DWR desires to order and facilitate the design and construction of an extension to the Midtown Greenway Park, which will include a number of the watershed and stormwater improvement components identified by the 2016 WIP Project ID: FL-5, and which is further described in Attachment B, and is requesting \$1,700,000.00 for such design and construction.

RESOLUTION PR-2017 - ____

**MIDTOWN GREENWAY EXTENSION, STORMWATER DETENTION POND AND
WATERSHED IMPROVEMENT PROJECT**

NOW, THEREFORE, BE IT RESOLVED THAT the governing body for the City of Gainesville hereby authorizes the Mayor, City Manager, City Attorney and City staff to acquire said properties in accordance with the Uniform Land Acquisition Policy of the City of Gainesville on behalf of the City of Gainesville Department of Water Resources, to initiate such proceedings, perform such acts and to execute such documents as necessary to complete the purchase, design, and construction.

BE IT FURTHER RESOLVED THAT an additional \$150,000.00 to cover staff salaries, contingency and other expenses is also authorized for a not-to-exceed total of \$2,825,000.00 for this project, said expenditure shall be from the Department of Water Resources Capital Projects Fund.

Adopted this ____ day of _____, 2017.

C. Danny Dunagan, Jr., Mayor

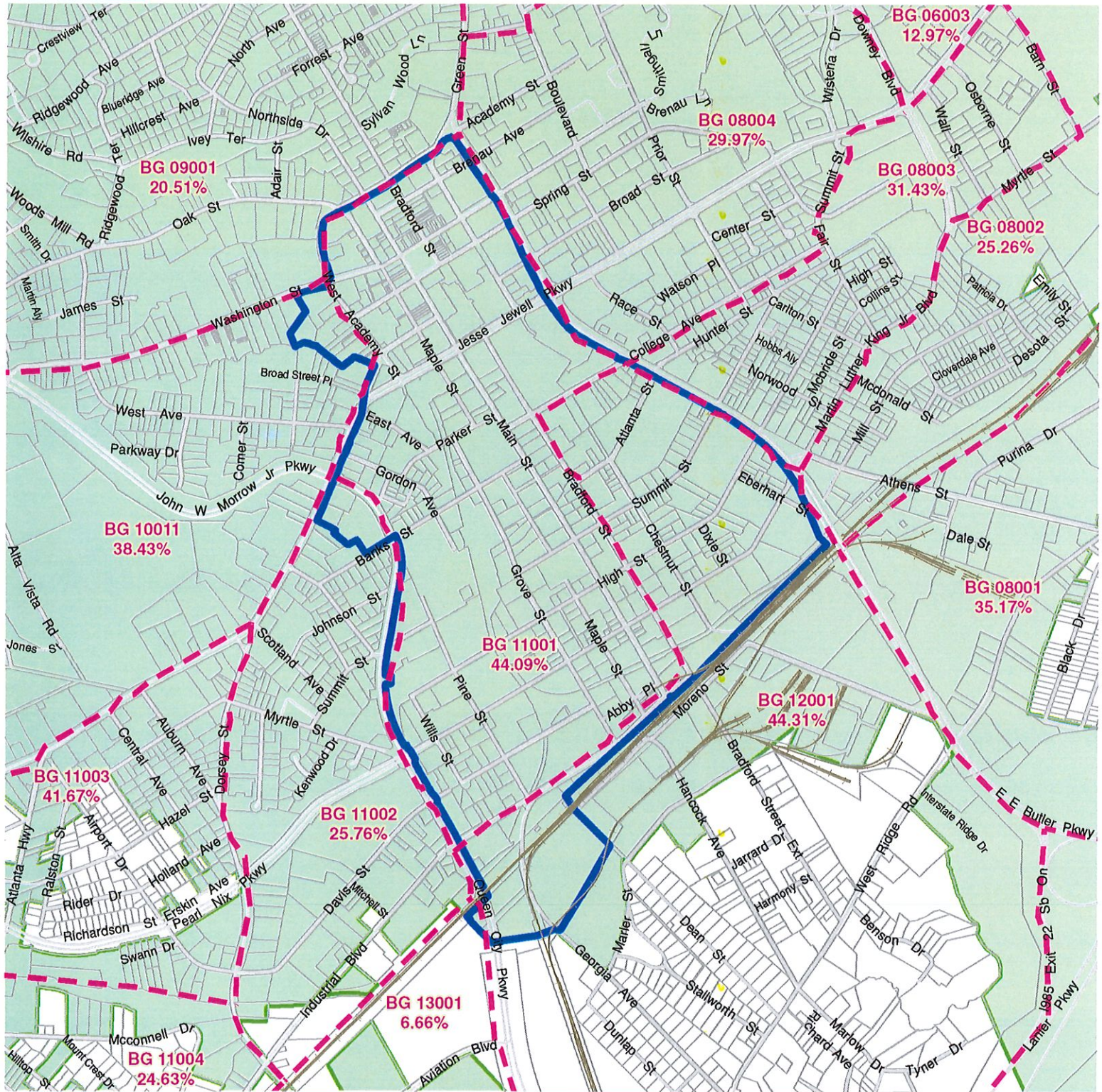
This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

Denise O. Jordan, City Clerk



Midtown Redevelopment Area



City of Gainesville

Land District 9; Land Lots 148, 149, 152, 153 & 154
Map Prepared: January 5, 2010

Opportunity Zone Administrator

Rusty Ligon, Community Development Director
311 Henry Ward Way
P O Box 2496
Gainesville, GA 30503
(770) 531-6570

Map Preparer

Mark Lane, GIS, GIS Manager
P O Box 1435
Gainesville, GA 30503
(770) 531-6809



1 inch = 1,200 feet



Urban Redevelopment Area



Gainesville City Limits



Parcels

Streets

Census Block Group Boundary

Census Block Group: BG 11001
Poverty Level Percentage: 44.09%

0 250 500 1,000 1,500 2,000 2,500 3,000 Feet

Attachment - B

Project Description and Evaluation

Project ID: FL-5

2016 Watershed Improvement Plan

Project Type: Stream Restoration and Stormwater BMP

Project Description

This WIP project would continue to build on the existing downstream restoration work, adding in additional restored channel to improve downstream water quality. The stormwater BMP and restored reach will provide additional downstream flood protection from small events and the location is ideal for public involvement opportunities. The project includes a stream restoration (daylighting) of an existing piped channel in the headwaters of Flat Creek located upstream of an existing stream restoration project. Project includes a Priority 1 stream restoration re-establishing the existing piped stream to a natural state including channel realignment, grade control, and a reconnection of the stream to the floodplain. Additionally, the project includes the installation of a stormwater BMP in the northwest portion of the property that would provide stormwater attenuation of flow from an adjacent property. The property is located adjacent to the existing Flat Creek Greenway recreational trail and public education components including educational signs and a trail have been included as project elements.

Watershed and Site Characteristics

Watershed: Flat Creek	BMP Footprint Area: 0.2 acres
Project Location Parker Street	BMP Max Depth: 8 feet
Latitude: 34° 17.650' N	Construction Services \$443,322
Longitude: 83° 49.590' W	Engineering Services \$435,600
Stream Restoration Length: 442 feet	Total Estimated Project Cost \$878,922
	Class 5 Cost Estimate Range: \$439,461 - \$1,757,844

Project Feasibility

The project area includes a parcel of land that may be acquired by the City. The parcel is located immediately upstream of the existing Flat Creek stream restoration project completed in 2012 and is adjacent to the highly visible Flat Creek Greenway recreational trail. Future development in the immediate vicinity of the project area will need to address stormwater impacts and the installation of a stormwater BMP along with the restoration of this section of Flat Creek will help mitigate flooding issues and impacts to the downstream channel. The location also provides another opportunity to educate local citizens further with respect to stormwater and the City's efforts to improve local waters.

Conceptual Design Components Included in Project

Stormwater Pond - Includes excavation and haul of materials, new stormwater infrastructure including piping, manholes, headwalls, outlet control structure and spillway

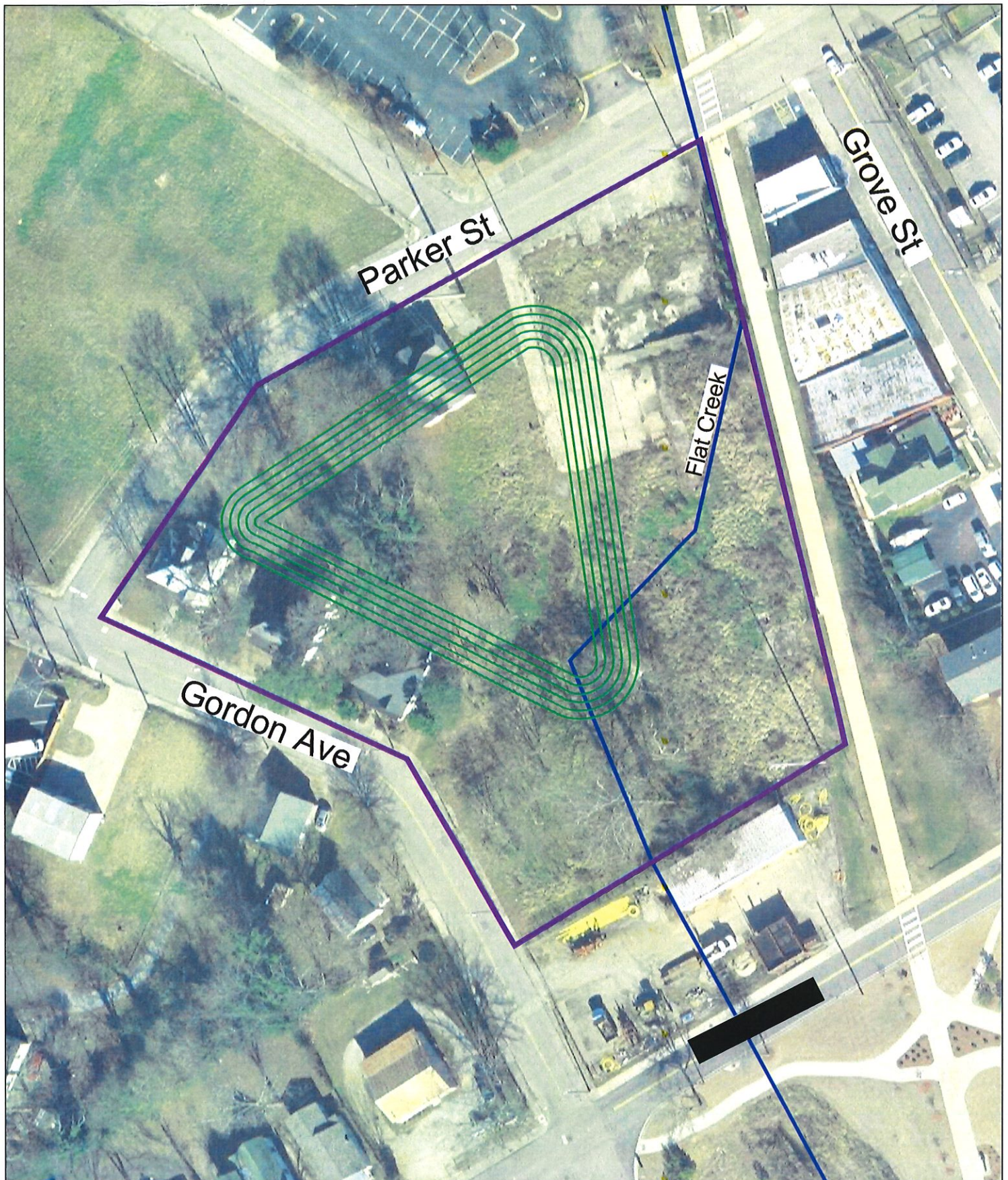
Stream Restoration - Includes excavation of channel, installation of in-stream structures, existing pipe removal, installation of new pipe, removal of invasive species, installation of trail and pedestrian bridge.

Project Scoring

Criteria	Score (0-5)	Criteria	Score (0-5)	
303(d) Listing	5	Upstream Imperviousness	5	
Green Infrastructure	3	Stormwater Structure Repair	3	
WQ/Bio Improvement	5	Sewer Structure Repair	1	
Community Partnership	1	General Infrastructure Repair	1	
Outreach	3	Site Access	5	
Education	5	Grant Funding	5	
Flood Protection	3	Constraints	3	
Restoration Length	5	Implementation Timeframe	3	
Channel Conditions	5	Public / Private Land	5	Max Score
Riparian Conditions	5	Total	71	95 points



Attachment - B



CITY OF GAINESVILLE
DEPARTMENT OF WATER RESOURCES

PLAN VIEW OF RESTORATION
PROJECT

Scale: Not To Scale



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JULY 2017

CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 7/28/2017

Presenter: Horace Gee

Item of Business: Resolution: Flat Creek Ecosystem Restoration Project Additional Funding

Meeting Date: 8/10/2017

Purpose of Request:

To authorize payment to Corps of Engineers to award the construction phase of the Project Partnership Agreement (PPA), which was executed/signed on September 24, 2014.

History/Background:

On September 11, 2011 the City Council approved Resolution PR-2011-32 which authorized Gainesville Public Utilities Department (now referred to as Department of Water Resources) to enter into a partnership with the Corps of Engineers for approximately 3,300 linear feet of stream restoration work. In September 2014 the PPA was once again approved by Resolution PR-2014-55, as the previous version had exceeded its contract period. In June 2017, the Corps of Engineers issued a Request for Proposals (RFP) and received proposals from six (6) firms. The lowest bid was accepted. However, as nine (9) years has elapsed since the signing of the first PPA, the total cost of the project has increased from the original estimate of \$1,912,000.00 to \$2,384,000.00, which has caused our 35% match to increase by \$163,800.00.

Facts & Issues for Consideration:

This is a great opportunity for the City as well as the community to partner with the Corps of Engineers on a restoration project that will go long way in protecting one of the most valuable resources we have: Clean Potable Drinking Water.

Department Recommendation:

Even though our contribution has increased from the original estimate, the Department of Water Resources strongly recommends approval of this resolution. We've continued to list this project in our Capital Improvement Plan (CIP) for the last 8 years in the hopes we finally could get the funds allocated by the Federal Agencies to move forward. This is a very large project and a great opportunity to partner with a Federal Agency to greatly improve water quality within Flat Creek without our citizens having to solely fund the project.

Department Director:

Linda MacGregor

If funding is involved, are funds approved within the current budget?

No

Amount Requested:

163,800.00

Source of Funds:

Department of Water Resources Capital Projects Fund

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
☐ Ecosystem Restoration Request For Funds	Resolution

- USACE Letter Requesting Additional Funds
- 2014 Project Partnership Agreement

Backup Material
Backup Material

RESOLUTION PR-2017 - ____

FLAT CREEK ECOSYSTEM RESTORATION PROJECT ADDITIONAL FUNDING

WHEREAS, the City of Gainesville (“the City”) wishes to preserve and protect the water quality of Lake Lanier and other local bodies of water as a good steward of our water resources; and

WHEREAS, in 2008 the City updated its Watershed Management Plan and developed a Ecosystem Restoration Plan with technical overview from both the Georgia Environmental Protection Division (GA EPD) and the U. S. Army Corps of Engineers (the “Corps of Engineers”); and

WHEREAS, both the City’s Watershed Management Plan and Ecosystem Restoration Plan call for restoration and retrofit of various streams in our sewer service area to restore stream habitat and lessen the effects of urban runoff to benefit water quality and control the volume of stormwater runoff; and

WHEREAS, on September 24, 2014 the City executed a Project Partnership Agreement with the Corps of Engineers which was authorized by Resolution PR-2011-32 on September 20, 2011; and

WHEREAS, the City recognizes Section 206 projects are funded 65% by the Federal Sponsor with a 35% non-federal match to be provided by the City; and

WHEREAS, the Project Partnership Agreement estimated the total cost of the project to be \$1,916,000 the City therefore would be responsible for approximately \$670,600; and

WHEREAS, the Project Partnership Agreement required an initial payment of \$386,600 to initialize the agreement with the Corps of Engineers for this stream restoration project, with the balance of the match paid upon completion of the project; and

WHEREAS, in June 2017 the Corps of Engineers issued a request for proposals, which were received and reviewed. The proposal they have selected is the lowest bid and the Corps of Engineers is prepared to award the construction phase of the project. However, due to the elapsed time to proceed with this project, the cost has increased by \$472,000.00, which requires an additional \$163,000.00 from the Non-Federal partner in order to complete project.

NOW, THEREFORE, BE IT RESOLVED that the governing body for the City of Gainesville hereby authorizes additional funding in the amount of \$163,000.00 from the Department of Water Resources Capital Projects Fund and/or other funding sources as required to complete this project to allow the Corps of Engineers to award the construction phase for this stream restoration project.

BE IT FURTHER RESOLVED THAT the Mayor, City Manager and City Attorney are authorized to sign documents that may be necessary to complete this project.

Adopted this ____ day of _____, 2017.

FLAT CREEK ECOSYSTEM RESTORATION PROJECT ADDITIONAL FUNDING

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

Denise O. Jordan, City Clerk



DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2288
MOBILE, ALABAMA 36628-0001

July 20, 2017

REPLY TO
ATTENTION OF

Plan Formulation Branch
Planning and Environmental Division

Mr. Horace Gee
City of Gainesville
Environmental Services Administrator
2641 Old Flowery Branch Road
Gainesville, Georgia 30504

Dear Mr. Gee:

Reference our previous correspondence dated July 16, 2017, regarding funds needed for to construct the Flat Creek Watershed Aquatic Ecosystem Restoration Project. Based on a recent estimate, including bid amount, the total project cost is now estimated to be \$2,384,000. The Project Partnership Agreement (PPA) executed between the City of Gainesville and the U.S. Army Corps of Engineer requires that funds for this project be shared at a rate of 65 percent Federal and 35 percent non-Federal. Based on that division, the Federal share is \$1,549,600 and the non-Federal share is \$834,400. In order to award the project for construction, additional Federal and non-Federal funds are needed. Thus far, we have received \$421,600 in non-Federal cash and have approved credit for Lands, Easements, Rights-of-way, and Disposal Areas in the amount of \$54,000. The balance needed to satisfy the non-Federal requirement is \$358,800. In accordance with the PPA, we are requesting that you forward a check totaling \$358,800 for the non-Federal match. The check should be made payable to:

FAQ, USAED, Mobile

To the following address:

U.S. Army Corps of Engineers
ATTN: PD-FP (Darnell)
Post Office Box 2288
Mobile, Alabama 36628

If you have any questions regarding this matter, please contact Mr. George Darnell at (251) 690-3240 or email at George.R.Darnell@usace.army.mil

Sincerely,

Curtis M. Flakes
Chief, Planning and Environmental
Division

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF GAINESVILLE, GEORGIA
FOR
DESIGN AND CONSTRUCTION
OF THE
FLAT CREEK WATERSHED AQUATIC ECOSYSTEM RESTORATION PROJECT

THIS AGREEMENT is entered into this 30TH day of SEPTEMBER 2014, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Mobile District and the City of Gainesville, Georgia (hereinafter the "Non-Federal Sponsor"), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, design and construction of the Flat Creek Watershed Aquatic Ecosystem Restoration Project for aquatic ecosystem restoration (hereinafter the "*Project*", as defined in Article I.A. of this Agreement) at Hall County, Georgia in the Chattahoochee River Basin was approved by the Director of Programs, South Atlantic Division on December 9, 2011, pursuant to the authority contained in Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330; hereinafter "*Section 206*");

WHEREAS, performance of *monitoring* (as defined in Article I.O. of this Agreement) was approved as part of the *Project*;

WHEREAS, Section 206 provides that \$50,000,000 in Federal funds are authorized to be appropriated for each *fiscal year* to carry out projects pursuant to Section 206 and no more than \$10,000,000 in Federal funds may be allotted for a project at any single locality;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Partnership Agreement (hereinafter the "*Agreement*") for design and construction of the *Project*;

WHEREAS, Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330) specifies the cost-sharing requirements applicable to the *Project*;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project,

or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement; and

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS

A. The term "*Project*" shall mean Flat Creek Watershed Aquatic Ecosystem Restoration as generally described in the Detailed Project Report, Flat Creek Watershed Aquatic Ecosystem Restoration, dated September 2011 and approved by the Director of Programs, South Atlantic Division on December 9, 2011.

B. The term "*total project costs*" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design and construction of the *Project* and the *pre-PPA planning and design costs* incurred by the Government. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's *pre-PPA planning and design costs* and the Government's design costs incurred after the effective date of this Agreement; the Government's costs of preparation of environmental compliance documentation in accordance with Article II.A.2. of this Agreement; the Government's engineering and design costs during construction; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government's actual construction costs; the Government's costs of *monitoring* in accordance with Article II.I. and Article II.J. of this Agreement; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to

Article II.B.3. of this Agreement; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.H.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "*period of design and construction*" shall mean the time from the effective date of this Agreement to the date that construction and *monitoring* of the *Project* are complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*financial obligations for design and construction*" shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. and Article II.C.2. of this Agreement to *financial obligations for design and construction*, as projected by the Government.

F. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

G. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

H. The term "*functional portion of the Project*" shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, Mobile District (hereinafter the "District Engineer") in writing, although the remainder of the *Project* is not complete.

I. The term "*betterment*" shall mean a difference in the design or construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the design or construction of that element. The term does not include any design or construction for features not included in the *Project* as defined in paragraph A. of this Article.

J. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

K. The term “*Section 206 Project Limit*” shall mean the \$10,000,000 statutory limitation on the Government’s financial participation in the planning, design, and construction of the *Project* as specified in Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330).

L. The term “*Section 206 Annual Program Limit*” shall mean the statutory limitation on the Government’s annual appropriations for planning, design, and construction of all projects implemented pursuant to Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330). As of the effective date of this Agreement, such limitation is \$50,000,000.

M. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

N. The term “*pre-PPA planning and design costs*” shall mean all costs incurred by the Government prior to the effective date of this Agreement for planning and design of the *Project*.

O. The term “*monitoring*” shall mean activities, including the collection and analysis of data, that are necessary to determine if predicted outputs of the *Project* are being achieved.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall design and construct the *Project*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for design of the *Project* or commence design of the *Project* using the Government’s own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall develop and coordinate as required, an Environmental Assessment and Finding of No Significant Impact or an Environmental Impact Statement and Record of Decision, as necessary, to inform the public regarding the environmental impacts of the *Project* in accordance with the National Environmental

Policy Act of 1969 (42 U.S.C. 4321–4347; hereinafter “NEPA”). However, the Government shall not issue the solicitation for the first construction contract for the *Project* or commence construction of the *Project* using the Government’s own forces until all applicable environmental laws and regulations have been complied with, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341).

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of design or construction using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

4. At the time the District Engineer furnishes the contractor with the Government’s Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall contribute 35 percent of *total project costs* in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Project*.

2. The Non-Federal Sponsor shall provide funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor’s required share of 35 percent of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required share: (a) the value of the Non-Federal Sponsor’s contributions under paragraph B.1. of this Article as determined in accordance with Article IV of this Agreement; and (b) the value of the

Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds and as limited by the *Section 206 Project Limit* and the *Section 206 Annual Program Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 35 percent of *total project costs* if the Government determines at any time that the collective value of the following contributions has exceeded 35 percent of *total project costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article as determined in accordance with Article IV of this Agreement; (b) the value of the Non-Federal Sponsor's contributions under paragraph B.2. of this Article; and (c) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *Project*, perform any remaining *relocations* necessary for the *Project*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* on behalf of the Non-Federal Sponsor. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Project* is limited by the following provisions of this paragraph.

1. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

2. In accordance with Section 206 of the Water Resources Development Act of 1996, Public Law 104-303, as amended (33 U.S.C. 2330), the Government's total financial obligations for planning, design, and construction of the *Project* (except for costs incurred on behalf of the Non-Federal Sponsor in accordance with paragraph H. of this Article) shall not exceed the *Section 206 Project Limit*. Notwithstanding any other

provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this limit and shall pay any such costs in accordance with Article VI.B. of this Agreement.

3. If the Government determines that the total amount of Federal funds provided by Congress for all projects implemented pursuant to Section 206 has reached the *Section 206 Annual Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Project* within the *Section 206 Annual Program Limit* will not be sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project* within the *Section 206 Annual Program Limit*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

D. When the District Engineer determines that, except for *monitoring*, the entire *Project*, or a *functional portion of the Project*, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy of all final as-built drawings for the entire *Project* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsor.

E. Upon notification from the District Engineer in accordance with paragraph D. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or the *functional portion of the Project* as the case may be, in accordance with Article VIII of this Agreement.

F. Upon the District Engineer's determination that, except for *monitoring*, the entire *Project* is complete, the Government shall conduct an interim accounting, in

accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor. Further, upon conclusion of the *period of design and construction* the Government shall amend the interim accounting to complete the final accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

G. The Non-Federal Sponsor shall not use *Federal program funds* to meet any of its obligations for the *Project* under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used to carry out the *Project*.

H. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, one or more of the services (hereinafter the “additional work”) described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

2. Inclusion of *betterments* in the design or construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

I. Prior to completion of construction of the *Project*, the Government, in consultation with the Non-Federal Sponsor and, as appropriate, other concerned agencies, shall finalize the plan for *monitoring* of the *Project*. The *monitoring* plan shall describe the specific parameters to be monitored; how these parameters relate to achieving the desired outcomes; methods for measuring those parameters; frequency and duration of *monitoring* of the *Project*; criteria for measuring the success of the *Project*; preparation and distribution of *monitoring* reports and other coordination requirements; and estimated *monitoring* costs. As of the effective date of this Agreement, the costs of *monitoring* for the *Project* are estimated to be \$76,000.

J. Upon providing notification to the Non-Federal Sponsor that the *Project* is complete in accordance with paragraph D. of this Article, the Government shall perform *monitoring* of the *Project* in accordance with the *monitoring* plan for a period of 5 consecutive years from the date of such notification. The Government's performance of *monitoring* shall be concurrent with the Non-Federal Sponsor's performance of operation, maintenance, repair, rehabilitation, and replacement for the completed *Project*. The *monitoring* of the *Project* by the Government shall end prior to the expiration of such 5 year period upon the occurrence of either of the following events: (1) the award of the next contract for *monitoring* of the *Project*, or continuation of *monitoring* of the *Project* using the Government's own forces, would result in the costs incurred for *monitoring* of the *Project* exceeding 1 percent of the amount equal to *total project costs* minus the costs for *monitoring* of the *Project*; or (2) the District Engineer determines that continued *monitoring* of the *Project* is not necessary.

K. The Non-Federal Sponsor shall prevent obstructions or encroachments on the *Project* (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on *Project* lands, easements, and rights-of-way or the addition of facilities which might reduce the outputs produced by the *Project*, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

L. The Non-Federal Sponsor shall not use the *Project*, or the lands, easements, and rights-of-way required pursuant to Article III of this Agreement, as a wetlands bank or mitigation credit for any other project.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way

required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government initiating construction of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the *period of design and construction*, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions.

D. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in

49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall include in *total project costs* and afford credit toward the Non-Federal Sponsor's share of *total project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement; for the value of the *relocations* that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement. However, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using *Federal program funds* unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used to carry out the *Project*.

B. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including such value in *total project costs* and for determining the amount of credit to be afforded or reimbursement to be provided in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded or reimbursement to be provided in accordance with this Agreement and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this

Agreement, the Non-Federal Sponsor, prior to instituting such proceedings, shall submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the Non-Federal Sponsor for

items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement also shall include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsor, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of Georgia would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the

improvements, but shall not include any costs due to *betterments*, as determined by the Government.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit or reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

G. Where the Government, on behalf of the Non-Federal Sponsor pursuant to Article II.H.1. of this Agreement, acquires lands, easements, or rights-of-way, performs *relocations*, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total project costs* and the amount of credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsor in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsor in accordance with the terms and conditions agreed upon in writing pursuant to Article II.H.1. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of design and construction*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of design and construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the *period of design and construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all necessary environmental coordination and documentation; plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or *functional portions of the Project*; preparation of the proposed OMRR&R Manual; finalization of the *monitoring* plan; performance of *monitoring*; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations to the District Engineer on matters related to the *Project* that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for design and construction of the *Project* has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Project Coordination Team shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$1,916,000; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be \$284,000; the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement is projected to be \$0; the Non-Federal Sponsor's contribution of funds required by Article II.B.2. of this Agreement is projected to be \$386,600; the Non-Federal Sponsor's contribution of funds required by Article II.C.2. of this Agreement is projected to be \$0; the *non-Federal proportionate share* is projected to be 23.69 percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.B.3. of this Agreement is projected to be \$0; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement are projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By October 15, 2014 and by each quarterly anniversary thereof until the conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement; the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement; the Non-Federal Sponsor's total contribution of funds required by Article II.B.2. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.C.2. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsor's total contribution of funds required by Article XVII.B.3. of this Agreement; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.H. of this Agreement.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Article II.B.2., Article II.C.2., and Article XVII.B.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 90 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for design of the *Project* or commencement of design of the *Project* using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Article II.B.2., Article II.C.2., and Article XVII.B.3. of this Agreement. Not later than

such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to “FAO, USAED, Mobile” to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for design and construction* incurred prior to the commencement of the *period of design and construction*; (b) the *non-Federal proportionate share of financial obligations for design and construction as financial obligations for design and construction* are incurred; and (c) the Non-Federal Sponsor’s share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor’s share of such financial obligations, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon the District Engineer’s determination that, except for *monitoring*, the entire *Project* is complete and all relevant claims and appeals and eminent domain proceedings have been resolved, the Government shall conduct an interim accounting and furnish the results to the Non-Federal Sponsor. Further, upon conclusion of the *period of design and construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall amend the interim accounting to complete the final accounting and furnish the results to the Non-Federal Sponsor. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting or amend the previous interim accounting, as applicable, and furnish the Non-Federal Sponsor with written notice of the results of such interim or amended interim accounting, as applicable. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party’s required share thereof, and each party’s total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required shares of *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Mobile" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by the *Section 206 Project Limit* and the *Section 206 Annual Program Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.H. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 90 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations incurred for additional work and furnish the Non-Federal Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of such financial obligations for additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of such financial obligations for additional work and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of such financial obligations for additional work to complete the final accounting of such financial obligations for additional work and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsor's contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the Government's total financial obligations for additional work exceed the total contribution of funds provided by the Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, Mobile" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the Non-Federal Sponsor for additional work exceeds the Government's total financial obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.D. of this Agreement and for so long as the *Project* remains authorized, the Non-Federal Sponsor, pursuant to Article II.E. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project* or *functional portion of the Project*, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such written notice by the Government, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design, construction, *monitoring*, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books,

records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the *Project* is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the *Project*.

B. In the event future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsor determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsor agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsor on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsor to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsor reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsor provides funds necessary to pay for cleanup and response costs and otherwise discharges its responsibilities under Article XIV.C. of this Agreement; 3)

the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. If after completion of the design portion of the *Project* the parties mutually agree in writing not to proceed with construction of the *Project*, the parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement.

E. In the event that this Agreement is terminated pursuant to this Article or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.2., Article II.C.2., and Article XVII.B.3. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

F. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article II.C. or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675; hereinafter "CERCLA"), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with

Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsor and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of *total project costs*. In the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain,

repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Horace Gee
City of Gainesville
Environmental Services Administrator
2641 Old Flowery Branch Road
Gainesville, Georgia 30504

If to the Government:

District Commander
U.S. Army Corps of Engineers, Mobile District
P.O. Box 2288
Mobile, Alabama 36628

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties. Any costs incurred by the Government for such work shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total project costs*, up to the statutory limit of one percent of the *Section 206 Project Limit*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements for aquatic ecosystem restoration, as follows: 35 percent will be borne by the Non-Federal Sponsor and 65 percent will be borne by the Government.

C. If, during its performance of *relocations* or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the *relocation* or construction of the improvement that is related to such discovery until the Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

CITY OF GAINESVILLE, GEORGIA

BY: Jon J. Chytka
JON J. CHYTKA
Colonel, U.S. Army
District Commander
Mobile District

BY: C. Danny Dunagan, Jr.
C. Danny Dunagan, Jr.
Mayor
City of Gainesville, Georgia

DATE: 9/30/14

DATE: 9/29/14

Approved as to Form:

James E. Palmour III
City Attorney, City of Gainesville

ATTEST:

Denise O. Jordan
City Clerk, City of Gainesville



CERTIFICATE OF AUTHORITY

I, JAMES E. PALMOUR III, do hereby certify that I am the principal legal officer of the City of Gainesville, Georgia, that the City of Gainesville, Georgia is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Gainesville, Georgia in connection with the Flat Creek Watershed Aquatic Ecosystem Restoration Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the City of Gainesville, Georgia have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

24TH day of September, 2014.

James E. Palmour III

James E. Palmour III
Attorney, City of Gainesville, Georgia

ATTEST:

Denise O. Jordan

City Clerk, City of Gainesville



ATTEST:

CERTIFICATION REGARDING LOBBYING

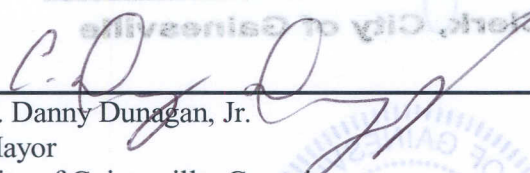
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

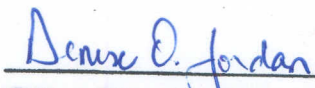
(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.


C. Danny Dunagan, Jr.
Mayor
City of Gainesville, Georgia

DATE: 9/27/14

ATTEST:


City Clerk, City of Gainesville



CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 8/4/2017

Presenter: Bryan Lackey

Item of Business: Resolution: Establish Boundaries Related to Downtown Dining District

Meeting Date: 8/10/2017

Purpose of Request:

Approval of a resolution establishing the newly revised boundaries related to the new Downtown Dining District.

History/Background:

With the approval of the amendments to City's Code Section 6-4-87(f)1, the City Council of Gainesville is required to adopt a Resolution setting the area of the Downtown Dining District.

Facts & Issues for Consideration:

Department Recommendation:

Approval of the proposed resolution upon adoption of the amendments to City's Code Section 6-4 entitled Alcoholic Beverages.

Department Director:

Bryan Lackey

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
☐ Downtown Dining District Boundaries	Resolution
☐ Downtown Dining District Area	Attachments/Exhibits

RESOLUTION BR-2017 - ____

Establish Boundaries Related to Downtown Dining District

WHEREAS, Section 6-4-87(f)1 entitled Alcoholic Beverages of the Code of Ordinances of the City of Gainesville, Georgia states that the area of the Downtown Dining District will be set by resolution of the governing body for the City of Gainesville; and

WHEREAS, the governing body will from time to time, review all areas and make changes as needed; and

WHEREAS, the governing body has reviewed the area on the attached map.

NOW, THEREFORE, BE IT RESOLVED THAT the governing body for the City of Gainesville hereby approves the area on the attached Downtown Dining District Map, of which this area shall be in effect until further resolution of the governing body.

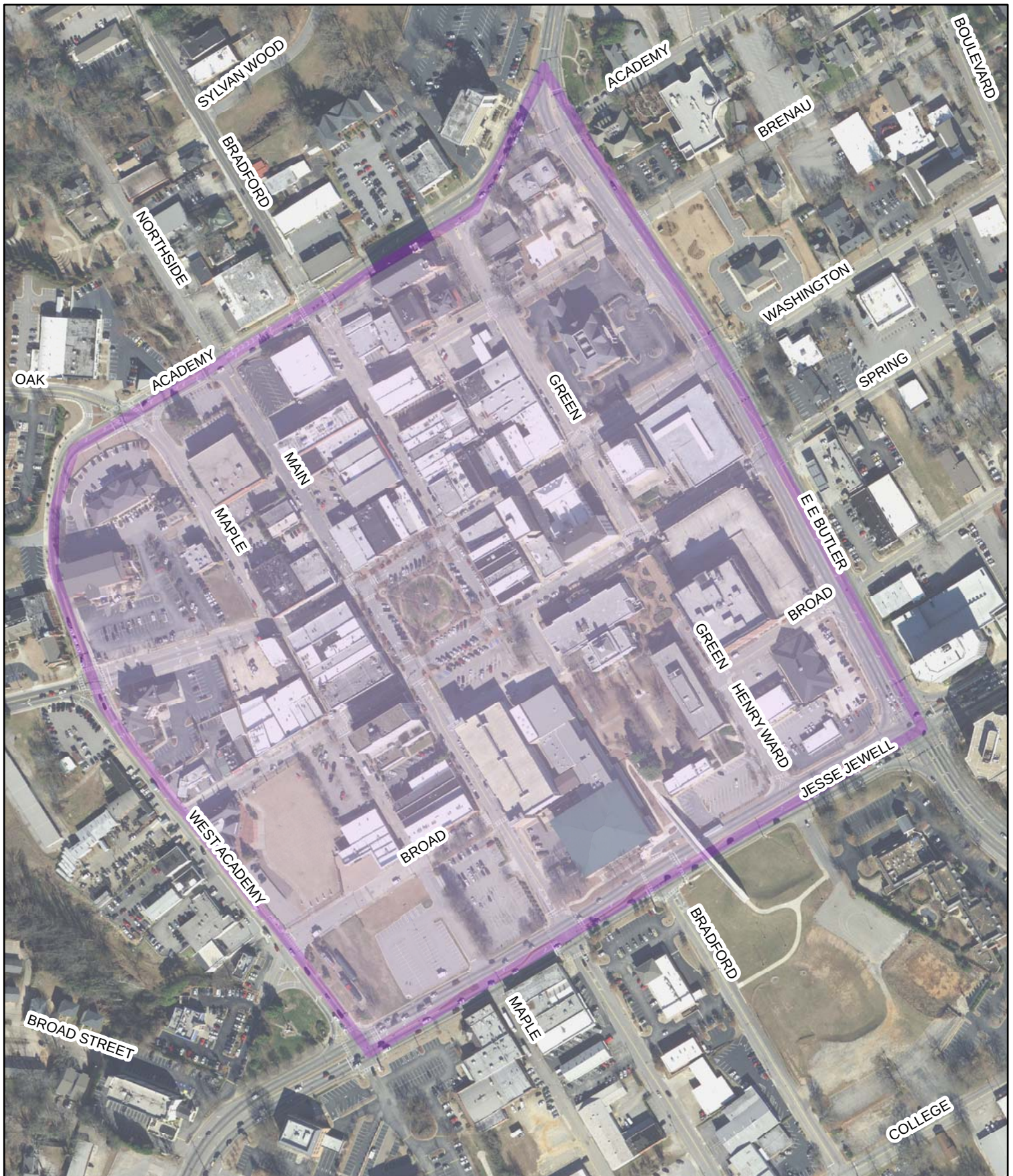
Adopted this ____ day of _____, 2017.

C. Danny Dunagan, Jr., Mayor

This is to certify that I am City Clerk of the City of Gainesville. As such, I keep its official records, including its minutes. In that capacity, my signature below certifies this resolution was adopted as stated and will be recorded in the official minutes.

ATTEST:

Denise O. Jordan, City Clerk



CITY OF GAINESVILLE
DOWNTOWN DINING DISTRICT



CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 8/6/2017
Presenter: Danny Dunagan
Item of Business: Appointment(s): Chattahoochee Golf Course Advisory Committee
Meeting Date: 8/10/2017

Purpose of Request:

The purpose of this request is to discuss expired terms.

History/Background:

CGCAC members follow guidelines set forth in the City Charter, Code of Ordinances and Business Resolution 2010-23. They are allowed to serve two successive three-year terms and continue to serve until a successor is appointed.

Facts & Issues for Consideration:

Nominations from the Chattahoochee Country Club are forthcoming for three of the positions to be addressed.

Department Recommendation:

Department Director:

Danny Dunagan

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
 CGCAC Members	Backup Material

CHATTAHOOCHEE GOLF COURSE ADVISORY COMMITTEE

NOMINATED BY:	LAST NAME	FIRST NAME	APPOINTED/ TERM BEGAN	REAPPOINTED	EXPIRES
CCC	Weschler	Gene	6/5/2012 UE	12/16/2014	7/1/2017
City Council	Turner	Joe	6/22/2010	3/4/2014	3/4/2017
City Council	Kiker	AJ	6/22/2010	3/4/2014	3/4/2017
City Council	Kolesar	Joe	6/22/2010	8/5/2014	8/5/2017
City Council	Pledger	Ed	6/22/2010	3/4/2014	3/4/2017
City Council	Hulsey	Mike	3/4/2014		3/4/2017
CCC	Hicks	Will	6/22/2010	12/16/2014	7/1/2017
CCC	Kelly (Chairperson)	Fred	11/1/2016		11/1/2019
CCC	Valentine	Dick	6/22/2010	12/16/2014 10/20/2015	7/1/2018
CCC	Peeples	Will	12/16/2014		7/1/2017
Ex-Officio	Thompson	Zack	1/10/2017		1/9/2018

TERM: Three year terms

CONTACT: Rodger Hogan, Golf Course

Re-established: June 22, 2010. Original Committee began January 1, 2005

NOTES: First appointees serve the initial term as shown. All successors serve 3 year terms.
Members continue to serve until a successor is appointed.
Staggered terms for December 2014 appointments.

UPDATED: 1/12/17 ag

CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 8/6/2017
Presenter: Danny Dunagan
Item of Business: Appointment(s): Gainesville-Hall '96 Board
Meeting Date: 8/10/2017

Purpose of Request:

The purpose of this request is to update the membership list in regards to the Gainesville Convention & Visitors Bureau representative.

History/Background:

The Communications and Tourism Director has served as the interim representative.

Facts & Issues for Consideration:

Department Recommendation:

Department Director:

Danny Dunagan

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
 Gainesville-Hall '96 Members	Backup Material

GAINESVILLE- HALL '96

POST	ORGANIZATION	LAST NAME	FIRST NAME
	City of Gainesville	Bruner	Ruth
At Large / Chair		Collins	Mimi
Secretary	Lake Lanier CVB	Dickson	Stacey
Chamber	GHCC	Dunlap	Kit
At Large / Treasurer		Bell	Mark
At Large		Fowler	Rob
Hall County	Hall County Government	Gibbs	Scott
	City of Gainesville - CVB	Felts	Catiel
	Lanier Canoe & Kayak Club	Braff	Mike
Vice Chair	Lake Lanier Rowing Club	Sutton	Phillip
At Large		Truelove	Dixie
Ex Officio	City of Gainesville - P&R	Cooper	Melvin
Ex Officio	Hall County - Parks & Leisure	Little	Mike
Ex Officio	Lake Lanier Islands Devel. Authority	Donohue	Bill
Ex Officio	Lake Lanier Rowing Club	Millard	Robin
Advisor		Mathis	Jim
Advisor		Gilliam	Steve
At Large		O'Rourke	Tate
Ex Officio	Corp.	Bagget	Nicholas
At Large		Barnett	David
At Large		Young	Rick
Virtue of Position	Venue Manager	House	Morgan

TERM: Three-Year Terms - (members are limited to three consecutive terms)
Initial terms were staggered beginning July 2013

CONTACT: Robyn Lynch Venue Manager, LLOV P. O. Box 369, Gainesville 30503 770.540.6307 morgan@lakelanierolympicvenue.org	Meg Nivens GHCC - Vision 2030 P.O. Box 374, Gainesville 30503 mnivens@ghcc.com
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UPDATED: 8/2/17 dj

CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 8/6/2017
Presenter: Danny Dunagan
Item of Business: Appointment(s): Main Street Gainesville Advisory Committee
Meeting Date: 8/10/2017

Purpose of Request:

The purpose of this request is to address terms that have expired.

History/Background:

MSGAB appointees serve two-year terms. They follow the guidelines of the City Charter and Code of Ordinances as well as Business Resolution 2010-02. Members can serve successive terms. When terms expire, members continue to serve until a successor is appointed.

Facts & Issues for Consideration:

Thea DuBose is not available to serve another term.

Department Recommendation:

Department Director:

Danny Dungan

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
 MSGAB Members	Backup Material

MAIN STREET GAINESVILLE ADVISORY BOARD

POST	LAST NAME	FIRST NAME	APPOINTED	REAPPOINTED	EXPIRES
Secretary Post 1	Kroll McClure	Amanda	7/5/2011	7/16/2013 6/16/2015	6/30/2017
Vice Chairman Post 2	Fowler	Brett	7/5/2011	7/16/2013 6/16/2015	6/30/2017
Post 3	DuBose	Thea	8/4/2015		6/30/2017
Post 4	McCall	Jennifer	9/6/2016		6/30/2018
Post 5	Everett	Jason	7/16/2013	8/5/2014 7/19/2016	6/30/2018
Post 6	Kunzer	Art	2/2/2010	7/16/2013 8/5/2014 7/19/2016	6/30/2018
Post 7	Jaeger	Dale	2/1/2011 UE	7/16/2013 8/5/2014 7/19/2016	6/30/2018
Ex-Officio	Bruner	Ruth	1/10/2017		1/9/2018

TERM: 2 year terms

CONTACT: Catiel Felts, Communications and Tourism Director

NOTES: Appointments made by the Governing Body
All Directors shall assume their office/duties in July of each year (except for the initial Board).

UPDATED: 8/6/17 dj

CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 8/6/2017
Presenter: Danny Dunagan
Item of Business: Appointment(s): Metropolitan Planning Organization Citizens Advisory Committee
Meeting Date: 8/10/2017

Purpose of Request:

The purpose of this request is to fill a vacant seat.

History/Background:

Members of the Committee serve two-year terms. They follow the guidelines of the City Charter and Code of Ordinances as well as the bylaws of the Committee.

Facts & Issues for Consideration:

Jerry Castleberry resigned from the Committee. A replacement is needed to complete the unexpired term.

Department Recommendation:

Department Director:

Danny Dunagan

If funding is involved, are funds approved within the current budget?

N/A

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:

ATTACHMENTS:

Description	Type
 MPOCAC Members	Backup Material

METROPOLITAN PLANNING ORGANIZATION - CITIZENS ADVISORY COMMITTEE

POST	LAST NAME	FIRST NAME	APPOINTED	REAPPOINTED	EXPIRES
Ward 1	Propes	Connie	7/5/2011	3/19/2013 8/18/2015 6/6/2017	6/30/2020
Ward 2	Stoner	Leesa	6/6/2017		6/30/2020
Ward 3	Castleberry	Jerry	8/18/2015	6/6/2017	6/30/2020
RESIGNED, per Mayor Dunagan 7/26/17					
Ward 4	Lipscomb	Berlinda	12/2/2003	4/3/2007 7/5/2011 3/19/2013 7/19/2016	6/30/2019
Ward 5	Jardine	Mary	7/5/2011	3/19/2013 7/1/2014 6/6/2017	6/30/2020

TERMS: Three year terms as of 6/6/17

Two year terms *Wards 2, 4, and 5 are 3 year terms

NOTES: Part of Gainesville-Hall MPO (GHMPO).

CONTACT: Rusty Ligon, Community Development Director
Srikanth Yamala, Hall County Planning Director

UPDATED: 6/13/17 ag

CITY OF GAINESVILLE

WORKSESSIONREQUEST

Date Submitted: 8/1/2017

Presenter:

Item of Business: Ex-Officio Report(s)

Meeting Date: 8/10/2017

Purpose of Request:

For elected officials to provide Ex-Officio reports on applicable Board/Committees.

History/Background:

Facts & Issues for Consideration:

Department Recommendation:

Department Director:

If funding is involved, are funds approved within the current budget?

Amount Requested:

Source of Funds:

Finance Comments:

Administrative Comments:
