



**February 19th, 2019 5:30 pm**

1. Call to Order by Mayor Jonathan McCollar
2. Invocation and Pledge of Allegiance by Councilman Derek Duke
3. Recognitions/Public Presentations
  - A) Presentation of Development Activity from the City of Statesboro's Planning & Development Department
4. Public Comments (Agenda Item):
5. Consideration of a Motion to approve the Consent Agenda
  - A) Approval of Minutes
    - a) 02-05-2019 Council Minutes
  - B) Consideration of a motion for the surplus and disposition of equipment and parts in the Public Works & Engineering Department and in the Public Utilities Department.
6. Public Hearing and Consideration of a Motion to Approve: **APPLICATION V 19-01-01**: Frontline Internal Medicine, LLC requests a variance from Article X, Section 1003(D) to reduce the required left side yard setback in order to allow for an expansion of medical office space on 0.27 acres of property located at 6 Lester Road (Tax Parcel MS71 000037 000).
7. Public Hearing and Consideration of a Motion to Approve: **APPLICATION V 19-01-02**: Frontline Internal Medicine, LLC requests a variance from Article X, Section 1003(D) to reduce the required right side yard setback in order to allow for an expansion of medical office space on 0.27 acres of property located at 6 Lester Road (Tax Parcel MS71 000037 000).
8. Consideration of a Motion to Approve a Memorandum of Understanding between City, Development Authority of Bulloch County, and the Blue Mile Foundation that sets out the parties' respective responsibilities in procurement of loan proceeds and development of the Blue Creek Project.
9. Consideration of a Motion to Approve Assignment/ Assumption Agreement with the Development Authority of Bulloch County (DA) as to the following attached contracts:
  - A) Loan Agreement between DA and Georgia Environmental Finance Authority (GEFA) regarding a \$15,500,000 loan for installation of the Blue Creek public component. City will pay \$155,000 origination fee and be fully liable with full faith and credit pledged as a taxing authority to pay off the loan. Loan is a line of credit and withdrawal of some amount must be done within six months of closing.

- B) Management Contract between DA and Blue Mile Foundation (BMF) as regarding the management of the Blue Creek public component by BMF. Only term of the Management Contract that survive assignment will be that the City compensate a Project Coordinator contracted by BMF for at least one year.
10. Consideration of a Motion to Approve an Environmental Facility Agreement with the Development Authority of Bulloch County (DA) as to City agreeing to repay \$15,500,000 GEFA loan that DA intends to borrow. In essence, City would act as co-signer of the loan taken out by DA. This agreement shall terminate upon the Assignment/Assumption Contract in the previous agenda item.
  11. Consideration of a Motion to award the purchase of a truck for the Streets Division in Public Works & Engineering to Roberts Truck Center in the amount of \$29,280.00. This will replace an existing truck that, if approved, will be brought to Council to be declared as surplus once the new truck is placed into service. Funding is provided by the GMA Lease Pool.
  12. Consideration of a Motion to award the purchase of a truck for the Parks Division in Public Works & Engineering to Roberts Truck Center in the amount of \$29,280.00. This will replace an existing truck that, if approved, will be brought to Council to be declared as surplus once the new truck is placed into service. Funding is provided by the GMA Lease Pool.
  13. Consideration of a Motion to award a Professional Services Contract to Nutter & Associates in the amount of \$25,050.00 to conduct an Ammonia Recalculation Procedure, to be paid for with funds from Water Sewer system revenues.
  14. Consideration of a Motion to Approve a sole source purchase of five (5) Smart Cover Sewer Monitors in the amount of \$28,642.00 with funds approved as part of the 2019 CIP Budget item #WWD-159.
  15. Other Business from City Council
  16. City Managers Comments
  17. Public Comments (General)
  18. Consideration of a Motion to enter into Executive Session to discuss “Personnel Matters” “Real Estate” and/or “Potential Litigation” in accordance with O.C.G.A 50-14-3(b)
  19. Consideration of a Motion to Adjourn



CITY OF STATESBORO  
COUNCIL MINUTES  
FEBRUARY 5<sup>th</sup>, 2019

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Regular Meeting                      50 E. Main St. City Hall Council Chambers                      9:00 AM

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1. **CALL TO ORDER**

Mayor Jonathan McCollar called the meeting to order.

2. **INVOCATION AND PLEDGE**

Councilman Jeff Yawn gave the Invocation and Pledge of Allegiance.

**ATTENDENCE**

Attendee Name	Title	Status	Arrived
Jonathan McCollar	Mayor	Present	
Phil Boyum	Councilmember	Present	
Sam Jones	Councilmember	Present	
Jeff Yawn	Councilmember	Present	
John Riggs	Councilmember	Present	
Derek Duke	Councilmember	Present	

Other staff present was: City Manager Randy Wetmore, City Attorney Cain Smith and City Clerk Sue Starling

3. **Recognitions/Public Presentations**

A) Director of Utilities, Steve Hotchkiss will give an “Update on emergency repairs for well #9”.

Director of Utilities Steve Hotchkiss updated Council on the repairs that needed to be done on well #9.

B) Presentation of the “Arbor Day” Proclamation. Accepting the proclamation will be Wesley Parker as well as others from the Tree Board. Georgia Forestry Chief Ranger (Bulloch County) Georgia Forestry Chief Ranger (Bulloch County) Doug Chassereau will present the Mayor and Tree Board with a Tree City USA flag and recognize the City of Statesboro for its participation in the Tree City USA Program.

Mayor McCollar read the Arbor Day proclamation and presented it to the members of the Tree Board. Wesley Parker also played City Council jeopardy and Councilman Duke won the prize. Alex Ballard was also introduced as the new member of the Community Forester crew.

Doug Chassereau presented Mayor and Council with a flag. He stated the City has received the Tree City USA Flag for 26 years.

C) Recognition of City of Statesboro Advanced Patrol Officers (APO) Kyle Briley and Nick Davis for receiving a Community Service Award.

Police Chief Mike Broadhead presented Advanced Patrol Officers (APO) Kyle Briley and Nick Davis with an award for their contributions to the community.

D) Presentation of Employee of the Quarter for the City of Statesboro  
This item was removed from the agenda

4. **Public Comments (Agenda Item):** None

5. **Consideration of a Motion to approve the Consent Agenda**

A) Approval of Minutes

a) 01-15-2019 Council Minutes

B) Statesboro Police Department request to surplus 12 vehicles in the Statesboro PD fleet.

A motion was made to approve the consent agenda in its entirety as written.

**RESULT:**

Approved (Unanimous)

**MOVER:**

Councilman Jeff Yawn

**SECONDER:**

Councilman John Riggs

**AYES:**

Boyum, Jones, Yawn, Riggs, Duke

**ABSENT:**

6. **Consideration of a Motion to approve the City of Statesboro's participation in the" Anti-Bullying Day" set for July 27th, 2019.**

**RESULT:**

Approved (Unanimous)

**MOVER:**

Councilman Derek Duke

**SECONDER:**

Councilman John Riggs

**AYES:**

Boyum, Jones, Yawn, Riggs, Duke

**ABSENT:**

7. **Consideration of a Motion to Approve Award of Contract to A.D. Williams Construction in the amount of \$129,164.00 for the Bulloch Street Detention Facility project. Funding is provided by Stormwater revenues.**

**RESULT:**

Approved (Unanimous)

**MOVER:**

Councilman Sam Jones

**SECONDER:**

Councilman Jeff Yawn

**AYES:**

Boyum, Jones, Yawn, Riggs, Duke

**ABSENT:**

8. **Consideration of a Motion to approve Resolution 2019-06: A Resolution Prohibiting Discriminatory Practices in Housing. Passage of this resolution is a requirement in the application for the 2019 Community Development Block Grant.**

**RESULT:**

Approved (Unanimous)



<b>MOVER:</b>	Councilman Phil Boyum
<b>SECONDER:</b>	Councilman Sam Jones
<b>AYES:</b>	Boyum, Jones, Yawn, Riggs, Duke
<b>ABSENT:</b>	

#### 9. Other Business from City Council

Mayor McCollar stated that Council would not move forward on the proposed work session of February 12<sup>th</sup>. Councilman Jones suggested the City to schedule an old tire pick up for at least 2 times a year. City Manager Wetmore stated they would update Council with a report in March. Councilman Riggs recognized the Police Department and the Impact Team.

#### 10. City Managers Comments

Interim City Manager Jason Boyles introduced William Cone as the new project manager for the TSPLOST Capital Project. Fire Chief Tim Grams updated Council on the ISO meeting. This meeting was to inform citizens of how the ISO rating in the five mile zones would affect the fire insurance rates. He also added that there would be 3 additional public meetings held on the next three Mondays at 6 pm in various locations.

#### 11. Public Comments (General) None

#### Consideration of a Motion to enter into Executive Session to discuss “Personnel Matters” “Real Estate” and/or “Potential Litigation” in accordance with O.C.G.A 50-14-3(b)

A motion was made to enter into Executive Session to discuss real estate.

<b>RESULT:</b>	Approved (Unanimous)
<b>MOVER:</b>	Councilman Phil Boyum
<b>SECONDER:</b>	Councilman John Riggs
<b>AYES:</b>	Boyum, Jones, Yawn, Riggs, Duke
<b>ABSENT:</b>	

At 9:42 am, the regular meeting was called back to order.

A motion was made to renew the lease between the City of Statesboro and the House of Representatives regarding office space in City Hall.

<b>RESULT:</b>	Approved (Unanimous)
<b>MOVER:</b>	Councilman John Riggs
<b>SECONDER:</b>	Councilman Jeff Yawn
<b>AYES:</b>	Boyum, Jones, Yawn, Riggs, Duke

**ABSENT:**

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**12. Consideration of a Motion to Adjourn**

A motion was made to adjourn the council meeting.

**RESULT:**

Approved (Unanimous)
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**MOVER:**

Councilman John Riggs
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**SECONDER:**

Councilman Jeff Yawn
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**AYES:**

Boyum, Jones, Yawn, Riggs, Duke
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**ABSENT:**

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The meeting was adjourned at 9:43 am.

# CITY OF STATESBORO



## COUNCIL

Phil Boyum, District 1  
Sam Jones, District 2  
Jeff Yawn, District 3  
John Riggs, District 4  
Derek Duke, District 5

Jonathan McCollar, Mayor  
Randy Wetmore, City Manager  
Sue Starling, City Clerk  
I. Cain Smith, City Attorney

50 EAST MAIN STREET • P.O. BOX 348  
STATESBORO, GEORGIA 30459-0348

**To:** Randy Wetmore, City Manager

**From:** Jason Boyles, Interim Assistant City Manager

**Date:** 2/13/19

**RE:** Asset Surplus and Disposition

**Policy Issue:** Purchasing Policy Section 3: Vehicle & Equipment  
Surplus and Disposition

### Recommendation:

Surplus and disposition of the following items in Public Works & Engineering:

- a) 1999 Rotary 12000 lb 4 post lift, model # SM 122-120
- b) 1996 Ammco 9000 lb 2 post lift, model # B2900
- c) 1992 ALM 9000lb 2 post lift, model 92
- d) 2008 Challenger 18000 lb 4 post lift, model # 47118E-06

Surplus and disposition of the following item in Public Utilities:

- a) 1996 A.A.A./Automotive Equipment Inc. 12000 lb 4 post lift, model TR-5L

Surplus and disposition of the attached list of equipment and parts in Public Works & Engineering.

### Background:

Staff in Public Works & Engineering and Public Utilities have provided the list of equipment above that have exceeded their useful life to the City. The attached list of mowers are scheduled for routine replacement and the parts listed are currently in the Fleet parts inventory and will become obsolete. These parts need to be declared surplus and sold with the mowers.

**Budget Impact:** Decrease in maintenance costs; increase in revenues for sale of assets

**Council Person and District:** N/A

**Attachments:** Equipment and parts list

## **Surplus Exmark Mowers and Misc Parts (February 2019)**

2006 Exmark Turf Ranger    Vin 566735    1312 hours

2007 Exmark Turf Ranger    Vin 5216042    1534 hours

Exmark Turf Ranger Front Deck (used for parts)

2015 Exmark Lazer S- Series Mower 52 inch    VIN 315634618    643 Hours

<u>Part Number</u>	<u>Desc</u>	<u>Count</u>
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>103-1026	BLADE BOLTS-----	111
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> 513208	BLADE WASHERS----	83
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> 513809	WHEEL BEARING-----	3
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> MISC.	IDLER SPRINGS-----	3
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> 1-543552-1	SPACER-----	1
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> 5435552	SPACER-----	1
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> 800346	SPACER BOLT-----	1
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> 603001	DECK ADJUSTMENT PIN----	2
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> 613107	SPINDLE SHAFT ---	2
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> 663574	SPINDLE SHAFT----	2
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> 543556	SPINDLE SHAFT-----	2
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> MISC.	DECK WHEELS-----	4
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> 554019	SPINDLE ASSEMBLY----	1
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> 614146	SPINDLE ASSEMBLY----	1
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> 554019	SPINDLE ASSEMBLY----	1
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> MISC.	PULLEYS ----	3
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> BOX OF	BLADES ----	5
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> BELTS----		5
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>103-2146	FILTER-----	4
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# CITY OF STATESBORO

## COUNCIL

Phil Boyum, District 1  
Sam Jones, District 2  
Jeff Yawn, District 3  
John Riggs, District 4  
Derek Duke, District 5



Jonathan M. McCollar, Mayor  
Randy Wetmore, City Manager  
Sue Starling, City Clerk  
I. Cain Smith, City Attorney

50 EAST MAIN STREET • P.O. BOX 348 • STATESBORO, GEORGIA 30459-0348

**To:** Randy Wetmore, City Manager and Sue Starling, City Clerk

**From:** Owen Dundee, City Planner II

**Date:** February 11, 2019

**RE:** February 19, 2019 City Council Agenda Items

**Policy Issue:** *Statesboro Zoning Ordinance: Variance Request*

**Recommendation:** Staff recommends approval of the variance requested by application V 19-01-01 with conditions.

**Background:** Frontline Internal Medicine, LLC requests a variance from Article X, Section 1003(D) to reduce the required left side yard setback in order to allow for an expansion of medical office space on 0.27 acres of property located at 6 Lester Road (Tax Parcel MS71 000037 000).

**Budget Impact:** None

**Council Person and District:** Boyum (District 1)

**Attachments:** Development Services Report V-19-01-01 & V-19-01-02.

# CITY OF STATESBORO

## COUNCIL

Phil Boyum, District 1  
Sam Jones, District 2  
Jeff Yawn, District 3  
John Riggs, District 4  
Derek Duke, District 5



Jonathan M. McCollar, Mayor  
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50 EAST MAIN STREET • P.O. BOX 348 • STATESBORO, GEORGIA 30459-0348

**To:** Randy Wetmore, City Manager and Sue Starling, City Clerk

**From:** Owen Dundee, City Planner II

**Date:** February 11, 2019

**RE:** February 19, 2019 City Council Agenda Items

**Policy Issue:** *Statesboro Zoning Ordinance: Variance Request*

**Recommendation:** Staff recommends approval of the variance requested by application V 19-01-02 with conditions.

**Background:** Frontline Internal Medicine, LLC requests a variance from Article X, Section 1003(D) to reduce the required right side yard setback in order to allow for an expansion of medical office space on 0.27 acres of property located at 6 Lester Road (Tax Parcel MS71 000037 000).

**Budget Impact:** None

**Council Person and District:** Boyum (District 1)

**Attachments:** Development Services Report V-19-01-01 & V-19-01-02.



# City of Statesboro-Department of Planning and Development

## DEVELOPMENT SERVICES REPORT

P.O. Box 348  
Statesboro, Georgia 30458

(912) 764-0630  
(912) 764-0664 (Fax)

<b>V 19-01-01 &amp; V 19-01-02</b> <b>ZONING VARIANCE REQUESTS</b> <b>6 LESTER ROAD – FRONTLINE INTERNAL MEDICINE EXPANSION</b>	
<b>LOCATION:</b>	6 Lester Road
<b>REQUEST:</b>	Variance from Article X Section 1003(D) to reduce the minimum right side yard setback and Variance from Article X Section 1003(D) to reduce the minimum left side yard setback.
<b>APPLICANT:</b>	Frontline Internal Medicine, LLC
<b>OWNER(S):</b>	Frontline Internal Medicine, LLC
<b>ACRES:</b>	0.27 Acres (11,761 Sq. Ft.)
<b>PARCEL TAX MAP #:</b>	MS71 000037 000
<b>COUNCIL DISTRICT:</b>	District 1 (Boyum)

Case # V 19-01-01 & V 19-01-02  
6 Lester Road  
Parcel: MS000037 000

The boundaries depicted on this map are approximate and should be used for reference only.

City of Statesboro  
Department of Planning and Development

### PROPOSAL& BACKGROUND:

The applicant is proposing the expansion of the existing 1,941 Sq. Ft. Frontline Internal Medicine Office building by the construction of an additional 1,891 Sq. Ft. two-story medical office space, with an Infusion Room, storage, and additional office space. In order to construct a larger medical office building at the same location, the applicant is requesting two (2) variances in order to reduce both side yard setbacks.

Therefore, the applicant requests the following:

- 1) Application **V 19-01-01**, a variance from Article X Section 1003 D to reduce the **right side yard setback from 15 feet to 12 feet**, and
- 2) Application **V 19-01-02**, a variance from Article X Section 1003 D to reduce the **left side yard setback from 15 feet to 12 feet**.

### SURROUNDING LAND USES/ZONING:

ZONING:		LAND USE:
<b>NORTH:</b>	R-3 (Medium Density Multiple Family Residential District)	Statesboro High School
<b>SOUTH:</b>	CR (Commercial Retail)	Wells Fargo Bank and Statesboro Family Practice Medical Offices
<b>EAST:</b>	CR (Commercial Retail)	Larry G. Hubbard Dentist Office
<b>WEST</b>	CR (Commercial Retail)	Statesboro Imaging Center (East GA Regional Medical Center)

The subject property is located in an area mostly surrounded by property with the CR (Commercial Retail) zoning district designation. The surrounding land uses include medical offices, Wells Fargo Bank, and Statesboro High School. (See **Exhibit A** –Location Map, **Exhibit B**—Future Development Map, & **Exhibit C**—Photos of Subject Site).

**ATTACHMENTS:** **Exhibit A** (Location Map), **Exhibit B** (Future Development Map) **Exhibit C** (Photos of Subject Site), **Exhibit D** (Proposed Site Plan) **Exhibit E** (Proposed Floor Plans), **Exhibit F** (Proposed Building Elevations).

## COMPREHENSIVE PLAN:

The *City of Statesboro Comprehensive Master Plan's* Future Development Map includes the subject site in the following character area:

<b><u>"Activity Centers/Regional Centers"</u></b>	
<b><i>Vision</i></b>	<b><i>Suggested Development &amp; Implementation Strategies</i></b>
<p>Currently dominated by auto-oriented design and large surface parking lots, the <b>Activity Centers</b> will evolve into pedestrian-oriented shopping, office, and entertainment places that may also accommodate high-density residential development. Where excess parking is located, infill development can break up large surface lots. Tree plantings and landscaping will be generous to soften the development intensity in these areas. Access to these activity centers will be easily achieved for pedestrians, cyclists, and drivers alike.</p> <p><i>Appropriate Land Uses:</i> Medical</p>	<ul style="list-style-type: none"><li>• Infill and redevelopment in these areas should occur according to a master plan that allows for mixed uses, transportation choices and urban design that mitigates the appearance of auto-dependence (such as screening parking lots or locating parking areas primarily to the sides and rear of buildings).</li><li>• Focus on redevelopment in areas of disinvestment (such as those that have become or are in danger of becoming greyfields). Development strategy should encourage uses and activities that are suitable for the immediately-surrounding character areas.</li></ul> <p><i>Statesboro Comprehensive Master Plan, Community Agenda pages 25-26.</i></p>

In addition, the "2014 Quality Community Objectives" section of the Comprehensive Plan states the following:

"Maximize the use of existing infrastructure and minimize the costly conversion of undeveloped land at the periphery of the community. This may be achieved by encouraging development or redevelopment of sites closer to the traditional core of the community; designing new development to minimize the amount of land consumed; carefully planning expansion of public infrastructure; or maintaining open space in agricultural, forestry, or conservation uses."

"Encourage development or expansion of businesses and industries that are suitable for the community. Factors to consider when determining suitability include job skills required; long-term sustainability; linkages to other economic activities in the region; impact on the resources of the area; or prospects for creating job opportunities that meet the needs of a diverse local workforce."

*Statesboro Comprehensive Master Plan, Quality Community Objectives, page 43 & 46.*

## ANALYSIS

- I. **Variance from Article X Section 1003 D: *Side yards*. Side yards shall be at a minimum 15 feet. On a lot which abuts a residential district, the side yard abutting such district shall have a width not less than that required in such adjoining district.**

The applicant is requesting a variance from Article X Section 1003 D to reduce the **minimum right side yard setback from 15 feet to 12 feet**. This variance is specifically being requested in order to allow for the expansion of medical office space at the same location. A portion of the building will be located in the area where the normal 15 foot building setback would be regulated in the CR (Commercial Retail) zoning district.

- II. **Variance from Article X Section 1003 D: *Side yards*. Side yards shall be at a minimum 15 feet. On a lot which abuts a residential district, the side yard abutting such district shall have a width not less than that required in such adjoining district.**

The applicant is requesting a variance from Article X Section 1003 D to reduce the **minimum left**



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**side yard setback from 15 feet to 12 feet.** This variance is specifically being requested in order to allow for the expansion of medical office space at the same location. A portion of the building will be located in the area where the normal 15 foot building setback would be regulated in the CR (Commercial Retail) zoning district.

#### ANALYSIS (Cont'd)

The *Statesboro Zoning Ordinance* provides for the award of variances by the City Council from the zoning regulations, stating that "approval of a variance must be in the public interest, the spirit of the ordinance must be observed, public safety and welfare secured, and substantial justice done. A variance may not be granted for the use of land that is not permitted by zoning regulations."

**Section 1801 states that the Mayor and Council [should] consider if the following are true in its consideration of a variance request:**

1. **There are special conditions pertaining to the land or structure in question because of its size, shape, topography, or other physical characteristic and that condition is not common to other land or buildings in the general vicinity or in the same zoning district;**

The subject site is smaller in size compared to all of the surrounding parcels in the same zoning district. Additionally, there is a drainage ditch near the rear property line of the subject site.

2. **The special conditions and circumstances do not result from the actions of the applicant;**

The applicant did not take action to result in this zoning classification.

3. **The application of the ordinance to this particular piece of property would create an unnecessary hardship; and**

The application of the ordinance to this particular piece of property does not create an unnecessary hardship to the property owner as the medical office has been open and operating.

4. **Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the zoning regulations.**

**In the course of exercising any of the above powers, the zoning board of appeals may attach conditions to its approval.**

#### RECOMMENDATION:

Staff recommends approval of the variances requested by applications V 19-01-01 and V 19-01-02 with staff condition(s).

At the regularly scheduled meeting held Tuesday, February 5, 2019 at 5:00 PM, the Planning Commission voted 5-0 to approve applications V 19-01-01 and V 19-01-02 with the following staff recommendation(s) and condition(s):

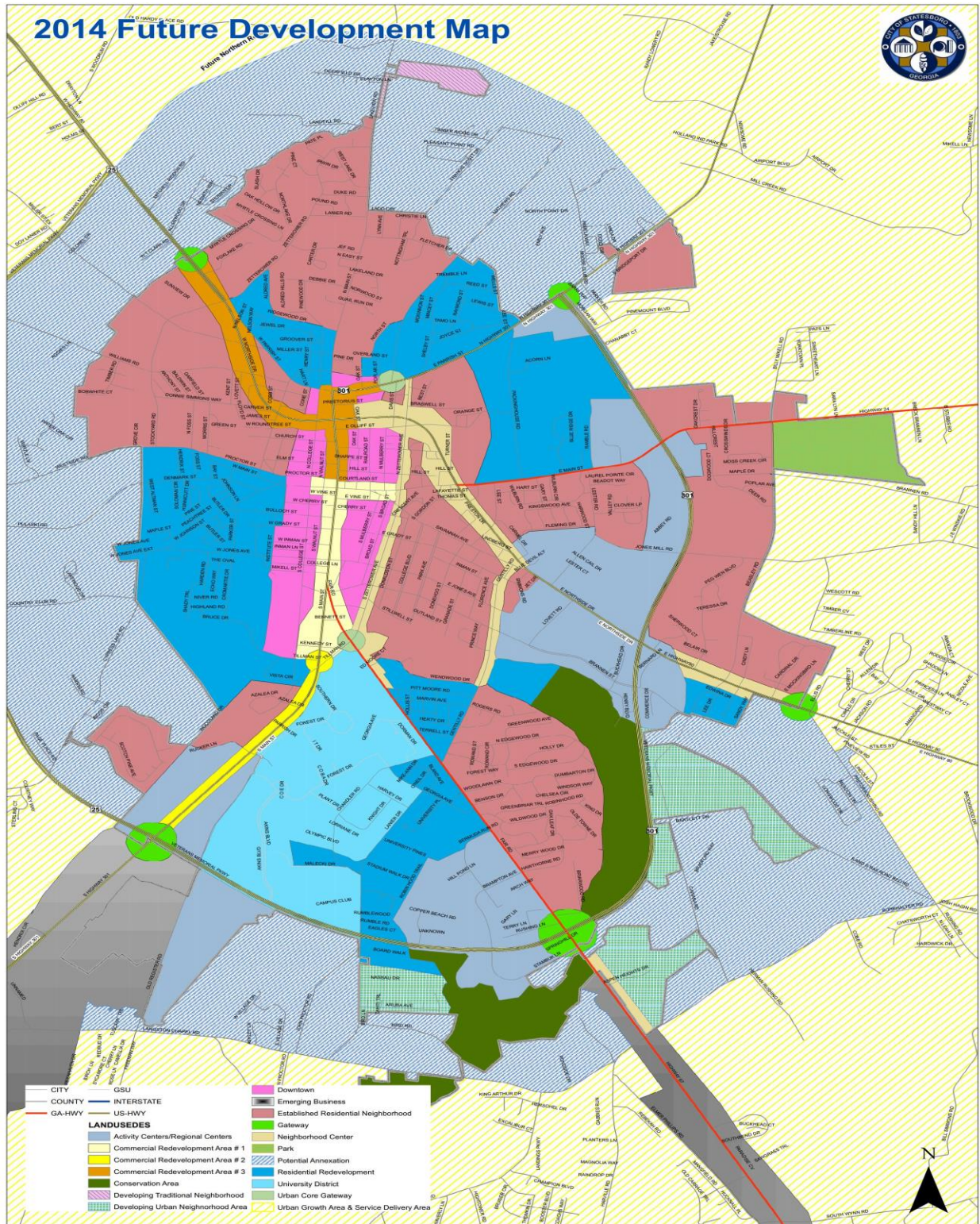
1. Approval of this variance does not grant site plan approval as submitted. Project will be required to meet all City Ordinances.
2. The construction of this building addition shall not impact the access to or the parking areas of the adjacent properties.
3. Proposed building addition shall not encroach on adjacent drainage ditch.
4. Provision for a dumpster pad may be required as it is currently located near the proposed building expansion.
5. Installation of a fire lane on the long side of the building shall be installed and marked as per IFC Chapter 5 Section 503 and approved by The Prevention Division of SFD.

EXHIBIT A: LOCATION MAP





## EXHIBIT B: FUTURE DEVELOPMENT MAP





## EXHIBIT C: SITE AND SURROUNDING PROPERTY PHOTOS

**Picture 1:** View of the subject site looking north from the adjoining property, Frontline Internal Medicine.



**Picture 2:** View of the subject property's right (eastern) side yard, looking north from the adjoining property. Also, a view of the area where **V 19-01-01** is being requested.





### EXHIBIT C: SITE AND SURROUNDING PROPERTY PHOTOS (CONT'D)

**Picture 3:** View of the subject property's left (western) side yard, looking north from the adjoining property. Also, a view of the area where **V 19-01-02** is being requested.



**Picture 4:** View of the subject property's rear yard, looking northwest from the adjacent property to the east. Also, a view of the proposed area for the new two-story 1,891 Sq. Ft. doctor's office addition.





**EXHIBIT C: SITE AND SURROUNDING PROPERTY PHOTOS (CONT'D)**

**Picture 5:** View of the adjacent property to the southeast of the subject site, currently Wells Fargo Bank.



**Picture 6:** View of the adjacent property to the east of the subject site, currently Larry G. Hubbard, D.D.S. Dentistry.





**EXHIBIT C: SITE AND SURROUNDING PROPERTY PHOTOS (CONT'D)**

**Picture 7:** View of the adjacent property to the northwest of the subject site, currently Statesboro Imaging Center.



**Picture 8:** View of the adjacent property to the southwest of the subject site, currently Statesboro Medical Center.



**EXHIBIT C: SITE AND SURROUNDING PROPERTY PHOTOS (CONT'D)**

**Picture 9:** View of the adjacent property to the north of the subject site, currently Statesboro High School.

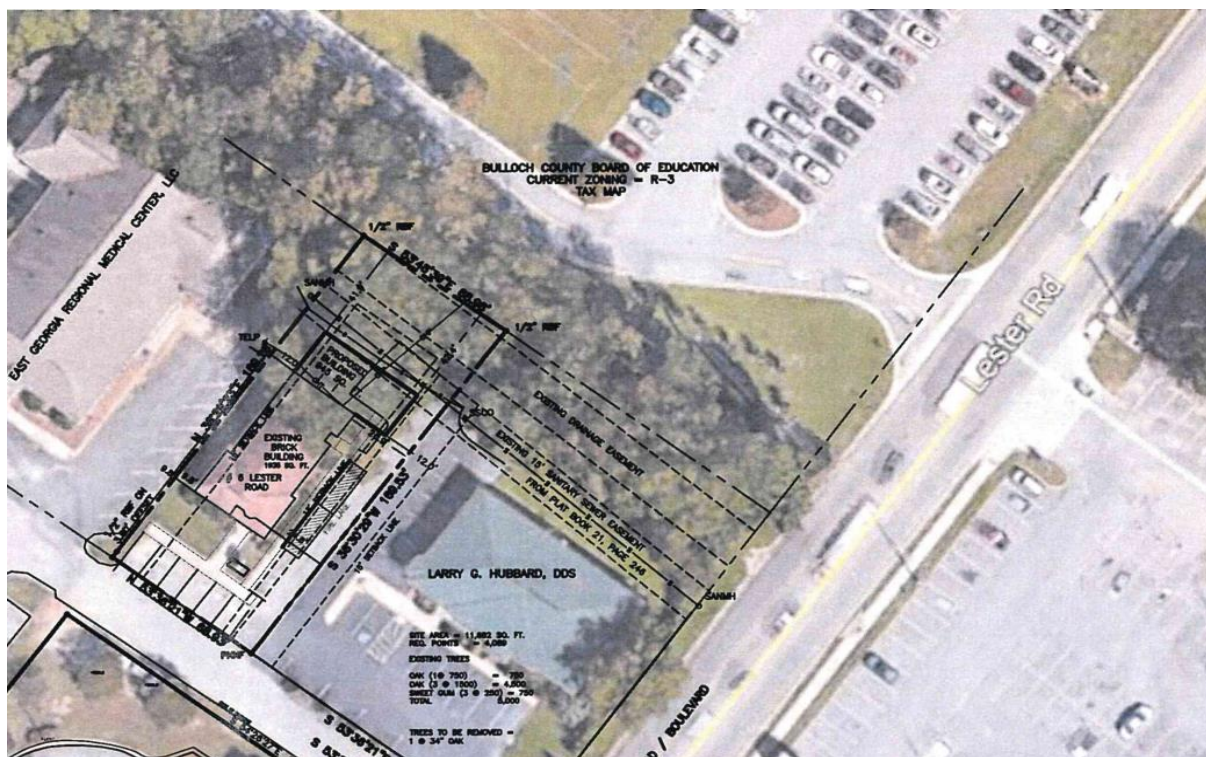




*Development Services Report*  
**Case V 19-01-01 & V 19-01-02**





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*Development Services Report*  
**Case V 19-01-01 & V 19-01-02**

*Development Services Report*  
**Case V 19-01-01 & V 19-01-02**

# CITY OF STATESBORO

## COUNCIL

Phillip A. Boyum  
Sam Lee Jones  
Jeff B. Yawn  
John C. Riggs  
Derek Duke



Jonathan McCollar, Mayor  
Randy Wetmore, City Manager  
Sue Starling, City Clerk  
Cain Smith, City Attorney

50 EAST MAIN STREET • P.O. BOX 348  
STATESBORO, GEORGIA 30459-0348

**To:** Randy Wetmore, City Manager and Sue Starling, City Clerk

**From:** Cain Smith, City Attorney

**Date:** February 13, 2019

**RE:** February 19, 2019 City Council Agenda Items

**Policy Issue:** Consideration of Memorandum of Understanding between City, Development Authority of Bulloch County, and the Blue Mile Foundation that sets out the parties' respective responsibilities in procurement of loan proceeds and development of the Blue Creek Project.

**Recommendation:** City consider the MOU for approval.

**Background:** MOU sets out the basic roles of the three parties that are then further clarified in other contracts being recommended for approval in subsequent agenda items.

**Budget Impact:** None

**Council Person and District:** All

**Attachments:** Proposed MOU

# **MEMORANDUM OF UNDERSTANDING**

**Among**

**Development Authority of Bulloch County,  
City of Statesboro, Georgia**

**and**

**Blue Mile Foundation, Inc.**

***For the Creek on the Blue Mile Project***

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## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (the “**Agreement**”) is entered into as of the Effective Date set forth below by and among the **CITY OF STATESBORO, GEORGIA** (the “**City**”), a municipal corporation of the State of Georgia (the “**State**”), the **DEVELOPMENT AUTHORITY OF BULLOCH COUNTY** (the “**Development Authority**”), a duly organized and validly existing public body corporate and politic existing under the Constitution and laws of the State of Georgia including the Development Authorities Law of the State of Georgia (O.C.G.A. § 36-62-1, *et seq.*), as amended (the “**Act**”), and **BLUE MILE FOUNDATION, INC.**, a non-profit corporation existing under the laws of the State (the “**Manager**”), each a “**Party**” and collectively the “**Parties**.”

### ARTICLE 1 RECITALS

1. **Capitalized Terms.** Capitalized terms used herein have the meanings provided in Article 2, below, or elsewhere in this Agreement.
2. **P3.** The Project is what is known as a public/private partnership, or P3.
3. **Components.** For purposes of this Agreement, the Project has two components, which are the Public Component and the Private Component.
4. **Responsibilities.** The intention of this Agreement is to set forth the respective responsibilities of the Parties to carry out the Project.

### AGREEMENT

**NOW THEREFORE**, City, Development Authority, and Manager for and in consideration of the mutual promises, covenants, obligations and benefits of this Agreement, hereby agree as follows:

### ARTICLE 2 GENERAL TERMS

**Section 2.1 Definitions.** Unless the context clearly requires a different meaning, the following terms are used herein with the following meanings:

“**Assignment**” means an “Assignment and Assumption Agreement”, substantially in the form of Schedule 3.2C attached hereto and incorporated herein by reference, to be dated the date of its execution and delivery, between Development Authority as assignor and City as assignee, relating to the GEFA Agreements and the Management Contract.

“**Effective Date**” means \_\_\_\_\_, 2019, the effective date of this Agreement. On the Effective Date, this Agreement has the following effective time: \_\_ o'clock, \_\_.m., Statesboro, Georgia time.

**“Environmental Facilities Agreement”** means that certain “Environmental Facilities Agreement” of even date herewith between Development Authority and City, relating to the repayment of the GEFA Loan, substantially in the form of Schedule 3.2B attached hereto and incorporated herein by reference.

**“GEFA”** means the Georgia Environmental Finance Authority, a public corporation and instrumentality of the State of Georgia. Unless the context otherwise requires, such term includes Clean Water State Revolving Fund, administered by GEFA.

**“GEFA Agreements”** means the GEFA Contract and the GEFA Loan Documents.

**“GEFA Contract”** means that certain “Intergovernmental Agreement to Share Water Supply Yield” of even date herewith by and between GEFA and the Development Authority, substantially in the form of Schedule 3.2A attached hereto and incorporated herein by reference.

**“GEFA Loan”** has the same meaning as the “Loan” as defined in the GEFA Loan Documents.

**“GEFA Loan Documents”** means the documents evidencing and securing that certain loan transaction between the Clean Water State Revolving Fund, Administered by Georgia Environmental Finance Authority, as lender, and the Development Authority as borrower; i.e., that certain “Loan Agreement” and “Promissory Note”, each of even date herewith between Development Authority as borrower or maker and such lender, and the “Assignment and Security Agreement” of even date herewith between Development Authority as assignor and such lender as assignee, each substantially in the form of Schedule 3.3B attached hereto and incorporated herein by reference.

**“Legislative Findings”** means the findings and determinations on the part of Development Authority and/or City that are set forth in Article 4, below.

**“Management Contract”** means that certain “Management Contract” of even date herewith between Development Authority as owner and Manager as manager, relating to the Public Component, substantially in the form of Schedule 3.2A attached hereto and incorporated herein by reference.

**“Person”** includes a corporation, a trust, an association, a partnership (including a limited liability partnership), a joint venture, an unincorporated organization, a business, an individual or natural person, a joint stock company, a limited liability company, a public body, or any other entity.

**“Private Component”** means privately-owned facilities (such owners, other than Manager, “Private Owners”) that represent the development of trade, commerce and private-sector employment opportunities and that are included in the Project. As planned, among such facilities will be multi-story commercial and entertainment venues. The Private Component is expected to create up to 750 jobs, expand the existing tax base to more than \$100 million in the planned area of development, and position the City as new economic hub for its region.

**“Private Owners”** has the meaning provided within the definition of Private Component, above.

**“Project”** means the development commonly known as the “Creek on the Blue Mile”, which will develop an existing creek as it intersects with South Main Street, adjacent to Shug’s on Main and the Baymont Hotel, in the City, for entertainment, shopping, living and recreation opportunities. It will include a plaza between South College and South Main in the City, and will connect the City’s downtown with Georgia Southern University. In connection with the Project, the existing canal under South Main will be reconfigured into a wide, shallow creek with broad pedestrian boulevards and multi-story commercial, residential and entertainment venues on each side. The creek will wind to the southern section of Fair Road Park in the City where a small amphitheater is being considered. The Public Component of the Project will, in part, create a 25-acre lake off South College Street to alleviate flooding and control runoff while providing a reservoir for the city. The Project’s plans include nature trails, fishing, kayaking and a pavilion with an adjoining playground.

**“Public Component”** means proposed water supply impoundment on Little Lots Creek within the limits of the City in Bulloch County, Georgia that will dually serve as an emergency water supply for the City and a public recreational feature for city residents. “Public Component”, as such term is used herein, includes all of the projects that are the subject of either the GEFA Loan Documents or the GEFA Contract or both.

**“Security Agreement”** means the “Assignment and Security Agreement” included in the definition herein of GEFA Loan Documents.

**“State”** means the State of Georgia.

**Section 2.2 Singular and Plural.** Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

**Section 2.3 Recitals.** The recitals above are incorporated into this Agreement as a part hereof.

### **ARTICLE 3 CARRYING OUT THE PROJECT**

**Section 3.1 GEFA Agreements.** Development Authority shall negotiate the GEFA Agreements with the other parties thereto and enter into the GEFA Agreements to which it is a party. It shall be a Closing Condition in favor of each of the Development Authority and the City that the GEFA Agreements be satisfactory to it, and that Development Authority and the other parties to the GEFA Agreements execute, deliver and enter into the GEFA Agreements no later than 5:00 o’clock p.m., Statesboro, Georgia time on \_\_\_\_\_, 2019.

**Section 3.2 Management Contract; Environmental Facilities Agreement; Assignment.** Contemporaneously with the execution and delivery by Development Authority of the GEFA Agreements, (a) Development Authority and Manager shall execute, deliver and enter into the Management Contract, (b) Development Authority and City shall execute, deliver and

enter into the Environmental Facilities Agreement, and (c) Development Authority and City shall execute, deliver and enter into the Assignment.

**Section 3.3 Public Component.** Development Authority will carry out the Public Component, insofar as is required by this Agreement, by entering into and performing the GEFA Agreements, the Environmental Facilities Agreement, and the Management Contract, subject, however, to the Assignment and the Security Agreement.

**Section 3.4 Private Component.** Development Authority will carry out the Private Component by:

**3.4.1** entering into the Management Contract, thereby obligating Manager to interpret and apply its responsibilities so as to carry out the intention of this Agreement that the Project be comprised of both public and private components which are integrated so as to produce the desired purposes of this Agreement, and that the Project will promote and develop the public purposes of trade, commerce, and employment opportunities; the foregoing is subject to the Assignment; and

**3.4.2** requiring Manager in its individual capacity and not as manager under the Management Contract, and Manager is hereby required, to exercise Manager's development rights related to the Private Component that are listed on Schedule 3.4 attached hereto and incorporated herein by reference, so as to accomplish the aspects of the Private Component of the Project that are related to such development rights. For the avoidance of doubts, (a) such development rights do not encompass the totality of the Private Component, and (b) in exercising such development rights, Manager shall be entitled to utilize its best business judgment in conducting such business; the foregoing is subject to the Assignment; and

**3.4.3** exercising its statutory powers to promote, in the discretion of and to the extent determined by, Development Authority, through the Private Owners, the development of trade, commerce, industry and employment opportunities.

**Section 3.5 Closing.** As used herein, the “**Closing**” is the event at which the GEFA Agreements are executed and delivered and the other transactions contemplated herein are consummated. References herein to a “**Closing Condition**” are to the optional right of a Party hereto, based on a Closing Condition, to exercise a right provided herein in its favor and to avoid the Closing and terminate this Agreement as provided in Sections 5.5 and 5.6, respectively, below.

## **ARTICLE 4 LEGISLATIVE FINDINGS**

**Section 4.1 Constitutional Authorization.** City and Development Authority have found and determined, and do hereby find and determine, that:

**4.1.1** The Project is Constitutionally authorized for the Development Authority, in that it is comprised of both public and private components which are integrated so as to produce the desired purposes, and that the Project will promote and develop the public purposes of trade, commerce, and employment opportunities.

**4.1.2** GEFA and Development Authority each is authorized pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983, to enter into intergovernmental contracts for any period not exceeding fifty years with any public corporation or public authority (including with each other), for the joint or separate provision of facilities, equipment, or services, if such contract deals with activities, services or facilities which the contracting parties are authorized by law to undertake or provide. GEFA and Development Authority are so authorized as set forth in Section 4.2, below, and thus, GEFA and Development Authority are Constitutionally authorized to enter into the GEFA Agreements to which each respectively is a party.

**Section 4.2 Development Authority Powers.** After careful study and investigation of the nature of the Project, Development Authority hereby finds and determines that:

**4.2.1** The Project is located within the area of operation of Development Authority and constitutes a “project” as defined in the Act and specifically, but without limitation, that Development Authority may undertake the Project as a “project” as defined in O.C.G.A. Sec. 36-62-2(6)(N).

**4.2.2** Development Authority is a “local government” or “local governing authority” as defined in O.C.G.A. Sec. 50-23-4(7), and hence, GEFA and the Development Authority are authorized by O.C.G.A. Sec. 50-23-5 to enter into and perform the GEFA Agreements to which each respectively is a party.

**4.2.3** Development Authority will be the owner of any property acquired for the Public Component with proceeds of the GEFA Agreements, but will not be the owner of property included in the Private Component. However, the Public Component and the Private Component will be physically and economically integrated, including such interconnections as reciprocal access agreements. Development Authority is authorized to carry out projects on land owned or leased by others, O.C.G.A. Sec. 36-62-6(a)(12), and, under the Revenue Bond Law, “revenue” consists of “all revenues, income, and earnings arising out of or in connection with the operation or ownership of the undertaking,” including undertakings owned by others, *Cottrell v. Atlanta Development Authority*, 770 S.E.2d (2015). Hence, Development Authority has the power to carry out both the Public Component and, insofar as is provided herein, the Private Component, notwithstanding that Development Authority will not own the Private Component.

**4.2.4** The Private Component is comprised of traditional business enterprises conducted for profit, and the Public Component promotes such commercial activities, and thus the Project:

- (a) meets the Constitutional and statutory definition of trade, commerce or industry,
- (b) is being carried out for a proper public use or purpose under the Constitution of Georgia,

(c) will promote the objectives of the Act and employment in the territorial area of the Development Authority will be increased or maintained as a direct result of the Project,

(d) will be in the public interest of the inhabitants of the City and of the State,

(e) will facilitate the development and redevelopment of the City and stimulate its economy, thereby promoting for the public good and general welfare trade, commerce, industry, and employment opportunities within the City and promoting the general welfare of this State, and

(f) the economic benefits that will inure to the City, the Development Authority and the State from the Project and the operation of the Private Component and the taxes to be paid by owners and users thereof will be equal to or greater than the benefits to be derived by private sector Persons in the aggregate; therefore, the transactions contemplated hereby do not violate the prohibition in the Georgia Constitution on the payment by public bodies of gratuities to private sector Persons and this Agreement and the Project are authorized by the Act and the Constitution of the State.

**Section 4.3 City Powers.** After careful study and investigation of the nature of the Project, City hereby finds and determines that it is authorized to enter into this Agreement and the Environmental Facilities Agreement, and, giving effect to the Assignment, also the Management Contract and the GEFA Agreements, in the place and stead of Development Authority inasmuch as:

**4.3.1** City is authorized by Article IX, Section II, Paragraph III of the Georgia Constitution, among other Constitutional supplementary powers, to provide parks, recreational areas, programs and facilities and also parking facilities, public health facilities and services, and storm water and sewage collection and disposal systems;

**4.3.2** City has the additional powers, in the interest of the health and general welfare of the citizens of the City, to acquire, construct, own, regulate, operate, improve, open, or extend parks, swimming pools, golf courses, recreation grounds, parking areas, parking buildings, athletic fields, grand stands and stadia buildings used or useful for sports, buildings used or useful for housing fairs and exhibits, buildings for educational purposes, libraries, buildings used or useful for poultry and livestock shows and exhibits, and buildings used or useful for public amusement purposes, together with facilities or buildings used for any combination of the above under the authority of O.C.G.A. Sec. 36-34-3; and

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

on the one hand and the other parties to this Agreement and to the GEFA Agreements assigned to City on the other hand are so authorized.

**4.3.4** (i) City possesses the statutory and Constitutional powers to assume and perform the Management Contract, including, without limitation, the City's redevelopment powers under the Redevelopment Powers Law, O.C.G.A. Sec. 36-44-1, et seq. (the "**Act**"), which, among other things, authorizes redevelopment projects in redevelopment areas to improve economic and social conditions therein in order to abate or eliminate deleterious effects, encourages the municipalities of this State to form a more effective partnership with private enterprise to overcome economic limitations that have previously impeded or prohibited redevelopment of such areas, and authorizes City to enter into any contract relating to the exercise of its redevelopment powers under the Act with any private persons, firms, corporations, or business entities for any period not exceeding 30 years; (ii) the Project is located in part of City of Statesboro Tax Allocation District #1: South Main Redevelopment Area; (iii) the Project will promote the objectives of the Act and the Management Contract relates to the exercise of the Public Body's redevelopment powers under the Act; and (v) the Project and the Management Contract will be in the public interest of the inhabitants of the Public Body.

## **ARTICLE 5**

### **TERM AND TERMINATION**

**Section 5.1 Term of Agreement.** This Agreement will commence on the Effective Date and will expire on, subject to earlier termination, as provided herein, the date on which all obligations of Development Authority under the GEFA Agreements have been satisfied and performed, but in no event shall this Agreement be effective for more than fifty (50) years. In the case of Development Authority personally (as opposed to its assignee), the foregoing shall be subject to Section 6.4, below.

**Section 5.2 Delay.** If, despite the good faith efforts of the Parties, this Agreement is not fully executed on or before 5:00 o'clock p.m., Statesboro, Georgia, time, on \_\_\_\_\_, 2019, or the Closing has not occurred by 5:00 o'clock p.m., Statesboro, Georgia, time, on \_\_\_\_\_, 2019, then any Party may terminate this Agreement by written notice to the other Parties, without any further liability except as otherwise expressly provided in this Agreement.

**Section 5.3 Approval by Governing Bodies.** Upon its execution of this Agreement, each Party hereto represents and warrants that its governing body or other authorized committee or official thereof has approved and authorized its entry into such Agreement.

**Section 5.4 Closing Conditions.** Any Party shall have the right to terminate this Agreement prior to the Closing, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice to the other Parties, if:

- (a) Any other Party is in breach of this Agreement.

(b) There has been commenced or threatened against City, Development Authority, or Manager any proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the matters that are the subjects of this Agreement, or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on, or otherwise interfering with, any of such matters.

**Section 5.5 The Termination Rights of City and Development Authority.** Prior to Closing, City and Development Authority respectively each shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately as to all Parties upon giving written notice thereof to the other Parties, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, City and Development Authority shall respectively each have the right to terminate this Agreement, effective immediately upon giving written notice to the other Parties if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of it has not been satisfied. If either City or Development Authority does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived by it with respect to the subject thereof.

**Section 5.6 The Manager's Termination Rights.** Prior to Closing, Manager shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately as to all Parties upon giving written notice thereof to the other Parties, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, Manager shall have the right to terminate this Agreement, effective immediately upon giving written notice to the other Parties if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of Manager has not been satisfied. If Manager does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived with respect to the subject thereof.

**Section 5.7 Effect of Termination.** If any Party terminates this Agreement pursuant to a right provided herein or if this Agreement expires, this Agreement shall terminate or expire as to all Parties without any further liability on the part of any Party, except as may theretofore have accrued, or except as otherwise expressly provided in this Agreement, or shall exist as a result of any prior breach hereof.

## **ARTICLE 6 MISCELLANEOUS**

**Section 6.1 Notices.** Any notice sent under this Agreement (except as otherwise expressly required) must be written and mailed or sent by overnight courier or personally delivered to an officer of the receiving party at the following addresses:

**If to Manager:**

Blue Mile Foundation, Inc.  
102 South Main St., Statesboro, GA, 30458

**If to Development Authority:**



Development Authority of Bulloch County  
P.O. Box 303  
Statesboro, GA 30459  
Attn: Executive Director

**With a copy to:**

Franklin, Taulbee, Rushing, Snipes & Marsh, LLC  
12 Siebald Street  
P. O. Box 327  
Statesboro, GA 30459  
Attn: Stephen T. Rushing

and

Seyfarth Shaw LLP  
Attn: Daniel M. McRae, Esq.  
1075 Peachtree Street, N.E.  
Suite 2500  
Atlanta, Georgia 30309

**If to the City:**

City of Statesboro  
50 E. Main St  
Statesboro 30458  
Attn: City Manager

**With a copy to:**

I. Cain Smith  
City Attorney  
City of Statesboro  
50 E. Main St.  
Post Office Box 348  
Statesboro, GA 30458

Each Party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section will be deemed to be given when so mailed, and any communication so delivered in person will be deemed to be given when receipted for by, or actually received by the Party identified above.

**Section 6.2 Amendments and Waivers.** Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the parties hereto. No course of dealing on the part of any party to this Agreement, nor any failure or delay by any party to this Agreement with respect to exercising any right, power or privilege hereunder will operate as a waiver thereof.

**Section 6.3 Invalidity.** In the event that any provision of this Agreement is held unenforceable in any respect, such unenforceability will not affect any other provision of this Agreement.

**Section 6.4 Successors and Assigns.** This Agreement shall not be assignable by any Party, except that pursuant to the Assignment, Development Authority will assign its interests in the Management Contract and the GEFA Agreements to City, which shall accept and assume such interests, all as provided in the Assignment. Upon the execution and delivery of the Assignment, City shall assume all existing and prospective liabilities and obligations of Development Authority under the Management Contract and the GEFA Agreements, and, as provided in such documents, Development Authority shall be released therefrom by the other parties thereto. In such event, City shall perform the Management Contract and the GEFA Agreements in the place and stead of Development Authority.

**Section 6.5 Schedules; Titles of Articles and Sections.** The Schedules attached to this Agreement are incorporated herein and will be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such Schedules and the provisions of this Agreement, the provisions of this Agreement will prevail. All titles or headings are only for the convenience of the parties and may not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a Section or subsection will be considered a reference to such Section or subsection of this Agreement unless otherwise stated. Any reference herein to a Schedule will be considered a reference to the applicable Schedule attached hereto unless otherwise stated.

**Section 6.6 Applicable Law.** This Agreement is a contract made under and will be construed in accordance with and governed by the laws of the United States of America and the State of Georgia. Venue shall be in Bulloch County, Georgia.

**Section 6.7 Entire Agreement.** This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

**Section 6.8 Additional Actions.** The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**Section 6.9 Intergovernmental Agreement.** This Agreement shall also constitute an intergovernmental agreement under Georgia Constitution Art. IX, Sec. III, Para. I between Development Authority and the City. Such intergovernmental agreement is subject to the 50-year term limit contained in such provision of the Georgia Constitution, but shall expire earlier upon its complete performance.

**Section 6.10 No Partnership.** Nothing contained in this Agreement or any other agreement between City and/or Development Authority on the one hand and Manager on the other hand is intended by the Parties to create a partnership or joint venture between or among them and

any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any Party as an agent of the other for any purpose whatsoever. No Party will in any way assume any of the liability of the other for acts of the other or obligations of the other Party. Each Party will be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions. The foregoing shall not affect the Management Contract.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be duly executed as of the day and year first written above.

(Signatures on following pages)

**“Development Authority”:**

**DEVELOPMENT AUTHORITY OF BULLOCH  
COUNTY**

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

Its: \_\_\_\_\_

ATTEST:

Secretary

[Authority’s Seal]

[Signatures Continued on Next Page]

**The “City”:**

**CITY OF STATESBORO, GEORGIA**

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

ATTEST:

Clerk

[City’s Seal]

**The “Manager”**

**Blue Mile Foundation, Inc.**

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

Name:

Title:

ATTEST:

\_\_\_\_\_

[Seal]

**SCHEDULE 3.1**  
**ASSIGNMENT**

**SCHEDULE 3.2A**  
**GEFA CONTRACT**



**SCHEDULE 3.2B**  
**ENVIRONMENTAL FACILITIES AGREEMENT**

**SCHEDULE 3.3C**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

**SCHEDULE 3.3B**  
**GEFA LOAN DOCUMENTS**

**SCHEDULE 3.4**

**MANAGER'S DEVELOPMENT RIGHTS**

# CITY OF STATESBORO

## COUNCIL

Phillip A. Boyum  
Sam Lee Jones  
Jeff B. Yawn  
John C. Riggs  
Derek Duke



Jonathan McCollar, Mayor  
Randy Wetmore, City Manager  
Sue Starling, City Clerk  
Cain Smith, City Attorney

50 EAST MAIN STREET • P.O. BOX 348  
STATESBORO, GEORGIA 30459-0348

**To:** Randy Wetmore, City Manager and Sue Starling, City Clerk

**From:** Cain Smith, City Attorney

**Date:** February 13, 2019

**RE:** February 19, 2019 City Council Agenda Items

**Policy Issue:** Consideration of Assignment/ Assumption Agreement with the Development Authority of Bulloch County (DA) as to the following attached contracts:

- A. Loan Agreement between DA and Georgia Environmental Finance Authority (GEFA) regarding a \$15,500,000 loan for installation of the Blue Creek public component. City will pay \$155,000 origination fee and be fully liable with full faith and credit pledged as a taxing authority to pay off the loan. Loan is a line of credit and withdrawal of some amount must be done within six months of closing.
- B. Management Contract between DA and Blue Mile Foundation (BMF) as regarding the management of the Blue Creek public component by BMF. Only term of the Management Contract that survive assignment will be that the City compensate a Project Coordinator contracted by BMF for at least one year.

Agreement additionally creates the strictly advisory Creek District Oversight Committee and City obligations to compensate Dan McRae, Steve Rushing, and Maguire Woods for professional services rendered.

**Recommendation:** City consider the Management Agreement for approval.

**Background:** GEFA offered a loan to the DA for installation of the Blue Creek public component with DA being initial signatory to said loan. Legal requirements resulted in DA contracting with BMF as manager. DA conditionally approved the Loan Agreement and Management Contract on February 12, 2019. Proposed assignment/ assumption agreement would put City in the shoes of the DA moving forward with no future mandated DA involvement in the

**Georgia Municipal Association City of Excellence**

Telephone: (912) 764-5468 • Fax: (912) 764-4691 • email: [cityhall@statesboroga.net](mailto:cityhall@statesboroga.net)

# CITY OF STATESBORO

## COUNCIL

Phillip A. Boyum  
Sam Lee Jones  
Jeff B. Yawn  
John C. Riggs  
Derek Duke



Jonathan McCollar, Mayor  
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Cain Smith, City Attorney

50 EAST MAIN STREET • P.O. BOX 348  
STATESBORO, GEORGIA 30459-0348

project. City is the entity with the resources and capacity to undertake a project of this scale therefore, the need for this assignment.

**Budget Impact:** TBD as to loan payment as it is a credit line. However, if the full \$15,5000,00 is drawn City payments would be approximately \$720,000 annually over a thirty year amortization. The amortization will begin when the project is completed and the loan consolidated. During the intervening time period the City shall make monthly interest payments on the outstanding loan. Origination fee of \$155,000 will be paid out of City stormwater fund in May of 2019. 50% of the compensation for the BMF contracted Project Coordinator will come from City's general operating budget. All other compensation obligations are to be paid for with loan and/or grant funds.

**Council Person and District:** Districts 2 and 3, Sam Jones and Jeff Yawn

**Attachments:** Proposed Assignment/ Assumption Agreement and relevant Management Contract and GEFA loan documents.

## ASSIGNMENT AND ASSUMPTION AGREEMENT

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (the “**Assignment**”), is made and entered into as of as of the Effective Date set forth below by and among the **DEVELOPMENT AUTHORITY OF BULLOCH COUNTY** (the “**Borrower**”), a duly organized and validly existing public body corporate and politic existing under the Constitution and laws of the State of Georgia including the Development Authorities Law of the State of Georgia (O.C.G.A. § 36-62-1, *et seq.*), as amended (the “**Act**”), as Borrower, and the **CITY OF STATESBORO, GEORGIA** (the “**Public Body**”), a municipal corporation of the State of Georgia (the “**State**”), as Public Body, each a “**Party**” and collectively the “**Parties**.”

### RECITALS:

A. The Parties are entering into this Assignment as contemplated by that certain “Memorandum of Understanding” of even date herewith between the Parties hereto and Blue Mile Foundation, Inc. (the “**MOU**”). All capitalized terms which are used but not defined herein, but which are defined in the MOU, shall have the same meaning herein as therein. The recitals contained in the MOU, and the Legislative Findings contained in the MOU, are hereby incorporated herein by reference.

B. Borrower has entered into the GEFA Agreements and the Environmental Facilities Agreement to partially finance the Public Component of the Project.

C. As contemplated in the GEFA Agreements, Borrower desires to assign its interest in the GEFA Agreements and in the Management Contract to Public Body, and Public Body desires to accept the assignment thereof, and to assume the duties, obligations and liabilities of Borrower under the GEFA Agreements and under the Management Contract. By its terms, the Environmental Facilities Agreement will terminate upon the effectiveness of this Assignment.

D. The Parties also wish to provide for the establishment of the Creek District Oversight Committee (defined below).

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. The “**Effective Date**” of this Assignment is the same as the effective date of the GEFA Agreements; i.e., \_\_\_\_\_, 2019. On the Effective Date, this Assignment has the following effective time: \_\_ o’clock, \_\_m., Statesboro, Georgia time.

2. Effective as of the Effective Date and the effective time, Borrower hereby sells, transfers, assigns, conveys and sets over unto Public Body all of Borrower’s right, title and interest in, to and under the GEFA Agreements and the Management Contract.

3. Public Body hereby accepts the foregoing assignment of the GEFA Agreements and the Management Contract, and hereby agrees promptly and faithfully to keep, fulfill, observe, perform and discharge and be bound by all of the covenants, conditions and obligations of



Borrower under the GEFA Agreements and the Management Contract to be performed or complied with by Borrower thereunder.

4. As provided in the GEFA Agreements and the Management Contract, it is the intention of the Parties that, upon the execution and delivery of this Assignment, Public Body shall assume, and does hereby assume, all of the rights, duties, obligations and liabilities of Borrower under the GEFA Agreements and the Management Contract, whether incurred before or after such assignment. Further, as provided in the GEFA Agreements and the Management Contract, the Parties intend for Borrower to be released by the other parties thereto from all duties, obligations and liabilities under the GEFA Agreements and Management Contract, whether incurred before or after such assignment, provided that the same shall be, and are hereby, assumed by the Public Body, and the other parties to such documents shall have direct recourse against Public Body regarding same. Nevertheless, Public Body hereby agrees to indemnify, protect, defend and hold harmless Borrower from any claims, costs, losses, suits, damages and expenses, including without limitation, reasonable attorneys' fees, arising in connection with the rights, duties, obligations and liabilities of Borrower under the GEFA Agreements and/or the Management Contract, whether incurred before or after such assignment.

5. Borrower and Public Body have found and determined, and do hereby find and determine, that, (a) the consideration to be received by Borrower for this Assignment includes, in part, the benefit to the Borrower and the citizens of Bulloch County and the City of Statesboro resulting from the Public Body's acceptance of this Assignment and agreement to assume the GEFA Agreements, which provide a portion of the funding for the the Public Component of the Project, (b) the Project will benefit the public by providing a significant and much needed catalyst for revitalization and continuing redevelopment of the area within the City of Statesboro in which it is located and property in the vicinity of the Project, (c) the Project promotes a vital interest of the Public Body, and obtaining such critical public benefit is the basis on which Borrower is making this Assignment and Public Body is accepting it, and (d) therefore, Borrower is receiving at least equivalent consideration in exchange for this Assignment, and Public Body is receiving at least equivalent consideration in exchange for its assumption of the GEFA Agreements and the Management Contract.

6. As additional consideration for this Assignment, Public Body shall, and hereby agrees to, pay, or reimburse Borrower for the payment of, all of the Borrowers' out of pocket costs related to the Project, including the costs of McGuire Woods Consulting, Seyfarth Shaw, and Taulbee, Rushing, Snipes, Marsh & Hodgin, either out of proceeds of the GEFA Contract or the GEFA Loan Documents, whichever is authorized to pay such costs and becomes available first, but in no event later than December 1, 2019, even if such proceeds are not then available.

7. As additional consideration for this Assignment, Public Body shall, and hereby agrees to, by resolution, create a committee (the "**Creek District Oversight Committee**") which shall continue in existence until the completion of the Project and which have such membership, powers, duties and responsibilities as are set forth on Schedule 7 attached hereto and incorporated herein by reference. Such agreement shall constitute an intergovernmental contract between Borrower and Public Body under Ga. Const. Art. IX, Sec. III, Para. I(a) which shall terminate as soon as it has been fully performed but in no event shall such intergovernmental contract continue in effect for longer than fifty (50) years from the effective date of this

Assignment. However, Borrower shall not be a party to such resolution of Public Body and shall have no obligations, responsibilities or liabilities arising out of or relating to the Creek District Oversight Committee; rather, Public Body shall indemnify, hold harmless and defend Borrower, its members, directors, officers, employees and representatives, from and against all of same, except, as to any particular indemnitee, any resulting from the gross negligence or willful misconduct of such particular indemnitee.

8. This Assignment shall be binding on Public Body and Borrower and their respective successors and assigns.

9. This Assignment shall be governed by and construed in accordance with the laws of the State of Georgia.

10. If any provision of this Assignment or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Assignment or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

11. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

12. The recitals at the beginning of this Assignment are part hereof and are hereby incorporated herein by reference.

IN WITNESS WHEREOF, Borrower and Public Body have executed this Assignment as of the Effective Date and the effective time.

**“Borrower”:**

**DEVELOPMENT AUTHORITY OF BULLOCH  
COUNTY**

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

ATTEST:

Secretary

[Authority’s Seal]

[Signatures continue on following page]

**The “Public Body”:**

**CITY OF STATESBORO, GEORGIA**

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

ATTEST:

Clerk

[City’s Seal]

## **SCHEDULE 7**

### **CREEK DISTRICT OVERSIGHT COMMITTEE**

The membership of the Creek District Oversight Committee will be comprised of up to 7 voting members. Such members shall meet monthly, and comply with open meetings and records requirements of law and with bylaws for approved by Public Body's governing body. Such Committee shall make recommendations to Public Body regarding development/zoning/design standards and guidelines for the "Creek District"; i.e., the area containing the Project.

The Committee will be comprised of (i) a City Council member appointed by the Mayor, (ii) a City staff member appointed by the City Manager, (iii and iv) two members appointed by the Blue Mile Foundation, Inc., (v) a member appointed by the County Commission (vi) a member appointed by the Downtown Statesboro Development Authority, and (vii) a member appointed by the Board of Education (contingent on the Board of Education participating in the Blue Mile Tax Allocation District). The Project Coordinator provided for in the Management Contract will serve as an ex officio nonvoting member of the Committee as well.

The Committee will be advisory in nature only, with governing body of the Public Body ultimately making all decisions. To maintain consistency of communication between the Public Body and the Committee, one Committee member shall act as liaison to the Public Body. The City Manager and/or his/her appointee will be the official City recipient of Committee recommendations. The Project Coordinator will also receive and transmit Committee recommendations to all involved parties.

## MANAGEMENT CONTRACT

### *For the Creek on the Blue Mile Project*

**THIS MANAGEMENT CONTRACT** (the “**Contract**”) is entered into as of the Effective Date set forth below by and between the **DEVELOPMENT AUTHORITY OF BULLOCH COUNTY** (the “**Development Authority**”), a duly organized and validly existing public body corporate and politic existing under the Constitution and laws of the State of Georgia (the “**State**”) including the Development Authorities Law of the State (O.C.G.A. Sec. 36-62-1, *et seq.*), as amended (the “**Act**”), as owner, and **BLUE MILE FOUNDATION, INC.**, a non-profit corporation existing under the laws of the State (the “**Manager**”), as manager, each a “**Party**” and collectively the “**Parties**.”

#### RECITALS:

- A. The Parties are entering into this Contract pursuant to that certain “Memorandum of Understanding” of even date herewith between the Parties hereto and the City of Statesboro, Georgia (the “**MOU**”). All capitalized terms which are used but not defined herein, but which are defined in the MOU, shall have the same meaning herein as therein. The recitals contained in the MOU, and the Legislative Findings contained in the MOU, are hereby incorporated herein by reference.
- B. Pursuant to the MOU, Development Authority proposes to enter into the GEFA Agreements to which it is a party to wholly or partially finance the Public Component of the Project.
- C. Development Authority desires to retain the services of Manager, and Manager desires to be retained by Development Authority, to manage the Public Component and to perform the services set forth herein, upon and subject to the terms and conditions herein set forth.

**NOW, THEREFORE**, for and in consideration of the premises, the mutual covenants and agreements contained herein, the sum of Ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Development Authority and Manager hereby covenant and agree as follows:

1. **Appointment of Manager** Development Authority hereby appoints and retains Manager as an independent contractor to carry out the full-time on-site management and operation of the Public Component on the terms and conditions and for the compensation provided in this Contract. Manager covenants and agrees with Development Authority that, subject to the terms and conditions hereof, it shall manage and operate the Public Component, including without limitation, performance of the services set forth in Section 4 below, in accordance with the terms and provisions hereof. The foregoing and any other provision hereof to the contrary notwithstanding, however, commencing as soon as the assignment to the Public Body contemplated in Section 6.3, below, has become effective, the performance by

Manager of this Contract shall be limited to the performance by Project Coordinator (defined below) of the specific duties and responsibilities set forth on Schedule 3.2 attached hereto and incorporated herein by reference, pursuant to the provisions of the Independent Contractor Agreement, in accordance with Section 3.2 hereof.

## **2. Term and Termination**

2.1. Effective Date. The Effective Date of this Contract is the same as the “Effective Date” of the MOU; i.e., \_\_\_\_\_, 2019. On the Effective Date, this Contract has the following effective time: \_\_ o’clock, \_\_m., Statesboro, Georgia time.

2.2. Term. The term of this Agreement shall commence on the Effective Date and, unless earlier terminated as provided herein, shall continue to and through the end of the calendar month that includes the first anniversary of the Effective Date (such period, the “**Initial Term**”), and shall be automatically extended from calendar month to calendar month thereafter unless either Development Authority or Manager gives 30 days written notice to the other that this Contract shall terminate, whereupon this Contract shall terminate as of the end of the calendar month in which the expiration of such 30 day period falls (such extension periods collectively, the “**Extension Term**”, and the Initial Term and the Extension Term collectively, the “**Term**”). Any provision hereof to the contrary notwithstanding, in no event shall the Term consist of more than thirty (30) years in the aggregate.

### **2.3. Earlier Termination**

2.3.1. Termination For Cause. In the event that Development Authority or Manager shall fail to comply with any of its covenants or obligations hereunder, or otherwise default hereunder, the non-defaulting Party shall give the defaulting Party written notice of the noncompliance or default. The defaulting Party shall have five (5) business days to cure such default or noncompliance. If the default or noncompliance is not cured within that period, the non-defaulting Party shall have the right to terminate this Contract by giving written notice of termination to the defaulting Party.

2.3.2. Event-Based Termination. In the event that Development Authority determines not to complete the Public Component or in the event the entire Public Component is sold or transferred, or taken through eminent domain, Development Authority may terminate this Agreement upon not less than 10 days’ written notice to Manager.

2.3.3. Automatic Termination. This Contract shall automatically terminate, without the necessity of any notice from one Party to the other, upon the expiration or earlier termination of the GEFA Agreements or the MOU, whichever first occurs.

2.4. Termination Process. Upon receipt of such notice of termination under Section 2.2, above, the Parties shall promptly commence to wind up Manager’s management operations, including performing such inventories and accounting as may be deemed necessary to properly turn over control of the Public Component to Development

Authority or such successor manager as Development Authority may designate in its discretion. All Monthly Fees (defined below) due and outstanding through the date of termination shall be paid.

### **3. Payments for Management Services.**

- 3.1. Monthly Fee. Development Authority agrees to pay to Manager for the performance of its services a fee of \$8,333.33 per calendar month (each, a “**Monthly Fee**”), prorated on the basis of the actual number of days for a partial month, no later than five days after the beginning of each calendar month (or the Effective Date of this Contract, as appropriate), commencing as soon as the assignment to the Public Body contemplated in Section 6.3, below, has become effective. Development Authority shall pay the Monthly Fee in cash or by check in the same manner provided herein for the giving of notices. The sole sources for payment of the Monthly Fees during the Initial Term shall be that \$50,000 will be paid from Public Body’s Operating budget, and the other \$50,000 will come out of the proceeds of the GEFA Contract. The Monthly Fees are inclusive of all expenses and reimbursements of or to Manager.
- 3.2. Project Coordination; Application of Monthly Fees. Manager shall perform its services hereunder by engaging an independent contractor (the “**Project Coordinator**”). The Monthly Fees shall be entirely applied to the compensation of the Project Coordinator. The Project Coordinator and the independent contractor agreement between Manager and Project Coordinator (the “**Independent Contractor Agreement**”) must be satisfactory to Public Body. Without limitation, Project Coordinator shall have the specific duties and responsibilities set forth on Schedule 3.2 attached hereto and incorporated herein by reference, and the provisions of the Independent Contractor Agreement relating to its term and termination shall be consistent with those contained in this Contract. Manager shall, and agrees to, indemnify and save Public Body and its officials, officers, members, representatives, agents, and employees (the “**Indemnified Persons**”) harmless against and from all claims by or on behalf of any person or entity, including, without limitation, any public body, and any liabilities and losses, arising from the performance by Manager of this Contract or relating to this Contract, or the performance by Project Coordinator of the Independent Contractor Agreement or relating to the Independent Contractor Agreement and, without limitation, against and from all claims arising from or relating to (i) any act or negligence of Manager or Project Coordinator or of any of the agents, contractors, servants, employees, or licensees of either of them, or (ii) any violation or alleged violation of any federal or State laws or regulations by Manager or Project Coordinator. However, this indemnity shall not apply, to the extent that a court of competent jurisdiction determines that any of the provisions of such indemnity violate O.C.G.A. § 13-8-2.

### **4. Services Provided by Manager**

- 4.1. Contract is a Subcontract of Operational and Management Responsibilities. The GEFA Agreements require, among other things, Development Authority to operate and manage the Public Component. The purpose of this Contract is for Development Authority to subcontract such operational and management responsibilities to Manager. Accordingly,



the Parties agree that Manager shall provide all operational and management services necessary to fulfill such requirement of the GEFA Agreements, subject to the financial restrictions set forth herein and the written approval of Development Authority.

- 4.2. Public/Private Partnership. In its capacity as Manager under this Contract, Manager shall interpret and apply its responsibilities so as to carry out the intention of the MOU that the Project be comprised of both public and private components which are integrated so as to produce the desired purposes of the MOU, and that the Project will promote and develop the public purposes of trade, commerce, and employment opportunities.
- 4.3. Legal Compliance. It is the intention of the Parties that this Contract and the performance thereof comply with all provisions of law applicable to the Project and to Development Authority. Without limitation, prior to the effectiveness of the Assignment, this Contract shall be subject to O.C.G.A. Sec. 36-62-7, the provisions of this Contract shall be interpreted consistently with such Code Section, and the provisions of such Code Section are hereby incorporated herein by reference as necessary for compliance purposes.
- 4.4. Standards. Manager shall provide its services in a professional manner to Development Authority's satisfaction. Services provided shall meet or exceed commercial standards applicable in private industry and the requirements of the MOU and the GEFA Agreements, respectively.
- 4.5. Maintenance of the Public Component. Subject to the financial restrictions set forth herein and the written approval of Development Authority, Manager agrees to (i) keep the Public Component in safe and functional condition consistent with all applicable Legal Requirements, and (ii) keep the Public Component in good repair and in good operating condition.
- 4.6. Records and Accounts. Manager will keep true and accurate records and books of account in connection with the Public Component in which full, true and correct entries will be made on a consistent basis, in accordance with Generally Accepted Accounting Principles in all material aspects. Development Authority, during normal business hours, shall be entitled to inspect all such books, records and accounts and make extracts or copies therefrom and thereof and audit the same, and Manager shall provide such particulars of accounting entries relating thereto as may be reasonably required by Development Authority.
- 4.7. Liens and Other Charges. Manager will within a reasonable time inform Development Authority of all claims for labor, materials, or supplies that if unpaid might by law become a lien or charge upon the Public Component of which it has knowledge.
- 4.8. Compliance with Laws, Contracts, Licenses, and Permits. In its management and operation of the Public Component, Manager will comply in all material respects with (a) all applicable laws related to the Public Component, (b) all material agreements and instruments related to or regarding the Public Component by which it may be bound (including, without limitation, the GEFA Agreements), (c) all restrictions, covenants and

easements affecting the Public Component, (d) all applicable decrees, orders and judgments related to or regarding the Public Component, and (e) all licenses and permits required by applicable laws and regulations for the management and operation of the Public Component.

4.9. Banking. Manager shall establish one or more bank accounts with a depository authorized by Development Authority, in the name of the Development Authority, on which the Executive Director of Development Authority (or, after the effectiveness of the Assignment, other appropriate official) and one or more officers or employees of Manager shall be authorized signatories, and shall use such account(s) exclusively in connection with the operation and management of the Public Component. All interest, if any, earned on the funds in such account shall be revenues of the Public Component for purposes of Section 5, below. No moneys in any such shall be commingled with any other funds of Manager. All funds deposited in such account(s) shall be deemed to be funds of the Development Authority and shall be held and disbursed as provided herein and in the GEFA Contract.

4.10. Insurance. Manager shall maintain in force all insurance policies required by the GEFA Agreements.

4.11. Independent Contractor. Nothing in this Contract shall be construed as, or shall constitute, a partnership, joint venture, employment or principal/agent relationship between Development Authority and Manager. The duties to be performed and the obligations assumed by Manager, as manager of the Public Component, under this Contract shall be performed and assumed by it as an independent contractor and not as agent or in any other way as representative of Development Authority, except to the extent that Manager is expressly authorized by this Contract to incur obligations on behalf of Development Authority.

4.12. Open Meetings and Open Records; Ethics. Notwithstanding that Manager is a private entity, in all matters relating to this Contract and the performance thereof:

4.12.1. Manager shall comply with O.C.G.A. Sec. 50-18-70, *et seq.*, relating to inspection of public records, and Sec. 50-14-1, *et seq.*, relating to open and public meetings.

4.12.2. Manager shall comply with O.C.G.A. 45-10-3, relating to ethics.

5. **Sole Sources for Payment**. Prior to the effectiveness of the Assignment, all operation and maintenance costs of the Public Component, including, without limitation, Manager's Monthly Fees and expense reimbursements, shall be paid solely from revenues of the Public Component and other amounts permitted by O.C.G.A. Sec. 36-62-7, including proceeds of the GEFA Agreements available for such purpose.

## 6. **General Provisions**

6.1. Notices. Any notice, demand, request, consent, agreement or approval which may or is requested to be given pursuant to this Contract shall be in writing and shall be sufficiently given or made if delivered in person, or mailed by prepaid certified or

registered mail, return receipt requested, or delivered by overnight delivery service with acknowledged receipt, or transmitted by fax and shall be addressed to:

If to Manager:  
Blue Mile Foundation, Inc.  
102 South Main St., Statesboro, GA, 30458

If to Development Authority:  
Development Authority of Bulloch County  
P.O. Box 303  
Statesboro, GA 30459  
Attn: Executive Director

With a copy to:  
Franklin, Taulbee, Rushing, Snipes & Marsh, LLC  
12 Siebald Street  
P. O. Box 327  
Statesboro, GA 30459  
Attn: Stephen T. Rushing

and

Seyfarth Shaw LLP  
Attn: Daniel M. McRae, Esq.  
1075 Peachtree Street, N.E.  
Suite 2500  
Atlanta, Georgia 30309

Each Party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section will be deemed to be given when so mailed, and any communication so delivered in person will be deemed to be given when received for by, or actually received by the Party identified above.

6.2. Amendments. This Contract may not be modified or amended except by a written instrument executed by all of the parties hereto.

6.3. Assignments. Neither this Contract nor any of the rights, entitlements, duties and obligations arising from it shall be assignable in whole or in part by Manager, except with the prior written consent of Development Authority. Development Authority will assign the rights, duties, obligations and liabilities of Development Authority under this Contract, whether incurred before or after such assignment, to the Mayor and Council of the City of Statesboro (the “**Public Body**”) and upon any such assignment, Development Authority shall be and is hereby released from all duties, obligations and liabilities under this Agreement, whether incurred before or after such assignment, provided that the same shall be assumed by Public Body and Manager shall have direct recourse against Public Body regarding same.

- 6.4. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Georgia.
- 6.5. Successors and Assigns. This Contract shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 6.6. Time of the Essence. Time shall be of the essence of this Contract.
- 6.7. Recitals. The recitals at the beginning of this Contract are part hereof and are hereby incorporated herein by reference.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be duly executed and their respective seals to be affixed hereto as of the Effective Date.

**“Development Authority”:**

**DEVELOPMENT            AUTHORITY            OF  
BULLOCH COUNTY**

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

Its: \_\_\_\_\_

ATTEST:

Secretary

[Authority’s Seal]

**The “Manager”**

**BLUE MILE FOUNDATION, INC.**

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

Name:

Title:

ATTEST:

\_\_\_\_\_

[Seal]

## **SCHEDULE 3.2**

### **INDEPENDENT CONTRACTOR AGREEMENT**

The Project Coordinator shall:

1. Make sure all efforts and plans for the new linear park, The Creek on the Blue Mile and The Blue Mile along South Main Street remain coordinated with all parties working together. Manager will identify each party they wish to be included and the contact information for said party.
2. Prepare a timeline showing deadlines that must be met in order to get all of the aspects of this project built out and ready for public use in a timely manner. Manager acknowledges that Contractor will only be able to provide a timeline but not enforce the time in which work is done by the Georgia Department of Transportation, City of Statesboro, or Bulloch County.
3. Coordinate and guide all The Creek on the Blue Mile (COTBM) Commission and/or Committees. Manager will inform Contractor of the committees they wish to have in place and the members that shall serve on said committees or commission.
4. Coordinate the approval process of the downtown Statesboro TAD in regards to the COTBM.
5. Be the liaison between City of Statesboro and Bulloch County (County Recreation Department) in regards to the Municipal Ball Fields being included in the future development plans of the COTBM and Linear Park.
6. Coordinate possible project fundraising through naming rights and grant opportunities to specifically include possible DNR funding for the new Park around the new reservoir/lake.
7. Coordinate GDOT involvement in any facets of these projects.
8. Investigate, coordinate and apply for any additional opportunities for additional funding for any and/or all of the differ facets of these projects.
9. Market lot sales along new creek.
10. Coordinate water features and fountain design and placements along all parts of this project.
11. Work with all public entities involved in this project.  
(Ex. DSDA, City, County, BCDA, SCVB, BMF, GSU, COC, TAD, BOE, etc.)
12. Work closely with any existing creek front, potential creek front or park investors.
13. Work with City of Statesboro in any property acquisitions that may be needed to secure all property needed for this project.
14. Assist in special City zoning if necessary for this project to be successful.
15. Assist in creating specific project covenants, construction guidelines and schedules needed to be sure all involved parties are kept informed and assist if they ask for help.

**CLEAN WATER STATE REVOLVING FUND, ADMINISTERED BY GEORGIA  
ENVIRONMENTAL FINANCE AUTHORITY**

(a public corporation duly created and  
existing under the laws of  
the State of Georgia)  
as Lender

and

**DEVELOPMENT AUTHORITY OF BULLOCH COUNTY**

(a public body corporate and politic duly created and existing  
under the laws of the State of Georgia)  
as Borrower

**LOAN AGREEMENT**



## LOAN AGREEMENT

This **LOAN AGREEMENT** (this “**Agreement**”) dated \_\_\_\_\_, 20\_\_\_\_\_, by and between **DEVELOPMENT AUTHORITY OF BULLOCH COUNTY**, a Georgia public body corporate and politic (the “**Borrower**”), whose address for purposes of this Agreement shall be Development Authority of Bulloch County, P.O. Box 303, Statesboro, GA 30459, Attn: Executive Director, and **CLEAN WATER STATE REVOLVING FUND, ADMINISTERED BY GEORGIA ENVIRONMENTAL FINANCE AUTHORITY**, a Georgia public corporation (the “**Lender**”), whose address for purposes of this Agreement shall be 233 Peachtree St, NE, Peachtree Center-Harris Tower, Ste 900, Atlanta, GA 30303-1506.

**1. Background** - The Lender desires to loan to the Borrower **FIFTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$15,500,000.00)** from the **CLEAN WATER STATE REVOLVING FUND, ADMINISTERED BY GEORGIA ENVIRONMENTAL FINANCE AUTHORITY** (the “**Fund**”) to finance the costs of acquiring, constructing, and installing the environmental facilities described in Exhibit A attached hereto (the “**Project**”). The Environmental Protection Division (“**EPD**”) of the Department of Natural Resources of the State of Georgia has completed all existing statutory reviews and approvals with respect to the Project, as required by Section 50-23-9 of the Official Code of Georgia Annotated, and has approved or will approve the detailed plans and specifications (the “**Plans and Specifications**”) for the Project prepared or to be prepared by the Borrower’s engineer (the “**Engineer**”), which may be amended from time to time by the Borrower but subject to the approval of the EPD.

**2. Loan** - Subject to the terms and conditions of this Agreement, the Lender agrees to make the following loan or loans (collectively, the “**Loan**”) available to the Borrower:

(a) The Lender agrees to advance to the Borrower, on or prior to the earlier of (1) the Completion Date (as hereinafter defined) or (2) «**Commitment\_Expiration**», or (3) the date that the loan evidenced by this Note is fully disbursed, the Loan in a principal amount of up to **\$\$15,500,000.00**, which Loan may be disbursed in one or more advances but each such disbursement shall reduce the Lender’s loan commitment hereunder and any sums advanced hereunder may not be repaid and then re-borrowed.

(b) The Lender’s commitment in paragraph (a) above to make advances to the Borrower shall be a limited obligation of the Lender, to be funded solely from available moneys in the Fund and from no other source of funds, including other funds of the Lender.

(c) The Borrower’s obligation to pay the Lender the principal of and interest on the Loan shall be evidenced by the records of the Lender and by the Note described below.

3. **Note** - The Loan shall be evidenced by the Promissory Note, dated this date, executed by the Borrower in favor of the Lender in an original stated principal amount equal to the maximum amount of the Loan as described above (the “**Note**,” which term shall include any extensions, renewals, modifications, or replacements thereof). The Note shall be in substantially the form attached to this Agreement as Exhibit B.

4. **Interest, Fees, and Other Charges** - In consideration of the Loan, the Borrower shall pay the Lender the following interest, fees, and other charges:

(a) The Loan shall bear interest at the rate or rates per annum specified in the Note and such interest shall be calculated in the manner specified in the Note.

(b) The Borrower agrees to pay all reasonable out-of-pocket costs and expenses of the Lender incurred in connection with its negotiation, structuring, documenting, and closing the Loan, including, without limitation, the reasonable fees and disbursements of counsel for the Lender. The Borrower agrees to pay all reasonable out-of-pocket costs and expenses of the Lender incurred in connection with its administration or modification of, or in connection with the preservation of its rights under, enforcement of, or any refinancing, renegotiation, restructuring, or termination of, any Credit Document (as hereinafter defined) or any instruments referred to therein or any amendment, waiver, or consent relating thereto, including, without limitation, the reasonable fees and disbursements of counsel for the Lender. Such additional loan payments shall be billed to the Borrower by the Lender from time to time, together with a statement certifying that the amount billed has been incurred or paid by the Lender for one or more of the above items. Amounts so billed shall be paid by the Borrower within thirty (30) days after receipt of the bill by the Borrower.

(c) In the event the Borrower fails to request any advances under the Loan within six (6) months after the dated date of this Agreement, the Borrower shall pay the Lender a fee equal to the Lender’s Loan Continuation Fee, as published from time to time in the Lender’s fee schedules, if the Lender requests the Borrower to pay such fee in writing within twelve (12) months after the dated date of this Agreement, such fee to be payable within fifteen (15) days of such written request.

(d) The Borrower shall pay the Lender an origination fee for the loan in the amount of one percent (1%) of the maximum amount of the Loan, payable on the dates specified by the Lender on not less than thirty (30) days written advance notice.

5. **Prepayment** - The Loan shall be prepayable in accordance with the terms and conditions of the Note.

6. **Authorized Borrower Representative and Successors** - The Borrower shall designate a person to act on behalf of the Borrower under this Agreement (the “**Authorized Borrower Representative**”) by written certificate furnished to the Lender, containing the specimen signature of such person and signed on behalf of the Borrower by its chief executive officer. Such certificate or any subsequent or supplemental certificate so executed may designate an alternate or alternates. In the event that any person so designated and his alternate or alternates, if any, should become unavailable

or unable to take any action or make any certificate provided for or required in this Agreement, a successor shall be appointed in the same manner.

**7. Conditions to the Loan** - At the time of the making of each advance under the Loan by the Lender to the Borrower under this Agreement (each an “**Advance**”), the following conditions shall have been fulfilled to the Lender’s satisfaction:

(a) This Agreement and the Note shall have been duly executed and delivered by all required parties thereto and in form and substance satisfactory to the Lender, and the Lender shall have received (1) a certified copy of the resolution adopted by the Borrower’s governing body, substantially in the form of Exhibit F attached hereto, and (2) a signed opinion of counsel to the Borrower, substantially in the form of Exhibit E attached hereto.

(b) There shall then exist no Event of Default under this Agreement (or other event that, with the giving of notice or passage of time, or both, would constitute such an Event of Default).

(c) All representations and warranties by the Borrower in this Agreement and the Note (collectively the “**Credit Documents**”) shall be true and correct in all material respects with the same effect as if such representations and warranties had been made on and as of the date of such advance.

(d) Since the date of the most recent annual financial statements of the Borrower delivered to the Lender, there shall have been no material adverse change in the financial condition, assets, management, control, operations, or prospects of the Borrower.

(e) The Advance to be made and the use of the proceeds thereof shall not violate any applicable law, regulation, injunction, or order of any government or court.

(f) The Borrower shall submit requests for Advances not more frequently than monthly and at least 21 days before the requested disbursement date.

(g) The Advance to be made and the use of the proceeds thereof shall be limited to payment of costs of the Project set forth in the Project budget included as part of Exhibit A and contemplated by the Plans and Specifications approved by the EPD.

(h) There shall be filed with the Lender:

(1) A requisition for such Advance, stating the amount to be disbursed.

(2) A certificate executed by the Authorized Borrower Representative attached to the requisition and certifying:

(A) that an obligation in the stated amount has been incurred by the Borrower and that the same is a cost of the Project and is presently due and payable or has been paid by the Borrower and is reimbursable hereunder and stating that the bill or statement of

account for such obligation, or a copy thereof, is attached to the certificate;

(B) that the Borrower has no notice of any vendor's, mechanic's, or other liens or rights to liens, chattel mortgages, or conditional sales contracts that should be satisfied or discharged before such payment is made; and

(C) that each item on such requisition has not been paid or reimbursed, as the case may be, and such requisition contains no item representing payment on account of any retained percentages that the Borrower is, at the date of any such certificate, entitled to retain or payment for labor performed by employees of the Borrower.

(i) The completed construction on the Project shall be reviewed (at the time each requisition is submitted) by the Engineer, and the Engineer shall certify to the Lender as to (A) the cost of completed construction, (B) the percentage of completion, and (C) compliance with the Plans and Specifications.

**8. Representations and Warranties** - The Borrower hereby represents and warrants to the Lender:

(a) Creation and Authority. The Borrower is a public body corporate and politic duly created and validly existing under the laws of the State of Georgia and has all requisite power and authority to execute and deliver the Credit Documents and to perform its obligations thereunder.

(b) Pending Litigation. Except as disclosed in writing to the Lender, there are no actions, suits, proceedings, inquiries, or investigations pending or, to the knowledge of the Borrower, after making due inquiry with respect thereto, threatened against or affecting the Borrower in any court or by or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially and adversely affecting the properties, activities, prospects, profits, operations, or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under the Credit Documents, or the transactions contemplated by the Credit Documents or which, in any way, would adversely affect the validity or enforceability of the Credit Documents or any agreement or instrument to which the Borrower is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby, nor is the Borrower aware of any facts or circumstances presently existing that would form the basis for any such actions, suits, or proceedings. Except as disclosed in writing to the Lender, the Borrower is not in default with respect to any judgment, order, writ, injunction, decree, demand, rule, or regulation of any court, governmental authority, or arbitration board or tribunal.

(c) Credit Documents are Legal and Authorized. The execution and delivery by the Borrower of the Credit Documents, the consummation of the transactions therein contemplated, and the fulfillment of or the compliance with all of the provisions thereof (i) are within the power, legal right, and authority of the Borrower; (ii) are legal and will not conflict with or constitute on the part of the Borrower a violation of or a breach of or

a default under, any organic document, indenture, mortgage, security deed, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which the Borrower is a party or by which the Borrower or its properties are otherwise subject or bound, or any license, law, statute, rule, regulation, judgment, order, writ, injunction, decree, or demand of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities or properties; and (iii) have been duly authorized by all necessary and appropriate official action on the part of the governing body of the Borrower. The Credit Documents are the valid, legal, binding, and enforceable obligations of the Borrower. The officials of the Borrower executing the Credit Documents are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of the Borrower.

(d) Governmental Consents. Neither the Borrower nor any of its activities or properties, nor any relationship between the Borrower and any other person, nor any circumstances in connection with the execution, delivery, and performance by the Borrower of its obligations under the Credit Documents, is such as to require the consent, approval, permission, order, license, or authorization of, or the filing, registration, or qualification with, any governmental authority on the part of the Borrower in connection with the execution, delivery, and performance of the Credit Documents or the consummation of any transaction therein contemplated, except as shall have been obtained or made and as are in full force and effect and except as are not presently obtainable. To the knowledge of the Borrower, after making due inquiry with respect thereto, the Borrower will be able to obtain all such additional consents, approvals, permissions, orders, licenses, or authorizations of governmental authorities as may be required on or prior to the date the Borrower is legally required to obtain the same.

(e) No Defaults. No event has occurred and no condition exists that would constitute an Event of Default or that, with the lapse of time or with the giving of notice or both, would become an Event of Default. To the knowledge of the Borrower, after making due inquiry with respect thereto, the Borrower is not in default or violation in any material respect under any organic document or other agreement or instrument to which it is a party or by which it may be bound, except as disclosed in writing to the Lender.

(f) Compliance with Law. To the knowledge of the Borrower, after making due inquiry with respect thereto, the Borrower is not in violation of any laws, ordinances, or governmental rules or regulations to which it or its properties are subject and has not failed to obtain any licenses, permits, franchises, or other governmental authorizations (which are presently obtainable) necessary to the ownership of its properties or to the conduct of its affairs, which violation or failure to obtain might materially and adversely affect the properties, activities, prospects, profits, and condition (financial or otherwise) of the Borrower, and there have been no citations, notices, or orders of noncompliance issued to the Borrower under any such law, ordinance, rule, or regulation, except as disclosed in writing to the Lender.

(g) Restrictions on the Borrower. The Borrower is not a party to or bound by any contract, instrument, or agreement, or subject to any other restriction, that materially and adversely affects its activities, properties, assets, operations, or condition (financial or otherwise), except as disclosed in writing to the Lender. The Borrower is



not a party to any contract or agreement that restricts the right or ability of the Borrower to incur indebtedness for borrowed money or to enter into loan agreements. Any contract or agreement of the Borrower that pledges the revenues of the Borrower permits such pledged revenues to be used to make payments due under the Credit Documents.

(h) Disclosure. The representations of the Borrower contained in this Agreement and any certificate, document, written statement, or other instrument furnished by or on behalf of the Borrower to the Lender in connection with the transactions contemplated hereby, do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein or therein not misleading. There is no fact that the Borrower has not disclosed to the Lender in writing that materially and adversely affects or in the future may (so far as the Borrower can now reasonably foresee) materially and adversely affect the acquisition, construction, and installation of the Project or the properties, activities, prospects, operations, profits, or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under the Credit Documents or any of the documents or transactions contemplated hereby or thereby or any other transactions contemplated by this Agreement, which has not been set forth in writing to the Lender or in the certificates, documents, and instruments furnished to the Lender by or on behalf of the Borrower prior to the date of execution of this Agreement in connection with the transactions contemplated hereby.

(i) Project Compliance. The Project complies or will comply with all presently applicable building and zoning, health, environmental, and safety ordinances and laws and all other applicable laws, rules, and regulations of any and all governmental and quasi-governmental authorities having jurisdiction over any portion of the Project.

(j) Financial Statements. The financial statements of the Borrower that have been provided to the Lender in connection with the Loan present fairly the financial position of the Borrower as of the date thereof and the results of its operations and its cash flows for the period covered thereby, all in conformity with generally accepted accounting principles (subject to normal year-end adjustments in the case of interim statements). Additionally, the Borrower agrees that all future financial statements that are required to be submitted to the Authority will be prepared in conformity with generally accepted accounting principles, including infrastructure provisions of GASB 34. Since the date of the most recent annual financial statements for the Borrower delivered to the Lender in connection with the Loan, there has been no material adverse change in the Borrower's financial condition, assets, management, control, operations, or prospects.

(k) Reaffirmation. Each request by the Borrower for an advance under the Loan shall constitute a representation and warranty by the Borrower to the Lender that the foregoing statements are true and correct on the date of the request and after giving effect to such advance.

(l) Borrower's Tax Certificate. The representations and warranties of the Borrower set forth in the Borrower's Tax Certificate, dated the date hereof, are hereby

incorporated herein and made a part hereof by this reference thereto, as if fully set forth herein, and are true and correct as of the date hereof.

**9. Security for Payments under Credit Documents** - As security for the payments required to be made and the obligations required to be performed by the Borrower under the Credit Documents, the Borrower hereby pledges to the Lender its revenue-raising power (including its power to set rates, fees, and charges) for such payment and performance. The Borrower covenants that, in order to make any payments required by the Credit Documents when due from its funds to the extent required hereunder, it will exercise its power to set rates, fees, and charges to the extent necessary to pay the amounts required to be paid under the Credit Documents and will make available and use for such payments all rates, fees, and charges imposed and collected for that purpose together with funds received from any other sources. The Borrower further covenants and agrees that in order to make funds available for such purpose in each fiscal year, it will, in its revenue, appropriation, and budgetary measures through which its revenues and the allocation thereof are controlled or provided for, include sums sufficient to satisfy any such payments that may be required to be made under the Credit Documents, whether or not any other sums are included in such measure, until all payments so required to be made under the Credit Documents shall have been made in full. In the event for any reason any such provision or appropriation is not made as provided in this Section 9, then the fiscal officers of the Borrower are hereby authorized and directed to set up as an appropriation on their accounts in the appropriate fiscal year the amounts required to pay the obligations that may be due from the funds of the Borrower. The amount of such appropriation shall be due and payable and shall be expended for the purpose of paying any such obligations, and such appropriation shall have the same legal status as if the Borrower had included the amount of the appropriation in its revenue, appropriation, and budgetary measures, and the fiscal officers of the Borrower shall make such payments required by the Credit Documents to the Lender if for any reason the payment of such obligations shall not otherwise have been made. The foregoing and any other provision hereof to the contrary notwithstanding, prior to the assignment contemplated in Section 13(b), below, to the Public Body (defined below) by the within-named Borrower of its interest herein and in the Note, the sole source for the payment of any pecuniary obligations of Borrower contained herein or in the Note or related hereto shall be recourse by the Lender to the Public Body under that certain "Environmental Facilities Agreement" of even date herewith between the within-named Borrower and the Public Body, pursuant to that certain "Assignment and Security Agreement" of even date herewith by Borrower in favor of Lender. Upon such assignment, the Public Body will assume the Borrower's duties, obligations and liabilities, whether incurred before or after such assignment, under this Agreement and the Note, the recourse of Lender with respect to such duties, obligations and liabilities shall be directly to the Public Body, and Lender shall have no recourse with respect to same to the within-named Borrower or under the Environmental Facilities Agreement.

**10. Borrower Covenants** - The Borrower agrees to comply with the following covenants so long as this Agreement is in effect:

(a) Information. The Borrower shall deliver to the Lender, within 180 days after the end of each fiscal year, an electronic copy of the financial statements required under state audit requirements (O.C.G.A. § 36-81-7), insofar as such requirement is applicable to Borrower. Borrower's annual financial statements shall be prepared in accordance with generally accepted accounting principles and otherwise in form and substance satisfactory to the Lender, which financial statements shall be accompanied by a certificate of the Borrower (1) to the effect that the Borrower is not in default under any provisions of the Credit Documents and has fully complied with all of the provisions thereof, or if the Borrower is in default or has failed to so comply, setting forth the nature of the default or failure to comply, and (2) stating the Fixed Charges Coverage Ratio, the Fixed Charges, and the Income Available for Fixed Charges of the Borrower for the fiscal year. The Borrower also shall promptly provide the Lender (A) upon receipt thereof, a copy of each other report submitted to the Borrower by its accountants in connection with any annual, interim, or special audit made by them of the books of the Borrower (including, without limitation, any management report prepared in connection with such accountants' annual audit of the Borrower) and (B) with such other information relating to the Borrower and the Project as the Lender may reasonably request from time to time.

(b) Access to Property and Records. The Borrower agrees that the Lender, the EPD, and their duly authorized representatives and agents shall have the right, upon reasonable prior notice, to enter the Borrower's property at all reasonable times for the purpose of examining and inspecting the Project, including any construction or renovation thereof. The Borrower shall keep accurate and complete records and books of account with respect to its activities in which proper entries are made in accordance with generally accepted accounting principles reflecting all of its financial transactions. The Lender and the EPD shall also have the right at all reasonable times to examine and make extracts from the books and records of the Borrower, insofar as such books and records relate to the Project or insofar as necessary to ascertain compliance with this Agreement, and to discuss with the Borrower's officers, employees, accountants, and engineers the Project and the Borrower's activities, assets, liabilities, financial condition, results of operations, and financial prospects.

(c) Agreement to Acquire, Construct, and Install the Project. The Borrower covenants to cause the Project to be acquired, constructed, and installed without material deviation from the Plans and Specifications and warrants that the acquisition, construction, and installation of the Project without material deviation from the Plans and Specifications will result in facilities suitable for use by the Borrower and that all real and personal property provided for therein is necessary or appropriate in connection with the Project. The Borrower may make changes in or additions to the Plans and Specifications; provided, however, changes in or additions to the Plans and Specifications that are material shall be subject to the prior written approval of the Engineer and the EPD. The Borrower agrees to complete the acquisition, construction, and installation of the Project as promptly as practicable and with all reasonable dispatch after the date of this Agreement. Without limiting the foregoing sentence, the Borrower shall commence and complete each activity or event by the deadline stated in the Project Schedule included as part of Exhibit A attached hereto. The Borrower shall comply with the bidding and preconstruction requirements set forth in Exhibit C attached hereto.

(d) Establishment of Completion Date. The date of completion of the acquisition, construction, and installation of the Project (the “**Completion Date**”) shall be evidenced to the Lender and the EPD by a certificate of completion signed by the Authorized Borrower Representative and approved by the Engineer, stating that construction of the Project has been completed without material deviation from the Plans and Specifications and all labor, services, materials, and supplies used in such construction have been paid or provided for. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties that exist at the date of such certificate or that may subsequently come into being. It shall be the duty of the Borrower to cause the certificate contemplated by this paragraph to be furnished as soon as the construction of the Project shall have been completed.

(e) Indemnity. (1) To the extent provided by law, in addition to the other amounts payable by the Borrower under this Agreement (including, without limitation, Section 4 hereof), the Borrower hereby agrees to pay and indemnify the Lender from and against all claims, liabilities, losses, costs, and expenses (including, without limitation, reasonable attorneys’ fees and expenses) that the Lender may (other than as a result of the gross negligence or willful misconduct of the Lender) incur or be subjected to as a consequence, directly or indirectly, of (i) any actual or proposed use of any proceeds of the Loan or the Borrower’s entering into or performing under any Credit Document; (ii) any breach by the Borrower of any representation, warranty, covenant, or condition in, or the occurrence of any other default under, any of the Credit Documents, including without limitation all reasonable attorneys’ fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default; (iii) allegations of participation or interference by the Lender in the management, contractual relations, or other affairs of the Borrower; (iv) allegations that the Lender has joint liability with the Borrower to any third party as a result of the transactions contemplated by the Credit Documents; (v) any suit, investigation, or proceeding as to which the Lender is involved as a consequence, directly or indirectly, of its execution of any of the Credit Documents, the making of the Loan, or any other event or transaction contemplated by any of the Credit Documents; or (vi) the conduct or management of or any work or thing done on the Project and any condition of or operation of the Project.

(2) Nothing contained in this paragraph (e) shall require the Borrower to indemnify the Lender for any claim or liability that the Borrower was not given any opportunity to contest or for any settlement of any such action effected without the Borrower’s consent. The indemnity of the Lender contained in this paragraph (e) shall survive the termination of this Agreement.

(f) Fixed Charges Coverage Ratio. The Borrower shall not permit the Fixed Charges Coverage Ratio for any fiscal year to be less than 1.05. The following terms are defined terms for purposes of this Agreement:

“**Fixed Charges**” means, for any period, the sum of all cash outflows that the Borrower cannot avoid without violating the Borrower’s long-term contractual obligations (those obligations that extend for a period greater than one year, determined in accordance with generally accepted accounting principles), including, but not limited

to, (i) interest on long-term debt, determined in accordance with generally accepted accounting principles, (ii) payments under long-term leases (whether capitalized or operating), and (iii) scheduled payments of principal on long-term debt.

**“Fixed Charges Coverage Ratio”** means, for any period, the ratio of Income Available for Fixed Charges to Fixed Charges.

**“Income Available for Fixed Charges”** means, for any period, net income of the Borrower, plus amounts deducted in arriving at such net income for (i) interest on long-term debt (including the current portion thereof), (ii) depreciation, (iii) amortization, and (iv) payments under long-term leases.

(g) Tax Covenants. The Borrower covenants that it will not take or omit to take any action nor permit any action to be taken or omitted that would cause the interest on the Note to become includable in the gross income of any owner thereof for federal income tax purposes. The Borrower further covenants and agrees that it shall comply with the representations and certifications it made in its Borrower’s Tax Certificate dated the date hereof and that it shall take no action nor omit to take any action that would cause such representations and certifications to be untrue.

**11. Events of Default and Remedies** – (a) Each of the following events shall constitute an Event of Default under this Agreement:

(1) Failure by the Borrower to make any payment with respect to the Loan (whether principal, interest, fees, or other amounts) when and as the same becomes due and payable (whether at maturity, on demand, or otherwise); or

(2) The Borrower shall (A) apply for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of the Borrower or of all or a substantial part of the property of the Borrower; (B) admit in writing the inability of the Borrower, or be generally unable, to pay the debts of the Borrower as such debts become due; (C) make a general assignment for the benefit of the creditors of the Borrower; (D) commence a voluntary case under the federal bankruptcy law (as now or hereafter in effect); (E) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (F) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against the Borrower in an involuntary case under such federal bankruptcy law; or (G) take any action for the purpose of effecting any of the foregoing; or

(3) A proceeding or case shall be commenced, without the application of the Borrower, in any court of competent jurisdiction, seeking (A) the liquidation, reorganization, dissolution, winding-up, or composition or readjustment of debts of the Borrower; (B) the appointment of a trustee, receiver, custodian, liquidator, or the like of the Borrower or of all or any substantial part of the assets of the Borrower; or (C) similar relief in respect of the Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition and adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment, or decree approving or

ordering any of the foregoing shall be entered and continue in effect, for a period of sixty (60) days from commencement of such proceeding or case or the date of such order, judgment, or decree, or any order for relief against the Borrower shall be entered in an involuntary case or proceeding under the federal bankruptcy law; or

(4) Any representation or warranty made by the Borrower in any Credit Document shall be false or misleading in any material respect on the date as of which made (or deemed made); or

(5) Any default by the Borrower shall occur in the performance or observance of any term, condition, or provision contained in any Credit Document and not referred to in clauses (1) through (4) above, which default shall continue for thirty (30) days after the Lender gives the Borrower written notice thereof; or

(6) Any material provision of any Credit Document shall at any time for any reason cease to be valid and binding in accordance with its terms on the Borrower, or the validity or enforceability thereof shall be contested by the Borrower, or the Borrower shall terminate or repudiate (or attempt to terminate or repudiate) any Credit Document; or

(7) Default in the payment of principal of or interest on any other obligation of the Borrower for money borrowed (or any obligation under any conditional sale or other title retention agreement or any obligation secured by purchase money mortgage or deed to secure debt or any obligation under notes payable or drafts accepted representing extensions of credit or on any capitalized lease obligation), or default in the performance of any other agreement, term, or condition contained in any contract under which any such obligation is created, guaranteed, or secured if the effect of such default is to cause such obligation to become due prior to its stated maturity; provided that in each and every case noted above the aggregate then outstanding principal balance of the obligation involved (or all such obligations combined) must equal or exceed \$100,000; or

(8) Default in the payment of principal of or interest on any obligation of the Borrower for money borrowed from the Lender (other than the Loan) or default in the performance of any other agreement, term, or condition contained in any contract under which any such obligation is created, guaranteed, or secured if the effect of such default is to entitle the Lender to then cause such obligation to become due prior to its stated maturity (the parties intend that a default may constitute an Event of Default under this paragraph (8) even if such default would not constitute an Event of Default under paragraph (7) immediately above); or

(9) The dissolution of the Borrower; or

(10) Any material adverse change in the Borrower's financial condition or means or ability to perform under the Credit Documents; or

(11) The occurrence of any other event as a result of which the Lender in good faith believes that the prospect of payment in full of the Loan is impaired.

(b) Upon the occurrence of an Event of Default, the Lender, at its option, without demand or notice of any kind, may declare the Loan immediately due and payable, whereupon all outstanding principal and accrued interest shall become immediately due and payable.

(c) Upon the occurrence of an Event of Default, the Lender, without notice or demand of any kind, may from time to time take whatever action at law or in equity or under the terms of the Credit Documents may appear necessary or desirable to collect the Loan and other amounts payable by the Borrower hereunder then due or thereafter to become due, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under the Credit Documents.

(d) In the event of a failure of the Borrower to pay any amounts due to the Lender under the Credit Documents within 15 days of the due date thereof, the Lender shall perform its duty under Section 50-23-20 of the Official Code of Georgia Annotated to notify the state treasurer of such failure, and the Lender may apply any funds allotted to the Borrower that are withheld pursuant to Section 50-23-20 of the Official Code of Georgia Annotated to the payment of the overdue amounts under the Credit Documents.

(e) Upon the occurrence of an Event of Default, the Lender may, in its discretion, by written notice to the Borrower, terminate its remaining commitment (if any) hereunder to make any further advances of the Loan, whereupon any such commitment shall terminate immediately.

**12. Assignment or Sale by Lender** - (a) The Credit Documents, and the obligation of the Borrower to make payments thereunder, may be sold, assigned, or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees, or subassignees by the Lender. Upon any sale, disposition, assignment, or reassignment, the Borrower shall be provided with a notice of such assignment. The Borrower shall keep a complete and accurate register of all such assignments in form necessary to comply with Section 149(a) of the Internal Revenue Code of 1986, as amended.

(b) The Borrower agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, setoff, or counterclaim whatsoever that the Borrower may from time to time have against the Lender. The Borrower agrees to execute all documents, including notices of assignment, which may be reasonably requested by the Lender or its assignee to protect its interests in the Credit Documents.

(c) The Borrower hereby agrees that the Lender may sell or offer to sell the Credit Documents (i) through a certificate of participation program, whereby two or more interests are created in the Credit Documents or the payments thereunder or (ii) with other similar instruments, agreements, and obligations through a pool, trust, limited partnership, or other entity.

**13. Miscellaneous** - (a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Georgia.



(b) This Agreement shall be binding upon and shall inure to the benefit of the Borrower, the Lender, and their respective heirs, legal representatives, successors, and assigns, but the Borrower may not assign or transfer any of its rights or obligations hereunder without the express prior written consent of the Lender. Lender does expressly consent to the assignment of the rights, duties, obligations and liabilities of Borrower under this Agreement and the Note, whether incurred before or after such assignment, to the Mayor and Council of the City of Statesboro (the "Public Body") and upon any such assignment, the within-named Borrower shall be and is hereby released from all duties, obligations and liabilities under this Agreement and the Note, whether incurred before or after such assignment, provided that the same shall be assumed by the Public Body and Lender shall have direct recourse against the Public Body regarding same.

(c) This Agreement may not be waived or amended except by a writing signed by authorized officials of the Lender and the Borrower.

(d) This Agreement shall be effective on the date on which the Borrower and the Lender have signed one or more counterparts of it and the Lender shall have received the same, provided the Lender receives the same executed by the Borrower by **«Execution\_Expiration»**. At such time as the Lender is no longer obligated under this Agreement to make any further advances under the Loan and all principal, interest, or other amounts owing with respect to the Loan and hereunder have been finally and irrevocably repaid by the Borrower to the Lender, this Agreement shall terminate.

(e) All notices, certificates, requests, demands, or other communications hereunder shall be sufficiently given and shall be deemed given upon receipt, by hand delivery, mail, overnight delivery, telecopy, or other electronic means, addressed as provided at the beginning of this Agreement. Any party to this Agreement may, by notice given to the other party, designate any additional or different addresses to which subsequent notices, certificates, or other communications shall be sent. For purposes of this Section, "electronic means" shall mean telecopy or facsimile transmission or other similar electronic means of communication that produces evidence of transmission.

(f) This Agreement may be executed in one or more counterparts.

(g) All pronouns used herein include all genders and all singular terms used herein include the plural (and vice versa).

(h) In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(i) Statements in Exhibit D attached hereto shall govern the matters they address.

(j) This Agreement and the Note constitute the entire agreement between the Borrower and the Lender with respect to the Loan and supersede all prior agreements,

negotiations, representations, or understandings between such parties with respect to such matters.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officials hereunto duly authorized as of the date first above written.

**DEVELOPMENT AUTHORITY OF BULLOCH  
COUNTY**

Approved as to form:

Signature:

By:

Print Name:

Borrower's Attorney

Title:

(SEAL)

Attest Signature:

Print Name:

Title:

—

**CLEAN WATER STATE REVOLVING FUND,  
ADMINISTERED BY GEORGIA  
ENVIRONMENTAL FINANCE AUTHORITY**

Signature:

Kevin Clark  
Executive Director

(SEAL)

## DESCRIPTION OF THE PROJECT

### SCOPE OF WORK

**Recipient:** DEVELOPMENT AUTHORITY OF BULLOCH COUNTY

**Loan Number:** «Loan\_No»

- 1) The “**Project**” hereunder is the same as the Public Component (defined below) of the Project that is the subject of that certain Memorandum of Understanding (the “**MOU**”) of even date herewith by and among the City of Statesboro, Georgia (i.e., the Public Body, also referred to below in this Exhibit as the “**City**”), the Borrower (i.e., the Development Authority of Bulloch County), and Blue Mile Foundation, Inc. (the “**Manager**”). The Project will be operated and managed by the Manager pursuant to that certain “Management Contract” between Borrower and Manager provided for in the MOU (the “**Management Contract**”).
- 2) The following terms have the same meanings herein as in the MOU, i.e.:
  - a) “**Project**” means the development commonly known as the “Creek on the Blue Mile”, which will develop an existing creek as it intersects with South Main Street, adjacent to Shug’s on Main and the Baymont Hotel, in the City, for entertainment, shopping, living and recreation opportunities. It will include a plaza between South College and South Main in the City, and will connect the City’s downtown with Georgia Southern University. In connection with the Project, the existing canal under South Main will be reconfigured into a wide, shallow creek with broad pedestrian boulevards and multi-story commercial, residential and entertainment venues on each side. The creek will wind to the southern section of Fair Road Park in the City where a small amphitheater is being considered. The Public Component of the Project will, in part, create a 25-acre lake off South College Street to alleviate flooding and control runoff while providing a reservoir for the city. The Project’s plans include nature trails, fishing, kayaking and a pavilion with an adjoining playground.
  - b) “**Public Component**” means a proposed water supply impoundment on Little Lots Creek within the limits of the City in Bulloch County, Georgia that will dually serve as an emergency water supply for the City and a public recreational feature for city residents.
  - c) “**Private Component**” means privately-owned facilities (such owners, other than Manager, “**Private Owners**”) that represent the development of trade, commerce and private-sector employment opportunities and that are included in the Project. As planned, among such facilities will be multi-story commercial and entertainment venues. The Private Component is expected to create up to 750 jobs, expand the existing tax base to more than \$100 million in the planned area of development, and position the City as new economic hub for its region.

- d) “**GEFA**” means the Georgia Environmental Finance Authority, a public corporation and instrumentality of the State of Georgia.
  - e) “**GEFA Contract**” means that certain “Intergovernmental Agreement to Share Water Supply Yield” dated as of \_\_\_\_\_, 2019 by and between GEFA and the Development Authority, substantially in the form of Schedule 3.3 attached hereto and incorporated herein by reference.
- 3) The use of the proceeds of the Loan is to pay a portion of the costs of the Public Component, in addition to costs paid by funding provided under the GEFA Contract, on and subject to the terms and conditions of this Agreement.
- 4) The findings and determinations on the part of Borrower and/or City that are set forth in Article 4 of the MOU (i.e., the “**Legislative Findings**”, as defined therein) are hereby incorporated herein by reference. Without limitation, the Project is intended to, and does, constitute an authorized “public/private partnership”, having properly integrated public and private components, being the Public Component and the Private Component.

**DESCRIPTION OF THE PROJECT**

**PROJECT BUDGET**

**Recipient:**       **«Borrower\_Name»**

**Loan Number:**   **«Loan\_No»**

<b>ITEM</b>	<b>TOTAL</b>	<b>LOAN</b>
Construction		
Contingency		
Engineering & Inspection		
Administrative/Legal		
<b>TOTAL</b>		

\*The amounts shown above in each budget item are estimates. Borrower may adjust the amounts within the various budget items without prior Lender approval provided Borrower does not exceed the loan amount contained in Section 1 of the Loan Agreement. In no event shall Lender be liable for any amount exceeding the loan amount contained in Section 1 of the Loan Agreement.

**DESCRIPTION OF THE PROJECT**

**PROJECT SCHEDULE**

**Recipient:**       «Borrower\_Name»

**Loan Number:**   «Loan\_No»

<b>ACTION</b>	<b>DATE</b>
Plans and Specifications submitted to EPD	Example: November 2016
Bid Opening	
Notice to Proceed with Construction	
Completion of Construction	



EXHIBIT B  
PAGE 1 OF 3  
DEVELOPMENT  
AUTHORITY OF  
BULLOCH COUNTY  
«Loan\_No»

SPECIMEN PROMISSORY NOTE

\$«Loan\_Amount1»

**FOR VALUE RECEIVED**, the undersigned (hereinafter referred to as the “**Borrower**”) promises to pay to the order of **CLEAN WATER STATE REVOLVING FUND, ADMINISTERED BY GEORGIA ENVIRONMENTAL FINANCE AUTHORITY** (hereinafter referred to as the “**Lender**”) at the Lender’s office located in Atlanta, Georgia, or at such other place as the holder hereof may designate, the principal sum of **FIFTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$15,500,000.00)** or so much thereof as shall have been advanced hereagainst and shall be outstanding, together with interest on so much of the principal balance of this Note as may be outstanding and unpaid from time to time, calculated at the rate or rates per annum indicated below.

The unpaid principal balance of this Note shall bear interest at a rate per annum equal to **«Loan\_No» PERCENT («LOAN\_NO»%)**, (1) calculated on the basis of actual number of days in the year and actual days elapsed until the Amortization Commencement Date (as hereinafter defined), and (2) calculated on the basis of a 360-day year consisting of twelve 30-day months thereafter.

Accrued interest on this Note shall be payable monthly on the first day of each calendar month until the first day of the calendar month following the earlier of (1) the Completion Date (as defined in the hereinafter defined Loan Agreement), (2) **«Commitment\_Expiration»**, or (3) the date that the loan evidenced by this Note is fully disbursed (the “**Amortization Commencement Date**”). Principal of and interest on this Note shall be payable in **«Alpha\_Term» («Numeric\_Term»)** consecutive monthly installments equal to the Installment Amount (as hereinafter defined), commencing on the first day of the calendar month following the Amortization Commencement Date, and continuing to be due on the first day of each succeeding calendar month thereafter, together with a final installment equal to the entire remaining unpaid principal balance of and all accrued interest on this Note, which shall be due and payable on the date that is **«Numeric\_Years»** years from the Amortization Commencement Date (the “**Maturity Date**”).

This Note shall bear interest on any overdue installment of principal and, to the extent permitted by applicable law, on any overdue installment of interest, at the aforesaid rates. The Borrower shall pay a late fee equal to the Lender’s late fee, as published from time to time in the Loan Servicing Fee schedules, for any installment payment or other amount due hereunder that is not paid by the 15<sup>th</sup> of the month in which the payment is due.

“**Installment Amount**” means the amount equal to the monthly installment of principal and interest required to fully amortize the then outstanding principal balance of

this Note as of the Amortization Commencement Date at the rate of interest on this Note, on the basis of level monthly debt service payments from the Amortization Commencement Date to and including the Maturity Date.

All payments or prepayments on this Note shall be applied first to unpaid fees and late fees, then to interest accrued on this Note through the date of such payment or prepayment, and then to principal (and partial principal prepayments shall be applied to such installments in the inverse order of their maturity).

At the option of the Lender, the Borrower shall make payments due under this Note using pre-authorized electronic debit transactions, under which the Lender will be authorized to initiate and effect debit transactions from a designated account of the Borrower without further or additional approval or confirmation by the Borrower. The Borrower further agrees to adopt any necessary approving resolutions and to complete and execute any necessary documents in order for the Lender to effect such pre-authorized debit transactions. In the event the Borrower has insufficient funds in its designated account on the date the Lender attempts to debit any payment due hereunder, the Borrower shall pay the Lender a processing fee equal to the Lender's processing fee, as published from time to time in the Lender's fee schedules for each such occurrence (but not exceeding two such processing fees in any calendar month), in addition to any late fee as provided above.

The Borrower may prepay the principal balance of this Note in whole or in part at any time without premium or penalty.

This Note constitutes the Promissory Note issued under and pursuant to and is entitled to the benefits and subject to the conditions of a Loan Agreement (the "**Loan Agreement**"), dated the date hereof, between the Borrower and the Lender, to which Loan Agreement reference is hereby made for a description of the circumstances under which principal shall be advanced under this Note. Reference is hereby made to the Loan Agreement for a description of the security for this Note and the options and obligations of the Borrower and the Lender hereunder. Upon an Event of Default (as defined in the Loan Agreement), the entire principal of and interest on this Note may be declared or may become immediately due and payable as provided in the Loan Agreement.

The obligation of the Borrower to make the payments required to be made under this Note and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Borrower, as provided in the Loan Agreement, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, counterclaim, or recoupment, except for payment, it may otherwise have against the Lender.

In case this Note is collected by or through an attorney-at-law, all costs of such collection incurred by the Lender, including reasonable attorney's fees, shall be paid by the Borrower.

Time is of the essence of this Note. Demand, presentment, notice, notice of demand, notice for payment, protest, and notice of dishonor are hereby waived by each and every maker, guarantor, surety, and other person or entity primarily or secondarily liable on this Note. The Lender shall not be deemed to waive any of its rights under this Note unless such waiver be in writing and signed by the Lender. No delay or omission by the Lender in exercising any of its rights under this Note shall operate as a waiver of such rights, and a waiver in writing on one occasion shall not be construed as a consent to or a waiver of any right or remedy on any future occasion.

This Note shall be governed by and construed and enforced in accordance with the laws of the State of Georgia (without giving effect to its conflicts of law rules). Whenever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note. Without limitation, in the event it should be finally determined that Borrower is not legally authorized to issue this instrument as a promissory note, then, (a) this instrument shall instead be construed to constitute an intergovernmental agreement under Georgia Constitution Art. IX, Sec. III, Para. I between Lender and Borrower, (b) the lending obligations of Lender hereunder and under related documents shall be reformed and deemed restated as obligations to fund the costs to be paid using proceeds of the Loan, otherwise on the terms and conditions contained herein, (c) the repayment obligations of Borrower hereunder and under related documents shall be reformed and deemed restated as obligations to reimburse the costs so funded, otherwise on the terms and conditions contained herein, including, without limitation, the payment of interest thereon, and (d) such intergovernmental agreement shall be subject to the 50-year term limit contained in such provision of the Georgia Constitution, but shall expire earlier upon its complete performance.

Words importing the singular number hereunder shall include the plural number and vice versa, and any pronoun used herein shall be deemed to cover all genders. The word "Lender" as used herein shall include transferees, successors, and assigns of the Lender, and all rights of the Lender hereunder shall inure to the benefit of its transferees, successors, and assigns. All obligations of the Borrower hereunder shall bind the Borrower's successors and assigns.

**SIGNED, SEALED, AND DELIVERED** by the undersigned Borrower as of the  
day of \_\_\_\_\_, \_\_\_\_.

**DEVELOPMENT AUTHORITY OF  
BULLOCH COUNTY**

(SEAL)

By: **SPECIMEN**

Name:

Title:

Approved as to form:

Attest:

By: **SPECIMEN**  
\_\_\_\_\_  
Authority Attorney

**SPECIMEN**  
\_\_\_\_\_  
Name:  
Title:

**BIDDING AND PRECONSTRUCTION REQUIREMENTS**

**Recipient:**           **«Borrower\_Name»**

**Loan Number:**      **«Loan\_No»**

1. Competitive procurement by public bidding is required for construction, construction services, materials, and equipment.
2. The Borrower must advertise for bids by conspicuously posting the notice in its office and by advertising in the local newspaper that is the legal organ or on its Internet website or on an Internet site designated for its legal advertisements. The bid or proposal opportunity must be advertised in the Georgia Procurement Registry, provided that such posting is at no cost to the governmental entity.
3. Advertisements must appear at least twice. The first advertisement must appear at least four weeks prior to the bid opening date. The second advertisement must follow at least two weeks after the first advertisement. Website advertisements must remain posted for at least four weeks. Plans and specifications must be available for inspection by the public on the first day of the advertisement. The advertisement must include details to inform the public of the extent and character of work to be performed, any pre-qualification requirements, any pre-bid conferences, and any federal requirements.
4. The Borrower must require at least a 5 percent bid bond or certified check or cash deposit equal to 5 percent of the contract amount.
5. Sealed bids, with a public bid opening, are required.
6. The Borrower must award the contract to the low, responsive, and responsible bidder or bidders, with reservation of right to reject all bids.
7. The Borrower may modify bidding documents only by written addenda with notification to all potential bidders not less than 72 hours prior to the bid opening, excluding Saturdays, Sundays, and legal holidays.
8. The Borrower must require 100 percent payment and performance bonds.
9. Change orders may not be issued to evade the purposes of required bidding procedures. Change orders may be issued for changes or additions consistent with the scope of the original construction contract documents.

10. Prior to disbursement of construction-related funds, the Borrower shall provide the Lender with copies of the following:
  - a. Proof of advertising;
  - b. Certified detailed bid tabulation;
  - c. Engineer's award recommendation;
  - d. Governing body's award resolution;
  - e. Executed contract documents, including plans and specifications;
  - f. Construction and payment schedules;
  - g. Notice to proceed;
  - h. Contractor's written oath in accordance with O.C.G.A. Section 36-91-21 (e).  
(This is an oath required by law to be provided to the Borrower by the contractor. In short, this oath must state that the contractor has not acted alone or otherwise to prevent or attempt to prevent competition in bidding by any means and must be signed by appropriate parties as defined by law.);  
and
  - i. Summary of plans for on-site quality control to be provided by the Borrower or the Engineer - name and brief qualifications of construction inspector(s) and approximate hours per week of inspection to be provided.
11. If other funding sources are involved that have stricter bidding requirements or if applicable laws or ordinances require stricter requirements, these stricter requirements shall govern.
12. If the Borrower wishes to fund work that may not fully meet the bidding requirements of this Agreement, then, prior to bidding this work, it shall submit a written request to the Lender that specific requirements be waived. Based on specific circumstances of the request, the Lender may require submission of additional information necessary to document that State laws and local ordinances are not violated and that the intent of the bid procedures set forth in this Exhibit C (public, open, and competitive procurement) is satisfied through alternate means.
13. The Borrower is required to notify the Lender at least two weeks prior to pre-construction conferences for work funded under this Agreement and to schedule these conferences so that a representative of this unit may participate.

**STATE REQUIREMENTS**

Recipient: «Borrower\_Name»

Loan Number: «Loan\_No»

**DO NOT INCLUDE ITEMS FROM EPD THAT ARE LISTED ELSEWHERE IN THE  
LOAN AGREEMENT**



**FEDERAL REQUIREMENTS**

**Recipient:**           **«Borrower\_Name»**

**Loan Number:**       **«Loan\_No»**

1. The Borrower covenants that the Project will comply with the federal requirements applicable to activities supported with federal funds. The Borrower further covenants that the Project will be constructed in compliance with State of Georgia objectives for participation by women's and minority business enterprises in projects financed with federal funds under the federal Clean Water Act. The Borrower will comply with all federal and State of Georgia laws, rules, and regulations relating to maintenance of a drug-free workplace at the Project.
2. The Borrower covenants to comply with the requirements of the Federal Single Audit Act, to the extent it applies to the expenditure of federal funds, including the Loan or any portion thereof. The Borrower agrees to submit to the Lender copies of any audit prepared and filed pursuant to the requirements of this Section.
3. It is the policy of the Lender to promote a fair share award of sub-agreements to small and minority and women's businesses on contracts performed under the Lender. If the successful bidder plans to subcontract a portion of the Project, the bidder must submit to the Lender, with copy to the Borrower within 10 days after bid opening, evidence of the positive steps taken to utilize small, minority, and women's businesses. Such positive efforts shall include:
  - a) including qualified small and minority and women's businesses on solicitation lists;
  - b) assuring that small and minority and women's businesses are solicited whenever they are potential sources;
  - c) dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small and minority and women's businesses;
  - d) establishing delivery schedules, where the requirements of the work permit, to encourage participation by small and minority and women's businesses;
  - e) using the services and assistance of the U.S. Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce;
  - f) requiring each party to a subagreement to take the affirmative steps outlined in paragraphs (a) through (e) of this section.

4. The Borrower shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The Borrower is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The Borrower is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier transactions. The Borrower acknowledges that failure to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

The Borrower may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49. "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

5. The Borrower shall insert in full in any contract in excess of \$2,000 which is entered into for actual construction, alteration and/or repair, including painting and decorating, financed in whole or in part from Federal funds and which is subject to the requirements of the Davis-Bacon Act, the document entitled "Supplemental General Conditions for Federally Assisted State Revolved Loan Fund Construction Contracts." **(EXCLUDE FOR SOLAR PROJECTS – SAVE NUMBERING AS "RESERVED")**
6. Borrower certifies to the best of its knowledge and belief that: No Federal appropriated funds have been paid in full or will be paid, by or on behalf of the Borrower, to any person 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 any of the following covered Federal actions: 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.

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 or a Member of Congress in connection with this loan agreement, then the Borrower shall fully disclose same to the Lender, and shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with instructions.

7. The Borrower will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Borrower will comply with all sections of Executive Order 12246 – Equal Employment Opportunity.
8. The Borrower will not discriminate against any employee or applicant for employment because of a disability. The Borrower will comply with section 504 of the Rehabilitation Act of 1973.

9. Forgiveness of Debt Service. In accordance with the Appropriations language, the Lender agrees to forgive **\$122,000** of this Loan, if all funds are drawn.

Upon the occurrence and continuation of an Event of Default, the Lender may, in its discretion, by written notice to the Borrower, terminate or suspend its agreement hereunder to forgive any further principal and interest payments due on the Loan, whereupon any such agreement shall terminate or suspend immediately. In the case of suspension of the Lender's agreement to forgive principal and interest payments due on the Loan, upon the cessation of such Event of Default, the Lender may, in its discretion, by written notice to the Borrower, reinstate its agreement hereunder to forgive any further principal and interest payments due on the Loan, whereupon any such agreement shall reinstate immediately.

10. The Borrower will comply with all federal requirements outlined in the Water Resources Reform and Development Act of 2014 and related Clean Water State Revolving Fund Policy Guidelines, which the Borrower understands includes, among other requirements, that all of the iron and steel products used in the Project (as described in Exhibit A) are to be produced in the United States ("American Iron and Steel Requirement" – section 608) unless (i) the Borrower has requested from the Lender and obtained a waiver from the Environmental Protection Agency pertaining to the Project or (ii) the Lender has otherwise advised the Borrower in writing that the American Iron and Steel Requirement is not applicable to the Project. **(EXCLUDE FOR SOLAR PROJECTS – SAVE NUMBERING AS "RESERVED")**
11. The Borrower will comply with all federal requirements outlined in the Water Resources Reform and Development Act of 2014 and related Clean Water State Revolving Fund Policy Guidelines, which the Borrower understands includes, among other requirements, the development of a Fiscal Sustainability Plan (FSP) (section 603(d)(1)(E)) for the Project (as described in Exhibit A). The Borrower has either certified that the FSP has been developed and is being implemented for the portion of the treatment works in the Project or the Borrower has certified that an FSP will be developed and implemented for the portion of the treatment works in the Project prior to the final disbursement of funds, unless the Lender has otherwise advised the Borrower in writing that the development and implementation of an FSP is not applicable to the Project. **(EXCLUDE FOR SOLAR PROJECTS – SAVE NUMBERING AS "RESERVED")**
12. The Borrower will comply with all record keeping and reporting requirements under the Clean Water Act, including any reports required by the Environmental Protection Agency or the Lender such as performance indicators of program deliverables, information on costs and project progress. The Borrower understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance and/or other remedial actions.
13. The Borrower shall insert in full in any contract which is entered into for construction, alteration, maintenance, or repair of a public water system or treatment works, financed in whole or in part from Federal funds, the document entitled "American Iron and Steel

Special Conditions and Information for Federally Assisted State Revolving Loan Fund Construction Contracts.” **(EXCLUDE FOR SOLAR PROJECTS – SAVE NUMBERING AS “RESERVED”)**

14. The Borrower will comply with the requirements and obligations of Title VI of the Civil Rights Act in accordance with 40 CFR Part 5 and 7. Among the requirements, borrowers must have a nondiscrimination notice, operate programs or activities that are accessible to individuals with disabilities, designate a civil rights coordinator, have a language access services policy, and maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves.
15. As required by 40 CFR Part 33.501(b), the Environmental Protection Agency (EPA) Disadvantaged Business Enterprise Rule requires State Revolving Loan recipients to create and maintain a bidders list. The purpose of a bidders list is to provide the Borrower who conducts competitive bidding with a more accurate database of the universe of Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) and non-MBE/WBE prime and subcontractors. The list must include all firms that bid on EPA-assisted projects, including both MBE/WBEs and non-MBE/WBEs. The bidders list must be kept active until the project period for the loan has ended.

The bidders list must contain the following information from all prime contractors and subcontractors:

- 1) Bidder’s name with point of contract;
- 2) Bidder’s mailing address, telephone number, and email address;
- 3) The procurement item on which the bidder bid or quoted, and when; and
- 4) Bidder’s status as an MBE/WBE or non-MBE/WBE

Borrowers receiving a combined total of \$250,000 or less in federal funding in any one fiscal year, are exempt from the requirements to maintain a bidders list.

**FINANCIAL COVENANTS**

Recipient: «Borrower\_Name»

Loan Number: «Loan\_No»

**ONLY INCLUDES SPECIAL CONDITIONS FOR LOAN MEMO WHICH WILL LAST FOR THE LIFE OF THE LOAN. DO NOT INCLUDE CONDITIONS PRECEDENT OF EXECUTION**

**OPINION OF BORROWER'S COUNSEL**  
(Please furnish this form on Attorney's Letterhead)

DATE

Clean Water State Revolving Fund, Administered by  
Georgia Environmental Finance Authority  
233 Peachtree St NE  
Harris Tower, Ste 900  
Atlanta, GA 30303-1506

Ladies and Gentlemen:

As counsel for **«Borrower\_Name»** (the "Borrower"), I have examined duly executed originals of the Loan Agreement (the "Loan Agreement"), Loan/Project No. **«Loan\_No»**, between the Borrower and **CLEAN WATER STATE REVOLVING FUND, ADMINISTERED BY GEORGIA ENVIRONMENTAL FINANCE AUTHORITY** (the "Lender"), the related Promissory Note (the "Note") of the Borrower, the proceedings taken by the Borrower to authorize the Loan Agreement and the Note (collectively, the "Credit Documents"), and such other documents, records, and proceedings as I have deemed relevant or material to render this opinion, and based upon such examination, I am of the opinion, as of the date hereof, that:

1. The Borrower is a public body corporate and politic, duly created and validly existing under the laws of the State of Georgia.

2. The Credit Documents have been duly authorized, executed, and delivered by the Borrower and are legal, valid, and binding obligations of the Borrower, enforceable in accordance with their terms.

3. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, in any way questioning or affecting the validity of the Credit Documents.

4. To the best of my knowledge, the execution, delivery, and performance by the Borrower of the Credit Documents will not conflict with, breach, or violate any law, any order or judgment to which the Borrower is subject, or any contract to which the Borrower is a party.

5. The signatures of the officers of the Borrower that appear on the Credit Documents are true and genuine. I know such officers and know them to be the duly elected or appointed qualified incumbents of the offices of the Borrower set forth below their names.

With your permission, in rendering the opinions set forth herein, I have assumed the following, without any investigation or inquiry on my part:

- (i) the due authorization, execution, and delivery of the Credit Documents by the Lender; and
- (ii) that the Credit Documents constitute the binding obligations of the Lender and that the Lender has all requisite power and authority to perform its obligations thereunder.

The enforceability of the Credit Documents (i) may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and other similar laws affecting the enforcement of creditors' rights, (ii) may be subject to general principles of equity, whether applied by a court of law or equity, and (iii) may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,

Signature

Printed Name

Date



**EXTRACT OF MINUTES  
RESOLUTION OF GOVERNING BODY**

**Recipient:**           **«Borrower\_Name»**

**Loan Number:**       **«Loan\_No»**

At a duly called meeting of the governing body of the Borrower identified above (the "Borrower") held on the \_\_\_\_\_ day of \_\_\_\_\_, the following resolution was introduced and adopted.

**WHEREAS**, the governing body of the Borrower has determined to borrow but not to exceed \$«Loan\_Amount1» from **CLEAN WATER STATE REVOLVING FUND, ADMINISTERED BY GEORGIA ENVIRONMENTAL FINANCE AUTHORITY** (the "Lender") to finance a portion of the costs of acquiring, constructing, and installing the environmental facilities described in Exhibit A to the hereinafter defined Loan Agreement (the "Project"), pursuant to the terms of a Loan Agreement (the "Loan Agreement") between the Borrower and the Lender, the form of which has been presented to this meeting; and

**WHEREAS**, the Borrower's obligation to repay the loan made pursuant to the Loan Agreement will be evidenced by a Promissory Note (the "Note") of the Borrower, the form of which has been presented to this meeting;

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the Borrower that the forms, terms, and conditions and the execution, delivery, and performance of the Loan Agreement and the Note are hereby approved and authorized.

**BE IT FURTHER RESOLVED** by the governing body of the Borrower that the terms of the Loan Agreement and the Note (including the interest rate provisions, which shall be as provided in the Note) are in the best interests of the Borrower for the financing of the Project, and the governing body of the Borrower designates and authorizes the following persons to execute and deliver, and to attest, respectively, the Loan Agreement, the Note, and any related documents necessary to the consummation of the transactions contemplated by the Loan Agreement.

\_\_\_\_\_  
(Signature of Person to Execute Documents)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Signature of Person to Attest Documents)

\_\_\_\_\_  
(Print Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Secretary/Clerk

(SEAL)

US2000 10904349.1

# CITY OF STATESBORO

## COUNCIL

Phillip A. Boyum  
Sam Lee Jones  
Jeff B. Yawn  
John C. Riggs  
Derek Duke



Jonathan McCollar, Mayor  
Randy Wetmore, City Manager  
Sue Starling, City Clerk  
Cain Smith, City Attorney

50 EAST MAIN STREET • P.O. BOX 348  
STATESBORO, GEORGIA 30459-0348

**To:** Randy Wetmore, City Manager and Sue Starling, City Clerk

**From:** Cain Smith, City Attorney

**Date:** February 13, 2019

**RE:** February 19, 2019 City Council Agenda Items

**Policy Issue:** Consideration of Environmental Facility Agreement with the Development Authority of Bulloch County (DA) as to City agreeing to repay \$15,500,000 GEFA loan that DA intends to borrow. In essence, City would act as co-signer of the loan taken out by DA. This agreement shall terminate upon the Assignment/ Assumption Contract in the previous agenda item.

**Recommendation:** City consider the Environmental Facility Agreement for approval.

**Background:** GEFA offered a \$15,500,000 loan to the City for installation of the Blue Creek public component with DA being initial signatory to said loan. GEFA required that the loan be backed by the full faith and credit of a taxing authority which would result from approval of the attached agreement.

**Budget Impact:** None

**Council Person and District:** All

**Attachments:** Proposed Environmental Facilities Agreement

Loan/Project No. «Loan\_No»

**ENVIRONMENTAL FACILITIES AGREEMENT**

**by and between**

**DEVELOPMENT AUTHORITY OF BULLOCH COUNTY**

**and**

**CITY OF STATESBORO, GEORGIA**

**Dated** \_\_\_\_\_

## ENVIRONMENTAL FACILITIES AGREEMENT

**THIS ENVIRONMENTAL FACILITIES AGREEMENT** (this “**Contract**”) dated \_\_\_\_\_, by and between **DEVELOPMENT AUTHORITY OF BULLOCH COUNTY**, a Georgia authority (the “**Borrower**”), whose address for purposes of this Agreement shall be P.O. Box 303, Statesboro, GA 30459, Attn: Executive Director, and **CITY OF STATESBORO, GEORGIA**, a Georgia public body corporate and politic (the “**Public Body**”), whose address for purposes of this Agreement shall be **50 E. Main St., Statesboro 30458, Attn: City Manager**;

**WHEREAS**, the Borrower desires to borrow **FIFTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$15,500,000.00)** from the **CLEAN WATER STATE REVOLVING FUND, ADMINISTERED BY GEORGIA ENVIRONMENTAL FINANCE AUTHORITY** (the “**Lender**”) to finance the costs of acquiring, constructing, and installing additions, extensions, or improvements to the Borrower’s environmental facilities, pursuant to the terms of a Loan Agreement (the “**Loan Agreement**”), dated the date hereof, between the Borrower and the Lender, a fully executed copy of which has been delivered to the Public Body; and

**WHEREAS**, the Borrower’s obligation to repay the loan made pursuant to the Loan Agreement is evidenced by a Promissory Note (the “**Note**”), dated the date hereof, by the Borrower to the Lender, a fully executed copy of which has been delivered to the Public Body; and

**WHEREAS**, Article IX, Section III, Paragraph I(a) of the Constitution of the State of Georgia of 1983 authorizes any county or municipality of the State of Georgia to contract for any period not exceeding fifty years with any public corporation or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, if such contract deals with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide; and

**WHEREAS**, the Borrower and the Public Body are authorized by law to undertake or provide environmental facilities and services; and

**WHEREAS**, the Borrower and the Public Body propose to enter into this Contract, under the terms of which (1) the Borrower will agree to operate its environmental facilities as public environmental facilities and to make its environmental facilities and services available to residents of the Public Body, and (2) the Public Body will agree (a) to make payments to the Borrower in amounts sufficient to enable the Borrower to pay when due the principal of and interest on the Note, to the extent the Borrower has insufficient funds for such purposes, and (b) to levy an annual ad valorem tax on all taxable property located within the territorial or corporate limits of the Public Body, within any limitation that may be prescribed by law, as may be necessary to produce in each year revenues that are sufficient to fulfill the Public Body’s obligations under this Contract; and

**WHEREAS**, to secure its obligation to pay principal of and interest on the Note, the Borrower proposes to assign and pledge, and grant a first priority lien on, its right,

title, and interest in this Contract and the payments to be received by the Borrower pursuant to this Contract to the Lender, pursuant to the terms of an Assignment and Security Agreement (the “**Assignment**”), to be dated the date hereof, between the Borrower and the Lender;

**NOW, THEREFORE**, in consideration of the respective covenants, representations, and agreements hereinafter contained and in furtherance of the mutual public purposes hereby sought to be achieved, the Borrower and the Public Body agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1. Definitions.** Certain words and terms used in this Contract shall have the meaning given them in the Loan Agreement, which by this reference are incorporated herein.

## **ARTICLE II**

### **REPRESENTATIONS**

**Section 2.1. Representations by the Borrower.** The Borrower makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Borrower is authorized to enter into the transactions contemplated by this Contract and to carry out its obligations hereunder, has been duly authorized to execute and deliver this Contract, and will do or cause to be done all things necessary to preserve and keep in full force and effect its status and existence.

(b) The issuance of the Note, the execution and delivery of this Contract and the Loan Agreement, and the performance of all covenants and agreements of the Borrower contained in this Contract, the Note, and the Loan Agreement and of all other acts and things required under the Constitution and laws of the State of Georgia to make this Contract, the Note, and the Loan Agreement are valid and binding obligations of the Borrower in accordance with their respective terms, are authorized by law, and have been duly authorized by proceedings of the Borrower adopted at public meetings duly and lawfully called and held.

(c) There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against the Borrower that have or could have a material adverse effect on the right of the Borrower to execute this Contract, the Note, or the Loan Agreement or the ability of the Borrower to comply with any of its obligations under this Contract, the Note, and the Loan Agreement.

**Section 2.2. Representations by the Public Body.** The Public Body makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Public Body is a public body corporate and politic duly created and validly existing under the laws of the State of Georgia, having the power to enter into and carry out its obligations under this Contract, and, by proper action of its governing body, has authorized the execution and delivery of this Contract and the taking of any and all such actions as may be required on its part to carry out, give effect to, and consummate the transactions contemplated by this Contract, and no approval or other action by any governmental authority, agency, or other person is required in connection with the delivery and performance of this Contract by it except as shall have been obtained as of the date hereof.

(b) This Contract has been duly executed and delivered by the Public Body and constitutes the legal, valid, and binding obligation of the Public Body enforceable in accordance with its terms, except as enforcement may be limited by the application of equitable principles.

(c) The authorization, execution, delivery, and performance by the Public Body of this Contract and compliance by the Public Body with the provisions hereof do not violate the Constitution or the statutes of the State of Georgia relating to the Public Body or constitute a breach of or a default under, any other law, court order, administrative regulation, or legal decree, or any agreement or other instrument to which it is a party or by which it is bound.

(d) There is no litigation or proceeding pending, or to the knowledge of the Public Body threatened, against the Public Body or any other person that have or could have a material adverse affect on the right of the Public Body to execute this Contract or its ability to comply with any of its obligations under this Contract or that involve the possibility of materially and adversely affecting the properties, activities, prospects, profits, operations, or condition (financial or otherwise) of the Public Body.

(e) The Public Body has furnished to the Borrower and the Lender (1) a certified copy of the resolution adopted by the Public Body's governing body, substantially in the form of Exhibit A attached hereto, and (2) a signed opinion of counsel to the Public Body, substantially in the form of Exhibit B attached hereto.

### **ARTICLE III**

#### **THE LOAN AND THE PROJECT; OPERATION OF THE ENVIRONMENTAL FACILITIES**

**Section 3.1. Agreement to Obtain the Loan.** The Borrower agrees that it shall obtain the Loan in order to finance the costs of acquiring, constructing, and installing the Project.

**Section 3.2. Completion of the Project.** The Borrower hereby agrees to promptly complete the acquisition, construction, and installation of the Project, all in accordance or substantially in accordance with the Plans and Specifications.

**Section 3.3. Disbursement of Advances under and in Compliance with the Loan Agreement.** Each Advance shall be disbursed and used for the purposes, and in accordance with the terms and conditions, set forth in the Loan Agreement.

**Section 3.4. Operation of Environmental Facilities.** The Borrower hereby agrees during the term hereof to operate its environmental facilities as public environmental facilities, making the facilities and the services of its environmental facilities available to public and private consumers and users located within its corporate or territorial limits and its environs, all for the benefit of the citizens of the Public Body. The Borrower hereby agrees to operate and maintain its environmental facilities for the benefit of the citizens of the Public Body, for and in consideration of the payments to be received from the Public Body as set forth in Section 4.2 hereof and in accordance with the provisions of this Contract. Borrower shall perform such operation and maintenance through that certain "Management Contract" of even date herewith between Borrower and Blue Mile Foundation, Inc., to the extent provided therein.

## **ARTICLE IV**

### **TERM; PAYMENT PROVISIONS; OBLIGATIONS ABSOLUTE AND UNCONDITIONAL**

**Section 4.1. Term.** The term of this Contract shall commence with the execution and delivery hereof and shall extend until the principal of and interest on the Note have been paid in full, but in no event shall the term hereof exceed fifty years from the date hereof, provided, that, (a) this Contract shall terminate upon the assignment by Borrower to Public Body of its interest in the Loan Agreement and the Note, (b) such termination shall not impair any accrued liability of Public Body hereunder, and (c) and upon any such assignment, the within-named Borrower shall be released from all duties, obligations and liabilities under the Loan Agreement and the Note, whether incurred before or after such assignment, and the same shall be, and upon such assignment are hereby, assumed by the Public Body and Lender shall have direct recourse against the Public Body regarding same.

**Section 4.2. Payments.** (a) To the extent the Borrower has insufficient funds to enable the Borrower to pay the principal of and interest on the Note, as the same becomes due and payable (as determined in accordance with subsection (d) below), the Public Body hereby covenants and agrees to pay to the Borrower on the date of any scheduled payment of principal of or interest on the Note, until the principal of and interest on the Note shall have been paid in full, a sum equal to the amount that will be sufficient, when added to the Borrower's funds available for such purpose, to pay the amounts payable on such dates as principal of and interest on the Note. The payments required to be made by the Public Body to the Borrower pursuant to the provisions of this



Section 4.2(a) shall be used by the Borrower solely to provide for the payment of principal of and interest on the Note as the same becomes due and payable. All payments received by the Borrower under the provisions of this Section 4.2(a) shall not be commingled with any other funds of the Borrower and shall be received in trust so as to assure the availability of moneys to the Borrower in order to enable the Borrower to pay the principal of and interest on the Note as the same becomes due and payable.

(b) As security for the payments required by Section 4.2(a) hereof, the Public Body hereby pledges to the Borrower its full faith and credit and taxing power for such payments. The Public Body covenants that, in order to make any payments required by Section 4.2(a) hereof when due from its general funds to the extent required hereunder, the Public Body will exercise its powers of taxation to the extent necessary to pay the amount of the payments required hereunder and will make available and use for such payments all taxes levied and collected for that purpose together with funds received from any other sources. The Public Body further covenants and agrees that in order to make funds available for such purpose in each fiscal year, it will, to the extent necessary, in its general revenue, appropriation, and budgetary measures through which its tax funds or revenues and the allocation thereof are controlled or provided for, include sums sufficient to satisfy any such payments, whether or not any other sums are included in such measure, until all payments so required to be made hereunder shall have been made in full. The obligation of the Public Body to make the payments required to be made hereunder from its general funds shall constitute a general obligation of the Public Body and a pledge of the full faith and credit of the Public Body to provide the funds required to fulfill any such obligation. In the event for any reason any such provision or appropriation is not made as provided in this Section 4.2(b), then the fiscal officers of the Public Body are hereby authorized and directed to set up as an appropriation on their accounts in the appropriate fiscal year the amounts required to pay the obligations that may be due from the general funds of the Public Body. The amount of such appropriation shall be due and payable and shall be expended for the purpose of paying any such obligations, and such appropriation shall have the same legal status as if the Public Body had included the amount of the appropriation in its general revenue, appropriation, and budgetary measures, and the fiscal officers of the Public Body shall make such payments as are required to be made hereunder if for any reason the payment of such obligations shall not otherwise have been made.

(c) The Public Body covenants and agrees that it shall, to the extent necessary, levy an annual ad valorem tax on all taxable property located within the corporate or territorial limits of the Public Body, as now existent and as the same may hereafter be extended, at such rate or rates, within any limitation that may be prescribed by law, as may be necessary to produce in each year revenues that will be sufficient to fulfill the Public Body's obligations to make any such payments required to be made by the Public Body hereunder, from which revenues the Public Body agrees to appropriate sums sufficient to pay in full when due all of the Public Body's obligations to make any such payments. Nothing herein contained, however, shall be construed as limiting the right of the Public Body to make the payments required to be made by the Public Body out of any funds lawfully available to it for such purpose, from whatever source derived (including general funds).

(d) Not less than five (5) days prior to the date of any scheduled payment of principal of or interest on the Note, the Borrower shall determine the amount of funds then on hand and available for payment of principal of and interest on the Note, and shall notify the Public Body of the amounts so on hand and available for such payment of the Note and the extent of the obligation of the Public Body to make the payments required to be made by the Public Body hereunder. Inasmuch as, pursuant to Section 4.4, below, the sole source for the payment of any pecuniary obligations of Borrower contained herein or related hereto shall be recourse by the Lender to the City under Section 4.2(a) of this Agreement, the amounts so on hand and available for such payment shall be deemed to be zero, and no such notice to the Public Body shall be required. Hence, on the date of any scheduled payment of principal of or interest on the Note, Public Body shall pay, until the principal of and interest on the Note shall have been paid in full, a sum equal to the amount that will be sufficient to pay the amounts payable on such dates as principal of and interest on the Note, and pursuant to (e), below, such payment shall be made directly to the Lender for the account of the Borrower.

(e) The payments to be made to the Borrower by the Public Body under the provisions of this Contract shall be made directly to the Lender for the account of the Borrower.

**Section 4.3. Obligations of Public Body Hereunder Absolute and Unconditional.** The obligations of the Public Body to make the payments provided for herein and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment, or counterclaim it may otherwise have against the Borrower. Until such time as the Note is paid in full, the Public Body (i) shall not withhold, suspend, abate, reduce, abrogate, diminish, postpone, modify, or discontinue the payments provided for herein, (ii) shall perform and observe all of its other agreements contained in this Contract, and (iii) shall not terminate the term of this Contract or its obligations hereunder for any contingency, act of God, event, or cause whatsoever, including, without limiting the generality of the foregoing, failure of the Borrower to complete the Project, failure of the Borrower to operate or use its environmental facilities as contemplated in this Contract or otherwise, any change or delay in the time of availability of the Borrower's environmental facilities, any acts or circumstances that may impair or preclude the use or possession of the Borrower's environmental facilities, any defect in the title, design, operation, merchantability, fitness, or condition of the Borrower's environmental facilities or in the suitability of the Borrower's environmental facilities for the Borrower's purposes or needs, failure of the Borrower's title in and to the Borrower's environmental facilities or any part thereof, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Borrower's environmental facilities, the taking by eminent domain of title to or the use of all or any part of the Borrower's environmental facilities, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Georgia or any political subdivision of either, any declaration or finding that the Note or the Loan Agreement is unenforceable or invalid, the invalidity of any provision of this Contract, or

any failure of the Borrower to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Contract or the Loan Agreement. Nothing contained in this Section shall be construed to release the Borrower from the performance of any of the agreements on its part contained herein. If the Borrower should fail to perform any such agreement, the Public Body may institute such action against the Borrower as the Public Body may deem necessary to compel performance or recover its damages for nonperformance as long as such action shall not do violence to or adversely affect the agreements on the part of the Public Body contained in this Contract and to make the payments specified herein. The Borrower hereby agrees that it shall not take or omit to take any action that would cause this Contract to be terminated. The Public Body may, however, at its own cost and expense and in its own name or in the name of the Borrower, prosecute or defend any action or proceeding or take any other action involving third persons that the Public Body deems reasonably necessary in order to secure or protect its rights hereunder, and in such event the Borrower hereby agrees to cooperate fully with the Public Body and to take all action necessary to effect the substitution of the Public Body for the Borrower in any such action or proceeding if the Public Body shall so request.

**Section 4.4. Enforcement of Obligations.** The obligation of the Public Body to make payments required hereunder may be enforced by (i) the Borrower, (ii) the Lender under the Assignment, in accordance with the applicable provisions of the Assignment, or (iii) such receiver or receivers as may be appointed pursuant to applicable law. It is understood and agreed that the Borrower will assign and pledge its right, title, and interest in this Contract and the payments to be received by it under this Contract to secure the Note pursuant to the Assignment, and the Public Body hereby consents to such assignment and pledge pursuant to the Assignment. The Lender is deemed to be and is a third party beneficiary of the representations, covenants, and agreements of the Public Body herein contained. Further, as contemplated in the Loan Agreement, Borrower will assign its interest therein and in the Note to the Public Body, and Public Body shall assume, and upon such assignment does hereby assume, Borrower's duties, obligations and liabilities thereunder and under the Note. Prior to such assignment, the sole source for the payment of any pecuniary obligations of Borrower contained herein or related hereto shall be recourse by the Lender to the City under Section 4.2(a) of this Agreement. On and after such assignment, the recourse of Lender shall be directly to the City, and Lender shall have no recourse to Borrower.

**Section 4.5. No Set-Off.** No breach, default, or failure by the Borrower to comply with the provisions of this Contract shall permit an abatement or reduction in or setoff against the payments due from the Public Body hereunder. Nothing in this Contract shall otherwise impair, diminish, or affect any other right or remedy available to the Public Body (i) as a result of the Borrower's breach, default, or failure under this Contract, or (ii) to enforce the obligations of the Borrower under this Contract. No dispute or litigation between the Borrower and the Public Body with respect to this Contract shall affect any party's duties to perform its obligations or its rights or remedies while such dispute or litigation is pending.

## **ARTICLE V**

## **SPECIAL COVENANTS OF PUBLIC BODY**

**Section 5.1. Information.** The Public Body shall deliver to the Borrower and the Lender, within 180 days after the end of each fiscal year, an electronic copy of the Public Body's annual financial statements prepared in accordance with generally accepted accounting principles and otherwise in form and substance satisfactory to the Lender, which financial statements shall be accompanied by an audit report resulting from an audit conducted by a firm of independent certified public accountants in conformity with generally accepted auditing standards. The Public Body also shall promptly provide the Borrower and the Lender (1) upon receipt thereof, a copy of each other report submitted to the Public Body by its accountants in connection with any annual, interim, or special audit made by them of the books of the Public Body (including, without limitation, any management report prepared in connection with such accountants' annual audit of the Public Body) and (2) with such other information relating to the Public Body as the Lender may reasonably request from time to time. The Public Body shall keep accurate and complete records and books of account with respect to its activities in which proper entries are made in accordance with generally accepted accounting principles reflecting all of its financial transactions. The Lender and the Borrower shall also have the right at all reasonable times to examine and make extracts from the books and records of the Public Body, insofar as necessary to ascertain compliance with this Contract, and to discuss with the Public Body's officers, employees, accountants, and engineers the Public Body's activities, assets, liabilities, financial condition, results of operations, and financial prospects.

**Section 5.2. Cooperation.** The Public Body shall cooperate in all appropriate respects with the Borrower with respect to any authorizations, approvals, licenses, permits, franchises, privileges, consents, reviews, legal clearances, and orders under federal, state, or local laws and from federal, state, or local entities or officers that are necessary or advisable to facilitate the ownership and operation by the Borrower of its environmental facilities and to permit full compliance with all covenants, agreements, and obligations of the Public Body and the Borrower under the Loan Agreement or this Contract and any document collateral thereto to which the Public Body or the Borrower is a party.

## **ARTICLE VI**

### **SPECIAL COVENANTS OF THE BORROWER**

**Section 6.1. Information.** The Borrower shall furnish to the Public Body all information furnished to the Lender pursuant to Section 10(a) of the Loan Agreement, contemporaneously with the delivery of such information to the Lender.

**Section 6.2. Monthly Financial Information.** If requested by the Public Body, the Borrower will furnish to the Public Body unaudited monthly financial statements showing its income and expenses in reasonable detail.

## ARTICLE VII

### MISCELLANEOUS

**Section 7.1. Entire Contract; Amendments.** This Contract, together with the above-mentioned "Loan Agreement" and assignments, contains the entire agreement of the Public Body and the Borrower relating to the matters covered by this Contract. No representation, promise, or understanding has been made, and no collateral agreement, stipulation, or undertaking exists, which will have any force and effect with respect to the matters covered by this Contract except as set forth in this Contract. This Contract may not be amended, changed, modified, altered, or terminated except with the prior written consent of the Lender.

**Section 7.2. Notices.** All notices, certificates, requests, demands, or other communications hereunder shall be sufficiently given and shall be deemed given upon receipt, by hand delivery, mail, overnight delivery, telecopy, or other electronic means, addressed as provided at the beginning of this Contract. Any party to this Contract may, by notice given to the other party, designate any additional or different addresses to which subsequent notices, certificates, or other communications shall be sent. For purposes of this Section, "electronic means" shall mean telecopy or facsimile transmission or other similar electronic means of communication that produces evidence of transmission.

**Section 7.3. Binding Effect.** This Contract shall inure to the benefit of and shall be binding upon the Borrower, the Public Body, and their respective successors and assigns, subject, however, to the limitations contained in this Contract.

**Section 7.4. Severability.** If any provision of this Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Contract shall not affect the remaining portions of this Contract or any part thereof.

**Section 7.5. Execution Counterparts.** This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 7.6. Captions.** The captions and headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**Section 7.7. Governing Law.** This Contract and the rights and obligations of the parties hereto (including third party beneficiaries) shall be governed, construed, and interpreted according to the laws of the State of Georgia.

[Signatures and Seals to Follow]

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be duly executed and delivered by their respective officials hereunto duly authorized as of the date first above written.

**DEVELOPMENT AUTHORITY OF BULLOCH  
COUNTY**

Signature:

Print Name:

Title:

(SEAL)

Attest Signature: \_\_\_\_\_

Print Name:

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

**CITY OF STATESBORO, GEORGIA**

Signature:

Print Name:

Title:

(SEAL)

Attest Signature: \_\_\_\_\_

Print Name:

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





**OPINION OF PUBLIC BODY'S COUNSEL**

(Please furnish this form on Attorney's Letterhead)

DATE

Clean Water State Revolving Fund, Administered by  
Georgia Environmental Finance Authority  
233 Peachtree Street NE  
Harris Tower, Ste 900  
Atlanta, GA 30303

Ladies and Gentlemen:

As counsel for **CITY OF STATESBORO, GEORGIA** (the "Public Body"), I have examined a duly executed original of the Environmental Facilities Agreement (the "Contract"), Loan/Project No. «**Loan\_No**», between the Public Body and **DEVELOPMENT AUTHORITY OF BULLOCH COUNTY** (the "Borrower"), the proceedings taken by the Public Body to authorize the Contract, and such other documents, records, and proceedings as I have deemed relevant or material to render this opinion, and based upon such examination, I am of the opinion, as of the date hereof, that:

1. The Public Body is a public body corporate and politic, duly created and validly existing under the laws of the State of Georgia.

2. The Contract has been duly authorized, executed, and delivered by the Public Body and is the legal, valid, and binding obligation of the Public Body, enforceable in accordance with its terms.

3. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, in any way questioning or affecting the validity of the Contract.

4. To the best of my knowledge, the execution, delivery, and performance by the Public Body of the Contract will not conflict with, breach, or violate any law, any order or judgment to which the Public Body is subject, or any contract to which the Public Body is a party.

5. The signatures of the officers of the Public Body that appear on the Contract are true and genuine. I know such officers and know them to be the duly elected or appointed qualified incumbents of the offices of the Public Body set forth below their names.

With your permission, in rendering the opinions set forth herein, I have assumed the following, without any investigation or inquiry on my part:

- (i) the due authorization, execution, and delivery of the Contract by the Borrower; and
- (ii) that the Contract constitutes the binding obligation of the Borrower and that the Borrower has all requisite power and authority to perform its obligations thereunder.

The enforceability of the Contract (i) may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium, and other similar laws affecting the enforcement of creditors' rights, (ii) may be subject to general principles of equity, whether applied by a court of law or equity, and (iii) may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,

Signature

Printed Name

Date

EXTRACT OF MINUTES  
RESOLUTION OF GOVERNING BODY

Public Body: CITY OF STATESBORO, GEORGIA

Loan Number: «Loan\_No»

At a duly called meeting of the governing body of the Public Body identified above (the "Public Body") held on the \_\_\_\_ day of \_\_\_\_\_, the following resolution was introduced and adopted.

**WHEREAS**, in order to facilitate the acquisition, construction, and installation of additions, extensions, or improvements to the environmental facilities of **DEVELOPMENT AUTHORITY OF BULLOCH COUNTY** (the "Borrower") and in order to make the Borrower's environmental facilities and services available to residents of the Public Body the governing body of the Public Body has determined to agree to make payments to the Borrower in amounts sufficient to enable the Borrower to repay a loan made to the Borrower by **CLEAN WATER STATE REVOLVING FUND, ADMINISTERED BY GEORGIA ENVIRONMENTAL FINANCE AUTHORITY**, in the event the Borrower has insufficient funds to repay such loan, pursuant to the terms of an Environmental Facilities Agreement (the "Contract") between the Borrower and the Public Body, the form of which has been presented to this meeting;

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the Public Body that the form, terms, and conditions and the execution, delivery, and performance of the Contract are hereby approved and authorized.

**BE IT FURTHER RESOLVED** by the governing body of the Public Body that the terms of the Contract are in the best interests of the Public Body for making the Borrower's environmental facilities and services available to residents of the Public Body, and the governing body of the Public Body designates and authorizes the following persons to execute and deliver, and to attest, respectively, the Contract and any related documents necessary to the consummation of the transactions contemplated by the Contract.

\_\_\_\_\_  
(Signature of Person to Execute Documents)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Signature of Person to Attest Documents)

\_\_\_\_\_  
(Print Title)

The undersigned further certifies that the above resolution has not been repealed or amended and remains in full force and effect.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Secretary/Clerk

(SEAL)

US2000 10072516.1

# CITY OF STATESBORO



## COUNCIL

Phil Boyum, District 1  
Sam Jones, District 2  
Jeff Yawn, District 3  
John Riggs, District 4  
Derek Duke, District 5

Jonathan McCollar, Mayor  
Randy Wetmore, City Manager  
Sue Starling, City Clerk  
I. Cain Smith, City Attorney

50 EAST MAIN STREET • P.O. BOX 348  
STATESBORO, GEORGIA 30459-0348

**To:** Randy Wetmore, City Manager  
Jason Boyles, Interim Assistant City Manager

**From:** Robert Seamans, Streets and Parks Superintendent

**Date:** 02/11/19

**RE:** Bid Award – Cab and Chassis Streets Division

**Policy Issue:** Purchasing Policy

### Recommendation:

We recommend the City of Statesboro award the purchase of a Ford F-350 Cab and Chassis to Roberts Truck Center as they have submitted the lowest responsive bid in the amount of \$29,280.00.

### Background:

The Cab and Chassis will be utilized in the Streets Division of Public Works. The truck, if approved, is funded in the amount of \$40,000.00 in the FY 2019 budget and is listed under CIP# STS-80. This Cab and Chassis will be outfitted with a landscape body and safety equipment with the remainder of the funds provided. This truck will be paid for using funds from the GMA Lease Pool. Bid opportunities were sent out to 6 dealerships and the results were as follows:

Dealer	Amount
Wade Ford	\$29,474.00
Roberts Truck Center	\$29,280.00
Allan Vigil Ford	\$29,510.00

### Budget Impact:

Reduce Maintenance Cost

### Council Person and District:

N/A (citywide)

### Attachments:

None

# CITY OF STATESBORO



## COUNCIL

Phil Boyum, District 1  
Sam Jones, District 2  
Jeff Yawn, District 3  
John Riggs, District 4  
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50 EAST MAIN STREET • P.O. BOX 348  
STATESBORO, GEORGIA 30459-0348

**To:** Randy Wetmore, City Manager  
Jason Boyles, Interim Assistant City Manager

**From:** Robert Seamans, Streets and Parks Superintendent

**Date:** 02/11/19

**RE:** Bid Award – Cab and Chassis Parks Division

**Policy Issue:** Purchasing Policy

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We recommend the City of Statesboro award the purchase of a Ford F-350 Cab and Chassis to Roberts Truck Center as they have submitted the lowest responsive bid in the amount of \$29,280.00.

### Background:

The Cab and Chassis will be utilized in the Parks Division of Public Works. The truck, if approved, is funded in the amount of \$40,000.00 in the FY 2019 budget and is listed under CIP# PRK- 4. This Cab and Chassis will be outfitted with a landscape body and safety equipment with the remainder of the funds provided. This truck will be paid for using funds from the GMA Lease Pool. Bid opportunities were sent out to 6 dealerships and the results were as follows:

Dealer	Amount
Wade Ford	\$29,474.00
Roberts Truck Center	\$29,280.00
Allan Vigil Ford	\$29,510.00

### Budget Impact:

Reduce Maintenance Cost

### Council Person and District:

N/A (citywide)

### Attachments:

None

# CITY OF STATESBORO

COUNCIL  
Phillip A. Boyum  
Sam Lee Jones  
Jeff B. Yawn  
John C. Riggs  
Derek Duke



Jonathan McCollar, Mayor  
Randy Wetmore, City Manager  
Sue Starling, City Clerk  
I. Cain Smith, City Attorney

50 EAST MAIN STREET • P.O. BOX 348  
STATESBORO, GEORGIA 30459-0348

**To: Randy Wetmore  
City Manager**

**From: Steve Hotchkiss  
Public Utilities Director**

**Date: 2-12-2019**

**RE: Professional Services Contract Nutter & Associates**

**Policy Issue: Council Approval**

**Recommendation: Consideration of a motion to award a Professional Services Contract to Nutter & Associates in the amount of \$24,050.00 to conduct an Ammonia Recalculation Procedure, to be paid for with funds from Water Sewer system revenues.**

**Background: The City is currently in the process of renewing its NPDES (National Pollutant Discharge Elimination System) permit for the Waste Water Treatment Plant. As part of that process EPA has issued new limits for the discharge of Ammonia from all waste water treatment plants in an effort to protect aquatic life in streams and rivers, namely the fresh water Mussel. These new limits were put in place State wide even though mussels are not present in all streams; it has been left up to the permit holder to make that determination if they so choose. If it can be proven that mussels are not present in your discharge stream you can use that information to negotiate a higher allowable discharge limit. The higher limit would reduce the impact on the plants operating cost and the potential for Permit Violations**

Georgia Municipal Association City of Excellence  
Telephone: (912) 764-5468 • Fax: (912) 764-4691 • email: [cityhall@statesboroga.net](mailto:cityhall@statesboroga.net)

# CITY OF STATESBORO

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**We have discussed this issue at length with our consulting engineers at Hussey, Gay, Bell and it is our opinion that we should proceed with the Study. The cost of the study is small compared to the potential savings and could continue to provide benefits in the future. We are proposing to use Nutter & Associates because this is a very specialized field of work and they are familiar with working in our area of the South East.**

**Budget Impact: This project will be paid for with Water Sewer Revenues funds.**

**Council Person and District: All**

**Attachments: Professional Services Contract**



January 14, 2019

Steve Hotchkiss  
Director of Public Utilities  
City of Statesboro  
P.O. Box 348  
Statesboro, GA 30459

Subject: Scope of Work and Budget to Perform Ammonia Recalculation Procedure for the City of Statesboro Water Pollution Control Plant. Project No. 19-005.

Dear Mr. Hotchkiss,

Nutter & Associates (NAI) is pleased to present this scope of work (SOW) and budget to generate and execute a study plan to recalculate the effluent limitation ("Limit") for total ammonia nitrogen ("Ammonia") in the EPD-proposed NPDES permit for the City of Statesboro Water Pollution Control Plant (WPCP). On 02 June 2017, Georgia EPD updated its NPDES permitting strategy for addressing ammonia toxicity based on the U.S. Environmental Protection Agency's (EPA) 2013 *National Recommended Aquatic Life Ambient Water Quality Criteria for Ammonia* ("Recommended Criteria"). The 2013 EPA Recommended Criteria is based on the toxicity of a suite of ammonia-sensitive species and is both temperature and pH dependent. The suite of species used in EPA's default algorithm is not present in all aquatic systems in the US (particularly, a species with the highest sensitivity to ammonia, the mussel *Villosa iris* of the Order Unionoida). Therefore and following EPA guidance (*Flexibilities for States Applying EPA's Ammonia Criteria Recommendations and Revised Deletion Process for the Site-Specific Recalculation Procedure for Aquatic Life Criteria*, EPA 2013), EPD's updated strategy for protecting against ammonia toxicity in aquatic ecosystems allows site-specific recalculation of the criteria based on the species present in the subject reach. This SOW details the process NAI will employ in pursuit of recalculating the Ammonia Limit for the WPCP outfall.

The City of Statesboro WPCP discharges to Little Lotts Creek, which flows into Lotts Creek and then to the Canoochee River (HUC 03060203) in the Ogeechee River Basin. If it is demonstrated that the most sensitive mussel species (*V. iris*) and other mussels in the same taxonomic Order are absent from Little Lotts Creek as well as a minimally disturbed reference stream, it is possible that the daily average Ammonia Limit for the outfall could be increased back to a similar concentration as the previous limit.

Georgia EPD has not provided specific guidance for all tasks associated with approving a recalculated ammonia limit for a municipal wastewater NPDES permit. However, the general

procedure is outlined in EPD's *Draft Sample Permit Conditions - Ammonia Compliance Schedule and Recalculation Procedure* document and includes the following:

1. Delineate the site (i.e., the waters or stream reach to be assessed)
2. Define presence/absence for the purposes of recalculation
3. Conduct a literature and database search to evaluate historic mussel presence/absence in the delineated stream reach and/or other nearby reference reaches
4. Conduct field mussel surveys
5. Calculate site-specific ammonia limits based on EPA guidance
6. Submit findings to EPD for approval and request permit limit modification

EPD concurrence with a study plan for conducting the tasks described above is required as part of the process.

## **SCOPE OF WORK**

The tasks necessary to develop and obtain EPD approval of a recalculated Ammonia Limit are detailed below.

### ***Task 1 – Reference Site Reconnaissance***

In order to determine whether mussels naturally occur in the streams in the vicinity of the WPCP, EPD requires that at least one reference reach be surveyed for mussel presence/absence. The reference stream(s) must have a similar size watershed to that of the WPCP receiving stream (Little Lotts Creek) that is mostly forested and undeveloped, and it must be located in the same ecoregion and major drainage basin as the WPCP. The WPCP discharge location is located in the Atlantic Southern Loam Plains (65I) ecoregion within the larger Southeastern Plains ecoregion. The same ecoregion will be searched for appropriate reference sites. The reference site reconnaissance will include a desktop search followed by a field reconnaissance by NAI biologists.

The reconnaissance task will also include a biological database search of national, state, and other databases and scientific literature. Additional information will be collected regarding the likelihood of mussel presence/absence based on stream habitat, flow regime, and watershed characteristics, to determine historic and/or recent occurrence records within the Little Lotts Creek and larger Canoochee River watersheds.

### ***Task 2 – Study Plan Development***

A narrative study plan document ("Plan") will be developed detailing the proposed methodology to be used in the recalculation process. The Plan will individually address each of the six

elements listed above. The specific database resources, field survey methods, and recalculation procedures (including definition of presence and absence per #2 above) will all be identified. Project milestones and due dates will be specified as based on EPD expectations (see Schedule section below) and any additional milestones the project team determines to be relevant or necessary. The Plan will be supported with graphics and tables as necessary.

### ***Task 3 – Field Survey***

Biological surveys will be conducted within the delineated stream reaches and in reference reaches to document the presence of and/or likelihood for mussels to be present. Specific biological survey methods will be detailed in the Study Plan, and we will seek authorization of the proposed methodology from EPD prior to initiating field surveys. Nutter & Associates will coordinate with an expert malacologist to assist in field sample design and actual field sampling, if necessary.

### ***Task 4 – Recalculation and Reporting***

This task includes using the information generated in Tasks 2 and 3 (if necessary) to recalculate the Ammonia Limit for the Statesboro WPCP outfall and then generate a report for EPD approval. The report will include documentation of all methods utilized, reference applicable EPA and EPD guidance and federal/state rules, and present the recalculated Ammonia Limit. The report will serve as the formal request for EPD to modify the subject permit, if necessary, to make the recalculated Limit effective. Task 4 also includes time for project team coordination with EPD and project administration (12 hours each for a Staff Scientist II and a Senior Scientist).

## **SCHEDULE**

Performance of the tasks above will be staged in a manner such that discovery of any information that indicates the recalculation will not be beneficial or not be approved can be assessed by the project team before moving forward with additional tasks (i.e., if the reconnaissance or database search (Task 1) suggests mussels have been identified in the subject receiving streams or similar nearby streams, the Task 3 Field Survey will not be performed unless the project team agrees that it is still a useful exercise).

EPD's draft Ammonia Compliance Schedule permit language for industrial wastewater indicates that the following milestones will be required if the recalculation option is selected by a permittee (all times are from permit effective date):

- 3 months – Submit Study Plan
- 6 months – Submit Progress Report for Executing Study Plan

- 12 months – Submit Report Detailing Results and Requesting Permit Modification

NAI will be prepared to begin work on or before the effective date of the subject permit. For each milestone listed above, our team will provide a draft report to the City of Statesboro for review no later than two (2) weeks prior to the established EPD due date.

## BUDGET

The not-to-exceed cost to perform the tasks outlined above is \$24,050. A detailed budget breakdown is provided in the table below:

TASK	COST
1. Reference Site Reconnaissance	\$ 5,430
2. Study Plan Development	4,060
3. Field Survey	6,980
4. Recalculation and Reporting	7,580
<b>TOTAL</b>	<b>\$ 24,050</b>

If the scope of work meets your needs and the budget is acceptable, please return a signed copy of the attached Professional Services Contract. This will authorize us to begin work and will serve as your acceptance of our terms.

We invoice upon completion of each specified task on a time and expense basis in accordance with the attached fee schedule. Should situations be encountered during the course of the project such that the scope of work and/or budget are changed, Nutter & Associates will contact you prior to performing out-of-scope tasks.

Nutter & Associates is pleased to offer these services to you. If you have any questions, please do not hesitate to contact us.

Sincerely,



V. Cody Hale, Ph.D., PH  
Principal, Senior Scientist



Shelley Dodd, Certified Ecologist  
Staff Scientist II

## ***Professional Services Contract***

Proposal No. & Date	19-005 January 14, 2019
Project Name	Statesboro Ammonia Recalculation
Project Location	Bulloch County, Georgia
Description of Services	Ammonia Recalculation Procedure
Cost of Services	\$24,050
Client Name	Mr. Steve Hotchkiss, Director of Public Utilities
Address	City of Statesboro P.O. Box 348 Statesboro, GA 30459
Telephone No.:	
Cellular No.:	
Fax No.:	
E-Mail:	steve.hotchkiss@statesboroga.gov

Client hereby acknowledges that this Proposal is provided subject to the general terms and conditions set out on the reverse side of this Proposal (the "Terms and Conditions"), which are hereby incorporated as a part of this Proposal. Client's acceptance of this Proposal shall be deemed an acceptance of the Terms and Conditions.

Authorized by:

---

Signature

---

Authorized Name

Send Invoices to attention of:

Invoices should be mailed/emailed to:

# TERMS AND CONDITIONS

Client hereby accepts the following general terms and conditions ("Terms and Conditions") applicable to Nutter & Associates, Inc.'s performance of the services described in the attached Proposal (the "Services"):

1. Payment Terms. Client shall pay all amounts due to Nutter & Associates, Inc. ("Nutter & Associates") upon receipt of each invoice from Nutter & Associates. Any amounts not paid by Client within thirty (30) days of the date of such invoices shall accrue interest at a rate of one and one half percent (1.5%) per month until such time as such amounts are paid in full. Client shall be responsible for all reasonable attorney's fees incurred by Nutter & Associates in connection with the collection of any amounts properly due and payable to Nutter & Associates in accordance with the terms of the Proposal and these Terms and Conditions.

2. Performance Standard. Nutter & Associates shall perform the Services using the care and skill ordinarily exercised by organizations performing services in the fields of soil and hydrologic evaluation, ecosystem evaluation and land treatment in the same or similar locality as the location where the Services are rendered. Client hereby acknowledges that Nutter & Associates makes no other representation or warranty with respect to the Services. Client further acknowledges that any oral or written reports furnished by Nutter & Associates shall not be construed as any representation or warranty with respect to the Services. NUTTER & ASSOCIATES HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. Limitation of Liability. Client hereby agrees that Nutter & Associates' total aggregate liability for any damages incurred by Client in connection with Nutter & Associates' performance of or failure to perform the Services shall not exceed the greater of (i) Fifty Thousand and No/100 Dollars (\$50,000.00) or (ii) Nutter & Associates total fee for the Services. IN NO EVENT SHALL NUTTER & ASSOCIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, PUNITIVE OR RELIANCE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, SAVINGS OR REVENUES OR INCREASED COST OF OPERATIONS, REGARDLESS AS TO THE NATURE OF CLIENT'S CLAIM AGAINST NUTTER & ASSOCIATES.

4. Insurance Coverage. Nutter & Associates shall maintain the following insurance coverages during the period in which the Services are performed: (i) worker's compensation and employer's liability insurance coverage with coverage limits which conform to the requirements of applicable law; (ii) comprehensive general liability insurance coverage on an occurrence basis in an amount not less than \$1,000,000.00 per claim with an aggregate limit of not less than \$2,000,000.00; and (iii) automobile liability insurance coverage for both bodily injury and property damage with a combined single limit of \$1,000,000.00. Nutter & Associates shall provide Client with a certificate of insurance evidencing the aforementioned insurance coverages upon request by Client.

5. Damage to Man-Made Objects. Client shall be responsible for disclosing the presence and accurate location of all underground or otherwise hidden man-made objects which might interfere with field tests or boring to be performed by Nutter & Associates as part of the Services. Client hereby agrees to indemnify and hold Nutter & Associates harmless from and against all claims, suits, losses,

personal injury, death and damage to property ("Indemnified Claims") resulting from unusual subsurface conditions or damage to subsurface structures or objects owned by client or any third parties in connection with Nutter & Associates' performance of the Services where such unusual subsurface conditions or the presence of such subsurface structures or objects are not disclosed by Client to Nutter & Associates in writing prior to the performance of the Services. Client's obligation to indemnify Nutter & Associates in accordance with this Section 5 shall include all expenses incurred by Nutter & Associates in connection with Indemnified Claims, including, without limitation, Nutter & Associates' reasonable attorney's fees.

6. Damage to Work in Place. Client hereby acknowledges that there is the possibility of the occurrence of certain events or conditions which may affect work performed by Nutter & Associates as part of the Services ("Work in Place") and which are outside of the control of Nutter & Associates. Client further acknowledges and agrees that the occurrence of any of the following events and conditions shall not obligate Nutter & Associates to re-perform or replace any Work in Place:

(a) The occurrence of either natural (including, without limitation, weather events) or unnatural (including, without limitation, upstream discharges) events which cause damage to Work in Place, including, but not limited to: (i) failure of any structures installed as part of the Work in Place; (ii) the erosion of or failure of any stream banks; (iii) the erosion or displacement of existing or planted vegetation within stream channels, riparian valleys or riparian zones; or (iv) wind damage to existing or planted vegetation within stream channels, riparian valleys or riparian zones;

(b) The occurrence of either natural (including, without limitation, weather events) or unnatural (including, without limitation, upstream discharges) which cause physical modification of any stream channels;

(c) The cutting and/or removal of either existing vegetation or vegetation planted by Nutter & Associates within the stream channel, riparian zone or riparian valley adjacent to or upstream from the Work in Place; and

(d) Drought conditions which inhibit or permanently damage the vegetative success of vegetation.

In the event any Work in Place is damaged or destroyed as a result of the occurrence of any of the aforementioned events or conditions, Client may request that Nutter & Associates perform such work as may be necessary to correct such damage or destruction. Nutter & Associates shall provide Client with a new proposal for the performance of such work, and Client may but shall not be obligated to engaged Nutter & Associates to perform such work in accordance with the terms of the new proposal.

7. Governing Law. The Proposal and these Terms and Conditions shall be governed by the laws of the State of Georgia.

8. Entire Agreement. The Proposal and these Terms and Conditions constitute the entire agreement between Nutter & Associates and Client with respect to the Services. The Proposal and these Terms and Conditions supersede all prior agreements, proposals, representations, statements or understandings, whether written or oral concerning the Services.

9. Binding Effect. The Proposal and these Terms and Conditions shall be binding upon any successors and assigns of Nutter & Associates and Client.



360 Hawthorne Lane  
Athens, GA 30606-2152  
P (706) 354-7925  
F (706) 354-7928  
[www.NutterInc.com](http://www.NutterInc.com)

## *2019 FEE SCHEDULE*

### **Staff Classification**

### **Hourly Rate**

#### **Professional Services**

Senior Consultant	\$	160
Senior Scientist		145
Project Scientist II		130
Project Scientist I		115
Staff Scientist II		100
Staff Scientist I		85
Technician		70

#### **Support Services**

Administrative Assistant	\$	35
Senior Administrator/Project Administrator		45

#### **Expenses and Subcontracts**

Direct expenses including supplies, communication, travel and lodging as well as subcontracts managed by Nutter & Associates will be charged at 1.15 times direct cost.



# CITY OF STATESBORO

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50 EAST MAIN STREET • P.O. BOX 348  
STATESBORO, GEORGIA 30459-0348

**To: Randy Wetmore**  
**City Manager**

**From: Steve Hotchkiss**  
**Director of Public Utilities**

**Date: 2-12-2019**

**RE: Purchase of five (5) Smart Cover Sewer Monitors**

**Policy Issue: Council Approval**

**Recommendation: Consideration of a motion to approve a sole source purchase of five (5) Smart Cover Sewer Monitors in the amount of \$28,642.00 with funds approved as part of the 2019 CIP Budget item #WWD-159.**

**Background: As part of our efforts to reduce the Inflow and Infiltration (I&I) of rain water into the City's sewer system we have made numerous repairs and improvements to the city Sanitary Sewer System. In order to determine where the repairs are most needed we need to know which sewers are most effected by I&I. In the past we have used traditional methods of detection such as lift station pumping data and visual inspections to gather this information. We are proposing to purchase five Smart Cover devices which are specially designed manhole covers with built in ultrasonic flow monitors and cellular communication capability. These units will track sewer flow rates and rain events in real time and report the information to a website where it can be monitored by City Personnel. This information will then be used to produce maps of areas where we should focus our sewer lining and repair efforts. This is sole source purchase because this is the only company that manufactures this type of device.**

Georgia Municipal Association City of Excellence  
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# CITY OF STATESBORO

## COUNCIL

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I. Cain Smith, City Attorney

50 EAST MAIN STREET • P.O. BOX 348  
STATESBORO, GEORGIA 30459-0348

**Budget Impact: Funding from approved CIP project WWD-159**

**Council Person and District: All**

**Attachments: Smart Cover Proposal**

Georgia Municipal Association City of Excellence

Telephone: (912) 764-5468 • Fax: (912) 764-4691 • email: [cityhall@statesboroga.net](mailto:cityhall@statesboroga.net)

**Proposal for the  
SmartCover® Sewer Monitoring System**

**5 SmartFLOE™ systems**

*Prepared for:*

**City of Statesboro, Georgia**

*Attention:*

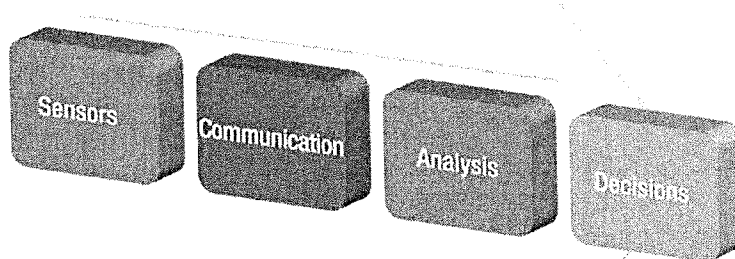
**Mr. Matt Aycock**

*Offered by:*



*Representing:*

**SmartCover® Systems™**



**Quotation Date: January  
Offered by: Stanley Mize  
Rep phone: (678) 521-6212 (cell)  
Rep Phone: (770) 614-8550 (office)  
Quote Valid: 90 days**

SmartFLOE™ Flow Estimation System provides a low-cost, low maintenance, high reliability means for flow measurement and communication. Flow measurement is highly valuable for any open channel water conveyance system. Conventional flow measurement methods can be expensive and complex where reliability, ease of maintenance and data communications are often challenging.

### *Benefits*

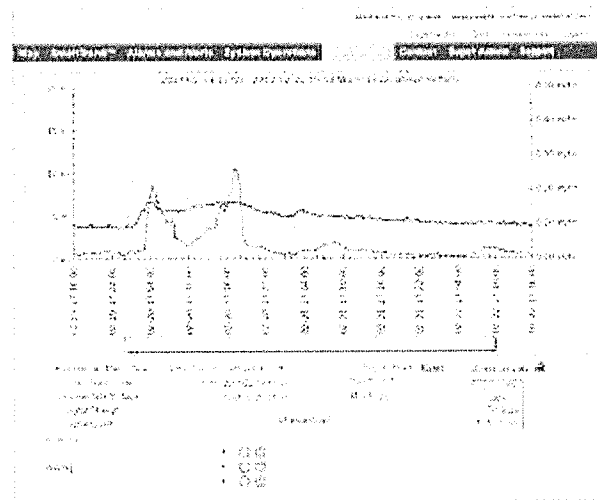
- Uninterrupted Monitoring from Any Location Through Battery Operation and Satellite Communication.
- Ongoing Data Capture and Transmission for Analysis.
- Highly Secure and Easy-To-Use Web Browser Viewing.
- User-Defined, on the Fly Parameter Selections.
- Easy, Fast Installation with Minimum Maintenance Required.

### **How SmartFLOE Works**

Flow Level Optimized Estimation (FLOE) is a new approach to using a well-proven Manning's equation providing users with a cost-effective means to acquire data for estimating flow rates in open channels.

### *System Status Alerts and Alarms*

SmartFLOE™ enables receipt of vital information including level alarms and water flows to prevent SSO/CSO. With user-defined alarm settings, the system warns of impending overflow issues before they occur, communicating to assigned personnel via email or text. Users are informed of the system's operating status so maintenance can be planned well in advance.



### *Flexible and Easy Adjustments*

The SmartFLOE™ user-configurable algorithm provides flow rate data. For modeling, users can change parameters, such as pipe diameter or slope for an instantaneous view.

### **Application**

SmartFLOE™ can be used in various applications including:

- Wastewater Collection Systems
- Storm Water Systems
- Raw Water Conveyance Systems
- Any Open Water Channel

Please find in this document:

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## 2.0 Pricing Summary

Part Number	Description	Unit Qty.	Unit Price (Each)	Total
SF-Q-S-15	<b>SmartFLOE System Components</b> <ul style="list-style-type: none"> <li>• <b>E-Box System Control</b> with onboard computer, modem, digital radio; fully potted and IP-68 rated.</li> <li>• <b>Distance Sensing Module (DSM)</b> with 4" to 79" sensor range, with 15' cable.</li> <li>• <b>PowerPack®</b>- lithium thionyl chloride battery with high power density.</li> <li>• <b>E-Square™ antenna</b>, including antenna and installation kit.</li> <li>• <b>Mounting bracket kit</b>- three-part amounting bracket set made of heavy gauge, hard-anodized aluminum; includes all mounting hardware.</li> </ul>	4	\$4,795	\$19,180.00
SF-Q-S-25	<b>SmartFLOE System Components</b> <ul style="list-style-type: none"> <li>• <b>E-Box System Control</b> with onboard computer, modem, digital radio; fully potted and IP-68 rated.</li> <li>• <b>Distance Sensing Module (DSM)</b> with 4" to 79" sensor range, with 15' cable.</li> <li>• <b>PowerPack®</b>- lithium thionyl chloride battery with high power density.</li> <li>• <b>E-Square™ antenna</b>, including antenna and installation kit.</li> <li>• <b>Mounting bracket kit</b>- three-part amounting bracket set made of heavy gauge, hard-anodized aluminum; includes all mounting hardware.</li> </ul>	1	\$4,795	\$4,795.00
PW-5C1	<b>TWO (2) Year, PowerPack Warranty</b> <ul style="list-style-type: none"> <li>• Limited Parts-Only Warranty on the PowerPack</li> </ul>	Included	Included	Included
EW-SF1	<b>ONE (1) Year, Parts-Only Warranty – Included with first year services</b> Limited Parts-Only Warranty on all system SmartLevel™ hardware.	Included	Included	Included
EW-SF2	<b>ONE (1) Year, Parts-Only Warranty – Covers second &amp; third-year protection</b> Limited Parts-Only Warranty on all system SmartLevel™ hardware.		\$742	
ASM-SF1	<b>Active Site Management (ASM), SmartFLOE, One-Year.</b> Comprehensive support services including: <ul style="list-style-type: none"> <li>• Software subscription with <i>unlimited number of users</i> accessed with secure user name and password</li> <li>• Complete maintenance of all cloud based software</li> <li>• Regular feature updates and upgrades including the <i>SmartTrend™</i>.</li> <li>• Hosting of data storage – unlimited data storage</li> <li>• Iridium Satellite connectivity service with bi-directional communication.</li> <li>• Advisories, Maintenance Alerts and Alarms via email and/or text message</li> <li>• Ongoing technical support via phone or online.</li> </ul>	5	\$595	\$2,975.00
IST-1	<b>Dedicated Customer Website: Initial Set-up &amp; Training (IST)</b> <ul style="list-style-type: none"> <li>• Dedicated Customer Website set-up and training</li> <li>• Browser-based, secure user access</li> <li>• Includes map view, site-specific data and information</li> <li>• Alarm and Advisories set-up</li> <li>• Comprehensive training for login, website features and website functions</li> </ul> <p><i>Note: this is a one-time charge for new customers and does not apply to following orders.</i></p>	1	\$300	\$300.00

<b>ASM-RD-1Y</b>	<b>SmartRain™, One-Year, per site</b> <ul style="list-style-type: none"> <li>Radar rain data, 1 km<sup>2</sup> area, (0.62 miles<sup>2</sup>)</li> </ul>	<b>2</b>	<b>\$96</b>	<b>\$192</b>
<b>Installation &amp; Training</b>	<b>Labor Installation of SmartCover® Systems™ by Trained SmartCover® Systems™ Field Tech and customer training</b>	<b>1</b>	<b>\$1,000</b>	<b>\$1,000.00</b>
<b>Shipping and Handling</b>	<b>Shipping and Handling</b> <b>Ground shipment FOB Escondido, CA</b>	<b>1</b>	<b>\$200</b>	<b>\$200.00</b>
<b>TOTAL</b>	<b>All items above</b>		<b>NA</b>	<b>\$28,642.00</b>

### 3.0 Standard Terms & Conditions

#### Delivery

- Standard: Six (6) weeks upon receipt of a Purchase Order and with receipt of complete engineering and site information from the customer as requested.
- All customers will be notified of the shipment date upon Order Acknowledgement.
- Actual availability may vary depending on total demand.
- The "Standard Six (6) weeks" is not a guarantee but a good faith estimate. It is strongly recommended that an order be placed as early as possible. Reasonable efforts will be made to provide earlier delivery if requested.

#### Installation and Training

##### Dedicated Customer Website: Initial Set-up & Training (IST)

- Dedicated Customer Website set-up and training (To be completed by SmartCover Headquarters in Escondido CA)
- Browser-based, secure user access (To be completed by SmartCover Headquarters in Escondido CA)
- Includes map view, site-specific data and information
- Alarm and Advisories set-up (To be completed by SmartCover Headquarters in Escondido CA)
- Comprehensive training for login, website features and website functions (To be completed by SmartCover Headquarters in Escondido CA) (Coordinated by Sales Representative and Regional Sales Manager)
- Initial training to be completed within 10 days of installation
- Ongoing training is available 6am to 5 pm PST by phone, email and WebEx

#### Monitor Labor Installation

- Installation will be done by an authorized Smart Cover Systems installing contractor.
- The City will be required to provide 2 personnel to assist with each flow monitors installation that includes; opening/closing of manhole lids, provide traffic control measures, and locates each installation manhole from the field.
- Training for website interface use will conducted for all pertinent city personnel after the installation of ALL flow monitors has been completed. This shall be performed by WC Equipment or Smart Covers System personnel.

**WC Equipment Sales  
4324 Brogdon Exchange  
Suwanee, GA 30024**

TERMS AND CONDITIONS

1. Price quoted is FOB factory with full freight allowed.
2. Only those items of equipment specifically mentioned above are included in this proposal.
3. No taxes are included in the quoted price, but taxes will be charged at the current rate for county of equipment delivery location if purchaser does not possess a sales tax exemption.
4. Price quoted will remain firm for a period of 30 days from date of proposal.
5. Payment terms are net 30 days from receipt of equipment to approved credit accounts.
6. This proposal is subject to the Manufacturer's Terms and Conditions and standard warranty clauses.

An order may be placed for the equipment covered in this proposal by signing in the space provided below and returning one signed copy, or by issuing your purchase order to:

**WC Equipment Sales  
4324 Brogdon Exchange  
Suwanee, GA  
30024**

and indicating on your order that it is an acceptance of this proposal.

Submitted By: WC Equipment Sales

\_\_\_\_\_  
Stanley Mize

Accepted By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name with Title

## Ongoing Costs

<b>Ongoing Costs</b> After the first year of operation, the following fees will provide <b>continued comprehensive services</b> including <b>software support, data storage, upgrades, added features, and satellite connectivity</b> . <b>PowerPack &amp; System Parts Warranty are optional yet highly recommended.</b>  These are <i>annual charges</i> paid prior to the start of the year.			
Part number	Months covered	Payment schedule	Cost per year
<b>Active Site Management (ASM) (Required)</b> Website Access, software subscription, satellite connectivity, data analysis, data storage, trend advisories, maintenance alerts, alarms, online S/C monitoring.			
<b>ASM-SF1R</b>	12	Every year	<b>\$595</b>
<b>ASM-SF2R</b>	24	Every other year	<b>\$1,107</b>
<b>PowerPack Warranty (Optional) PARTS-ONLY</b> , PowerPack™ Warranty for each installation, offering unlimited replacements during the Warranty term.			
<b>PW-5C1R</b>	12	Every year	<b>\$199</b>
<b>PW-5C-2YR</b>	24	Every other year	<b>\$358</b>
<b>Systems Parts Warranty Extension (Optional) PARTS-ONLY</b> , Warranty for each installation, covers: E-Box System Control, Distance Sensing Module (DSM), antenna, and mounting brackets			
<b>EW-SF1R</b>	12	Every year	<b>\$399</b>
<b>EW-SF2R</b>	24	Every other year	<b>\$742</b>

## 5.0 SmartCover® System Description

### 5.1 Basic Remote Field Unit Hardware

Each SmartCover System includes the following basic remote field unit (RFU) hardware components delivered with each system. Other hardware configurations are available.

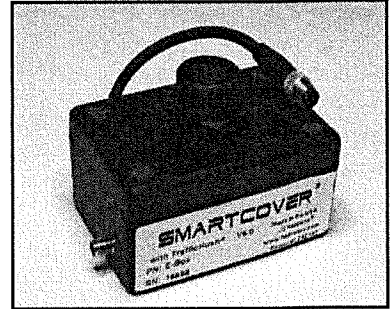
- One (1) E-Box system control
- One (1) Ultrasonic Distance Sensing Module (DSM) with connecting cable.
- One (1) communications antenna for direct connection to the Iridium Satellite System.
- One (1) PowerPack™, a proprietary high-power density lithium thionyl chloride battery
- One (1) bracket kit for either mounting flat to the underside of the manhole cover or for mounting to the manhole cover vein.
- One installation kit containing all hardware and accessories necessary to mount a single system



## Component Descriptions:

### E-Box System Control

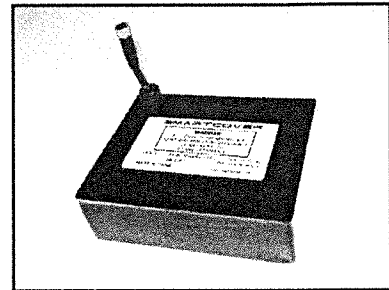
The E-Box is the system control containing the digital satellite radio, computer and signal processing components. It is fully potted and can be completely submerged in water (IP-68 rated). It is housed in an, ABS enclosure and shock tested to 10 G's.



**SmartCover® E Box Control**

### PowerPack™

The PowerPack™ is a high power-density battery system designed for reliable, consistent delivery of power in the harsh wastewater environment. It is housed in a urethane coated pack containing Lithium Thionyl Chloride primary batteries. Typically, the PowerPack™ provides at least two years of life and generally longer under normal operating conditions. PowerPacks have a 10-year shelf life prior to use.



**SmartCover® PowerPack™**

### Distance Sensing Module (DSM)

The distance sensing module is an ultrasonic distance sensor. It is enclosed and sealed in an ABS housing. It is fully potted and completely water-proof, meeting IP-68 standards. The crystal controlled oscillator sensor is self-calibrating for temperature fluctuations.

There are two distance ranges available.

- The standard range senses between 4" and 79"
- The long-range sensor's range is 11" to 240".

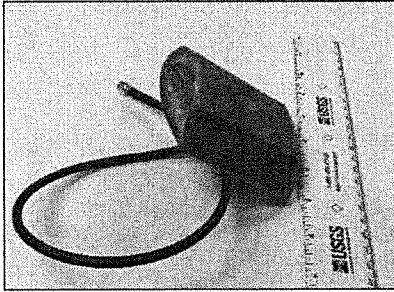


**SmartCover® DSM**

The DSM has two standard cable lengths of 15' and 25'. Custom lengths are available, application dependent, up to 300'. SCS Application Engineers are available to assist users to determine the correct DSM range, uses and cable lengths.

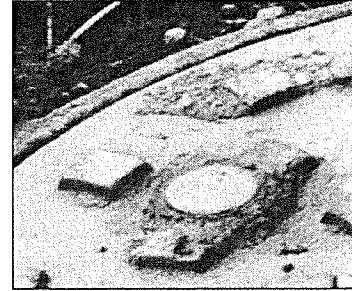
### E-Series™ Antennae

The E-Series™ antennae include the "E-Square" and the "E-Dot" types. Both are traffic rated and designed to mount directly to the manhole cover or vault lid. They communicate directly to the Iridium® Satellite System and do not require any intermediary devices for boosting signals. The antennae are secured to the top of the manhole cover using a high strength, two-part acrylic adhesive specifically designed for high stress, structural applications.



**E-Square™**

The E-Dot antenna is for cold-weather climates where snow plow operation occurs and are designed to be mounted below the manhole profile.

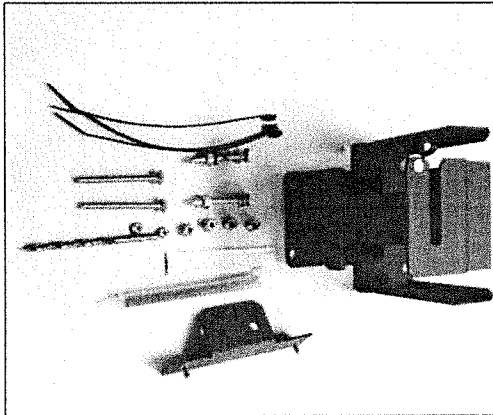


**E-Dot™ Antenna**

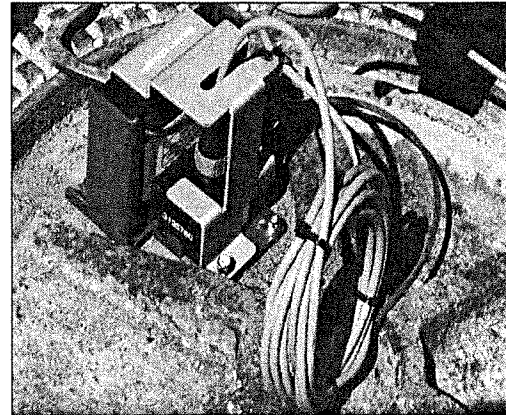
The E-Square antenna is a road-reflector type used in areas where there is no opportunity for dislocation from such hazards as snow plows.

### **Mounting Bracket Kit**

The mounting bracket is a ruggedized, corrosion resistant assembly designed to protect and secure system components. The bracket is secured with two stainless steel bolts whereby the installer drills two ¼" holes into the cover. The bracket is designed in such a manner such that **NO CONFINED SPACE ENTRY IS REQUIRED FOR INSTALLATION**. The hard-anodized aluminum housing protects the PowerPack and the E-Box control. The DSM (distance sensing module) is connected to the E-Box and suspended via a cable, typically over the invert.



**Bracket with kit**



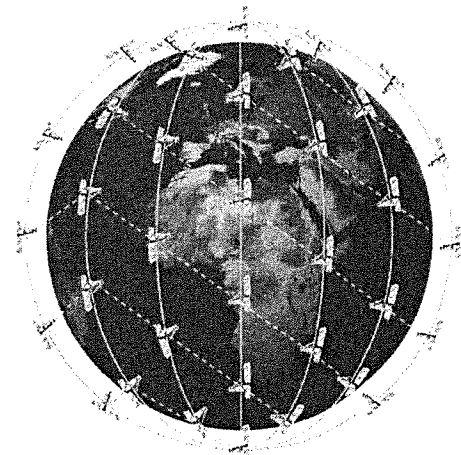
**Mounted Bracket**

## **5.2 Communications**

The SmartCover® System™ uses the high reliability, highly secure **Iridium Satellite System** as its communications backbone. Iridium is a state-of-the-art communications system consisting of 66 Low Earth Orbiting (LEO) satellites. It has global, redundant coverage and is known to provide highly superior connectivity to that of terrestrial systems such as GSM, GPRS and other cell phone based systems. Iridium has a very strong record of performance and reliability. It is used by the US military for its reliability. Iridium is currently launching Iridium NEXT, the next generation of LEO communication satellites.

Iridium Satellites are in orbit across the globe and assured connectivity is achieved requiring but a small fraction of the available horizon. SmartCovers are able to communicate in challenging locations with such impediments as tree canopies, overpasses or buildings.

SmartCover® data is highly secure with servers using 2048-bit encryption. These are redundant servers located in a climate controlled, secure facility with emergency power to prevent any interruptions. Servers store historical communication, all system generated and associated data, and data access information. Being a “cloud” based system; data is available at all times through a browser from a computer, tablet or phone. Users can access data through any web browser to the server via encrypted data and send notifications directly to the user.

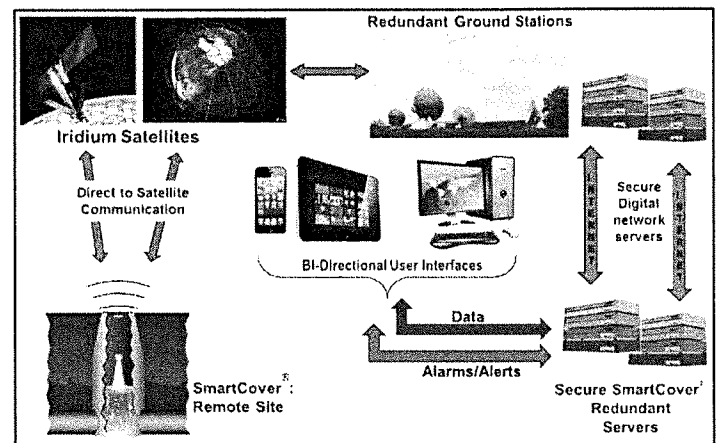


**Iridium Satellite Constellation**

## Communications Architecture

The following diagram illustrates the structure of the SmartCover communications architecture. The SmartCover remote field units communicate directly to an orbiting satellite. The communication signals are then sent to Iridium earth link stations and then to SCS secure servers.

For alarm signals, they are subsequently sent to the Customer via cell phone, Smart Phone, digital pager and/or to computers via the internet. It is possible to have alarms sent to a central control room as well.



**SmartCover® communications system architecture**

SmartCover® communication is *bi-directional* and the user has control over the remote sites. A major benefit of the SCS system is that data acquisition, alarms and system setting changes are enabled *remote from the installation site*, saving time and resources. For example, the alarm level settings can be accessed via the dedicated user website to be changed or disabled. Changes to these settings are communicated from the SCS servers through the Iridium system and to the SmartCover® System™ at the designated site.

## 5.3 Data Handling and Analysis

The SmartCover® System™ monitors continuously 24 hours per day, seven (7) days per week. SCS has cumulatively acquired more than 15,000 years of data and experience with this basic measurement protocol to assure users that this methodology is extremely sound, robust and reliable for ongoing data acquisition and alarming functions.

## Measurement Frequency

The following are the default measurement frequencies for delivered systems. Measurement frequencies can be changed between once per minute to once per hour, based on the application need. Consult with a SCS Applications Engineer to determine the proper measurement frequency for your application.

### **Measurement Frequency** **SmartFLOE®**

- The SmartFLOE® System™ takes a measurement every 5 (five) minutes. If the measured level is below the pre-set alarm level, then the cycle begins again.
- The SmartFLOE® logs readings every 5 (five) or 10 (ten) minutes measurement cycle.
- These readings are “batched” and sent once every 60 (sixty) minutes or 1 (one) hour via satellite to the server and stored for user access such as trending and analysis

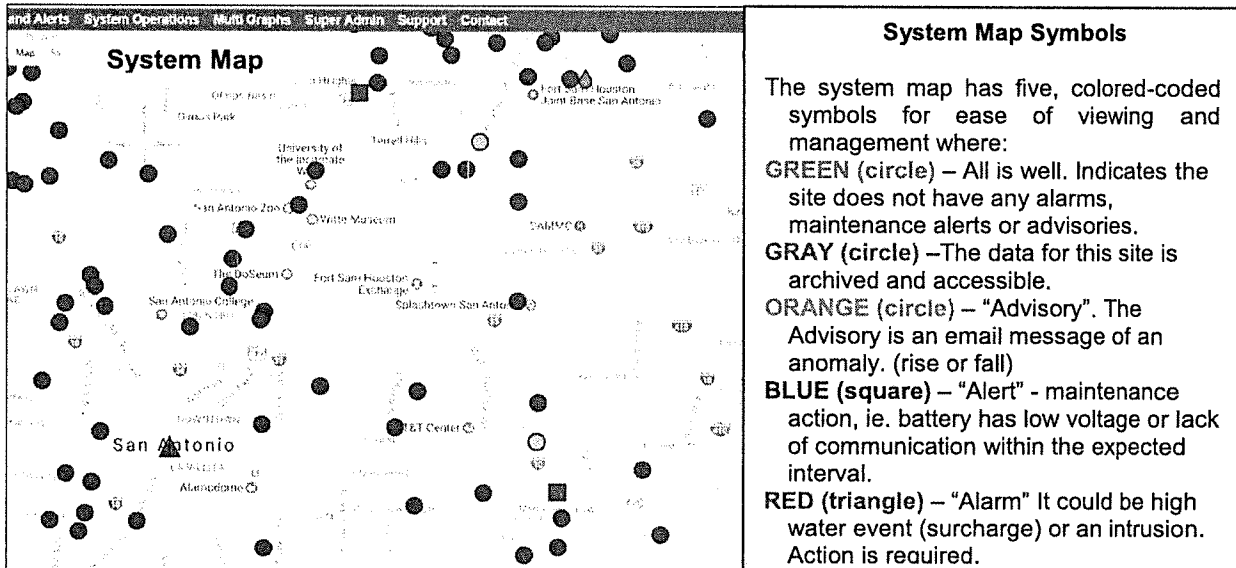
### **Alarming**

If the SmartCover® System™ measures and senses that the water it is *above* the alarm level, an alarm notification is sent to the designated users and by a pre-established communication protocol i.e., text message to a mobile device or an email message to a computer. Alarms through cell phones or pagers are via Short Message Service (SMS), or Smart Phones and emails via email messaging. Alarms will continue to be sent until acknowledged. The system will continue to monitor, even though the alarm has been acknowledged. Note: a dedicated direct-from-satellite handheld system is available option for highly critical communications. Contact SCS for more information.

**A LEVEL MEASUREMENT IS TAKEN EVERY 5 MINUTES AND DATA IS UPDATED ON THE SERVER EVERY HOUR. IN THE EVENT OF A HIGH-WATER EVENT, THE ALARM IS SENT THE NEXT TIME A LEVEL MEASUREMENT IS MADE. THE LONGEST TIME BETWEEN THE TIME THE WATER REACHES THE ALARM LEVEL AND WHEN THE ALARM SOUNDS IS 5 MINUTES.**

### **Graphical Data**

The website is accessed by designated users through a secure portal and using a user name and password. Upon login, a map of the system appears as shown below.



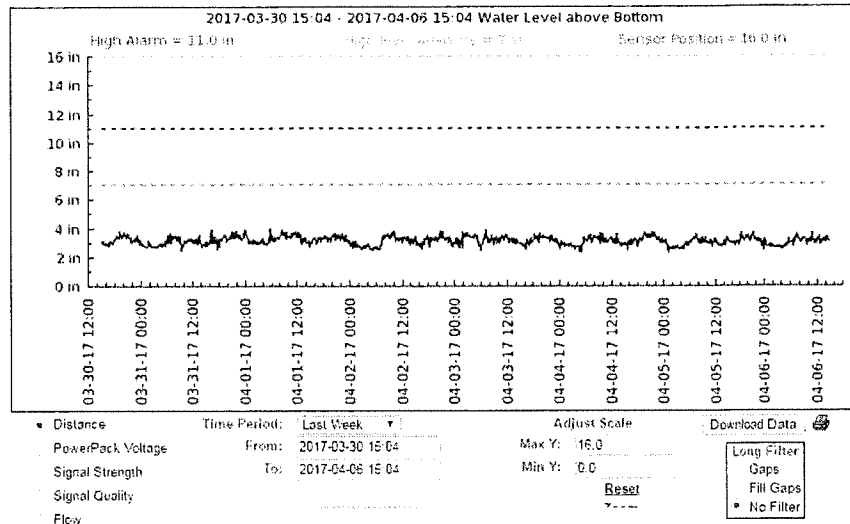
## Site Graphs 1 and 2

SmartFLOE data may be viewed as inches or gallons, with the click of a button. A user may access any remote site by clicking on the map or on the address location.

### Site Graph-1

As an example, the graph to the right illustrates level in inches (y-axis), and date/time (x-axis), flow levels (blue line), and the alarm setting (red line), and the advisory setting (orange line). We see in this case flow levels are below the alarm.

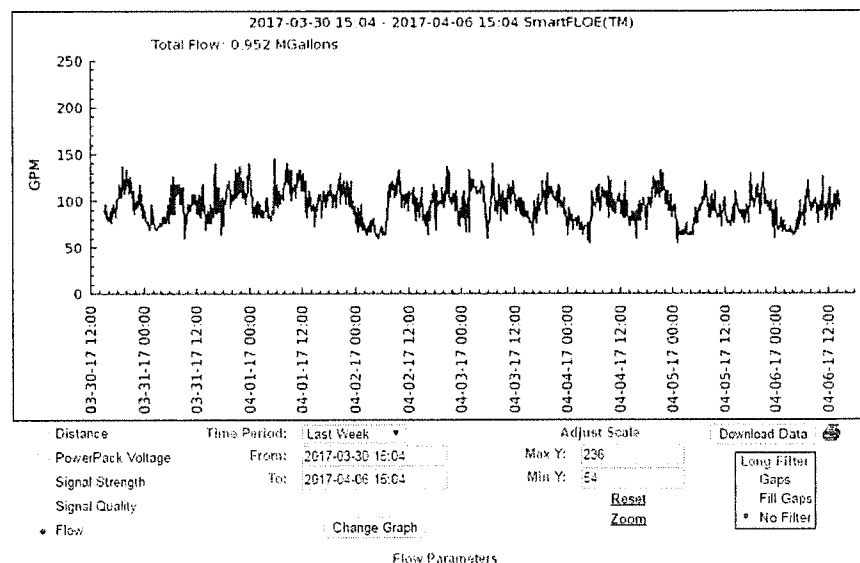
**Site Graph 1 – flow in inches**



**Site Graph 2 – flow in gallons**

### Site Graph-2

Any FLOE graph may also be viewed with GPM (y-axis), date/time (x-axis) and the flow level as the blue line. This is achieved by the click of the Flow button on the lower left corner of the graph page. This graph is the same data shown in Graph 1 in flow format.



## 5.4 System Installation & Activation

### Installation

It is most important to note that the SmartCover installation **does not require confined space entry, per OSHA 1910.146**. Because of the unique and patented design, a SmartCover® RFU installation is inexpensive and takes less than one hour for physical installation. THE existing manhole cover or alternative covers may be used for installation. The antenna is mounted to the top of the cover or lid and the mouthing bracket, and the PowerPack and E-Box bracket with the DSM connected to the E-Box, to the bottom of the manhole cover.

The antenna is mounted and secured with a high strength, MIL-Spec grade, two-part adhesive and a hole is drilled to feed the antenna wire to the underside where the E-Box control is located.

The bracket is mounted to the underside by drilling to two holes into the cover or lid. Two stainless steel screws secure the bracket. The DSM is connected to the E-Box control and it is suspended and aligned to the flow target area i.e., the invert, providing a means to **monitor water levels in the invert**.

On-site testing of the communication link is performed to ensure that the unit is operational. Installation can take place on-site, or offsite with a replaced manhole cover. Typically, the Customer will provide personnel and equipment as appropriate, and traffic control as required by local regulations and safety of field personnel.

### Activation

After the physical installation of the SmartCover® (SmartLevel or SmartFLOE) remote field unit, the following actions bring full functionality to the SmartCover® System™. SCS technicians will assist with all installation activation as part of our standard service protocol.

#### SmartCover® Activation: Customer Actions

- Upon receipt of a Purchase Order, the user will receive a questionnaire to obtain the site-specific information necessary to perform the SmartCover® service set-up. Proper system operation is dependent upon receipt of required information.
- This site information is used as part of installation where communication will be tested to verify functionality.

#### SmartCover® Activation: SCS Actions

- At the SCS technical Support offices, the secure Customer web site is set up including a private account and database on the SCS secure server.
- The customer web site is configured with SmartCover® System™ locations, applications, and users, including various user levels.
- Initial population of the Customer SmartCover® database with site specific information is performed.
- Registration of the SmartCover® System™ wireless radios with the network and setting the customer default system operational parameters is performed.

### Training

Training is provided after completion of the installation process. Once on-site personnel are trained, SCS will be available to provide additional web site training remotely after the SmartCover® system has been installed and operational.

## 5.5 Active Site Management

Active Site Management (ASM) is a **compressive support service** for the SmartCover® System™. It includes software support, satellite connectivity and ongoing technical support with these three elements described below.

It is an annual, per site service provided by SCS. ASM includes but is not limited to:

- **Website hosting-** initial set-up and ongoing hosting of all software and customer data. Note that all data is owned by the customer.
- **Website / Software Upgrades-** from time to time SCS provides new features and tools at no charge including such features supporting improved analytical tools, improved graphical tools and new reports.
- **Website maintenance** – maintaining the secure servers on which your web site resides, and providing free upgrades to the web sites as they become available.
- **Standard Reports** - SCS will support Customer in the preparation of these reports for management or regulators
- **Technical Telephone Support** - This service is offered by the SCS Technical Services team from 7am to 5 pm Pacific time and with additional support from local representatives.
- **Management Oversight**
  - SCS will send automatic notifications of alarms, advisories and alerts. Customer is responsible for acknowledging and responding to the above notifications. The SCS Technical Services team monitors the proper operation of all installed systems including battery voltage, the radio signal strength and the communication to/from the systems.
  - SCS coordinates the appropriate service to repair any components in the field with you or the local dealer
- **Alarm Processing** – maintaining the infrastructure of the alarm contact system.
- **After Hours Support** – on an as-needed basis. Contact SCS for details
- **Wireless Communications Connectivity** – Access to the two-way, wireless satellite network.

### Product Improvements

The SmartCover® is continuously improving, adding new features and functions. SCS often uses customer input to add new features. Product improvements are backwards compatible to existing satellite systems. There is no charge for these improvements as they are part of the annual ASM.

### SmartTrend™

**SmartTrend™** is an analytical, patented addition to **SmartCover®** that notifies and enables users to anticipate events at remote monitoring sites. **SmartTrend™** automatically scans each remote site to assess data trends and changes in water level patterns. Should it see an “anomaly”, it provides users an Advisory email message. This important addition to the **SmartCover® System™** means that users now have the most advanced predictive method available identifying future issues such as SSO days or even weeks *before they occur*.

## **6.0 Additional Terms & Conditions, Limited Warranty**

### ***Mutual Hold Harmless***

SCS agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Customer from any and all claims that may arise, or damages that may result, to SCS or SCS staff to the extent caused by SCS's negligence during the performance of this contract. Customer agrees, to the fullest extent permitted by law, to indemnify and hold harmless SCS, its officers, directors, employees and subcontractors (collectively, SCS) from any and all claims that may arise, to the extent caused by the Customer's negligent acts in connection with the installation, operation, or use of the SmartCover® System™, and the acts of its contractors, subcontractors or consultants or anyone for whom the Customer is legally liable. Neither SCS nor the Customer shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.

### ***Loss of Communications***

Customer acknowledges that SCS is not responsible for the loss of wireless communication or internet communications or any communications used in the operation of this system.

### ***Advisory Only***

The SmartCover® System™ is an advisory service only. As such, SCS and its founders, owners, or staff are not responsible for any damage of any kind or from any cause whatsoever that may result from, in relation to, in connection with, due to, or as a result of the installation or operation of the system, including without limitation, equipment failure, or any consequential damages caused by, or resulting from, the use or installation of the SmartCover® system.

### ***Limited Warranty***

The equipment components of the SmartCover® System™ are warranted free from material defects of material and workmanship for a period of one year from the date of installation. Unless otherwise stated, the SCS warranty herein is a parts-only warranty. Should the Customer discover any condition that might invoke a warranty claim, they are to expeditiously and without delay notify the SCS Technical Services group. Upon notification, SCS will assess and instruct the user on follow-on actions. Should a component fail as a result of a defect in material or workmanship, SCS will replace the component or repair it at the SCS location. For all valid warranty claims, as determined by SCS, reasonable freight charges to and from Customer shall be paid by SCS. In all cases, SCS shall determine the shipping method and/or carrier unless otherwise agreed to in writing by Customer and SCS. Upon approval of a warranty failure by SCS, SCS will either repair or replace the defective component at SCS' sole discretion.

**The foregoing warranty is exclusive. Repair or replacement in the manner provided above shall be the sole and exclusive remedy for breach of warranty and shall constitute fulfillment of all liabilities of SCS with respect to the quality and performance of the products. This warranty does not cover damage or repairs or replacements by any cause beyond the control of SCS, including acts of nature, improper use, lack of proper maintenance, vandalism, or unauthorized repair. SCS shall not be liable for any actual, exemplary, indirect or consequential damages, including damages for loss of goodwill or profits and/or losses, that stem from a failure or malfunction of the SmartCover® System™.**

**SmartCover® Systems™ does not provide traffic control. Customer must provide traffic control for installation and servicing of all units.**

In no event shall SCS's liability, whether in contract or in tort (including negligence and strict liability), exceed the price of the Product from which such liability arises.



## 7.0 Acceptance

The undersigned have read, acknowledge and agree to this offer.  
Please include this entire document with Purchase Order.

### Signatures

**W C Equipment Inc.**  
**4324 Brogdon Exchange**  
**Suite 100**  
**Suwanee, GA 30024**

**City of Villa Rica**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

**Stanley Mize**  
**Sales Georgia**

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

**Date: March 13, 2018**

\_\_\_\_\_  
*Date*