



**City of Flowery Branch
City Council Meeting
Thursday, August 15, 2024, 6:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542**



CALL WORK SESSION TO ORDER:

PLEDGE OF ALLEGIANCE:

ADOPTION OF AGENDA:

AWARDS & RECOGNITIONS:

UNFINISHED BUSINESS - WORK SESSION:

- Consider the Second Reading of Ordinance Number 720, Variance Requests for 5632 Church Street Regarding Front Porch Length and Garage Placement Requirements.
[Flowery Branch Variance 4_23_24.pdf](#)
[Flowery Branch Variance 4_23_24_01.pdf](#)
[Ordinance 720 - 5632 Church Street.pdf](#)

NEW BUSINESS -WORK SESSION:

- Consider Awarding Contract to Intercontinental Commercial Services, Inc. for Janitorial Services for the City of Flowery Branch.
[Executive Summary- ICS, Inc. Contract.pdf](#)
[24-005 NOIA \(Notice of Intent to Award\).pdf](#)
[24-005 ICS Contract for Janitorial Services](#)
- Consider Awarding Contract to DCI Metal Buildings, Inc. for Well Building 1 & 3 Rehabilitation.
[Executive Summary- DCI Metal Buildings.pdf](#)
[24-007 NOIA \(Notice of Intent to Award\).pdf](#)
[24-007 DCI Metal Buildings Contract for Rehabilitation on Well Building 1 & 3.pdf](#)
- Consider Amendment 2 to the Memorandum of Understanding (MOU) with Parkside Partners
[ES - Amendment 2 to MOU with Parkside Partners.pdf](#)
[Amendment #2 to the Parkside Partners Agreement.pdf](#)
- Consider Authorizing a Change Order in the Amount of \$590,590.73 for Incorporating Additional Road Paving Scope into the Ongoing Road Resurfacing Improvements Contract and Allow for an Additional 30 days.
[8.15.2024 Executive Summary Baldwin Paving Change Order Additional Roads.pdf](#)
[2024.08.08 - Change Order No. 1 - signed by contractor.pdf](#)
[2024.08.07 - Paving Project Final Map.pdf](#)
- Consider the Second Amendment to the Lease Agreement with Norfolk Southern Railway Company.
[ES - Norfolk Southern 2nd Amendment to Lease.pdf](#)

[NS ROW Lease \(Amendment 1\) Entire Document 2019 FULLY EXECUTED.pdf](#)
[Lease amend Norfolk Southern.pdf](#)
[Norfolk Southern Lease.PDF](#)
[Norfolk Southern Map.PDF](#)

DEPARTMENT REPORTS: -

- a. City Manager Report
- b. City Clerk Report
- c. Department of Fun Report
- d. Finance Department Report
- e. Human Resources Report
- f. Planning Department Report
- g. Police Department Report
- h. Public Works & Utilities Report
- i. Attorney Report
- j. Council Report

ADJOURNMENT WORK SESSION:**VOTING SESSION AGENDA****CALL VOTING SESSION TO ORDER:**

PUBLIC COMMENTS: - Please limit to two minutes

CONSENT AGENDA:

- Consider July 2024 Per Diem for Mayor Asbridge
[July 2024 Per Diem for Mayor Asbridge.pdf](#)
- Consider August 1, 2024 City Council Meeting Minutes
[Unofficial August 1, 2024 City Council Meeting Minutes.pdf](#)

UNFINISHED BUSINESS - VOTING SESSION:

- Consider the Second Reading of Ordinance Number 720, Variance Requests for 5632 Church Street Regarding Front Porch Length and Garage Placement Requirements.
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NEW BUSINESS - VOTING SESSION:

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[24-007 NOIA \(Notice of Intent to Award\).pdf](#)

[24-007 DCI Metal Buildings Contract for Rehabilitation on Well Building 1 & 3.pdf](#)

- Consider Second Amendment to FB Main Street, A Master Condominium Shopping Center Lease Agreement with The Social Peach Boutique, LLC.
[Executive Summary Social Peach 2 Amendment.pdf](#)
[The Social Peach Second Amendment.pdf](#)
- Consider Amendment 2 to the Memorandum of Understanding (MOU) with Parkside Partners
[ES - Amendment 2 to MOU with Parkside Partners.pdf](#)
[Amendment #2 to the Parkside Partners Agreement.pdf](#)
- Consider Authorizing a Change Order in the Amount of \$590,590.73 for Incorporating Additional Road Paving Scope into the Ongoing Road Resurfacing Improvements Contract and Allow for an Additional 30 days.
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[Norfolk Southern Lease.PDF](#)
[Norfolk Southern Map.PDF](#)

EXECUTIVE SESSION:

ADJOURNMENT:

If you have a disability or impairment and need special assistance please contact the City Clerk prior to the meeting at 770-967-6371 - Meeting agenda is subject to change



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider the Second Reading of Ordinance Number 720, Variance Requests for 5632 Church Street Regarding Front Porch Length and Garage Placement Requirements.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

The public hearing for the variance requests submitted as ordinance number 720, for 5632 Church Street, was held on June 20, 2024. The first read was approved with modified conditions at the July 18, 2024 meeting, and the second is on August 1, 2024. Staff recommends approval of both variance requests. Restrictions caused by the lot size and shape prohibit two of the Traditional Neighborhood District (TND) requirements (front porch size, garage placement) from being met. This item was tabled on August 1, 2024 until August 15, 2024.

FACTS AND ISSUES:

The lot in question is small (6,754) and due to its shape, it is difficult to meet the Traditional Neighborhood District (TND) requirements. Therefore, the applicant has made two variance requests for City Council consideration.

There are two variance request for this project:

1. Allow the garage to be located in front rather than the required side/rear.
2. Allow for a smaller front porch (13'x6" rather than the required 16'x6).

Staff recommends approval of both requests.

OPTIONS:

Approve, modify, table, deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Approve as submitted.

SAMPLE MOTION:

I make a motion to approve the second read of ordinance number 720.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Flowery Branch Variance 4_23_24.pdf](#)
- [Flowery Branch Variance 4_23_24_01.pdf](#)
- [Ordinance 720 - 5632 Church Street.pdf](#)



VARIANCE APPLICATION

Address of Request:

5632 Church Street

Type of Variance Requested

Complete requirements for variances can be found in the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37;

Please verify all the requirements of the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37, section 37.5 are being met.

Explain below:

- variance for size of lot will only take front side entry, will not back entry garage.
- variance for front porch smaller than required because of size of lot.

Applicant: Mark Miller Properties, Inc.

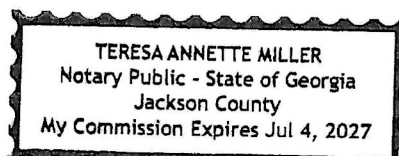
Address: P.O. Box 176
Dacula, Ga. 30019

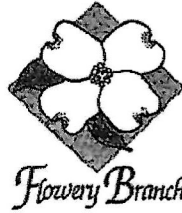
E-mail address: markmillerpropertiesinc@gmail.com

Phone number: 678-409-1158

Signature: Teresa Miller

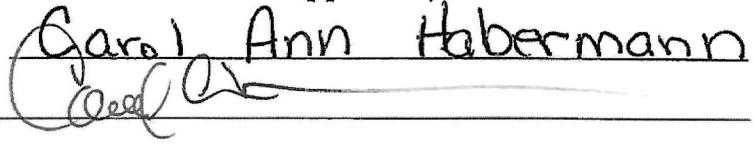
Notary Seal:





Property owner information (if different than the applicant)

Property owner (please print): Carol Ann Habermann

Signature of property owner: 

Notary Seal:




October 20, 2025

Please provide the following at time of submittal:

- ✓ Legal description – one hard copy and on a flash drive
- ✓ Current survey of property – one hard copy and on a flash drive
- ✓ Site plan – one hard copy and on a flash drive
- ✓ Detailed description of request
- ✓ Conflict of interest disclosure (attached)
- ✓ Disclosure of campaign contributions (attached)



Conflict of Interest Disclosure

Identify all members of the City Council of the City of Flowery Branch and Employees of the City of Flowery Branch Community Development Department who

Have a property interest in the real property affected by this request

N/A

Have a financial interest (direct ownership interest) of the total assets or capital stock of a business entity where such ownership interest is more than 10% in any business entity which has a property interest in the real property affected by this request

N/A

Have a member of the family (spouse, mother, father, brother, sister, son or daughter) having a property financial interest as herein defined, in the real property affected by this request

N/A

Disclosure of Campaign Contributions

List below the names of local government officials of the City of Flowery Branch to whom campaign contributions were made, within two (2) years immediately preceding the filing of this application, which campaign contributions total \$250.00 or more or to whom gifts were made having a total value of \$250.00 or more.

Elected Officials Name

Amount of Description of Gift

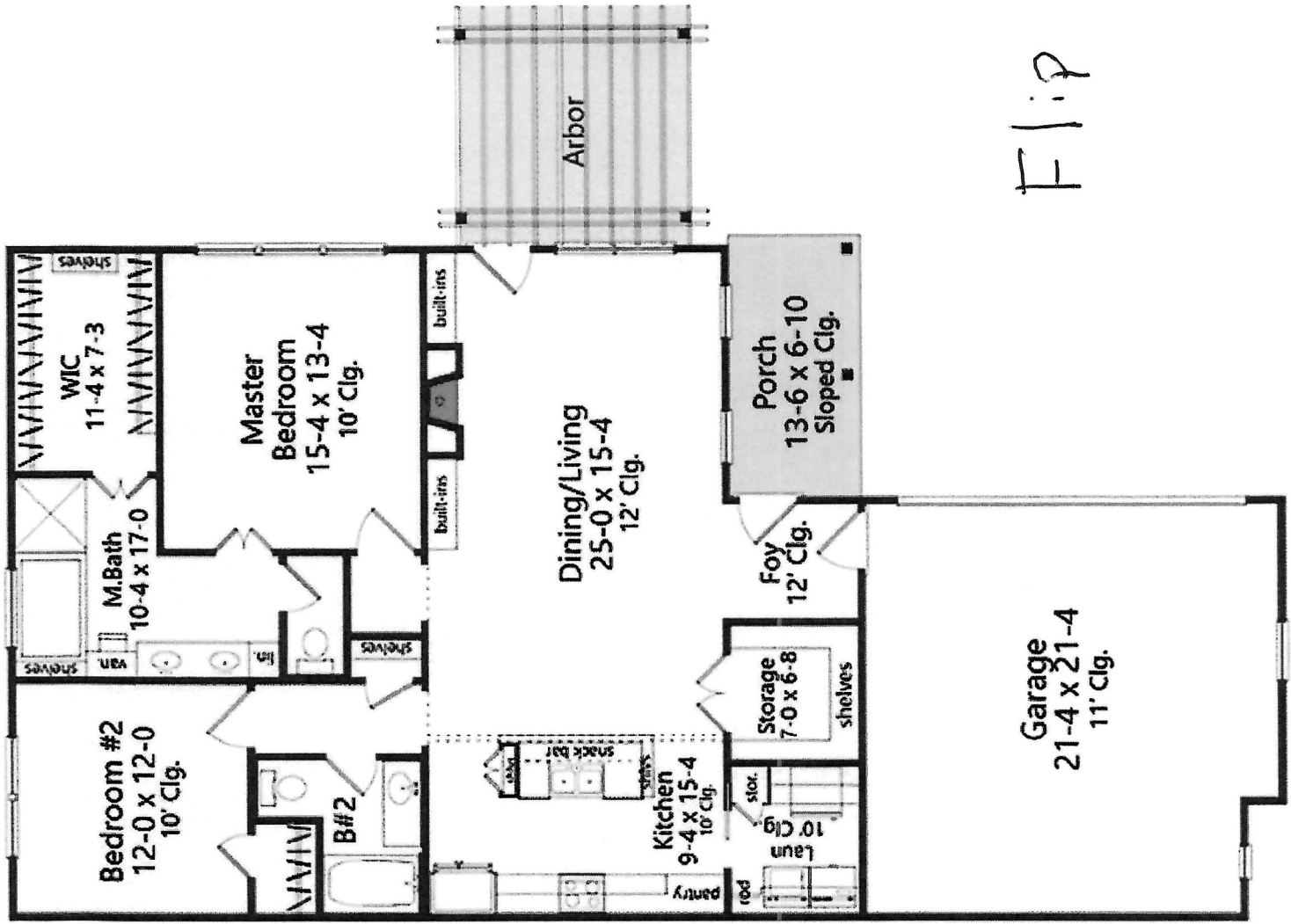
N/A

N/A



AD Plan 62137V
Architectural Designs.com

Flip



Flip

OWNER'S CERTIFICATION

CLERK OF SUPERIOR COURT
GEORGIA
HALL COUNTY
CITY OF FLOWERY BRANCH
LAND LOT 112 & 118
8th DISTRICT

FINAL PLAT APPROVAL

THE CITY OF FLOWERY BRANCH, GEORGIA CERTIFIES THAT THIS PLAT COMPLIES WITH THE CITY OF FLOWERY BRANCH ZONING AND ORDINANCE, CONDITIONS OF ZONING AND THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS OF THE CITY OF FLOWERY BRANCH, AND THAT THIS PLAT IS HEREBY APPROVED AND RELEASED FOR RECORDING PURPOSES.

APPROVED AND RELEASED FOR RECORDING ON 2/3/2017
 Eickhoff, D. L. DATE

Survivor's Certification

The undersigned hereby certifies that this plot is true and correct and was prepared from an actual survey of the property by me or under my supervision and that all monuments shown thereon actually exist.

The field data upon which this plat is based has a closure precision of one foot in 25,377 feet, and an angular error of 1" per angle point, and has been adjusted using the Compass Rule.

This plot has been calculated for closure and is found to be accurate within one foot in 92,924 feet.

The term "Certification" as used in Rule 180-6-.09(2) and (3) and relating to professional engineering or land surveying services, as defined in O.C.G.A. 43-15-2(6) and (11), shall mean a signed statement based upon facts and knowledge known to the registrant and is not a guarantee or warranty, either expressed or implied.

This survey was prepared in conformity with The Technical Standards for Property Surveys in Georgia as set forth in Chapter 180-7 of the Rules of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in the Georgia Plat Act O.C.G.A. 15-5-67.

LEGEND

- SUBJECT PROPERTY LINE
 ADJACENT PROPERTY LINE
 OVERHEAD POWER LINE (OHLE)
 FENCE LINE
 POWER POLE (PP)
 PROPERTY CORNER FOUND
 PROPERTY CORNER SET
 NOTE NUMBER
 POINT OF BEGINNING

GRAPHIC SCALE



© Copyright 2016 Tompkins Surveying & Mapping, LLC
All RIGHTS Reserved This drawing is the property of Tompkins Surveying & Mapping, LLC. It is to be used only for the project and site intended for this client named and any copy of this rendering without a written consent from Tompkins Surveying & Mapping, LLC is null and void across the seal is not valid

OWNER'S INFORMATION:

OWNER: KELLY MCCLINCH
ADDRESS: 5628 CHURCH STREET,
FLOWERY BRANCH, GA 30542
PHONE: 770-597-4080

AREA	
TRACT A	TRACT B
9157.9 SQ. FT.	6754 SQ. FT.
0.210 ACRES	0.155 ACRES
	6516 SQ. FT.
	.150 ACRES

AREA

516 SQ. FT.
.150 ACRES

TRACT B
6754 SQ. FT.
0.155 ACRES

TRACT A
9157.9 SQ. FT.
0.210 ACRES

NOTES

1. THE FIELD DATA, COLLECTED 10/27/2016, A TOPCON ANGLAR TOTAL STATION WAS USED TO OBTAIN LINEAR AND ANGULAR MEASUREMENTS.
2. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND HAS BEEN FOUND TO BE ACCURATE WITHIN ONE FOOT IN 171,156 FEET.
3. THE UNLINED LOT WAS LOCATED FROM ABOVE GROUND OF EVIDENCE. THERE WAS NO VISIBLE EVIDENCE ABOVE GROUND OF EVIDENCE SITE OR GRAVEYARD. THE SURVEYOR DID NOT PERFORM EXTENSIVE RESEARCH ON THE MATTER AND HAD NO REASONABLE RESEARCH ON ANY SUCH ITEMS.
4. THIS SURVEYOR TAKES EXCEPTION TO ANY SUCH ITEMS. THIS PROPERTY MAY BE SUBJECT TO EASEMENTS, RIGHTS OF WAY OR RESTRICTIONS THAT ARE NOT OF RECORD OR THAT WOULD HAVE BEEN DISCOVERED BY AN ACCURATE AND CURRENT TITLE SEARCH. THEREFORE THE SURVEYOR TAKES EXCEPTION TO ANY SUCH ITEMS.
5. THE PURPOSE OF THIS SURVEY IS TO RE-ALIGN THE PROPERTY LINES FOR TRACTS A,B AND C IN ORDER TO MOVE THE PROPERTY LINE FURTHER AWAY FROM THE 40' OAK TREE. IT IS ALSO THE PURPOSE OF THIS SURVEY TO ILLUSTRATE SOME OF THE PROPERTY THAT HAS BEEN TRANSFERRED AWAY FROM EDWIN T. ELIOTT FOR RIGHT OF WAY ACQUISITION ALONG MITCHELL STREET.
6. CONCRETE CHANGED AS OF 1-20-17 TO SHOW THE FUTURE DRIVEWAY ACCESS AND NOT AGREEMENT BETWEEN KELLY WOODCHINA AND THE CITY OF FLOWERY BRANCH ILLUSTRATING THE CONCRETE FLOOR FOR THE DRIVEWAY.

REFERENCES

- A SURVEY PLAT BY PATTON-BOYER, INC. LAND SURVEYORS DATED JULY 7TH 2008 AND PROVIDED BY CLIENT

DATE	REVISION DESCRIPTION	NO.
1/27/17	REVISED CONCRETE NOTE	1
AUTHORIZED BY: KELLY MCCLINCHA		
PROJECT 5731 MITCHELL STREET, 5020 MARTIN STREET & 5032 CHURCH STREET, FLOWERY BRANCH, GA 30042		
DRAWING TITLE		
<u>A RESIDENTIAL LAND DIVISION SURVEY FOR:</u> <u>KELLY MCCLINCHA, ET AL</u>		
JOB NO. 16-0100	DWG NO.	
DRN BY: C. TOMPKINS	16--0100.dwg	
CHKD BY: C. TOMPKINS	SCALE: 1"=40'	
DATE: NOVEMBER 15TH 2016		
SHEET 1 OF 1		



PHONE: 866-979-1845 FAX: 866-979-1565

A TRIMBLE S6 TOTAL STATION WAS USED TO OBTAIN THE LINEAR AND ANGULAR MEASUREMENTS USED IN THE PREPARATION OF THIS PLAT.

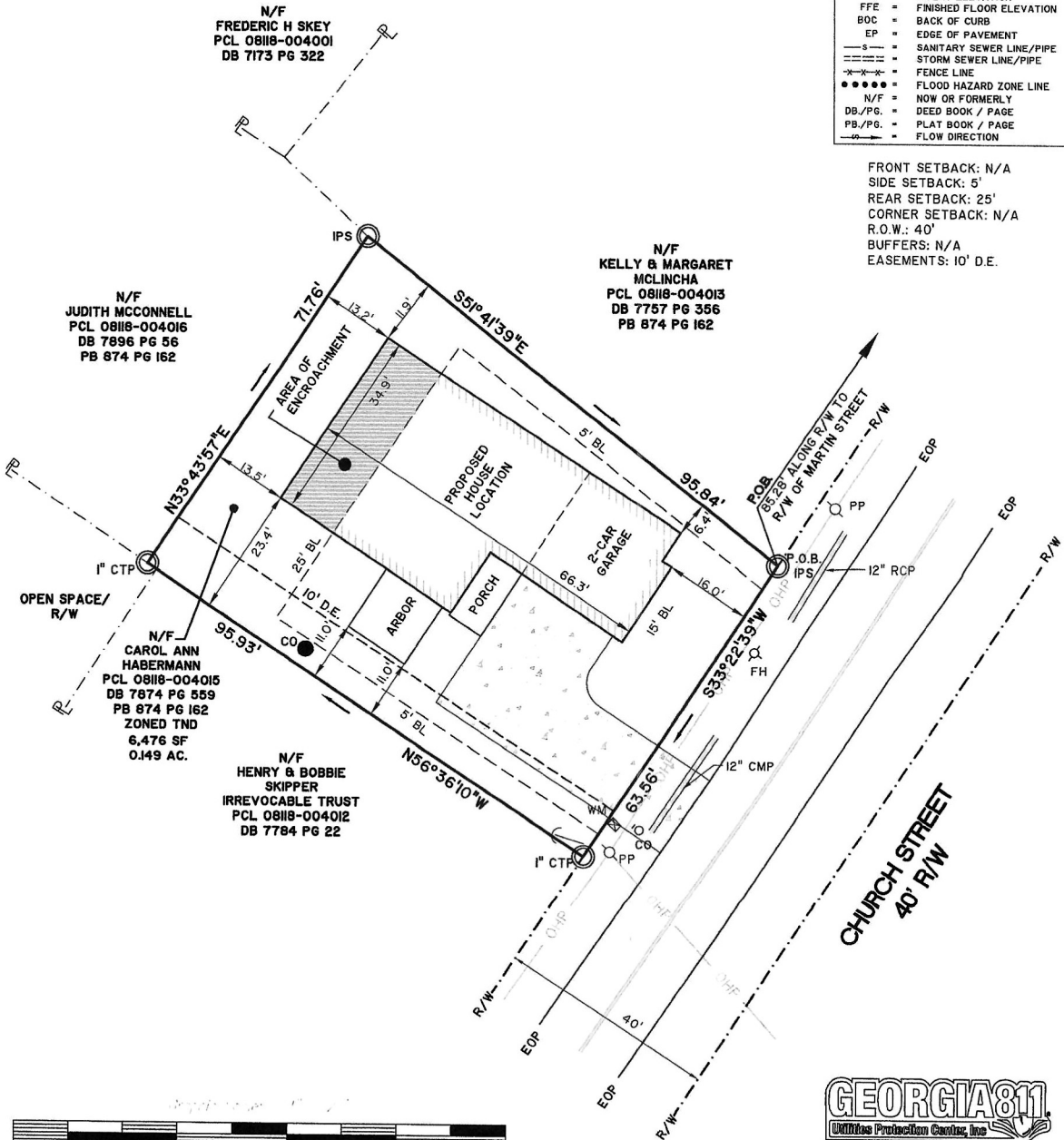
THE FIELD DATA UPON WHICH THIS MAP OR PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 92,507 FEET AND AN ANGULAR ERROR OF 02" PER POINT, AND WAS ADJUSTED USING THE LEAST SQUARES RULE.

THIS MAP OR PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 167,178 FEET.

OFFICIAL FLOOD HAZARD MAP COMMUNITY NUMBER 13137C0291H DATED 12/01/2022 SHOWS NO PORTION OF THIS PROPERTY TO BE IN AN AREA HAVING SPECIAL FLOOD HAZARDS (ZONE AE).

LEGEND

IPS	=	1/2" REBAR PIN SET
RBF	=	REBAR PIN FOUND
OTP	=	OPEN TOP PIPE
CTP	=	CRIMP TOP PIPE
LLL	=	LAND LOT LINE
P	=	PROPERTY LINE
CL	=	CENTERLINE
B	=	BUILDING LINE
R/W	=	RIGHT-OF-WAY
SSE	=	SANITARY SEWER EASEMENT
DE	=	DRAINAGE EASEMENT
LL	=	LAND LOT
MH	=	MANHOLE
CB	=	CATCH BASIN
JB	=	JUNCTION BOX
HW	=	HEADWALL
DI	=	DROP INLET
FH	=	FIRE HYDRANT
IE	=	INVERT ELEVATION
FFE	=	FINISHED FLOOR ELEVATION
BOC	=	BACK OF CURB
EP	=	EDGE OF PAVEMENT
S	=	SANITARY SEWER LINE/PIPE
SS	=	STORM SEWER LINE/PIPE
F	=	FENCE LINE
FHZ	=	FLOOD HAZARD ZONE LINE
N/F	=	NOW OR FORMERLY
DB/Pg.	=	DEED BOOK / PAGE
PB/Pg.	=	PLAT BOOK / PAGE
→	=	FLOW DIRECTION



FRONT SETBACK: N/A
SIDE SETBACK: 5'
REAR SETBACK: 25'
CORNER SETBACK: N/A
R.O.W.: 40'
BUFFERS: N/A
EASEMENTS: 10' D.E.





**THOMAS
&
HUTTON**

5074 BRISTOL INDUSTRIAL WAY
SUITE A
BUFORD, GEORGIA 30518
(770) 271-2868

SHEET 1 OF 1



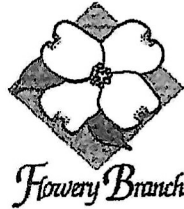
**MARK MILLER
PROPERTIES
P.O. BOX 176
DACULA, GEORGIA**

No.	REVISION	DATE
1.		
2.		
3.		
4.		
5.		

TASK: HOUSE LOCATION PLAN	
PROJECT NAME: 5632 CHURCH STREET PIN# 08118-004015	

SCALE	1" = 20'
DATE	04/10/24
DESIGN	
DRAWN	MJH
CHECKED	CCB
PROJECT No.	31917.0000

ADDRESS:
5632 CHURCH STREET
8TH DISTRICT LAND LOT 112
CITY OF FLOWERY BRANCH
HALL COUNTY, GEORGIA



VARIANCE APPLICATION

Address of Request:

5632 Church Street

Type of Variance Requested

Complete requirements for variances can be found in the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37;

Please verify all the requirements of the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37, section 37.5 are being met.

Explain below:

- variance for size of lot will only take front side entry, will not ^{take} back entry garage due to size of lot, encroachments, and easements. ^{and Building Lines}
- variance for front porch smaller than required because of size of lot and the house plan that is needed. If we make porch bigger it will go ^{past} the beginning of garage opening.

Applicant: Mark Miller Properties, Inc.

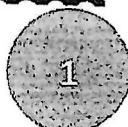
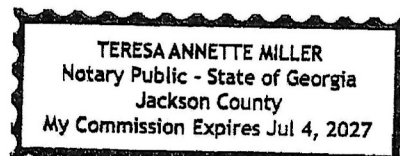
Address: P.O. Box 176
Dacula, ga. 30019

E-mail address: markmillerpropertiesinc@gmail.com

Phone number: 678-409-1158

Signature: *Mark Miller*

Notary Seal:



Public Hearing Published 05/04/2024
Public Hearing 06/20/2024

First Reading 07/18/2024
Second Reading 08/15/2024

ORDINANCE 720

5632 Church Street Variance Request

AN ORDINANCE GRANTING VARIANCES FROM THE REQUIREMENTS OF ARTICLE 7, SECTION 7.5.(b) and (c) OF THE FLOWERY BRANCH ZONING ORDINANCE; 5632 CHURCH STREET, TAX PARCEL IDENTIFICATION NO. 08118 004015, OWNED BY HABERMANN, CAROL ANN, AS SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C"; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, HABERMANN, CAROL ANN has submitted a written and signed application to the City of Flowery Branch, Georgia requesting a specific variance for property located at 5632 Church Street; and

WHEREAS, a survey and complete description of the property subject to the requested variance is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on June 20, 2024, to consider the application, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of HABERMANN, CAROL ANN in conjunction with the standards set forth in Article 37, Section 37.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variance from the City of Flowery Branch Zoning Ordinance Article 7, Section 7.5 (b) and (c) is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

- (a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

Public Hearing Published 05/04/2024
Public Hearing 06/20/2024

First Reading 07/18/2024
Second Reading 08/15/2024

- (b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;
- (c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;
- (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;
- (e) The special circumstances are not the result of the actions of the applicant;
- (f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and
- (g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variance from the requirements set forth in the Flowery Branch Zoning Ordinance Article 7, Additional Development Requirements 7.5 (b)

Front Porches. Any new, detached dwelling shall have a front porch no less than sixteen feet in width as measured along the street frontage and no less than six feet in depth measured from the front property line to the interior of the lot.

Ordinance Article 7, Additional Development Requirements 7.5 (c)

On-site Parking. A two-car garage or carport located in the rear or side yard is required.

Conditions set forth in Exhibit "C" are imposed on said property. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published 05/04/2024
Public Hearing 06/20/2024

First Reading 07/18/2024
Second Reading 08/15/2024

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 15th day of August 2024.

Edward R. Asbridge, Mayor

ATTEST:

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

Ted C. Baggett, City Attorney

Exhibit "A"

State of Georgia
 Hall County
 City of Flowery Branch
 Land Lot 112 & 113
 8th District

FINAL PLAT APPROVAL

THE CITY OF FLOWERY BRANCH, GEORGIA CERTIFIES THAT THIS PLAT COMPLES WITH THE CITY OF FLOWERY BRANCH ZONING AND ORDINANCE, CONDITIONS OF ZONING AND THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS OF THE CITY OF FLOWERY BRANCH, AND THAT THIS PLAT IS HEREBY APPROVED AND RELEASED FOR RECORDING PURPOSES.

Signature 3/3/2017
 CITY OF FLOWERY BRANCH

Surveyor's Certification
 The undersigned hereby certifies that this plat is true and correct and was prepared from an actual survey of the land to be surveyed and under my supervision and that all monuments shown thereon actually exist.
 The field data upon which this plat is based has a closure error on one foot of 25.777 feet, and an angular error of 1" per angle point, and was adjusted using the Compass Rule.
 The plat has been calculated for closure and is found to be accurate within one foot in 25,774 feet.
 The terms "Certification" as used in Rule 180-6-08(2) and (3) and relating to professional engineering or land surveying services, as defined in O.C.G.A. 43-15-26(6) and (11), shall mean a signed statement based upon facts and knowledge known to the registrant, and is not a guarantee or warranty, either expressed or implied.
 This survey was prepared in conformity with the Technical Standards for Property Surveys in Georgia as set forth in Chapter 180-7 of the Rules of the Georgia Board of Land Surveyors and for Professional Engineers and Land Surveyors and as set forth in the Georgia Plat Act O.C.G.A. 15-8-1.

S. CLARK TOMPKINS, PROFESSIONAL SURVEYOR
 REGISTRATION NO. 3597

LEGEND
 SURVEYED PROPERTY LINE
 UNADJUSTED PROPERTY LINE
 EXISTING POWER LINE (H&E)
 TRAIL LINE
 POWER POLE (PP)
 PROPERTY CORNER FOUND
 PROPERTY CORNER SET
 IRON NAIL
 POINT OF BEGINNING
 POINT OF BEGINNING

0 20' 40' 80' 120'

Participant(s) Party Name
 State of Georgia
 Spencer Clark Tompkins
 Engineer Clark Tompkins
 0601010010001
 0601010010001

OWNER'S CERTIFICATION

STATE OF GEORGIA
 COUNTY OF HALL
 THE UNDERSIGNED CERTIFIES THAT HE OR SHE IS THE OWNER OF THE LAND SHOWN ON THIS PLAT AND THE PUBLIC AND PRIVATE IMPROVEMENTS CONTAINED THEREON OR ASSOCIATED THEREWITH MEET ALL APPLICABLE REQUIREMENTS AND STANDARDS OF THE CITY OF FLOWERY BRANCH LIMITED DEVELOPMENT CODE. THE OWNER HEREBY ACKNOWLEDGES THIS PLAT AND THE ALLOWANCE TO BE HIS FREE ACT AND DEED, AND AGREES TO THE CITY OF FLOWERY BRANCH FOREVER ALL AREAS SHOWN OR INDICATED ON THIS PLAT AS PUBLIC STREETS, EASEMENTS OR OTHER PUBLIC LAND AREAS AND ALL WATER SYSTEMS, SEWERAGE AND OTHER PUBLIC IMPROVEMENTS.

Thomas A. McInch 1-30-2017
 OWNER'S NAME DATE

1-30-2017

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 COUNTY OF HALL
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Thomas A. McInch 1-30-2017
 OWNER'S NAME DATE

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Thomas A. McInch 1-30-2017
 OWNER'S NAME DATE

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1-30-2017

NOTES
 1. THE FIELD DATA, COLLECTED 10/27/2016, A TOPCON AGROUND TOTAL STATION WAS USED TO OBTAIN LENGTH AND ANGLE MEASUREMENTS.
 2. THE PLAT HAS BEEN CALCULATED FOR CLOSURE AND HAS BEEN FOUND TO BE ACCURATE WITHIN ONE FOOT IN 25,774 FEET.
 3. THE SURVEYOR HAS CONDUCTED RESEARCH ON THE WATER AND HAS NO EVIDENCE. THERE WAS NO VISIBLE EVIDENCE ABOVE GROUND OF A BURIAL SITE OR GRAVEYARD. THE SURVEYOR DID NOT PERFORM EXTENSIVE RESEARCH ON THE WATER AND HAS NO ARCHEOLOGIST PERFORM ANY SUCH RESEARCH. THEREFORE, THE SURVEYOR TAKES EXCEPTION TO ANY SUCH ITEMS.
 4. THIS PROPERTY MAY BE SUBJECT TO EASEMENTS, RIGHTS OF WAY OR RESTRICTIONS THAT ARE NOT OF RECORD OR THAT WOULD HAVE BEEN DISCOVERED BY AN ACCURATE AND CURRENT TITLE SEARCH. THEREFORE THE SURVEYOR TAKES EXCEPTION TO ANY SUCH ITEMS.
 5. THE PURPOSE OF THIS SURVEY IS TO RE-ALIGN THE PROPERTY LINES FOR TRACTS A, B AND C IN ORDER TO MOVE THE PROPERTY LINE FURTHER AWAY FROM THE 40' HIGH DRAINAGE TIE. IT IS ALSO THE PURPOSE OF THIS SURVEY TO ELUSTRATE SOME OF THE PROPERTY THAT HAS BEEN TRANSFERRED AWAY FROM EDWIN E. BLUETT FOR RIGHT OF WAY ACQUISITION ALONG MITCHELL STREET.
 6. COMPLETE CHAINED AS OF 1-20-17 TO SHOW THE FUTURE DRAINAGE ACCESS AND THE AGREEMENT BETWEEN KELLY MCINCH AND THE CITY OF FLOWERY BRANCH, THE SURVEYOR FUTURE CHANGES IN THE CONCRETE FOR THE DRIVEWAY.

REFERENCES

A SURVEY PLAT BY PATTON-BOYER, INC. LAND SURVEYING DATED JULY 7TH 2008 AND PROVIDED BY CLIENT.
 2. A RIGHT OF WAY MAP BY POH ENGINEERING, INC. DATED JUNE 20TH 2014 AND USED SPECIFICALLY ON SHEET 4 OF THIS CITY OF FLOWERY BRANCH AND THE DEPARTMENT OF TRANSPORTATION.

1-30-2017

1-30-2017

1-30-2017

Public Hearing Published 05/04/2024
Public Hearing 06/20/2024

First Reading 07/18/2024
Second Reading 08/15/2024

Exhibit "B"

LEGAL DESCRIPTION

VARIANCE APPLICATION

All that tract or parcel of land lying and being in Land Lot 112 AND 118 of the 8th District, Flowery Branch, Hall County, Georgia and being more particularly described as follows:

To find the TRUE POINT OF BEGINNING, begin at the intersection of the southwesterly right-of way of Martin Street (40' R/W) and the northwesterly right-of-way of Church Street (40' R/W); THENCE

along said right-of-way of Martin Street South 33 degrees 22 minutes 39 seconds West a distance of 85.28 feet to an iron pin set, said point being the TRUE POINT OF BEGINNING;

THENCE South 33 degrees 22 minutes 39 seconds West a distance of 63.56 feet to a point;

THENCE North 56 degrees 36 minutes 10 seconds West a distance of 95.93 feet to a point;

THENCE North 33 degrees 43 minutes 57 seconds East a distance of 71.76 feet to a point;

THENCE South 51 degrees 41 minutes 39 seconds East a distance of 95.84 feet , said point being THE TRUE POINT OF BEGINNING

The above-described tract contains an area of 0.149 acres (6,476 S.F.)

Conditions of Zoning

1. The project shall generally adhere to the site plan as shown below:



Public Hearing Published 05/04/2024
Public Hearing 06/20/2024

First Reading 07/18/2024
Second Reading 08/15/2024

2. Front porch shall be no smaller than thirteen feet and six inches (13'6") in width and six feet and six inches in depth (6'6")
3. Sewer shall be provided to the project by the City of Flowery Branch.
4. Water shall be supplied by the City of Flowery Branch.
5. Elevation design requirements:
 - a. The side of the garage facing the street shall consist of brick/stone from the ground at least up to where the gable portion of the roof begins and approved by staff.
 - b. The garage will have a garage door(s). Garage door frame shall be encased in brick/stone. Garage door(s) should be carriage style, or an alternative style, approved by staff, that will keep with the intent of the TND using recently built TND front facing detached garages as a gauge.
 - c. The house shall have a brick/stone feature on all sides and approved by staff.
 - d. Porch will have columns holding up the shed or gabled roof above it. These columns should be decorative, have a brick/stone base measuring a minimum height of 36 inches from the floor of the porch and approved by staff.



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Awarding Contract to Intercontinental Commercial Services, Inc. for Janitorial Services for the City of Flowery Branch.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

This is a new initiative as our previous contract did not encompass all five locations or services requested. The addresses are as follows:

- City Hall: 5410 Pine Street, Flowery Branch, GA 30542
- Police Department: 5270 Railroad Avenue, Flowery Branch, GA 30542
- Planning/Fun: 5512 Main Street, Flowery Branch, GA 30542
- Train Depot: 5302 Railroad Avenue, Flowery Branch, GA 30542
- WWTP Office: 5572 Atlanta Hwy, Flowery Branch, GA 30542

FACTS AND ISSUES:

The terms of this contract shall align with the City's fiscal year from July 1st to June 30th and shall be from commencement of services until all services are rendered. The contract shall be renewed for four (4) one-year periods unless the city elects not to renew the agreement or either party utilizes the termination provisions. The contract price shall remain firm throughout each renewal.

OPTIONS:

1. Award the Contract
2. Do not Award the Contract.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$38,400 - various departmental budgets

RECOMMENDATION:

Award Contract to Intercontinental Commercial Services, Inc. for Janitorial Services for the City of Flowery Branch

SAMPLE MOTION:

I move we award Bid 24-005 Janitorial Services to Intercontinental Commercial Services Inc. for the amount of \$38,400 and to authorize the Mayor to sign a contract substantially similar to Janitorial Services Contract 24-005 on behalf of the City once the exhibits contained therein have been obtained from the awardee to the satisfaction of the City Manager and City Attorney.

COLLABORATING DEPARTMENT:

DEPARTMENT: Finance

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary- ICS, Inc. Contract.pdf](#)
- [24-005 NOIA \(Notice of Intent to Award\).pdf](#)
- [24-005 ICS Contract for Janitorial Services](#)

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Awarding Contract to Intercontinental Commercial Services, Inc. for Janitorial Services for the City of Flowery Branch.

DATE: August 9, 2024

(X) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL- \$38,400.00

() OTHER

CAPITAL-

COUNCIL ACTION REQUESTED ON: August 15, 2024

PURPOSE: To award a contract for Bid 24-005 Janitorial Services for the City of Flowery Branch to a responsible, responsive bidder

HISTORY: This is a new initiative as our previous contract did not encompass all five locations or services requested. The addresses are as follows:

- City Hall: 5410 Pine Street, Flowery Branch, GA 30542
- Police Department: 5270 Railroad Avenue, Flowery Branch, GA 30542
- Planning/Fun: 5512 Main Street, Flowery Branch, GA 30542
- Train Depot: 5302 Railroad Avenue, Flowery Branch, GA 30542
- WWTP Office: 5572 Atlanta Hwy, Flowery Branch, GA 30542

FACTS AND ISSUES: The terms of this contract shall align with the City's fiscal year from July 1st to June 30th and shall be from commencement of services until all services are rendered. The contract shall be renewed for four (4) one-year periods unless the city elects not to renew the agreement or either party utilizes the termination provisions. The contract price shall remain firm throughout each renewal.

OPTIONS: 1. Award the Contract
2. Do not Award the Contract.

RECOMMENDED SAMPLE MOTION: I move we award Bid 24-005 Janitorial Services to Intercontinental Commercial Services Inc. for the amount of \$38,400 and to authorize the Mayor to sign a contract substantially similar to Janitorial Services Contract 24-005 on behalf of the City once the exhibits contained therein have been obtained from the awardee to the satisfaction of the City Manager and City Attorney.

DEPARTMENT: Finance Department

Prepared by: Nancy Rodriguez



NOTICE OF INTENT TO AWARD

Bid/RFP No: 24-005

Date Opened: June 6, 2024

Title: Janitorial Services for the City of Flowery Branch

NOIA Posting Date: July 18, 2024

This form shall serve as notice of the City's intent to award a contract. The successful supplier listed here was determined to be the most advantageous for the City. Any supplier who wishes to protest this Notice of Intent must file the protest within ten (10) calendar days following the date of this notice or that right is forfeited. If the tenth day falls on a weekend or holiday, the last day of the protest period is the first working day following the tenth day. The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest is received and accepted by the Procurement office.

No recommendation is official until ten (10) days have passed since the NOIA has been posted **AND** it has been approved by City Council, if applicable. **The successful supplier listed is instructed not to proceed until a contract, Purchase Order or other official notice is given by the contracting officer.**

AWARD RECOMMENDATION TO APPARENT SUCCESSFUL SUPPLIER:

Company Name: Intercontinental Commercial Services, Inc.

City, State: Lawrenceville, GA

Award Amount: \$38,400.00

UNSUCCESSFUL BIDDERS:

REASON:

1)	All Bright Janitorial Service, Inc	Not Highest Scoring
2)	ATL Prime Services Corp	Not Highest Scoring
3)	Bear Cleaning and Sanitation, LLC	Not Highest Scoring
4)	Contact Group Solutions	Not Highest Scoring
5)	Elite Professional Spaces, LLC	Not Highest Scoring
6)	Premiere Building Services	Not Highest Scoring
7)	Take A Break Cleaning Services	Not Highest Scoring
8)	Turnkey Facility Maintenance	Not Highest Scoring



CONTRACT AGREEMENT

24-005 JANITORIAL SERVICES FOR THE CITY OF FLOWERY BRANCH

This Agreement made and entered into this _____ day of _____, in the year 2024, by and between The City of Flowery Branch, Georgia, having its principal place of business at 5410 Pine St, Flowery Branch, Georgia and **INTERCONTINENTAL COMMERCIAL SERVICES, INC.** ("Contractor") located at 912 Hurricane Shoals Road, NE, Lawrenceville, GA 30043.

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

WHEREAS, the City of Flowery Branch has caused **BID 24-005** to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for by them in accordance with this proposal. Selected ("Contractor") is required to provide the services as called for in the specifications; and

WHEREAS, the Contractor submitted a response to the **BID 24-005**; and

WHEREAS, the Contractor's submittal was deemed by the City of Flowery Branch to be the most responsible and responsive per the scope of work; and

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

1.0 Scope of Work

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

EXHIBIT A - SCOPE OF SERVICE

EXHIBIT B - COST PROPOSAL

EXHIBIT C - W-9

EXHIBIT D - CERTIFICATE OF INSURANCE

EXHIBIT E - E-VERIFY AFFIDAVIT

EXHIBIT F - CONTACT INFORMATION

EXHIBIT G - ADDENDUMS

EXHIBIT H - CONTRACTOR'S OATH

2.0 Compensation

2.1 Pricing. The Contractor will be paid for the services sold pursuant to the Contract in accordance with the BID and final pricing documents as incorporated into the terms of the Contract. All prices are firm and fixed and are not subject to variation. The prices quoted and listed on the attached Cost Proposal, a copy of which is attached hereto as **“Exhibit B” (Cost Proposal)** and incorporated herein, shall be firm throughout the term of this Contract. The maximum costs owed by the City, unless otherwise agreed to in writing, shall not exceed **\$38,400.00**.

2.2 Billings. If applicable, the Contractor shall submit, on a regular basis, an invoice for services supplied to the City under the Contract at the billing address specified in the Purchase Instrument or Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The City shall pay all approved invoices in arrears and in accordance with applicable provisions of City law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the City for any services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract.

Invoices are to be emailed to APInvoices@flowerybranchga.org and must reference the PO# (see top of contract). A W-9 Request for Taxpayer Identification Number and Certification Form must be submitted **"Exhibit C" (W-9)**.

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

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

3.0 Duration of Contract

Contract Term. Pursuant to O.C.G.A. Section 36-60-13, this Contract shall not be deemed to create a debt of the City for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal. The terms of this contract shall align with the City's fiscal year from July 1 to June 30 and shall be from commencement of services until all services are rendered. All invoices postmarked by the City during said term shall be filed at the contract price.

This contract shall be renewed for four (4) one-year periods unless the city elects not to renew the agreement or either party utilizes the termination provisions included herein. The contract price shall remain firm throughout each renewal.

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

4.0 Independent Contractor

- 4.1** The Contractor shall be an independent Contractor. The Contractor is not an employee, agent or representative of the City of Flowery Branch. The successful Contractor shall obtain and maintain, at the Contractor's expense, all permits, license or approvals that may be necessary for the performance of the services. The Contractor shall furnish copies of all such permits, licenses or approvals to the City of Flowery Branch Representative within ten (10) day after issuance.
- 4.2** Inasmuch as the City of Flowery Branch and the Contractor are independent of one another neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. The Contractor agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the City of Flowery Branch without the express knowledge and prior written consent of the City.

5.0 Indemnification

- 5.1** The Contractor agrees to indemnify, hold harmless and defend the City, its public officials, officers, employees, and agents from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including reasonable attorney's fees) to the extent rising out of any act or omission of the Contractor, its agents, Subcontractors, Contractors or employees in the performance of this Contract except for such claims that arise from the City's sole negligence or willful misconduct.
- 5.2** Notwithstanding the foregoing indemnification clause, the City may join in the defense of any claims raised against it in the sole discretion of the City. Additionally, if any claim is raised against the City, said claim(s) cannot be settled or compromised without the City's written consent, which shall not be unreasonably withheld.

6.0 Performance

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

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

6.1 Final Completion, Acceptance, and Payment

- (a) Final Completion shall be achieved when the work is fully and finally complete in accordance with the Contract Documents. The City shall notify Contractor once the date of final completion has been achieved in writing.
- (b) Final Acceptance is the formal action of City acknowledging Final Completion. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the City's right under any warranty or guarantee. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents submit to City a Notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment shall release Contractor or its sureties from any obligations of these Contract Documents or the bond, or constitute a waiver of any claims by City arising Contractor's failure to perform the work in accordance with the Contract Documents.
- (c) Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to City of all claims by Contractor, or any such Subcontractor for an increase in the Contract Sum or the Contract Time, and for every act or omission of City relating to or arising out of the work, except for those Claims made in accordance with the procedures, including the time limits, set forth in section 8.

7.0 Changes

The City, within the general scope of the Agreement, may, by written notice to Contractor, issue additional instructions, require additional services or direct the omission of services covered by this Agreement. In such event, there will be made an equitable adjustment in price, but any claim for such an adjustment must be made within thirty (30) days of the receipt of said written notice.

8.0 Change Order Defined

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

9.0 Insurance

- 9.1** The Contractor shall, at its own cost and expense, obtain and maintain the following minimum insurance coverage covering the period of this Agreement, such insurance to be

obtained from a responsible insurance company legally licensed and authorized to transact business in the State of Georgia.

▪ Workers' Compensation	Statutory Minimum \$100,000/accident
▪ Employers Liability	\$1,000,000
▪ Bodily Injury Liability	\$1,000,000
▪ Except Automobile	\$1,000,000 aggregate
▪ Property Damage Liability	\$1,000,000 each occurrence
▪ Except Automobile	\$1,000,000 each occurrence
▪ Automobile Bodily Injury	\$1,000,000 each person
▪ Liability	\$1,000,000 each occurrence
▪ Automobile Property	
Damage Liability	\$1,000,000 each occurrence
▪ Excess Umbrella Liability	\$2,000,000 each occurrence

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

10.0 Termination

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

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

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

- (a) The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;
- (b) The City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
- (c) The Contractor fails to make substantial and timely progress toward performance of the contract;
- (d) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- (e) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- (f) The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion; or
- (g) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the City, or a third party.

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

- (a) Immediately terminate the Contract without additional written notice; and/or
- (b) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,
- (c) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

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

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

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

- (a) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the City may require;
- (b) Immediately cease using and return to the City, any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;
- (c) Comply with the City's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
- (d) Cooperate in good faith with the City, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and
- (e) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

11.0 Claims and Dispute Resolution

11.1 Claims Procedure.

- (a) If the parties fail to reach agreement regarding any dispute arising from the Contract Documents, including a failure to reach agreement on the terms of any Change Order for City- directed work as provided in section 8, or on the resolution of any request for an equitable adjustment in the Contract Sum or the Contract Time, Contractor's only remedy shall be to file a Claim with City as provided in this section.
- (b) Contractor shall file its Claim within the earlier of: 120 Days from City's final instructions in accordance with section 8; or the date of Final Acceptance,

- (c) The Claim shall be deemed to cover all changes in cost and time (including direct, indirect) impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. The Claim shall contain a detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of work affected by the Claim.
- (d) If an adjustment in the Contract Time is sought: the specific Days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time.
- (e) If any adjustment in the Contract Sum is sought: the exact amount sought and a breakdown of that amount into the categories; and a statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes City is liable.
- (f) After Contractor has submitted a fully-documented Claim, the City shall respond, in writing, to Contractor with a decision within sixty (60) days of the date the Claim is received, or with notice to Contractor of the date by which it will render its decision.

11.2 Arbitration.

- (a) If Contractor disagrees with City's decision rendered in accordance with section 12. If, Contractor shall provide City with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than thirty (30) Days after the date of City's decision on such Claim, failure to demand arbitration with said thirty (30) Day period shall result in City's decision being final and binding upon Contractor and its Subcontractors.
- (b) Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provide to City. The parties shall negotiate or mediate under the Voluntary Construction Mediation Rules of the AAA, or mutually acceptable service, before seeking arbitration in accordance with the Construction Industry Arbitration Rules of AAA as follows:
 - (1) Disputes involving \$30,000 or less shall be conducted in accordance with the Southeast Region Expedited Commercial Arbitration Rules; or
 - (2) Disputes over \$30,000 shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA, unless the parties agree to use the expedited rules.
 - a. All Claims arising out of the work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may occur, in the Superior Court of Hall County.

- b. If the parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.
- c. Choice of Law and Forum. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of State law. The Superior Court of Hall County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Hall County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the City.
- d. All Claims filed against City shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractor of any tier, to maintain and retain sufficient records to allow City to verify all or a portion of the Claim or to permit City access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

12.0 Confidential Information

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

- (a) The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;
- (b) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- (c) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
- (d) The Contractor shall provide adequate supervision and training to its agents, employees and Subcontractors to ensure compliance with the terms of the Contract. The private or confidential data shall remain the property of the City at all times. Some services

performed for the City may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

- 12.2** No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the City, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the City. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.
- 12.3** Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.
- 12.4** Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.
- 12.5** Survives Termination. The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

13.0 Inclusion of Documents

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

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

14.0 Compliance with All Laws and Licenses

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

- 14.1** Federal Requirements.

- (a) Federal Compliance Regulations.

Federal regulations apply to all City of Flowery Branch contracts using Federal funds as a

source for the solicitation of goods and services. Successful bidders must comply with the following Federal requirement as they apply to:

- (1) Equal Employment Opportunity - The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall comply with Executive Order 1 1246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (2) Reports - The submission of reports to the City on behalf of the U.S. Department of Housing and Urban Development as may be determined necessary for the activities covered by this contract, which is federally funded.
- (3) Patents - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive, and irrevocable right to use, and to authorize others to use, for Federal Government purposes:
 - a. Any patent that shall result under this contract; and
 - b. Any patent rights to which the Contractor purchases ownership with grant support
- (4) Copyrights - The U.S. Department of Housing and Urban Development reserves a royalty- free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - a. The copyright in any work developed under this contract; and
 - b. Any rights of copyright to which the Contractor purchases ownership with grant support.
- (5) Access to books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purposes of making audit, examination, excerpts and transcriptions by Federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives; and
- (6) Retention of all required records for three years after the City makes final payment and all other pending matters are closed.

14.2 Georgia Security and Immigration Compliance Act

- (a) The parties certify that Contractor has executed an affidavit verifying that Contractor

has registered and participates in the federal work authorization program to verify information of all new employees, per O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02. The appropriate affidavit is attached hereto as "**Exhibit E**" (**E-Verify Form**) and incorporated herein by reference and made a part of this contract.

- (b) The Contractor further certifies that any Subcontractors employed by Contractor for the performance of this agreement has executed an appropriate Subcontractor affidavit verifying its registration and participation in the federal work authorization program and compliance with O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02, and that all such affidavits are incorporated into and made a part of every contract between the Contractor and each Subcontractor.
- (c) Contractor's compliance with O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02 is a material condition of this agreement and Contractor's failure to comply with said provisions shall constitute a material breach of this agreement.

15.0 Assignment

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

16.0 Amendments in Writing

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

17.0 Drug-Free and Smoke-Free Workplace

- 17.1** A drug-free and smoke-free workplace will be provided for the Contractor's employees during the performance of this Agreement; and
- 17.2** The Contractor will secure from any sub-Contractor hired to work in a drug-free and smoke-free work place a written certification so stating and in accordance with Paragraph 7, subsection B of the Official Code of Georgia Annotated Section 50-24-3.
- 17.3** The Contractor may be suspended, terminated, or debarred if it is determined that:
 - (a) The Contractor has made false certification herein; or
 - (b) The Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia Annotated Section 50-24-3.

18.0 Additional Terms

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

19.0 Antitrust Actions

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

20.0 Governing Law

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

21.0 Entire Agreement

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

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

CITY OF FLOWERY BRANCH:

CONTRACTOR: INTERCONTINENTAL
COMMERCIAL SERVICES, INC.

By: _____

By: _____

Title: _____

Title: _____

Name: _____

Name: _____

Date: _____

Date: _____

Attest:

Shelia Clerk, City Clerk

(Seal)

Approved as to form:

Ted Baggett, City Attorney

EXHIBIT A

TO CONTRACT BETWEEN CITY OF FLOWERY BRANCH AND INTERCONTINENTAL COMMERCIAL SERVICES, INC. FOR JANITORIAL SERVICES

REFERENCE: BID# 24-005
SCOPE OF WORK

The services, work, and/or items that the Contractor shall provide in a timely and proper manner in accordance with the Contract include, but are not necessarily limited to, the following:

Basic cleaning services, floor care maintenance, and bi-annual or annual specialized services for five (5) locations.

I. General Services

The contractor shall perform the following tasks for all administrative buildings unless otherwise specified.

A. General Cleaning

The following shall be performed, *twice (2) per week*.

- Empty all trash containers and replace liners and place trash in dumpster (wipe/wash as needed).
- Empty recycle bin and place in appropriate containers outside of building.
- Vacuum all carpeted areas. Spot clean if necessary.
- Sweep with chemically treated dust-mop all hard flooring.
- Mop thoroughly all hard surface floors with a chemically treated mop head.
- Remove and clean fingerprints from surfaces including glass, rails, furniture, etc.
- Thoroughly clean lobby area, including floors, walls, doors, and tables.
- Disinfect all skin-touched surfaces (e.g. light switches, door handles, drinking fountains, etc.).
- Remove cobwebs throughout city facilities.
- Report all maintenance issues in Logbook.

B. Restroom Cleaning

The following shall be performed, *twice (2) per week*.

- Empty all waste containers and replace trash bags.
- Clean and disinfect all toilets, toilet seats, and urinals.
- Clean base of toilets and urinals.
- Clean all restroom partitions and walls around toilets and urinals.
- Clean and disinfect all sinks and countertops.
- Clean and polish all chrome and stainless steel.
- Clean exterior/interior of all doors.
- Clean all mirrors.
- Clean and disinfect diaper-changing stations.
- Spot clean walls to remove smudges and marks.
- Refill all soap containers, paper products, toilet paper, paper towels, etc.

- Sweep and wet mop all floors, with mop designated exclusively for use in restroom facilities.

C. Kitchen / Breakroom Cleaning

The following shall be performed, *twice (2) per week*.

- Empty all waste containers and replace trash bags.
- Wipe down all tables, counters, and exterior appliance surfaces with appropriate cleaning agents.
- Wet mop the entire floor with mop designated exclusively for use in kitchen area.

II. **Special Services**

The contractor shall perform the following services on a scheduled basis as coordinated with City personnel for all areas.

A. Quarterly Services

- Dust window blinds and windowsills.
- High dust all air vents, tops of doors, door frames, ceiling corners and edges, etc.
- Wash down walls and base boards.
- Clean inside and outside of building windows/glass (All glass doors and panels).
- Pour water down the floor drains.
- Disinfect locker room walls.
- Deep clean showers

B. Optional Annual Services

- Strip, seal, and wax all floors.
- Clean all carpets.

III. **Additional Work**

The City may add to these specifications with the joint approval of the Contractor and the City. All modifications shall be in writing.

- A. In the event that the City requires additional work outside of these specifications, the Contractor shall perform all work at a competitive industry price.
- B. Additional work may be added to the contract as the need arises. The Contractor shall perform all specified and approved additional work.
- C. The Contractor must be willing to provide a competitive price for additional work that may be added to the contract. The contractor will be required to demonstrate the ability to properly execute the expanded workload with the necessary increase in labor, materials, and equipment.

LIST OF LOCATIONS

Location	Address:	Schedule:
City Hall	5410 Pine Street, Flowery Branch, GA 30542	Tuesdays and Fridays
Police Dept.	5270 Railroad Ave., Flowery Branch, GA 30542	Tuesdays and Fridays
Planning/Fun	5512 Main Street, Flowery Branch, GA 30542	Tuesdays and Fridays
Train Depot	5302 Railroad Ave., Flowery Branch, GA 30542	Tuesdays and Fridays at 8:00 a.m.
WWTP Office	5572 Atlanta Hwy, Flowery Branch, GA 30542	Tuesdays and Fridays after 5 p.m.

All cleaning services, unless otherwise approved, must be conducted during business hours on scheduled set days.

END EXHIBIT A

EXHIBIT E

Contractor Affidavit under O.C.G.A. §13-10-91

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of CITY OF FLOWERY BRANCH has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned Contractor will continue to use the federal work authorization program throughout the Contract Term and the undersigned Contractor will contract for the physical performance of services in satisfaction of such contract only with Subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. §13-10-91. Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Name of Project

City of Flowery Branch
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____(city), _____(state).

By:_____
Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

Subscribed and Sworn before me on this the

_____ day of _____, 20 ____.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT F

Contact Information Form

Please fill out this form with the appropriate contact information for your company.

Full Legal Name of Company: _____

Doing Business As (DBA): _____

Federal Employee ID Number (FEIN): _____ - _____ - _____

Address:

Mailing Address (if different)

Contractor Information:

Primary Contact Person: _____

Title: _____

Telephone Number: _____

E-mail Address: _____

Secondary Contact Person: _____

Title: _____

Telephone Number: _____

E-mail Address: _____

Preferred Contact for Administration (i.e. Document Processing) (Choose One)

☐ Primary Contact ☐ Secondary Contact

Signature: _____ Date: _____

CITY OF FLOWERY BRANCH

ACKNOWLEDGE OF RECEIPT OF ADDENDUM

BID 24-005

JANITORIAL SERVICES FOR THE CITY OF FLOWERY BRANCH

Upon receipt, please print and add to your proposal.

I hereby acknowledge receipt of the supplement pertaining to the above referenced bid.

COMPANY NAME: _____

CONTACT PERSON: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

PHONE: FAX: _____

EMAIL ADDRESS: _____

SIGNATURE: _____ DATE: _____



EXHIBIT H
CONTRACTOR'S OATH

COMES NOW, _____ (“Contractor”),
[name of Contractor]

appearing by and through _____,
[name of individual with authority to bind Contractor]

its _____ (“Individual And Representative Affiant”), and
[title]

[insert the names of all those required to give the oath]

(collectively, “Individual Affiants”), and each of the Individual And Representative Affiant and Individual Affiants, after first being duly sworn, deposes and says that:

1. Contractor has not directly or indirectly violated subsection (d) of the Official Code of Georgia Annotated

Section 36-91-21, which provides as follows:

Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

Code Section 36-91-21(d) also applies to municipal street system contracts pursuant to Official Code of Georgia Annotated Section 32-4-122.

2. Individual And Representative Affiant is the officer of Contractor whose duty it is to make the payment.
3. If Contractor is a partnership, then Individual and Representative Affiant and Individual Affiants together constitute all of the partners and any officer, agent or other person who may have represented or acted for Contractor in bidding for or procuring the contract.

4. If Contractor is a corporation, then Individual and Representative Affiant and Individual Affiants together constitute all officers, agents, or other persons who may have acted for or represented Contractor in bidding for or procuring the contract.

Further affiants sayeth not.

This ____ day of _____, 20____.

By: _____, individually and on behalf of Contractor
[signature of Individual And Representative Affiant]

Name: _____ Title: _____

Individual Affiants' signatures and names:

Name: _____ Name: _____

Name: _____ Name: _____

Name: _____ Name: _____

Subscribed and Sworn before me on this

_____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider Awarding Contract to DCI Metal Buildings, Inc. for Well Building 1 & 3 Rehabilitation.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

The City of Flowerly Branch requested bids for repairing a metal building that houses the City's drinking water wells, well pumps and other important water infrastructure.

FACTS AND ISSUES:

The extent of the work consists of a contractor repairing only the exterior of a 40' x 60' metal building.

OPTIONS:

1. Award the Contract
2. Do not Award the Contract.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$79,150 - budgeted capital project

RECOMMENDATION:

Award Contract to DCI Metal Buildings, Inc. for Well Building 1 & 3 Rehabilitation.

SAMPLE MOTION:

I move we award Bid 24-007 Well Buildings 1 & 3 Rehab to DCI Metal Buildings, Inc. in the amount of \$79,150 and to authorize the Mayor to sign a contract substantially similar to 24-007 Well Building 1 & 3 Rehabilitation on behalf of the City once the exhibits contained therein have been obtained from the awardee to the satisfaction of the City Manager and City Attorney.

COLLABORATING DEPARTMENT:

DEPARTMENT: Water/Wastewater

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary- DCI Metal Buildings.pdf](#)
- [24-007 NOIA \(Notice of Intent to Award\).pdf](#)
- [24-007 DCI Metal Buildings Contract for Rehabilitation on Well Building 1 & 3.pdf](#)

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Awarding Contract to DCI Metal Buildings, Inc. for Well Building 1 & 3 Rehabilitation.

DATE: August 9, 2024

(X) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL-

() OTHER

CAPITAL- \$79,150.00

COUNCIL ACTION REQUESTED ON: August 15, 2024

PURPOSE: To award a contract for Bid 24-007 Well Building 1 & 3 Rehabilitation to a responsible, responsive bidder.

HISTORY: The City of Flowery Branch requested bids for repairing a metal building that houses the City's drinking water wells, well pumps and other important water infrastructure.

FACTS AND ISSUES: The extent of the work consists of a contractor repairing only the exterior of a 40' x 60' metal building.

OPTIONS: 1. Award the Contract

2. Do not Award the Contract.

RECOMMENDED SAMPLE MOTION: I move we award Bid 24-007 Well Buildings 1 & 3 Rehab to DCI Metal Buildings, Inc. in the amount of \$79,150 and to authorize the Mayor to sign a contract substantially similar to 24-007 Well Building 1 & 3 Rehabilitation on behalf of the City once the exhibits contained therein have been obtained from the awardee to the satisfaction of the City Manager and City Attorney.

DEPARTMENT: Finance Department

Prepared by: Nancy Rodriguez



NOTICE OF INTENT TO AWARD

Bid/RFP No: 24-007

Date Opened: June 13, 2024

Title: Well Building 1 & 3 Rehabilitation

NOIA Posting Date: July 18, 2024

This form shall serve as notice of the City's intent to award a contract. The successful supplier listed here was determined to be the most advantageous for the City. Any supplier who wishes to protest this Notice of Intent must file the protest within ten (10) calendar days following the date of this notice or that right is forfeited. If the tenth day falls on a weekend or holiday, the last day of the protest period is the first working day following the tenth day. The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest is received and accepted by the Procurement office.

No recommendation is official until ten (10) days have passed since the NOIA has been posted **AND** it has been approved by City Council, if applicable. **The successful supplier listed is instructed not to proceed until a contract, Purchase Order or other official notice is given by the contracting officer.**

AWARD RECOMMENDATION TO APPARENT SUCCESSFUL SUPPLIER:

Company Name: DCI Metal Buildings, Inc.

City, State: Gainesville, GA

Award Amount: \$79,150.00

UNSUCCESSFUL BIDDERS:

REASON:

1)	RNR Contracting, LLC	Not lowest bid



CONTRACT AGREEMENT

24-007 WELL BUILDING 1 & 3 REHABILITATION

This Agreement made and entered into this _____ day of _____, in the year 2024, by and between The City of Flowery Branch, Georgia, having its principal place of business at 5410 Pine St, Flowery Branch, Georgia and **DCI METAL BUILDINGS INC.** ("Contractor") located at 908 Pine Street, Gainesville, GA 30501.

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

WHEREAS, the City of Flowery Branch has caused **BID 24-007** to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for by them in accordance with this proposal. Selected ("Contractor") is required to provide the services as called for in the specifications; and

WHEREAS, the Contractor submitted a response to the **BID 24-007**; and

WHEREAS, the Contractor's submittal was deemed by the City of Flowery Branch to be the most responsible and responsive per the scope of work; and

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

1.0 Scope of Work

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

- EXHIBIT A - SCOPE OF SERVICE**
- EXHIBIT B - COST PROPOSAL**
- EXHIBIT C - W-9**
- EXHIBIT D - CERTIFICATE OF INSURANCE**
- EXHIBIT E - E-VERIFY AFFIDAVIT**
- EXHIBIT F - CONTACT INFORMATION**
- EXHIBIT G - ADDENDUMS**
- EXHIBIT H - CONTRACTOR'S OATH**

2.0 Compensation

2.1 Pricing. The Contractor will be paid for the services sold pursuant to the Contract in accordance with the BID and final pricing documents as incorporated into the terms of the Contract. All prices are firm and fixed and are not subject to variation. The prices quoted and listed on the attached Cost Proposal, a copy of which is attached hereto as **“Exhibit B” (Cost Proposal)** and incorporated herein, shall be firm throughout the term of this Contract. The maximum costs owed by the City, unless otherwise agreed to in writing, shall not exceed **\$79,150.00**.

2.2 Billings. If applicable, the Contractor shall submit, on a regular basis, an invoice for services supplied to the City under the Contract at the billing address specified in the Purchase Instrument or Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The City shall pay all approved invoices in arrears and in accordance with applicable provisions of City law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the City for any services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract.

Invoices are to be emailed to APInvoices@flowerybranchga.org and must reference the PO# (see top of contract). A W-9 Request for Taxpayer Identification Number and Certification Form must be submitted **"Exhibit C" (W-9)**.

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

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

3.0 Duration of Contract

Contract Term. Pursuant to O.C.G.A. Section 36-60-13, this Contract shall not be deemed to create a debt of the City for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal. The terms of this contract shall align with the City's fiscal year from July 1 to June 30 and shall be from commencement of services until all

services are rendered. All invoices postmarked by the City during said term shall be filed at the contract price.

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

4.0 Independent Contractor

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

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

5.0 Indemnification

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

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

6.0 Performance

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

A written response from the Contractor detailing how correction(s) will be made is required to be

delivered to the City. Contractor will have thirty (30) days to remedy the situation. If requirements are not remedied City of Flowery Branch has the right to cancel this Agreement with no additional obligation to Contractor.

6.1 Final Completion, Acceptance, and Payment

- (a) Final Completion shall be achieved when the work is fully and finally complete in accordance with the Contract Documents. The City shall notify Contractor once the date of final completion has been achieved in writing.
- (b) Final Acceptance is the formal action of City acknowledging Final Completion. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the City's right under any warranty or guarantee. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents submit to City a Notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment shall release Contractor or its sureties from any obligations of these Contract Documents or the bond, or constitute a waiver of any claims by City arising Contractor's failure to perform the work in accordance with the Contract Documents.
- (c) Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to City of all claims by Contractor, or any such Subcontractor for an increase in the Contract Sum or the Contract Time, and for every act or omission of City relating to or arising out of the work, except for those Claims made in accordance with the procedures, including the time limits, set forth in section 8.

7.0 Changes

The City, within the general scope of the Agreement, may, by written notice to Contractor, issue additional instructions, require additional services or direct the omission of services covered by this Agreement. In such event, there will be made an equitable adjustment in price, but any claim for such an adjustment must be made within thirty (30) days of the receipt of said written notice.

8.0 Change Order Defined

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

9.0 Insurance

- 9.1** The Contractor shall, at its own cost and expense, obtain and maintain the following minimum insurance coverage covering the period of this Agreement, such insurance to be obtained from a responsible insurance company legally licensed and authorized to transact business in the State of Georgia.

▪ Workers' Compensation	Statutory Minimum \$100,000/accident
▪ Employers Liability	\$1,000,000
▪ Bodily Injury Liability	\$1,000,000
▪ Except Automobile	\$1,000,000 aggregate
▪ Property Damage Liability	\$1,000,000 each occurrence
▪ Except Automobile	\$1,000,000 each occurrence
▪ Automobile Bodily Injury	\$1,000,000 each person
▪ Liability	\$1,000,000 each occurrence
▪ Automobile Property	
Damage Liability	\$1,000,000 each occurrence
▪ Excess Umbrella Liability	\$2,000,000 each occurrence

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

10.0 Termination

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

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

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

- (a) The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform to the City's satisfaction, any material requirement of the Contract or is in

violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

- (b) The City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
- (c) The Contractor fails to make substantial and timely progress toward performance of the contract;
- (d) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- (e) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- (f) The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion; or
- (g) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the City, or a third party.

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

- (a) Immediately terminate the Contract without additional written notice; and/or
- (b) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,
- (c) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

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

10.5 Payment Limitation in the event of Termination. In the event termination of the Contract for

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

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

- (a) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the City may require;
- (b) Immediately cease using and return to the City, any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;
- (c) Comply with the City's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
- (d) Cooperate in good faith with the City, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and
- (e) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

11.0 Claims and Dispute Resolution

11.1 Claims Procedure.

- (a) If the parties fail to reach agreement regarding any dispute arising from the Contract Documents, including a failure to reach agreement on the terms of any Change Order for City- directed work as provided in section 8, or on the resolution of any request for an equitable adjustment in the Contract Sum or the Contract Time, Contractor's only remedy shall be to file a Claim with City as provided in this section.
- (b) Contractor shall file its Claim within the earlier of: 120 Days from City's final instructions in accordance with section 8; or the date of Final Acceptance,
- (c) The Claim shall be deemed to cover all changes in cost and time (including direct, indirect impact, and consequential) to which Contractor may be entitled. It shall be fully

substantiated and documented. The Claim shall contain a detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of work affected by the Claim.

- (d) If an adjustment in the Contract Time is sought: the specific Days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time.
- (e) If any adjustment in the Contract Sum is sought: the exact amount sought and a breakdown of that amount into the categories; and a statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes City is liable.
- (f) After Contractor has submitted a fully-documented Claim, the City shall respond, in writing, to Contractor with a decision within sixty (60) days of the date the Claim is received, or with notice to Contractor of the date by which it will render its decision.

11.2 Arbitration.

- (a) If Contractor disagrees with City's decision rendered in accordance with section 12. If, Contractor shall provide City with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than thirty (30) Days after the date of City's decision on such Claim, failure to demand arbitration with said thirty (30) Day period shall result in City's decision being final and binding upon Contractor and its Subcontractors.
- (b) Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provide to City. The parties shall negotiate or mediate under the Voluntary Construction Mediation Rules of the AAA, or mutually acceptable service, before seeking arbitration in accordance with the Construction Industry Arbitration Rules of AAA as follows:
 - (1) Disputes involving \$30,000 or less shall be conducted in accordance with the Southeast Region Expedited Commercial Arbitration Rules; or
 - (2) Disputes over \$30,000 shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA, unless the parties agree to use the expedited rules.
 - a. All Claims arising out of the work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may occur, in the Superior Court of Hall County.
 - b. If the parties resolve the Claim prior to arbitration judgment, the terms of the

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

- c. Choice of Law and Forum. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of State law. The Superior Court of Hall County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Hall County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the City.
- d. All Claims filed against City shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractor of any tier, to maintain and retain sufficient records to allow City to verify all or a portion of the Claim or to permit City access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

12.0 Confidential Information

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

- (a) The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;
- (b) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- (c) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
- (d) The Contractor shall provide adequate supervision and training to its agents, employees and Subcontractors to ensure compliance with the terms of the Contract. The private or confidential data shall remain the property of the City at all times. Some services performed for the City may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure

agreement, if required, may result in termination of the Contract.

- 12.2** No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the City, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the City. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.
- 12.3** Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.
- 12.4** Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.
- 12.5** Survives Termination. The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

13.0 Inclusion of Documents

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

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

14.0 Compliance with All Laws and Licenses

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

14.1 Federal Requirements.

- (a) Federal Compliance Regulations.

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

- (1) Equal Employment Opportunity - The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall comply with Executive Order 1 1246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (2) Reports - The submission of reports to the City on behalf of the U.S. Department of Housing and Urban Development as may be determined necessary for the activities covered by this contract, which is federally funded.
- (3) Patents - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive, and irrevocable right to use, and to authorize others to use, for Federal Government purposes:
 - a. Any patent that shall result under this contract; and
 - b. Any patent rights to which the Contractor purchases ownership with grant support
- (4) Copyrights - The U.S. Department of Housing and Urban Development reserves a royalty- free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - a. The copyright in any work developed under this contract; and
 - b. Any rights of copyright to which the Contractor purchases ownership with grant support.
- (5) Access to books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purposes of making audit, examination, excerpts and transcriptions by Federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives; and
- (6) Retention of all required records for three years after the City makes final payment and all other pending matters are closed.

14.2 Georgia Security and Immigration Compliance Act

- (a) The parties certify that Contractor has executed an affidavit verifying that Contractor has registered and participates in the federal work authorization program to verify information of all new employees, per O.C.G.A. 13-10-90, et. seq., and Georgia

Department of Labor Regulations Rule 300-10-1-02. The appropriate affidavit is attached hereto as "**Exhibit E**" (**E-Verify Form**) and incorporated herein by reference and made a part of this contract.

- (b) The Contractor further certifies that any Subcontractors employed by Contractor for the performance of this agreement has executed an appropriate Subcontractor affidavit verifying its registration and participation in the federal work authorization program and compliance with O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02, and that all such affidavits are incorporated into and made a part of every contract between the Contractor and each Subcontractor.
- (c) Contractor's compliance with O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02 is a material condition of this agreement and Contractor's failure to comply with said provisions shall constitute a material breach of this agreement.

15.0 Assignment

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

16.0 Amendments in Writing

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

17.0 Drug-Free and Smoke-Free Workplace

- 17.1** A drug-free and smoke-free workplace will be provided for the Contractor's employees during the performance of this Agreement; and
- 17.2** The Contractor will secure from any sub-Contractor hired to work in a drug-free and smoke-free work place a written certification so stating and in accordance with Paragraph 7, subsection B of the Official Code of Georgia Annotated Section 50-24-3.
- 17.3** The Contractor may be suspended, terminated, or debarred if it is determined that:
 - (a) The Contractor has made false certification herein; or
 - (b) The Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia Annotated Section 50-24-3.

18.0 Additional Terms

Neither the City nor any Department shall be bound by any terms and conditions included in any Contractor packaging, Invoice, catalog, brochure, technical data sheet, or other document which

attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.

19.0 Antitrust Actions

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

20.0 Governing Law

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

21.0 Entire Agreement

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

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

CITY OF FLOWERY BRANCH: CONTRACTOR: DCI METAL BUILDINGS INC.

By: _____ By: _____

Title: _____ Title: _____

Name: _____ Name: _____

Date: _____ Date: _____

Attest:

Shelia Clerk, City Clerk (Seal)

Approved as to form:

Ted Baggett, City Attorney

EXHIBIT A

TO CONTRACT BETWEEN CITY OF FLOWERY BRANCH AND DCI METAL BUILDINGS INC FOR WELL BUILDING 1 & 3 REHABILITATION

REFERENCE: BID# 24-007
SCOPE OF WORK

The following Scope of Work outlines the required tasks the Contractor is expected to perform and include in their quotes. Contractor shall perform all services provisioned under the contract in a skillful and competent manner.

It is understood that the selected Contractor will furnish all labor and equipment to remove all roof panels, wall panels, gutter, downspouts, rake trim, insulation, windows, doors, and fans for the completion of work in a timely and organized manner. The Contractor will furnish all labor and equipment to install all new roof panels, wall panels, gutter, downspouts, rake trim, insulation, (9) windows, (1) 12' X 12' roll up door, (2) 3070 personal doors, (2) 3' X 3' exhaust fans with gravity dampers. All services, unless otherwise approved, must be conducted during business hours.

The Bidder shall provide the City with monthly invoices upon delivery. The Bidder shall assign a Project Manager who will meet with City staff.

I. Additional Work

The City may add to these specifications with the joint approval of the Contractor and the City. All modifications shall be in writing.

- A. In the event that the City requires additional work outside of these specifications, the Contractor shall perform all work at a competitive industry price.
- B. Additional work may be added to the contract as the need arises. The Contractor shall perform all specified and approved additional work.
- C. The Contractor must be willing to provide a competitive price for additional work that may be added to the contract. The contractor will be required to demonstrate the ability to properly execute the expanded workload with the necessary increase in labor, materials, and equipment.

LIST OF LOCATIONS

Location	Address:	Schedule:
Well Building	5109 Mulberry Street, Flowery Branch, GA 30542	Monday – Friday

All services, unless otherwise approved, must be conducted during business hours on scheduled set days.

END EXHIBIT A

EXHIBIT B

**TO CONTRACT
BETWEEN CITY OF FLOWERY BRANCH AND
DCI METAL BUILDINGS INC
FOR WELL BUILDING 1 & 3 REHABILITATION**

REFERENCE: BID# 24-007
COST PROPOSAL



908 Pine Street. Gainesville, GA. 30501 Office(678)450-9334 Mobile (770)480-7963

Contract

7-22-2024
Flowery Branch water Department
Peter Woener
Flowery Branch, Ga

40'x50' water building

DCI Metal Buildings to furnish all labor and equipment to remove all roof panels, wall panels, gutter, downspouts, rake trim, insulation, windows, doors, fans, includes disposal of materials.

DCI Metal Buildings to furnish all labor and equipment to install all new roof panels, wall panels, gutter, downspouts, rake trim, insulation, (9) windows, (1) 12'x12' roll up door, (3) 3070 personnel doors with mortise locks and closers, (2) 3'x3' exhaust fans with gravity dampers.

Customer to have all asphalt/dirt out of the way on all sides of building allowing DCI access to bottom of all panels.

Total cost: \$ 79,150.00

Deposit to order materials: \$ 39,575.00 **Due when material is delivered**

When complete: \$ 39,575.00

X_____

EXHIBIT E

Contractor Affidavit under O.C.G.A. §13-10-91

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of CITY OF FLOWERY BRANCH has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned Contractor will continue to use the federal work authorization program throughout the Contract Term and the undersigned Contractor will contract for the physical performance of services in satisfaction of such contract only with Subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. §13-10-91. Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Name of Project

City of Flowery Branch
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____(city), _____(state).

By:_____
Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

Subscribed and Sworn before me on this the

_____ day of _____, 20 ____.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT F

Contact Information Form

Please fill out this form with the appropriate contact information for your company.

Full Legal Name of Company: _____

Doing Business As (DBA): _____

Federal Employee ID Number (FEIN): _____ - _____ - _____

Address:

Mailing Address (if different)

Contractor Information:

Primary Contact Person: _____

Title: _____

Telephone Number: _____

E-mail Address: _____

Secondary Contact Person: _____

Title: _____

Telephone Number: _____

E-mail Address: _____

Preferred Contact for Administration (i.e. Document Processing) (Choose One)

☐ Primary Contact ☐ Secondary Contact

Signature: _____ Date: _____

CITY OF FLOWERY BRANCH

ACKNOWLEDGE OF RECEIPT OF ADDENDUM

BID 24-007

WELL BUILDING 1 & 3 REHABILITATION

Upon receipt, please print and add to your proposal.

I hereby acknowledge receipt of the supplement pertaining to the above referenced bid.

COMPANY NAME: _____

CONTACT PERSON: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

PHONE: FAX: _____

EMAIL ADDRESS: _____

SIGNATURE: _____ DATE: _____



EXHIBIT H
CONTRACTOR'S OATH

COMES NOW, _____ ("Contractor"),
[name of Contractor]

appearing by and through _____,
[name of individual with authority to bind Contractor]

its _____ ("Individual And Representative Affiant"), and
[title]

[insert the names of all those required to give the oath]

(collectively, "Individual Affiants"), and each of the Individual And Representative Affiant and Individual Affiants, after first being duly sworn, deposes and says that:

1. Contractor has not directly or indirectly violated subsection (d) of the Official Code of Georgia Annotated

Section 36-91-21, which provides as follows:

Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

Code Section 36-91-21(d) also applies to municipal street system contracts pursuant to Official Code of Georgia Annotated Section 32-4-122.

2. Individual And Representative Affiant is the officer of Contractor whose duty it is to make the payment.
3. If Contractor is a partnership, then Individual and Representative Affiant and Individual Affiants together constitute all of the partners and any officer, agent or other person who may have represented or acted for Contractor in bidding for or procuring the contract.

4. If Contractor is a corporation, then Individual and Representative Affiant and Individual Affiants together constitute all officers, agents, or other persons who may have acted for or represented Contractor in bidding for or procuring the contract.

Further affiants sayeth not.

This ____ day of _____, 20____.

By: _____, individually and on behalf of Contractor
[signature of Individual And Representative Affiant]

Name: _____ Title: _____

Individual Affiants' signatures and names:

Name: _____ Name: _____

Name: _____ Name: _____

Name: _____ Name: _____

Subscribed and Sworn before me on this

_____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider Amendment 2 to the Memorandum of Understanding (MOU) with Parkside Partners

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

On September 7, 2023, the city entered into an MOU with Parkside Partners giving them the exclusive right to develop Phase II of the Old Town Redevelopment Plan. On December 7, 2023 the city extended the agreement to August 29, 2024.

FACTS AND ISSUES:

After the MOU was signed, city staff began the development of the parking and mobility study of the downtown area and partnered with the Greater Hall Metropolitan Planning Organization (GHMPO). City staff requested that Parkside Partners have one member of their team on the evaluation committee of the parking and mobility study. The bid for the parking and mobility study has not been awarded and the two projects' timing must coincide. For the first amendment, city staff requested that the MOU be extended to ensure that the parking and mobility study was complete before Parkside Partners presented their final plans for public and council review. Now that the study has been completed, Parkside Partners has requested this extension to allow time for their final plan.

OPTIONS:

- Amend the MOU extending the date of the MOU from August 29, 2024 to December 31, 2024.
- 2) Amend the MOU extending the date of the MOU from August 29, 2024 to another date in the future.
- 3) Do not amend the MOU.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Amend the memorandum of understanding (MOU) with Parkside Partners to extend the date of the MOU from August 29, 2024 to December 31, 2024.

SAMPLE MOTION:

I make a motion to approve Amendment 2 to the Memorandum of Understanding (MOU) with Parkside Partners.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [ES - Amendment 2 to MOU with Parkside Partners.pdf](#)
- [Amendment #2 to the Parkside Partners Agreement.pdf](#)



**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

SUBJECT: Consider Amendment 2 to the Memorandum of Understanding (MOU) with Parkside Partners

DATE: August 6, 2024

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL-

(X)RECOMMENDATION
() POLICY DISCUSSION
() STATUS REPORT
() OTHER

COUNCIL ACTION REQUESTED ON: August 15, 2024

PURPOSE: Amend the memorandum of understanding (MOU) with Parkside Partners to extend the date of the MOU from August 29, 2024 to December 31, 2024.

HISTORY: On September 7, 2023, the city entered into an MOU with Parkside Partners giving them the exclusive right to develop Phase II of the Old Town Redevelopment Plan. On December 7, 2023 the city extended the agreement to August 29, 2024.

FACTS AND ISSUES: After the MOU was signed, city staff began the development of the parking and mobility study of the downtown area and partnered with the Greater Hall Metropolitan Planning Organization (GHMPO). City staff requested that Parkside Partners have one member of their team on the evaluation committee of the parking and mobility study. The bid for the parking and mobility study has not been awarded and the two projects' timing must coincide. For the first amendment, city staff requested that the MOU be extended to ensure that the parking and mobility study was complete before Parkside Partners presented their final plans for public and council review. Now that the study has been completed, Parkside Partners has requested this extension to allow time for their final plan.

OPTIONS:

- 1) Amend the MOU extending the date of the MOU from August 29, 2024 to December 31, 2024.
- 2) Amend the MOU extending the date of the MOU from August 29, 2024 to another date in the future.
- 3) Do not amend the MOU.

RECOMMENDED SAMPLE MOTION:

I make a motion to approve Amendment 2 to the Memorandum of Understanding (MOU) with Parkside Partners.

DEPARTMENT: Administration

Prepared by: Tonya Parrish



Amendment 2 to the:

Memorandum of Understanding by and Between the City of Flowery branch, Georgia and Parkside Partners, LLC.

The above referenced MOU entered into on August 29, 2023 and amended on December 7, 2023 is hereby amended as follows:

Paragraph 4.a. relating to the Term of the MOU is hereby amended so as to extend the expiration from midnight on August 29, 2024 to midnight on December 31, 2024. Any extensions beyond that date shall not be automatic and shall require the mutual agreement of the Parties as evidenced and approved in writing. All other agreement terms, conditions, duties, obligations, and mutual covenants contained in the MOU shall remain in force and effect until the revised expiration date.

CITY OF FLOWERY BRANCH, GEORGIA

By: _____
Ed Asbridge, Mayor

Date: _____

PARKSIDE PARTNERS, LLC

By: _____
Partner

Date: _____



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider Authorizing a Change Order in the Amount of \$590,590.73 for Incorporating Additional Road Paving Scope into the Ongoing Road Resurfacing Improvements Contract and Allow for an Additional 30 days.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

The City awarded the Road Resurfacing Improvements construction contract to Baldwin Paving, Inc in the amount of \$1,645,269.00. Given the generally favorable overall pricing of the bid, the City engaged ESG Engineering to design road paving improvements for additional roads and to obtain pricing from the contractor for incorporation of the additional scope into the contract.

FACTS AND ISSUES:

This contract change order will incorporate road paving improvements on the follow roads (a total of approximately 2.2 miles):

- Lazy Hammock Way
- Blue Heron Way
- Newberry Point
- Flowery Branch Bay Park Road
- A small portion of Flagstone Way
- Railroad Ave – this will include resurfacing of the main travel lanes from West Chestnut St to Main St as well as paving the existing gravel parking lot between Railroad Ave and the railroad tracks.

Furthermore, a portion of the original scope is proposed to be removed from the contract. This portion is a section of Thurmon Tanner Pkwy owned/maintained by Hall County. This area was originally included in the contract as part of a potential, longer-term paving arrangement in which the County would engage the contractor for purposes of resurfacing their roads. After discussions with the County, this arrangement will not be pursued and this area will be removed from the project scope.

As part of the contract change order, the contract time will be increased to account for the additional work, and this extension will be coordinated with the contractor to ensure a schedule that is both timely and feasible.

Estimated Construction Costs:

Original Contract Amount: \$ 1,645,269.00

Change Order No. 1 Amount: \$ 590,590.73

Revised Contract Amount: \$ 2,235,859.73

OPTIONS:

- 1) Authorize Additional Road Paving Scope
 - 2) Do Not Authorize Additional Road Paving Scope
-
-

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$590,590.73 - Capital project budget

RECOMMENDATION:

To request authorization for the incorporation of additional road paving improvements into the ongoing Road Resurfacing Improvements Contract.

SAMPLE MOTION:

I make a motion to authorize the change order for additional road paving scope and allow for an additional 30 days in the amount of \$590,590.73 for Baldwin Pavement Company, Inc.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [8.15.2024 Executive Summary Baldwin Paving Change Order Additional Roads.pdf](#)
- [2024.08.08 - Change Order No. 1 - signed by contractor.pdf](#)
- [2024.08.07 - Paving Project Final Map.pdf](#)

FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY

SUBJECT: Consider Authorizing a Change Order in the amount of \$590,590.73 for incorporating Additional Road Paving Scope into the Ongoing Road Resurfacing Improvements contract and allow for an additional 30 days.

DATE: August 8, 2024

BUDGET INFORMATION:

ANNUAL-

CAPITAL- \$590,590.73

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

☐ **STATUS REPORT**

☐ **OTHER**

COUNCIL ACTION REQUESTED ON: August 15, 2024

PURPOSE: To Consider Authorizing a Change Order in the amount of \$590,590.73 for Incorporating Additional Road Paving Scope into the Ongoing Road Resurfacing Improvements contract and allow for an additional 30 days.

HISTORY: The City awarded the Road Resurfacing Improvements construction contract to Baldwin Paving, Inc in the amount of \$1,645,269.00. Given the generally favorable overall pricing of the bid, the City engaged ESG Engineering to design road paving improvements for additional roads and to obtain pricing from the contractor for incorporation of the additional scope into the contract.

FACTS AND ISSUES: This contract change order will incorporate road paving improvements on the follow roads (a total of approximately 2.2 miles):

- Lazy Hammock Way
- Blue Heron Way
- Newberry Point
- Flowery Branch Bay Park Road
- A small portion of Flagstone Way
- Railroad Ave – this will include resurfacing of the main travel lanes from West Chestnut St to Main St as well as paving the existing gravel parking lot between Railroad Ave and the railroad tracks.

Furthermore, a portion of the original scope is proposed to be removed from the contract. This portion is a section of Thurmon Tanner Pkwy owned/maintained by Hall County. This area was originally included in the contract as part of a potential, longer-term paving arrangement in which the County would engage the contractor for purposes of resurfacing their roads. After discussions with the County, this arrangement will not be pursued and this area will be removed from the project scope.

As part of the contract change order, the contract time will be increased to account for the additional work, and this extension will be coordinated with the contractor to ensure a schedule that is both timely and feasible.

Estimated Construction Costs:

Original Contract Amount: \$ 1,645,269.00

Change Order No. 1 Amount: \$ 590,590.73

Revised Contract Amount: \$ 2,235,859.73

OPTIONS: 1) Authorize Additional Road Paving Scope 2) Do Not Authorize Additional Road Paving Scope

RECOMMENDED SAMPLE MOTION: I make a motion to authorize the change order for additional road paving scope and allow for an additional 30 days in the amount of \$590,590.73 for Baldwin Pavement Company, Inc.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish



CONTRACT CHANGE ORDER NO. 1

Project: Flowery Branch Resurfacing Improvements
 Owner: City of Flowery Branch
 Contractor: Baldwin Paving
 Date: August 08, 2024

You are hereby requested to comply with the following changes from the contract plans and specifications:

CONTRACT AMOUNT

- Additional roads have been incorporated into the project for resurfacing and are reflected in the revised plan sheets.
 - Lazy Hammock Way
 - Blue Heron Way
 - Newberry Point
 - Flowery Branch Bay Park Road
 - A small portion of Flagstone Way
 - Railroad Ave – this will include resurfacing of the main travel lines from West Chestnut St to Main St as well as paving the existing gravel parking long between Railroad Ave and the railroad tracks.
- A portion of Thurmon Tanner (located in Hall County) has been removed from the project.

The amount of the contract will increase by the amount of Five Hundred Ninety Thousand, Five Hundred Ninety & 73/100 Dollars \$ 590,590.73

The contract total including this and previous Change Orders will be: Two Million, Two Hundred Thirty-Five Thousand, Eight Hundred Fifty-Nine and & 73/100 Dollars \$ 2,235,859.73

See Attached Exhibit A for change order calculation.

CONTRACT PERIOD

Due to the additional scope of work, the contract period has been increased by 30 days, to a total of 120 days.

This document will become a supplement to the contract and all provisions will apply hereto.

Requested:

City of Flowery Branch

(Date)

Recommended:

ESG Engineering, Inc.

08/08/2024
(Date)

Accepted:

Baldwin Paving

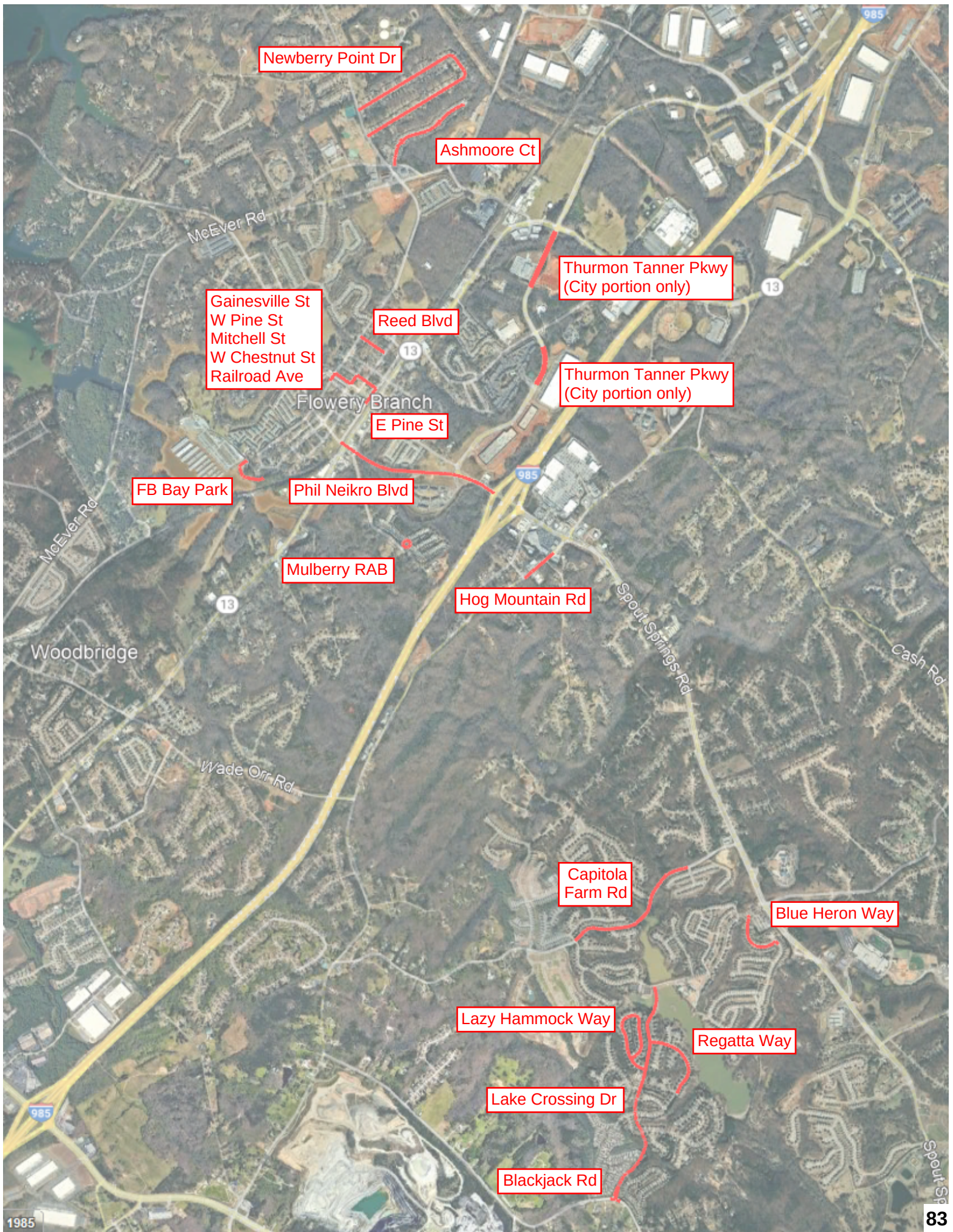
8/8/2024
(Date)

Change Order No. 1 - Exhibit A

BASE BID						CHANGE ORDER #1		REVISED CONTRACT AMOUNT	
SECTION 100 - PAVING IMPROVEMENTS									
ITEM NO.	BID QTY.	UNIT	DESCRIPTION	UNIT PRICE	BID TOTAL PRICE	CHANGE ORDER #1 QTY	CHANGE ORDER #1 TOTAL PRICE	TOTAL QTY (INCLUDING CO #1)	TOTAL PRICE (INCLUDING CO #1)
100	85,000	SY	Variable Depth Milling of Asphaltic Concrete Pavement	\$ 2.45	\$ 208,250.00	-9850.00	\$ (24,132.50)	75150	\$ 184,117.50
101	200	TN	Recycled Asphalt Leveling Course	\$ 155.00	\$ 31,000.00	0.00	\$ -	200	\$ 31,000.00
102	1,300	TN	Asphaltic Concrete Open-Graded Interlayer (OGI)	\$ 164.00	\$ 213,200.00	0.00	\$ -	1300	\$ 213,200.00
103	3,600	TN	9.5 mm "Type II" Asphalt Overlay	\$ 84.00	\$ 302,400.00	0.00	\$ -	3600	\$ 302,400.00
104	3,500	TN	12.5 mm Asphalt Overlay	\$ 127.50	\$ 446,250.00	-860.00	\$ (109,650.00)	2640	\$ 336,600.00
105	440	SY	Full-Depth Pavement Repair (incl. demo & removal of ex. pavement & subgrade, compaction, 8" GAB, 2.5" asphalt binder course, and 1.5" asphalt surface course	\$ 209.75	\$ 92,290.00	0.00	\$ -	440	\$ 92,290.00
106	6	EA	Remove & Replace Existing 6x40 Signal Loop	\$ 2,000.00	\$ 12,000.00	0.00	\$ -	6	\$ 12,000.00
107	5	EA	Remove & Replace Existing 6x6 Signal Setback Loop	\$ 1,000.00	\$ 5,000.00	0.00	\$ -	5	\$ 5,000.00
108	23	EA	Adjust Existing Valve Box to Final Grade	\$ 1,350.50	\$ 31,061.50	0.00	\$ -	23	\$ 31,061.50
109	5	EA	Adjust Existing Manhole/Structure Top to Final Grade	\$ 4,919.00	\$ 24,595.00	1.00	\$ 4,919.00	6	\$ 29,514.00
110	22,000	LF	Solid Traffic Stripe, 5" - Yellow High-Build Paint	\$ 0.50	\$ 11,000.00	-1500.00	\$ (750.00)	20500	\$ 10,250.00
111	23,000	LF	Solid Traffic Stripe, 5" - White High-Build Paint	\$ 0.50	\$ 11,500.00	-160.00	\$ (80.00)	22840	\$ 11,420.00
112	400	LF	Skip Traffic Stripe, 5" - Yellow High-Build Paint	\$ 0.35	\$ 140.00	-170.00	\$ (59.50)	230	\$ 80.50
113	10,500	LF	Skip Traffic Stripe, 5" - White High-Build Paint	\$ 0.35	\$ 3,675.00	-3160.00	\$ (1,106.00)	7340	\$ 2,569.00
114	600	LF	Stop Bar, 24" - White High-Build Paint	\$ 3.50	\$ 2,100.00	600.00	\$ 2,100.00	1200	\$ 4,200.00
115	2,000	SY	Median Hatching - Yellow High-Build Paint	\$ 3.50	\$ 7,000.00	0.00	\$ -	2000	\$ 7,000.00
116	500	SY	Median Hatching - White High-Build Paint	\$ 3.50	\$ 1,750.00	-50.00	\$ (175.00)	450	\$ 1,575.00
117	360	SY	Pedestrian Crosswalk, 8" - White High-Build Paint	\$ 5.00	\$ 1,800.00	27.00	\$ 135.00	387	\$ 1,935.00
118	6	EA	Pavement Marking Arrow, Type 1 - White High-Build Paint	\$ 40.00	\$ 240.00	0.00	\$ -	6	\$ 240.00
119	62	EA	Pavement Marking Arrow, Type 2 - White High-Build Paint	\$ 40.00	\$ 2,480.00	-10.00	\$ (400.00)	52	\$ 2,080.00
120	5	EA	Pavement Marking Arrow, Type 3 - White High-Build Paint	\$ 50.00	\$ 250.00	0.00	\$ -	5	\$ 250.00
121	10	EA	Pavement Marking Arrow, Type 7 - White High-Build Paint	\$ 50.00	\$ 500.00	0.00	\$ -	10	\$ 500.00
122	8	EA	Pavement "ONLY" Marking - White High-Build Paint	\$ 50.00	\$ 400.00	0.00	\$ -	8	\$ 400.00
123	1	LS	Shoulder Grading & Grassing	\$ 27,330.00	\$ 27,330.00	0.00	\$ -	1	\$ 27,330.00
CO1-1	0	CY	Import Fill	\$ 70.00	\$ -	373.00	\$ 26,110.00	373	\$ 26,110.00
CO1-2	0	SY	Variable Depth Milling of Asphaltic Concrete Pavement	\$ 3.50	\$ -	23093.00	\$ 80,825.50	23093	\$ 80,825.50
CO1-3	0	TN	Recycled Asphalt Leveling Course	\$ 165.00	\$ -	60.00	\$ 9,900.00	60	\$ 9,900.00
CO1-4	0	TN	12.5 mm Asphalt Overlay	\$ 133.75	\$ -	2277.95	\$ 304,675.48	2277.9475	\$ 304,675.48
CO1-5	0	SY	Full-Depth Pavement Repair (incl. demo & removal of ex. pavement & subgrade, compaction, 8" GAB, 2.5" asphalt binder course, and 1.5" asphalt surface course	\$ 140.00	\$ -	1120.00	\$ 156,800.00	1120	\$ 156,800.00
CO1-6	0	EA	Adjust Existing Valve Box to Final Grade	\$ 1,500.00	\$ -	15.00	\$ 22,500.00	15	\$ 22,500.00
CO1-7	0	SY	Cut Ex GAB/Gravel, Install 4" GAB, Prime Coat, & Compact Subgrade	\$ 75.00	\$ -	760.00	\$ 57,000.00	760	\$ 57,000.00
CO1-8	0	EA	Wheelstops	\$ 270.75	\$ -	25.00	\$ 6,768.75	25	\$ 6,768.75
SECTION 100 - PAVING IMPROVEMENTS SUBTOTAL:					\$ 1,436,211.50		\$ 535,380.73		\$ 1,971,592.23

SECTION 200 - GENERAL ITEMS									
200	1	LS	Traffic Control	\$ 159,057.50	\$ 159,057.50	0.350	\$ 55,210.00	1.35	\$ 214,267.50
201	1	LS	Supplemental Work Allowance (SWA)	\$ 50,000.00	\$ 50,000.00	0	\$ -	1	\$ 50,000.00
SECTION 200 - GENERAL ITEMS SUBTOTAL:					\$ 209,057.50		\$ 55,210.00		\$ 264,267.50

TOTAL				\$ 1,645,269.00		\$ 590,590.73		\$ 2,235,859.73
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FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider the Second Amendment to the Lease Agreement with Norfolk Southern Railway Company.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

The City of Flowery Branch entered into an agreement with Norfolk Southern on September 26, 2006. This agreement was amended on June 11, 2019 and the city leased 9.18 acres/square feet which included both sides of Atlanta Highway. In 2023, the city paid \$5,109 and annual rate of the lease increases annually with the CPI.

FACTS AND ISSUES:

The City of Flowery Branch would like to lease the northern side of the railroad right-of-way from Norfolk Southern. The new leased area is 8.18 acres/square feet.

OPTIONS:

- Approve the second amendment to the lease with Norfolk Southern.
2) Do not approve the second amendment to the lease with Norfolk Southern.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$5,110 - General Fund budget

RECOMMENDATION:

Authorize the second amendment to the lease agreement with Norfolk Southern.

SAMPLE MOTION:

I move to approve the second amendment to the lease agreement with Norfolk Southern.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [ES - Norfolk Southern 2nd Amendment to Lease.pdf](#)
- [NS ROW Lease \(Amendment 1\) Entire Document 2019 FULLY EXECUTED.pdf](#)

- [Lease amend Norfolk Southern.pdf](#)
- [Norfolk Southern Lease.PDF](#)
- [Norfolk Southern Map.PDF](#)



FLOWERY BRANCH CITY COUNCIL EXECUTIVE SUMMARY

SUBJECT: Consider the Second Amendment to the Lease Agreement with Norfolk Southern Railway Company.

DATE: August 8, 2024

(X)RECOMMENDATION
() POLICY DISCUSSION
() STATUS REPORT
() OTHER

BUDGET INFORMATION:
ANNUAL- \$5,110
CAPITAL- N/A

COUNCIL ACTION REQUESTED ON: August 15, 2024

PURPOSE: To consider the second amendment to the lease agreement with Norfolk Southern which allows for a different area (than previously) for \$5,110. In 2023, the city paid \$5,109 and lease increases annually with the CPI.

HISTORY: The City of Flowery Branch entered into an agreement with Norfolk Southern on September 26, 2006. This agreement was amended on June 11, 2019 and the city leased 9.18 acres/square feet which included both sides of Atlanta Highway. In 2023, the city paid \$5,109 and annual rate of the lease increases annually with the CPI.

FACTS AND ISSUES: The City of Flowery Branch would like to lease the northern side of the railroad right-of-way from Norfolk Southern. The new leased area is 8.18 acres/square feet.

OPTIONS:

- 1) Approve the second amendment to the lease with Norfolk Southern.
 - 2) Do not approve the second amendment to the lease with Norfolk Southern.
-

RECOMMENDED SAMPLE MOTION:

I move to approve the second amendment to the lease agreement with Norfolk Southern.

DEPARTMENT: Administration

Prepared by: Tonya Parrish



Norfolk Southern Corporation
Real Estate and Contract Services
1200 Peachtree Street, NE, 12th Floor
Atlanta, Georgia 30309-3579

Martina Chitwood
Senior Property Services Agent
My Direct Line Is:
Phone: (404) 962-5734
Fax: (404) 589-6756
E-mail: Martina.Chitwood@nscorp.com

June 11, 2019
Activity Number: 1270494

UPS GROUND

Mr. Bill Andrew
The City of Flowery Branch, Georgia
5410 W. Pine Street
Flowery Branch, GA 30542

RE: Flowery Branch, Hall County, Georgia – First Amendment to Lease dated September 26, 2006 between NORFOLK SOUTHERN RAILWAY COMPANY and THE CITY OF FLOWERY BRANCH, GEORGIA covering 9.18 acres, more or less, located at Milepost 592.99.

Dear Mr. Andrew:

Enclosed is one fully executed original of the above referenced agreement for your file.

Thank you for your cooperation and if I may be of further assistance, please contact me at the telephone number shown above.

Sincerely,


Martina Chitwood

iManage # 1750885v1



Activity Number 1270494

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is made as of the 11th day of June, 2019 by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (the "Landlord") and THE CITY OF FLOWERY BRANCH, GEORGIA, a Georgia government entity (the "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated September 26 2006, as amended by (the "Lease"), for real property located at Milepost 592.99 in Flowery Branch, Hall County, Georgia, having an area of 9.18 acres/square feet, more or less (the "Premises");

WHEREAS, Landlord and Tenant desire to modify the rental payable by Tenant under the Lease and to make certain other changes to the Lease as hereinafter stated.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby amended, and the parties hereto do agree as follows:

1. Adjustment of Base Rental. Commencing on September 26, 2019 (the "Commencement Date"), Tenant shall pay unto Landlord, without offset, abatement or demand, base rental in the amount of FOUR THOUSAND THREE HUNDRED DOLLARS (\$4,300.00) per annum, payable in advance. Commencing on the first anniversary of the Commencement Date and thereafter on each anniversary thereof during the term of the Lease, the amount of the base rental shall be increased (and not decreased) on an annual basis by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)(1982-1984 = 100) U.S. City Average, All Items (the "Index") as set forth below. If the Index has changed so that the base year differs from that used in this Paragraph, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, to the 1982-84 base. If the Index is discontinued or revised during the term of the Lease, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. The "Adjustment Date" shall mean the first anniversary of the Commencement Date and each anniversary thereof during the term of the Lease. The Index published nearest to the Commencement Date shall be the "Base Index". The Index published nearest to the date three (3) months prior to the then current Adjustment Date shall be the "Adjustment Index". On each Adjustment Date, the base rental shall be adjusted by multiplying the base rental payable under the Lease at the Commencement Date by a fraction, the numerator of which fraction is the applicable Adjustment Index and the denominator of which fraction is the Base Index. The amount so determined shall be the base rental payable under the Lease beginning on the applicable Adjustment Date and until the next Adjustment Date (if any).

2. Notice. Any notice given pursuant to the Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE – 12th Floor, Atlanta, Georgia 30309-3579 or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: City of Flowery Branch, c/o City Manager, 5410 W. Pine Street, Flowery Branch, Ga. 30542 or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

3. Ratification; Successors and Assigns. Landlord and Tenant acknowledge and agree that the Lease, as amended by this Amendment, is hereby ratified and confirmed and in full force and effect. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

4. Signature. The parties agree that if an authorized officer of a party fully signs this Agreement in the appropriate location(s) below and then returns that signature to the other party via electronic means with a pdf or similar scanned copy of that signature, then that scanned signature shall serve as that party's signature for the Agreement, and, upon full execution of the Agreement by all parties, shall create a legally binding Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate, each part being an original, as of the 11th day of June, 2019.

Witness: As To Landlord

Donald N. Allen
Signature
Name: Donald N. Allen

Witness: As To Landlord

M. Chitwood
Signature
Name: M. Chitwood

LANDLORD:

NORFOLK SOUTHERN RAILWAY COMPANY
a Virginia corporation

By: [Signature]
Name: Jason Chapman
Title: Senior Project Advisor

Date of Landlord Signature: 6/11/19

[SEAL]

Witness: As To Tenant

Bill Andrew
Signature Name: Bill Andrew

Witness: As To Tenant

Melissa McCain
Signature Name: Melissa McCain

TENANT:

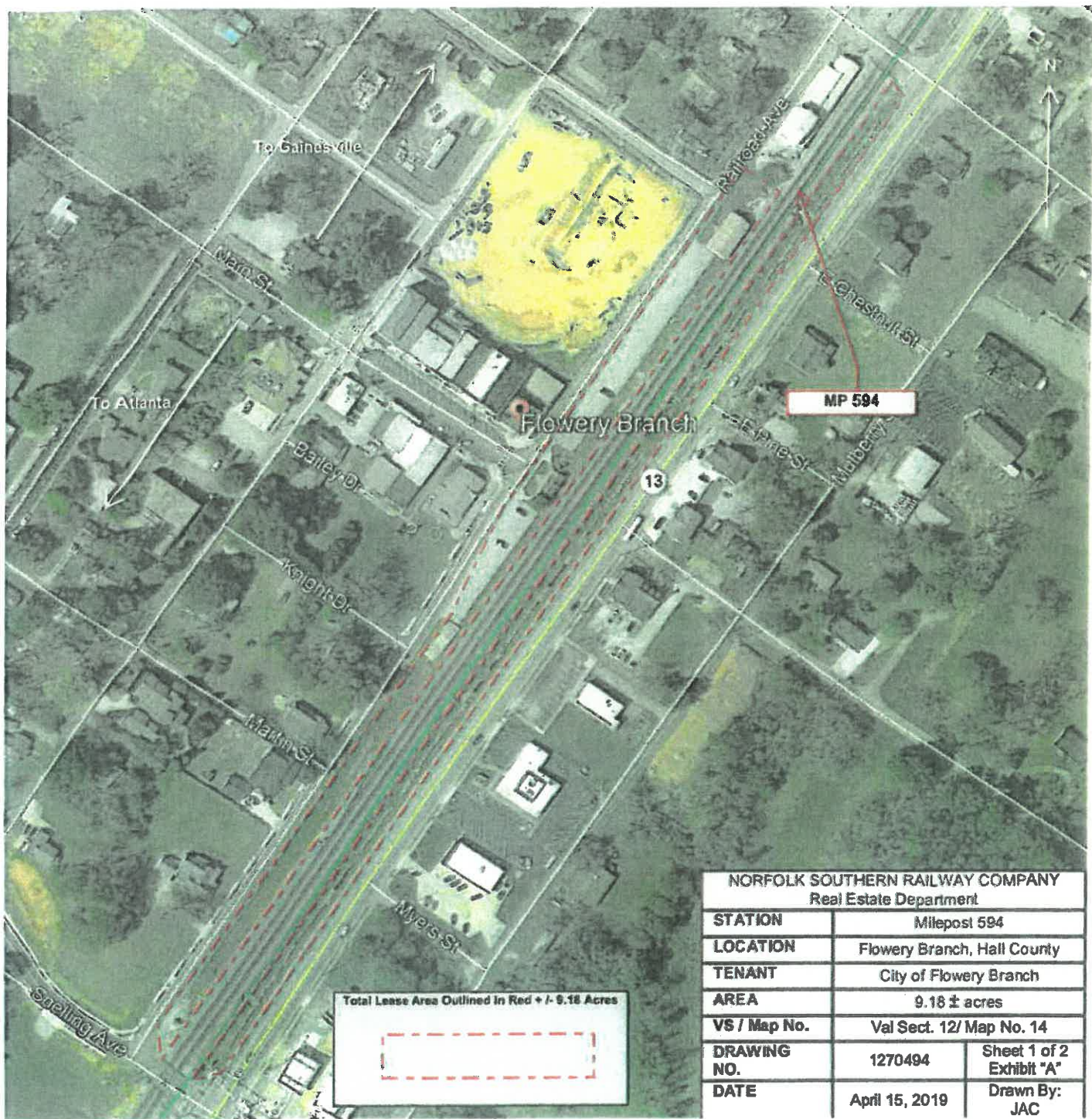
THE CITY OF FLOWERY BRANCH, GEORGIA
a Georgia government entity

By: [Signature]
Name: James Miller
Title: Mayor

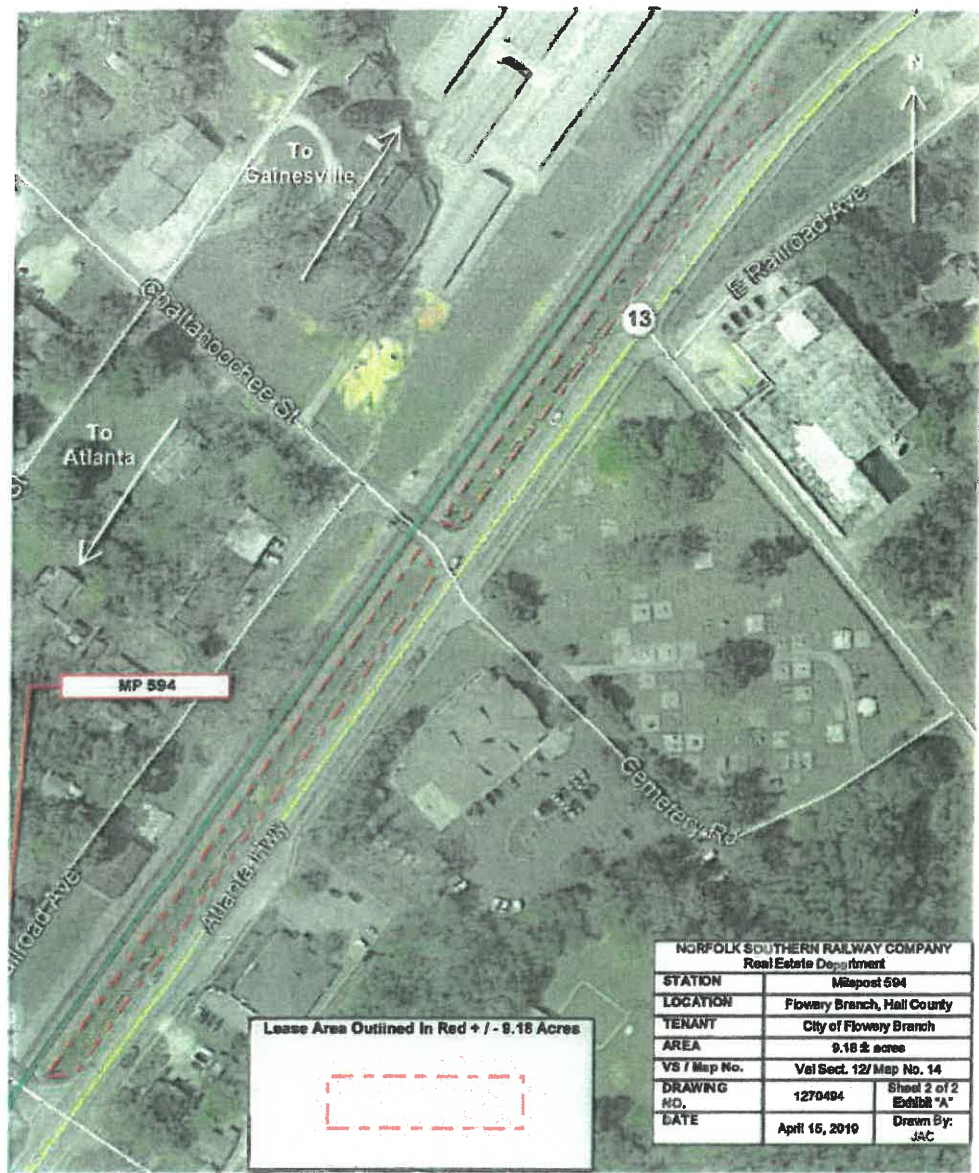
Date of Tenant Signature: June 6, 2019

JAC Thursday, May 23, 2019 1270494\Activity No. 1270494





NORFOLK SOUTHERN RAILWAY COMPANY Real Estate Department		
STATION	Milepost 594	
LOCATION	Flowery Branch, Hall County	
TENANT	City of Flowery Branch	
AREA	9.18 ± acres	
VS / Map No.	Val Sect. 12/ Map No. 14	
DRAWING NO.	1270494	Sheet 1 of 2 Exhibit "A"
DATE	April 15, 2019	Drawn By: JAC



Activity Number: 1315244

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (this "**Amendment**"), effective date of which shall be the date last executed, below, by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a **VIRGINIA** corporation (the "**Landlord**") and **THE CITY OF FLOWERY BRANCH, GEORGIA**, a **GEORGIA**, GOVERNMENT ENTITY (the "**Tenant**").

W I T N E S S E T H:

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated as last amended on September 26, 2006, (as amended, the "**Lease**"), for real property located at Milepost 592.99 in FLOWERY BRANCH, HALL County, GEORGIA, having an area of 9.18 acres/square feet, more or less (the "**Premises**");

WHEREAS, Landlord and Tenant desire to execute this Amendment to modify the rental payable by Tenant under the Lease and to make certain other changes to the Lease as hereinafter stated, with the Lease and the Amendment.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby amended, and the parties hereto do agree as follows:

1. Adjustment of Base Rental. Commencing on November 6, 2023 (the "**Commencement Date**"), Tenant shall pay unto Landlord, without offset, abatement or demand, base rental in the amount of Five Thousand One Hundred Ten and 00/100 DOLLARS (\$5,110.00) per annum, payable in advance. Commencing on the First anniversary of the Commencement Date and thereafter on each anniversary thereof during the term of the Lease, the amount of the base rental shall be increased (and not decreased) on an annual basis by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)(1982-1984 = 100) U.S. City Average, All Items (the "**Index**") as set forth below. If the Index has changed so that the base year differs from that used in this Paragraph, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, to the 1982-84 base. If the Index is discontinued or revised during the term of the Lease, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. The "**Adjustment Date**" shall mean the first anniversary of the Commencement Date and each anniversary thereof during the term of the Lease. The Index published nearest to the Commencement Date shall be the "**Base Index**". The Index published nearest to the date three (3) months prior to the then current Adjustment Date shall be the "**Adjustment Index**". On each Adjustment Date, the base rental shall be adjusted by multiplying the base rental payable under the Lease at the Commencement Date by a fraction, the numerator of which fraction is the applicable Adjustment Index and the denominator of which fraction is the Base Index. The amount so determined shall be the base rental payable under the Lease beginning on the applicable Adjustment Date and until the next Adjustment Date (if any).

2. Insurance. Tenant shall procure and maintain, at all times and at its expense, in a form and

with an insurance company acceptable to Landlord, Commercial General Liability Insurance for the Premises. Such coverage shall (a) have a single limit of not less than \$2,000,000.00 for each occurrence (or such greater amount over time so as to be commercially reasonable) and shall provide for a deductible of not more than \$5,000.00, (b) cover Tenant's contractual liability hereunder, (c) cover Tenant and Landlord for liability arising out of work performed by any third parties for Tenant in or about the Premises, (d) name the Landlord Entities as additional insureds, and (e) be considered primary and noncontributory, regardless of any insurance carried by Landlord. Any property insurance maintained by Tenant on its furniture, fixtures, equipment and personal property shall include a waiver of subrogation in favor of Landlord. Tenant shall deliver certificates of insurance evidencing the insurance required hereinabove to Landlord simultaneously with the execution of this Lease by Tenant, which certificates shall reflect that the policies shall not be canceled without at least thirty (30) days prior notice to Landlord. If Tenant fails to obtain the necessary coverages, Landlord may do so at Tenant's expense and the same shall constitute additional rental. All insurance certificates should be delivered to Landlord's Risk Management Department, 650 W Peachtree St NW, Atlanta, GA 30308, simultaneously with the execution of this Lease by Tenant. The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of Tenant hereunder and shall not waive Landlord's right to seek a full recovery from Tenant.

3. Term Adjustment. The terms of the original lease are hereby adjusted as follows: To have and to hold for a term beginning on _____, 2024, and continuing thereafter for 30 years.
4. Paragraph 3, "Beautification" of the Rider to the original lease labelled as Exhibit B dated September 26, 2006 is hereby modified as follows:

Beautification. A portion of the Premises will be used for beautification and a multi-purpose trail. Tenant will enter that portion of the Premises for the sole purposes of landscaping and gardening the Premises with grass, flowers and low shrubbery and of maintaining said landscaping and to construct and maintain a multi-purpose trail. In no event shall any trees be planted or permitted to grow on the Premises. This Lease is a personal privilege to Tenant and shall not be assigned without the written consent of Company, nor shall Tenant, except with such written consent, permit the Premises to be used for any purpose by any other party, firm or corporation.

Grass, flowers and shrubbery planted by Tenant on the Premises shall be maintained, cut and trimmed by Tenant in a safe and orderly manner so as not to obstruct the view of Landlord's employees engaged in railroad operations or of pedestrians or motorists. In no event shall any shrubbery be permitted to exceed 48 inches in height. Tenant agrees that no grass, flowers or shrubbery shall be planted closer than 100 feet on each side of any grade crossing over tracks of Landlord.

In installing, maintaining or removing said landscaping or multi-purpose trail, Tenant will not damage or interfere with the drainage facilities of Landlord. If new or additional drainage is required in connection with the landscaping permitted herein, such drainage will be constructed at the sole expense of Tenant, will be subject to the advance, written approval of Landlord, and will be constructed so as to cause any runoff to flow away from Landlord's railroad facilities.

5. Notice. Any notice given pursuant to the Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 650 W Peachtree St
RE_A_1471

NW, Atlanta, GA 30308 or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: P O BOX 757 5517 MAIN STREET FLOWERY BRANCH, GA 30542, or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

6. Ratification; Successors and Assigns. Landlord and Tenant acknowledge and agree that the Lease, as amended by this Amendment, is hereby ratified and confirmed and in full force and effect. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

7. Signature. The parties agree that if an authorized officer of a party fully signs this Agreement in the appropriate location(s) below and then returns that signature to the other party via electronic means with a pdf or similar scanned copy of that signature, then that scanned signature shall serve as that party's signature for the Agreement, and, upon full execution of the Agreement by all parties, shall create a legally binding Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate, each part being an original, as of the date last executed below.

Witness As To Landlord:

Name:

Witness As To Landlord:

Name:

LANDLORD:

**NORFOLK SOUTHERN RAILWAY
COMPANY**

a VIRGINIA corporation

Signature: _____

Name: _____

Title: _____

Date of Landlord Signature: _____

[SEAL]

Witness As To Tenant:

Name:

Witness As To Tenant:

Name:

TENANT:

**THE CITY OF FLOWERY BRANCH,
GEORGIA**

a GEORGIA GOVERNMENT ENTITY

Signature: _____

Name: _____

Title: _____

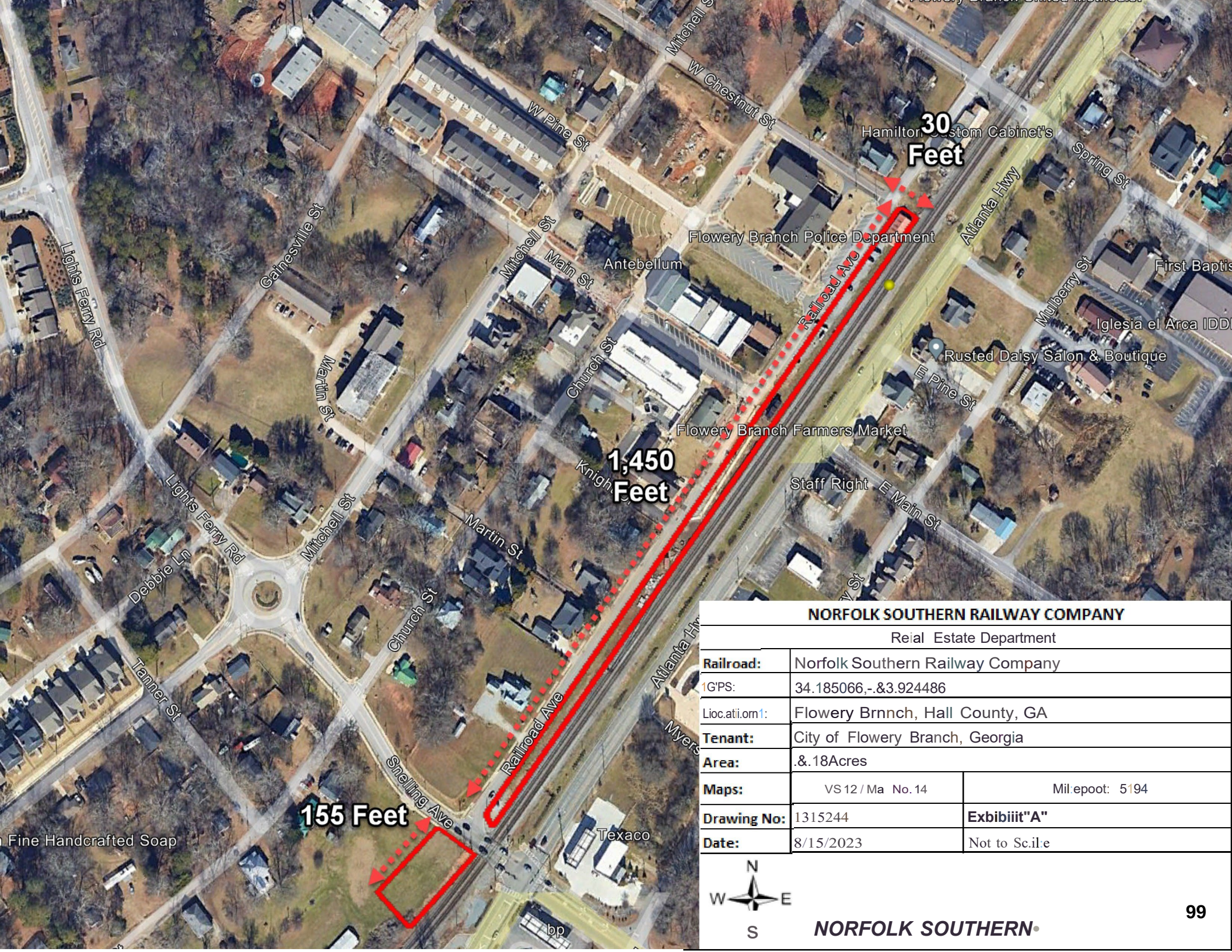
Date of Tenant Signature: _____

[SEAL]

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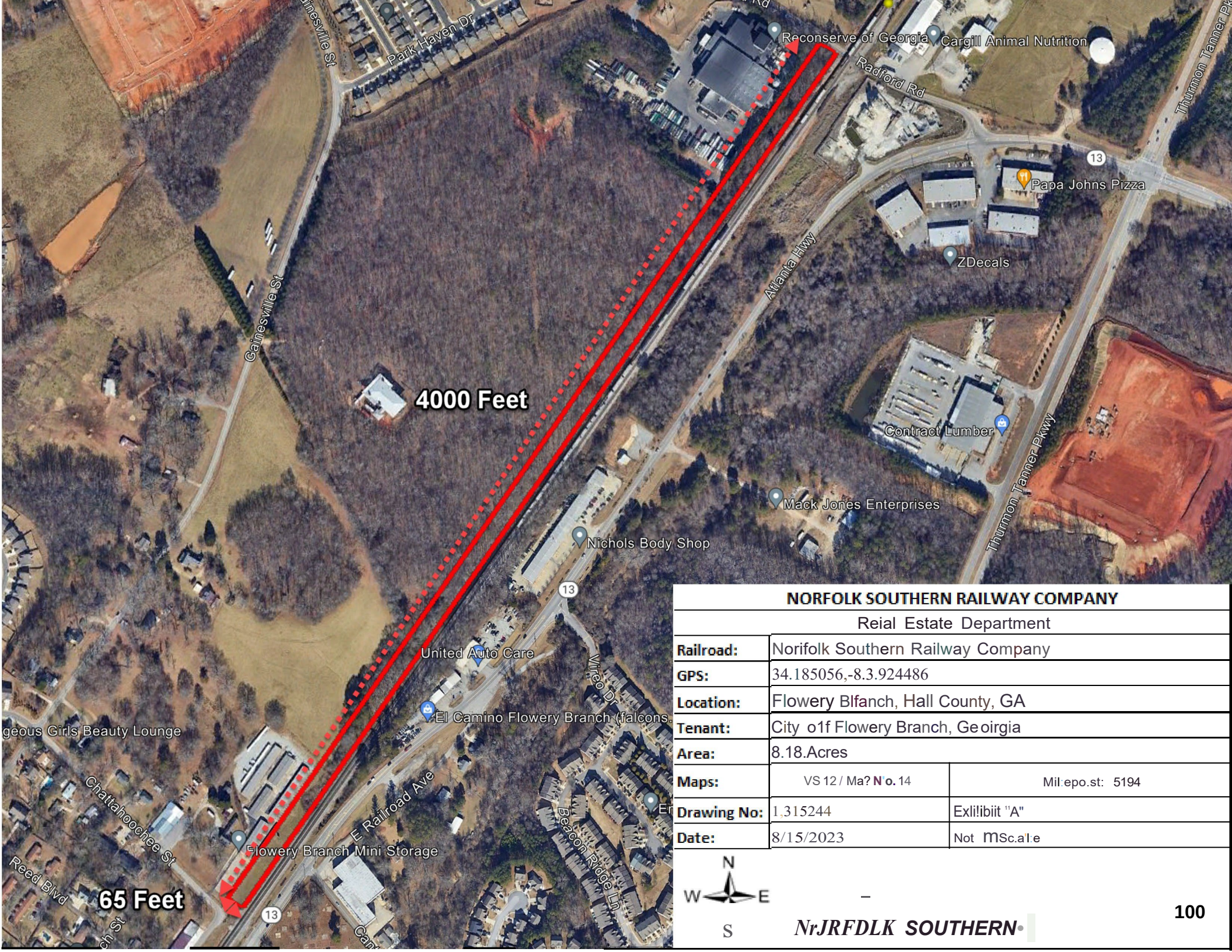
Form Amendment – Rental, Insurance and Notice (NS) 214854v1

Exhibit A



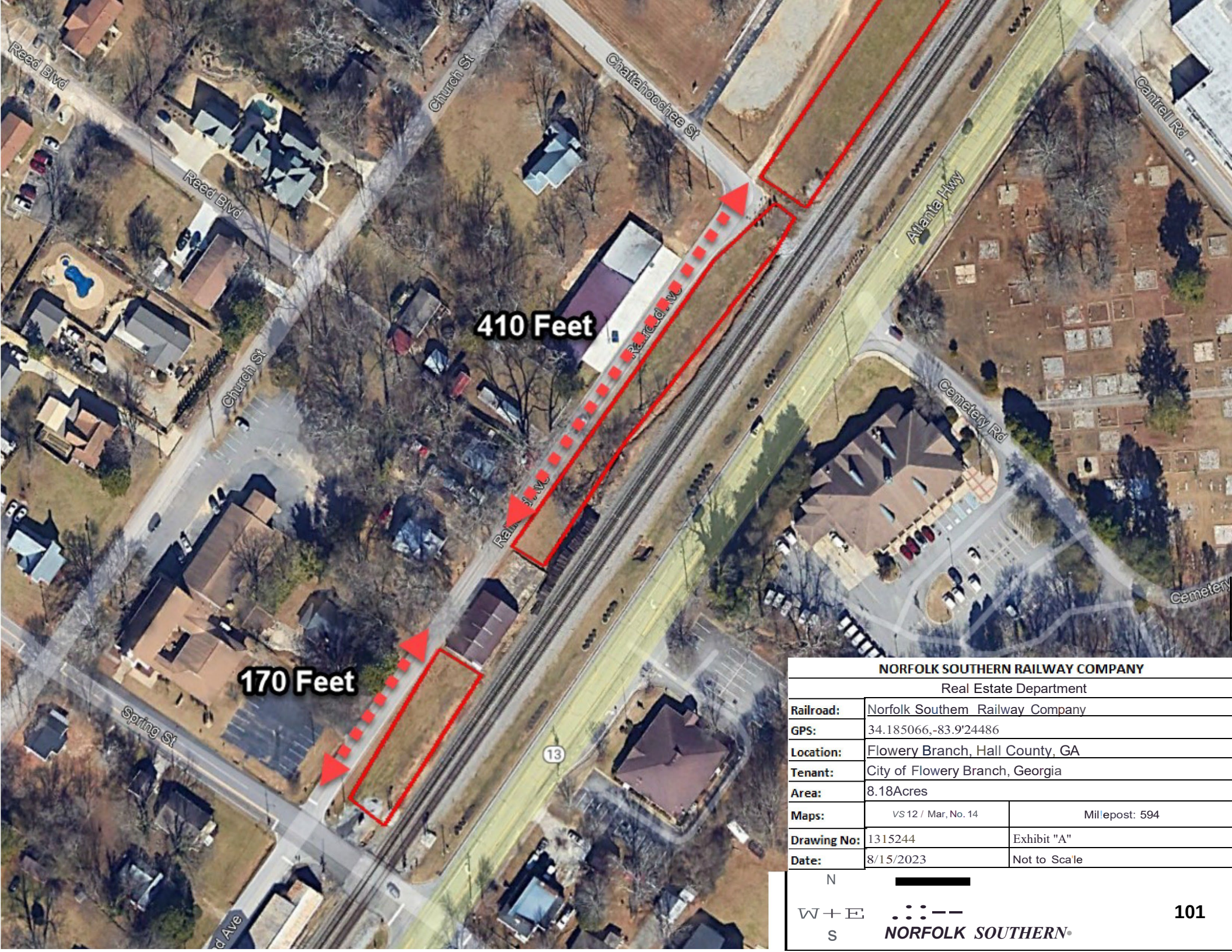
NORFOLK SOUTHERN RAILWAY COMPANY		
Reial Estate Department		
Railroad:	Norfolk Southern Railway Company	
IGPS:	34.185066,-. & 3.924486	
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Tenant:	City of Flowery Branch, Georgia	
Area:	&.18Acres	
Maps:	VS 12 / Ma No. 14	Mil.epoot: 5' 194
Drawing No:	1315244	Exhibiit"A"
Date:	8/15/2023	Not to Sc.ile





NORFOLK SOUTHERN RAILWAY COMPANY		
Reial Estate Department		
Railroad:	Norfolk Southern Railway Company	
GPS:	34.185056,-8.3.924486	
Location:	Flowery Blfanch, Hall County, GA	
Tenant:	City o1f Flowery Branch, Geoirgia	
Area:	8.18.Acres	
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Date:	8/15/2023	Not mSc.al'e





NORFOLK SOUTHERN RAILWAY COMPANY		
Real Estate Department		
Railroad:	Norfolk Southern Railway Company	
GPS:	34.185066,-83.9°24486	
Location:	Flowery Branch, Hall County, GA	
Tenant:	City of Flowery Branch, Georgia	
Area:	8.18Acres	
Maps:	VS 12 / Mar, No. 14	Milepost: 594
Drawing No:	1315244	Exhibit "A"
Date:	8/15/2023	Not to Scale

LEASE AGREEMENT

THIS LEASE is made as of the 26th day of September 2006, by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (the "**Landlord**") and **THE CITY OF FLOWERY BRANCH, GEORGIA**, a Georgia government entity (the "**Tenant**").

1. **Premises; Use.** For and in consideration of the agreements set forth herein, to be paid, kept and performed by Tenant, Landlord hereby leases and rents to Tenant, insofar as its right, title and interest in the Premises enables it to do so, that certain real property located at Milepost 594.00 in Flowery Branch, Hall County, Georgia, having an area of 9.18 acres, more or less, the location of which is substantially shown on drawing dated August 9, 2006, hereunto annexed as **Exhibit "A"** attached hereto (the "**Land**"), together with the right to: remove and/or barricade existing stairs; remove Country Craft buildings (after Tenant provides Landlord with proof of permission or a bill of sale); use and maintain the existing building of Landlord (Mooney Building); maintain the existing paved parking lot of Tenant; and install and maintain landscaping thereon (the "**Improvements**"). The Land and the Improvements are collectively referred to herein as the "**Premises**". This Lease is subject to all encumbrances, easements, conditions, covenants and restrictions, whether or not of record.

The Premises shall be used for parking, beauification and storage (inside the Mooney Building) and no other purpose. The Premises shall not be used for any illegal purposes, for the storage of unlicensed vehicles, nor in any manner to create any nuisance or trespass. No smoking is permitted in or about the Premises. Landlord reserves unto itself and its permittees, the permanent right to construct, maintain or replace upon, under, or over the Premises, any pipe, electrical, telecommunications, and signal lines, or any other facilities of like character now installed or hereinafter to be installed. Landlord further reserves unto itself and its permittees the right to enter upon the Premises at any and all times for the purposes of operating, maintaining, constructing or relocating any trackage or railroad facilities located on, or in the vicinity of, the Premises.

The terms and conditions of the Rider, if any, attached hereto as **Exhibit "B"** are incorporated herein by this reference. In the event of an inconsistency between the terms hereof and the terms of the Rider, the terms of the Rider shall prevail.

2. **Term.** To have and to hold for a term beginning on September 26, 2006, and continuing thereafter on a periodic basis. In addition to any termination rights that the parties may have hereunder, either party may terminate this Lease for any reason by giving the other party not less than thirty (30) days' notice of such termination. Any such termination pursuant to the preceding sentence shall not relieve Tenant from satisfying and performing all of its obligations hereunder (including, but not limited to, the payment of rental) through the date of such termination and shall not relieve either party from performing any obligation that, pursuant to the terms of the Lease, survives the termination of the Lease.

3. **Base Rental.** Commencing on September 26, 2006 (the "**Rental Commencement Date**") and thereafter on each anniversary thereof during the term of this Lease, Tenant shall pay to Landlord, without offset, abatement or demand, initial base rental of **TWO THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$2,400.00)**. The amount of the base rental shall be increased (and not decreased) on an annual basis by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)(1982-1984 = 100) U.S. City Average, All Items (the "**Index**") as set forth below. If the Index has changed so that the base year differs from that used in this Paragraph, the Index shall be converted in accordance with the conversion

factor published by the United States Department of Labor, Bureau of Labor Statistics, to the 1982-84 base. If the Index is discontinued or revised during the term of this Lease, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

The "**Adjustment Date**" shall mean the first anniversary of the Rental Commencement Date and each anniversary thereof during the term of this Lease. The Index published nearest to the Rental Commencement Date shall be the "**Base Index**". The Index published nearest to the date three (3) months prior to the then current Adjustment Date shall be the "**Adjustment Index**". On each Adjustment Date, the base rental shall be adjusted by multiplying the base rental payable under this Lease at the Rental Commencement Date by a fraction, the numerator of which fraction is the applicable Adjustment Index and the denominator of which fraction is the Base Index. The amount so determined shall be the base rental payable under the Lease beginning on the applicable Adjustment Date and until the next Adjustment Date (if any).

Base rental shall be due in advance. Except in the event of default, base rental for any partial rental periods shall be prorated. The acceptance by Landlord of base rental shall not constitute a waiver of any of Landlord's rights or remedies under this Lease. All payments of base rental, and any additional rental payable hereunder, shall be sent to the Treasurer of Landlord at P.O. Box 116944, Atlanta, Georgia 30368-6944, or such other address as Landlord may designate in any invoice delivered to Tenant. Prior to or simultaneously with Tenant's execution of this Lease, Tenant has paid to Landlord (a) a non-refundable, application fee in the amount of \$500.00, and (b) the first installment of base rental due hereunder. In the event Tenant fails to pay base rental or any other payment called for under this Lease on or before the due date, Tenant shall pay a late charge equal to five percent (5%) of the unpaid amount. In addition, any sum not paid within thirty (30) days of its due date shall accrue interest thereafter until paid at the rate per annum equal to the lesser of (a) the highest interest rate permitted by applicable law; or (b) eighteen percent (18%). (See Rider, Waiver of Application Fee)

4. Utilities. Landlord shall have no obligation to provide light, water, heat, air conditioning or any other utilities or services to the Premises. Tenant shall place any and all utility and service related bills in its name and shall timely pay the same, along with all assessments or other governmental fees or charges pertaining to the Premises. If Tenant does not pay same, Landlord may (but shall not be obligated to) pay the same, including any and all late fees and penalties, and such payment shall be added to and treated as additional rental of the Premises.

5. Maintenance and Repairs. Tenant, at its sole cost, shall keep and maintain all of the Premises (including, but not limited to, all structural and non-structural components thereof and all systems) in good order and repair (including replacements) and shall keep the Premises free of pests and rodents. Tenant hereby waives (a) any rights at law or in equity to require Landlord to perform any repair, replacement or maintenance to the Premises, and (b) any right to abate rental or terminate this Lease due to the failure by Landlord to perform any repairs, replacements or maintenance. Tenant shall not create any lien, charge or encumbrance upon the Premises, and Tenant shall promptly remove or bond over any such lien, charge or encumbrance.

6. Modifications and Alterations to the Premises. Tenant shall make no modifications, alterations or improvements to the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Any modifications or alterations consented to by Landlord shall be completed in a good, workmanlike and lien-free manner, in accordance with all applicable laws, codes, regulations and ordinances and by contractors approved by Landlord. Unless otherwise agreed by the parties hereto, any alterations or improvements to the Premises made by Tenant

shall become the property of Landlord; provided, however, Landlord, at its option, may require Tenant to remove any improvements or repair any alterations in order to restore the Premises to the condition existing at the time Tenant took possession. Notwithstanding the foregoing, Tenant may remove any moveable equipment or trade fixtures owned by Tenant during the term of this Lease, provided that any damage caused by such removal shall be repaired by Tenant in a manner acceptable to Landlord.

7. Return of Premises. Tenant agrees to return the Premises to Landlord at the expiration or prior termination of this Lease in the same condition and repair as when first received, normal wear and tear excepted. Tenant agrees to remove its moveable equipment and trade fixtures from the Premises at the expiration or prior termination of this Lease. Tenant shall immediately repair any damage arising out of any such removal in a manner acceptable to Landlord. Failure to comply with this Paragraph 7 will constitute holding over by Tenant.

8. Destruction of or Damage to Premises. If all or substantially all of the Premises are destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date. In the event of such termination, rental shall be prorated and paid up to the date of such casualty. In no event shall Tenant have any right to terminate this Lease if the casualty in question was caused or contributed to by Tenant, its agents, employees, contractors or invitees.

9. Indemnity. Except for damage caused solely by Landlord's negligence, Tenant agrees to indemnify, defend and save harmless Landlord, Landlord's parent companies, subsidiaries, affiliates, lessors, licensors, and subsidiaries of parent companies (collectively the "**Landlord Related Entities**") and Landlord's and Landlord's Related Entities' officers, directors, members, shareholders, lenders, agents and employees (collectively the "**Landlord Entities**") against all claims (including but not limited to claims for bodily injury, death or property damage), economic losses, liabilities, costs, injuries, damages, actions, mechanic's liens, losses and expenses (including but not limited to reasonable attorney's fees and costs) to whomsoever, including, but not limited to, Tenant's agents, workmen, servants or employees, or whatsoever occurring (collectively, "**Claims**") arising out of or relating to Tenant's use or occupancy of the Premises. To the fullest extent permitted by applicable laws, Tenant hereby waives and releases the Landlord Entities from any Claims (including but not limited to Claims relating to interruptions in services) arising out of or relating in any way to the Tenant's use or occupancy of the Premises.

10. Governmental Orders. Tenant agrees, at its own expense, to comply with all laws, orders, regulations, ordinances or restrictions applicable by reason of Tenant's use or occupancy of the Premises or operation of its business.

11. Condemnation. If the Premises or such portion thereof as will make the Premises unusable for the purpose herein leased shall be condemned by any legally constituted authority for any public use or purpose, or sold under threat of condemnation, then this Lease shall terminate as of the date of such condemnation or sale, and rental shall be accounted for between Landlord and Tenant as of such date. All condemnation awards shall belong to Landlord; provided, however, and to the extent permitted under applicable law, Tenant shall be entitled to file a separate claim against the condemning authority for loss of its personal property and moving expenses so long as the filing of such claim does not affect or reduce Landlord's claim as to such awards or proceeds.

12. Assignment. Tenant may not assign this Lease or any interest thereunder or sublet the Premises in whole or in part or allow all or a portion of the Premises to be used by a third party without the prior written consent of Landlord. If Tenant is a corporation, partnership, limited liability company or other entity, the transfer of more than fifty percent (50%) of the ownership interests of Tenant or the

transfer of a lesser percentage which results in a transfer of control of Tenant (WHICH INCLUDES, WITHOUT LIMITATION, TRANSACTIONS IN WHICH TENANT SELLS ITS BUSINESS, SELLS ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF ITS BUSINESS OR MERGES OR CONSOLIDATES WITH ANOTHER ENTITY), whether in one transaction or a series of related transactions, shall constitute an assignment for purposes of this Lease. All requests for an assignment or sublease shall be accompanied by a copy of the proposed assignment or sublease agreement and an administrative fee in the amount of \$750.00. Any assignee shall become liable directly to Landlord for all obligations of Tenant hereunder. No such assignment or sublease nor any subsequent amendment of the Lease shall release Tenant or any guarantor of Tenant's obligations hereunder. If any such subtenant or assignee pays rental in excess of the rental due hereunder or if Tenant receives any other consideration on account of any such assignment or sublease, Tenant shall pay to Landlord, as additional rent, one-half of such excess rental or other consideration upon the receipt thereof. Any assignment or sublease made in violation of this Paragraph 12 shall be void and shall constitute a default hereunder.

13. Environmental. Tenant covenants that neither Tenant, nor any of its agents, employees, contractors or invitees shall cause or permit any aboveground or underground storage tanks or associated piping (collectively "**Tanks**") to be located on or under the Premises or any Hazardous Materials (as hereinafter defined) to be stored, handled, treated, released or brought upon or disposed of on the Premises. Tenant shall comply, at its own expense, with any and all applicable laws, ordinances, rules, regulations and requirements respecting solid waste, hazardous waste, air, water, pollution or otherwise relating to the environment or health and safety (collectively "**Environmental Laws**"). Tenant shall not under any circumstance dispose of trash, debris or wastes on the Premises and will not conduct any activities on the Premises which require a hazardous waste treatment, storage or disposal permit. As used herein, the term "**Hazardous Materials**" means asbestos, polychlorinated biphenyls, oil, gasoline or other petroleum based liquids, and any and all other materials or substances deemed hazardous or toxic or regulated by applicable laws, including but not limited to substances defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 6901 et seq. (or any state counterpart to the foregoing statutes) or determined to present the unreasonable risk of injury to health or the environment under the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq. Tenant shall indemnify, defend and hold the Landlord Entities harmless from and against any and all claims, judgments, damages, penalties, fines, costs (including without limitation, consultant's fees, experts' fees, attorney's fees, investigation and cleanup costs and courts costs), liabilities or losses resulting from (1) the storage, handling, treatment, release, disposal, presence or use of Hazardous Materials in, on or about the Premises from and after the date of this Lease or (2) the violation by Tenant of any provision of any Environmental Laws. Without limiting the generality of the foregoing indemnity, in the event Landlord has reason to believe that the covenants set forth in this Paragraph 13 have been violated by Tenant, Landlord shall be entitled, at Tenant's sole expense, to take such actions as Landlord deems necessary in order to assess, contain, delineate and/or remediate any condition created by such violation. Any sums expended by Landlord shall be reimbursed by Tenant, as additional rental, within thirty (30) days after demand therefor by Landlord. Landlord has the right to enter the Premises at all reasonable times for purposes of inspecting the Premises in order to evaluate Tenant's compliance with the covenants of this Paragraph 13. In the event Tenant delivers or receives any notices or materials from any governmental or quasi-governmental entity and such notices or materials relate to Tanks or Hazardous Materials in, on or about the Premises, Tenant shall immediately send to Landlord a copy of such notices or materials. Tenant shall also provide Landlord with a detailed report relating to any release of a Hazardous Material in, on or about the Premises whenever such release is required to be reported to governmental authorities pursuant to the Environmental Laws. Upon the expiration or earlier termination of this Lease, Landlord shall have the right to cause to be performed such environmental studies of the Premises by an environmental consultant as are necessary to determine whether any Hazardous Materials have been stored, handled, treated, released, brought upon or disposed of on the Premises during the term

of this Lease in violation of the terms hereof. If any such study reveals any violation of this Lease, Tenant shall promptly reimburse Landlord for the costs of such studies and Tenant shall immediately undertake a further investigation, if necessary, and remediation of such contamination. Landlord may undertake such investigation and remediation if Tenant fails to do so within a reasonable time frame, in which case Tenant shall promptly reimburse Landlord for the cost of same within thirty (30) days after demand therefore by Landlord. The obligations of this Paragraph 13 shall survive the expiration or earlier termination of this Lease.

14. Default; Remedies. In the event (i) any payment of rental or other sum due hereunder is not paid within ten (10) days after the due date thereof; (ii) the Premises shall be deserted or vacated; (iii) Tenant shall fail to comply with any term, provision, condition or covenant of this Lease, other than an obligation requiring the payment of rental or other sums hereunder, and shall not cure such failure within twenty (20) days after notice to the Tenant of such failure to comply; (iv) Tenant shall attempt to violate or violate Paragraph 12 above; or (v) Tenant or any guarantor shall file a petition under any applicable federal or state bankruptcy or insolvency law or have any involuntary petition filed thereunder against it, then Landlord, in addition to any remedy available at law or in equity, shall have the option to do any one or more of the following:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. Tenant agrees to indemnify the Landlord Entities for all loss, damage and expense which Landlord may suffer by reason of such termination.

(b) Without terminating this Lease, terminate Tenant's right of possession, whereupon rental shall continue to accrue and be owed by Tenant hereunder. Thereafter, at Landlord's option, Landlord may enter upon and relet all or a portion of the Premises (or relet the Premises together with any additional space) for a term longer or shorter than the remaining term hereunder and otherwise on terms satisfactory to Landlord. Tenant shall be liable to Landlord for the deficiency, if any, between Tenant's rental hereunder and all net sums received by Landlord on account of such reletting (after deducting all costs incurred by Landlord in connection with any such reletting, including without limitation, tenant improvement costs, brokerage commissions and attorney's fees).

(c) Pursue a dispossessory, eviction or other similar action against Tenant, in which event Tenant shall remain liable for all amounts owed hereunder, including amounts accruing hereunder from and after the date that a writ of possession is issued.

(d) Perform any unperformed obligation of Tenant, including, but not limited to, cleaning up any trash, debris or property remaining in or about the Premises upon the expiration or earlier termination of this Lease. Any sums expended by Landlord shall be repaid by Tenant, as additional rent, within ten (10) days after demand therefor by Landlord.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies available at law or in equity. Tenant agrees to pay all costs and expenses, including, but not limited to, reasonable attorney's fees and consultant's fees, incurred by Landlord in connection with enforcing the performance of any of the provisions of this Lease, whether suit is actually filed or not. Acceptance of rental or any other sums paid by Tenant shall not constitute the waiver by Landlord of any of the terms of this Lease or any default by Tenant hereunder. Landlord shall not be required to mitigate damages, and the parties intend to waive any burden that applicable law may impose on Landlord to mitigate damages; provided, however, if applicable law nevertheless requires Landlord to mitigate damages then (i) Landlord shall have no obligation to treat preferentially the Premises compared to other premises

Landlord has available for leasing; (ii) Landlord shall not be obligated to expend any efforts or any monies beyond those Landlord would expend in the ordinary course of leasing space; and (iii) in evaluating a prospective reletting of the Premises, the term, rental, use and the reputation, experience and financial standing of prospective tenants are factors which Landlord may properly consider.

15. Signs; Entry by Landlord. Landlord may place "For Lease" signs upon the Premises one hundred twenty (120) days before the termination of this Lease and may place "For Sale" signs upon the Premises at any time. Landlord may enter the Premises with prior notice to Tenant at reasonable hours during the term of this Lease (a) to show the same to prospective purchasers or tenants, (b) to make repairs to Landlord's adjoining property, if any, (c) to inspect the Premises in order to evaluate Tenant's compliance with the covenants set forth in this Lease, or (d) to perform activities otherwise permitted or contemplated hereby.

16. No Estate in Land. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant; Tenant's interest is not assignable by Tenant except as provided in Paragraph 12, above.

17. Holding Over. If Tenant remains in possession of the Premises after expiration of the term hereof with Landlord's written consent, Tenant shall be a month-to-month tenant upon all the same terms and conditions as contained in this Lease, except that the base rental shall become two times the then current base rental, and there shall be no renewal of this Lease by operation of law. Such month-to-month tenancy shall be terminable upon thirty (30) days written notice by either party to the other. Tenant waives any right that it may have to additional notice pursuant to applicable law. If Tenant remains in possession of the Premises after the expiration of the term hereof without Landlord's written consent, Tenant shall be a tenant at sufferance subject to immediate eviction. In such event, in addition to paying Landlord any damages resulting from such holdover, Tenant shall pay base rental at the rate of three times the then current base rental. In such circumstance, acceptance of base rental by Landlord shall not constitute consent or agreement by Landlord to Tenant's holding over and shall not waive Landlord's right to evict Tenant immediately.

18. Notices. Any notice given pursuant to this Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE – 12th Floor, Atlanta, Georgia 30309-3579, or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: The City of Flowery Branch, Georgia, Attention: City Clerk, 5517 Main Street, Flowery Branch, Georgia 30542, or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

19. Track Clearance. Notwithstanding anything contained in this Lease, and irrespective of the sole, joint, or concurring negligence of Landlord, Tenant shall assume sole responsibility for and shall indemnify, save harmless and defend the Landlord Entities from and against all claims, actions or legal proceedings arising, in whole or in part, from the conduct of Tenant's operations, or the placement of

Tenant's fixtures, equipment or other property, within twenty-five feet (25') of Landlord's tracks, if any, located on or adjacent to the Premises. In this connection it is specifically understood that knowledge on the part of Landlord of a violation of the foregoing clearance requirement, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve Tenant of its obligations to indemnify the Landlord Entities for losses and claims resulting from any such violation.

20. Brokerage. Landlord and Tenant hereby covenant and agree to indemnify and hold the other harmless from and against any and all loss, liability, damage, claim, judgment, cost and expense (including without limitation attorney's fees and litigation costs) that may be incurred or suffered by the other because of any claim for any fee, commission or similar compensation with respect to this Lease, made by any broker, agent or finder claiming by, through or under the indemnifying party, whether or not such claim is valid.

21. Tenant's Insurance. Tenant shall procure and maintain, at all times and at its expense, in a form and with an insurance company acceptable to Landlord, Commercial General Liability Insurance for the Premises. Such coverage shall (a) have a single limit of not less than \$2,000,000.00 for each occurrence (or such greater amount over time so as to be commercially reasonable) and shall provide for a deductible of not more than \$5,000.00, (b) cover Tenant's contractual liability hereunder, (c) cover Tenant and Landlord for liability arising out of work performed by any third parties for Tenant in or about the Premises, (d) name the Landlord Entities as additional insureds, and (e) be considered primary and noncontributory, regardless of any insurance carried by Landlord. Any property insurance maintained by Tenant on its furniture, fixtures, equipment and personal property shall include a waiver of subrogation in favor of Landlord. Tenant shall deliver certificates of insurance evidencing the insurance required hereinabove to Landlord simultaneously with the execution of this Lease by Tenant, which certificates shall reflect that the policies shall not be canceled without at least thirty (30) days prior notice to Landlord. If Tenant fails to obtain the necessary coverages, Landlord may do so at Tenant's expense and the same shall constitute additional rental. All insurance certificates should be delivered to Landlord's Risk Management Department, Three Commercial Place, Norfolk, Virginia 23510, simultaneously with the execution of this Lease by Tenant. The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of Tenant hereunder and shall not waive Landlord's right to seek a full recovery from Tenant.

22. Taxes. Tenant agrees to reimburse Landlord, as additional rental, for all real estate taxes and assessments (regular or special) pertaining to the Premises ("Taxes") paid by Landlord with respect to the Premises. Landlord may, but shall not be obligated to, invoice Tenant for the estimated Taxes for each calendar year (but no more frequently than monthly), which amounts shall be adjusted each year based upon anticipated Taxes. If the Premises are part of a larger tract, the Taxes for which Tenant is responsible for reimbursing Landlord pursuant to the terms hereof shall be the share of such total Taxes that Landlord reasonably determines are applicable to the Premises, giving due consideration to the relative value of the Premises and the value of the land and improvements reflected in the applicable tax valuation. Upon request from Tenant, Landlord shall provide Tenant with copies of tax bills for the Taxes. If Landlord has been invoicing Tenant for Taxes and the tax bills indicate that the total of the payments made by Tenant exceeds the amount of Taxes applicable to the Premises, Landlord shall credit any such amount against the Tax reimbursement payment next coming due. In the event the accounting shows that the total of the Tax payments made by Tenant is less than the amount of Tax payment due from Tenant under this Paragraph, the accounting shall be accompanied by an invoice for the additional payment. During the year in which the Lease terminates, Landlord shall have the option to invoice Tenant for Taxes based upon the previous year's Taxes. If this Lease commences on a day other than the first day of a tax year or ends on a day other than the last day of a tax year, the amount of any Taxes payable by Tenant applicable to the year in which the term commences or ends shall be prorated. Tenant

agrees to pay any sum due under this Paragraph within ten (10) days following receipt of the invoice showing the amount due.

23. Joint and Several. If Tenant comprises more than one person, corporation, partnership or other entity, the liability hereunder of all such persons, corporations, partnerships or other entities shall be joint and several.

24. No Warranties; Entire Agreement. TENANT ACCEPTS THE PREMISES "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUIET ENJOYMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES. LANDLORD SHALL NOT BE LIABLE FOR, AND TENANT HEREBY RELEASES LANDLORD FROM ALL CLAIMS FOR ECONOMIC LOSSES AND ALL OTHER DAMAGE OF ANY NATURE WHATSOEVER ACCRUING TO TENANT, INCLUDING, BUT NOT LIMITED TO THE VALUE OF ANY BUILDINGS, STRUCTURES OR IMPROVEMENTS OF TENANT UPON THE PREMISES, RESULTING FROM OR ARISING BY REASON OF ANY DEFICIENCY, INSUFFICIENCY OR FAILURE OF TITLE OF LANDLORD. THIS LEASE CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES HERETO AS TO THE PREMISES, AND NO REPRESENTATIONS, INDUCEMENTS, PROMISES OR AGREEMENTS, ORAL OR OTHERWISE, BETWEEN THE PARTIES, NOT EMBODIED HEREIN, SHALL BE OF ANY FORCE OR EFFECT.

25. Survival. The provisions of Paragraphs 6, 7, 9, 13, 17, 20 and 22 shall survive the expiration or earlier termination of this Lease.

26. Miscellaneous. Knowledge on the part of Landlord or any employee, agent or representative of Landlord of any violation of any of the terms of this Lease by Tenant shall constitute neither negligence nor consent on the part of Landlord, and shall in no event relieve Tenant of any of the responsibilities and obligations assumed by Tenant in this Lease. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative but not restrictive to those given by law. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. Subject to the terms of Paragraph 12 above, this Lease shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of Landlord and Tenant. If any term, covenant or condition of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons, entities or circumstances other than those which or to which used may be held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law. Time is of the essence in this Lease. Neither party shall be bound hereunder until such time as both parties have signed this Lease. This Lease shall be governed by the laws of the State or Commonwealth in which the Premises are located.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, effective the day and year first above written.

Witness (as to Landlord):

S.A. Goings
Signature
Name: S.A. Goings

Witness (as to Landlord):

Kayana Holloway
Signature
Name: Kayana Holloway

Witness (as to Tenant):

Melissa McCain
Signature
Name: MELISSA MCCAIN

Witness (as to Tenant):

Lou F. Camiscioni
Signature
Name: Lou F. Camiscioni ^{II}

SAG 08/10/06/IM#396228v2

LANDLORD:

NORFOLK SOUTHERN RAILWAY COMPANY
a Virginia corporation

By: SG Portnell
Name: SG Portnell
Title: Real Estate Manager

Date of Landlord Signature: 9/24/06

[SEAL]

TENANT:

THE CITY OF FLOWERY BRANCH, GEORGIA
a Georgia government entity

By: Diane C. Hirling
Name: Diane C. Hirling
Title: Mayor

Date of Tenant Signature: 8-28-06



EXHIBIT B

RIDER TO LEASE AGREEMENT DATED September 26, 2006 BY AND BETWEEN NORFOLK SOUTHERN RAILWAY COMPANY, AS LANDLORD, AND THE CITY OF FLOWERY BRANCH, GEORGIA, AS TENANT

This rider is attached to and made a part of the referenced Lease Agreement. In the event of an inconsistency between the terms of this Rider and the terms of the Lease agreement, the terms of this Rider shall control.

1. **Waiver of Application Fee.** The \$500.00 application fee described in Paragraph 3 of this Lease is hereby waived by Landlord.

2. **Notification Required Before Changing Contour of the Premises.** Prior to digging, grading or otherwise changing the contour of the Premises, Tenant shall first obtain Landlord's approval, and shall then notify any "One Call" agencies or underground utility locator services as may be required in the local community.

3. **Beautification.** A portion of the Premises will be used for beautification. Tenant will enter that portion of the Premises for the sole purpose of landscaping and gardening the Premises with grass, flowers and low shrubbery and of maintaining said landscaping. In no event shall any trees be planted or permitted to grow on the Premises. This Lease is a personal privilege to Tenant and shall not be assigned without the written consent of Company, nor shall Tenant, except with such written consent, permit the Premises to be used for any purpose by any other party, firm or corporation.

It is specifically understood and agreed that the Premises are not to be open to the public and that said Premises are not and will not be permitted to become a park. Tenant will not install benches, walkways, recreation equipment or anything other than landscaping material and plants on the Premises.

Grass, flowers and shrubbery planted by Tenant on the Premises shall be maintained, cut and trimmed by Tenant in a safe and orderly manner so as not to obstruct the view of Landlord's employees engaged in railroad operations or of pedestrians or motorists. In no event shall any shrubbery be permitted to exceed 48 inches in height. Tenant agrees that no grass, flowers or shrubbery shall be planted closer than 100 feet on each side of any grade crossing over tracks of Landlord.

In installing, maintaining or removing said landscaping, Tenant will not damage or interfere with the drainage facilities of Landlord. If new or additional drainage is required in connection with the landscaping permitted herein, such drainage will be constructed at the sole expense of Tenant, will be subject to the advance, written approval of Landlord, and will be constructed so as to cause any runoff to flow away from Landlord's railroad facilities.

4. **Public Parking.** The protection afforded Landlord under the provisions of Paragraph 9 of the Lease shall extend to include patrons and invitees of Tenant and Tenant agrees to protect and hold Landlord harmless from loss, injury or damage as set out in said Paragraph 9 accruing from acts, negligence or default of such patrons and invitees or the presence of their property upon the Premises of Landlord including damage to such property from railroad operations. Tenant further agrees that no gasoline or other flammable liquid shall be stored or handled upon the Premises (except fuel in fuel tanks of vehicles parked thereon).

5. **Georgia Usufruct.** Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except as specifically provided in the Lease.

6. **Supersede and Cancel.** This Lease is intended to, and hereby does, supersede and cancel, as of the effective date hereof, the agreement between Southern Railway Company (now Landlord) and Tenant, dated November 16, 1972, last amended by letter dated September 26, 1991, concerning the lease of 2,400 square feet, more or less, at Flowery Branch, Hall County, Georgia. (Custodian No. 46328)

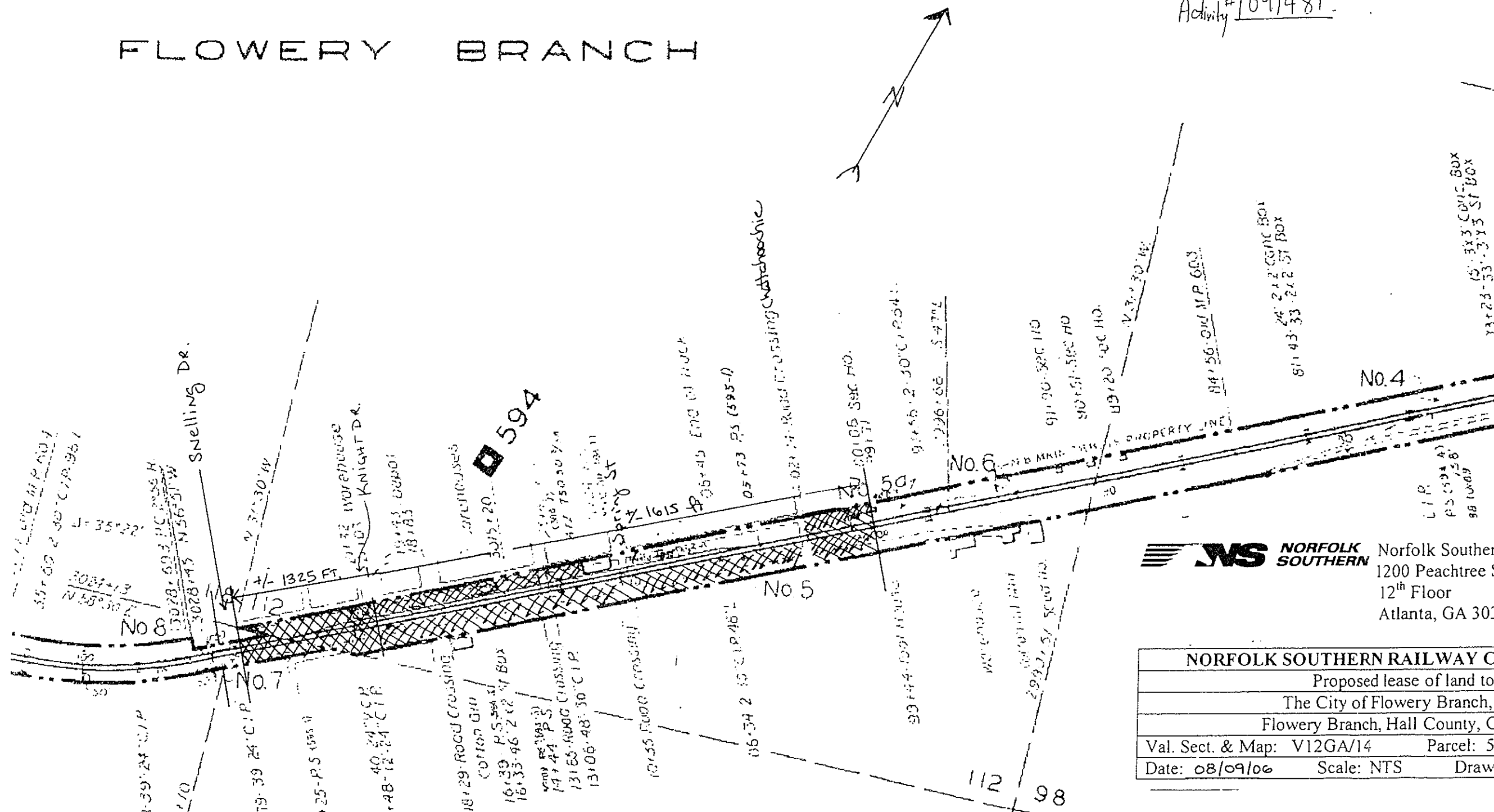
(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

V-12
m-14

Hall County
Flowery Branch, GA

Activity #1091481

FLOWERY BRANCH



Norfolk Southern Corporation
1200 Peachtree Street, NE
12th Floor
Atlanta, GA 30309

NORFOLK SOUTHERN RAILWAY CORPORATION

Proposed lease of land to

The City of Flowery Branch, GA

Flowery Branch, Hall County, Georgia

Val. Sect. & Map: V12GA/14 Parcel: 5

Date: 08/09/06 Scale: NTS Drawn by: AUR



= LEASE OF
APPROX 9.18 ac.

Lease of property to City of Flowery Branch for Beautification & Parking
from Snelling Dr. +/- 1325' S. MP 594 to 1615' N. MP 594
on either side of tracks - 25 ft from center line
excluding lease of property to Hamilton Cabinet



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider July 2024 Per Diem for Mayor Asbridge

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$100 GL 100-1110-511101

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [July 2024 Per Diem for Mayor Asbridge.pdf](#)



**City of Flowery Branch
Mayor & Council Attendance Sheet Per Diem Pay**

Name: Mayor Edward R. Asbridge Month/Year: July 2024

Meeting Date	Description of Meeting
July 25, 2024	HCMPO Meeting at 4pm
July 30, 2024	Chamber Meeting at Breakwater Grill at 9am

My signature certifies that I am eligible to be paid for 2 meeting dates, a maximum of 5 per month, in accordance with the Per Diem Pay as described in Ordinance 477 and at a rate of \$50.00 per meeting.

Total of \$100.00

Signature



City of Flowery Branch
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Total of \$100.00

Signature



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider August 1, 2024 City Council Meeting Minutes

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Unofficial August 1, 2024 City Council Meeting Minutes.pdf](#)



**City of Flowery Branch
City Council Meeting
Thursday, August 1, 2024, 6:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542**



CALL WORK SESSION TO ORDER:

Mayor Asbridge called the council meeting to order at 6:00 p.m.

Present: Mayor Asbridge and Council Members Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, and Chris Mundy.

Also present were City Manager Tonya Parrish, City Clerk Shelia Cooper, Public Works and Utilities Director Bill Whidden, Director of Fun Renee Carden, Deputy Police Chief Todd Templeton, Finance Director Matt Hamby, and City Attorney Frank Hartley.

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Asbridge led the Pledge of Allegiance.

ADOPTION OF AGENDA:

There was a motion made to approve the agenda as presented.

MOTION: Chris Mundy

SECOND: William McDaniel

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

AWARDS & RECOGNITIONS:

Mayor Asbridge presented Council Member Oliver McClellan with the Harold F. Holtz Municipal Training Institute Certificate of Recognition. The Harold F. Holtz Municipal Training Institute is a series of training programs designed to help city officials enhance their knowledge and skills in municipal related matters.



PUBLIC HEARING:

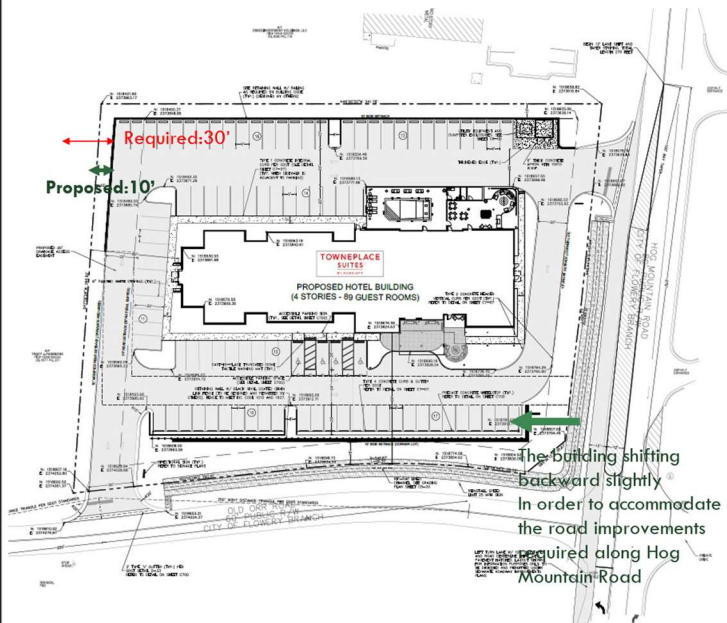
A Public Hearing to Consider a Variance Request to Reduce the Minimum Rear Setback Requirement for 4865 Hog Mountain Road.

City Planner Yu “Anna” Peng presented a consideration of a variance request to reduce the minimum rear setback requirement for 4865 Hog Mountain Road. The Flowery Branch Code requires a rear setback buffer of 30’. To provide the additional road improvements along Hog Mountain Road as requested, the applicant is requesting a 20’ reduction of the buffer in order to make the project fit on the site. The remaining 10’ buffer can be enhanced with additional evergreen plantings and a 6’ high wood privacy fence.

Variance for
setback/Buffer
width

Relief from the zoning
ordinance Table 9.2

“Minimum setback abutting an R-1, R-2, R-3, TND or PUD district and Minimum width of natural buffer abutting the same districts as listed, requires a rear set back buffer of 30’



Mr. Darrell Baker from Randolph Williams, LLC, 100 World Drive, Peachtree City, Georgia 30205, spoke on behalf of the applicant, Towne Place Suites.

Council held a discussion with Mr. Baker regarding the request.

In Favor:

Darrell Baker, 100 World Drive, Peachtree City, Georgia 30205.

Against:

Bob Bedwell, 6074 Trumpet Flower Avenue, Flowery Branch, Georgia 30542.

Jessica Miller, 4660 Holland Dam Road, Flowery Branch, Georgia 30542.

Mayor Asbridge closed the public hearing at 6:47 p.m.

UNFINISHED BUSINESS - WORK SESSION:

Consider the Second Reading of Ordinance Number 720, Variance Requests for 5632 Church Street Regarding Front Porch Length and Garage Placement Requirements.

City Manager Parrish presented variance requests for 5632 Church Street regarding the front porch length and garage placement requirements. The applicant is asking for relief from the zoning ordinance on sections 7.5(b) and 7.5(c). The purpose of section 7.5 (b) is to retain the traditional street view regarding front porch size and the purpose of section 7.5 (c) is to retain the traditional street view regarding garage location.

Council held a discussion with City Manager Parrish regarding the request for 5632 Church Street.

NEW BUSINESS -WORK SESSION:

Consider Resolution Number 24-005 to Amend the Master Fee Schedule for FY2025

Finance Director Hamby presented Resolution 24-005, amendment to the master fee schedule for fiscal year 2025. The master fee schedule was approved during the FY2025 budget approval process. However, with the recent approval of Ordinance 717 allowing micro-brewers and micro-distillers in the CBD and Ordinance 718 amending Chapter 8 of the City of Flowery Branch city code, it was necessary to change the fee schedule once again. The city code is related to alcohol beverages to provide for licensing of micro-breweries and micro-distilleries. It was also noted that the police alcohol licensing fees were not included in the original master fee schedule.

Council held a discussion with Director Hamby regarding Resolution 24-005.

Consider an Agreement with Equity Realty Associates, LLC. to Market 5509 Main Street, Flowery Branch, for Lease.

City Manager Parrish presented an agreement with Equity Realty Associates, LLC to market 5509 Main Street, Flowery Branch for lease.

Council held a discussion with City Manager Parrish regarding the agreement to lease 5509 Main Street.

DEPARTMENT REPORTS:

Department of Fun Report:

Director Carden noted upcoming events.

Finance Report:

Director Hamby advised auditors to be at City Hall the last week of August 2024.

Human Resources Report:

Director Hightower advised we will be starting a financial wellness program for employees and training in CPR, AED and first aid will be available for all employees this month.

Council Report:

Council Member Anglin congratulated Council Member McClellan on his Certificate of Achievement from the Harold F. Holtz Municipal Training Institute.

ADJOURNMENT WORK SESSION:

Mayor Asbridge adjourned the work session at 7:11 p.m.

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

Mayor Asbridge called the voting session to order at 7:11 p.m.

PUBLIC COMMENTS: There were no public comments.

CONSENT AGENDA:

- Consider July 18, 2024 City Council Meeting Minutes

There was a motion made to approve the consent agenda as presented.

MOTION: Chris Mundy
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

UNFINISHED BUSINESS - VOTING SESSION:

Consider the Second Reading of Ordinance Number 720, Variance Requests for 5632 Church Street Regarding Front Porch Length and Garage Placement Requirements.

City Clerk Cooper read the caption for Ordinance 720, variance requests for 5632 Church Street regarding front porch length and garage placement requirements.

There was a motion made to table Ordinance 720 until August 15, 2024 City Council Meeting.

MOTION: Joe Anglin
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

NEW BUSINESS - VOTING SESSION:

Consider Resolution Number 24-005 to Amend the Master Fee Schedule for FY2025

There was a motion made to approve Resolution 24-005 to amend the Master Fee Schedule for FY2025.

MOTION: Oliver McClellan
SECOND: Chris Mundy
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consider an Agreement with Equity Realty Associates, LLC. to Market 5509 Main Street, Flowery Branch, for Lease.

There was a motion made to approve an agreement with Equity Realty, LLC.

MOTION: Joe Anglin
SECOND: Oliver McClellan

Council Member William McDaniel abstained from the vote.

AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

EXECUTIVE SESSION:

There was a motion made to enter executive session for matters related to the acquisition/disposition of real estate, for matters related to certain personnel issues, and for matters related to pending or potential litigation at 7:14 p.m.

MOTION: Chris Mundy
SECOND: William McDaniel
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

There was a motion made to exit executive session at 9:16 p.m.

MOTION: Chris Mundy
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

ADJOURNMENT:

There was a motion made to adjourn the meeting at 9:16 p.m.

MOTION: Oliver McClellan

SECOND: William McDaniel

AYES: Joe Anglin, Oliver McClellan, William McDaniel, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

Edward R. Asbridge, Mayor

Date

Shelia Cooper, City Clerk



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider the Second Reading of Ordinance Number 720, Variance Requests for 5632 Church Street Regarding Front Porch Length and Garage Placement Requirements.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

The public hearing for the variance requests submitted as ordinance number 720, for 5632 Church Street, was held on June 20, 2024. The first read was approved with modified conditions at the July 18, 2024 meeting, and the second is on August 1, 2024. Staff recommends approval of both variance requests. Restrictions caused by the lot size and shape prohibit two of the Traditional Neighborhood District (TND) requirements (front porch size, garage placement) from being met. This item was tabled on August 1, 2024 until August 15, 2024.

FACTS AND ISSUES:

The lot in question is small (6,754) and due to its shape, it is difficult to meet the Traditional Neighborhood District (TND) requirements. Therefore, the applicant has made two variance requests for City Council consideration.

There are two variance request for this project:

1. Allow the garage to be located in front rather than the required side/rear.
2. Allow for a smaller front porch (13'x6" rather than the required 16'x6).

Staff recommends approval of both requests.

OPTIONS:

Approve, modify, table, deny

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Approve as submitted.

SAMPLE MOTION:

I make a motion to approve the second read of ordinance number 720.

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Flowery Branch Variance 4_23_24.pdf](#)
- [Flowery Branch Variance 4_23_24_01.pdf](#)
- [Ordinance 720 - 5632 Church Street.pdf](#)



VARIANCE APPLICATION

Address of Request:

5632 Church Street

Type of Variance Requested

Complete requirements for variances can be found in the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37;

Please verify all the requirements of the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37, section 37.5 are being met.

Explain below:

- variance for size of lot will only take front side entry, will not back entry garage.
- variance for front porch smaller than required because of size of lot.

Applicant: Mark Miller Properties, Inc.

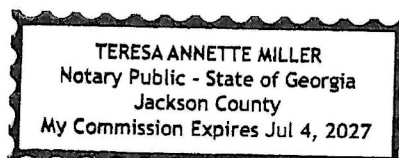
Address: P.O. Box 176
Dacula, Ga. 30019

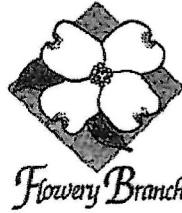
E-mail address: markmillerpropertiesinc@gmail.com

Phone number: 678-409-1158

Signature: *Mark Miller*

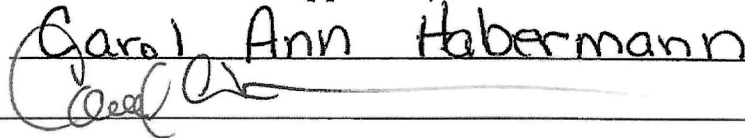
Notary Seal:





Property owner information (if different than the applicant)

Property owner (please print): Carol Ann Habermann

Signature of property owner: 

Notary Seal:




October 20, 2025

Please provide the following at time of submittal:

- ✓ Legal description – one hard copy and on a flash drive
- ✓ Current survey of property – one hard copy and on a flash drive
- ✓ Site plan – one hard copy and on a flash drive
- ✓ Detailed description of request
- ✓ Conflict of interest disclosure (attached)
- ✓ Disclosure of campaign contributions (attached)



Conflict of Interest Disclosure

Identify all members of the City Council of the City of Flowery Branch and Employees of the City of Flowery Branch Community Development Department who

Have a property interest in the real property affected by this request

N/A

Have a financial interest (direct ownership interest) of the total assets or capital stock of a business entity where such ownership interest is more than 10% in any business entity which has a property interest in the real property affected by this request

N/A

Have a member of the family (spouse, mother, father, brother, sister, son or daughter) having a property financial interest as herein defined, in the real property affected by this request

N/A

Disclosure of Campaign Contributions

List below the names of local government officials of the City of Flowery Branch to whom campaign contributions were made, within two (2) years immediately preceding the filing of this application, which campaign contributions total \$250.00 or more or to whom gifts were made having a total value of \$250.00 or more.

Elected Officials Name

Amount of Description of Gift

N/A

N/A



AD Plan 62137V
Architectural Designs.com

Flip



Plot Book 060201000001, dated
SUBMITTED FEB 13 2017 01:12:00 PM
TYPE PLAN BK 00074 Pg 144
Clerk of Superior Court-Georgia
Clerk of Superior Court-Georgia

HALL COUNTY
CITY OF FLOWERY BRANCH
LAND LOT 112 & 118
8th DISTRICT

FINAL PLAT APPROVAL

THE CITY OF FLOWERY BRANCH, GEORGIA CERTIFIES THAT THIS PLAT COMPLES WITH THE CITY OF FLOWERY BRANCH ZONING AND ORDINANCE, CONDITIONS OF ZONING AND THE SUBDIVISION AND LAND DEVELOPMENT REQUIREMENTS OF THE CITY OF FLOWERY BRANCH, AND THAT THIS PLAT IS HEREBY APPROVED AND RELEASED FOR RECORDING PURPOSES.

Richard P. Ott 2/3/2017
DATE
CITY OF FLOWERY BRANCH

Surveyor's Certification

The undersigned hereby certifies that this plat is true and correct and was prepared from an actual survey of the property by me or under my supervision and that all monuments shown thereon actually exist.

The field data upon which this plat is based has a closure precision of one foot in 23,377 feet, and an angular error of 1" per angle point, and was adjusted using the Compass Rule.

This plat has been calculated for closure and is found to be accurate within one foot in 92,924 feet.

The term "Certification" as used in Rule 180-6-.08(2) and (3) and relating to professional engineering and land surveying services, as defined in O.C.G.A. 43-15-2(6) and (11), shall mean a signed statement based upon facts and knowledge known to the registrant and is not a guarantee or warranty, either expressed or implied.

This survey was prepared in conformity with the Technical Standards for Property Surveys in Georgia as set forth in Chapter 180-7 of the Rules of the Georgia Board of Registration for Professional Engineers and Land Surveyors and as set forth in the Georgia Plat Act O.C.G.A. 15-6-67

S. Clark Tompkins
S. CLARK TOMPKINS, PROFESSIONAL SURVEYOR
REGISTRATION NO. 3237

LEGEND

- SUBJECT PROPERTY LINE
- ADJACENT PROPERTY LINE
- OVERHEAD POWER LINE (HVL)
- FENCE LINE
- POWER POLE (PP)
- PROPERTY CORNER FOUND
- PROPERTY CORNER SET
- NOTE NUMBER
- POST OF BEGINNING

POB

Party Name
Sponsor Clark Tompkins
Sponsor Clark Tompkins

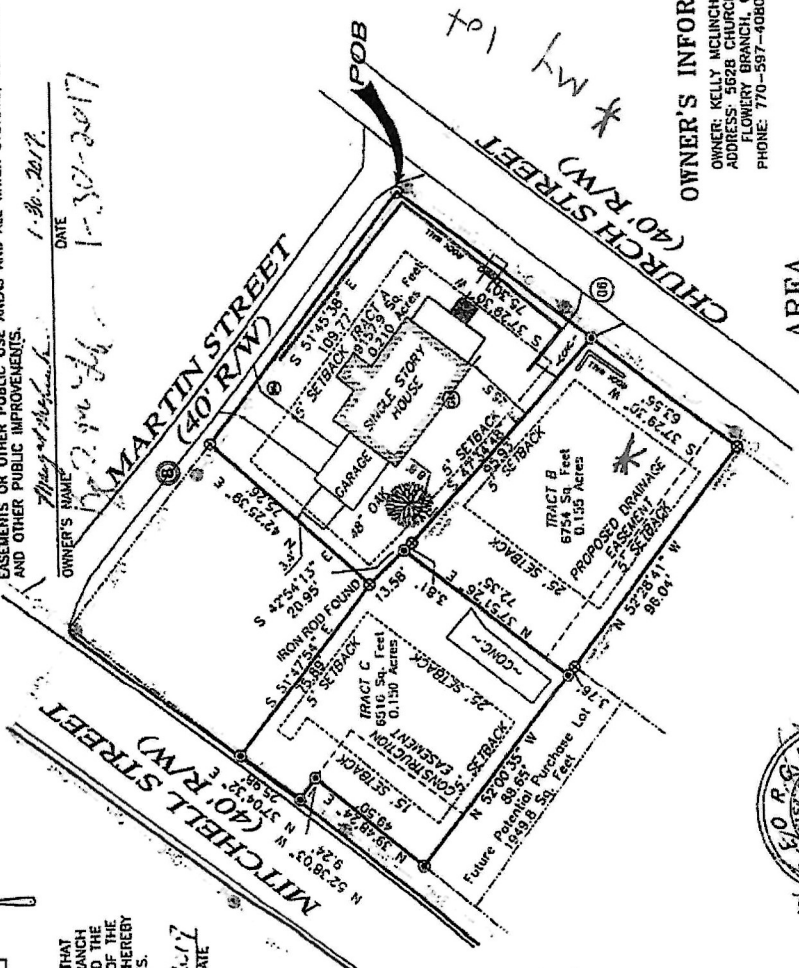
Party Type
RETURN TO
PREPARED BY

Participant ID
0601019321

OWNER'S CERTIFICATION

STATE OF GEORGIA
COUNTY OF HALL
THE UNDERSIGNED CERTIFIES THAT HE OR SHE IS THE OWNER OF THE LAND SHOWN ON THIS PLAT AND THE PUBLIC AND PRIVATE IMPROVEMENTS THEREON AND ASSOCIATED THEREWITH MEET ALL APPLICABLE REQUIREMENTS AND STANDARDS OF THE CITY OF FLOWERY BRANCH AND THE ALLOWMENT TO BE THE OWNER FURTHER ACKNOWLEDGES THIS PLAT AND THE ALLOWMENT TO BE HIS FREE ACT AND DEED, AND DEDICATES TO THE CITY OF FLOWERY BRANCH, FOREVER ALL AREAS SHOWN OR INDICATED ON THIS PLAT AS PUBLIC STREETS, EASEMENTS OR OTHER PUBLIC USE AREAS AND ALL WATER SYSTEMS, SEWERAGE AND OTHER PUBLIC IMPROVEMENTS.

Richard P. Ott 1-30-2017
OWNER'S NAME
DATE



OWNER'S INFORMATION:

OWNER: KELLY MCCLINCHA
ADDRESS: 5628 CHURCH STREET,
FLOWERY BRANCH, GA 30542
PHONE: 770-597-4080

AREA
TRACT A 9157.9 SQ. FT. 0.210 ACRES
TRACT B 6754 SQ. FT. 0.155 ACRES
TRACT C 6516 SQ. FT. 0.150 ACRES



NOTES

- THE FIELD DATA, COLLECTED 10/27/2016, A TOPCON ROBOTIC TOTAL STATION WAS USED TO OBTAIN LINEAR AND ANGULAR MEASUREMENTS.
- THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND HAS BEEN FOUND TO BE ACCURATE WITHIN ONE FOOT IN 171,156 FEET.
- THE UTILITIES HAVE BEEN LOCATED FROM ABOVE GROUND EVIDENCE. THERE IS NO VISIBLE EVIDENCE ABOVE GROUND OF A BURIAL SITE OR RESEARCH ON THE MATTER AND NO ARCHAEOLOGICAL RESEARCH ANY SUCH ITEMS.
- THIS PLAT TAKES EXCEPTION TO ANY SUCH ITEMS, RIGHTS OF WAY OR RESTRICTIONS THAT ARE NOT OF RECORD OR THAT WOULD HAVE BEEN DISCOVERED BY AN ACCURATE AND CURRENT TITLE SEARCH. THEREFORE THE SURVEYOR TAKES EXCEPTION TO ANY SUCH ITEMS.
- THE PURPOSE OF THIS SURVEY IS TO RE-ALIGN THE PROPERTY LINES FOR TRACTS A, B AND C IN ORDER TO MOVE THE PROPERTY LINE FURTHER AWAY FROM THE 48 INCH OAK TREE. IT IS ALSO THE PURPOSE OF THIS SURVEY TO ILLUSTRATE SOME OF THE PROPERTY THAT HAS BEEN TRANSFERRED AWAY FROM EDWIN T. ELLIOTT FOR RIGHT OF WAY ACQUISITION ALONG MITCHELL STREET.
- CONCRETE CHANGED AS OF 1-28-17 TO SHOW THE FUTURE DRIVEWAY ACCESS AND THE AGREEMENT BETWEEN KELLY MCCLINCHA AND THE CITY OF FLOWERY BRANCH ILLUSTRATING FUTURE CHANGES IN THE CONCRETE FOR THE DRIVEWAY.

REFERENCES

- A SURVEY PLAT BY BY PATTON-BOYER, INC. LAND SURVEYORS DATED JULY 7TH 2008 AND PROVIDED BY CLIENT
- A RIGHT OF WAY MAP BY POND ENGINEERING, INC. DATED JUNE 20TH 2014 AND LISTED SPECIFICALLY ON SHEET 4 OF 7 FOR THE CITY OF FLOWERY BRANCH AND THE DEPARTMENT OF TRANSPORTATION.

DATE	REVISION	NO.
1/27/17	REVISED CONCRETE NOTE	1 1
AUTHORIZED BY: KELLY MCCLINCHA		
PROJECT 5731 MITCHELL STREET, 5628 MARTIN STREET & 5632 CHURCH STREET, FLOWERY BRANCH, GA 30542		
DRAWING TITLE A RESIDENTIAL LAND DIVISION SURVEY FOR: KELLY MCCLINCHA, ET AL.		
JOB NO. 16-0100	DWG NO.	
16-0100.dwg		
DRN BY: C. TOMPKINS	SCALE: 1"=40'	
CHKD BY: C. TOMPKINS		
DATE: NOVEMBER 11TH 2016	SHEET 1 OF 1	

Tompkins
SURVEYING & MAPPING
102 West Main Street, Suite 306
Columbus, GA 31902
PHONE: 866-979-1845 FAX: 866-979-1988
LAND SURVEYING | 3D MODELING | GIS CONSULTING
LASER SCANNING | & SUPPORT
www.TompkinsSurveying.com

Copyright 2016 Tompkins Surveying & Mapping, LLC
All Rights Reserved. This drawing is the property of Tompkins Surveying & Mapping and is intended for the client named and any copy of this redrawing without a written signature across the seal is not valid.

A TRIMBLE S6 TOTAL STATION WAS USED TO OBTAIN THE LINEAR AND ANGULAR MEASUREMENTS USED IN THE PREPARATION OF THIS PLAT.

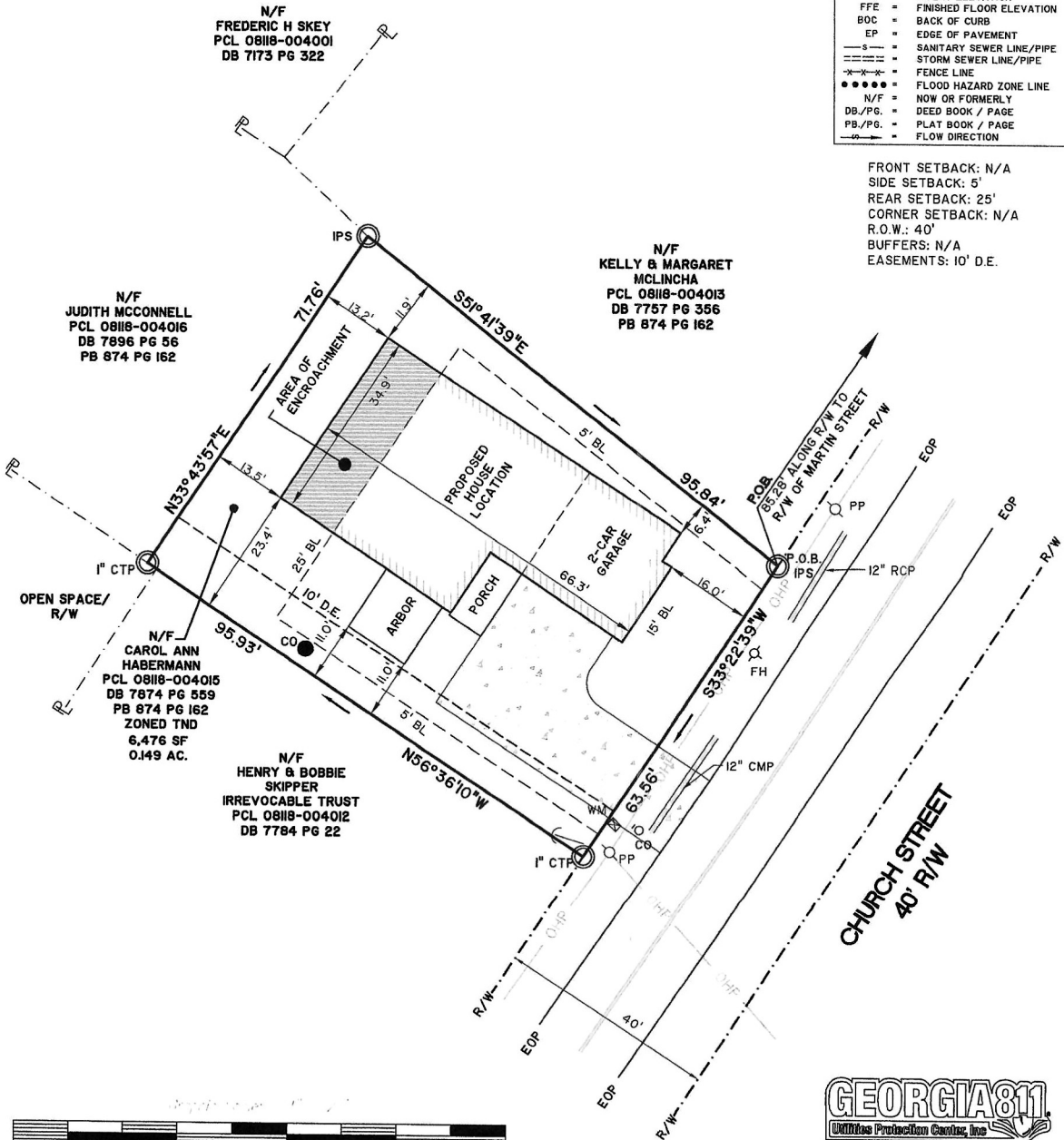
THE FIELD DATA UPON WHICH THIS MAP OR PLAT IS BASED HAS A CLOSURE PRECISION OF ONE FOOT IN 92,507 FEET AND AN ANGULAR ERROR OF 02" PER POINT, AND WAS ADJUSTED USING THE LEAST SQUARES RULE.

THIS MAP OR PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 167,178 FEET.

OFFICIAL FLOOD HAZARD MAP COMMUNITY NUMBER 13137C0291H DATED 12/01/2022 SHOWS NO PORTION OF THIS PROPERTY TO BE IN AN AREA HAVING SPECIAL FLOOD HAZARDS (ZONE AE).

LEGEND

IPS	=	1/2" REBAR PIN SET
RBF	=	REBAR PIN FOUND
OTP	=	OPEN TOP PIPE
CTP	=	CRIMP TOP PIPE
LLL	=	LAND LOT LINE
P	=	PROPERTY LINE
CL	=	CENTERLINE
B	=	BUILDING LINE
R/W	=	RIGHT-OF-WAY
SSE	=	SANITARY SEWER EASEMENT
DE	=	DRAINAGE EASEMENT
LL	=	LAND LOT
MH	=	MANHOLE
CB	=	CATCH BASIN
JB	=	JUNCTION BOX
HW	=	HEADWALL
DI	=	DROP INLET
FH	=	FIRE HYDRANT
IE	=	INVERT ELEVATION
FFE	=	FINISHED FLOOR ELEVATION
BOC	=	BACK OF CURB
EP	=	EDGE OF PAVEMENT
S	=	SANITARY SEWER LINE/PIPE
SS	=	STORM SEWER LINE/PIPE
F	=	FENCE LINE
FHZ	=	FLOOD HAZARD ZONE LINE
N/F	=	NOW OR FORMERLY
DB/Pg.	=	DEED BOOK / PAGE
PB/Pg.	=	PLAT BOOK / PAGE
→	=	FLOW DIRECTION



FRONT SETBACK: N/A
SIDE SETBACK: 5'
REAR SETBACK: 25'
CORNER SETBACK: N/A
R.O.W.: 40'
BUFFERS: N/A
EASEMENTS: 10' D.E.



THOMAS & HUTTON

5074 BRISTOL INDUSTRIAL WAY
SUITE A
BUFORD, GEORGIA 30518
(770) 271-2868

SHEET 1 OF 1

GEORGIA
REGISTERED
NO. 3121
LAND SURVEYOR
CHRISTOPHER C. BALDWIN
L.S.F. #000145

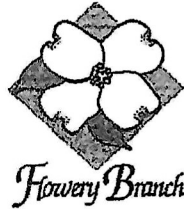
MARK MILLER
PROPERTIES
P.O. BOX 176
DACULA, GEORGIA

TASK:
HOUSE LOCATION PLAN

PROJECT NAME:
5632 CHURCH STREET
PIN# 08118-004015

ADDRESS:
5632 CHURCH STREET
8TH DISTRICT LAND LOT 112
CITY OF FLOWERY BRANCH
HALL COUNTY, GEORGIA

No.	REVISION	DATE	SCALE	1" = 20'
1.			DATE	04/10/24
2.			DESIGN	
3.			DRAWN	MJH
4.			CHECKED	CCB
5.			PROJECT No.	31917.0000



VARIANCE APPLICATION

Address of Request:

5632 Church Street

Type of Variance Requested

Complete requirements for variances can be found in the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37;

Please verify all the requirements of the Flowery Branch Code of Ordinances; Appendix C, "Zoning Ordinance", Article 37, section 37.5 are being met.

Explain below:

- variance for size of lot will only take front side entry, will not ^{take} back entry garage due to size of lot, encroachments, and easements. ^{and Building Lines}
- variance for front porch smaller than required because of size of lot and the house plan that is needed. If we make porch bigger it will go ^{past} the beginning of garage opening.

Applicant: Mark Miller Properties, Inc.

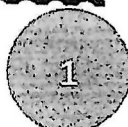
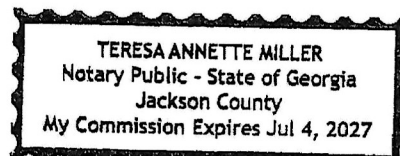
Address: P.O. Box 176
Dacula, ga. 30019

E-mail address: markmillerpropertiesinc@gmail.com

Phone number: 678-409-1158

Signature: *Mark Miller*

Notary Seal:



Public Hearing Published 05/04/2024
Public Hearing 06/20/2024

First Reading 07/18/2024
Second Reading 08/15/2024

ORDINANCE 720

5632 Church Street Variance Request

AN ORDINANCE GRANTING VARIANCES FROM THE REQUIREMENTS OF ARTICLE 7, SECTION 7.5.(b) and (c) OF THE FLOWERY BRANCH ZONING ORDINANCE; 5632 CHURCH STREET, TAX PARCEL IDENTIFICATION NO. 08118 004015, OWNED BY HABERMANN, CAROL ANN, AS SHOWN ON EXHIBIT "A", DESCRIBED ON EXHIBIT "B", AND SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "C"; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND FOR ALL OTHER LAWFUL PURPOSES.

WHEREAS, HABERMANN, CAROL ANN has submitted a written and signed application to the City of Flowery Branch, Georgia requesting a specific variance for property located at 5632 Church Street; and

WHEREAS, a survey and complete description of the property subject to the requested variance is included in the application; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia held a public hearing on June 20, 2024, to consider the application, which was duly noticed as prescribed by law and published in the Gainesville Times, as shall be set forth in the minutes of said meeting; and

WHEREAS, the City Council of the City of Flowery Branch, Georgia has considered the subject variance application of HABERMANN, CAROL ANN in conjunction with the standards set forth in Article 37, Section 37.5 of the Zoning Ordinance.

NOW THEREFORE, THE COUNCIL OF THE CITY OF FLOWERY BRANCH HEREBY ORDAINS AS FOLLOWS:

SECTION 1. FINDINGS:

The City Council finds that the proposed variance from the City of Flowery Branch Zoning Ordinance Article 7, Section 7.5 (b) and (c) is consistent with the adopted standards for governing the exercise of the zoning power consistent with O.C.G.A. § 36-66-5 and requirements of Article 37, Section 37.5 of the City of Flowery Branch Zoning Ordinance as identified below.

Sec. 37.5. Criteria for Granting Variances.

Any applicant requesting consideration of a variance to any provision of the zoning ordinance shall provide a written justification that one or more of the following condition(s) exist. The City Council shall not approve a variance application unless it shall have adopted findings that one or more of the following conditions exist:

- (a) There are extraordinary and exceptional conditions or practical difficulties pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

Public Hearing Published 05/04/2024
Public Hearing 06/20/2024

First Reading 07/18/2024
Second Reading 08/15/2024

- (b) A literal interpretation of the provisions of this ordinance would effectively deprive the applicant of rights commonly enjoyed by other properties of the district in which the property is located;
- (c) Granting the variance requested will not confer upon the property of the applicant any special privileges that are denied to other properties of the district in which the applicant's property is located;
- (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;
- (e) The special circumstances are not the result of the actions of the applicant;
- (f) The variances requested are the minimum variances that will make possible the proposed use of the land, building, or structure in the use district proposed; and
- (g) The variance shall not permit a use of land, buildings or structures, which is not permitted by right in the zoning district or overlay district involved.

SECTION 2. LEGAL DESCRIPTION, VARIANCES GRANTED AND CONDITIONS IMPOSED:

The properties as shown in attached Exhibit "A" and as legally described in Exhibit "B" shall be granted the following variance from the requirements set forth in the Flowery Branch Zoning Ordinance Article 7, Additional Development Requirements 7.5 (b)

Front Porches. Any new, detached dwelling shall have a front porch no less than sixteen feet in width as measured along the street frontage and no less than six feet in depth measured from the front property line to the interior of the lot.

Ordinance Article 7, Additional Development Requirements 7.5 (c)

On-site Parking. A two-car garage or carport located in the rear or side yard is required.

Conditions set forth in Exhibit "C" are imposed on said property. Said Exhibits are incorporated by reference as if fully set forth herein.

SECTION 3. SEVERABILITY.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Public Hearing Published 05/04/2024
Public Hearing 06/20/2024

First Reading 07/18/2024
Second Reading 08/15/2024

SECTION 4. EFFECTIVE DATE.

The effective date of this Ordinance shall be upon adoption by the City Council of the City of Flowery Branch, Georgia.

SECTION 5. REPEALER.

All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

Adopted this 15th day of August 2024.

Edward R. Asbridge, Mayor

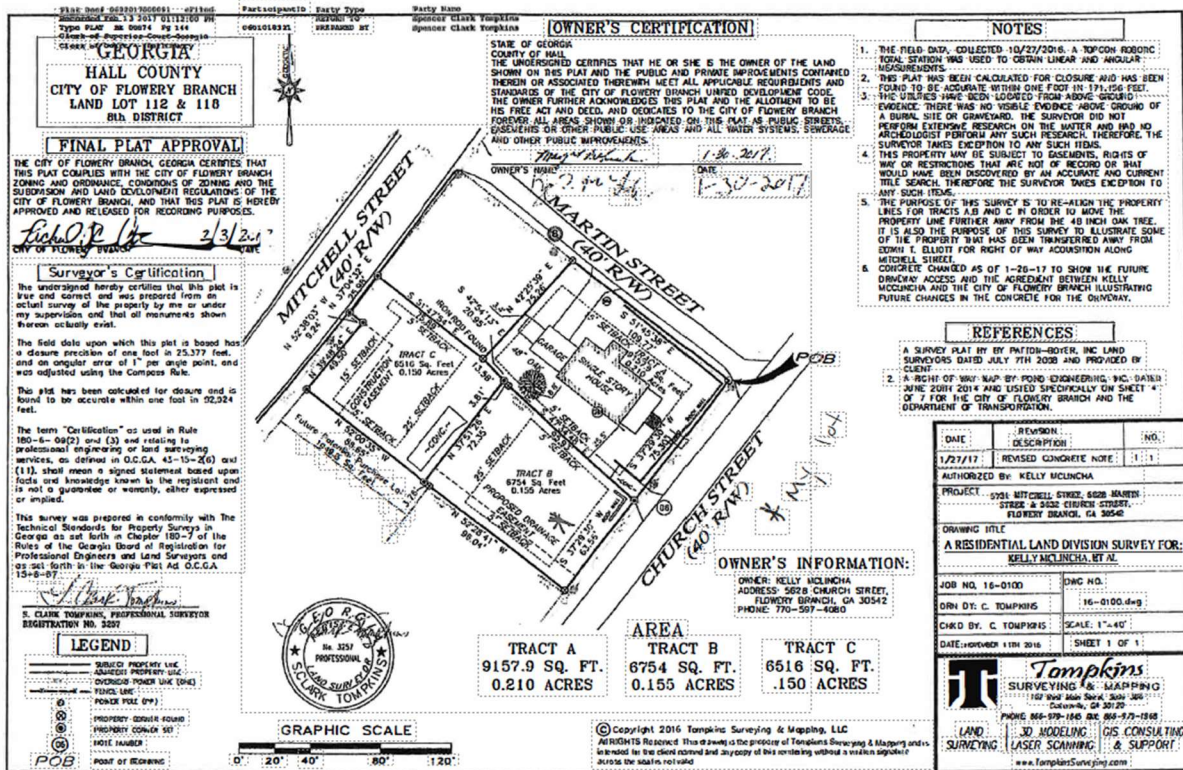
ATTEST:

Shelia R. Cooper, City Clerk

APPROVED AS TO FORM:

Ted C. Baggett, City Attorney

Exhibit "A"



Public Hearing Published 05/04/2024
Public Hearing 06/20/2024

First Reading 07/18/2024
Second Reading 08/15/2024

Exhibit "B"

LEGAL DESCRIPTION

VARIANCE APPLICATION

All that tract or parcel of land lying and being in Land Lot 112 AND 118 of the 8th District, Flowery Branch, Hall County, Georgia and being more particularly described as follows:

To find the TRUE POINT OF BEGINNING, begin at the intersection of the southwesterly right-of way of Martin Street (40' R/W) and the northwesterly right-of-way of Church Street (40' R/W); THENCE

along said right-of-way of Martin Street South 33 degrees 22 minutes 39 seconds West a distance of 85.28 feet to an iron pin set, said point being the TRUE POINT OF BEGINNING;

THENCE South 33 degrees 22 minutes 39 seconds West a distance of 63.56 feet to a point;

THENCE North 56 degrees 36 minutes 10 seconds West a distance of 95.93 feet to a point;

THENCE North 33 degrees 43 minutes 57 seconds East a distance of 71.76 feet to a point;

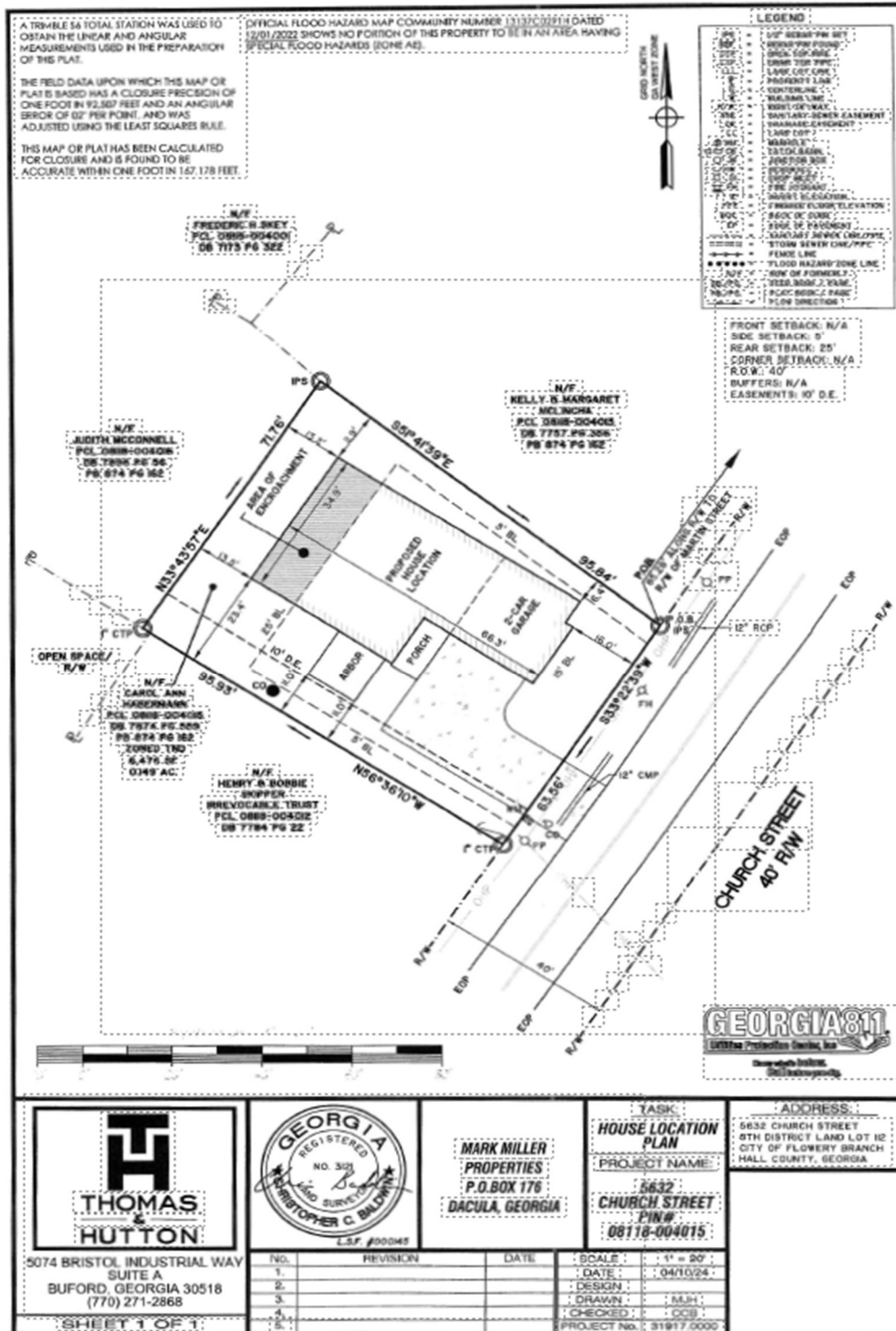
THENCE South 51 degrees 41 minutes 39 seconds East a distance of 95.84 feet , said point being THE TRUE POINT OF BEGINNING

The above-described tract contains an area of 0.149 acres (6,476 S.F.)

Exhibit "C"

Conditions of Zoning

1. The project shall generally adhere to the site plan as shown below:



Public Hearing Published 05/04/2024
Public Hearing 06/20/2024

First Reading 07/18/2024
Second Reading 08/15/2024

2. Front porch shall be no smaller than thirteen feet and six inches (13'6") in width and six feet and six inches in depth (6'6")
3. Sewer shall be provided to the project by the City of Flowery Branch.
4. Water shall be supplied by the City of Flowery Branch.
5. Elevation design requirements:
 - a. The side of the garage facing the street shall consist of brick/stone from the ground at least up to where the gable portion of the roof begins and approved by staff.
 - b. The garage will have a garage door(s). Garage door frame shall be encased in brick/stone. Garage door(s) should be carriage style, or an alternative style, approved by staff, that will keep with the intent of the TND using recently built TND front facing detached garages as a gauge.
 - c. The house shall have a brick/stone feature on all sides and approved by staff.
 - d. Porch will have columns holding up the shed or gabled roof above it. These columns should be decorative, have a brick/stone base measuring a minimum height of 36 inches from the floor of the porch and approved by staff.



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Awarding Contract to Intercontinental Commercial Services, Inc. for Janitorial Services for the City of Flowery Branch.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

This is a new initiative as our previous contract did not encompass all five locations or services requested. The addresses are as follows:

- City Hall: 5410 Pine Street, Flowery Branch, GA 30542
- Police Department: 5270 Railroad Avenue, Flowery Branch, GA 30542
- Planning/Fun: 5512 Main Street, Flowery Branch, GA 30542
- Train Depot: 5302 Railroad Avenue, Flowery Branch, GA 30542
- WWTP Office: 5572 Atlanta Hwy, Flowery Branch, GA 30542

FACTS AND ISSUES:

The terms of this contract shall align with the City's fiscal year from July 1st to June 30th and shall be from commencement of services until all services are rendered. The contract shall be renewed for four (4) one-year periods unless the city elects not to renew the agreement or either party utilizes the termination provisions. The contract price shall remain firm throughout each renewal.

OPTIONS:

1. Award the Contract
2. Do not Award the Contract.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$38,400 - various departmental budgets

RECOMMENDATION:

Award Contract to Intercontinental Commercial Services, Inc. for Janitorial Services for the City of Flowery Branch

SAMPLE MOTION:

I move we award Bid 24-005 Janitorial Services to Intercontinental Commercial Services Inc. for the amount of \$38,400 and to authorize the Mayor to sign a contract substantially similar to Janitorial Services Contract 24-005 on behalf of the City once the exhibits contained therein have been obtained from the awardee to the satisfaction of the City Manager and City Attorney.

COLLABORATING DEPARTMENT:

DEPARTMENT: Finance

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary- ICS, Inc. Contract.pdf](#)
- [24-005 NOIA \(Notice of Intent to Award\).pdf](#)
- [24-005 ICS Contract for Janitorial Services](#)

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Awarding Contract to Intercontinental Commercial Services, Inc. for Janitorial Services for the City of Flowery Branch.

DATE: August 9, 2024

(X) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL- \$38,400.00

() OTHER

CAPITAL-

COUNCIL ACTION REQUESTED ON: August 15, 2024

PURPOSE: To award a contract for Bid 24-005 Janitorial Services for the City of Flowery Branch to a responsible, responsive bidder

HISTORY: This is a new initiative as our previous contract did not encompass all five locations or services requested. The addresses are as follows:

- City Hall: 5410 Pine Street, Flowery Branch, GA 30542
- Police Department: 5270 Railroad Avenue, Flowery Branch, GA 30542
- Planning/Fun: 5512 Main Street, Flowery Branch, GA 30542
- Train Depot: 5302 Railroad Avenue, Flowery Branch, GA 30542
- WWTP Office: 5572 Atlanta Hwy, Flowery Branch, GA 30542

FACTS AND ISSUES: The terms of this contract shall align with the City's fiscal year from July 1st to June 30th and shall be from commencement of services until all services are rendered. The contract shall be renewed for four (4) one-year periods unless the city elects not to renew the agreement or either party utilizes the termination provisions. The contract price shall remain firm throughout each renewal.

OPTIONS: 1. Award the Contract
2. Do not Award the Contract.

RECOMMENDED SAMPLE MOTION: I move we award Bid 24-005 Janitorial Services to Intercontinental Commercial Services Inc. for the amount of \$38,400 and to authorize the Mayor to sign a contract substantially similar to Janitorial Services Contract 24-005 on behalf of the City once the exhibits contained therein have been obtained from the awardee to the satisfaction of the City Manager and City Attorney.

DEPARTMENT: Finance Department

Prepared by: Nancy Rodriguez



NOTICE OF INTENT TO AWARD

Bid/RFP No: 24-005

Date Opened: June 6, 2024

Title: Janitorial Services for the City of Flowery Branch

NOIA Posting Date: July 18, 2024

This form shall serve as notice of the City's intent to award a contract. The successful supplier listed here was determined to be the most advantageous for the City. Any supplier who wishes to protest this Notice of Intent must file the protest within ten (10) calendar days following the date of this notice or that right is forfeited. If the tenth day falls on a weekend or holiday, the last day of the protest period is the first working day following the tenth day. The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest is received and accepted by the Procurement office.

No recommendation is official until ten (10) days have passed since the NOIA has been posted **AND** it has been approved by City Council, if applicable. **The successful supplier listed is instructed not to proceed until a contract, Purchase Order or other official notice is given by the contracting officer.**

AWARD RECOMMENDATION TO APPARENT SUCCESSFUL SUPPLIER:

Company Name: Intercontinental Commercial Services, Inc.

City, State: Lawrenceville, GA

Award Amount: \$38,400.00

UNSUCCESSFUL BIDDERS:

REASON:

1)	All Bright Janitorial Service, Inc	Not Highest Scoring
2)	ATL Prime Services Corp	Not Highest Scoring
3)	Bear Cleaning and Sanitation, LLC	Not Highest Scoring
4)	Contact Group Solutions	Not Highest Scoring
5)	Elite Professional Spaces, LLC	Not Highest Scoring
6)	Premiere Building Services	Not Highest Scoring
7)	Take A Break Cleaning Services	Not Highest Scoring
8)	Turnkey Facility Maintenance	Not Highest Scoring



CONTRACT AGREEMENT

24-005 JANITORIAL SERVICES FOR THE CITY OF FLOWERY BRANCH

This Agreement made and entered into this _____ day of _____, in the year 2024, by and between The City of Flowery Branch, Georgia, having its principal place of business at 5410 Pine St, Flowery Branch, Georgia and **INTERCONTINENTAL COMMERCIAL SERVICES, INC.** ("Contractor") located at 912 Hurricane Shoals Road, NE, Lawrenceville, GA 30043.

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

WHEREAS, the City of Flowery Branch has caused **BID 24-005** to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for by them in accordance with this proposal. Selected ("Contractor") is required to provide the services as called for in the specifications; and

WHEREAS, the Contractor submitted a response to the **BID 24-005**; and

WHEREAS, the Contractor's submittal was deemed by the City of Flowery Branch to be the most responsible and responsive per the scope of work; and

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

1.0 Scope of Work

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

- EXHIBIT A - SCOPE OF SERVICE**
- EXHIBIT B - COST PROPOSAL**
- EXHIBIT C - W-9**
- EXHIBIT D - CERTIFICATE OF INSURANCE**
- EXHIBIT E - E-VERIFY AFFIDAVIT**
- EXHIBIT F - CONTACT INFORMATION**
- EXHIBIT G - ADDENDUMS**
- EXHIBIT H - CONTRACTOR'S OATH**

2.0 Compensation

2.1 Pricing. The Contractor will be paid for the services sold pursuant to the Contract in accordance with the BID and final pricing documents as incorporated into the terms of the Contract. All prices are firm and fixed and are not subject to variation. The prices quoted and listed on the attached Cost Proposal, a copy of which is attached hereto as **“Exhibit B” (Cost Proposal)** and incorporated herein, shall be firm throughout the term of this Contract. The maximum costs owed by the City, unless otherwise agreed to in writing, shall not exceed **\$38,400.00**.

2.2 Billings. If applicable, the Contractor shall submit, on a regular basis, an invoice for services supplied to the City under the Contract at the billing address specified in the Purchase Instrument or Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The City shall pay all approved invoices in arrears and in accordance with applicable provisions of City law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the City for any services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract.

Invoices are to be emailed to APInvoices@flowerybranchga.org and must reference the PO# (see top of contract). A W-9 Request for Taxpayer Identification Number and Certification Form must be submitted **"Exhibit C" (W-9)**.

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

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

3.0 Duration of Contract

Contract Term. Pursuant to O.C.G.A. Section 36-60-13, this Contract shall not be deemed to create a debt of the City for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal. The terms of this contract shall align with the City's fiscal year from July 1 to June 30 and shall be from commencement of services until all services are rendered. All invoices postmarked by the City during said term shall be filed at the contract price.

This contract shall be renewed for four (4) one-year periods unless the city elects not to renew the agreement or either party utilizes the termination provisions included herein. The contract price shall remain firm throughout each renewal.

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

4.0 Independent Contractor

- 4.1** The Contractor shall be an independent Contractor. The Contractor is not an employee, agent or representative of the City of Flowery Branch. The successful Contractor shall obtain and maintain, at the Contractor's expense, all permits, license or approvals that may be necessary for the performance of the services. The Contractor shall furnish copies of all such permits, licenses or approvals to the City of Flowery Branch Representative within ten (10) day after issuance.
- 4.2** Inasmuch as the City of Flowery Branch and the Contractor are independent of one another neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. The Contractor agrees not to represent itself as the City's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the City of Flowery Branch without the express knowledge and prior written consent of the City.

5.0 Indemnification

- 5.1** The Contractor agrees to indemnify, hold harmless and defend the City, its public officials, officers, employees, and agents from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including reasonable attorney's fees) to the extent rising out of any act or omission of the Contractor, its agents, Subcontractors, Contractors or employees in the performance of this Contract except for such claims that arise from the City's sole negligence or willful misconduct.
- 5.2** Notwithstanding the foregoing indemnification clause, the City may join in the defense of any claims raised against it in the sole discretion of the City. Additionally, if any claim is raised against the City, said claim(s) cannot be settled or compromised without the City's written consent, which shall not be unreasonably withheld.

6.0 Performance

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

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

6.1 Final Completion, Acceptance, and Payment

- (a) Final Completion shall be achieved when the work is fully and finally complete in accordance with the Contract Documents. The City shall notify Contractor once the date of final completion has been achieved in writing.
- (b) Final Acceptance is the formal action of City acknowledging Final Completion. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the City's right under any warranty or guarantee. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents submit to City a Notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment shall release Contractor or its sureties from any obligations of these Contract Documents or the bond, or constitute a waiver of any claims by City arising Contractor's failure to perform the work in accordance with the Contract Documents.
- (c) Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to City of all claims by Contractor, or any such Subcontractor for an increase in the Contract Sum or the Contract Time, and for every act or omission of City relating to or arising out of the work, except for those Claims made in accordance with the procedures, including the time limits, set forth in section 8.

7.0 Changes

The City, within the general scope of the Agreement, may, by written notice to Contractor, issue additional instructions, require additional services or direct the omission of services covered by this Agreement. In such event, there will be made an equitable adjustment in price, but any claim for such an adjustment must be made within thirty (30) days of the receipt of said written notice.

8.0 Change Order Defined

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

9.0 Insurance

- 9.1** The Contractor shall, at its own cost and expense, obtain and maintain the following minimum insurance coverage covering the period of this Agreement, such insurance to be

obtained from a responsible insurance company legally licensed and authorized to transact business in the State of Georgia.

▪ Workers' Compensation	Statutory Minimum \$100,000/accident
▪ Employers Liability	\$1,000,000
▪ Bodily Injury Liability	\$1,000,000
▪ Except Automobile	\$1,000,000 aggregate
▪ Property Damage Liability	\$1,000,000 each occurrence
▪ Except Automobile	\$1,000,000 each occurrence
▪ Automobile Bodily Injury	\$1,000,000 each person
▪ Liability	\$1,000,000 each occurrence
▪ Automobile Property	
Damage Liability	\$1,000,000 each occurrence
▪ Excess Umbrella Liability	\$2,000,000 each occurrence

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

10.0 Termination

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

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

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

- (a) The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform to the City's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;
- (b) The City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
- (c) The Contractor fails to make substantial and timely progress toward performance of the contract;
- (d) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- (e) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- (f) The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion; or
- (g) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the City, or a third party.

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

- (a) Immediately terminate the Contract without additional written notice; and/or
- (b) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,
- (c) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

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

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

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

- (a) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the City may require;
- (b) Immediately cease using and return to the City, any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;
- (c) Comply with the City's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
- (d) Cooperate in good faith with the City, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and
- (e) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

11.0 Claims and Dispute Resolution

11.1 Claims Procedure.

- (a) If the parties fail to reach agreement regarding any dispute arising from the Contract Documents, including a failure to reach agreement on the terms of any Change Order for City- directed work as provided in section 8, or on the resolution of any request for an equitable adjustment in the Contract Sum or the Contract Time, Contractor's only remedy shall be to file a Claim with City as provided in this section.
- (b) Contractor shall file its Claim within the earlier of: 120 Days from City's final instructions in accordance with section 8; or the date of Final Acceptance,

- (c) The Claim shall be deemed to cover all changes in cost and time (including direct, indirect) impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. The Claim shall contain a detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of work affected by the Claim.
- (d) If an adjustment in the Contract Time is sought: the specific Days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time.
- (e) If any adjustment in the Contract Sum is sought: the exact amount sought and a breakdown of that amount into the categories; and a statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes City is liable.
- (f) After Contractor has submitted a fully-documented Claim, the City shall respond, in writing, to Contractor with a decision within sixty (60) days of the date the Claim is received, or with notice to Contractor of the date by which it will render its decision.

11.2 Arbitration.

- (a) If Contractor disagrees with City's decision rendered in accordance with section 12. If, Contractor shall provide City with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than thirty (30) Days after the date of City's decision on such Claim, failure to demand arbitration with said thirty (30) Day period shall result in City's decision being final and binding upon Contractor and its Subcontractors.
- (b) Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provide to City. The parties shall negotiate or mediate under the Voluntary Construction Mediation Rules of the AAA, or mutually acceptable service, before seeking arbitration in accordance with the Construction Industry Arbitration Rules of AAA as follows:
 - (1) Disputes involving \$30,000 or less shall be conducted in accordance with the Southeast Region Expedited Commercial Arbitration Rules; or
 - (2) Disputes over \$30,000 shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA, unless the parties agree to use the expedited rules.
 - a. All Claims arising out of the work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may occur, in the Superior Court of Hall County.

- b. If the parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.
- c. Choice of Law and Forum. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of State law. The Superior Court of Hall County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Hall County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the City.
- d. All Claims filed against City shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractor of any tier, to maintain and retain sufficient records to allow City to verify all or a portion of the Claim or to permit City access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

12.0 Confidential Information

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

- (a) The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;
- (b) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- (c) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
- (d) The Contractor shall provide adequate supervision and training to its agents, employees and Subcontractors to ensure compliance with the terms of the Contract. The private or confidential data shall remain the property of the City at all times. Some services

performed for the City may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Contract.

- 12.2** No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the City, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the City. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.
- 12.3** Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.
- 12.4** Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.
- 12.5** Survives Termination. The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

13.0 Inclusion of Documents

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

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

14.0 Compliance with All Laws and Licenses

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

- 14.1** Federal Requirements.

- (a) Federal Compliance Regulations.

Federal regulations apply to all City of Flowery Branch contracts using Federal funds as a

source for the solicitation of goods and services. Successful bidders must comply with the following Federal requirement as they apply to:

- (1) Equal Employment Opportunity - The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall comply with Executive Order 1 1246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (2) Reports - The submission of reports to the City on behalf of the U.S. Department of Housing and Urban Development as may be determined necessary for the activities covered by this contract, which is federally funded.
- (3) Patents - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive, and irrevocable right to use, and to authorize others to use, for Federal Government purposes:
 - a. Any patent that shall result under this contract; and
 - b. Any patent rights to which the Contractor purchases ownership with grant support
- (4) Copyrights - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - a. The copyright in any work developed under this contract; and
 - b. Any rights of copyright to which the Contractor purchases ownership with grant support.
- (5) Access to books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purposes of making audit, examination, excerpts and transcriptions by Federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives; and
- (6) Retention of all required records for three years after the City makes final payment and all other pending matters are closed.

14.2 Georgia Security and Immigration Compliance Act

- (a) The parties certify that Contractor has executed an affidavit verifying that Contractor

has registered and participates in the federal work authorization program to verify information of all new employees, per O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02. The appropriate affidavit is attached hereto as "**Exhibit E**" (**E-Verify Form**) and incorporated herein by reference and made a part of this contract.

- (b) The Contractor further certifies that any Subcontractors employed by Contractor for the performance of this agreement has executed an appropriate Subcontractor affidavit verifying its registration and participation in the federal work authorization program and compliance with O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02, and that all such affidavits are incorporated into and made a part of every contract between the Contractor and each Subcontractor.
- (c) Contractor's compliance with O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02 is a material condition of this agreement and Contractor's failure to comply with said provisions shall constitute a material breach of this agreement.

15.0 Assignment

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

16.0 Amendments in Writing

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

17.0 Drug-Free and Smoke-Free Workplace

- 17.1** A drug-free and smoke-free workplace will be provided for the Contractor's employees during the performance of this Agreement; and
- 17.2** The Contractor will secure from any sub-Contractor hired to work in a drug-free and smoke-free work place a written certification so stating and in accordance with Paragraph 7, subsection B of the Official Code of Georgia Annotated Section 50-24-3.
- 17.3** The Contractor may be suspended, terminated, or debarred if it is determined that:
 - (a) The Contractor has made false certification herein; or
 - (b) The Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia Annotated Section 50-24-3.

18.0 Additional Terms

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

19.0 Antitrust Actions

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

20.0 Governing Law

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

21.0 Entire Agreement

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

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

CITY OF FLOWERY BRANCH:

CONTRACTOR: INTERCONTINENTAL
COMMERCIAL SERVICES, INC.

By:_____

By: _____

Title:_____

Title: _____

Name:_____

Name: _____

Date:_____

Date: _____

Attest:

Shelia Clerk, City Clerk

(Seal)

Approved as to form:

Ted Baggett, City Attorney

EXHIBIT A

TO CONTRACT BETWEEN CITY OF FLOWERY BRANCH AND INTERCONTINENTAL COMMERCIAL SERVICES, INC. FOR JANITORIAL SERVICES

REFERENCE: BID# 24-005
SCOPE OF WORK

The services, work, and/or items that the Contractor shall provide in a timely and proper manner in accordance with the Contract include, but are not necessarily limited to, the following:

Basic cleaning services, floor care maintenance, and bi-annual or annual specialized services for five (5) locations.

I. General Services

The contractor shall perform the following tasks for all administrative buildings unless otherwise specified.

A. General Cleaning

The following shall be performed, *twice (2) per week*.

- Empty all trash containers and replace liners and place trash in dumpster (wipe/wash as needed).
- Empty recycle bin and place in appropriate containers outside of building.
- Vacuum all carpeted areas. Spot clean if necessary.
- Sweep with chemically treated dust-mop all hard flooring.
- Mop thoroughly all hard surface floors with a chemically treated mop head.
- Remove and clean fingerprints from surfaces including glass, rails, furniture, etc.
- Thoroughly clean lobby area, including floors, walls, doors, and tables.
- Disinfect all skin-touched surfaces (e.g. light switches, door handles, drinking fountains, etc.).
- Remove cobwebs throughout city facilities.
- Report all maintenance issues in Logbook.

B. Restroom Cleaning

The following shall be performed, *twice (2) per week*.

- Empty all waste containers and replace trash bags.
- Clean and disinfect all toilets, toilet seats, and urinals.
- Clean base of toilets and urinals.
- Clean all restroom partitions and walls around toilets and urinals.
- Clean and disinfect all sinks and countertops.
- Clean and polish all chrome and stainless steel.
- Clean exterior/interior of all doors.
- Clean all mirrors.
- Clean and disinfect diaper-changing stations.
- Spot clean walls to remove smudges and marks.
- Refill all soap containers, paper products, toilet paper, paper towels, etc.

- Sweep and wet mop all floors, with mop designated exclusively for use in restroom facilities.

C. Kitchen / Breakroom Cleaning

The following shall be performed, *twice (2) per week*.

- Empty all waste containers and replace trash bags.
- Wipe down all tables, counters, and exterior appliance surfaces with appropriate cleaning agents.
- Wet mop the entire floor with mop designated exclusively for use in kitchen area.

II. Special Services

The contractor shall perform the following services on a scheduled basis as coordinated with City personnel for all areas.

A. Quarterly Services

- Dust window blinds and windowsills.
- High dust all air vents, tops of doors, door frames, ceiling corners and edges, etc.
- Wash down walls and base boards.
- Clean inside and outside of building windows/glass (All glass doors and panels).
- Pour water down the floor drains.
- Disinfect locker room walls.
- Deep clean showers

B. Optional Annual Services

- Strip, seal, and wax all floors.
- Clean all carpets.

III. Additional Work

The City may add to these specifications with the joint approval of the Contractor and the City. All modifications shall be in writing.

- A. In the event that the City requires additional work outside of these specifications, the Contractor shall perform all work at a competitive industry price.
- B. Additional work may be added to the contract as the need arises. The Contractor shall perform all specified and approved additional work.
- C. The Contractor must be willing to provide a competitive price for additional work that may be added to the contract. The contractor will be required to demonstrate the ability to properly execute the expanded workload with the necessary increase in labor, materials, and equipment.

LIST OF LOCATIONS

Location	Address:	Schedule:
City Hall	5410 Pine Street, Flowery Branch, GA 30542	Tuesdays and Fridays
Police Dept.	5270 Railroad Ave., Flowery Branch, GA 30542	Tuesdays and Fridays
Planning/Fun	5512 Main Street, Flowery Branch, GA 30542	Tuesdays and Fridays
Train Depot	5302 Railroad Ave., Flowery Branch, GA 30542	Tuesdays and Fridays at 8:00 a.m.
WWTP Office	5572 Atlanta Hwy, Flowery Branch, GA 30542	Tuesdays and Fridays after 5 p.m.

All cleaning services, unless otherwise approved, must be conducted during business hours on scheduled set days.

END EXHIBIT A

EXHIBIT E

Contractor Affidavit under O.C.G.A. §13-10-91

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of CITY OF FLOWERY BRANCH has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned Contractor will continue to use the federal work authorization program throughout the Contract Term and the undersigned Contractor will contract for the physical performance of services in satisfaction of such contract only with Subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. §13-10-91. Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Name of Project

City of Flowery Branch
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____(city), _____(state).

By:_____
Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

Subscribed and Sworn before me on this the

_____ day of _____, 20 ____.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT F

Contact Information Form

Please fill out this form with the appropriate contact information for your company.

Full Legal Name of Company: _____

Doing Business As (DBA): _____

Federal Employee ID Number (FEIN): _____ - _____ - _____

Address:

Mailing Address (if different)

Contractor Information:

Primary Contact Person: _____

Title: _____

Telephone Number: _____

E-mail Address: _____

Secondary Contact Person: _____

Title: _____

Telephone Number: _____

E-mail Address: _____

Preferred Contact for Administration (i.e. Document Processing) (Choose One)

☐ Primary Contact ☐ Secondary Contact

Signature: _____ Date: _____

CITY OF FLOWERY BRANCH

ACKNOWLEDGE OF RECEIPT OF ADDENDUM

BID 24-005

JANITORIAL SERVICES FOR THE CITY OF FLOWERY BRANCH

Upon receipt, please print and add to your proposal.

I hereby acknowledge receipt of the supplement pertaining to the above referenced bid.

COMPANY NAME: _____

CONTACT PERSON: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

PHONE: FAX: _____

EMAIL ADDRESS: _____

SIGNATURE: _____ DATE: _____



EXHIBIT H
CONTRACTOR'S OATH

COMES NOW, _____ (“Contractor”),
[name of Contractor]

appearing by and through _____,
[name of individual with authority to bind Contractor]

its _____ (“Individual And Representative Affiant”), and
[title]

[insert the names of all those required to give the oath]

(collectively, “Individual Affiants”), and each of the Individual And Representative Affiant and Individual Affiants, after first being duly sworn, deposes and says that:

1. Contractor has not directly or indirectly violated subsection (d) of the Official Code of Georgia Annotated

Section 36-91-21, which provides as follows:

Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

Code Section 36-91-21(d) also applies to municipal street system contracts pursuant to Official Code of Georgia Annotated Section 32-4-122.

2. Individual And Representative Affiant is the officer of Contractor whose duty it is to make the payment.
3. If Contractor is a partnership, then Individual and Representative Affiant and Individual Affiants together constitute all of the partners and any officer, agent or other person who may have represented or acted for Contractor in bidding for or procuring the contract.

4. If Contractor is a corporation, then Individual and Representative Affiant and Individual Affiants together constitute all officers, agents, or other persons who may have acted for or represented Contractor in bidding for or procuring the contract.

Further affiants sayeth not.

This ____ day of _____, 20____.

By: _____, individually and on behalf of Contractor
[signature of Individual And Representative Affiant]

Name: _____ Title: _____

Individual Affiants' signatures and names:

Name: _____ Name: _____

Name: _____ Name: _____

Name: _____ Name: _____

Subscribed and Sworn before me on this

_____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider Awarding Contract to DCI Metal Buildings, Inc. for Well Building 1 & 3 Rehabilitation.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

The City of Flower Branch requested bids for repairing a metal building that houses the City's drinking water wells, well pumps and other important water infrastructure.

FACTS AND ISSUES:

The extent of the work consists of a contractor repairing only the exterior of a 40' x 60' metal building.

OPTIONS:

1. Award the Contract
2. Do not Award the Contract.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$79,150 - budgeted capital project

RECOMMENDATION:

Award Contract to DCI Metal Buildings, Inc. for Well Building 1 & 3 Rehabilitation.

SAMPLE MOTION:

I move we award Bid 24-007 Well Buildings 1 & 3 Rehab to DCI Metal Buildings, Inc. in the amount of \$79,150 and to authorize the Mayor to sign a contract substantially similar to 24-007 Well Building 1 & 3 Rehabilitation on behalf of the City once the exhibits contained therein have been obtained from the awardee to the satisfaction of the City Manager and City Attorney.

COLLABORATING DEPARTMENT:

DEPARTMENT: Water/Wastewater

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary- DCI Metal Buildings.pdf](#)
- [24-007 NOIA \(Notice of Intent to Award\).pdf](#)
- [24-007 DCI Metal Buildings Contract for Rehabilitation on Well Building 1 & 3.pdf](#)

FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY

SUBJECT: Consider Awarding Contract to DCI Metal Buildings, Inc. for Well Building 1 & 3 Rehabilitation.

DATE: August 9, 2024

(X) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL-

() OTHER

CAPITAL- \$79,150.00

COUNCIL ACTION REQUESTED ON: August 15, 2024

PURPOSE: To award a contract for Bid 24-007 Well Building 1 & 3 Rehabilitation to a responsible, responsive bidder.

HISTORY: The City of Flowery Branch requested bids for repairing a metal building that houses the City's drinking water wells, well pumps and other important water infrastructure.

FACTS AND ISSUES: The extent of the work consists of a contractor repairing only the exterior of a 40' x 60' metal building.

OPTIONS: 1. Award the Contract
2. Do not Award the Contract.

RECOMMENDED SAMPLE MOTION: I move we award Bid 24-007 Well Buildings 1 & 3 Rehab to DCI Metal Buildings, Inc. in the amount of \$79,150 and to authorize the Mayor to sign a contract substantially similar to 24-007 Well Building 1 & 3 Rehabilitation on behalf of the City once the exhibits contained therein have been obtained from the awardee to the satisfaction of the City Manager and City Attorney.

DEPARTMENT: Finance Department

Prepared by: Nancy Rodriguez



NOTICE OF INTENT TO AWARD

Bid/RFP No: 24-007

Date Opened: June 13, 2024

Title: Well Building 1 & 3 Rehabilitation

NOIA Posting Date: July 18, 2024

This form shall serve as notice of the City's intent to award a contract. The successful supplier listed here was determined to be the most advantageous for the City. Any supplier who wishes to protest this Notice of Intent must file the protest within ten (10) calendar days following the date of this notice or that right is forfeited. If the tenth day falls on a weekend or holiday, the last day of the protest period is the first working day following the tenth day. The protest must be in writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest is received and accepted by the Procurement office.

No recommendation is official until ten (10) days have passed since the NOIA has been posted **AND** it has been approved by City Council, if applicable. **The successful supplier listed is instructed not to proceed until a contract, Purchase Order or other official notice is given by the contracting officer.**

AWARD RECOMMENDATION TO APPARENT SUCCESSFUL SUPPLIER:

Company Name: DCI Metal Buildings, Inc.

City, State: Gainesville, GA

Award Amount: \$79,150.00

UNSUCCESSFUL BIDDERS:

REASON:

1)	RNR Contracting, LLC	Not lowest bid



CONTRACT AGREEMENT

24-007 WELL BUILDING 1 & 3 REHABILITATION

This Agreement made and entered into this _____ day of _____, in the year 2024, by and between The City of Flowery Branch, Georgia, having its principal place of business at 5410 Pine St, Flowery Branch, Georgia and **DCI METAL BUILDINGS INC.** ("Contractor") located at 908 Pine Street, Gainesville, GA 30501.

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

WHEREAS, the City of Flowery Branch has caused **BID 24-007** to be issued soliciting proposals from qualified Contractors to furnish all items, labor services, materials and appurtenances called for by them in accordance with this proposal. Selected ("Contractor") is required to provide the services as called for in the specifications; and

WHEREAS, the Contractor submitted a response to the **BID 24-007**; and

WHEREAS, the Contractor's submittal was deemed by the City of Flowery Branch to be the most responsible and responsive per the scope of work; and

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

1.0 Scope of Work

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

- EXHIBIT A - SCOPE OF SERVICE**
- EXHIBIT B - COST PROPOSAL**
- EXHIBIT C - W-9**
- EXHIBIT D - CERTIFICATE OF INSURANCE**
- EXHIBIT E - E-VERIFY AFFIDAVIT**
- EXHIBIT F - CONTACT INFORMATION**
- EXHIBIT G - ADDENDUMS**
- EXHIBIT H - CONTRACTOR'S OATH**

2.0 Compensation

2.1 Pricing. The Contractor will be paid for the services sold pursuant to the Contract in accordance with the BID and final pricing documents as incorporated into the terms of the Contract. All prices are firm and fixed and are not subject to variation. The prices quoted and listed on the attached Cost Proposal, a copy of which is attached hereto as **“Exhibit B” (Cost Proposal)** and incorporated herein, shall be firm throughout the term of this Contract. The maximum costs owed by the City, unless otherwise agreed to in writing, shall not exceed **\$79,150.00**.

2.2 Billings. If applicable, the Contractor shall submit, on a regular basis, an invoice for services supplied to the City under the Contract at the billing address specified in the Purchase Instrument or Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The City shall pay all approved invoices in arrears and in accordance with applicable provisions of City law. Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the City for any services provided by or on behalf of the Contractor under the Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Contract.

Invoices are to be emailed to APInvoices@flowerybranchga.org and must reference the PO# (see top of contract). A W-9 Request for Taxpayer Identification Number and Certification Form must be submitted **"Exhibit C" (W-9)**.

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

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

3.0 Duration of Contract

Contract Term. Pursuant to O.C.G.A. Section 36-60-13, this Contract shall not be deemed to create a debt of the City for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal. The terms of this contract shall align with the City's fiscal year from July 1 to June 30 and shall be from commencement of services until all

services are rendered. All invoices postmarked by the City during said term shall be filed at the contract price.

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

4.0 Independent Contractor

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

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

5.0 Indemnification

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

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

6.0 Performance

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

A written response from the Contractor detailing how correction(s) will be made is required to be

delivered to the City. Contractor will have thirty (30) days to remedy the situation. If requirements are not remedied City of Flowery Branch has the right to cancel this Agreement with no additional obligation to Contractor.

6.1 Final Completion, Acceptance, and Payment

- (a) Final Completion shall be achieved when the work is fully and finally complete in accordance with the Contract Documents. The City shall notify Contractor once the date of final completion has been achieved in writing.
- (b) Final Acceptance is the formal action of City acknowledging Final Completion. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the City's right under any warranty or guarantee. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents submit to City a Notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment shall release Contractor or its sureties from any obligations of these Contract Documents or the bond, or constitute a waiver of any claims by City arising Contractor's failure to perform the work in accordance with the Contract Documents.
- (c) Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to City of all claims by Contractor, or any such Subcontractor for an increase in the Contract Sum or the Contract Time, and for every act or omission of City relating to or arising out of the work, except for those Claims made in accordance with the procedures, including the time limits, set forth in section 8.

7.0 Changes

The City, within the general scope of the Agreement, may, by written notice to Contractor, issue additional instructions, require additional services or direct the omission of services covered by this Agreement. In such event, there will be made an equitable adjustment in price, but any claim for such an adjustment must be made within thirty (30) days of the receipt of said written notice.

8.0 Change Order Defined

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

9.0 Insurance

- 9.1** The Contractor shall, at its own cost and expense, obtain and maintain the following minimum insurance coverage covering the period of this Agreement, such insurance to be obtained from a responsible insurance company legally licensed and authorized to transact business in the State of Georgia.

▪ Workers' Compensation	Statutory Minimum \$100,000/accident
▪ Employers Liability	\$1,000,000
▪ Bodily Injury Liability	\$1,000,000
▪ Except Automobile	\$1,000,000 aggregate
▪ Property Damage Liability	\$1,000,000 each occurrence
▪ Except Automobile	\$1,000,000 each occurrence
▪ Automobile Bodily Injury	\$1,000,000 each person
▪ Liability	\$1,000,000 each occurrence
▪ Automobile Property	
Damage Liability	\$1,000,000 each occurrence
▪ Excess Umbrella Liability	\$2,000,000 each occurrence

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

10.0 Termination

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

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

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

- (a) The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform to the City's satisfaction, any material requirement of the Contract or is in

violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

- (b) The City determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
- (c) The Contractor fails to make substantial and timely progress toward performance of the contract;
- (d) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- (e) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
- (f) The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion; or
- (g) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the City, or a third party.

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

- (a) Immediately terminate the Contract without additional written notice; and/or
- (b) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,
- (c) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

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

10.5 Payment Limitation in the event of Termination. In the event termination of the Contract for

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

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

- (a) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the City may require;
- (b) Immediately cease using and return to the City, any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;
- (c) Comply with the City's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
- (d) Cooperate in good faith with the City, its employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and
- (e) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

11.0 Claims and Dispute Resolution

11.1 Claims Procedure.

- (a) If the parties fail to reach agreement regarding any dispute arising from the Contract Documents, including a failure to reach agreement on the terms of any Change Order for City- directed work as provided in section 8, or on the resolution of any request for an equitable adjustment in the Contract Sum or the Contract Time, Contractor's only remedy shall be to file a Claim with City as provided in this section.
- (b) Contractor shall file its Claim within the earlier of: 120 Days from City's final instructions in accordance with section 8; or the date of Final Acceptance,
- (c) The Claim shall be deemed to cover all changes in cost and time (including direct, indirect impact, and consequential) to which Contractor may be entitled. It shall be fully

substantiated and documented. The Claim shall contain a detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of work affected by the Claim.

- (d) If an adjustment in the Contract Time is sought: the specific Days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time.
- (e) If any adjustment in the Contract Sum is sought: the exact amount sought and a breakdown of that amount into the categories; and a statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes City is liable.
- (f) After Contractor has submitted a fully-documented Claim, the City shall respond, in writing, to Contractor with a decision within sixty (60) days of the date the Claim is received, or with notice to Contractor of the date by which it will render its decision.

11.2 Arbitration.

- (a) If Contractor disagrees with City's decision rendered in accordance with section 12. If, Contractor shall provide City with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than thirty (30) Days after the date of City's decision on such Claim, failure to demand arbitration with said thirty (30) Day period shall result in City's decision being final and binding upon Contractor and its Subcontractors.
- (b) Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provide to City. The parties shall negotiate or mediate under the Voluntary Construction Mediation Rules of the AAA, or mutually acceptable service, before seeking arbitration in accordance with the Construction Industry Arbitration Rules of AAA as follows:
 - (1) Disputes involving \$30,000 or less shall be conducted in accordance with the Southeast Region Expedited Commercial Arbitration Rules; or
 - (2) Disputes over \$30,000 shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA, unless the parties agree to use the expedited rules.
 - a. All Claims arising out of the work shall be resolved by arbitration. The judgment upon the arbitration award may be entered, or review of the award may occur, in the Superior Court of Hall County.
 - b. If the parties resolve the Claim prior to arbitration judgment, the terms of the

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

- c. Choice of Law and Forum. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of State law. The Superior Court of Hall County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this contract. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Hall County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the City.
- d. All Claims filed against City shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractor of any tier, to maintain and retain sufficient records to allow City to verify all or a portion of the Claim or to permit City access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

12.0 Confidential Information

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

- (a) The Contractor shall provide to the City a written description of the Contractor's policies and procedures to safeguard confidential information;
- (b) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- (c) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
- (d) The Contractor shall provide adequate supervision and training to its agents, employees and Subcontractors to ensure compliance with the terms of the Contract. The private or confidential data shall remain the property of the City at all times. Some services performed for the City may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure

agreement, if required, may result in termination of the Contract.

- 12.2** No Dissemination of Confidential Data. No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the City, either during the period of the Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the City. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract, in whatever form it is maintained, promptly at the request of the City.
- 12.3** Subpoena. In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the City and cooperate with the City in any lawful effort to protect the confidential information.
- 12.4** Reporting of Unauthorized Disclosure. The Contractor shall immediately report to the City any unauthorized disclosure of confidential information.
- 12.5** Survives Termination. The Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

13.0 Inclusion of Documents

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

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

14.0 Compliance with All Laws and Licenses

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

14.1 Federal Requirements.

- (a) Federal Compliance Regulations.

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

- (1) Equal Employment Opportunity - The Contractor shall not discriminate against any employee or applicant or employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall comply with Executive Order 1 1246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (2) Reports - The submission of reports to the City on behalf of the U.S. Department of Housing and Urban Development as may be determined necessary for the activities covered by this contract, which is federally funded.
- (3) Patents - The U.S. Department of Housing and Urban Development reserves a royalty-free, nonexclusive, and irrevocable right to use, and to authorize others to use, for Federal Government purposes:
 - a. Any patent that shall result under this contract; and
 - b. Any patent rights to which the Contractor purchases ownership with grant support
- (4) Copyrights - The U.S. Department of Housing and Urban Development reserves a royalty- free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
 - a. The copyright in any work developed under this contract; and
 - b. Any rights of copyright to which the Contractor purchases ownership with grant support.
- (5) Access to books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purposes of making audit, examination, excerpts and transcriptions by Federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives; and
- (6) Retention of all required records for three years after the City makes final payment and all other pending matters are closed.

14.2 Georgia Security and Immigration Compliance Act

- (a) The parties certify that Contractor has executed an affidavit verifying that Contractor has registered and participates in the federal work authorization program to verify information of all new employees, per O.C.G.A. 13-10-90, et. seq., and Georgia

Department of Labor Regulations Rule 300-10-1-02. The appropriate affidavit is attached hereto as "**Exhibit E**" (**E-Verify Form**) and incorporated herein by reference and made a part of this contract.

- (b) The Contractor further certifies that any Subcontractors employed by Contractor for the performance of this agreement has executed an appropriate Subcontractor affidavit verifying its registration and participation in the federal work authorization program and compliance with O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02, and that all such affidavits are incorporated into and made a part of every contract between the Contractor and each Subcontractor.
- (c) Contractor's compliance with O.C.G.A. 13-10-90, et. seq., and Georgia Department of Labor Regulations Rule 300-10-1-02 is a material condition of this agreement and Contractor's failure to comply with said provisions shall constitute a material breach of this agreement.

15.0 Assignment

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

16.0 Amendments in Writing

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

17.0 Drug-Free and Smoke-Free Workplace

- 17.1** A drug-free and smoke-free workplace will be provided for the Contractor's employees during the performance of this Agreement; and
- 17.2** The Contractor will secure from any sub-Contractor hired to work in a drug-free and smoke-free work place a written certification so stating and in accordance with Paragraph 7, subsection B of the Official Code of Georgia Annotated Section 50-24-3.
- 17.3** The Contractor may be suspended, terminated, or debarred if it is determined that:
 - (a) The Contractor has made false certification herein; or
 - (b) The Contractor has violated such certification by failure to carry out the requirements of Official Code of Georgia Annotated Section 50-24-3.

18.0 Additional Terms

Neither the City nor any Department shall be bound by any terms and conditions included in any Contractor packaging, Invoice, catalog, brochure, technical data sheet, or other document which

attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.

19.0 Antitrust Actions

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

20.0 Governing Law

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

21.0 Entire Agreement

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

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

CITY OF FLOWERY BRANCH: CONTRACTOR: DCI METAL BUILDINGS INC.

By: _____ By: _____

Title: _____ Title: _____

Name: _____ Name: _____

Date: _____ Date: _____

Attest:

Shelia Clerk, City Clerk (Seal)

Approved as to form:

Ted Baggett, City Attorney

EXHIBIT A

TO CONTRACT BETWEEN CITY OF FLOWERY BRANCH AND DCI METAL BUILDINGS INC FOR WELL BUILDING 1 & 3 REHABILITATION

REFERENCE: BID# 24-007
SCOPE OF WORK

The following Scope of Work outlines the required tasks the Contractor is expected to perform and include in their quotes. Contractor shall perform all services provisioned under the contract in a skillful and competent manner.

It is understood that the selected Contractor will furnish all labor and equipment to remove all roof panels, wall panels, gutter, downspouts, rake trim, insulation, windows, doors, and fans for the completion of work in a timely and organized manner. The Contractor will furnish all labor and equipment to install all new roof panels, wall panels, gutter, downspouts, rake trim, insulation, (9) windows, (1) 12' X 12' roll up door, (2) 3070 personal doors, (2) 3' X 3' exhaust fans with gravity dampers. All services, unless otherwise approved, must be conducted during business hours.

The Bidder shall provide the City with monthly invoices upon delivery. The Bidder shall assign a Project Manager who will meet with City staff.

I. Additional Work

The City may add to these specifications with the joint approval of the Contractor and the City. All modifications shall be in writing.

- A. In the event that the City requires additional work outside of these specifications, the Contractor shall perform all work at a competitive industry price.
- B. Additional work may be added to the contract as the need arises. The Contractor shall perform all specified and approved additional work.
- C. The Contractor must be willing to provide a competitive price for additional work that may be added to the contract. The contractor will be required to demonstrate the ability to properly execute the expanded workload with the necessary increase in labor, materials, and equipment.

LIST OF LOCATIONS

Location	Address:	Schedule:
Well Building	5109 Mulberry Street, Flowery Branch, GA 30542	Monday – Friday

All services, unless otherwise approved, must be conducted during business hours on scheduled set days.

END EXHIBIT A



EXHIBIT B

**TO CONTRACT
BETWEEN CITY OF FLOWERY BRANCH AND
DCI METAL BUILDINGS INC
FOR WELL BUILDING 1 & 3 REHABILITATION**

REFERENCE: BID# 24-007
COST PROPOSAL



908 Pine Street. Gainesville, GA. 30501 Office(678)450-9334 Mobile (770)480-7963

Contract

7-22-2024
Flowery Branch water Department
Peter Woener
Flowery Branch, Ga

40'x50' water building

DCI Metal Buildings to furnish all labor and equipment to remove all roof panels, wall panels, gutter, downspouts, rake trim, insulation, windows, doors, fans, includes disposal of materials.

DCI Metal Buildings to furnish all labor and equipment to install all new roof panels, wall panels, gutter, downspouts, rake trim, insulation, (9) windows, (1) 12'x12' roll up door, (3) 3070 personnel doors with mortise locks and closers, (2) 3'x3' exhaust fans with gravity dampers.

Customer to have all asphalt/dirt out of the way on all sides of building allowing DCI access to bottom of all panels.

Total cost: \$ 79,150.00

Deposit to order materials: \$ 39,575.00 **Due when material is delivered**

When complete: \$ 39,575.00

X_____

EXHIBIT E

Contractor Affidavit under O.C.G.A. §13-10-91

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of CITY OF FLOWERY BRANCH has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned Contractor will continue to use the federal work authorization program throughout the Contract Term and the undersigned Contractor will contract for the physical performance of services in satisfaction of such contract only with Subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. §13-10-91. Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Name of Project

City of Flowery Branch
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____(city), _____(state).

By:_____
Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

Subscribed and Sworn before me on this the

_____ day of _____, 20 ____.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT F

Contact Information Form

Please fill out this form with the appropriate contact information for your company.

Full Legal Name of Company: _____

Doing Business As (DBA): _____

Federal Employee ID Number (FEIN): _____ - _____ - _____

Address:

Mailing Address (if different)

Contractor Information:

Primary Contact Person: _____

Title: _____

Telephone Number: _____

E-mail Address: _____

Secondary Contact Person: _____

Title: _____

Telephone Number: _____

E-mail Address: _____

Preferred Contact for Administration (i.e. Document Processing) (Choose One)

☐ Primary Contact ☐ Secondary Contact

Signature: _____ Date: _____

CITY OF FLOWERY BRANCH

ACKNOWLEDGE OF RECEIPT OF ADDENDUM

BID 24-007

WELL BUILDING 1 & 3 REHABILITATION

Upon receipt, please print and add to your proposal.

I hereby acknowledge receipt of the supplement pertaining to the above referenced bid.

COMPANY NAME: _____

CONTACT PERSON: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

PHONE: FAX: _____

EMAIL ADDRESS: _____

SIGNATURE: _____ DATE: _____



EXHIBIT H
CONTRACTOR'S OATH

COMES NOW, _____ ("Contractor"),
[name of Contractor]

appearing by and through _____,
[name of individual with authority to bind Contractor]

its _____ ("Individual And Representative Affiant"), and
[title]

[insert the names of all those required to give the oath]

(collectively, "Individual Affiants"), and each of the Individual And Representative Affiant and Individual Affiants, after first being duly sworn, deposes and says that:

1. Contractor has not directly or indirectly violated subsection (d) of the Official Code of Georgia Annotated

Section 36-91-21, which provides as follows:

Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

Code Section 36-91-21(d) also applies to municipal street system contracts pursuant to Official Code of Georgia Annotated Section 32-4-122.

2. Individual And Representative Affiant is the officer of Contractor whose duty it is to make the payment.
3. If Contractor is a partnership, then Individual and Representative Affiant and Individual Affiants together constitute all of the partners and any officer, agent or other person who may have represented or acted for Contractor in bidding for or procuring the contract.

4. If Contractor is a corporation, then Individual and Representative Affiant and Individual Affiants together constitute all officers, agents, or other persons who may have acted for or represented Contractor in bidding for or procuring the contract.

Further affiants sayeth not.

This ____ day of _____, 20____.

By: _____, individually and on behalf of Contractor
[signature of Individual And Representative Affiant]

Name: _____ Title: _____

Individual Affiants' signatures and names:

Name: _____ Name: _____

Name: _____ Name: _____

Name: _____ Name: _____

Subscribed and Sworn before me on this

_____ day of _____, 20____.

NOTARY PUBLIC

My Commission Expires:



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consider Second Amendment to FB Main Street, A Master Condominium Shopping Center Lease Agreement with The Social Peach Boutique, LLC.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

The Social Peach began its lease agreement with the City of Flowery Branch on June 16, 2022 in the Main Street A Master Condominium Shopping Center. The commercial portion is city-owned and the residential is privately owned and leased. This is the former site of the City of Flowery Branch City Hall, Police Station, and various other retail spaces. The entirety of the site was demolished in 2019. In September 2021 the final certificate of occupancy was issued. The apartments are fully occupied, and three of the retail spaces are leased.

FACTS AND ISSUES:

The Social Peach Boutique, LLC has been doing business on Main Street since March 2023.

The Social Peach is asking for a change in their weekly business hours to Monday thru Saturday 10am – 7pm and Sunday 11am – 4pm.

An address correction is also being made. The original lease had 5519 Main Street, Suite 3, Flowery Branch GA. The corrected address is 5515 Main Street, Flowery Branch GA 30542.

OPTIONS:

- 1) Authorize the amendment to the existing lease as presented.
- 2) Do not authorize the amendment of the lease as presented and suggest other terms.
- 3) Do not authorize the amendment of the lease.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

I move to approve the second amendment to the lease agreement with The Social Peach, LLC, 5515 Main Street, Flowery Branch GA 30542.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary Social Peach 2 Amendment.pdf](#)
- [The Social Peach Second Amendment.pdf](#)

FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY

SUBJECT: SECOND AMENDMENT TO LEASE AGREEMENT FOR 5515 MAIN STREET (PREVIOUSLY 5519 MAIN ST SUITE 3) WITH THE SOCIAL PEACH BOUTIQUE, LLC

DATE: AUGUST 15, 2024

(X) RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL-

() OTHER

CAPITAL-

COUNCIL ACTION REQUESTED ON: AUGUST 15, 2024

PURPOSE: The purpose of this agenda item is to request council to amend the original lease agreement with The Social Peach Boutique, LLC at 5515 Main Street in Flowery Branch, within the Shopping Center on Main Street.

HISTORY: The Social Peach began its lease agreement with the City of Flowery Branch on June 16, 2022 in the Main Street A Master Condominium Shopping Center. The commercial portion is city-owned and the residential is privately owned and leased. This is the former site of the City of Flowery Branch City Hall, Police Station, and various other retail spaces. The entirety of the site was demolished in 2019. In September 2021 the final certificate of occupancy was issued. The apartments are fully occupied, and three of the retail spaces are leased.

FACTS AND ISSUES: The Social Peach Boutique, LLC has been doing business on Main Street since March 2023.

The Social Peach is asking for a change in their weekly business hours to Monday thru Saturday 10am – 7pm and Sunday 11am – 4pm.

An address correction is also being made. The original lease had 5519 Main Street, Suite 3, Flowery Branch GA. The corrected address is 5515 Main Street, Flowery Branch GA 30542.

OPTIONS: 1) Authorize the amendment to the existing lease as presented.

2) Do not authorize the amendment of the lease as presented and suggest other terms.

3) Do not authorize the amendment of the lease.

RECOMMENDED SAMPLE MOTION: I move to approve the second amendment to the lease agreement with The Social Peach, LLC, 5515 Main Street, Flowery Branch GA 30542

DEPARTMENT: Administration

Prepared by: Renee Carden

SECOND AMENDMENT TO FB MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS SECOND AMENDMENT TO FB MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this "Amendment"), is made and entered into effective the 15th day of August, 2024, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as "Landlord") and THE SOCIAL PEACH BOUTIQUE, LLC, a limited liability company, (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated June 16, 2022, (the "Original Lease"), and thereafter amended the Original Lease effective October 6, 2022 ("First Amended Original Lease") for that certain property previously commonly known as 5519 Main Street, Suite 103, Flowery Branch, Georgia (the "Demised Premises") and whereas Original Lease and the First Amended Original Lease together establish the "Current Lease" between the parties; and

WHEREAS, Landlord and Tenant desire to amend the Current Lease, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars (\$1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledged, and the mutual covenants flowing between the parties hereto, the Current Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Current Lease are hereby ratified.
2. Basic Lease Provisions. Section 1.1 Q. HOURS OF OPERATION is deleted in its entirety and replaced with the following:
"Tenant agrees to remain open during standard operating hours for a retail clothing store, namely from 10:00 a.m. to 7:00 p.m. daily Monday through Saturday and 11:00 a.m. to 4:00 p.m. on Sunday."
3. Leased Premises. Paragraph 2 of Section 2.2 is deleted in its entirety, solely for the purpose of updating the premises address, and is replaced with the following:
"5515 Main Street, consisting of approximately 1,634 sq. ft. as shown on Exhibit A."

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Current Lease shall remain the same and the parties hereto do hereby ratify the Current Lease.

IN WITNESS WHEREOF, Landlord and Tenant have carefully read and reviewed this Amendment, and each term and provision contained herein, and by the execution of this

Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenant with respect to the Demised Premises.

This 15th day of August, 2024.

LANDLORD: CITY OF FLOWERY BRANCH,
GEORGIA

Edward R. Asbridge, Mayor

ATTEST:

Shelia, Cooper, City Clerk

TENANT: THE SOCIAL PEACH BOUTIQUE, LLC

By: Katie Gettys, Member

Sworn to and subscribed before me

This day of ,2024.

NOTARY PUBLIC

My Commission Expires:



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider Amendment 2 to the Memorandum of Understanding (MOU) with Parkside Partners

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

On September 7, 2023, the city entered into an MOU with Parkside Partners giving them the exclusive right to develop Phase II of the Old Town Redevelopment Plan. On December 7, 2023 the city extended the agreement to August 29, 2024.

FACTS AND ISSUES:

After the MOU was signed, city staff began the development of the parking and mobility study of the downtown area and partnered with the Greater Hall Metropolitan Planning Organization (GHMPO). City staff requested that Parkside Partners have one member of their team on the evaluation committee of the parking and mobility study. The bid for the parking and mobility study has not been awarded and the two projects' timing must coincide. For the first amendment, city staff requested that the MOU be extended to ensure that the parking and mobility study was complete before Parkside Partners presented their final plans for public and council review. Now that the study has been completed, Parkside Partners has requested this extension to allow time for their final plan.

OPTIONS:

- Amend the MOU extending the date of the MOU from August 29, 2024 to December 31, 2024.
- 2) Amend the MOU extending the date of the MOU from August 29, 2024 to another date in the future.
 - 3) Do not amend the MOU.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

Amend the memorandum of understanding (MOU) with Parkside Partners to extend the date of the MOU from August 29, 2024 to December 31, 2024.

SAMPLE MOTION:

I make a motion to approve Amendment 2 to the Memorandum of Understanding (MOU) with Parkside Partners.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [ES - Amendment 2 to MOU with Parkside Partners.pdf](#)
- [Amendment #2 to the Parkside Partners Agreement.pdf](#)



**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

SUBJECT: Consider Amendment 2 to the Memorandum of Understanding (MOU) with Parkside Partners

DATE: August 6, 2024

BUDGET INFORMATION:
ANNUAL- N/A
CAPITAL-

(X)RECOMMENDATION
() POLICY DISCUSSION
() STATUS REPORT
() OTHER

COUNCIL ACTION REQUESTED ON: August 15, 2024

PURPOSE: Amend the memorandum of understanding (MOU) with Parkside Partners to extend the date of the MOU from August 29, 2024 to December 31, 2024.

HISTORY: On September 7, 2023, the city entered into an MOU with Parkside Partners giving them the exclusive right to develop Phase II of the Old Town Redevelopment Plan. On December 7, 2023 the city extended the agreement to August 29, 2024.

FACTS AND ISSUES: After the MOU was signed, city staff began the development of the parking and mobility study of the downtown area and partnered with the Greater Hall Metropolitan Planning Organization (GHMPO). City staff requested that Parkside Partners have one member of their team on the evaluation committee of the parking and mobility study. The bid for the parking and mobility study has not been awarded and the two projects' timing must coincide. For the first amendment, city staff requested that the MOU be extended to ensure that the parking and mobility study was complete before Parkside Partners presented their final plans for public and council review. Now that the study has been completed, Parkside Partners has requested this extension to allow time for their final plan.

OPTIONS:

- 1) Amend the MOU extending the date of the MOU from August 29, 2024 to December 31, 2024.
 - 2) Amend the MOU extending the date of the MOU from August 29, 2024 to another date in the future.
 - 3) Do not amend the MOU.
-
-

RECOMMENDED SAMPLE MOTION:

I make a motion to approve Amendment 2 to the Memorandum of Understanding (MOU) with Parkside Partners.

DEPARTMENT: Administration

Prepared by: Tonya Parrish



Amendment 2 to the:

Memorandum of Understanding by and Between the City of Flowery branch, Georgia and Parkside Partners, LLC.

The above referenced MOU entered into on August 29, 2023 and amended on December 7, 2023 is hereby amended as follows:

Paragraph 4.a. relating to the Term of the MOU is hereby amended so as to extend the expiration from midnight on August 29, 2024 to midnight on December 31, 2024. Any extensions beyond that date shall not be automatic and shall require the mutual agreement of the Parties as evidenced and approved in writing. All other agreement terms, conditions, duties, obligations, and mutual covenants contained in the MOU shall remain in force and effect until the revised expiration date.

CITY OF FLOWERY BRANCH, GEORGIA

By: _____
Ed Asbridge, Mayor

Date: _____

PARKSIDE PARTNERS, LLC

By: _____
Partner

Date: _____



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider Authorizing a Change Order in the Amount of \$590,590.73 for Incorporating Additional Road Paving Scope into the Ongoing Road Resurfacing Improvements Contract and Allow for an Additional 30 days.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

The City awarded the Road Resurfacing Improvements construction contract to Baldwin Paving, Inc in the amount of \$1,645,269.00. Given the generally favorable overall pricing of the bid, the City engaged ESG Engineering to design road paving improvements for additional roads and to obtain pricing from the contractor for incorporation of the additional scope into the contract.

FACTS AND ISSUES:

This contract change order will incorporate road paving improvements on the follow roads (a total of approximately 2.2 miles):

- Lazy Hammock Way
- Blue Heron Way
- Newberry Point
- Flowery Branch Bay Park Road
- A small portion of Flagstone Way
- Railroad Ave – this will include resurfacing of the main travel lanes from West Chestnut St to Main St as well as paving the existing gravel parking lot between Railroad Ave and the railroad tracks.

Furthermore, a portion of the original scope is proposed to be removed from the contract. This portion is a section of Thurmon Tanner Pkwy owned/maintained by Hall County. This area was originally included in the contract as part of a potential, longer-term paving arrangement in which the County would engage the contractor for purposes of resurfacing their roads. After discussions with the County, this arrangement will not be pursued and this area will be removed from the project scope.

As part of the contract change order, the contract time will be increased to account for the additional work, and this extension will be coordinated with the contractor to ensure a schedule that is both timely and feasible.

Estimated Construction Costs:

Original Contract Amount: \$ 1,645,269.00

Change Order No. 1 Amount: \$ 590,590.73

Revised Contract Amount: \$ 2,235,859.73

OPTIONS:

- 1) Authorize Additional Road Paving Scope
 - 2) Do Not Authorize Additional Road Paving Scope
-
-

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$590,590.73 - Capital project budget

RECOMMENDATION:

To request authorization for the incorporation of additional road paving improvements into the ongoing Road Resurfacing Improvements Contract.

SAMPLE MOTION:

I make a motion to authorize the change order for additional road paving scope and allow for an additional 30 days in the amount of \$590,590.73 for Baldwin Pavement Company, Inc.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [8.15.2024 Executive Summary Baldwin Paving Change Order Additional Roads.pdf](#)
- [2024.08.08 - Change Order No. 1 - signed by contractor.pdf](#)
- [2024.08.07 - Paving Project Final Map.pdf](#)

FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY

SUBJECT: Consider Authorizing a Change Order in the amount of \$590,590.73 for incorporating Additional Road Paving Scope into the Ongoing Road Resurfacing Improvements contract and allow for an additional 30 days.

DATE: August 8, 2024

BUDGET INFORMATION:

ANNUAL-

CAPITAL- \$590,590.73

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

☐ **STATUS REPORT**

☐ **OTHER**

COUNCIL ACTION REQUESTED ON: August 15, 2024

PURPOSE: To Consider Authorizing a Change Order in the amount of \$590,590.73 for Incorporating Additional Road Paving Scope into the Ongoing Road Resurfacing Improvements contract and allow for an additional 30 days.

HISTORY: The City awarded the Road Resurfacing Improvements construction contract to Baldwin Paving, Inc in the amount of \$1,645,269.00. Given the generally favorable overall pricing of the bid, the City engaged ESG Engineering to design road paving improvements for additional roads and to obtain pricing from the contractor for incorporation of the additional scope into the contract.

FACTS AND ISSUES: This contract change order will incorporate road paving improvements on the follow roads (a total of approximately 2.2 miles):

- Lazy Hammock Way
- Blue Heron Way
- Newberry Point
- Flowery Branch Bay Park Road
- A small portion of Flagstone Way
- Railroad Ave – this will include resurfacing of the main travel lanes from West Chestnut St to Main St as well as paving the existing gravel parking lot between Railroad Ave and the railroad tracks.

Furthermore, a portion of the original scope is proposed to be removed from the contract. This portion is a section of Thurmon Tanner Pkwy owned/maintained by Hall County. This area was originally included in the contract as part of a potential, longer-term paving arrangement in which the County would engage the contractor for purposes of resurfacing their roads. After discussions with the County, this arrangement will not be pursued and this area will be removed from the project scope.

As part of the contract change order, the contract time will be increased to account for the additional work, and this extension will be coordinated with the contractor to ensure a schedule that is both timely and feasible.

Estimated Construction Costs:

Original Contract Amount: \$ 1,645,269.00

Change Order No. 1 Amount: \$ 590,590.73

Revised Contract Amount: \$ 2,235,859.73

OPTIONS: 1) Authorize Additional Road Paving Scope 2) Do Not Authorize Additional Road Paving Scope

RECOMMENDED SAMPLE MOTION: I make a motion to authorize the change order for additional road paving scope and allow for an additional 30 days in the amount of \$590,590.73 for Baldwin Pavement Company, Inc.

DEPARTMENT: Administration

Prepared by: Tonya D. Parrish



CONTRACT CHANGE ORDER NO. 1

Project: Flowery Branch Resurfacing Improvements
 Owner: City of Flowery Branch
 Contractor: Baldwin Paving
 Date: August 08, 2024

You are hereby requested to comply with the following changes from the contract plans and specifications:

CONTRACT AMOUNT

- Additional roads have been incorporated into the project for resurfacing and are reflected in the revised plan sheets.
 - Lazy Hammock Way
 - Blue Heron Way
 - Newberry Point
 - Flowery Branch Bay Park Road
 - A small portion of Flagstone Way
 - Railroad Ave – this will include resurfacing of the main travel lines from West Chestnut St to Main St as well as paving the existing gravel parking long between Railroad Ave and the railroad tracks.
- A portion of Thurmon Tanner (located in Hall County) has been removed from the project.

The amount of the contract will increase by the amount of Five Hundred Ninety Thousand, Five Hundred Ninety & 73/100 Dollars \$ 590,590.73

The contract total including this and previous Change Orders will be: Two Million, Two Hundred Thirty-Five Thousand, Eight Hundred Fifty-Nine and & 73/100 Dollars \$ 2,235,859.73

See Attached Exhibit A for change order calculation.

CONTRACT PERIOD

Due to the additional scope of work, the contract period has been increased by 30 days, to a total of 120 days.

This document will become a supplement to the contract and all provisions will apply hereto.

Requested:

City of Flowery Branch

(Date)

Recommended:

ESG Engineering, Inc.

08/08/2024

(Date)

Accepted:

Baldwin Paving

8/8/2024

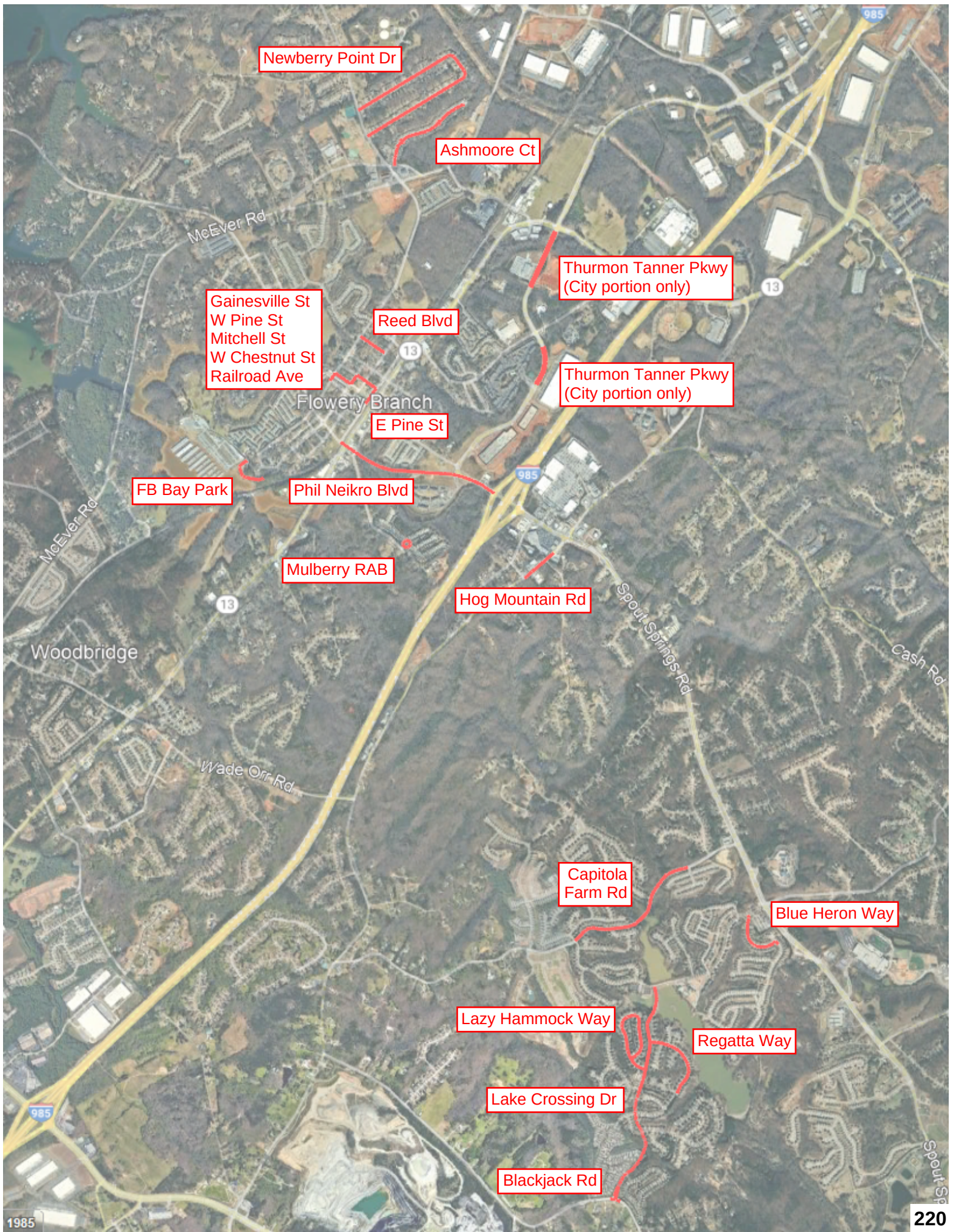
(Date)

Change Order No. 1 - Exhibit A

BASE BID						CHANGE ORDER #1		REVISED CONTRACT AMOUNT	
SECTION 100 - PAVING IMPROVEMENTS									
ITEM NO.	BID QTY.	UNIT	DESCRIPTION	UNIT PRICE	BID TOTAL PRICE	CHANGE ORDER #1 QTY	CHANGE ORDER #1 TOTAL PRICE	TOTAL QTY (INCLUDING CO #1)	TOTAL PRICE (INCLUDING CO #1)
100	85,000	SY	Variable Depth Milling of Asphaltic Concrete Pavement	\$ 2.45	\$ 208,250.00	-9850.00	\$ (24,132.50)	75150	\$ 184,117.50
101	200	TN	Recycled Asphalt Leveling Course	\$ 155.00	\$ 31,000.00	0.00	\$ -	200	\$ 31,000.00
102	1,300	TN	Asphaltic Concrete Open-Graded Interlayer (OGI)	\$ 164.00	\$ 213,200.00	0.00	\$ -	1300	\$ 213,200.00
103	3,600	TN	9.5 mm "Type II" Asphalt Overlay	\$ 84.00	\$ 302,400.00	0.00	\$ -	3600	\$ 302,400.00
104	3,500	TN	12.5 mm Asphalt Overlay	\$ 127.50	\$ 446,250.00	-860.00	\$ (109,650.00)	2640	\$ 336,600.00
105	440	SY	Full-Depth Pavement Repair (incl. demo & removal of ex. pavement & subgrade, compaction, 8" GAB, 2.5" asphalt binder course, and 1.5" asphalt surface course	\$ 209.75	\$ 92,290.00	0.00	\$ -	440	\$ 92,290.00
106	6	EA	Remove & Replace Existing 6x40 Signal Loop	\$ 2,000.00	\$ 12,000.00	0.00	\$ -	6	\$ 12,000.00
107	5	EA	Remove & Replace Existing 6x6 Signal Setback Loop	\$ 1,000.00	\$ 5,000.00	0.00	\$ -	5	\$ 5,000.00
108	23	EA	Adjust Existing Valve Box to Final Grade	\$ 1,350.50	\$ 31,061.50	0.00	\$ -	23	\$ 31,061.50
109	5	EA	Adjust Existing Manhole/Structure Top to Final Grade	\$ 4,919.00	\$ 24,595.00	1.00	\$ 4,919.00	6	\$ 29,514.00
110	22,000	LF	Solid Traffic Stripe, 5" - Yellow High-Build Paint	\$ 0.50	\$ 11,000.00	-1500.00	\$ (750.00)	20500	\$ 10,250.00
111	23,000	LF	Solid Traffic Stripe, 5" - White High-Build Paint	\$ 0.50	\$ 11,500.00	-160.00	\$ (80.00)	22840	\$ 11,420.00
112	400	LF	Skip Traffic Stripe, 5" - Yellow High-Build Paint	\$ 0.35	\$ 140.00	-170.00	\$ (59.50)	230	\$ 80.50
113	10,500	LF	Skip Traffic Stripe, 5" - White High-Build Paint	\$ 0.35	\$ 3,675.00	-3160.00	\$ (1,106.00)	7340	\$ 2,569.00
114	600	LF	Stop Bar, 24" - White High-Build Paint	\$ 3.50	\$ 2,100.00	600.00	\$ 2,100.00	1200	\$ 4,200.00
115	2,000	SY	Median Hatching - Yellow High-Build Paint	\$ 3.50	\$ 7,000.00	0.00	\$ -	2000	\$ 7,000.00
116	500	SY	Median Hatching - White High-Build Paint	\$ 3.50	\$ 1,750.00	-50.00	\$ (175.00)	450	\$ 1,575.00
117	360	SY	Pedestrian Crosswalk, 8" - White High-Build Paint	\$ 5.00	\$ 1,800.00	27.00	\$ 135.00	387	\$ 1,935.00
118	6	EA	Pavement Marking Arrow, Type 1 - White High-Build Paint	\$ 40.00	\$ 240.00	0.00	\$ -	6	\$ 240.00
119	62	EA	Pavement Marking Arrow, Type 2 - White High-Build Paint	\$ 40.00	\$ 2,480.00	-10.00	\$ (400.00)	52	\$ 2,080.00
120	5	EA	Pavement Marking Arrow, Type 3 - White High-Build Paint	\$ 50.00	\$ 250.00	0.00	\$ -	5	\$ 250.00
121	10	EA	Pavement Marking Arrow, Type 7 - White High-Build Paint	\$ 50.00	\$ 500.00	0.00	\$ -	10	\$ 500.00
122	8	EA	Pavement "ONLY" Marking - White High-Build Paint	\$ 50.00	\$ 400.00	0.00	\$ -	8	\$ 400.00
123	1	LS	Shoulder Grading & Grassing	\$ 27,330.00	\$ 27,330.00	0.00	\$ -	1	\$ 27,330.00
CO1-1	0	CY	Import Fill	\$ 70.00	\$ -	373.00	\$ 26,110.00	373	\$ 26,110.00
CO1-2	0	SY	Variable Depth Milling of Asphaltic Concrete Pavement	\$ 3.50	\$ -	23093.00	\$ 80,825.50	23093	\$ 80,825.50
CO1-3	0	TN	Recycled Asphalt Leveling Course	\$ 165.00	\$ -	60.00	\$ 9,900.00	60	\$ 9,900.00
CO1-4	0	TN	12.5 mm Asphalt Overlay	\$ 133.75	\$ -	2277.95	\$ 304,675.48	2277.9475	\$ 304,675.48
CO1-5	0	SY	Full-Depth Pavement Repair (incl. demo & removal of ex. pavement & subgrade, compaction, 8" GAB, 2.5" asphalt binder course, and 1.5" asphalt surface course	\$ 140.00	\$ -	1120.00	\$ 156,800.00	1120	\$ 156,800.00
CO1-6	0	EA	Adjust Existing Valve Box to Final Grade	\$ 1,500.00	\$ -	15.00	\$ 22,500.00	15	\$ 22,500.00
CO1-7	0	SY	Cut Ex GAB/Gravel, Install 4" GAB, Prime Coat, & Compact Subgrade	\$ 75.00	\$ -	760.00	\$ 57,000.00	760	\$ 57,000.00
CO1-8	0	EA	Wheelstops	\$ 270.75	\$ -	25.00	\$ 6,768.75	25	\$ 6,768.75
SECTION 100 - PAVING IMPROVEMENTS SUBTOTAL:					\$ 1,436,211.50		\$ 535,380.73		\$ 1,971,592.23

SECTION 200 - GENERAL ITEMS									
200	1	LS	Traffic Control	\$ 159,057.50	\$ 159,057.50	0.350	\$ 55,210.00	1.35	\$ 214,267.50
201	1	LS	Supplemental Work Allowance (SWA)	\$ 50,000.00	\$ 50,000.00	0	\$ -	1	\$ 50,000.00
SECTION 200 - GENERAL ITEMS SUBTOTAL:					\$ 209,057.50		\$ 55,210.00		\$ 264,267.50

TOTAL				\$ 1,645,269.00		\$ 590,590.73		\$ 2,235,859.73
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FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider the Second Amendment to the Lease Agreement with Norfolk Southern Railway Company.

COUNCIL MEETING DATE: August 15, 2024

HISTORY:

The City of Flowery Branch entered into an agreement with Norfolk Southern on September 26, 2006. This agreement was amended on June 11, 2019 and the city leased 9.18 acres/square feet which included both sides of Atlanta Highway. In 2023, the city paid \$5,109 and annual rate of the lease increases annually with the CPI.

FACTS AND ISSUES:

The City of Flowery Branch would like to lease the northern side of the railroad right-of-way from Norfolk Southern. The new leased area is 8.18 acres/square feet.

OPTIONS:

- Approve the second amendment to the lease with Norfolk Southern.
2) Do not approve the second amendment to the lease with Norfolk Southern.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$5,110 - General Fund budget

RECOMMENDATION:

Authorize the second amendment to the lease agreement with Norfolk Southern.

SAMPLE MOTION:

I move to approve the second amendment to the lease agreement with Norfolk Southern.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [ES - Norfolk Southern 2nd Amendment to Lease.pdf](#)
- [NS ROW Lease \(Amendment 1\) Entire Document 2019 FULLY EXECUTED.pdf](#)

- [Lease amend Norfolk Southern.pdf](#)
- [Norfolk Southern Lease.PDF](#)
- [Norfolk Southern Map.PDF](#)



FLOWERY BRANCH CITY COUNCIL EXECUTIVE SUMMARY

SUBJECT: Consider the Second Amendment to the Lease Agreement with Norfolk Southern Railway Company.

DATE: August 8, 2024

(X)RECOMMENDATION
() POLICY DISCUSSION
() STATUS REPORT
() OTHER

BUDGET INFORMATION:
ANNUAL- \$5,110
CAPITAL- N/A

COUNCIL ACTION REQUESTED ON: August 15, 2024

PURPOSE: To consider the second amendment to the lease agreement with Norfolk Southern which allows for a different area (than previously) for \$5,110. In 2023, the city paid \$5,109 and lease increases annually with the CPI.

HISTORY: The City of Flowery Branch entered into an agreement with Norfolk Southern on September 26, 2006. This agreement was amended on June 11, 2019 and the city leased 9.18 acres/square feet which included both sides of Atlanta Highway. In 2023, the city paid \$5,109 and annual rate of the lease increases annually with the CPI.

FACTS AND ISSUES: The City of Flowery Branch would like to lease the northern side of the railroad right-of-way from Norfolk Southern. The new leased area is 8.18 acres/square feet.

OPTIONS:

- 1) Approve the second amendment to the lease with Norfolk Southern.
 - 2) Do not approve the second amendment to the lease with Norfolk Southern.
-
-

RECOMMENDED SAMPLE MOTION:

I move to approve the second amendment to the lease agreement with Norfolk Southern.

DEPARTMENT: Administration

Prepared by: Tonya Parrish



Norfolk Southern Corporation
Real Estate and Contract Services
1200 Peachtree Street, NE, 12th Floor
Atlanta, Georgia 30309-3579

Martina Chitwood
Senior Property Services Agent
My Direct Line Is:
Phone: (404) 962-5734
Fax: (404) 589-6756
E-mail: Martina.Chitwood@nscorp.com

June 11, 2019
Activity Number: 1270494

UPS GROUND

Mr. Bill Andrew
The City of Flowery Branch, Georgia
5410 W. Pine Street
Flowery Branch, GA 30542

RE: Flowery Branch, Hall County, Georgia – First Amendment to Lease dated September 26, 2006 between NORFOLK SOUTHERN RAILWAY COMPANY and THE CITY OF FLOWERY BRANCH, GEORGIA covering 9.18 acres, more or less, located at Milepost 592.99.

Dear Mr. Andrew:

Enclosed is one fully executed original of the above referenced agreement for your file.

Thank you for your cooperation and if I may be of further assistance, please contact me at the telephone number shown above.

Sincerely,


Martina Chitwood

iManage # 1750885v1



Activity Number 1270494

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "**Amendment**") is made as of the 11th day of June, 2019 by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (the "**Landlord**") and **THE CITY OF FLOWERY BRANCH, GEORGIA**, a Georgia government entity (the "**Tenant**").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated September 26 2006, as amended by (the "**Lease**"), for real property located at Milepost 592.99 in Flowery Branch, Hall County, Georgia, having an area of 9.18 acres/square feet, more or less (the "**Premises**");

WHEREAS, Landlord and Tenant desire to modify the rental payable by Tenant under the Lease and to make certain other changes to the Lease as hereinafter stated.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby amended, and the parties hereto do agree as follows:

1. Adjustment of Base Rental. Commencing on September 26, 2019 (the "**Commencement Date**"), Tenant shall pay unto Landlord, without offset, abatement or demand, base rental in the amount of FOUR THOUSAND THREE HUNDRED DOLLARS (\$4,300.00) per annum, payable in advance. Commencing on the first anniversary of the Commencement Date and thereafter on each anniversary thereof during the term of the Lease, the amount of the base rental shall be increased (and not decreased) on an annual basis by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)(1982-1984 = 100) U.S. City Average, All Items (the "**Index**") as set forth below. If the Index has changed so that the base year differs from that used in this Paragraph, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, to the 1982-84 base. If the Index is discontinued or revised during the term of the Lease, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. The "**Adjustment Date**" shall mean the first anniversary of the Commencement Date and each anniversary thereof during the term of the Lease. The Index published nearest to the Commencement Date shall be the "**Base Index**". The Index published nearest to the date three (3) months prior to the then current Adjustment Date shall be the "**Adjustment Index**". On each Adjustment Date, the base rental shall be adjusted by multiplying the base rental payable under the Lease at the Commencement Date by a fraction, the numerator of which fraction is the applicable Adjustment Index and the denominator of which fraction is the Base Index. The amount so determined shall be the base rental payable under the Lease beginning on the applicable Adjustment Date and until the next Adjustment Date (if any).

2. Notice. Any notice given pursuant to the Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE – 12th Floor, Atlanta, Georgia 30309-3579 or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: City of Flowery Branch, c/o City Manager, 5410 W. Pine Street, Flowery Branch, Ga. 30542 or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

3. Ratification; Successors and Assigns. Landlord and Tenant acknowledge and agree that the Lease, as amended by this Amendment, is hereby ratified and confirmed and in full force and effect. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

4. Signature. The parties agree that if an authorized officer of a party fully signs this Agreement in the appropriate location(s) below and then returns that signature to the other party via electronic means with a pdf or similar scanned copy of that signature, then that scanned signature shall serve as that party's signature for the Agreement, and, upon full execution of the Agreement by all parties, shall create a legally binding Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate, each part being an original, as of the 11th day of June, 2019.

Witness: As To Landlord

Donald N. Allen
Signature
Name: Donald N. Allen

Witness: As To Landlord

M. Chitwood
Signature
Name: M. Chitwood

LANDLORD:

NORFOLK SOUTHERN RAILWAY COMPANY
a Virginia corporation

By: [Signature]
Name: Jason Chapman
Title: Senior Project Advisor

Date of Landlord Signature: 6/11/19

[SEAL]

Witness: As To Tenant

Bill Andrew
Signature Name: Bill Andrew

Witness: As To Tenant

Melissa McCain
Signature Name: Melissa McCain

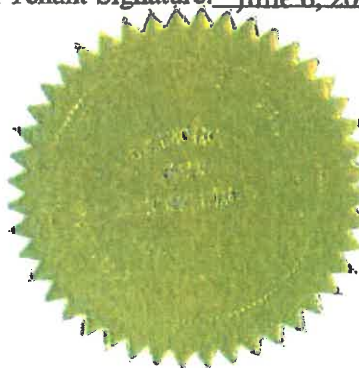
TENANT:

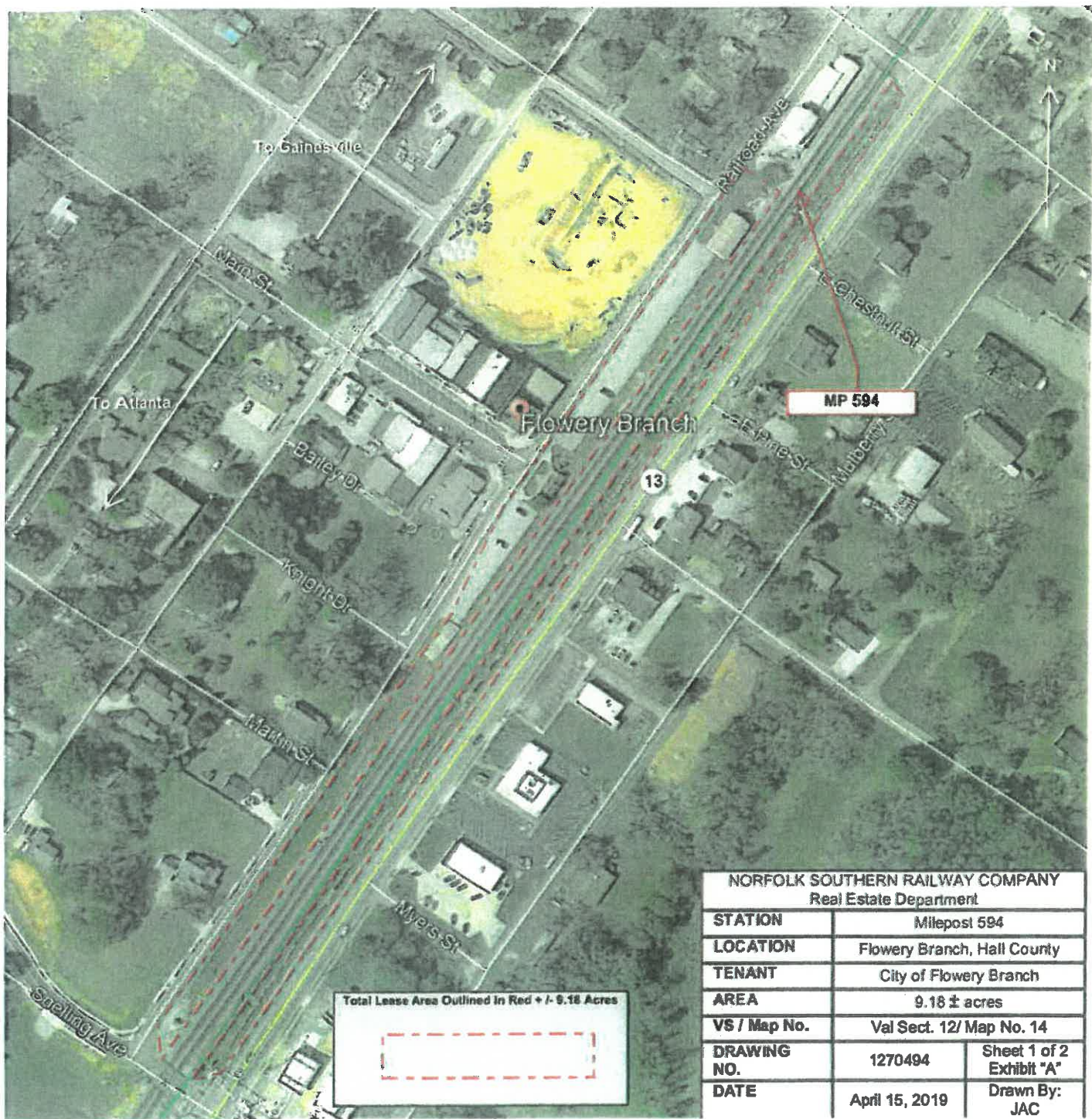
THE CITY OF FLOWERY BRANCH, GEORGIA
a Georgia government entity

By: [Signature]
Name: James Miller
Title: Mayor

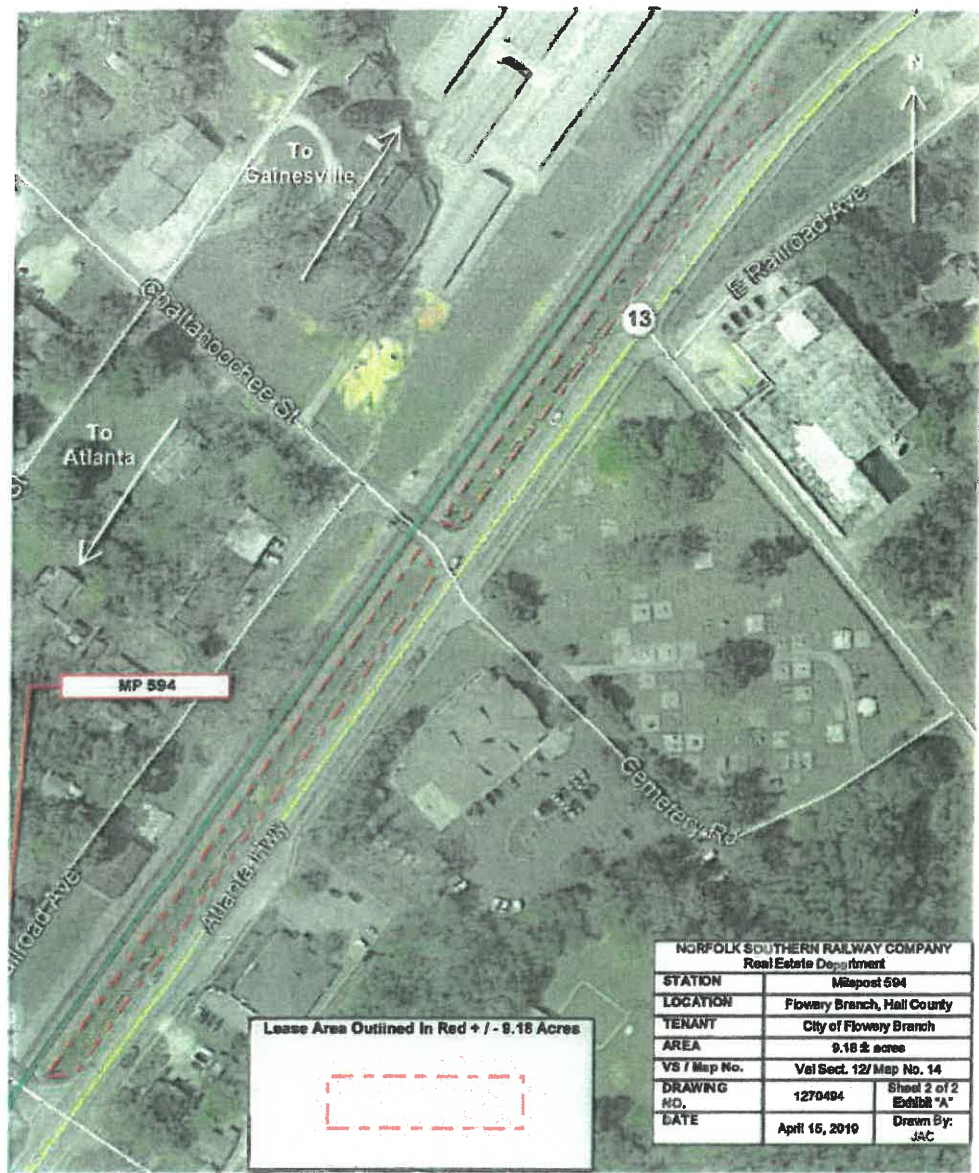
Date of Tenant Signature: June 6, 2019

JAC Thursday, May 23, 2019 1270494\Activity No. 1270494





NORFOLK SOUTHERN RAILWAY COMPANY Real Estate Department		
STATION	Milepost 594	
LOCATION	Flowery Branch, Hall County	
TENANT	City of Flowery Branch	
AREA	9.18 ± acres	
VS / Map No.	Val Sect. 12/ Map No. 14	
DRAWING NO.	1270494	Sheet 1 of 2 Exhibit "A"
DATE	April 15, 2019	Drawn By: JAC



Lease Area Outlined in Red +/- 9.16 Acres



NORFOLK SOUTHERN RAILWAY COMPANY		
Real Estate Department		
STATION	Milepost 594	
LOCATION	Flowery Branch, Hall County	
TENANT	City of Flowery Branch	
AREA	9.16 ± acres	
VS / Map No.	Val Sect. 12/ Map No. 14	
DRAWING NO.	1270494	Sheet 2 of 2 Exhibit "A"
DATE	April 16, 2010	Drawn By: JAC

Activity Number: 1315244

SECOND AMENDMENT TO LEASE AGREEMENT

THIS SECOND AMENDMENT TO LEASE AGREEMENT (this "**Amendment**"), effective date of which shall be the date last executed, below, by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a **VIRGINIA** corporation (the "**Landlord**") and **THE CITY OF FLOWERY BRANCH, GEORGIA**, a **GEORGIA**, GOVERNMENT ENTITY (the "**Tenant**").

W I T N E S S E T H:

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated as last amended on September 26, 2006, (as amended, the "**Lease**"), for real property located at Milepost 592.99 in FLOWERY BRANCH, HALL County, GEORGIA, having an area of 9.18 acres/square feet, more or less (the "**Premises**");

WHEREAS, Landlord and Tenant desire to execute this Amendment to modify the rental payable by Tenant under the Lease and to make certain other changes to the Lease as hereinafter stated, with the Lease and the Amendment.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby amended, and the parties hereto do agree as follows:

1. Adjustment of Base Rental. Commencing on November 6, 2023 (the "**Commencement Date**"), Tenant shall pay unto Landlord, without offset, abatement or demand, base rental in the amount of Five Thousand One Hundred Ten and 00/100 DOLLARS (\$5,110.00) per annum, payable in advance. Commencing on the First anniversary of the Commencement Date and thereafter on each anniversary thereof during the term of the Lease, the amount of the base rental shall be increased (and not decreased) on an annual basis by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)(1982-1984 = 100) U.S. City Average, All Items (the "**Index**") as set forth below. If the Index has changed so that the base year differs from that used in this Paragraph, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics, to the 1982-84 base. If the Index is discontinued or revised during the term of the Lease, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. The "**Adjustment Date**" shall mean the first anniversary of the Commencement Date and each anniversary thereof during the term of the Lease. The Index published nearest to the Commencement Date shall be the "**Base Index**". The Index published nearest to the date three (3) months prior to the then current Adjustment Date shall be the "**Adjustment Index**". On each Adjustment Date, the base rental shall be adjusted by multiplying the base rental payable under the Lease at the Commencement Date by a fraction, the numerator of which fraction is the applicable Adjustment Index and the denominator of which fraction is the Base Index. The amount so determined shall be the base rental payable under the Lease beginning on the applicable Adjustment Date and until the next Adjustment Date (if any).

2. Insurance. Tenant shall procure and maintain, at all times and at its expense, in a form and

with an insurance company acceptable to Landlord, Commercial General Liability Insurance for the Premises. Such coverage shall (a) have a single limit of not less than \$2,000,000.00 for each occurrence (or such greater amount over time so as to be commercially reasonable) and shall provide for a deductible of not more than \$5,000.00, (b) cover Tenant's contractual liability hereunder, (c) cover Tenant and Landlord for liability arising out of work performed by any third parties for Tenant in or about the Premises, (d) name the Landlord Entities as additional insureds, and (e) be considered primary and noncontributory, regardless of any insurance carried by Landlord. Any property insurance maintained by Tenant on its furniture, fixtures, equipment and personal property shall include a waiver of subrogation in favor of Landlord. Tenant shall deliver certificates of insurance evidencing the insurance required hereinabove to Landlord simultaneously with the execution of this Lease by Tenant, which certificates shall reflect that the policies shall not be canceled without at least thirty (30) days prior notice to Landlord. If Tenant fails to obtain the necessary coverages, Landlord may do so at Tenant's expense and the same shall constitute additional rental. All insurance certificates should be delivered to Landlord's Risk Management Department, 650 W Peachtree St NW, Atlanta, GA 30308, simultaneously with the execution of this Lease by Tenant. The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of Tenant hereunder and shall not waive Landlord's right to seek a full recovery from Tenant.

3. **Term Adjustment.** The terms of the original lease are hereby adjusted as follows: To have and to hold for a term beginning on _____, 2024, and continuing thereafter for 30 years.
4. Paragraph 3, "Beautification" of the Rider to the original lease labelled as Exhibit B dated September 26, 2006 is hereby modified as follows:

Beautification. A portion of the Premises will be used for beautification and a multi-purpose trail. Tenant will enter that portion of the Premises for the sole purposes of landscaping and gardening the Premises with grass, flowers and low shrubbery and of maintaining said landscaping and to construct and maintain a multi-purpose trail. In no event shall any trees be planted or permitted to grow on the Premises. This Lease is a personal privilege to Tenant and shall not be assigned without the written consent of Company, nor shall Tenant, except with such written consent, permit the Premises to be used for any purpose by any other party, firm or corporation.

Grass, flowers and shrubbery planted by Tenant on the Premises shall be maintained, cut and trimmed by Tenant in a safe and orderly manner so as not to obstruct the view of Landlord's employees engaged in railroad operations or of pedestrians or motorists. In no event shall any shrubbery be permitted to exceed 48 inches in height. Tenant agrees that no grass, flowers or shrubbery shall be planted closer than 100 feet on each side of any grade crossing over tracks of Landlord.

In installing, maintaining or removing said landscaping or multi-purpose trail, Tenant will not damage or interfere with the drainage facilities of Landlord. If new or additional drainage is required in connection with the landscaping permitted herein, such drainage will be constructed at the sole expense of Tenant, will be subject to the advance, written approval of Landlord, and will be constructed so as to cause any runoff to flow away from Landlord's railroad facilities.

5. Notice. Any notice given pursuant to the Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 650 W Peachtree St
RE_A_1471

NW, Atlanta, GA 30308 or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: P O BOX 757 5517 MAIN STREET FLOWERY BRANCH, GA 30542, or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

6. Ratification; Successors and Assigns. Landlord and Tenant acknowledge and agree that the Lease, as amended by this Amendment, is hereby ratified and confirmed and in full force and effect. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

7. Signature. The parties agree that if an authorized officer of a party fully signs this Agreement in the appropriate location(s) below and then returns that signature to the other party via electronic means with a pdf or similar scanned copy of that signature, then that scanned signature shall serve as that party's signature for the Agreement, and, upon full execution of the Agreement by all parties, shall create a legally binding Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in duplicate, each part being an original, as of the date last executed below.

Witness As To Landlord:

Name:

Witness As To Landlord:

Name:

LANDLORD:

**NORFOLK SOUTHERN RAILWAY
COMPANY**

a VIRGINIA corporation

Signature: _____

Name: _____

Title: _____

Date of Landlord Signature: _____

[SEAL]

Witness As To Tenant:

Name:

Witness As To Tenant:

Name:

TENANT:

**THE CITY OF FLOWERY BRANCH,
GEORGIA**

a GEORGIA GOVERNMENT ENTITY

Signature: _____

Name: _____

Title: _____

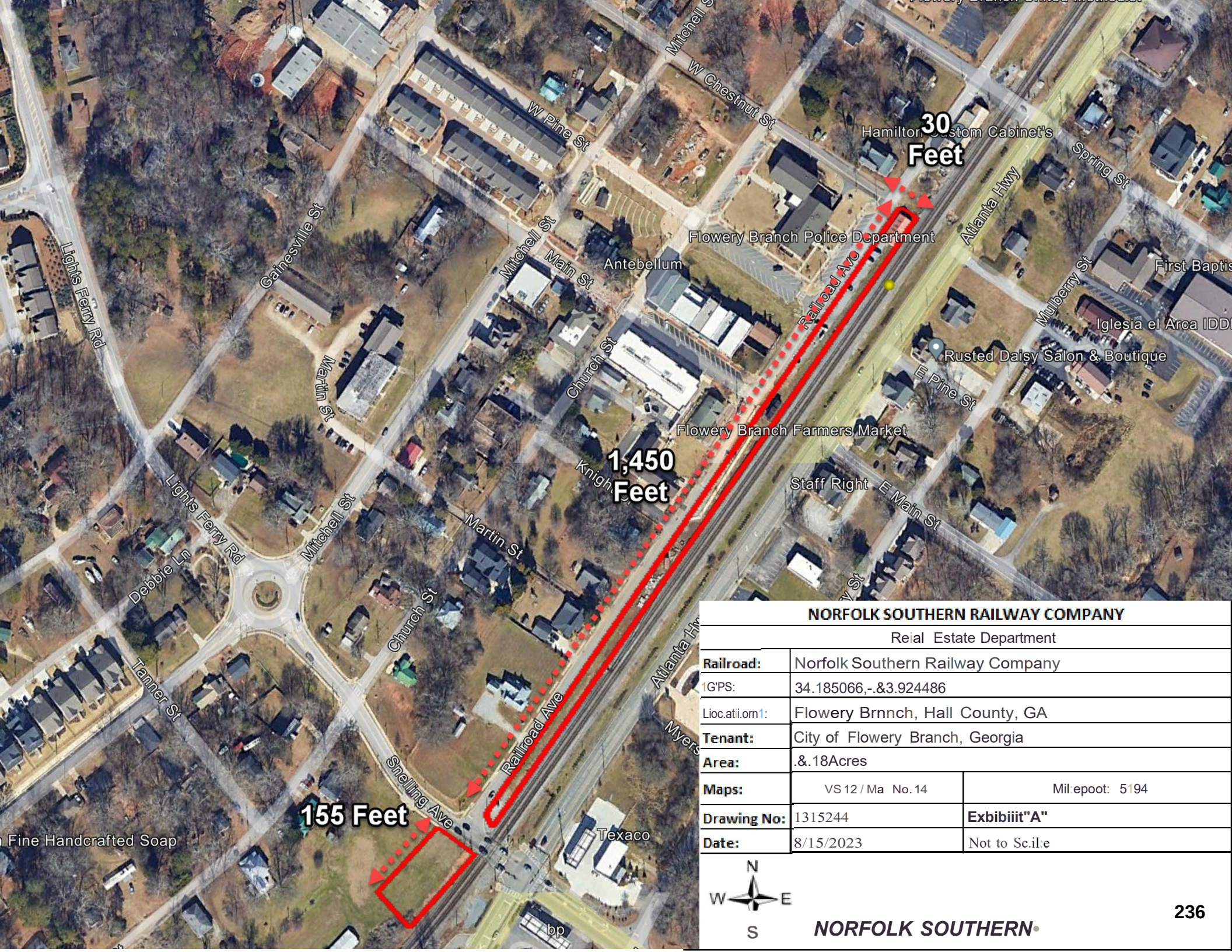
Date of Tenant Signature: _____

[SEAL]

S S\Activity No. 1315244

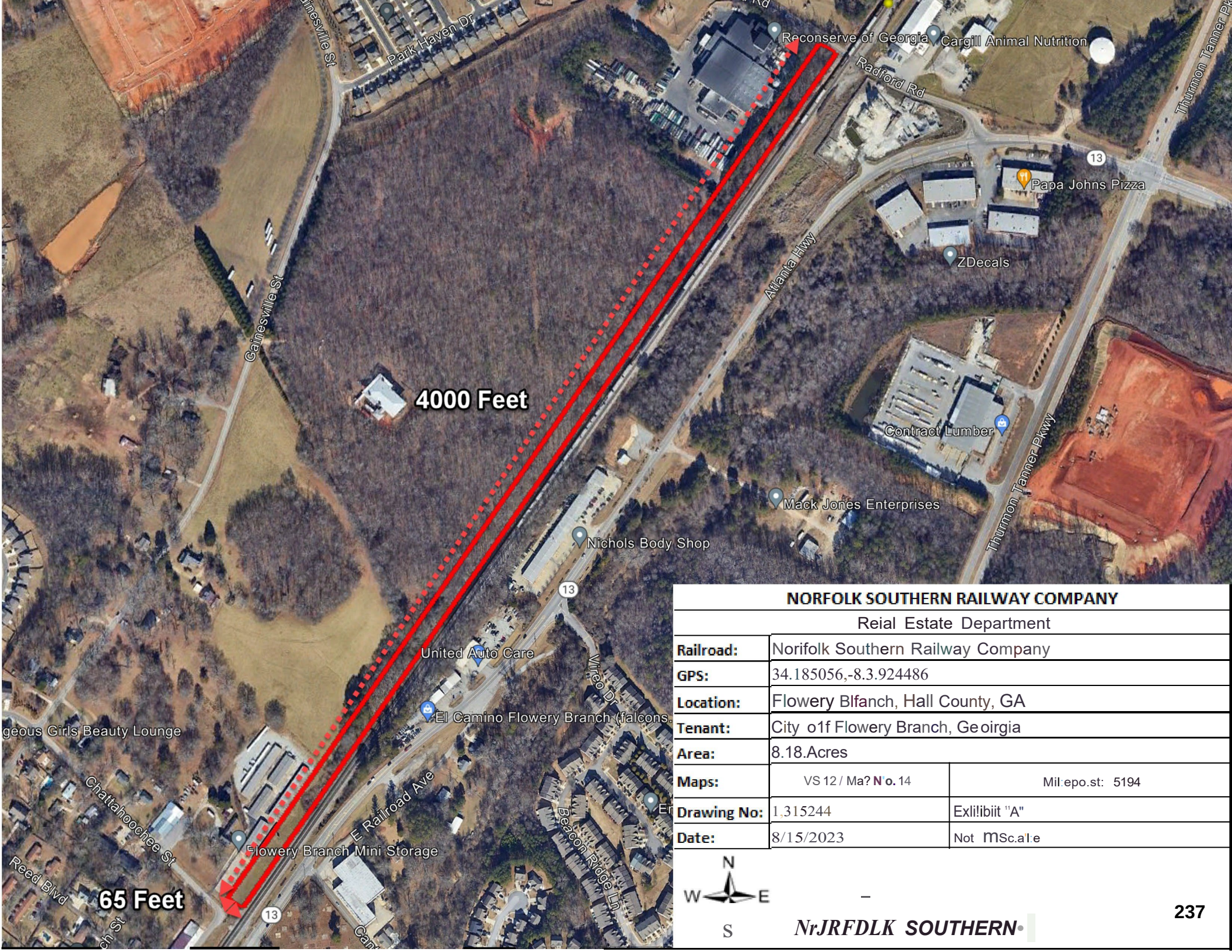
Form Amendment – Rental, Insurance and Notice (NS) 214854v1

Exhibit A



NORFOLK SOUTHERN RAILWAY COMPANY		
Reial Estate Department		
Railroad:	Norfolk Southern Railway Company	
IGPS:	34.185066,-. &3.924486	
Lioc.ati.om1:	Flowery Brnnch, Hall County, GA	
Tenant:	City of Flowery Branch, Georgia	
Area:	&.18Acres	
Maps:	VS 12 / Ma No. 14	Mil.epoot: 5'194
Drawing No:	1315244	Exhibiit"A"
Date:	8/15/2023	Not to Sc.ile





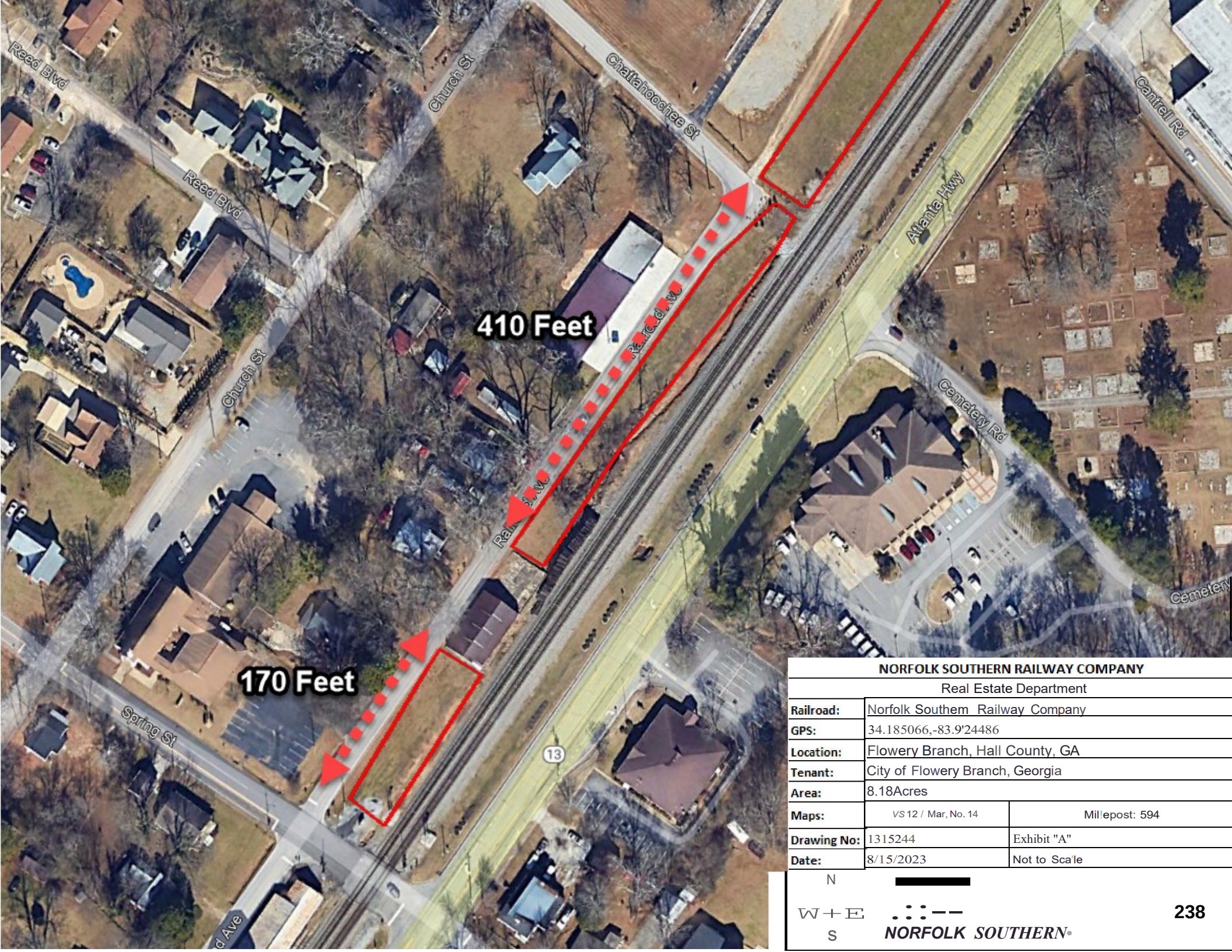
4000 Feet

65 Feet

NORFOLK SOUTHERN RAILWAY COMPANY		
Reial Estate Department		
Railroad:	Norfolk Southern Railway Company	
GPS:	34.185056,-8.3.924486	
Location:	Flowery Blfanch, Hall County, GA	
Tenant:	City o1f Flowery Branch, Geoirgia	
Area:	8.18.Acres	
Maps:	VS 12 / Ma? N o. 14	Mil:epo.st: 5194
Drawing No:	1.315244	Exl:ibiit "A"
Date:	8/15/2023	Not MSc.al'e



NrJRFDLK SOUTHERN



NORFOLK SOUTHERN RAILWAY COMPANY		
Real Estate Department		
Railroad:	Norfolk Southern Railway Company	
GPS:	34.185066,-83.9°24486	
Location:	Flowery Branch, Hall County, GA	
Tenant:	City of Flowery Branch, Georgia	
Area:	8.18Acres	
Maps:	VS 12 / Mar, No. 14	Milepost: 594
Drawing No:	1315244	Exhibit "A"
Date:	8/15/2023	Not to Scale

LEASE AGREEMENT

THIS LEASE is made as of the 26th day of September 2006, by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (the "**Landlord**") and **THE CITY OF FLOWERY BRANCH, GEORGIA**, a Georgia government entity (the "**Tenant**").

1. Premises; Use. For and in consideration of the agreements set forth herein, to be paid, kept and performed by Tenant, Landlord hereby leases and rents to Tenant, insofar as its right, title and interest in the Premises enables it to do so, that certain real property located at Milepost 594.00 in Flowery Branch, Hall County, Georgia, having an area of 9.18 acres, more or less, the location of which is substantially shown on drawing dated August 9, 2006, hereunto annexed as **Exhibit "A"** attached hereto (the "**Land**"), together with the right to: remove and/or barricade existing stairs; remove Country Craft buildings (after Tenant provides Landlord with proof of permission or a bill of sale); use and maintain the existing building of Landlord (Mooney Building); maintain the existing paved parking lot of Tenant; and install and maintain landscaping thereon (the "**Improvements**"). The Land and the Improvements are collectively referred to herein as the "**Premises**". This Lease is subject to all encumbrances, easements, conditions, covenants and restrictions, whether or not of record.

The Premises shall be used for parking, beauification and storage (inside the Mooney Building) and no other purpose. The Premises shall not be used for any illegal purposes, for the storage of unlicensed vehicles, nor in any manner to create any nuisance or trespass. No smoking is permitted in or about the Premises. Landlord reserves unto itself and its permittees, the permanent right to construct, maintain or replace upon, under, or over the Premises, any pipe, electrical, telecommunications, and signal lines, or any other facilities of like character now installed or hereinafter to be installed. Landlord further reserves unto itself and its permittees the right to enter upon the Premises at any and all times for the purposes of operating, maintaining, constructing or relocating any trackage or railroad facilities located on, or in the vicinity of, the Premises.

The terms and conditions of the Rider, if any, attached hereto as **Exhibit "B"** are incorporated herein by this reference. In the event of an inconsistency between the terms hereof and the terms of the Rider, the terms of the Rider shall prevail.

2. Term. To have and to hold for a term beginning on September 26, 2006, and continuing thereafter on a periodic basis. In addition to any termination rights that the parties may have hereunder, either party may terminate this Lease for any reason by giving the other party not less than thirty (30) days' notice of such termination. Any such termination pursuant to the preceding sentence shall not relieve Tenant from satisfying and performing all of its obligations hereunder (including, but not limited to, the payment of rental) through the date of such termination and shall not relieve either party from performing any obligation that, pursuant to the terms of the Lease, survives the termination of the Lease.

3. Base Rental. Commencing on September 26, 2006 (the "**Rental Commencement Date**") and thereafter on each anniversary thereof during the term of this Lease, Tenant shall pay to Landlord, without offset, abatement or demand, initial base rental of **TWO THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$2,400.00)**. The amount of the base rental shall be increased (and not decreased) on an annual basis by the percentage of increase, if any, in the United States, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)(1982-1984 = 100) U.S. City Average, All Items (the "**Index**") as set forth below. If the Index has changed so that the base year differs from that used in this Paragraph, the Index shall be converted in accordance with the conversion

factor published by the United States Department of Labor, Bureau of Labor Statistics, to the 1982-84 base. If the Index is discontinued or revised during the term of this Lease, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

The "**Adjustment Date**" shall mean the first anniversary of the Rental Commencement Date and each anniversary thereof during the term of this Lease. The Index published nearest to the Rental Commencement Date shall be the "**Base Index**". The Index published nearest to the date three (3) months prior to the then current Adjustment Date shall be the "**Adjustment Index**". On each Adjustment Date, the base rental shall be adjusted by multiplying the base rental payable under this Lease at the Rental Commencement Date by a fraction, the numerator of which fraction is the applicable Adjustment Index and the denominator of which fraction is the Base Index. The amount so determined shall be the base rental payable under the Lease beginning on the applicable Adjustment Date and until the next Adjustment Date (if any).

Base rental shall be due in advance. Except in the event of default, base rental for any partial rental periods shall be prorated. The acceptance by Landlord of base rental shall not constitute a waiver of any of Landlord's rights or remedies under this Lease. All payments of base rental, and any additional rental payable hereunder, shall be sent to the Treasurer of Landlord at P.O. Box 116944, Atlanta, Georgia 30368-6944, or such other address as Landlord may designate in any invoice delivered to Tenant. Prior to or simultaneously with Tenant's execution of this Lease, Tenant has paid to Landlord (a) a non-refundable, application fee in the amount of \$500.00, and (b) the first installment of base rental due hereunder. In the event Tenant fails to pay base rental or any other payment called for under this Lease on or before the due date, Tenant shall pay a late charge equal to five percent (5%) of the unpaid amount. In addition, any sum not paid within thirty (30) days of its due date shall accrue interest thereafter until paid at the rate per annum equal to the lesser of (a) the highest interest rate permitted by applicable law; or (b) eighteen percent (18%). (See Rider, Waiver of Application Fee)

4. Utilities. Landlord shall have no obligation to provide light, water, heat, air conditioning or any other utilities or services to the Premises. Tenant shall place any and all utility and service related bills in its name and shall timely pay the same, along with all assessments or other governmental fees or charges pertaining to the Premises. If Tenant does not pay same, Landlord may (but shall not be obligated to) pay the same, including any and all late fees and penalties, and such payment shall be added to and treated as additional rental of the Premises.

5. Maintenance and Repairs. Tenant, at its sole cost, shall keep and maintain all of the Premises (including, but not limited to, all structural and non-structural components thereof and all systems) in good order and repair (including replacements) and shall keep the Premises free of pests and rodents. Tenant hereby waives (a) any rights at law or in equity to require Landlord to perform any repair, replacement or maintenance to the Premises, and (b) any right to abate rental or terminate this Lease due to the failure by Landlord to perform any repairs, replacements or maintenance. Tenant shall not create any lien, charge or encumbrance upon the Premises, and Tenant shall promptly remove or bond over any such lien, charge or encumbrance.

6. Modifications and Alterations to the Premises. Tenant shall make no modifications, alterations or improvements to the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Any modifications or alterations consented to by Landlord shall be completed in a good, workmanlike and lien-free manner, in accordance with all applicable laws, codes, regulations and ordinances and by contractors approved by Landlord. Unless otherwise agreed by the parties hereto, any alterations or improvements to the Premises made by Tenant

shall become the property of Landlord; provided, however, Landlord, at its option, may require Tenant to remove any improvements or repair any alterations in order to restore the Premises to the condition existing at the time Tenant took possession. Notwithstanding the foregoing, Tenant may remove any moveable equipment or trade fixtures owned by Tenant during the term of this Lease, provided that any damage caused by such removal shall be repaired by Tenant in a manner acceptable to Landlord.

7. Return of Premises. Tenant agrees to return the Premises to Landlord at the expiration or prior termination of this Lease in the same condition and repair as when first received, normal wear and tear excepted. Tenant agrees to remove its moveable equipment and trade fixtures from the Premises at the expiration or prior termination of this Lease. Tenant shall immediately repair any damage arising out of any such removal in a manner acceptable to Landlord. Failure to comply with this Paragraph 7 will constitute holding over by Tenant.

8. Destruction of or Damage to Premises. If all or substantially all of the Premises are destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date. In the event of such termination, rental shall be prorated and paid up to the date of such casualty. In no event shall Tenant have any right to terminate this Lease if the casualty in question was caused or contributed to by Tenant, its agents, employees, contractors or invitees.

9. Indemnity. Except for damage caused solely by Landlord's negligence, Tenant agrees to indemnify, defend and save harmless Landlord, Landlord's parent companies, subsidiaries, affiliates, lessors, licensors, and subsidiaries of parent companies (collectively the "**Landlord Related Entities**") and Landlord's and Landlord's Related Entities' officers, directors, members, shareholders, lenders, agents and employees (collectively the "**Landlord Entities**") against all claims (including but not limited to claims for bodily injury, death or property damage), economic losses, liabilities, costs, injuries, damages, actions, mechanic's liens, losses and expenses (including but not limited to reasonable attorney's fees and costs) to whomsoever, including, but not limited to, Tenant's agents, workmen, servants or employees, or whatsoever occurring (collectively, "**Claims**") arising out of or relating to Tenant's use or occupancy of the Premises. To the fullest extent permitted by applicable laws, Tenant hereby waives and releases the Landlord Entities from any Claims (including but not limited to Claims relating to interruptions in services) arising out of or relating in any way to the Tenant's use or occupancy of the Premises.

10. Governmental Orders. Tenant agrees, at its own expense, to comply with all laws, orders, regulations, ordinances or restrictions applicable by reason of Tenant's use or occupancy of the Premises or operation of its business.

11. Condemnation. If the Premises or such portion thereof as will make the Premises unusable for the purpose herein leased shall be condemned by any legally constituted authority for any public use or purpose, or sold under threat of condemnation, then this Lease shall terminate as of the date of such condemnation or sale, and rental shall be accounted for between Landlord and Tenant as of such date. All condemnation awards shall belong to Landlord; provided, however, and to the extent permitted under applicable law, Tenant shall be entitled to file a separate claim against the condemning authority for loss of its personal property and moving expenses so long as the filing of such claim does not affect or reduce Landlord's claim as to such awards or proceeds.

12. Assignment. Tenant may not assign this Lease or any interest thereunder or sublet the Premises in whole or in part or allow all or a portion of the Premises to be used by a third party without the prior written consent of Landlord. If Tenant is a corporation, partnership, limited liability company or other entity, the transfer of more than fifty percent (50%) of the ownership interests of Tenant or the

transfer of a lesser percentage which results in a transfer of control of Tenant (WHICH INCLUDES, WITHOUT LIMITATION, TRANSACTIONS IN WHICH TENANT SELLS ITS BUSINESS, SELLS ALL OR SUBSTANTIALLY ALL OF THE ASSETS OF ITS BUSINESS OR MERGES OR CONSOLIDATES WITH ANOTHER ENTITY), whether in one transaction or a series of related transactions, shall constitute an assignment for purposes of this Lease. All requests for an assignment or sublease shall be accompanied by a copy of the proposed assignment or sublease agreement and an administrative fee in the amount of \$750.00. Any assignee shall become liable directly to Landlord for all obligations of Tenant hereunder. No such assignment or sublease nor any subsequent amendment of the Lease shall release Tenant or any guarantor of Tenant's obligations hereunder. If any such subtenant or assignee pays rental in excess of the rental due hereunder or if Tenant receives any other consideration on account of any such assignment or sublease, Tenant shall pay to Landlord, as additional rent, one-half of such excess rental or other consideration upon the receipt thereof. Any assignment or sublease made in violation of this Paragraph 12 shall be void and shall constitute a default hereunder.

13. Environmental. Tenant covenants that neither Tenant, nor any of its agents, employees, contractors or invitees shall cause or permit any aboveground or underground storage tanks or associated piping (collectively "**Tanks**") to be located on or under the Premises or any Hazardous Materials (as hereinafter defined) to be stored, handled, treated, released or brought upon or disposed of on the Premises. Tenant shall comply, at its own expense, with any and all applicable laws, ordinances, rules, regulations and requirements respecting solid waste, hazardous waste, air, water, pollution or otherwise relating to the environment or health and safety (collectively "**Environmental Laws**"). Tenant shall not under any circumstance dispose of trash, debris or wastes on the Premises and will not conduct any activities on the Premises which require a hazardous waste treatment, storage or disposal permit. As used herein, the term "**Hazardous Materials**" means asbestos, polychlorinated biphenyls, oil, gasoline or other petroleum based liquids, and any and all other materials or substances deemed hazardous or toxic or regulated by applicable laws, including but not limited to substances defined as hazardous under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 6901 et seq. (or any state counterpart to the foregoing statutes) or determined to present the unreasonable risk of injury to health or the environment under the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq. Tenant shall indemnify, defend and hold the Landlord Entities harmless from and against any and all claims, judgments, damages, penalties, fines, costs (including without limitation, consultant's fees, experts' fees, attorney's fees, investigation and cleanup costs and courts costs), liabilities or losses resulting from (1) the storage, handling, treatment, release, disposal, presence or use of Hazardous Materials in, on or about the Premises from and after the date of this Lease or (2) the violation by Tenant of any provision of any Environmental Laws. Without limiting the generality of the foregoing indemnity, in the event Landlord has reason to believe that the covenants set forth in this Paragraph 13 have been violated by Tenant, Landlord shall be entitled, at Tenant's sole expense, to take such actions as Landlord deems necessary in order to assess, contain, delineate and/or remediate any condition created by such violation. Any sums expended by Landlord shall be reimbursed by Tenant, as additional rental, within thirty (30) days after demand therefor by Landlord. Landlord has the right to enter the Premises at all reasonable times for purposes of inspecting the Premises in order to evaluate Tenant's compliance with the covenants of this Paragraph 13. In the event Tenant delivers or receives any notices or materials from any governmental or quasi-governmental entity and such notices or materials relate to Tanks or Hazardous Materials in, on or about the Premises, Tenant shall immediately send to Landlord a copy of such notices or materials. Tenant shall also provide Landlord with a detailed report relating to any release of a Hazardous Material in, on or about the Premises whenever such release is required to be reported to governmental authorities pursuant to the Environmental Laws. Upon the expiration or earlier termination of this Lease, Landlord shall have the right to cause to be performed such environmental studies of the Premises by an environmental consultant as are necessary to determine whether any Hazardous Materials have been stored, handled, treated, released, brought upon or disposed of on the Premises during the term

of this Lease in violation of the terms hereof. If any such study reveals any violation of this Lease, Tenant shall promptly reimburse Landlord for the costs of such studies and Tenant shall immediately undertake a further investigation, if necessary, and remediation of such contamination. Landlord may undertake such investigation and remediation if Tenant fails to do so within a reasonable time frame, in which case Tenant shall promptly reimburse Landlord for the cost of same within thirty (30) days after demand therefore by Landlord. The obligations of this Paragraph 13 shall survive the expiration or earlier termination of this Lease.

14. Default; Remedies. In the event (i) any payment of rental or other sum due hereunder is not paid within ten (10) days after the due date thereof; (ii) the Premises shall be deserted or vacated; (iii) Tenant shall fail to comply with any term, provision, condition or covenant of this Lease, other than an obligation requiring the payment of rental or other sums hereunder, and shall not cure such failure within twenty (20) days after notice to the Tenant of such failure to comply; (iv) Tenant shall attempt to violate or violate Paragraph 12 above; or (v) Tenant or any guarantor shall file a petition under any applicable federal or state bankruptcy or insolvency law or have any involuntary petition filed thereunder against it, then Landlord, in addition to any remedy available at law or in equity, shall have the option to do any one or more of the following:

(a) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord. Tenant agrees to indemnify the Landlord Entities for all loss, damage and expense which Landlord may suffer by reason of such termination.

(b) Without terminating this Lease, terminate Tenant's right of possession, whereupon rental shall continue to accrue and be owed by Tenant hereunder. Thereafter, at Landlord's option, Landlord may enter upon and relet all or a portion of the Premises (or relet the Premises together with any additional space) for a term longer or shorter than the remaining term hereunder and otherwise on terms satisfactory to Landlord. Tenant shall be liable to Landlord for the deficiency, if any, between Tenant's rental hereunder and all net sums received by Landlord on account of such reletting (after deducting all costs incurred by Landlord in connection with any such reletting, including without limitation, tenant improvement costs, brokerage commissions and attorney's fees).

(c) Pursue a dispossessory, eviction or other similar action against Tenant, in which event Tenant shall remain liable for all amounts owed hereunder, including amounts accruing hereunder from and after the date that a writ of possession is issued.

(d) Perform any unperformed obligation of Tenant, including, but not limited to, cleaning up any trash, debris or property remaining in or about the Premises upon the expiration or earlier termination of this Lease. Any sums expended by Landlord shall be repaid by Tenant, as additional rent, within ten (10) days after demand therefor by Landlord.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies available at law or in equity. Tenant agrees to pay all costs and expenses, including, but not limited to, reasonable attorney's fees and consultant's fees, incurred by Landlord in connection with enforcing the performance of any of the provisions of this Lease, whether suit is actually filed or not. Acceptance of rental or any other sums paid by Tenant shall not constitute the waiver by Landlord of any of the terms of this Lease or any default by Tenant hereunder. Landlord shall not be required to mitigate damages, and the parties intend to waive any burden that applicable law may impose on Landlord to mitigate damages; provided, however, if applicable law nevertheless requires Landlord to mitigate damages then (i) Landlord shall have no obligation to treat preferentially the Premises compared to other premises

Landlord has available for leasing; (ii) Landlord shall not be obligated to expend any efforts or any monies beyond those Landlord would expend in the ordinary course of leasing space; and (iii) in evaluating a prospective reletting of the Premises, the term, rental, use and the reputation, experience and financial standing of prospective tenants are factors which Landlord may properly consider.

15. Signs; Entry by Landlord. Landlord may place "For Lease" signs upon the Premises one hundred twenty (120) days before the termination of this Lease and may place "For Sale" signs upon the Premises at any time. Landlord may enter the Premises with prior notice to Tenant at reasonable hours during the term of this Lease (a) to show the same to prospective purchasers or tenants, (b) to make repairs to Landlord's adjoining property, if any, (c) to inspect the Premises in order to evaluate Tenant's compliance with the covenants set forth in this Lease, or (d) to perform activities otherwise permitted or contemplated hereby.

16. No Estate in Land. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant; Tenant's interest is not assignable by Tenant except as provided in Paragraph 12, above.

17. Holding Over. If Tenant remains in possession of the Premises after expiration of the term hereof with Landlord's written consent, Tenant shall be a month-to-month tenant upon all the same terms and conditions as contained in this Lease, except that the base rental shall become two times the then current base rental, and there shall be no renewal of this Lease by operation of law. Such month-to-month tenancy shall be terminable upon thirty (30) days written notice by either party to the other. Tenant waives any right that it may have to additional notice pursuant to applicable law. If Tenant remains in possession of the Premises after the expiration of the term hereof without Landlord's written consent, Tenant shall be a tenant at sufferance subject to immediate eviction. In such event, in addition to paying Landlord any damages resulting from such holdover, Tenant shall pay base rental at the rate of three times the then current base rental. In such circumstance, acceptance of base rental by Landlord shall not constitute consent or agreement by Landlord to Tenant's holding over and shall not waive Landlord's right to evict Tenant immediately.

18. Notices. Any notice given pursuant to this Lease shall be in writing and sent by certified mail, return receipt requested, by hand delivery or by reputable overnight courier to:

(a) Landlord: c/o Director Real Estate, Norfolk Southern Corporation, 1200 Peachtree Street, NE – 12th Floor, Atlanta, Georgia 30309-3579, or at such other address as Landlord may designate in writing to Tenant.

(b) Tenant: The City of Flowery Branch, Georgia, Attention: City Clerk, 5517 Main Street, Flowery Branch, Georgia 30542, or at such other address as Tenant may designate in writing to Landlord.

Any notice sent in the manner set forth above shall be deemed delivered three (3) days after said notice is deposited in the mail if sent by certified mail (return receipt requested), or upon receipt if sent by hand delivery or reputable overnight courier. Any change of notice address by either party shall be delivered to the other party by the manner of notice required hereby.

19. Track Clearance. Notwithstanding anything contained in this Lease, and irrespective of the sole, joint, or concurring negligence of Landlord, Tenant shall assume sole responsibility for and shall indemnify, save harmless and defend the Landlord Entities from and against all claims, actions or legal proceedings arising, in whole or in part, from the conduct of Tenant's operations, or the placement of

Tenant's fixtures, equipment or other property, within twenty-five feet (25') of Landlord's tracks, if any, located on or adjacent to the Premises. In this connection it is specifically understood that knowledge on the part of Landlord of a violation of the foregoing clearance requirement, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve Tenant of its obligations to indemnify the Landlord Entities for losses and claims resulting from any such violation.

20. Brokerage. Landlord and Tenant hereby covenant and agree to indemnify and hold the other harmless from and against any and all loss, liability, damage, claim, judgment, cost and expense (including without limitation attorney's fees and litigation costs) that may be incurred or suffered by the other because of any claim for any fee, commission or similar compensation with respect to this Lease, made by any broker, agent or finder claiming by, through or under the indemnifying party, whether or not such claim is valid.

21. Tenant's Insurance. Tenant shall procure and maintain, at all times and at its expense, in a form and with an insurance company acceptable to Landlord, Commercial General Liability Insurance for the Premises. Such coverage shall (a) have a single limit of not less than \$2,000,000.00 for each occurrence (or such greater amount over time so as to be commercially reasonable) and shall provide for a deductible of not more than \$5,000.00, (b) cover Tenant's contractual liability hereunder, (c) cover Tenant and Landlord for liability arising out of work performed by any third parties for Tenant in or about the Premises, (d) name the Landlord Entities as additional insureds, and (e) be considered primary and noncontributory, regardless of any insurance carried by Landlord. Any property insurance maintained by Tenant on its furniture, fixtures, equipment and personal property shall include a waiver of subrogation in favor of Landlord. Tenant shall deliver certificates of insurance evidencing the insurance required hereinabove to Landlord simultaneously with the execution of this Lease by Tenant, which certificates shall reflect that the policies shall not be canceled without at least thirty (30) days prior notice to Landlord. If Tenant fails to obtain the necessary coverages, Landlord may do so at Tenant's expense and the same shall constitute additional rental. All insurance certificates should be delivered to Landlord's Risk Management Department, Three Commercial Place, Norfolk, Virginia 23510, simultaneously with the execution of this Lease by Tenant. The minimum limits of insurance provided for hereunder are not intended to be a limitation on the liability of Tenant hereunder and shall not waive Landlord's right to seek a full recovery from Tenant.

22. Taxes. Tenant agrees to reimburse Landlord, as additional rental, for all real estate taxes and assessments (regular or special) pertaining to the Premises ("Taxes") paid by Landlord with respect to the Premises. Landlord may, but shall not be obligated to, invoice Tenant for the estimated Taxes for each calendar year (but no more frequently than monthly), which amounts shall be adjusted each year based upon anticipated Taxes. If the Premises are part of a larger tract, the Taxes for which Tenant is responsible for reimbursing Landlord pursuant to the terms hereof shall be the share of such total Taxes that Landlord reasonably determines are applicable to the Premises, giving due consideration to the relative value of the Premises and the value of the land and improvements reflected in the applicable tax valuation. Upon request from Tenant, Landlord shall provide Tenant with copies of tax bills for the Taxes. If Landlord has been invoicing Tenant for Taxes and the tax bills indicate that the total of the payments made by Tenant exceeds the amount of Taxes applicable to the Premises, Landlord shall credit any such amount against the Tax reimbursement payment next coming due. In the event the accounting shows that the total of the Tax payments made by Tenant is less than the amount of Tax payment due from Tenant under this Paragraph, the accounting shall be accompanied by an invoice for the additional payment. During the year in which the Lease terminates, Landlord shall have the option to invoice Tenant for Taxes based upon the previous year's Taxes. If this Lease commences on a day other than the first day of a tax year or ends on a day other than the last day of a tax year, the amount of any Taxes payable by Tenant applicable to the year in which the term commences or ends shall be prorated. Tenant

agrees to pay any sum due under this Paragraph within ten (10) days following receipt of the invoice showing the amount due.

23. Joint and Several. If Tenant comprises more than one person, corporation, partnership or other entity, the liability hereunder of all such persons, corporations, partnerships or other entities shall be joint and several.

24. No Warranties; Entire Agreement. TENANT ACCEPTS THE PREMISES "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF QUIET ENJOYMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES. LANDLORD SHALL NOT BE LIABLE FOR, AND TENANT HEREBY RELEASES LANDLORD FROM ALL CLAIMS FOR ECONOMIC LOSSES AND ALL OTHER DAMAGE OF ANY NATURE WHATSOEVER ACCRUING TO TENANT, INCLUDING, BUT NOT LIMITED TO THE VALUE OF ANY BUILDINGS, STRUCTURES OR IMPROVEMENTS OF TENANT UPON THE PREMISES, RESULTING FROM OR ARISING BY REASON OF ANY DEFICIENCY, INSUFFICIENCY OR FAILURE OF TITLE OF LANDLORD. THIS LEASE CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES HERETO AS TO THE PREMISES, AND NO REPRESENTATIONS, INDUCEMENTS, PROMISES OR AGREEMENTS, ORAL OR OTHERWISE, BETWEEN THE PARTIES, NOT EMBODIED HEREIN, SHALL BE OF ANY FORCE OR EFFECT.

25. Survival. The provisions of Paragraphs 6, 7, 9, 13, 17, 20 and 22 shall survive the expiration or earlier termination of this Lease.

26. Miscellaneous. Knowledge on the part of Landlord or any employee, agent or representative of Landlord of any violation of any of the terms of this Lease by Tenant shall constitute neither negligence nor consent on the part of Landlord, and shall in no event relieve Tenant of any of the responsibilities and obligations assumed by Tenant in this Lease. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative but not restrictive to those given by law. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. Subject to the terms of Paragraph 12 above, this Lease shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of Landlord and Tenant. If any term, covenant or condition of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons, entities or circumstances other than those which or to which used may be held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law. Time is of the essence in this Lease. Neither party shall be bound hereunder until such time as both parties have signed this Lease. This Lease shall be governed by the laws of the State or Commonwealth in which the Premises are located.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, effective the day and year first above written.

Witness (as to Landlord):

Signature [Signature]
Name: S.A. Goings

Witness (as to Landlord):

Signature [Signature]
Name: Kayana Holloway

Witness (as to Tenant):

Signature [Signature]
Name: MELISSA MCCAIN

Witness (as to Tenant):

Signature [Signature]
Name: Lou F. CAMISCIONI II

SAG 08/10/06IM#396228v2

LANDLORD:

NORFOLK SOUTHERN RAILWAY COMPANY
a Virginia corporation

By: [Signature]
Name: SG Portnell
Title: Real Estate Manager

Date of Landlord Signature: 9/24/06

[SEAL]

TENANT:

THE CITY OF FLOWERY BRANCH, GEORGIA
a Georgia government entity

By: [Signature]
Name: Diane C. Hirling
Title: Mayor

Date of Tenant Signature: 8-28-06



EXHIBIT B

RIDER TO LEASE AGREEMENT DATED September 26, 2006 BY AND BETWEEN NORFOLK SOUTHERN RAILWAY COMPANY, AS LANDLORD, AND THE CITY OF FLOWERY BRANCH, GEORGIA, AS TENANT

This rider is attached to and made a part of the referenced Lease Agreement. In the event of an inconsistency between the terms of this Rider and the terms of the Lease agreement, the terms of this Rider shall control.

1. **Waiver of Application Fee.** The \$500.00 application fee described in Paragraph 3 of this Lease is hereby waived by Landlord.

2. **Notification Required Before Changing Contour of the Premises.** Prior to digging, grading or otherwise changing the contour of the Premises, Tenant shall first obtain Landlord's approval, and shall then notify any "One Call" agencies or underground utility locator services as may be required in the local community.

3. **Beautification.** A portion of the Premises will be used for beautification. Tenant will enter that portion of the Premises for the sole purpose of landscaping and gardening the Premises with grass, flowers and low shrubbery and of maintaining said landscaping. In no event shall any trees be planted or permitted to grow on the Premises. This Lease is a personal privilege to Tenant and shall not be assigned without the written consent of Company, nor shall Tenant, except with such written consent, permit the Premises to be used for any purpose by any other party, firm or corporation.

It is specifically understood and agreed that the Premises are not to be open to the public and that said Premises are not and will not be permitted to become a park. Tenant will not install benches, walkways, recreation equipment or anything other than landscaping material and plants on the Premises.

Grass, flowers and shrubbery planted by Tenant on the Premises shall be maintained, cut and trimmed by Tenant in a safe and orderly manner so as not to obstruct the view of Landlord's employees engaged in railroad operations or of pedestrians or motorists. In no event shall any shrubbery be permitted to exceed 48 inches in height. Tenant agrees that no grass, flowers or shrubbery shall be planted closer than 100 feet on each side of any grade crossing over tracks of Landlord.

In installing, maintaining or removing said landscaping, Tenant will not damage or interfere with the drainage facilities of Landlord. If new or additional drainage is required in connection with the landscaping permitted herein, such drainage will be constructed at the sole expense of Tenant, will be subject to the advance, written approval of Landlord, and will be constructed so as to cause any runoff to flow away from Landlord's railroad facilities.

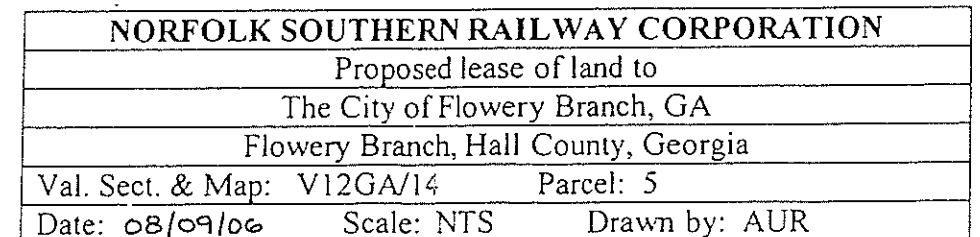
4. **Public Parking.** The protection afforded Landlord under the provisions of Paragraph 9 of the Lease shall extend to include patrons and invitees of Tenant and Tenant agrees to protect and hold Landlord harmless from loss, injury or damage as set out in said Paragraph 9 accruing from acts, negligence or default of such patrons and invitees or the presence of their property upon the Premises of Landlord including damage to such property from railroad operations. Tenant further agrees that no gasoline or other flammable liquid shall be stored or handled upon the Premises (except fuel in fuel tanks of vehicles parked thereon).

5. **Georgia Usufruct.** Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except as specifically provided in the Lease.

6. **Supersede and Cancel.** This Lease is intended to, and hereby does, supersede and cancel, as of the effective date hereof, the agreement between Southern Railway Company (now Landlord) and Tenant, dated November 16, 1972, last amended by letter dated September 26, 1991, concerning the lease of 2,400 square feet, more or less, at Flowery Branch, Hall County, Georgia. (Custodian No. 46328)

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Activity # 1091481



lease of property to City of Flowering Branch for Beautification & Parking
from Snelling Dr. +/- 1325' S. MP 594 to 1615' N MP 594
on either side of tracks - 25 ft from center line
excluding lease of property to Hamilton Cabinet



= LEASE OF
APPROX 9.18 ac.