



DeKalb County Government

1300 Commerce Drive
Decatur, Georgia 30030

Agenda

PWI-Public Works & Infrastructure Committee

Tuesday, February 21, 2023

3:30 PM

Meeting Started At

Attendees:

I. MINUTES

2023-0100

Commission District(s): ALL
Minutes for February 7, 2023, Public Works and Infrastructure
Committee Meeting

II. DISCUSSION

FY23 Budget Discussion
Sanitation

Roads & Drainage

Watershed Management

DeKalb Sanitation Rate Study

III. AGENDA ITEM

Previously Heard Items

[2023-0228](#)

Commission District(s): All
LB - Invitation No. 22-101543 SPLOST Phase II Resurfacing Project (Area A) (365 Days): for use by Public Works - Roads and Drainage (R&D). Consists of providing SPLOST (Phase II - Area A) road resurfacing to various roads located in DeKalb County. Recommend award to the lowest, responsive and responsible bidder: E.R. Snell Contractor, Inc. Amount Not To Exceed: \$22,483,778.80.

- [2023-0113](#) Commission District(s): 4 & 7
Agreement for the Construction and Financing of Sewer Upgrades with
Captura Rockbridge Acquisition I LLC Not to Exceed \$150,500.

New Agenda Items

- 2023-0191** Commission District(s): Commission Districts 2,6
CSX Encroachment Agreement at S. McDonough Street, East College Ave.
and East Howard Ave.
No Cost to County

- 2023-0201** Commission District(s): All
REN - Contract Nos. 1242005 and 1242006 Electrical Switchgear
Inspections and Repair (Annual Contract - 2nd Renewal of 2 Options to
Renew): for use by the Department of Watershed Management (DWM).
The contracts consist of providing inspection and repair of switchgear
equipment at water and wastewater treatment plants. This request seeks to
ratify a previously provided sixty (60) day contract term increase and
exercise the 2nd renewal option through January 31, 2024 for both
contracts. Awarded to Cleveland Electric Company and Brown Electrical
Services, LLC. Total Amount Not To Exceed: \$2,493,572.00

- 2023-0082** Commission District(s): All
CO - Change Order No. 1 to Contract No. 1198103 Stone Crushed Granite
(Annual Contract with 2 Options to Renew): for use by the Departments of
Watershed Management (DWM), Recreation, Parks and Cultural Affairs
(RPCA), Public Works - Roads & Drainage (R&D) and Sanitation. This
contract consists of providing stone crushed granite for use in various
applications. This request seeks to ratify a previously provided sixty (60) day
contract term increase for one vendor (FM Shelton); increase the contract
term through July 31, 2023; and increase funds. Awarded to F.M Shelton,
Inc. Amount Not To Exceed: \$3,999,164.00.

Meeting Ended At:

Barbara H. Sanders-Norwood CCC, CMC



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File #: 2023-0100

2/7/2023

File Status: Draft

Public Hearing: YES NO

Department: Board of Commissioners

SUBJECT:

Commission District(s): ALL

Minutes for February 7, 2023, Public Works and Infrastructure Committee Meeting

Information Contact: Shannon McGraw

Phone Number: 404 687 3464

PURPOSE:

To accept and record the minutes for February 7, 2023, Public Works and Infrastructure Committee Meeting.

NEED/IMPACT:

To accept the minutes into the record.

FISCAL IMPACT:

N/A

RECOMMENDATION:

Accept the minutes.



DRAFT -Minutes

PWI-Public Works & Infrastructure Committee

Tuesday, February 7, 2023

3:30 PM

Meeting Started At: 3:36 PM

Attendees: Cochran Johnson, Terry, Patrick, Johnson, Davis Johnson

Present 3 - Commissioner Lorraine Cochran-Johnson, Robert Patrick, and Ted Terry

I. MINUTES

2023-0099 Commission District(s): ALL
Minutes for the January 17, 2023, Public Works and Infrastructure Committee Meeting
MOTION was made by Ted Terry, seconded by Robert Patrick, that this agenda item be approved. The motion carried by the following vote:

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

II. STATUS UPDATE

Rock Blasting

-information provided by COO Williams, David Hayes, Lee Jugg

Question RP: Please clarify the process, is this for public and private?

COO Williams: It is the same process through the fire marshal's office

Additional information provided by Lee Judd

Question RP: What happens if the property owner refuses?

M Welsh: if we have some materials or equipment at the property we have some level or rights at the property. Most times it is just levels of discussion with property owners.

Additional comments provided by Lee Jugg

Additional comments provided by Chief Fullum and Fire Marshall's Office

II. DISCUSSION

Water Disconnections Notices

Information provided by CFO McNabb

McNabb: 62,200 were past due residential, of those: 34,200 paid in full 14,500 part 10,900 installment plans, 2,700 customers with no engagement.

Question LCJ: that 2700 reflects those who will be disconnected?

McNabb: that is the net, the have refused to engage. We have provided opportunities for dispute. We disconnect 4 days a week excluding Fridays. Additional information provided.

Question LCJ: if the debt has not been satisfied before Friday at 5, will customers need to wait until Monday or would service be provided on weekend?

McNabb: we do not provide services, outside of extreme emergencies on weekends. That is why we do not turn off on Fridays. We do not want people to go through the weekend.

Question TT: is this onsite connections? What device do you use?

McNabb: correct, we use meter locks

LCJ Request: Please provide all commissioners with bullet points on the department process and services provided when water is disconnected.

COO Williams: A new Day project has resulted in replacement of 100,000 meters, hiring of new staff, new procedures and systematic review of the process. Additional Background provided by COO Williams. Question TT: What is the disconnection capacity of the department?

McNabb: about 200 a day could get done. This 2800 cases we have discussed would take a couple of weeks to complete

Question TT: Is there a hurry to disconnect, or is there an opportunity to be more graceful to give people more time. Maybe only turn off 2 days a week instead of 4 I'm concerned about any extenuating circumstances. McNabb: We can evaluate that.

Question TT: do these cases include apartments?

McNabb: its about 75% homeowners that we know of.

Question TT: on the door tags, are the resources provided?

McNabb: We have a long list of nonprofits and other resources

Question TT: have language or communication barriers been addressed in these cases?

McNabb: I can check that, I haven't had any issues reported to me.

Question TT: Are most small bills or are they significant?

DM: They are higher than average customers but there is not anything I'd consider extreme

Question RP: What is the average unpaid bill?

McNabb: I can get that to you. We are switching to monthly billing to put the remaining 15% of customers on bimonthly billing. That should be completed around April

III. AGENDA ITEM

New Agenda Items

[2023-0013](#)

Commission District(s): All
CO - Change Order No. 1 to Contract Nos.: 1188014 and 1188015
Street Sweeping Services (Annual Contract with 2 Options to Renew):
for use by Public Works - Beautification. These contracts consist of
providing street sweeping services to the County on a regularly
scheduled basis to remove litter, dirt, rocks, and other debris from
County streets. This request seeks to ratify a previously provided
ninety (90) day contract term increase; increase the contract term
through March 31, 2023 for both contracts; and increase funds for
Contract No. 1188014 (Pateco). Awarded to Pateco Services, LLC and
AC Sweepers and Maintenance, Inc. Total Amount Not To Exceed:
\$6,100.00.

**MOTION was made by Ted Terry, seconded by Robert Patrick,
that this agenda item be recommended for approval. to the Board
of Commissioners, due back on 2/16/2023. The motion carried by
the following vote:**

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

Information provided by Commissioner Cochran Johnson

[2023-0017](#)

Commission District(s): All
CO - Change Order No. 2 to Contract Nos.: 1176675 and 1272165 for
County Street and Roadway Litter Removal (Annual Contract with 2
Options to Renew): for use by Public Works - Sanitation and
Beautification. These contracts consist of litter removal services at 37
locations within the County. Awarded to Russell Landscape, LLC and
American Eagle, LLC. Total Amount Not To Exceed: \$198,332.78.

**MOTION was made by Ted Terry, seconded by Robert Patrick,
that this agenda item be recommended for approval. to the Board
of Commissioners, due back on 2/16/2023. The motion carried by
the following vote:**

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

Information provided by Commissioner Cochran Johnson

Additional information provided by Director Hutchinson

Question LCJ: Does this extension only take us to March?

Hutchinson: Correct

Question TT: will the invitation to bid be designed to increase service or is it for the same 37?

Hutchinson: The gateway project is separate from this item. These are the heaviest litter locations in the County.

LCJ Request: Please bring back the Gateway project to PWI for a status update and discuss what the program is about

[2023-0044](#) Commission District(s): 2 and 6
CO - Change Order No. 1 to Contract No. 1288704 for North Decatur Road Roundabout Improvements (120 days): for use by Public Works-Transportation. This contract consists of construction of mini-roundabouts at the North Decatur Road intersections with Springdale Road and Oakdale Road, including related curb, ramps, and sidewalks. This request is to increase the contract term through June 30, 2023 and to ratify a previously provided sixty (60) day contract term increase. Awarded to: SD&C, Inc. CONTRACT TERM INCREASE ONLY.

MOTION was made by Robert Patrick, seconded by Ted Terry, that this agenda item be recommended for approval. to the Board of Commissioners, due back on 2/16/2023. The motion carried by the following vote:

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

Information provided by Director Lemke

RP : Rec Sub for Approval

[2023-0052](#) Commission District(s): All
REN - Contract No. 1286042 Herbicide Growth Regulator Services (Annual Contract - 1st Renewal of 2 Options to Renew): for use by the Department of Public Works Sanitation - Beautification. This contract consists of providing herbicide application services on County roads, right of ways, and other locations. This request is to exercise the 1st renewal option through March 31, 2024. Awarded to American Eagle, LLC. Amount Not To Exceed: \$150,000.00.

MOTION was made by Ted Terry, seconded by Robert Patrick, that this agenda item be recommended for approval. to the Board of Commissioners, due back on 2/16/2023. The motion carried by the following vote:

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

No additional information requested

[2023-0095](#) Commission District(s): ALL
RA - Ratification of Change Order No. 1 to Contract 1252356 for Disaster Recovery and Sewage Cleaning Services (Annual Contract with 2 Options to Renew): for use by the Departments of Facilities Management (FM) and Watershed Management (DWM). This contract consists of providing disaster recovery cleaning services of water and sewage and supplementary services for repairs to systems affected by spills from heating, ventilation, air conditioning and plumbing. This request seeks to ratify an emergency purchase that overspent the available contract funds. Awarded to Belfor USA Group. Amount Not To Exceed: \$1,200,000.00.

MOTION was made by Robert Patrick, seconded by Ted Terry, that this agenda item be recommended for approval. to the Board of Commissioners, due back on 2/16/2023. The motion carried by the following vote:

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

Information provided COO Williams & Director Hayes

[2023-0113](#) Commission District(s): 4 & 7
Agreement for the Construction and Financing of Sewer Upgrades with Captura Rockbridge
Acquisition I LLC Not to Exceed \$150,500.

MOTION was made by Ted Terry, seconded by Robert Patrick, that this agenda item be recommended for deferral to the Board of Commissioners, due back on 2/28/2023. The motion carried by the following vote:

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

Question TT: this is related to an zoning item that was withdrawn correct?

Hayes: I am not aware of zoning issues

LCJ: Then lets defer this to the next PWI meeting because a sub may be needed

[2023-0114](#) Commission District(s): 2 & 6
Agreement for the Construction and Financing of Sewer Upgrades with Corso Druid Hills LLC Not to Exceed \$647,000.00.

MOTION was made by Ted Terry, seconded by Robert Patrick, that this agenda item be recommended for approval. to the Board of Commissioners, due back on 2/16/2023. The motion carried by the following vote:

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

*Information on 0114 and item 0125 and 0131 provided by Commissioner Cochran Johnson and Director Hayes
D Hayes: The funds you mentioned are monies the companies will pay to dekalb for assistance on these projects
Additional information provided by Cochran Johnson*

2023-0125 Commission District(s): 5 & 7
Agreement for the Construction and Financing of Sewer Upgrades with
Hidden Hills Condo LLC
Not to Exceed \$291,000 for Phase 1 and \$190,500 for Phase 2.
**MOTION was made by Ted Terry, seconded by Robert Patrick,
that this agenda item be recommended for approval. to the Board
of Commissioners, due back on 2/16/2023. The motion carried by
the following vote:**

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

2023-0131 Commission District(s): 3 & 6
Agreement for the Construction and Financing of Sewer Upgrades with
TAMA BAG FACTORY QBE LLC Not to Exceed \$279,500 (the
“Agreement”).
**MOTION was made by Ted Terry, seconded by Robert Patrick,
that this agenda item be recommended for approval. to the Board
of Commissioners, due back on 2/16/2023. The motion carried by
the following vote:**

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

2023-0121 Commission District(s): All
Reimbursement for Traffic Signal Equipment Relocations, Upgrades,
Recycling, and Damage
**MOTION was made by Robert Patrick, seconded by Ted Terry,
that this agenda item be recommended for approval. to the Board
of Commissioners, due back on 2/16/2023. The motion carried by
the following vote:**

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

Information provided by Director Lemke

[2023-0091](#)

Commission District(s): All

Acceptance of Fluoride Equipment Grant Reimbursement funds from the Georgia Department of Public Health, CDC, Water Fluoridation Program administered by GRWA in the amount of \$22,809 to provide reimbursement in support of the optimal water fluoridation for DeKalb County water which benefits the public health of over 750,000 people served by its water system at a cost to the County

MOTION was made by Robert Patrick, seconded by Ted Terry, that this agenda item be recommended for approval to the Board of Commissioners, due back on 2/16/2023. The motion carried by the following vote:

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

Information provided by Director Hayes

[2023-0228](#)

Commission District(s): All

LB - Invitation No. 22-101543 SPLOST Phase II Resurfacing Project (Area A) (365 Days): for use by Public Works - Roads and Drainage (R&D). Consists of providing SPLOST (Phase II - Area A) road resurfacing to various roads located in DeKalb County. Recommend award to the lowest, responsive and responsible bidder: E.R. Snell Contractor, Inc. Amount Not To Exceed: \$22,483,778.80.

MOTION was made by Robert Patrick, seconded by Ted Terry, that this agenda item be recommended for approval upon receipt of additional information to the Board of Commissioners, due back on 2/21/2023. The motion carried by the following vote:

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

WALK ON - Information provided by COO Williams

Question LCJ: This is the allocation for this year?

COO Williams: That is correct, for this cycle. This is a rebid from about 6 months ago because we could not come to an agreement. I wanted to go ahead and get the process started, we can defer the item

Additional information provided by Commissioner Patrick

RP: Rec for Approval pending OIIA

TT: Can we amend this to ask the administration that at some point in the future, to include the intersection North Decatur Rd and Superior Rd that has not been striped in 2 years

LCJ: Request Stripping List from Administration as to current projects

COO Williams: A lot of the challenges come from the contractor that is used throughout the state. We can get that information

Second TT

Vote: Yes unanimous

2022-2124

Commission District(s): ALL

LB - Invitation No. 22-101516 Asphaltic Concrete Pavement Repairs: for use by Departments of Watershed Management (DWM); Public Works - Roads & Drainage (R&D); Recreation, Parks & Cultural Affairs (RPCA); and Facilities Management (FM). Consists of providing road repair and maintenance services on various County roads. Recommend award to all responsive and responsible bidders: A&S Paving, Inc.; Greenway One, Inc.; and HEH Paving, Inc. Total Amount Not To Exceed: \$9,718,913.17.

MOTION was made by Ted Terry, seconded by Robert Patrick, that this agenda item be recommended for approval upon receipt of additional information to the Board of Commissioners, due back on 2/16/2023. The motion carried by the following vote:

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

Information provided by COO Williams

COO Williams: we request a due past for this item pending audit and providing final feedback prior to next Thursday BOC Meeting. We will be bring forth a substitute on the item

TT: I would be in favor of moving it forward

Meeting Ended At: 5:24 PM

MOTION was made by Robert Patrick, seconded by Ted Terry, that this agenda item be adjourned meeting. The motion carried by the following vote:

Yes: 3 - Commissioner Cochran-Johnson, Patrick, and Terry

Barbara H. Sanders-Norwood CCC, CMC



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File #: 2023-0228
File Status: Preliminary Item

2/21/2023

Purchasing Type: Low Bidders (LB)

Public Hearing: YES NO

Department: Purchasing & Contracting

AGENDA ITEM:

Commission District(s): All

LB - Invitation No. 22-101543 SPLOST Phase II Resurfacing Project (Area A) (365 Days): for use by Public Works - Roads and Drainage (R&D). Consists of providing SPLOST (Phase II - Area A) road resurfacing to various roads located in DeKalb County. Recommend award to the lowest, responsive and responsible bidder: E.R. Snell Contractor, Inc. Amount Not To Exceed: \$22,483,778.80.

Information Contact: Michelle Butler, Procurement Manager

Phone Number: (404) 687-3581

PURPOSE:

Consists of providing SPLOST (Phase II - Area A) road resurfacing to various roads located in DeKalb County. Three (3) bids were received.

RECOMMENDATION:

Recommend award to the lowest, responsive and responsible bidder:

E.R. Snell Contractor, Inc., 1785 Oak Drive, Snellville, GA 30078
Amount Not To Exceed: \$22,483,778.80.

ADDITIONAL INFORMATION:

- | | |
|---------------------------------------|-------------------|
| 1. LSBE Participation: | 20% |
| 2. Contract Effective Date: | Date of Execution |
| 3. Contract Expiration Date: | December 31, 2024 |
| 4. Amount Spent on Previous Contract: | \$11,500,533.50 |
| 5. Funding: | SPLOST (R&D) |
| 6. Additional Bidders: | |

Stewart Brothers, Inc.
2480 Pleasantdale Road
Doraville, GA 30340

Pittman Construction Company
1487 Farmer Road

File #: 2023-0228
File Status: Preliminary Item

2/21/2023

Conyers, GA 30012

AGENDA NOTES

Contract Name and #	SPLOST Phase II Resurfacing Project (Area A) (365 Day Contract) ITB No. 22-101543
Procurement Agent	Kyheem Bristol
Date Solicitation bid prices expires.	Bid validity extension in process
Solicitation Name, Number and Contract Number of expiring/expired Contract	Phase One SPLOST Road Resurfacing Projects (Area A) ITB 18-100921 CPA No. 1128997
Previous Contract Number, Contractor Name and Award Amount	CPA No. 1128997 C.W. Matthews Contracting Co., Inc. \$12,955,725.38
Previous Amount Spent on Expiring/Expired Contract	CPA No. 1128997 \$11,500,533.50
Prime Contractor Information and LSBE-Subcontractor	<u>E.R. Snell Contractor, Inc. (Prime)</u> Owner: Scott Briscoe, CEO Years in business: 64 Years doing business with DeKalb: 18 <u>Lori's Transportation and Excavation; LSBE-MSA - 20%</u> 2475 Northwinds Parkway, Suite 200 Alpharetta, GA 30009 Years in Business: 18 Years Doing business w/DeKalb: 9 Services/Products Provided: Asphalt paving, patching and milling. Prime references were favorable.
Attachments	UD Recommendation Bid Tabulation Market Survey

User Department's Recommendation SPLOST Phase II Road Resurfacing Project (Area A)
(365 Day Contract)

User Department Name: Public Works - Roads & Drainage Division

Recommended Bidder: E. R. Snell Contractor, Inc. meets our approval.

Project Amount This Term: \$22,483,778.80

Funding:

General Enterprise 3 Digit Fund Code _____

CIP Line Item No. (if applicable): _____

SPLOST Funding

Justification:

PW-Roads & Drainage Division recommends one bidder, E.R. Snell Contractor, Inc., to perform SPLOST Phase II-Area A Road Resurfacing. Their bid price was submitted as lowest, responsible and responsive for the bid process.

SPLOST Program Management Coordinator: *Ernest Alughter*

SPLOST Approved Funding Amount: \$22,483,778.80

SPLOST Funding Line Item: 10A7B3-80651-541401-01.3.3-602006

SPLOST Allocation Agenda Item/Date: 2-2-2023

Peggy V. Allen, Deputy Director
Name, Title Date

Peggy Allen
Digitally signed by Peggy Allen
Date: 2023.02.02 09:57:10 -05'00'
Department Director Date

ITB No. 22-101543

ITB Name: SPLOST Phase II Resurfacing Project (Area A) (365 Day Contract)

BID TABULATION

Price Opening: November 21, 2022 @

2:00PM

Agent: Angel Frazier

Item No.	Description	Unit	Approximate	Stewart Brothers, Inc.		E.R. Snell Contractor, Inc.		Pittman Construction Company	
				Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
(150-1000)	Traffic Control	Lump Sum	1	\$3,799,000.00	\$3,799,000.00	\$2,392,113.00	\$2,392,113.00	\$5,028,790.00	\$5,028,790.00
(310-5040)	Gr Aggr Base Crs, Incl. Excavation and Material	Cubic Yds	7,830	\$314.40	\$2,461,752.00	\$159.96	\$1,252,486.80	\$218.40	\$1,710,072.00
(402-1802)	Recycled Asphalt Concrete Patching Including Bitum Material and H Lime	Tons	88,394	\$226.30	\$20,003,562.20	\$149.30	\$13,197,224.20	\$134.50	\$11,888,993.00
(402-3102)	Recycled Asphalt Concrete 9.5, MM Superpave, Type II, Blend 1 including Bitum, Material and H Lime	Tons	42,048	\$165.10	\$6,942,124.80	\$115.10	\$4,839,724.80	\$98.50	\$4,141,728.00
(432-5010)	Mill Asphalt Concrete Variable	Sq Yds	25,000	\$9.95	\$248,750.00	\$4.90	\$122,500.00	\$2.25	\$56,250.00
(611-8055)	Adjust Minor Structures to Grade	Ea	5	\$3,750.00	\$18,750.00	\$3,744.00	\$18,720.00	\$3,850.00	\$19,250.00
(653-2501)	Stripping	Mile	11.9	\$61,345.00	\$730,005.50	\$54,650.00	\$650,335.00	\$56,289.50	\$669,845.05
(653-1704)	Thermoplastic Solid Traf Stripe, 24 in White	GLF	570	\$8.50	\$4,845.00	\$7.50	\$4,275.00	\$7.75	\$4,417.50
(653-1804)	Thermoplastic Solid Traf Stripe, 8 in White	GLF	2560	\$8.50	\$21,760.00	\$2.50	\$6,400.00	\$2.60	\$6,656.00
TOTAL BID				\$34,230,549.50		\$22,483,778.80		\$23,526,001.55	
Number of Bids Received:		3							
LSBE Participation Benchmark/GFE				33.0%		20%		20.66%	
Attendance at the Mandatory LSBE Meeting (Yes/No)				Yes		Yes		Yes	
Separate Sealed Price Schedule (Yes/No)				Yes		Yes		Yes	
NOTES - DETAIL JUSTIFICATION									
<p>Recommend award to the lowest, responsive and responsible bidder:</p> <p>E.R. Snell Contractor, Inc., 1785 Oak Drive, Snellville, GA 30078</p>									

MARKET SURVEY

ITB Number: 22-101543

Project Name: SPLOST Phase II Resurfacing Project (Area A) (365 Day Contract)

Agent: Kyheem Bristol/ Angel Frazier

Department: Roads and Drainage

Prepared By: Danette Barlow

Company	Contact #	Contact Person	Receive bid invitation? Yes/No	Justification	Bid in Future
Traffic Troopers Inc.	770-896-3459	Harold Cox	Yes	Representative, Harold Cox stated that they are a subcontractor, and they attended the LSBE with intentions to work with a Prime vendor. No one chose them for sub-contracting work.	Yes
CBI International Group Inc.	404-315-9889	Sherlyn Parker	Yes	Representative, Sherlyn Parker stated they were looking to be a subcontractor instead of the Prime. No one chose them for sub-contracting work.	Yes
Dokun Technologies LLC	678-935-0136	Solomon Adedokun	Yes	Representative, Solomon Adedokun stated that after further evaluation, the scope of work for this project was not in his company's expertise.	Yes

Summary: Some vendors were interested in participating in this project as sub-contractors, but no Prime vendor chose to work with them. One interested vendor realized they did not meet the expertise needed for this project. All vendors said they would consider showing interest in the future and would continue to attend LSBE meetings.



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File #: 2023-0113
File Status: Preliminary Item

2/7/2023

Public Hearing: YES NO Department: Watershed Management

SUBJECT:

Commission District(s): 4 & 7

Agreement for the Construction and Financing of Sewer Upgrades with Captura Rockbridge Acquisition I LLC Not to Exceed \$150,500.

Information Contact: David Hayes, Director

Phone Number: 770-414-6240

PURPOSE:

To consider approving an agreement for the Construction and Financing of Sewer Upgrades in the Snapfinger model shed with Captura Rockbridge Acquisition I LLC.

NEED/IMPACT:

Captura Rockbridge Acquisition I LLC seeks to construct a single-family home development at 4962, 4964, 4994, 4998, and 5046 Rockbridge Road, Stone Mountain, GA, 30088, (the "Project") and the Project requires upgrading and expanding portions of the existing sanitary sewer infrastructure and lines to accommodate additional discharge of wastewater into the Sewer System. The purpose of this Agreement is for the parties to enter a binding contract evidencing their agreement as to the installation and financing of the improvements for this development. The improvements will consist of upgrades and expansion of certain portions of the DeKalb County sanitary sewer infrastructure and lines servicing the Snapfinger model shed. The improvements will allow for a total of 124 residences. The County, through its Department of Watershed Management and/or its contractor, will determine those portions of the sanitary sewer infrastructure and lines to be upgraded and expanded (the "Work"). The Work will be completed by December 1, 2023. Completed improvements shall generate 68,820 gallons per day in sewer capacity credits as calculated per DeKalb County's Capacity Assurance Banking Credit Program. Company agrees that upon completion of the improvements and before Company shall be allowed access to the County's sanitary sewer system, Company shall reimburse the County up to \$150,500 total of the estimated cost of \$301,000 for sewer improvements in the Snapfinger model shed. ("Company's Contribution").

FISCAL IMPACT:

The County's contribution is not anticipated to exceed \$150,500.00

RECOMMENDATION:

To authorize the CEO or designee to execute the Agreement and all necessary documents in a form acceptable

File #: 2023-0113
File Status: Preliminary Item

2/7/2023

to the County Attorney.

**AGREEMENT FOR
CONSTRUCTION AND FINANCING
OF SEWER UPGRADES**

THIS Agreement for the Construction and Financing of Sewer Upgrades (hereinafter referred to as “**Agreement**”) is made as of the _____ day of _____, 20__ by and between DeKalb County, Georgia (hereinafter referred to as “**County**”) and **Captura Rockbridge Acquisition I LLC**, with its principal place of business located at 24 Rockland Pl. Decatur GA 30030 (hereinafter referred to, together with any entity to which it may assign its rights under this Agreement, as the “**Company**”).

WITNESSETH:

WHEREAS, the Company is undertaking the construction of a 124 single family homes located at 4962, 4964, 4994, 4998, and 5046 Rockbridge Road, Stone Mountain, GA, 30088 (the “**Project**”); and

WHEREAS, the Project will increase demand on the existing sanitary sewer infrastructure and lines serving the Project site; and

WHEREAS, the Project will require upgrading and expanding portions of the existing sanitary sewer infrastructure and lines to accommodate additional discharge of water into the Sewer System (the “**Improvements**”); and

WHEREAS, the County has previously adopted Section 25-177 of the Code of DeKalb County, as revised 1988 (hereinafter “**Code**”), outlining a method of cost sharing between the County and a private developer when a proposed development would require expansion of the existing sanitary sewer system; and,

WHEREAS, due to the complex nature of the Improvements contemplated by this Agreement and the extent of the improvements and expansion of the sanitary sewer system beyond

just Company's use, the County's Department of Watershed Management or its contractors has agreed to complete the Improvements and Company has agreed to make a contribution towards the Improvements in an amount not to exceed \$150,500 as the appropriate method of cost sharing; and

WHEREAS, the purpose of this Agreement is for the parties to enter into a binding contract evidencing their agreement as to the installation and financing of the Improvements;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises and undertakings contained herein, the parties hereto to hereby agree and consent to the following:

1. **Improvements**. The Improvements will consist of upgrades and expansion of certain portions of the DeKalb County sanitary sewer infrastructure and lines servicing 4962, 4964, 4994, 4998, 5046 Rockbridge Road, Stone Mountain, GA, 30088 (the "Site"). The County, through its Department of Watershed Management and/or its contractor, will determine those portions of the sanitary sewer infrastructure and lines to be upgraded and expanded (the "Work") from the candidate areas presented in Exhibit A and the corresponding pipe rehabilitation list presented in Exhibit B. The Work shall be completed to the extent necessary to generate 68,820 gallons per day in sewer capacity credits as calculated per DeKalb County's Capacity Assurance Banking Credit Program. The County's Department of Watershed Management, or other applicable department, shall operate and maintain the Improvements in accordance with applicable laws.
2. **Term of Agreement and Relevant Times**
 - a. This Agreement shall become effective upon the date of execution, and terminate on December 1, 2023, unless terminated earlier in accordance with the termination provision of this Agreement or extended by and through consent of the parties.
 - b. The County agrees to have the Improvements required by Section 1 of this Agreement designed, constructed and operational no later than December 1, 2023.
 - c. The County's approval of Company's request for sewer capacity will expire two (2) years from the date listed on the County's correspondence entitled "SEWER

CAPACITY APPROVAL IN LIEU OF CERTIFICATION,” (the “expiration date”). At that time, a new request for capacity must be submitted to the County for review and approval. Extensions of up to one (1) year will be considered if made in writing more than sixty (60) days prior to the expiration date.

- d. Any sewer capacity credits created are non-transferable by the Company unless the proposed transfer is to an affiliate of Company operating the Site for use related to the Project and consistent with this Agreement and DeKalb County’s policies. Any sewer capacity credits created as a result of the Improvements that are in excess of those required by the Company, or an affiliate of Company, as reflected in this Agreement and in accordance with DeKalb County’s policies shall remain in the control of the County.
- e. The Company shall inform The County within 30 days if the associated project is cancelled for any reason.

3. Reimbursement of a Portion of Improvement Costs by Company

- a. Company agrees that upon completion of the Improvements and before Company shall be allowed access to the County’s sanitary sewer system, Company shall reimburse the County a total amount not to exceed \$150,500.00.
- b. In no event shall the Company’s Contribution, exclusive of any interest as defined in Section 3(e) of this Agreement, exceed \$150,500.00.
- c. Upon the completion of the Improvements, the County shall provide an invoice reflecting the final amount of the Company’s Contribution, including instructions for payment of such amounts, to the Company at the following address:

Captura Rockbridge Acquisition I LLC
c/o Agustin Abalo
24 Rockland Pl.
Decatur GA 30030

- d. In the event the Company’s Contribution is more than thirty (60) days past due, the County may:
 - i. charge Company interest at a rate of one-percent (1%) per month as to the outstanding amount of the Company’s Contribution until the past due amount is paid to the County in full; and,

- ii. refuse to allow Company access to the County's sanitary sewer system and the Improvements until the past due amount of the Company's Contribution is paid to the County in full.

4. Requirements before Connection to the County's Sanitary Sewer System

- a. The Company agrees, prior to connecting to the County's sanitary sewer system, to comply with the following requirements:

- 1. Install low-flow plumbing fixtures;
- 2. Prevent discharge of fats, oils, and grease (FOG) into the wastewater collection system;
- 3. Maintain caps on service line cleanouts for sewer laterals;
- 4. Maintain private sewer service lines; and
- 5. Ensure roof and floor drains are not connected to the wastewater system.

- b. If Company fails to comply with the requirements listed above in Section 4(a), the County may terminate the approval to connect to the sanitary sewer system.

5. **Termination.** The parties agree that this Agreement shall terminate on the date on which an amount equal to the Company's Contribution and any interest payments that may be due the County pursuant to this Agreement have been paid to the County in full under this Agreement; provided that the Improvements servicing the Site are operational after the Company connects to the sanitary sewer system.

6. Miscellaneous.

- a. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.
- b. The recitals above are part of this Agreement.
- c. County may not assign its rights under this Agreement. The Company may not assign its rights under this Agreement except to an entity that will own or operate the Project, with the previous written consent of the County.

- d. Each individual executing this Agreement on behalf of a party represents and warrants to the other party that such individual is authorized to do so and that his signature binds the party on whose behalf he is executing this Agreement.
- e. County and the Company acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation, oral or written, not incorporated in this Agreement shall be binding upon the County or the Developer. All parties must sign any amendments to the Agreement.
- f. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.
- g. If a court of competent jurisdiction renders any provision of this Agreement (or portion thereof) to be invalid or otherwise unenforceable, that provision or portion thereof shall be severed and the remainder of this Agreement shall continue in full force and effect as if the invalid provision or portion thereof was not part of this Agreement. Any such holding materially affecting the commitments herein may be the subject of further negotiations for purpose of legally revising the consideration involved. No action taken pursuant to this Agreement shall be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and should not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.
- h. Nothing under this Agreement and no action taken pursuant hereto shall cause the County and Company to be treated as a partnership, joint venture, association, or other common entity.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three (3) counterparts, each to be considered an original by their authorized representative.

Captura Rockbridge Acquisition I LLC

DEKALB COUNTY, GEORGIA

By: _____
Signature

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

Name

ATTEST:

Title

BARBARA H. SANDERS, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer

APPROVED AS TO SUBSTANCE:

David Hayes
Director
Department of Watershed Management

APPROVED AS TO FORM:

County Attorney Signature



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2023-0044

Substitute

2/14/2023

Purchasing Type: Ratification (RA)

Public Hearing: YES NO

Department: Purchasing & Contracting

AGENDA ITEM:

Commission District(s): ALL

CO - Change Order No. 1 to Contract No. 1288704 for North Decatur Road Roundabout Improvements (120 days): for use by Public Works-Transportation. This contract consists of construction of mini-roundabouts at the North Decatur Road intersections with Springdale Road and Oakdale Road, including related curb, ramps, and sidewalks. This request is to increase the contract term through June 30, 2023 and to ratify a previously provided sixty (60) day contract term increase. Awarded to: SD&C, Inc. CONTRACT TERM INCREASE ONLY.

Information Contact: Michelle Butler, CPPO, Procurement Manager

Phone Number: (404) 687-3581

PURPOSE:

Awarded by the BOC on April 12, 2022, for an amount not to exceed \$627,165.71. This contract consists of the construction of mini roundabouts at the North Decatur Road intersections with Springdale Road and Oakdale Road, including related curbs, ramps, and sidewalks. Work at these intersections also includes milling the existing asphalt and replacing with a 1.5-inch inlay. New roadway striping will be added on North Decatur Road from near Briarcliff Road to Lullwater Road. The contract is delayed due to material manufacturing for proposed traffic signals. This request seeks to ratify a previously provided sixty (60) day contract term increase, effective as of December 31, 2022 and to increase the contract term through June 30, 2023 to allow for the completion of existing work.

This substitute is to revise the requested contract term expiration date to reflect a June 30, 2023 contract term expiration.

RECOMMENDATION:

Recommend approval of Change Order No. 1 with:

SD&C, Inc., 4473 Covington Highway, Decatur, Georgia 30035

and authorize the Chief Executive Officer to execute the change order and all associated documents.

ADDITIONAL INFORMATION:

- | | |
|------------------------------|--------------------|
| 1. LSBE Participation: | LSBE – DeKalb Firm |
| 2. Contract Effective Date | August 26, 2022 |
| 3. Contract Expiration Date: | February 28, 2023 |



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

4. Amount Spent To Date:

\$0.00

5. Funding:

SPLOST Category 1D – Transportation Enhancements

AGENDA NOTES 2023-0044

Solicitation Name and #	North Decatur Road Roundabout Improvements (120 days): for use by PublicWorks-Transportation ITB No. 21-101463
Senior Procurement Agent	Brenda H. Redus
Date Solicitation bid prices expire.	NA
Solicitation Name, Number and Contract Number of Expiring/Expired Contract	North Decatur Road Roundabout Improvements (120 days): for use by PublicWorks-Transportation ITB No. 21-101463 S D & C, Inc. - CPA 1288704
Contract Number, Contractor Name and Award Amount	<u>\$627,165.71 – Total Award</u>
Amount Spent to Date on Contract(s)	\$0.00
Prime Contractor Information and LSBE - Subcontractor	<u>S D & C, Inc. (Prime) – LSBE DeKalb</u> Tony Abide, President & COO Years in Business: 25 Years Doing Business with DeKalb: 13
Attachments	<ul style="list-style-type: none"> • UD/SPLOST Change Order Request Form



DeKalb SPLOST Change Order Request Administrative Authorization

ITB No. 21-101463 Contract No. 1288704 Change Order # 1

Request Date 10/31/2022 Project Type Intersection Improvement

Project Description North Decatur Road carries a significant amount of vehicular traffic through neighborhoods where pedestrians are active. The project includes mini-roundabouts on North Decatur Road at the Springdale Road and Oakdale Road intersections, including related curb, ramps, and sidewalks, which are intended to calm traffic and improve operations and safety.

Contractor SD&C Purchase Order Authorized Amount \$627,165.71

Change Order Amount \$0 Change to Purchase Order 0%

Requester Name Jeffery Brown Requester Title Project Manager

Items for Proposed Change or Addition

Item	Unit of Measure	Quantity	Unit Cost	Total Cost
Time Extension	CD	84	N/A	N/A

Explanation of Necessity for Change or Addition The NTP for this project was signed by the contractor on 9/9/2022. At the NTP meeting the contractor advised of delays in material manufacturing for the proposed traffic signals. The contractor's submitted schedule shows an anticipated completion date of March 31, 2023. Extending the completion date to 3/31/2023 should allow for adequate time for completion.

David Pelton Digitally signed by David Pelton
Date: 2022.12.02 16:51:21 -05'00'

Division Manager Date

Tony Adibe 10/31/22

Contractor Name Print Date

Jeffery Brown Digitally signed by Jeffery Brown
DN: C=US,
E=jeffery.brown@onestas.com,
O=Alfas Technical Consultants,
OU=Jeffery Brown 11/1/2022

SPLOST PM Construction Manager Date

Tony Adibe

Contractor Sign
President

Contractor Title

Ernest Ruffler 12-8-2022

SPLOST PM Coordinator Date

Jeffery Williams 12-12-22

Zachary L. Williams/COO/Executive Assistant Date

The Chief Executive Officer or his designee shall have the authority to approve and execute a Change Order lowering the Contract Price or increasing the Contract Price up to twenty percent (20%) of the original Contract Price provided that the total amount of the increase authorized by such Change Order is less than \$100,000.



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File #: 2023-0191
File Status: Preliminary Item

2/28/2023

Public Hearing: YES NO Department: Public Works - Roads & Drainage

SUBJECT: CSX Encroachment Agreement at S. McDonough Street, East College Ave. and East Howard Ave.

Commission District(s): Commission Districts 2,6

CSX Encroachment Agreement at S. McDonough Street, East College Ave. and East Howard Ave.
No Cost to County

Information Contact: Peggy Allen

Phone Number: (404) 294-2878

PURPOSE:

To consider executing the encroachment agreement with CSX Railroad for the repair and construction of two new traffic signal poles at S. McDonough Street, East College Ave. and East Howard Ave. and
To consider authorizing the Chief Executive Officer to execute all necessary documents for the installation.

NEED/IMPACT:

As a result of a traffic accident at S. McDonough Street, East College Ave. and East Howard Ave., the traffic signal was damaged, and the traffic poles were destroyed. A temporary repair has been made however in the interest of safety for the motorist and for CSX infrastructure, new, stronger traffic signal poles must be installed. The new poles will be installed within the CSX right of way and therefore an encroachment agreement with CSX is required. The agreement has been approved as to form by the Law Department.

FISCAL IMPACT:

No cost to the county

RECOMMENDATION:

To execute the encroachment agreement with CSX Railroad for the repair and construction of two new traffic signal poles at S. McDonough Street, East College Ave. and East Howard Ave. and To Authorize the Chief Executive Officer to execute all necessary documents for the installation.

DEKALB COUNTY

ITEM NO.

BOARD OF COMMISSIONERS

HEARING TYPE
Preliminary

BUSINESS AGENDA / MINUTES

MEETING DATE: February 14, 2023

ACTION TYPE
Resolution

SUBJECT: CSX Encroachment Agreement at S. McDonough Street, East College Ave. and East Howard Ave.

Commission Districts 2,6

DEPARTMENT: Public Works – Roads & Drainage

PUBLIC HEARING: YES NO

ATTACHMENT: YES No

PAGES: 19

INFORMATION CONTACT: Peggy Allen (404) 294-2878

PHONE NUMBER:

PURPOSE:

To consider executing the encroachment agreement with CSX Railroad for the repair and construction of two new traffic signal poles at S. McDonough Street, East College Ave. and East Howard Ave. and To consider authorizing the Chief Executive Officer to execute all necessary documents for the installation.

NEED/IMPACT:

As a result of a traffic accident at S. McDonough Street, East College Ave. and East Howard Ave., the traffic signal was damaged, and the traffic poles were destroyed. A temporary repair has been made however in the interest of safety for the motorist and for CSX infrastructure, new, stronger traffic signal poles must be installed. The new poles will be installed within the CSX right of way and therefore an encroachment agreement with CSX is required. The agreement has been approved as to form by the Law Department.

RECOMMENDATION(s):

To execute the encroachment agreement with CSX Railroad for the repair and construction of two new traffic signal poles at S. McDonough Street, East College Ave. and East Howard Ave. and To Authorize the Chief Executive Officer to execute all necessary documents for the installation.

FACILITY ENCROACHMENT AGREEMENT

THIS AGREEMENT, Made and effective as of September 28, 2021, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, hereinafter called "Licensor," and DEKALB COUNTY GOVERNMENT, a municipality corporation, political subdivision or state agency, under the laws of the State of Georgia, whose mailing address is 729B Camp Road, Decatur, Georgia 30032, hereinafter called "Licensee," WITNESSETH:

WHEREAS, Licensee desires to construct (unless previously constructed and designated as existing herein), use and maintain the below described facility(ies), hereinafter called "Facilities," over, under or across property owned or controlled by Licensor, at the below described location(s):

1. One (1) aerial wireline crossing, solely for the transmission of electrical power only, through or on metal strand wire(s), located at or near Decatur, Dekalb County, Georgia, Atlanta Division, Atlanta Terminal Subdivision, Milepost YYG-164.98, Latitude N33:46:11., Longitude W84:17:48.;
2. Two (2) miscellaneous encroachment - poles, located at or near Decatur, Dekalb County, Georgia, Atlanta Division, Atlanta Terminal Subdivision, Milepost YYG-164.98, Latitude N33:46:11., Longitude W84:17:48.;

hereinafter, called the "Encroachment," as shown on print(s) labeled Exhibit "A," attached hereto and made a part hereof;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. LICENSE:

1.1 Subject to Article 17, Licensor, insofar as it has the legal right, power and authority to do so, and its present title permits, and subject to:

(A) Licensor's present and future right to occupy, possess and use its property within the area of the Encroachment for any and all purposes, including but not limited to Licensor's track(s) structure(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus, or any appurtenances thereto ("Licensor's Facilities") and any other facilities as now exist or which may in the future be located in, upon, over, under or across the property;

(B) All encumbrances, conditions, covenants, easements, and limitations applicable to Licensor's title to or rights in the subject property; and

(C) Compliance by Licensee and its agent or contractor ("Licensee's Contractor") with the terms and conditions herein contained;

does hereby license and permit Licensee to construct, maintain, repair, renew, operate, use, alter or change the Facilities at the Encroachment above for the term herein stated, and to remove same upon termination.

1.2 The term Facilities, as used herein, shall include only those structures and ancillary facilities devoted exclusively to the transmission usage above within the Encroachment, and as shown on attached Exhibit A.

1.3 No additional structures or other facilities shall be placed, allowed, or maintained by Licensee in, upon or on the Encroachment except upon prior separate written consent of Licensor.

1.4 The term Licensor Facilities, as used herein shall include Licensor's track(s) structures(s), power lines, communication, signal or other wires, train control system, cellular or data towers, or electrical or electronic apparatus other property, or any appurtenances thereto and any other facilities as now exist or which may in the future be located in, upon, over, under or across the property.

2. ENCROACHMENT FEE; TERM:

2.1 Licensee shall pay Licensor a one-time nonrefundable Encroachment Fee of TEN THOUSAND TWO HUNDRED AND 00/100 U.S. DOLLARS (\$10,200.00) upon execution of this Agreement. Licensee agrees that the Encroachment Fee applies only to the original Licensee under this Agreement. In the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Licensee changes its name, then Licensee shall be subject to payment of Licensor's current administrative and document preparation fees for the cost incurred by Licensor in preparing and maintaining this Agreement on a current basis.

2.2 However, Licensee assumes sole responsibility for, and shall pay directly (or reimburse Licensor), any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property solely on account of said Facilities or Encroachment.

2.3 This Agreement shall terminate as herein provided, but shall also terminate upon: (a) Licensee's cessation of use of the Facilities or Encroachment for the purpose(s) above; (b) removal of the Facilities; (c) subsequent mutual consent; and/or (d) failure of Licensee to complete installation within five (5) years from the effective date of this Agreement.

2.4 In further consideration for the license or right hereby granted, Licensee hereby agrees that Licensor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Facilities and appurtenances, and/or maintenance thereof, or for any public works project of which said Facilities is a part. Licensee agrees it shall not assess Licensor any stormwater or drainage fee associated with such Facilities. Furthermore, Licensee shall be responsible for any stormwater or drainage fees assessed by any County or State agency managing such systems.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Licensee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Facilities, in a prudent, workmanlike manner, using quality materials and complying with any applicable standard(s) or regulation(s) of Licensor (CSXT Specifications), or Licensee's particular industry, National Electrical Safety Code, or any governmental or regulatory body having jurisdiction over the Encroachment.

3.2 Location and construction of Facilities shall be made strictly in accordance with design(s) and specifications furnished to and approved by Licensor and of material(s) and size(s) appropriate for the purpose(s) above recited.

3.3 All of Licensee's work, and exercise of rights hereunder, shall be undertaken at time(s) satisfactory to Licensor, and so as to eliminate or minimize any impact on or interference with the safe use and operation of Licensor's property and appurtenances thereto.

3.4 In the installation, maintenance, repair and/or removal of said Facilities, Licensee shall not use explosives on or adjacent to Licensor's property of any type or perform or cause any blasting without the separate express written consent of Licensor. As a condition to such consent, a representative will be assigned by Licensor to monitor blasting, and Licensee shall reimburse Licensor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Facilities, whether resulting from acts of Licensee, or natural or weather events, which are necessary to protect or facilitate Licensor's use of its property, shall be made by Licensee promptly, but in no event later than thirty (30) days after Licensee has notice as to the need for such repairs or maintenance.

3.6 Licensor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request immediate repair or renewal of the Facilities, and if the same is not performed, may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Licensee.

3.7 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

3.8 All work on the Encroachment shall be conducted in accordance with Licensor's safety rules and regulations.

3.9 Licensee hereby agrees to reimburse Licensor any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising from any failure of Licensee to make repairs or conduct maintenance as required by Section 3.5 above or from improper or incomplete repairs or maintenance to the Facilities or Encroachment.

3.10 In the event it becomes necessary for the Licensee to deviate from the approved Exhibit, Licensee shall seek prior approval from Licensor, or when applicable, an official field representative of Licensor permitted to approve changes, authorizing the necessary field changes and Licensee shall provide Licensor with complete As-Built Drawings of the completed work. As-Built Drawings shall be submitted to Licensor in either electronic or hard copy form upon the substantial completion of the project and upon Licensor's request.

3.11 In the event of large scale maintenance/construction work to railroad bridges Licensee is required to protect power lines with insulated covers or comparable safety devices at their costs during construction/maintenance for safety of railroad employees.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before use of the Encroachment for the contracted purpose, Licensee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters), letter(s) or certificate(s) of approval. Licensee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permit(s), approval(s) and authorization(s), and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (State, Federal or Local) having jurisdiction over Licensee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (29 CFR 1926.651(b)), et al., and State "One Call" - "Call Before You Dig" requirements.

4.2 Licensee assumes sole responsibility for failure to obtain such permit(s) or approval(s), for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation or maintenance upon Licensor's property, Licensee, at its sole cost and expense, shall:

- (A) support track(s) and roadbed in a manner satisfactory to Licensor;
- (B) backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Licensor; and
- (C) either remove any surplus earth or material from Licensor's property or cause said surplus earth or material to be placed and distributed at location(s) and in such manner Licensor may approve.

5.2 After construction or maintenance of the Facilities, Licensee shall:

- (A) Restore any track(s), roadbed and other disturbed property; and

(B) Erect, maintain and periodically verify the accuracy of aboveground markers, in a form approved by Licensor, indicating the location, depth and ownership of any underground Facilities or related facilities.

5.3 Licensee shall be solely responsible for any subsidence or failure of lateral or subjacent support in the Encroachment area for a period of three (3) years after completion of installation.

6. TRACK CHANGES:

6.1 In the event that rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of track(s) or other facilities, or in the event future use of Licensor's rail corridor or property necessitate any change of location, height or depth in the Facilities or Encroachment, Licensee, at its sole cost and expense and within thirty (30) days after notice in writing from Licensor, shall make changes in the Facilities or Encroachment to accommodate such track(s) or operations.

6.2 If Licensee fails to do so, Licensor may make or contract to make such changes at Licensee's cost.

7. FACILITY CHANGES:

7.1 Licensee shall periodically monitor and verify the depth or height of the Facilities or Encroachment in relation to the existing tracks and facilities, and shall relocate the Facilities or change the Encroachment, at Licensee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of Licensor.

7.2 If Licensee undertakes to revise, renew, relocate or change in any manner whatsoever all or any part of the Facilities (including any change in voltage or gauge of wire or any change in circumference, diameter or radius of pipe or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefor shall be submitted to Licensor for approval before such change. After approval, the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 Although the Facilities/Encroachment herein permitted may not presently interfere with Licensor's Facilities, in the event that the operation, existence or maintenance of said Facilities, in the sole judgment of Licensor, causes: (a) interference (including, but not limited to, physical or interference from an electromagnetic induction, or interference from stray or other currents) with Licensor's power lines, communication, signal or other wires, train control system, or electrical or electronic apparatus; or (b) interference in any manner, with the operation, maintenance or use of Licensor's Facilities; then and in either event, Licensee, upon receipt of written notice from Licensor of any such interference, and at Licensee's sole risk, cost and expense, shall promptly make such changes in its Facilities or installation, as may be required in the reasonable judgment of the Licensor to eliminate all such interference. Upon

Licensee's failure to remedy or change, Licensor may do so or contract to do so at Licensee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Facilities, Licensor hereby reserves the right to inspect same and to require Licensee to undertake repairs, maintenance or adjustments to the Facilities, which Licensee hereby agrees to make promptly, at Licensee's sole cost and expense.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 To the fullest extent permitted by State law (constitutional or statutory, as amended), Licensee hereby agrees to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.2 Licensee's Contractor shall hereby agree to, defend, indemnify, and hold Licensor harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Licensor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Licensor), and for damage to or loss of or destruction of any property whatsoever, arising out of resulting from, or in any way connected with the construction, repair, maintenance, replacement, presence, existence, operations, use or removal of the Facilities or any structure in connection therewith, or restoration of premises of Licensor to good order or condition after removal, EXCEPT when proven to have been caused solely by the willful misconduct or gross negligence of Licensor. HOWEVER, to the fullest extent permitted by State law, during any period of actual construction, repair, maintenance, replacement or removal of the Facilities, wherein agents, equipment or personnel of Licensee are on the railroad rail corridor, Licensee's liability hereunder shall be absolute, irrespective of any joint, sole or contributory fault or negligence of Licensor.

9.3 Use of Licensor's rail corridor involves certain risks of loss or damage as a result of the rail operations. Notwithstanding Section 9.1, Licensee expressly assumes all risk of loss and damage to Licensee's Property or the Facilities in, on, over or under the Encroachment,

including loss of or any interference with use or service thereof, regardless of cause, including electrical field creation, fire or derailment resulting from rail operations. For this Section, the term "Licensee's Property" shall include property of third parties situated or placed upon Licensor's rail corridor by Licensee or by such third parties at request of or for benefit of Licensee.

9.4 To the fullest extent permitted by State law, as above, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold Licensor harmless from: (a) all claims, costs and expenses, including reasonable attorneys' fees, as a consequence of any sudden or nonsudden pollution of air, water, land and/or ground water on or off the Encroachment area, arising from or in connection with the use of this Encroachment or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Facilities; (b) any claim or liability arising under federal or state law dealing with either such sudden or nonsudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of the tracks arising from such Facilities leakage.

9.5 Notwithstanding Section 9.1, Licensee also expressly assumes all risk of loss which in any way may result from Licensee's failure to maintain either required clearances for any overhead Facilities or the required depth and encasement for any underground Facilities, whether or not such loss(es) result(s) in whole or part from Licensor's contributory negligence or joint fault.

9.6 Obligations of Licensee hereunder to release, indemnify and hold Licensor harmless shall also extend to companies and other legal entities that control, are controlled by, subsidiaries of, or are affiliated with Licensor, as well as any railroad that operates over the rail corridor on which the Encroachment is located, and the officers, employees and agents of each.

9.7 If a claim is made or action is brought against Licensor, and/or its operating lessee, for which Licensee may be responsible hereunder, in whole or in part, Licensee shall be notified to assume the handling or defense of such claim or action; but Licensor may participate in such handling or defense.

9.8 Notwithstanding anything contained in this Agreement, the limitation of liability contained in the state statutes, as amended from time to time, shall not limit Licensor's ability to collect under the insurance policies required to be maintained under this Agreement.

10. INSURANCE:

10.1 Prior to commencement of surveys, installation or occupation of premises pursuant to this Agreement, Licensee shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of

- (i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00).

- (ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement and naming Licensor, and/or its designee, as additional insured. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor, or its designee, prior to cancellation or modification of any policy. Mail CGL certificate, along with agreement, to CSX Transportation, Inc., Speed Code J180, 500 Water Street, Jacksonville, FL 32202. On each successive year, send certificate to RenewalCOI@csx.com.
- (iii) Business automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence naming Licensor, and/or its designee, as additional insured.
- (iv) The insurance policies must contain a waiver of subrogation against CSXT and its Affiliates, except where prohibited by law. All insurance companies must be A. M. Best rated A- and Class VII or better.
- (v) Such other insurance as Licensor may reasonably require.
- (vi) Licensee shall require its contractors to meet minimum insurance requirements above when performing work in relation to this agreement. Licensee will procure and review contractor's insurance certificates to confirm requirements are met. Licensor may request a copy of the insurance certificate.

10.2 If Licensee's Contractor's existing CGL policy(ies) do(es) not automatically cover Licensee's contractual liability during periods of survey, installation, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee's Contractor. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall be at Licensee's sole risk.

10.3 Licensor, or its designee, may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensor's request shall be considered a default by Licensee.

10.4 To the extent permitted by law and without waiver of the sovereign immunity of Licensee, securing such insurance shall not limit Licensee's liability under this Agreement, but shall be security therefor.

10.5 (A) In the event Licensee finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall: (a) notify

Licensors; and (b) require Licensee's Contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Licensor,

i) Railroad Protective Liability (RPL) Insurance, naming Licensor, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 04 13) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period. The original of such RPL policy shall be sent to and approved by Licensor prior to commencement of such construction or demolition. Licensor reserves the right to demand higher limits.

OR

ii) The CGL policy shall include endorsement ISO CG 24 17 and the Auto Liability Policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsements are not included, RPL insurance must be provided.

(B) At Licensor's option, in lieu of purchasing RPL insurance or the 50 foot endorsements from an insurance company (but not CGL insurance), Licensee may pay Licensor, at Licensor's current rate at time of request, the cost of adding this Encroachment, or additional construction and/or demolition activities, to Licensor's Railroad Protective Liability (RPL) Policy for the period of actual construction. This coverage is offered at Licensor's discretion and may not be available under all circumstances.

10.6 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

11. GRADE CROSSINGS; PROTECTION SERVICES:

11.1 Nothing herein contained shall be construed to permit Licensee or Licensee's contractor to move any vehicles or equipment over the track(s), except at public road crossing(s), without separate prior written approval of Licensor.

11.2 If Licensor deems it advisable, during any construction, maintenance, repair, renewal, alteration, change or removal of said Facilities, to place watchmen, flagmen, or field construction managers for protection of operations of Licensor or others on Licensor's rail corridor at the Encroachment, and to keep persons, equipment or materials away from the track(s), Licensor shall have the right to do so at the expense of Licensee, but Licensor shall not be liable for failure to do so.

12. LICENSOR'S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Licensor to accommodate Licensee's continued use of Licensor's property as a result of track changes or changes to Licensor's Facilities shall also be paid by Licensee.

12.2 Licensor's expense for wages ("force account" charges) and materials for any work performed at the expense of Licensee pursuant hereto shall be paid by Licensee within thirty (30) days after receipt of Licensor's bill therefor. Licensor may, at its discretion, request an advance deposit for estimated Licensor costs and expenses.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under "force account" rules, plus current applicable overhead percentages, the actual cost of materials, and insurance, freight and handling charges on all material used. Equipment rentals shall be in accordance with Licensor's applicable fixed rate. Licensor may, at its discretion, require advance deposits for estimated costs of such expenses and costs.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Licensee fails or refuses to fully and completely perform any of said covenants or remedy any breach within thirty (30) days after receiving written notice from Licensor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Licensor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of encroachment fee(s) having been paid in advance for any annual or other period. Upon such revocation, Licensee shall make removal in accordance with Article 14.

13.2 No waiver by Licensor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Licensor.

13.3 Neither the failure of Licensor to object to any work done, material used, or method of construction or maintenance of said Encroachment, nor any approval given or supervision exercised by Licensor, shall be construed as an admission of liability or responsibility by Licensor, or as a waiver by Licensor of any of the obligations, liability and/or responsibility of Licensee under this Agreement.

14. TERMINATION, REMOVAL:

14.1 All rights which Licensee may have hereunder shall cease upon the date of (a) termination, (b) revocation, or (c) subsequent agreement, or (d) Licensee's removal of the Facility from the Encroachment. However, neither termination nor revocation of this Agreement shall affect any claims and liabilities which have arisen or accrued hereunder, and which at the

time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within thirty (30) days after revocation or termination, Licensee, at its sole risk and expense, shall (a) remove the Facilities from the rail corridor of Licensor, unless the parties hereto agree otherwise, (b) restore the rail corridor of Licensor in a manner satisfactory to Licensor, and (c) reimburse Licensor any loss, cost or expense of Licensor resulting from such removal.

15. NOTICE:

15.1 Licensee shall give Licensor at least thirty (30) days written notice before doing any work on Licensor's rail corridor, except that in cases of emergency shorter notice may be given. Licensee shall provide proper notification as follows:

a. For non-emergencies, Licensee shall submit online via the CSX Property Portal from Licensor's web site, via web link:
https://propertyportal.csx.com/pub_ps_res/ps_res/jsf/public/index.faces

b. For emergencies, Licensee shall complete all of the steps outlined in Section 15.1 a. above, and shall also include detailed information of the emergency. Licensee shall also call and report details of the emergency to Licensor's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Licensor needs to contact Licensee concerning an emergency involving Licensee's Facility(ies), the emergency phone number for Licensee is: 404-294-2363.

15.2 All other notices and communications concerning this Agreement shall be addressed to Licensee at the address above, and to Licensor at the address shown on Page 1, c/o CSXT Contract Management, J180; or at such other address as either party may designate in writing to the other.

15.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered delivered upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Licensee only, and Licensee shall obtain Licensor's prior written consent to any assignment of Licensee's interest herein; said consent shall not be unreasonably withheld.

16.2 Subject to Sections 2 and 16.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Licensee shall give Licensor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of

Licensee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Licensors expressly reserves the right to assign this Agreement, in whole or in part, to any grantee, lessee, or vendee of Licensor's underlying property interests in the Encroachment, upon written notice thereof to Licensee.

16.5 In the event of any unauthorized sale, transfer, assignment, sublicense or encumbrance of this Agreement, or any of the rights and privileges hereunder, Licensor, at its option, may revoke this Agreement by giving Licensee or any such assignee written notice of such revocation; and Licensee shall reimburse Licensor for any loss, cost or expense Licensor may incur as a result of Licensee's failure to obtain said consent.

17. TITLE:

17.1 Licensee understands that Licensor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Licensor's title for any particular Encroachment or segment of Rail Corridor occupied, used or enjoyed in any manner by Licensee under any rights created in this Agreement. It is expressly understood that Licensor does not warrant title to any Rail Corridor and Licensee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to others therein.

17.2 The term "license," as used herein, shall mean with regard to any portion of the Rail Corridor which is owned by Licensor in fee simple absolute, or where the applicable law of the State where the Encroachment is located otherwise permits Licensor to make such grants to Licensee, a "permission to use" the Rail Corridor, with dominion and control over such portion of the Rail Corridor remaining with Licensor, and no interest in or exclusive right to possess being otherwise granted to Licensee. With regard to any other portion of Rail Corridor occupied, used or controlled by Licensor under any other facts or rights, Licensor merely waives its exclusive right to occupy the Rail Corridor and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Licensor continues its own occupation, use or control. Licensor does not warrant or guarantee that the license granted hereunder provides Licensee with all of the rights necessary to occupy any portion of the Rail Corridor. Licensee further acknowledges that it does not have the right to occupy any portion of the Rail Corridor held by Licensor in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, Licensee shall not obtain, exercise or claim any interest in the Rail Corridor that would impair Licensor's existing rights therein.

17.3 Licensee agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right to, any claim against Licensor for damages on account of any deficiencies in title to the Rail Corridor in the event of failure or insufficiency of Licensor's title to any portion thereof arising from Licensee's use or occupancy thereof.

17.4 Licensee agrees to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the Facilities placement, or the presence of the Facilities in, on or along any Encroachment(s), including claims for punitive or special damages.

17.5 Licensee shall not at any time own or claim any right, title or interest in or to Licensor's property occupied by the Encroachments, nor shall the exercise of this Agreement for any length of time give rise to any right, title or interest in Licensee to said property other than the license herein created.

17.6 Nothing in this Agreement shall be deemed to give, and Licensor hereby expressly waives, any claim of ownership in and to any part of the Facilities.

17.7 Licensee shall not create or permit any mortgage, pledge, security, interest, lien or encumbrances, including without limitation, tax liens and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the Facilities in or on any portion of the Encroachment (collectively, "Liens or Encumbrances"), to be established or remain against the Encroachment or any portion thereof or any other Licensor property.

17.8 In the event that any property of Licensor becomes subject to such Liens or Encumbrances, Licensee agrees to pay, discharge or remove the same promptly upon Licensee's receipt of notice that such Liens or Encumbrances have been filed or docketed against the Encroachment or any other property of Licensor; however, Licensee reserves the right to challenge, at its sole expense, the validity and/or enforceability of any such Liens or Encumbrances.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Except as otherwise provided herein, or in any Rider attached hereto, neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have

no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the state in which the Facilities and Encroachment are located.

18.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Licensor's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

18.7 Licensee agrees to reimburse Licensor for all reasonable costs (including attorney's fees) incurred by Licensor for collecting any amount due under the Agreement.

18.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions, or (d) to Lessees of Licensor's land and/or track who are affected by the terms and conditions of this Agreement and will maintain the confidentiality of this Agreement.

18.9 Within thirty (30) days of an overpayment in a cumulative total amount of One Hundred Dollars (\$100.00) or more by Licensee to Licensor, Licensee shall notify Licensor in writing with documentation evidencing such overpayment. Licensor shall refund the actual amount of Licensee's overpayment within 120 days of Licensor's verification of such overpayment.

18.10 This Agreement may be executed in any number of counterparts, and such counterparts may be exchanged by electronic transmission. Upon execution by the parties hereto, each counterpart shall be deemed an original and together shall constitute one and the same instrument. A fully executed copy of this Agreement by electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

19. CONTRACTOR'S ACCEPTANCE:

19.1 Licensee shall observe and abide by, and shall require Licensee's Contractors to observe and abide by the terms, conditions and provisions set forth in this Agreement. Prior to any commencement of work under this Agreement by Licensee's Contractor, Licensee shall require Licensee's Contractor to execute and deliver to Licensor the Contractor Acceptance form attached hereto as Schedule A to acknowledge Licensee's Contractor's agreement to observe and abide by terms and conditions of the Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the effective date of this Agreement.

Witness for Licensor:

CSX TRANSPORTATION, INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee:

DEKALB COUNTY GOVERNMENT

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax ID No.: _____

Schedule "A"

CONTRACTOR'S ACCEPTANCE

This Amendment is and shall be a part of Agreement No. CSX937978, and is incorporated therein.

To and for the benefit of CSX TRANSPORTATION, Inc. (Licensor") and to induce Licensor to permit Contractor on or about Licensor's property for the purpose of performing work in accordance with the Agreement dated September 28, 2021, between Licensee and Licensor, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Sections 3, 9, 10 of the Agreement.

Witness for Licensor:

CSX TRANSPORTATION INC.

By: _____

Print/Type Name: _____

Print/Type Title: _____

Witness for Licensee's Contractor

LICENSEE'S CONTRACTOR

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Licensee has the authority to do so and to bind the Licensee to the terms and conditions of this Agreement

NAME: _____

TITLE: _____

DATE: _____

CSXT Transportation (CSXT) General Notes (Aerial):

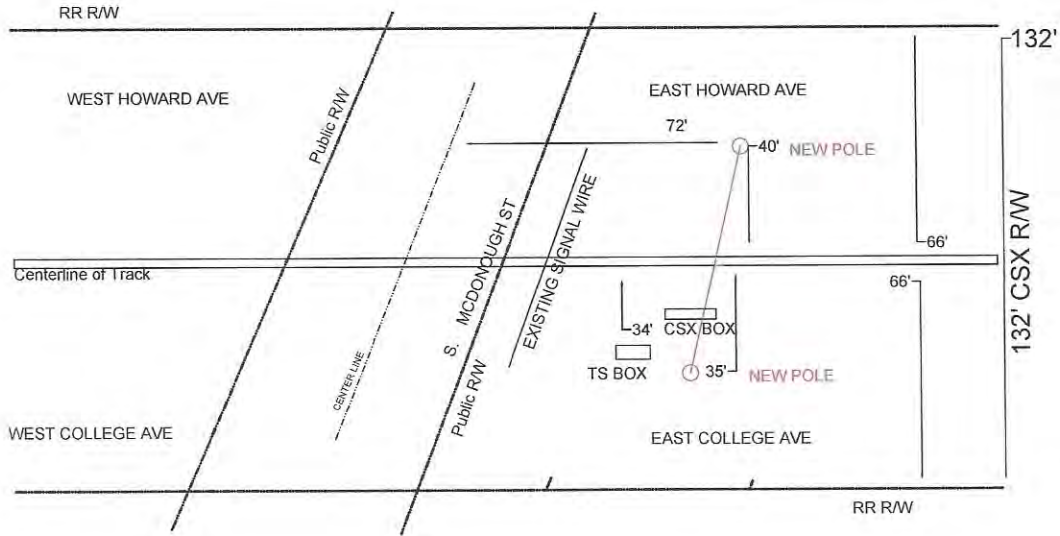
- 1) Work schedule is subject to the approval of all required construction submittals by the CSXT Construction Representative, verification that proposed work will not conflict with any CSXT U.G. Facilities, and the availability of CSXT Flagging and Protection Services. Construction submittals will be based upon the proposed scope of work and may include, but are not limited to; proposed work plan, project schedule, means and methods, site access, dewatering, temporary excavation/shoring, soil disposition/management, track monitoring, concrete placement work, structural lifting/rigging plans for hoisting operations, substructure construction plans, steel erection plans, roadwork plans, etc. No work may begin on, over, or adjacent to CSXT property, or that could potentially impact CSXT property, operations or safety without the prior completion and approval of the required aforementioned information and approvals.
- 2) CSXT owns its right-of-way for the primary purpose of operating a railroad, and shall maintain unrestricted use of its property for current and future operations. In the event that relocation of facilities becomes necessary to accommodate the movement of rail traffic, Licensee, at its sole risk and expense, shall be required to relocate and/or remove facilities from the rail corridor of Licensor within a time frame mutually agreed.
- 3) CSXT's consent applies to the design and construction of the utility located solely in the right-of-way owned by CSXT and assures that CSXT and AREMA Standard Specifications are met for tracks owned by others over which CSXT operates. It is the utility Owner's (Applicant) responsibility to get permission from the property owner that is other than CSXT to access and construct on their property.
- 4) Refer to the CSXT's "Design & Construction Standard Specifications Wireline Occupancies" revised December 16, 2016 and "Design & Construction Standard Specifications Pipeline Occupancies" revised June 5, 2018 (4.1.2
- 5) CSXT's signal facilities and/or warning devices at proposed facility crossing, i.e. cantilevers, flashers, and gates are to be located prior to installation.
- 6) No entry or construction on CSXT's railroad corridor is permitted until the utility encroachment review and approval process is completed, you are in receipt of a fully executed License agreement and you have obtained authority from the local Road Master.
- 7) CSXT does not grant or convey an easement for this installation.
- 8) The use of construction safety fencing is required when a CSXT Flagman is not present. Distance of fencing from nearest rail to be determined by the CSXT Roadmaster and shall be removed upon completion of the project.

2 NEW POLES AND SIGNAL WIRE PLAN

CSX937978

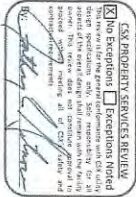
Exhibit A

9/23/2021



- (a) 72' from center line of S. McDonough st to NEW POLE
- (b) 132' CSX R/W (val map 07159)
- (c) 66' from E. College ave to centerline of track
- (c) 66' from E. Howard ave to centerline of track
- (e) 35' from NEW POLE on E. College ave side to centerline of track
- (e) 40' from NEW POLE on E. Howard ave side to centerline of track





CSX PROPERTY SERVICES REVIEW
 Job Exceptions Exceptions noted
 This drawing was reviewed for compliance with CSX utility standards and specifications. The reviewer is not responsible for the accuracy of the information provided in this drawing. The reviewer is not responsible for the accuracy of the information provided in this drawing. The reviewer is not responsible for the accuracy of the information provided in this drawing.

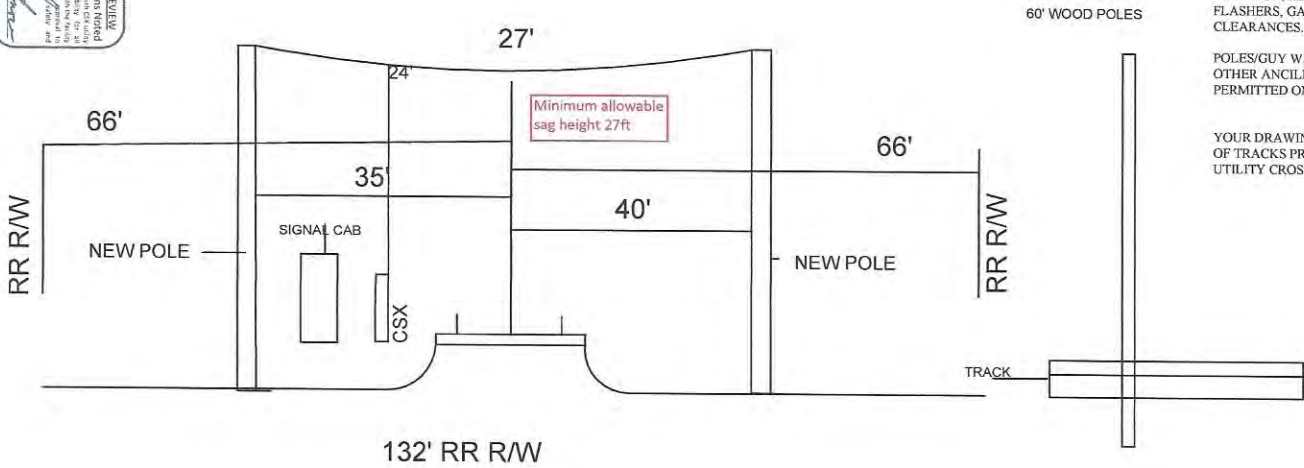
NOTES:

REFER TO ENGINEERING SPECIFICATIONS IN THE APPLICATION PACKAGE FOR ADDITIONAL INFORMATION AND GUIDANCE.

LOCATE CSX'S SIGNAL FACILITIES AND/OR WARNING DEVICES AT PROPOSED FACILITY CROSSING LOCATION, I.E. CANTILEVERS, FLASHERS, GATES AND SHOW CLEARANCES.

POLES/GUY WIRES/ANCHORS AND OTHER ANCILLIARIES ARE NOT PERMITTED ON CSXT R/W.

YOUR DRAWING MUST SHOW ALL SETS OF TRACKS PRESENT AT THE PROPOSED UTILITY CROSSING LOCATION.



LEGEND		WIRE/CABLE DETAILS			YOUR TITLE BLOCK
Letter	Description	Type:	Wire/Cable 1	Wire/Cable 2	
(a)	Distance from centerline of track to CSX R/W	<input checked="" type="checkbox"/> Electric <input type="checkbox"/> Cable TV <input type="checkbox"/> Fiber Optic <input type="checkbox"/> Communications <input type="checkbox"/> Other Describe: _____			
(b)	Distance from pole to centerline of nearest track	Conductor Material(s): <input checked="" type="checkbox"/> Aluminum/Copper <input type="checkbox"/> Other Describe: _____			
(c)	Distance from top-of-rail to bottom-of-sag	Fiber Cable Count: Wire Size/Pair: 7pr Voltage: 120		3pr shielded	
(d)	Height of wire above CSX aerial facilities	If options above not applicable, describe: Number of Phases (Electric Only): single Type of Wire Supports: messenger wire False Dead Ends: 0			
(e)	Distance between existing and proposed cable/wireline	Total # of CSX Pole Lines to be Crossed: 0			

Location: _____
 Latitude: N _____
 Longitude: W _____
 Drawing No.: _____ Sheet: ____ of ____
 Drawing Date: ____/____/____ Revised: ____/____/____
 Drawing Scale: V _____ Inches = _____ Feet
 Drawing Scale: H _____ Inches = _____ Feet



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File #: 2023-0201
File Status: Preliminary Item

2/28/2023

Purchasing Type: Renewal (REN)

Public Hearing: YES NO

Department: Purchasing & Contracting

AGENDA ITEM:

Commission District(s): All

REN - Contract Nos. 1242005 and 1242006 Electrical Switchgear Inspections and Repair (Annual Contract - 2nd Renewal of 2 Options to Renew): for use by the Department of Watershed Management (DWM). The contracts consist of providing inspection and repair of switchgear equipment at water and wastewater treatment plants. This request seeks to ratify a previously provided sixty (60) day contract term increase and exercise the 2nd renewal option through January 31, 2024 for both contracts. Awarded to Cleveland Electric Company and Brown Electrical Services, LLC. Total Amount Not To Exceed: \$2,493,572.00

Information Contact: Michelle Butler, Procurement Manager

Phone Number: (404) 687-3581

PURPOSE:

Awarded by the BOC on January 19, 2021, for a total amount not to exceed \$1,854,000.00. On January 11, 2022, the BOC approved the 1st renewal for a total amount not to exceed \$1,925,000.00. The contracts consist of providing inspection and repair of switchgear equipment at water and wastewater treatment plants.

This request seeks to ratify a previously provided sixty (60) day contract term increase, effective as of January 31, 2023, for both contracts. This request also seeks to exercise the 2nd renewal option through January 31, 2024.

RECOMMENDATION:

Recommend approval to exercise the 2nd renewal option with:

Cleveland Electric Company, 1282 Fulton Industrial Boulevard, Atlanta, GA 30336

Estimated Amount: \$2,154,918.00

Brown Electrical Services, LLC, 4674 Clark Howell Highway, Suite 5, Atlanta, GA 30349

Note: LSBE - MSA Firm

Estimated Amount: \$338,654.00

Total Amount Not To Exceed: \$2,493,572.00

ADDITIONAL INFORMATION:

- | | |
|------------------------------|---------------------------|
| 1. Contract Effective Date: | January 19, 2021 |
| 2. Contract Expiration Date: | March 31, 2023 |
| 3. Amount Spent To Date: | \$1,471,427.19 |
| 4. Funding: | General - Operating (DWM) |

AGENDA NOTES

Solicitation Name and Number	Electrical Switchgear Inspection and Repair (Annual Contract with 2 Options to Renew) ITB No. 20-101230
Procurement Technician	Sharice Feagins-Bailey
Vendor(s) agree to renew under the same prices, terms and conditions	Yes
Solicitation Name, Number and Contract Number of Expiring Contract	Electrical Switchgear Inspection and Repair (Annual Contract with 2 Options to Renew) ITB No. 20-101230 CPA No. 1242005 (Cleveland Electric Company) CPA No. 1242006 (Brown Electrical Services)
Expiring Contract Number, Contractor Name and Award Amount	\$3,779,000.00 CPA No.1242005 (Cleveland Electric Company) Initial - \$1,364,000.00 1 st Renewal - \$1,275,000.00 CPA No. 1242006 (Brown Electrical Services, LLC) Initial - \$490,000.00 1 st Renewal - \$650,000.00
Amount Spent on Expiring Contract	\$1,471,427.19 CPA No. 1242005 (Cleveland Electric Company) Initial - \$417,708.38 1 st Renewal – 772,497.81 CPA No. 1242006 (Brown Electrical Services, LLC) Initial - \$134,851.00 1 st Renewal -\$146,370.00
Prime Contractor Information and LSBE-Subcontractor	<u>Cleveland Electric Company</u> Owner: J.R. Cleveland, Jr. - CEO Years in business: 60 Years doing business with DeKalb: 18 No LSBE; CPO approved GFE <u>Brown Electrical Services - LSBE- MSA Firm</u> Owner: Lewis Brown - President Years in business: 20 Years doing business with DeKalb: 2
Attachments	Renewal Request Form



User Department: Watershed Management (DWM)

From: Sharice Feagins-Bailey

ITB No.: 20-101230

Title: Electrical Switchgear Inspection and Repair

Effective Date: January 19, 2021

Expiration Date: January 31, 2023

Contract APPROVED Amount: \$1,854,000.00

Number of Renewals to Date: 01

Amount Released: \$1,471,427.19

Contractor(s)	Contract No.	Agrees to Extend
Cleveland Electric Company	1242005	Yes
Brown Electrical Services	1242006	Yes

User Department Recommendation:

Renew

Bid

Funding for Renewal Term: \$2,493,572.00

(Unused funds do not roll over to the next term. Provide the amount of funding necessary for the renewal term.)

Funding: General Enterprise 3 Digit Fund Code 511
CIP Line Item No. (if applicable): _____

Award Amount(s):

Vendor 1: Cleveland Electric Company (\$2,154,918.00)
Name/Amount

Vendor 2: Brown Electrical Services (\$338,654.00)
Name/Amount

Vendor 3: _____
Name/Amount

Vendor 4: _____
Name/Amount

Justification:

This contract provides a vital service to all three (3) treatment facilities and the collection system. Switchgears are critical components in all those areas. They ensure continuity of power throughout the facilities should there be an interruption on one of the power sources. Proper maintenance and testing is important to ensure the equipment and devices are operating correctly.

David Hayes

Digitally signed by David Hayes
Date: 2023.01.26 14:52:41 -05'00'

Department Director Signature and Date

For Use by Purchasing and Contracting:

Approve

Deny

Additional Comments:

Purchasing and Contracting Signature and Date



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File #: 2023-0082
File Status: Preliminary Item

2/28/2023

Purchasing Type: Change Order (CO)

Public Hearing: YES NO

Department: Purchasing & Contracting

AGENDA ITEM:

Commission District(s): All

CO - Change Order No. 1 to Contract No. 1198103 Stone Crushed Granite (Annual Contract with 2 Options to Renew): for use by the Departments of Watershed Management (DWM), Recreation, Parks and Cultural Affairs (RPCA), Public Works - Roads & Drainage (R&D) and Sanitation. This contract consists of providing stone crushed granite for use in various applications. This request seeks to ratify a previously provided sixty (60) day contract term increase for one vendor (FM Shelton); increase the contract term through July 31, 2023; and increase funds. Awarded to F.M Shelton, Inc. Amount Not To Exceed: \$3,999,164.00.

Information Contact: Michelle Butler, Procurement Manager

Phone Number: (404) 687-3581

PURPOSE:

Awarded by the BOC on January 28, 2020 to two vendors for a total amount not to exceed \$2,268,327.85. On December 8, 2021, the BOC approved the 1st renewal to both awardees for a total amount not to exceed \$2,065,000.00. On January 11, 2022, the BOC approved the 2nd renewal to both awardees for a total amount not to exceed \$2,565,000.00. This contract consists of providing stone crushed granite for use in various applications. This request seeks to ratify a previously provided sixty (60) day contract term increase for one vendor (FM Shelton), effective as of January 31, 2023. It also seeks to increase FM Shelton's funding and contract term through July 31, 2023.

The procurement process for a new contract is currently in process.

RECOMMENDATION:

Recommend approval of Change Order No. 1:

F.M. Shelton, Inc. 1434 Ralph David Abernathy Boulevard, SW #1, Atlanta, GA 30310

Amount Not To Exceed: \$3,999,164.00

ADDITIONAL INFORMATION:

1. LSBE Participation: LSBE-MSA Firm
2. Contract Effective Date: January 28, 2020

-
- 3. Contract Expiration Date: March 31, 2023
 - 4. Amount Spent To Date: \$422,322.17
 - 5. Funding:
 - \$500,000.00 Enterprise-Stormwater Management Operating (R&D)
 - \$20,000 General-Special Tax District Designated Services (RPCA)
 - \$30,000.00 Enterprise-Sanitation Operating (Sanitation)
 - \$3,449,164.00 General-Operating (DWM)

AGENDA NOTES

Solicitation Name and Number	ITB 19-101075 Stone Crushed Granite (Annual Contract with 2 Options to Renew)
Procurement Agent	Sophia Thomas
Vendor(s) agree to renew under the same prices, terms and conditions	Yes
Solicitation Name, Number and Contract Number of Expiring Contract	ITB 19-101075 Stone Crushed Granite (Annual Contract with 2 Options to Renew) CPA No. 1198103 (F.M. Shelton)
Expiring Contract Number, Contractor Name and Award Amount	\$2,721,675.75 CPA No. 1198103 (F.M. Shelton) Initial - \$201,675.75 1 st Renewal - \$1,365,000.00 2 nd Renewal - \$1,155,000.00
Amount Spent on Expiring Contract	\$422,322.17 CPA No. 1198103 (F.M. Shelton) Initial – \$141,384.23 1 st Renewal - \$34,561.77 2 nd Renewal -\$246,376.17
Prime Contractor Information and LSBE-Subcontractor	<u>F M Shelton, Inc. LSBE-MSA -Prime</u> Owner: Fawn Shelton Years in business: 31 Years doing business with DeKalb: 16
Attachments	Change Order Form



**DeKalb County
Department of Purchasing and Contracting
Change Order Request Form**

User Department(s): Watershed Management (DWM), Recreation, Parks and Cultural Affairs (RPCA), Public Works - Roads & Drainage (R&D) and Sanitation	From: Purchasing & Contracting
ITB No.: 19-101075	Title: Stone Crushed Granite (Annual Contract with 2 Options to Renew)
Effective Date: January 28, 2020	Expiration Date: January 31, 2023
Contract APPROVED Amount: 1198101 – 4,176,652.10 1198103 – 2,721,675.75	Number of Renewals to Date: 2

Contractor(s)	Contract No.	Agrees to Extend
Green Dream International, LLC	1198101	No
F.M. Shelton, Inc.	1198103	Yes

User Department Recommendation: Renew Bid Increase Decrease

Funding for Renewal Term: \$500,000.00
(Unused funds do not roll over to the next term. Provide the amount of funding necessary for the renewal term.)

Funding: General Enterprise 3 Digit Fund Code 581 SPLOST Category _____
CIP Line-Item No. (if applicable): _____

Justification: Roads and Drainage has over 5,000 project to complete. This contract will allow us to better maintain the storm water infrastructure.

F.M. Shelton, Inc. = \$500,000.00

Green Dream International, LLC = \$0.00

Peggy Allen Digitally signed by Peggy Allen
Date: 2022.12.29 13:23:49 -05'00'

12-29-2022

Department Director Signature

Date

For Use by Purchasing and Contracting:

Approve

Deny

Additional Comments:

Purchasing and Contracting Signature

Date



**DeKalb County
Department of Purchasing and Contracting
Change Order Request Form**

User Department(s): Watershed Management (DWM), Recreation, Parks and Cultural Affairs (RPCA), Public Works - Roads & Drainage (R&D) and Sanitation	From: Purchasing & Contracting
ITB No.: 19-101075	Title: Stone Crushed Granite (Annual Contract with 2 Options to Renew)
Effective Date: January 28, 2020	Expiration Date: July 31 st , 2023
Contract APPROVED Amount: 1198101 – 4,176,652.10 1198103 – 2,721,675.75	Number of Renewals to Date: 2

Contractor(s)	Contract No.	Agrees to Extend
Green Dream International, LLC F.M. Shelton, Inc.	1198101 1198103	No Yes

User Department Recommendation: Renew Bid Increase Decrease

Funding for Renewal Term: **\$20,000** _____
(Unused funds do not roll over to the next term. Provide the amount of funding necessary for the renewal term.)

Funding: General Enterprise 3 Digit Fund Code _____ SPLOST Category _____
CIP Line Item No. (if applicable): _____

Justification:

The Department of Recreation, Parks and Cultural Affairs recommends to renew contract 1198103 with FM Shelton for ITB No. 19-101075 and extend the contract to July 31st, 2023.

Clark O. Ellis _____ 1/11/2023
Department Director Signature **Date**

For Use by Purchasing and Contracting: Approve Deny

Additional Comments:

Purchasing and Contracting Signature _____
Date



DeKalb County
Department of Purchasing and Contracting
Change Order Request Form

User Department(s): Watershed Management (DWM), Recreation, Parks and Cultural Affairs (RPCA), Public Works - Roads & Drainage (R&D) and Sanitation	From: Purchasing & Contracting
ITB No.: 19-101075	Title: Stone Crushed Granite (Annual Contract with 2 Options to Renew)
Effective Date: January 28, 2020	Expiration Date: January 31, 2023
Contract APPROVED Amount: 1198101 – 4,176,652.10 1198103 – 2,721,675.75	Number of Renewals to Date: 2

Contractor(s)	Contract No.	Agrees to Extend
Green Dream International, LLC F.M. Shelton, Inc.	1198101 1198103	No Yes

User Department Recommendation: Renew Bid Increase Decrease

Funding for Renewal Term: \$30,000.00 _____
 (Unused funds do not roll over to the next term. Provide the amount of funding necessary for the renewal term.)

Funding: General Enterprise 3 Digit Fund Code 541 SPLOST Category _____
 CIP Line Item No. (if applicable): _____

Justification: Sanitation agreed to extend the current contract with F.M. Shelton until ~~6/30/23~~ ^{7/31/23} while the new ITB is in process. This contract provides crushed stones for the Seminole Road Landfill operations.



11/12/23
Date

For Use by Purchasing and Contracting: Approve Deny

Additional Comments:

Purchasing and Contracting Signature

Date