City of Hogansville

City Council

Regular Meeting Agenda

Tuesday, January 17, 2023

Meeting will be held at Hogansville City Hall, 111 High Street, Hogansville, GA 30230

Mayor:	***Jake Ayers***	*2025*	Interim City Manager: ***Lisa E. Kelly***
Council Post 1:	***Michael Taylor, Jr***	*2025*	City Attorney: ***Alex Dixon***
Council Post 2:	***Matthew Morgan***	*2025*	Chief of Police: ***Jeffrey Sheppard***
Council Post 3:	***Mandy Neese****	*2023*	
Council Post 4:	***Mark Ayers***	*2023*	
Council Post 5:	***Toni Striblin***	*2023*	* Mayor Pro-Tem

Regular Meeting – 7:00 pm

1. Call to Order – Mayor Jake Ayers
2. Invocation & Pledge

Consent Agenda

All items listed under the Consent Agenda are considered to be routine in nature and will be approved by one blanket motion.

1. Approval of Agenda: Regular Meeting January 17, 2023
2. Approval of Minutes: Regular Meeting January 3, 2023

Presentation

1. Employee Service Award – Jeffrey Sheppard – 15 Years

New Business

1. Establish Election Qualifying Fees
2. Zoning Map Services for UDO
3. Lake Jimmy Jackson Surveying

Interim City Manager's Report

Council Member Reports

1. Council Member Taylor
2. Council Member Morgan
3. Council Member Neese
4. Council Member Ayers
5. Council Member Striblin

Mayor's Report

Adjourn

Upcoming Dates & Events

- February 6, 2023 – 7:00 pm | Regular Meeting of the Mayor and Council at Hogansville City Hall

HOGANSVILLE
GEORGIA

01/03/2023

Meeting held at Hogansville City Hall, 111 High Street, Hogansville GA 30230

Regular Meeting

Call to Order: Mayor Jake Ayers called the meeting to order at 7:00 pm. Present were Council Member Michael Taylor, Jr., Council Member Matthew Morgan, Council Member Mandy Neese, and Council Toni Striblin. Also present were Interim City Manager Lisa Kelly, Police Chief Jeff Sheppard, City Attorney Alex Dixon, and Deputy City Clerk LeAnn Lehigh. Council Member Mark Ayers was not present at tonight's meeting.

Council Member Morgan gave an invocation and Mayor Ayers led the Pledge of Allegiance.

CONSENT AGENDA

Motion: Council Member Taylor moved to approve the Consent Agenda. The motion was seconded by Council Member Striblin.
Motion Carries 4-0

OLD BUSINESS

1. 2nd Reading and Adoption – Text Amendment Change to 102-155 – Public Notices

Motion: A motion was made by Council Member Striblin to adopt the text amendment change to the ordinance regarding Public Notices. This amendment would enable the Council to create a new zoning map without having to post on every property being rezoned by way of holding a public hearing. The motion was seconded by Council Member Neese.
Discussion: None
Motion Carries 4-0

2. Board Appointments – Downtown Development Authority

Motion: A motion was made by Council Member Neese to appoint the DDA's recommended applicants of Amanda McManious, Kane Hicks, Shereen Barker and reappoint Kandis Strickland. The motion was seconded by Council Member Morgan.
Discussion: None
Motion Carries 3-0 with Council Member Taylor recusing.

NEW BUSINESS

1. Selection of Mayor Pro-Tem

Motion: A motion was made by Council Member Striblin to appoint Council Member Mandy Neese as Mayor Pro-Tem for 2023. The motion was seconded by Council Member Morgan.
Discussion: None
Motion Carries 4-0

1. Line of Credit 2023

Motion: A motion was made by Council Member Neese to approve the Resolution for a line of credit with Community Bank & Trust for an amount not exceeding $300,000 for year 2023. The motion was seconded by Council Member Striblin.
Discussion: None
Motion Carries 3-0 with Council Member Taylor recusing

DISCUSSION ITEM

1. LMIG Project 2023

The Local Maintenance & Improvement Grant (LMIG) has a deadline of February 1 to apply for grant funding with DOT. Interim City Manager Lisa Kelly discussed with Council about projects to consider when applying for the grant. Council agreed to submit the request using funding to patch roads in need of repair. Council discussed hiring an outside consultant to prioritize the severity and need of repairs.

Motion: A motion was made by Council Member Striblin to apply for the LMIG grant funding for repairs of potholes in city roads. The motion was seconded by Council Member Neese.

Discussion: None

Motion Carries 4-0

ADJOURNMENT

On a motion made by Council Member Neese and duly seconded, Mayor Jake Ayers adjourned the meeting at 7:48 pm.

Respectfully,

LeAnn Lehigh
Deputy City Clerk

HOGANSVILLE
GEORGIA

A RESOLUTION ESTABLISHING QUALIFYING FEES FOR 2023 MUNICIPAL ELECTION

WHEREAS, O.C.G.A. Sec. 21-2-131 (a)(1) requires that qualifying fees for public offices be fixed and published; and

WHEREAS, O.C.G.A. Sec. 21-2-131 (a)(1) requires that the governing body of a municipality fix and publish qualifying fees for each of its offices not later than February 1 the year the general election is to be held; and

WHEREAS, O.C.G.A. Sec. 21-2-131 (a)(1) states the qualifying fee for each office to be filled in the upcoming election shall be more than three (3) percent of the income derived from such office paid in the preceding calendar year.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Mayor and Council of the City of Hogansville, Georgia, do hereby fix the qualifying for the office of Council Member at One Hundred Eight ($108.00) and do hereby publish the same.

This 17th day of January, 2023.

_____
Mayor Jacob Ayers

ATTEST:

_____
LeAnn Lehigh, Acting City Clerk

(seal)

CITY COUNCIL
Mayor Jake Ayers
Michael Taylor, Jr., Post 1
Mathew Morgan, Post 2
Mandy Neese, Post 3
Mark Ayers, Post 4
Toni Striblin, Post 5

HOGANSVILLE
GEORGIA

City Manager - Open
Lisa Kelly, Interim City Manager
Alex Dixon, City Attorney

111 High St
Hogansville GA 30230-1196
706-637-8629 | cityofhogansville.org

COUNCIL ACTION FORM

MEETING DATE: January 17, 2023 **SUBMITTED BY:** Lynne Miller LSM

AGENDA TITLE: Zoning Map Services for Unified Development Ordinance

CLASSIFICATION (City Attorney must approve all ordinances, resolutions and contracts as to form)

☐ Ordinance (No. _____) ☐ Contract ☐ Information Only ☐ Public Hearing

☐ Resolution (No. _____) ☐ Ceremonial X Discussion/Action ☐ Other

BACKGROUND (Includes description, background, and justification)

This Spring the City will adopt a Unified Development Ordinance. This UDO will require an updated zoning map with new zoning districts. The City's existing zoning map was created by the Chattahoochee-Flint Regional Development Center (now Three Rivers Regional Commission) in 2003. We have contacted both the Regional Commission and the LaGrange GIS (Map making) department to see if either one can help with mapping for the UDO. City of LaGrange responded, and estimated it will take 8-12 hours at $66.83/hr. The LaGrange mapping department provided these services for the LaGrange UDO, with similar zoning districts.

BUDGETING & FINANCIAL IMPACT (Includes project costs and funding sources)

STAFF RECOMMENDATION (Include possible options for consideration)

Approve the Intergovernmental Mutual Aid Agreement with City of LaGrange to provide a zoning map for the City of Hogansville Unified Development Ordinance, at a not-to-exceed amount of $1,200.

INTERGOVERNMENTAL AGREEMENT
FOR MUTUAL AID AND ASSISTANCE

This Intergovernmental Agreement, made and entered as of this _____ day of _____, 2020 by and between the CITY OF HOGANSVILLE, GEORGIA, a municipal corporation of Troup County, Georgia (hereafter "Hogansville") and the CITY OF LAGRANGE, GEORGIA, a municipal corporation of Troup County, Georgia (hereafter "LaGrange"), individually referred to as a "Party" and collectively as the "Parties";

WITNESSETH:

WHEREAS, the Parties are authorized under the laws of the State of Georgia to enter into Intergovernmental Agreements with each other to provide Mutual Aid and Assistance ("Assistance"); and

WHEREAS, in the event of any conflicts or differences between this Agreement and any other Assistance Agreements entered into by either Party, this Agreement shall govern; and

WHEREAS, one Party at its sole discretion may agree to provide Assistance to the other Party under the terms and provisions herein;

NOW, THEREFORE, the Parties agree as follows:

1.

Term. The term of this Agreement shall be for the maximum period authorized pursuant to Article IX, Section III, Paragraph I of the Georgia Constitution, fifty (50) years. The term of this Agreement shall commence upon execution by both Parties and shall continue unless terminated by either Party by providing thirty (30) days written notice to the other Party. Termination of this Agreement shall not affect the indemnification obligations or any other accrued liability and the obligation to pay amounts due hereunder.

2.

Assistance. Upon request by one Party for Assistance from the other Party, the Party receiving the request shall be the sole and absolute judge of its ability and capacity to furnish the manpower, equipment, and materials requested. Nothing in this Agreement shall be construed to deprive either Party of its discretion to decline to send Assistance under any circumstances.

3.

Compensation. The Party providing Assistance shall be compensated as follows within thirty (30) days of sending an invoice to the other Party:

1. Labor for the first eight (8) hours per day, including travel time, shall be paid at one and one-half (1 ½) times each responding employee's salary plus benefits calculated according to the Federal Emergency Management Agency's Benefits Calculation Worksheet.

2. Labor for all hours over the first eight (8) per day, and for all hours on a weekend or holiday, including travel time, shall be paid at two (2) times each responding employee's salary plus benefits calculated according to the Federal Emergency Management Agency's Benefits Calculation Worksheet.

3. Housing and meal expenses, if reasonably required, shall be paid at out of pocket costs.

4. Vehicle and equipment expenses shall be paid according to the Federal Emergency Management Agency's Schedule of Equipment Rates.

5. Materials and supplies used during the provision of mutual aid and assistance shall be paid at the cost of said materials plus 15%.

4.

Indemnification. The Party receiving Assistance pursuant to this Agreement hereby agrees, to the fullest extent permitted by law, to release, indemnify, defend and hold harmless the Party providing Assistance, its officers, agents, and employees from and against any and all loss, liabilities, claims, damages, fines, penalties, clean-up costs, and all costs, fees (including attorney's fees) and expenses related thereto, resulting or arising (directly or indirectly) out of, or in any way connected with the provision of Assistance hereunder, including, without limitation, those resulting or arising (directly or indirectly) from the acts or omissions of its officers, agents, or employees, negligent or otherwise, except those resulting solely from willful acts or omissions.

5.

Personnel. Personnel providing Assistance pursuant to this Agreement shall be conclusively deemed, for all purposes, to remain employees of the Party providing the mutual aid and assistance. Such personnel shall retain all rights, privileges, immunities, and benefits, including without limitation, coverage under the applicable Worker's Compensation Act, as they enjoy while performing their normal duties.

6.

Modification. This Agreement shall not be amended, modified, or otherwise changed except when done so in writing and upon the prior written consent of both Parties.

IN WITNESS THEREOF, the Parties have caused this Intergovernmental Agreement to be executed by their respective authorized corporate representatives and have caused their respective corporate seals to be hereunto affixed and attested, all as of the date and year first above written.

CITY OF HOGANSVILLE, GEORGIA (SEAL)

By: _____

Attest: _____

CITY OF LAGRANGE, GEORGIA (SEAL)

By: _____

Attest: _____

CITY OF LAGRANGE SEAL TROUP COUNTY

Lynne Miller

From: Lynne Miller <lmiller251@gmail.com>
Sent: Monday, January 9, 2023 3:24 PM
To: Merideth Spencer
Cc: Lynne Miller; Lisa Kelly
Subject: Re: Hogansville
Attachments: image004.png

Thank you, Meredith.

On Mon, Jan 9, 2023, 3:14 PM Merideth Spencer <MSpencer@lagrangega.org> wrote:

I have attached the first invoice.

I am going to estimate it will take me between 8 to 12 hours to compete the UDO.

Merideth Spencer

GIS/Utility Specialist

(706)883-2019

mspencer@lagrangega.org

200 Ridley Avenue

LaGrange, GA 30240

From: Lynne Miller [mailto:lynne.miller@cityofhogansville.org]
Sent: Friday, January 6, 2023 2:02 PM
To: Merideth Spencer <MSpencer@lagrangega.org>
Cc: Lisa Kelly <lisa.kelly@cityofhogansville.org>
Subject: FW: Hogansville

CAUTION: This email originated from outside of the organization. DO NOT CLICK links or open attachments unless you recognize the sender and know the content is safe.

INVOICE #
1092023
1/9/2023

City of LaGrange, Georgia
Mutual Aid
Work Dates:December 8, 2022

200 Ridley Avenue
LaGrange, GA 30240

Description:
GIS

TOTAL AMOUNT DUE **$133.65**

Employees	Date	Hours	OT Factor	Base Rate	OT Adder	Base Benefits	OT Benefits	Benefit Rate	Total Rate	Total
Merideth Spencer, GIS Analyst	12/8/2022 Thu	2.0	1.5	$32.71	$16.36	44.2%	20.2%	$17.76	$66.83	$133.65
										$133.65

CITY COUNCIL
Mayor Jake Ayers
Michael Taylor, Jr., Post 1
Mathew Morgan, Post 2
Mandy Neese, Post 3
Mark Ayers, Post 4
Toni Striblin, Post 5

HOGANSVILLE
GEORGIA

City Manager - Open
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COUNCIL ACTION FORM

MEETING DATE: January 17, 2023 **SUBMITTED BY:** Lynne Miller LSM

AGENDA TITLE: NCRS Survey and Flood Analysis for Lake Jimmy Jackson Park Grant

CLASSIFICATION (City Attorney must approve all ordinances, resolutions and contracts as to form)

☐ Ordinance (No. _____) ☐ Contract ☐ Information Only ☐ Public Hearing

☐ Resolution (No. _____) ☐ Ceremonial X Discussion/Action ☐ Other

BACKGROUND (Includes description, background, and justification)

The City's $87,500 Land & Water Conservation matching grant for the Lake Jimmy Jackson Park must be completed by November 16, 2023. On 19 October 2022 the National Conservation Resources Service requested additional survey and geotechnical analyses to determine this project's potential impact on the dam and auxiliary spillway at this site. City staff contacted four engineers for this Safe Dams work and received proposals from: WSP Golder of Atlanta at $53,940 and Mallett Consulting of Fayetteville at $37,800. The project will require coordination with NCRS, who has reserved the right to ask for additional information between the survey and geotechnical parts of this assignment.

BUDGETING & FINANCIAL IMPACT (Includes project costs and funding sources)

Project can be funded from the Lake Jimmy Jackson grant and SPLOST.

STAFF RECOMMENDATION (Include possible options for consideration)

Approve Mallett Consulting to provide the survey and geotechnical analysis required by National Conservation Resources Service for Lake Jimmy Jackson Park at $37,800.

USDA

United States Department of Agriculture

October 19, 2022

Mr. Jake Ayers, Mayor
City of Hogansville
111 High Street
Hogansville, GA 30230

Re: Yellowjacket Creek Watershed Structure No. 15
City Park Modifications

Dear Mayor Ayers:

The Natural Resources Conservation Service (NRCS) held an internal meeting to review the previous work on the existing city park in the auxiliary spillway of the Yellowjacket Creek Watershed Structure No. 15. The Georgia Department of Natural Resources Safe Dams Program (SDP) was included in our meeting, and it appears that at least most of their concerns have been answered.

Based upon further review, additional items have been noted and should be addressed.

- Obtain a current survey as noted in the attached PDF's provided by the City's consultant and marked up by NRCS including, at a minimum:
  - contours,
  - cross-sections in the auxiliary spillway,
  - elements constructed that were not included in the 1973 as-built drawings for the watershed structure,
  - changes in the auxiliary spillway,
  - utilities identified on and around the embankment,
  - provide height of any elements that are not flush to the ground.
- Overlay your new current conditions drawing onto the 1973 as-built drawings to determine if there are variations.
- If there is a variation, analyses of the function of the structure will be required.
- Verify that the flood storage capacity has not been reduced by fill placed in the limits of the flood pool.
- An Engineer of Record listed on the SDP website will be required to determine if the watershed structure will perform per the original design.
- It was also noted that there are some new concerns that will be investigated after the completion of the survey work.

If you have any questions or concerns regarding this correspondence, please contact Howard Sewell, NRCS O&M Dam Safety Engineer by phone (706-552-2537) or email (Howard.Sewell@USDA.gov).

Sincerely,

DIANE GUTHRIE

Digitally signed by DIANE GUTHRIE
Date: 2022.10.19 18:03:14 -04'00'

Diane A. Guthrie, P.E.
State Conservation Engineer

Natural Resources Conservation Service
Georgia State Office
355 East Hancock Avenue - Athens, GA - 30601-2775
Voice: 706-546-2272 Fax: 855-417-8490

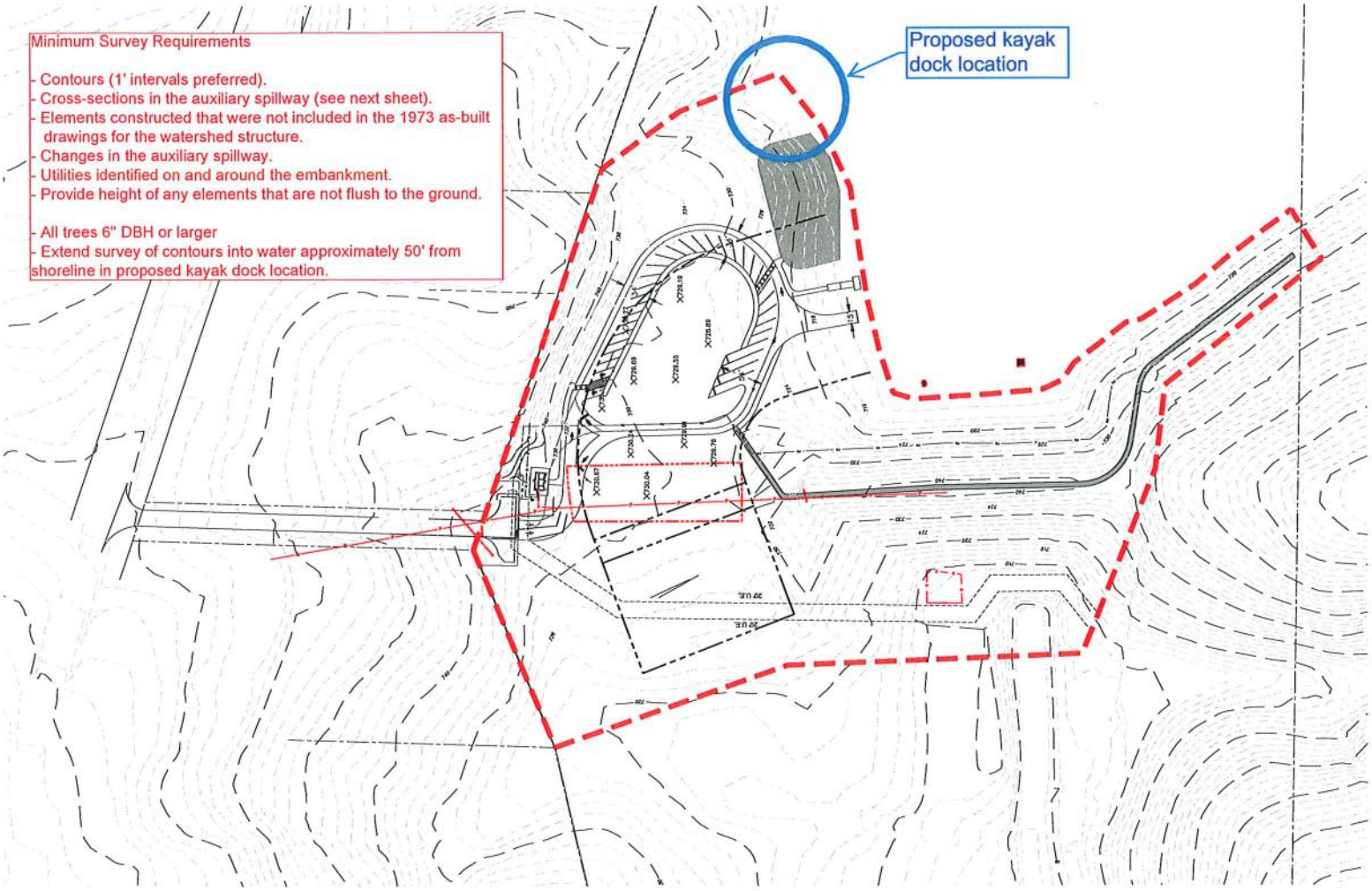
An Equal Opportunity Provider, Employer and Lender.

General Scope of Service
Review the available design information and collect new data as needed to evaluate the impact the new and proposed site modifications will have on the flow capacity of the auxiliary spillway relative to its pre-existing (NRCS as-built) flow capacity.

Data Review and Collection
Review the existing design documents and available information, including USGS LiDAR. Based on comments from NRCS and the Safe Dams Program that we reviewed, we anticipate that a ground-run as-built survey to document the existing ground and structural elevations at the site will be required. Use this information to construct pre-existing and final elevation profiles through the spillway and document the functional changes between the two conditions.

Flow Capacity Analysis
If significant changes and obstructions to flow are identified, evaluate and compare the actual flow capacities of both the pre-existing and current/proposed conditions by creating 2-dimensional computational flow models through the spillway channel. Modeling will be completed using the USACE HEC-RAS computer model. The resultant spillway flow capacities will also be compared to those shown on the SCS Basic Data Record which were determined at the time of initial dam design and construction. Evaluate the impact of keeping the picnic pavilions in the auxiliary spillway, including flow capacity of the spillway and potential for blockages to form. We expect that the NRCS and Safe Dams Program will object to these structures in their current locations but would like to demonstrate that they will not impact the spillway's capacity if possible.

Coordination with Georgia Safe Dams and NRCS
Some coordination will likely be required with the Georgia Safe Dams Program and the NRCS throughout this process. Participate in virtual meetings as needed with these agencies to present your findings and recommendations, as well as to provide our opinions on other items of concern such as impacts from the floating dock and the potential loss of reservoir flood storage volume.


Minimum Survey Requirements
- Contours (1' intervals preferred).
- Cross-sections in the auxiliary spillway (see next sheet).
- Elements constructed that were not included in the 1973 as-built drawings for the watershed structure.
- Changes in the auxiliary spillway.
- Utilities identified on and around the embankment.
- Provide height of any elements that are not flush to the ground.
- All trees 6" DBH or larger
- Extend survey of contours into water approximately 50' from shoreline in proposed kayak dock location.
Proposed kayak dock location

Mallett Consulting, Inc.

ENGINEERING - SURVEYING - PROJECT MANAGEMENT

101 DEVANT STREET, SUITE 804
FAYETTEVILLE, GEORGIA 30214
770-719-3333

Ms. Lynne S. Miller, AICP
Planning & Development Director
City of Hogansville
111 High Street
Hogansville, GA 30230

Re: Request for Proposal
Lake Jimmy Jackson Dam
Engineering and Surveying Services

November 22, 2022

Dear Ms. Miller:

Mallett Consulting, Inc. is pleased to offer the following proposal in response to your recent email request and subsequent telephone discussion. It is our understanding that NRCS and the Georgia Safe Dams Program has asked for flow capacity analysis of the auxiliary spillway at the above referenced project site. The intent of this analysis will be to compare flow characteristics of the spillway as designed and after recent physical improvements to the surrounding park amenities. With that understanding, we propose the following pricing:

Task 1 - Data Review and Survey

Review the Owner provided existing design documents and available information, including USGS LiDAR. Perform a ground-run as-built topographic survey to document the existing ground and structural elevations at the site, within the limits shown on the attached exhibit. Use this information to construct pre-existing (design) and final elevation (AS-built) profiles and cross-sections through the spillway to document the physical changes between the two conditions. (Boundary Survey will not be required.)

Lump Sum: $ 19,500.00

Task 2 - Sub-Surface (lake) Topographic Survey

Supplemental topographic surveying of the lake bottom (below normal pool) at the area designated for the proposed Kayak Launch.

Lump Sum: $ 2,400.00

Task 3 - Tree Survey

Identify and locate all trees, 6" diameter and larger, within the limits of the AS-Built topographic Survey.

Lump Sum: $ 2,400.00

Task 4 - Spillway Flow Capacity Analysis

Evaluate and compare the actual flow capacities of both the pre-existing (Design) and final elevation (AS Built) conditions by creating 2-dimensional computational flow models through the spillway channel. Modeling will be completed using the USACE HEC-RAS computer model. The resultant spillway flow capacities will also be compared to those shown on the Owner provided SCS Basic Data Record which were determined at the time of initial dam design and construction. Evaluate the impact of keeping the picnic pavilions in the auxiliary spillway, including flow capacity of the spillway and potential for blockages to form.

Lump Sum: $ 11,000.00

Task 5 - Coordination with Georgia Safe Dams and NRCS

Participate in virtual meetings as needed with these agencies to present our findings and recommendations, as well as to provide our opinions on other items of concern. *(Design and/or plan preparation for remedial work required by the Owner, Georgia Safe Dams or NRCS will be priced in a separate proposal, if necessary.)*

Lump Sum: $ 2,500.00

Total, Tasks 1-5: Lump Sum: $ 37,800.00

Thank you for the opportunity to provide this proposal. I am available for further discussion as necessary.

Sincerely,
Mallett Consulting, Inc.

David Jaeger

David Jaeger, PE
President
GA Safe Dams Program - Engineer of Record

January 12, 2023

Proposal No. 202227336 Addendum

Lynne Miller, ACIP
City of Hogansville
111 High Street, Hogansville, Georgia 30230

ADDENDUM – SURVEY COSTS FOR SPILLWAY CAPACITY EVALUATION AT JIMMY JACKSON DAM

Dear Ms. Miller,

This letter serves as an addendum to Golder Associates USA Inc. (WSP Golder) Dam Services proposal numbered 202227336, titled "Proposal for Spillway Capacity Evaluation at Jimmy Jackson Dam", dated November 2022. This letter should be read in conjunction with the contents of the original proposal, also attached.

Based on our correspondence with you on January 10, 2023, we understand that the City of Hogansville (the City) would like our proposal to include costs to complete the survey requirements associated with the spillway capacity evaluation. Our proposal dated November 2022, excluded all surveying services with the understanding that the City would subcontract those services separately. WSP Golder will subcontract the surveying services. The estimated survey costs are based on comments provided by NRCS in a letter dated October 2022 and information provided to WSP Golder on January 10, 2023 by Ms. Lynne Miller. We understand that the required survey information is contained within the perimeters of the auxiliary spillway and the dam embankment and includes the following:

- overall site topography (1-foot contour intervals),
- utilities,
- trees (6" or larger DBH),
- structures,
- bathymetry information at the kayak dock (within 50 feet of shoreline)
- cross sections along the auxiliary spillway

The additional cost to include this survey work is estimated to be $31,240 and includes WSP Golder work associated with contracting and coordinating with the surveyors. All work would be completed on a time and materials basis per our Proposal No. 202227336. The revised total for WSP Golder to complete the scope of work included in the proposal and this addendum would be $53,940.

We trust that this information is sufficient for your needs but would be happy to discuss any additional modifications to our proposal that may be needed. We look forward to assisting the City of Hogansville on this project.

Please do not hesitate to contact one of the undersigned if you have questions or comments regarding the information provided herein.

GOLDER ASSOCIATES USA INC.

Eurys Ciriaco

Eurys Ciriaco, EIT
Staff Civil Engineer

Steven J. Cribb, PE
Principal & Practice Leader

EC/SJC

CC: Lisa Kelly – City of Hogansville

Attachments: WSP Golder Proposal No. 202227336, dated Nov. 11, 2022

Sketch with 'Minimum Survey Requirements' provided by the City of Hogansville on Jan. 10, 2023

https://golderassociates.sharepoint.com/sites/168738/project files/1 proposal and project management/230112_addendum to wsp golder proposal 202227336_sjc.docx

November 11, 2022 202227336

Lynne Miller, AICP
City of Hogansville
111 High Street, Hogansville, Georgia 30230

PROPOSAL FOR SPILLWAY CAPACITY EVALUATION AT JIMMY JACKSON DAM

Golder Associates USA Inc. (WSP-Golder) has prepared this proposal to evaluate the flow capacity of the earthen spillway at the Jimmy Jackson Dam (aka, NRCS Yellowjacket Creek Watershed Dam Number 15) and to assist the City of Hogansville in coordinating their response to the Natural Resource Conservation Commission and the Georgia Safe Dams Program.

Project Background

Jimmy Jackson Dam was constructed in 1973 for flood control and municipal water supply purposes by the Natural Resource Conservation Commission (NRCS), then known as the Soil Conservation Service (SCS). In 2018, the City of Hogansville constructed a small park within the earthen auxiliary spillway located at the right abutment. The park consists off a paved road and parking area, boat launch and dock, sand beach, restrooms and 3 picknick pavilions among other improvements. A force-main sewer line was constructed through the main embankment servicing the new facilities. Both the NRCS and the Georgia Safe Dams Program have expressed concern that the new facilities may impede flow through the auxiliary spillway such that the dam is no longer in compliance with the Georgia Safe Dams Rules for Dam Safety. Specifically, the NRCS outlined their concerns and recommendations for action in a letter dated October 19, 2022. In brief, the NRCS provided the following recommendations:

- Obtain a survey of the spillway including channel ground cross-sections and location and elevation of all elements that are not flush to the ground.
- Overlay the new survey to the 1973 as-built drawings to determine any variations.
- If variations are identified, analyze the function of the spillway and determine if it will perform per the original design.
- Verify that the flood storage volume has not been reduced by fill placements.

Scope of Service

The following scope of service was prepared to specifically address the agency concerns specified in the October 19, 2022 letter. All work will be completed under the supervision of an Engineer of Record with the Safe Dams Program.

Task 1 – Site Inspection & Survey Review

We understand the City of Hogansville will retain a ground-run survey independently and we have not included any survey work as part of our scope of service. We will coordinate with the City's surveyors as needed to ensure the survey adequately meets the needs of the project.

WSP-Golder will visit the site to familiarize ourselves with the dam and document the existing features in the auxiliary spillway in order to determine the potential flow obstructions. We will review the ground-run survey, provided by the City of Hogansville, for concurrence to our site observations and applicability to the remaining tasks that follow.

Task 2 – Pre- and Post-Construction Site Comparison

WSP-Golder will collect and evaluate elevation data from several sources collected prior to construction with the goal of reconstructing a detailed pre-construction surface model. These sources include:

- NRCS 1973 As-Built
- USGS 2017 Southwest Georgia LiDAR Dataset
- Any pre-construction survey data available

The pre-construction surface model will be aligned to and compared against the survey data provided to WSP-Golder by the City. A spatial grid of ground elevation differences will be produced depicting any variations in ground elevation. The identified elevation variations will be reviewed for their influence on spillway flow capacity and flood storage reduction.

Task 3 – Spillway Flow Capacity Model

Even if no positive ground elevation variations are identified, the presence of the picnic pavilions and other structures will require the development of a spillway capacity model to evaluate their impact on the spillway function.

WSP-Golder will use the pre- and post-construction surface models to create and compare 2-dimensional hydraulic flow models through the spillway channel that includes flow obstructions such as the picnic pavilions and playground equipment. The hydraulic model will be used to compare the resultant reservoir elevations associated with a series of spillway discharges including the design discharges listed in the SCS Basic Data Record.

Task 4 – Coordinate with the Georgia Safe Dams Program and NRCS

Both the Georgia Safe Dams Program and NRCS will need to approve the methods used throughout the process and accept the results. Golder will coordinate with both agencies to address their specific concerns outlined in the October 2022 letter from the NRCS and any additional concerns associated with the park facilities that come to light within the scope of service of this proposal.

While we have prepared this scope of service to address the specific concern of spillway flow capacity, the Georgia Safe Dams Program or NRCS may have additional concerns with the park facilities being located within the auxiliary spillway and may require that structures be removed from the spillway regardless of our ultimate findings.

Deliverable

Following Tasks 1 through 3, we will produce a summary report documenting or efforts, methods and results. Upon approval by the City, we will share these findings with the Georgia Safe Dams Program and NRCS as part of Task 4. There will be no additional deliverable associated with Task 4.

Schedule, Cost and Terms

We will complete the scope of service detailed herein on a time and material bases for an estimated not-to-exceed cost of $22,700. We will not exceed this cost without prior written approval from the City of Hogansville; however, depending on the agencies' response and nature of additional concerns not specifically laid out in the received correspondence, this cost may require adjustment. We will notify the City as soon as practical once such adjustments become apparent.

All services will be provided under standard WSP Golder Terms and Conditions (Earth and Environment) attached to this proposal.

We anticipate completion of Tasks 1 through 3 and submission of a draft deliverable within 4 weeks of receipt of the required survey data from the City.

Closing

We greatly appreciate the opportunity to propose on this project. If you wish to proceed, please sign and return the attached proposal acceptance sheet which also serves as written notice to proceed.

Sincerely,

Golder Associates USA Inc.

Michael Chilson, PE
Senior Lead Consultant, Technical Principal

Steve Cribb, PE
Principal & Practice Leader

Attachments: Proposal Acceptance Sheet
Golder Associates USA Inc. Standard Terms and Conditions

https://golderassociates.sharepoint.com/sites/168738/project files/1 proposal and project management/proposal 2.docx

GOLDER

GOLDER ASSOCIATES USA INC.
PROPOSAL ACCEPTANCE FORM (TERMS AND CONDITIONS)

PROPOSAL NUMBER: 202227336

RE: PROPOSAL FOR SPILLWAY CAPACITY EVALUATION AT JIMMY JACKSON DAM

SUBMITTED this 11 day of NOV, 20 22.

BY: STEVE CRIBB, for Golder Associates USA Inc.

The Proposal dated 11/11/2022, attached hereto and the WSP Golder Terms and Conditions (Earth and Environment) (Rev: 03/01/22), comprise the entire agreement between Golder Associates USA Inc. and Client.

ACCEPTED this _____ day of _____, 20____.

BY: _____
(Authorized Representative's Signature on Behalf of **Client**)

NAME: (Print or Type)_____

TITLE: (Print or Type)_____

FOR: Client Name and Address (Print or Type)

_____

_____

_____

Phone:_____ Fax:_____ E-mail:_____

Please address invoices to:	**Please address deliverables and notices to: Same as invoices: Yes / No, address to:**
ATTN:	ATTN:

BY: _____
(Authorized Representative's Signature on Behalf of Golder Associates USA Inc.)

NAME: (Print or Type) _____

TITLE: (Print or Type) _____

WSP GOLDER

TERMS AND CONDITIONS (EARTH AND ENVIRONMENT)

1. STANDARD OF CARE

Services performed by CONSULTANT will be conducted in a manner consistent with that level of care and skill ordinarily exercised by other professionals practicing contemporaneously, under similar conditions, in the same locality, subject to the time limits and financial, physical, or other constraints applicable to the Services. No warranty, express or implied is made.

2. INVOICES AND PAYMENT TERMS

A. Unless otherwise specified in any proposal, CONSULTANT will submit monthly invoices to CLIENT and a final bill upon completion of Services. CLIENT shall notify CONSULTANT within ten (10) days of receiving an invoice of any dispute with the invoice and the parties shall promptly resolve any disputed items. If notice is not received within (10) days of receiving the invoice, the invoice is deemed to be correct, and CLIENT shall pay CONSULTANT the full sum according to the invoice. Full payment is due prior to delivery of CONSULTANT'S final deliverable. All monies due to CONSULTANT shall be paid in US $ (Dollars) unless specifically detailed otherwise. CLIENT shall pay all conveyance, transfer and recording fees and taxes, if any, imposed on any transfer of, or construction, on property contemplated by this Agreement. Payment on undisputed invoice amounts is due upon receipt of invoice by CLIENT and is past due thirty (30) days from the date of the invoice. CLIENT agrees to pay a finance charge of one and one-half percent (1-1/2%) per month (18% per annum) compounded daily, or the maximum rate allowed by law, on past due accounts. If payment remains past due sixty (60) days from the date of the invoice, then CONSULTANT shall have the right to suspend or terminate all Services under this Agreement, without prejudice or penalty. CLIENT will pay all reasonable demobilization and other suspension or termination costs. CLIENT agrees to pay attorneys' fees, legal costs and all other collection costs incurred by CONSULTANT in pursuit of past due payments.

B. Where the cost estimate for the Services is "not to exceed" a specified sum, CONSULTANT shall notify CLIENT before each limit is exceeded, and shall not continue to provide Services beyond such limit unless CLIENT authorizes an increase in the amount of the limitation. If a "not to exceed" limitation is broken down into budgets for specific tasks, the task budget may be exceeded without CLIENT authorization as long as the total limitation is not exceeded.

C. If CONSULTANT is required by the CLIENT to provide additional services outside the scope of the Services set out in the proposal, the CLIENT shall make payment according to the hourly rates and sums set out in the proposal.

D. Support for depositions, response to Subpoenas, legal or regulatory proceedings, and expert testimony shall be charged at 150% of the labor rates set forth in the proposal.

3. CHANGES

CLIENT and CONSULTANT recognize that it may be necessary to modify the scope of Services, schedule, and/or cost estimate proposed in this Agreement. to the extent such modifications change the Services, schedule, and/or the cost, the parties shall mutually agree upon equitable adjustment as appropriate under the circumstances. CONSULTANT shall notify CLIENT in a timely manner when it has reason to believe a change to the Agreement is warranted. CONSULTANT shall prepare a change order request outlining the changes to the scope, schedule, and/or cost. CLIENT has a duty to promptly consider the change order request and advise CONSULTANT in a timely manner in writing on how to proceed. If, after a good faith effort by CONSULTANT to negotiate modifications to the scope of Services, schedule, and/or cost estimate, an agreement has not been reached with the CLIENT, then CONSULTANT shall have the right to terminate this Agreement, without prejudice or penalty, upon written notice to the CLIENT.

4. SCHEDULE

CONSULTANT agrees to exercise diligence in the performance of its services consistent with the agreed upon project schedule, subject to the exercise of the generally accepted standard of care for performance of such services, as stated in Article 1, Standard of Care.

5. DELAYS AND FORCE MAJEURE

A. If site or other conditions prevent or inhibit performance of Services or if unrevealed hazardous materials or differing site conditions are encountered, Services under this Agreement may be delayed. The schedule and contract completion date shall be extended accordingly, and CLIENT shall pay CONSULTANT for Services performed to the delay commencement date plus reasonable delay charges. Delay charges shall include personnel and equipment rescheduling and/or reassignment adjustments and all other related costs incurred including but not limited to, labor and material escalation, and extended overhead costs, attributable to such delays. CLIENT shall not hold CONSULTANT responsible for damages or delays in performance caused by acts or omissions of CLIENT, its subcontractors, site conditions or conditions related to unrevealed hazardous materials which prevent or inhibit performance of Services.

B. Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as governmental authorities, regulatory agencies, civil or labor unrest, epidemics or pandemics, acts of God, nature, or terror, disruptions of the Internet, electronic telecommunications or hosting services or any other events that are beyond the reasonable control of the parties. In the event of any such delays, then the party whose performance is delayed or impaired by such condition shall give prompt written notice to the other party as to the nature and anticipated extent of the delay or impairment.

C. Delays in excess of thirty (30) days within the scope of this Article shall, at the option of either party, make this Agreement subject to termination or to renegotiation.

6. INDEPENDENT JUDGMENTS OF CLIENT

If the Services include the collection of samples and data, then CONSULTANT'S obligation to perform those Services is subject to CLIENT's assumption of all Subsurface Risks (such risks being more fully described in Article 12, Subsurface Risks). CONSULTANT will not be responsible for the independent conclusions, interpretations, interpolations or decisions of CLIENT, or others, relating to the Services. Under no circumstances do CONSULTANT'S Services include making any recommendation or giving any advice as to whether CLIENT should or should not proceed with any transaction regarding any site related to the Services. CLIENT assumes all responsibility and risk associated with decisions it makes based on the Services.

7. INDEMNIFICATION

A. To the maximum extent allowed by law, CONSULTANT agrees to indemnify, but not defend, CLIENT and its officers, directors, and employees from and against all claims, damages, losses, or expenses arising from personal injury, death, or damage to third-party property, and for reimbursement of defense costs, to the extent that all such claims, damages, losses, expenses, or costs are finally determined to be proximately caused by CONSULTANT'S negligence. Such indemnification, as limited by Article 7, Limitation of Liability, shall be CLIENT's sole and exclusive remedy against CONSULTANT.

B. To the maximum extent allowed by law, CLIENT shall, at all times, defend, indemnify and save harmless CONSULTANT and its subcontractors, consultants, agents, officers, directors and employees from and against all claims, damages, losses and expenses (including but not limited to reasonable attorneys' fees, and court and arbitration costs), arising out of or resulting from the Services of CONSULTANT, including but not limited to claims made by third parties, or any claims against CONSULTANT arising from the acts, errors or omissions of CLIENT, its employees, agents, contractors and subcontractors or others. To the fullest extent permitted by law, such indemnification shall apply regardless of breach of contract or strict liability of CONSULTANT. Such indemnification shall not apply to the extent that such claims, damages, losses, or expenses are finally determined to be proximately caused by CONSULTANT'S negligence.

8. LIMITATION OF LIABILITY

A. CLIENT shall immediately notify CONSULTANT in writing of any deficiencies or suspected deficiencies arising directly or indirectly from CONSULTANT'S negligent acts, errors, or omissions. Failure by CLIENT to notify CONSULTANT shall relieve

CONSULTANT of any further responsibility and liability for such deficiencies. To the extent permitted by law, CLIENT and CONSULTANT agree that all liability arising directly or indirectly from this Agreement or the Services of CONSULTANT shall expire no later than one (1) year from the date of CONSULTANT'S acts, errors, or omissions or prior to the last date allowed in the applicable statute of limitation, whichever occurs first in time.

B. CLIENT agrees to limit the liability of CONSULTANT, its affiliates, and their respective employees, officers, directors, agents, consultants and subcontractors ("CONSULTANT Group") to CLIENT, its employees, officers, directors, agents, consultants and subcontractors, whether in contract, tort, or otherwise, which arises from CONSULTANT'S acts, negligence, errors or omissions, such that the total aggregate liability of the CONSULTANT Group to all those named shall not exceed Fifty Thousand Dollars ($50,000) or CONSULTANT'S total fee for the Services rendered under this Agreement, whichever is greater.

C. Neither party shall be responsible to the other for lost revenues, lost profits, cost of capital, claims of customers, loss of data or any other special, indirect, consequential, or punitive damages.

9. INSURANCE

A. CONSULTANT maintains insurance coverage with the following limits:

(i) Workers' Compensation in compliance with statutory limits

(ii) Automobile Liability

Combined Single Limit	$5,000,000

(iii) Commercial General Liability:

Each Occurrence	$3,500,000
General Aggregate	$7,500,000

(iv) Professional Liability Insurance

Any One Claim	$1,000,000
Policy Aggregate	$3,000,000

B. CLIENT shall not require CONSULTANT to sign any document or perform any Service which in the judgment of CONSULTANT would risk the availability or increase the cost of its Professional or Commercial General Liability insurance.

10. PROFESSIONAL WORK PRODUCT

A. The Services provided by CONSULTANT are intended for one time use only. All documents, including but not limited to, reports, plans, designs, boring logs, field data, field notes, laboratory test data, calculations, and estimates and all electronic media prepared by CONSULTANT are considered its professional work product (the "Documents"). CONSULTANT retains all rights to the Documents.

B. CLIENT understands and acknowledges that the Documents are not intended or represented by CONSULTANT to be suitable for reuse by any party, including, but not limited to, the CLIENT, its employees, agents, subcontractors, or subsequent owners on any extension of a specific project not covered by this Agreement or on any other project, whether CLIENT's or otherwise, without CONSULTANT'S prior written permission. CLIENT agrees that any reuse unauthorized by CONSULTANT will be at CLIENT's sole risk and that CLIENT will defend, indemnify, and hold CONSULTANT harmless from any loss or liability resulting from the reuse, misuse, or negligent use of the Documents.

11. DATA AND INFORMATION

A. **Project Information.** Before the commencement of Services by CONSULTANT or its subcontractors, and continuing thereafter, CLIENT shall immediately notify CONSULTANT of any known or potential health or safety hazards, hazardous substances or conditions existing on or near the project site. Furthermore, CLIENT shall promptly provide CONSULTANT with all relevant, reports data, studies, plans, specifications, documents, and information in its possession relating to the site history, to the project, and to the environmental, geologic, and geotechnical surface and subsurface conditions of the site and surrounding areas ("Project Information") or any other information related to the project that CONSULTANT may

reasonably request. CONSULTANT shall be entitled to rely upon the Project Information provided by CLIENT or others and CONSULTANT assumes no responsibility or liability for the accuracy or completeness of such. CLIENT waives any claim against CONSULTANT, and agrees to defend, indemnify, and hold CONSULTANT harmless from any claim or liability for injury or loss allegedly arising from incomplete Project Information, errors, omissions, or inaccuracies in the Project Information. CONSULTANT will not be responsible for any interpretations or recommendations generated or made by others, which are based, whole or in part, on CONSULTANT'S data, interpretations, or recommendations.

B. **Personal Information.** Each Party shall at all times comply with the requirements of applicable personal privacy legislation with respect to the collection, use and disclosure of personal information in connection with this Agreement. Client warrants that any such personal information (including personally identifiable information) was processed in compliance with all applicable laws.

12. RIGHT OF ENTRY

CLIENT will provide for the right of entry for CONSULTANT, its subcontractors, and all necessary equipment in order to complete the Services under this Agreement. If CLIENT does not own the site, CLIENT shall obtain permission and execute any required documents for CONSULTANT to enter the site and perform Services. It is understood by CLIENT that in the normal course of work some surface damage may occur, the restoration of which is not part of this Agreement.

13. SUBSURFACE RISKS

A. Special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program implemented in accordance with a professional Standard of Care may fail to detect certain conditions. The environmental, geological, geotechnical, geochemical, hydrogeological, and other conditions that CONSULTANT interprets to exist between sampling points may differ from those that actually exist. Furthermore, CLIENT recognizes that, passage of time, natural occurrences, direct or indirect human intervention at or near the site may substantially alter discovered conditions.

B. Subsurface sampling may result in damage or injury to underground structures or utilities and unavoidable contamination of certain subsurface areas not known to be previously contaminated such as, but not limited to, a geologic formation, the groundwater, or other hydrous body. CONSULTANT will adhere to the standard of care during the conduct of any subsurface investigation. When the Services include subsurface sampling, CLIENT waives any claim against CONSULTANT, and agrees to defend, indemnify, and hold CONSULTANT harmless from any claim or liability for injury, loss, or expense (including but not limited to legal fees) which may arise as a result of alleged or actual cross-contamination caused by any subsurface investigation or any damage or injury to underground structure, formation, body, or utilities.

14. DISPOSAL OF SAMPLES, MATERIALS AND CONTAMINATED EQUIPMENT

A. All samples obtained pursuant to this Agreement remain the property and responsibility of CLIENT. Uncontaminated soil and rock samples or other specimens maybe disposed of thirty (30) days after submission of the work product due pursuant to the Proposal. Upon written request, CONSULTANT will store uncontaminated samples for longer periods of time or transmit the samples to CLIENT for a mutually acceptable charge.

B. All contaminated samples and materials (containing or potentially containing hazardous constituents), including, but not limited to soil cuttings, contaminated purge water, and/or other environmental wastes obtained pursuant to this Agreement remain the property and responsibility of CLIENT and shall be returned to CLIENT for proper disposal. All laboratory and field equipment that cannot readily and adequately be cleansed of its hazardous contaminants shall become the property and responsibility of CLIENT. All such equipment shall be charged and turned over to CLIENT for proper disposal. Alternate arrangements to assist CLIENT with proper disposal of such equipment, materials and samples may be made at CLIENT's direction and expense unless otherwise specified in a separate Agreement or addendum to this Agreement. In such event, CLIENT agrees to have a representative available to sign all certifications, manifests, and other documents reasonably required by CONSULTANT and associated with the transportation, treatment and disposal, or handling of hazardous substances, waste, or materials from the project property site, and derived from CONSULTANT'S performance of the Services, including investigation derived wastes. If such CLIENT representative is unavailable and CONSULTANT is required

to execute any such documents on CLIENT's behalf, CLIENT acknowledges that CONSULTANT shall be acting only as offeror or agent on behalf of CLIENT. It is understood and agreed that CONSULTANT is not, and has no responsibility as, a handler, generator, operator, treater, storer, arranger, transporter, or disposer of hazardous substances, waste or materials found or identified at or around the project site property. CLIENT agrees to waive any claim against CONSULTANT and to defend, indemnify and hold CONSULTANT harmless from and against any claims, losses, damages, expenses (including, but not limited to, legal fees), and liabilities of any type arising out of the discovery and disposal of any alleged or actual hazardous substances, wastes or materials found or identified at or around the project site property.

15. CONTROL OF WORK AND JOB-SITE SAFETY

A. CONSULTANT shall be responsible only for its activities and that of its employees and subcontractors. CONSULTANT'S Services under this Agreement are performed for the sole benefit of the CLIENT and no other entity shall have any claim against CONSULTANT because of this Agreement or the performance or nonperformance of Services hereunder. CONSULTANT will not direct, supervise or control the work of other consultants and contractors or their subcontractors. CONSULTANT does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any other contractor, subcontractor, supplier, or other entities furnishing materials or performing any work on the project.

B. Insofar as job site safety is concerned, CONSULTANT is responsible only for the health and safety of its employees and subcontractors. Nothing herein shall be construed to relieve CLIENT or any other consultants or contractors from their responsibilities for maintaining a safe job site. CONSULTANT shall not advise on, issue directions regarding, or assume control over safety conditions and programs for others at the job site. Neither the professional activities of CONSULTANT, nor the presence of CONSULTANT or its employees and subcontractors, shall be construed to imply that CONSULTANT controls the operations of others or has any responsibility for job site safety.

16. PUBLIC RESPONSIBILITY

CLIENT has a duty to comply with applicable codes, standards, regulations, and ordinances, with regard to public health and safety. While CONSULTANT performs the Services, it will endeavor to alert CLIENT to any matter of which CONSULTANT becomes aware and believes requires CLIENT's immediate attention to help protect public health and safety, or which CONSULTANT believes requires CLIENT to issue a notice or report to certain public officials, or to otherwise comply with applicable codes, standards, regulations, or ordinances. If CLIENT decides to disregard CONSULTANT'S recommendations in these respects, (i) CONSULTANT shall determine in its sole judgment if it has a duty to notify public officials, and (ii) CONSULTANT has the right immediately to terminate this Agreement upon written notice to the CLIENT and without penalty. In states where there is a legal obligation for a licensed professional (employed by CONSULTANT or CONSULTANT as a company) to report an observed release of a hazardous material or petroleum product to the environment, an imminent threat to human health or the environment, or other incident (as defined by applicable law) to a regulatory agency, CONSULTANT shall make reasonable efforts to first notify the CLIENT and its Counsel regarding the nature and timing of the required notification, but in any case will comply with the applicable legal requirements with regard to reporting.

17. NOTIFICATION AND DISCOVERY OF HAZARDOUS MATERIALS

A. Prior to commencing the Services and as required by Article 10, Data and Information, CLIENT shall furnish to CONSULTANT all documents and information known to CLIENT that relate to past or existing conditions of the site and surrounding area, including the identity, location, quantity, nature, or characteristics of any hazardous materials or suspected hazardous materials or subterranean utilities. CONSULTANT may rely on such information and documents. CLIENT hereby warrants that, if it knows or has any reason to assume or suspect that hazardous materials may exist at the project site, it has so informed CONSULTANT.

B. CLIENT acknowledges that if unanticipated hazardous materials or suspected hazardous materials are discovered on the project site property or on properties surrounding or adjacent to such site, it is CLIENT's responsibility, and not CONSULTANT'S, to inform the owner of any affected property not owned by CLIENT of such discovery. CLIENT also recognizes that any such discovery may result in a significant reduction of the property's value. CLIENT waives any claim against CONSULTANT and agrees to defend, indemnify, and hold harmless CONSULTANT from any claim or liability for injury or loss of any type arising from the discovery of hazardous materials or suspected hazardous materials on the project

property site or on surrounding property, whether or not owned by CLIENT. CLIENT agrees that discovery of unanticipated hazardous materials shall constitute a changed condition for which CONSULTANT shall be fairly compensated.

18. TERMINATION

Either party may terminate this Agreement as a result of a material breach of the other party if the other party does not commence and continue to cure the breach within thirty (30) days of receipt of written notice of the breach from the non-breaching party. In the event of termination, CONSULTANT shall be paid for Services performed to the termination notice date, reasonable termination expenses, and a portion of its anticipated profits not less than the percentage of the contract services performed as of the termination notice date. CONSULTANT may complete such analyses and records as are necessary to complete its files and may also complete a report on the Services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of CONSULTANT in completing such analyses, records, and reports.

19. DISPUTES

A. **Dispute Resolution by Senior Management.** Any controversy, claim, or disagreement arising out of or relating to this Agreement shall be referred to senior management of each Party for a resolution. If the senior management is able to resolve the dispute, such resolution shall be binding on the Parties. In the event the senior management is unable to resolve the dispute within thirty (30) business days (or such other period as the Parties may agree upon) of referral, each Party shall have the right to pursue any other rights or remedies that may be available at law or equity, subject to this Article.

B. **Litigation.** This Agreement shall be deemed to be a contract made under the laws of the state of New York, and for all purposes shall be construed in accordance with the laws thereof. Client agrees that any and all disputes between the parties under or relating to the terms and conditions of this Agreement shall be fully and completely adjudicated in any federal or state court located in the state of New York and Client completely and entirely waives any and all jurisdictional defenses it may have now or in the future to the jurisdictional reach of such courts.

C. **Attorneys' Fees and Costs.** In the event that one party makes a claim against the other, at law or otherwise, and then fails to prove such claim, then the prevailing party shall be entitled to all costs, including attorneys' fees incurred in defending against the claim. The term "prevailing party" shall be defined as the party that recovers at least fifty percent (50%) of the amount of its claim as identified on the first day of any trial. Conversely, any party defending a claim shall be determined the "prevailing party" if the party asserting a claim fails to recover at least fifty percent (50%) of the amount of its claim as identified on the first day of any trial.

20. INTELLECTUAL PROPERTY

A. If the Services require CONSULTANT to provide CLIENT with the right to use or access proprietary CONSULTANT software, programs, information management solutions, hosting services, technology, designs, information, or data ("CONSULTANT Products"), CONSULTANT grants CLIENT during the term of the project a non-exclusive, non-transferable, non-assignable license to use the CONSULTANT Products for CLIENT's internal purposes, solely in connection with the Services. Except for this limited license, CONSULTANT expressly reserves all other rights in and to the CONSULTANT Products.

B. CONSULTANT'S Right to Use CLIENT Materials - If the Services require CLIENT to provide CONSULTANT with the right to use or access proprietary CLIENT software, programs, technology, information, or data ("CLIENT Products"), CLIENT grants CONSULTANT a perpetual, non-exclusive, non-transferable, non-assignable, royalty free world-wide license to use and access the CLIENT Product as necessary to provide CLIENT with Services.

C. Intellectual Property General - CONSULTANT shall own all Intellectual Property (as hereinafter defined) associated with the Services and the CONSULTANT Products, together with any modifications, updates, or enhancements to said Intellectual Property. CONSULTANT grants no right or license to such Intellectual Property to CLIENT except as expressly provided in this Agreement. CLIENT conveys to CONSULTANT any interest in any such Intellectual Property rights that, notwithstanding the foregoing, would otherwise be deemed by law to vest in CLIENT. "Intellectual Property" includes patents, patent applications, trademarks, trademark applications, copyrights, moral rights or other rights of authorship and applications to protect or register the same, trade secrets, industrial rights, know-how, privacy rights and any other similar

proprietary rights under the laws of any jurisdiction in the world. CONSULTANT may use and publish the CLIENT's name and give a general description of the Services rendered by CONSULTANT for the purpose of informing other clients and potential clients of CONSULTANT'S experience and qualifications.

D. CONSULTANT shall use reasonable efforts to provide the Services without infringing on any valid patent or copyright and without the use of any confidential information that is the property of others; provided, however, reasonable efforts of CONSULTANT shall not include a duty to conduct or prepare a patent or copyright search and/or opinion. If CONSULTANT performs its Services in a manner consistent with the above, then to the fullest extent permitted by law, CLIENT shall indemnify, defend, and hold harmless CONSULTANT and its officers, directors, agents and employees against all liability, cost, expense, attorneys' fees, claims, loss, or damage arising from any alleged or actual patent or copyright infringement resulting from the Services under this Agreement.

21. INFORMATION MANAGEMENT

Some CONSULTANT Products may be offered to CLIENT via the Internet and some CONSULTANT Products may utilize wireless radio communications. Atmospheric, meteorological, topographical, and other conditions can affect the performance of any wireless device, software, or technology (including, but not limited to information management solutions, hosting services, ftp, and extranet services), just as application size, traffic, bottlenecks, and other conditions can affect Internet access and upload and download speeds. CLIENT acknowledges that these types of conditions and other similar conditions are beyond the reasonable control of CONSULTANT and that CONSULTANT makes no representations or guarantees that CLIENT will be able to access any particular CONSULTANT Product at any given time without any error or interruption.

22. MISCELLANEOUS

A. This Agreement supersedes all other agreements, oral or written, and contains the entire agreement of the parties. No cancellation, modification, amendment, deletion, addition, waiver, or other change in this Agreement shall have effect unless specifically set forth in writing signed by the party to be bound thereby. Titles in this Agreement are for convenience only.

B. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns provided that it may not be assigned by either party without consent of the other. It is expressly intended and agreed that no third-party beneficiaries are created by this Agreement, and that the rights and remedies provided herein shall inure only to the benefit of the parties to this Agreement.

C. CLIENT acknowledges and agrees that CONSULTANT can retain subconsultants, who may be affiliated with CONSULTANT, to provide Services for the benefit of CONSULTANT. CONSULTANT will be responsible to CLIENT for the Services and work done by all of its subconsultants and subcontractors, collectively to the maximum amount stated in Article 7 Limitation of Liability. CLIENT agrees that it will only assert claims against and seek to recover losses, damages, or other liabilities from CONSULTANT and not CONSULTANT'S affiliated companies.

D. No waiver of any right or remedy in respect of any occurrence on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence on any other occasion.

E. All representations and obligations (including without limitation the obligation of CLIENT to indemnify CONSULTANT in Article 6 and the Limitation of Liability in Article 7) shall survive indefinitely the termination of the Agreement. CLIENT acknowledges that it may not use CONSULTANT'S name or any reference to the Services in any press release or public document without the express, written consent of CONSULTANT.

F. Any provision, to the extent found to be unlawful or unenforceable, shall be stricken without affecting any other provision of the Agreement, so that the Agreement will be deemed to be a valid and binding agreement enforceable in accordance with its terms.

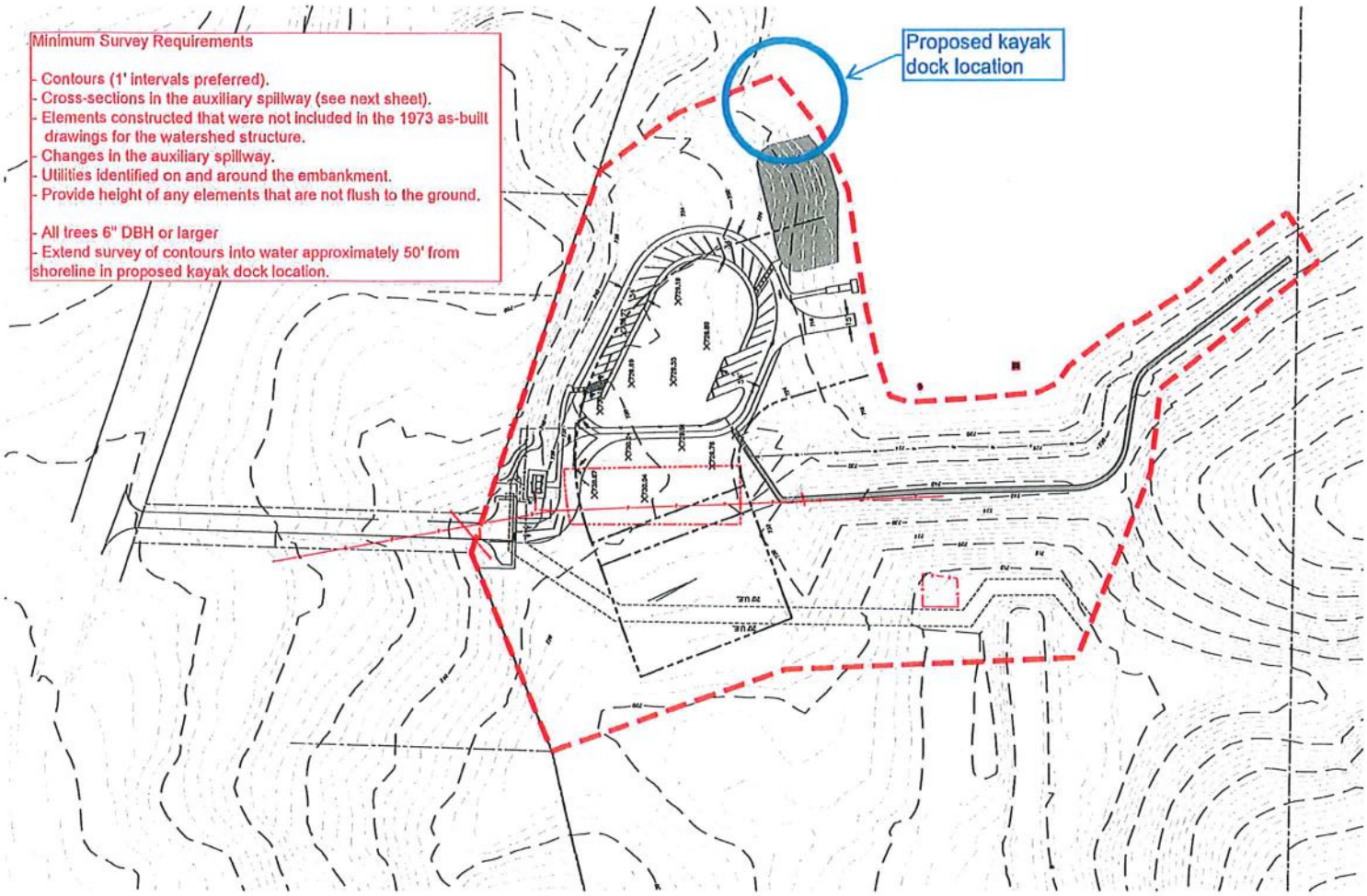
G. All questions concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of New York unless the law of another jurisdiction must apply for this Agreement to be enforceable.

H. All notices required or permitted to be given hereunder, shall be deemed to be properly given if delivered in writing via facsimile machine, e-mail, regular mail, hand delivery or express courier addressed to CLIENT or CONSULTANT, as the case may be, at the addressee set forth in the Proposal Acceptance Form in regard to the CLIENT, and as listed on the Proposal in regard to CONSULTANT, with postage thereon fully prepaid if sent by mail or express courier.

I. Any signature (including any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record) hereto or to any resulting Work Order, and any contract formation or record-keeping through electronic means shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system, to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act. The parties hereby waive any objection to the contrary.

J. CLIENT represents and warrants that the individual signing this Agreement is an authorized representative of CLIENT and has authority to bind the CLIENT.

REV: 03/01/2022


Minimum Survey Requirements
- Contours (1' intervals preferred).
- Cross-sections in the auxiliary spillway (see next sheet).
- Elements constructed that were not included in the 1973 as-built drawings for the watershed structure.
- Changes in the auxiliary spillway.
- Utilities identified on and around the embankment.
- Provide height of any elements that are not flush to the ground.
- All trees 6" DBH or larger
- Extend survey of contours into water approximately 50' from shoreline in proposed kayak dock location.
Proposed kayak dock location