

# CITY COUNCIL MEETING

*Ted Terry – Mayor*

*YT Bell*

*Andrea Cervone*

*Jamie Carroll*

*Awet Eyasu*

*Ahmed Hassan*

*Mario Williams*

*Keith Barker – City Manager*

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## **AGENDA**

**July 5, 2018 7:00PM**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. ADMINISTRATIVE BUSINESS/ PRESENTATION**

C1) Approve Minutes 6/5/18 Council Meeting and 6/27/18 Special Call Meetings

**D. PUBLIC COMMENTS**

**E. OLD BUSINESS**

**F. NEW BUSINESS**

F1) Millage Rate 2018 Adoption

a) Presentation

b) Public Hearing to take comment on the proposed 2018 millage rate

c) Adopt 2018 Millage Rate by ordinance

F2) Amend the Adoption Agreement for the City of Clarkston's Georgia Municipal Employees Benefit System Defined Benefit Retirement Plan

F3) Adopt Resolution to Amend the Sanitation Fee Schedule

F4) Adopt Ordinance to Amend the Stormwater Fee

F5) Public Hearing: Approve Rezoning of the property located at 801 Glendale Road from NR-3 High Density Neighborhood Residential to I- Light Industrial

F6) Approve a Variance request for the properties located at 795/ 801/803 Glendale Road to vary Section 1103- Driveways and Curb Cuts.

F7) Approve Contract with Welcoming America

**G. REPORTS:**

1) Planning & Zoning Report

2) City Manager's Report

3) City Attorney's Report – Bryan Downs

4) Council Remarks

5) Mayor's Report

**ADJOURNMENT:**

CITY OF CLARKSTON

ITEM NO: F1

CLARKSTON CITY COUNCIL MEETING

HEARING TYPE:  
Council Meeting

BUSINESS AGENDA / MINUTES

ACTION TYPE:  
Resolution

MEETING DATE: July 5, 2018

**SUBJECT:** Adopt the 2018 Millage Rate

DEPARTMENT: Administration

PUBLIC HEARING:  YES  NO

ATTACHMENT:  YES  NO  
Pages: 1

INFORMATION CONTACT: Keith Baker, City  
Manager  
PHONE NUMBER: 404-296-6489

PURPOSE: To adopt the 2018 Millage Rate.

NEED/ IMPACT: The current 2018 projected Clarkston Net Tax Digest is \$166,912,767. The 2017 Net Tax Digest for Clarkston was \$163,285,508. This represents an increase of \$3,627,259 or 2.2% in our Net Tax Digest.

The calculated rollback millage rate for 2018 (rate for the city to receive the same tax amounts as last year) is **15.475 mils**. The rollback millage rate for 2018 is lower than the 2017 adopted millage rate of 15.89 mils due to an increase in the net digest.

The Council must hold three public hearings if the advertised millage rate is higher than the millage rollback rate. The purpose of the meetings is to take public comment on the millage rate for consideration of the final adopted rate. There must be 5 days between the public hearings. Two meetings can be held on the same day with one starting prior to noon and one meeting must start between 6-7pm.

The mathematical millage rate required to balance the budget is **17.276 mils**.

RECOMMENDATIONS:

Staff recommends The City Council adopt a Millage Rate of **15.890 mils** for fiscal year 2018 and grant a 3% across-the-board salary adjustment for all eligible employees effective September 1, 2018.

CITY OF CLARKSTON

ITEM NO: F2

CLARKSTON CITY WORK SESSION

BUSINESS AGENDA / MINUTES

ACTION TYPE:  
Ordinance

HEARING TYPE:  
Council Meeting

MEETING DATE: July 5, 2018

SUBJECT: Amend the Adoption Agreement for the City of Clarkston's Georgia Municipal Employees Benefit System Defined Benefit Retirement Plan

DEPARTMENT: Administration

PUBLIC HEARING:  YES  NO

ATTACHMENT:  YES  NO  
Pages: 38

INFORMATION CONTACT: Keith Barker  
PHONE NUMBER: 404-296-6489

**PURPOSE:**

To consider and approve the attached Resolution to amend the Adoption Agreement for the City of Clarkston's Georgia Municipal Employees Benefit System ("GMEBS") Defined Benefit Retirement Plan ("Plan").

**NEED/ IMPACT:** The City's current Defined Benefit Retirement Plan was adopted in January 2000. For the City to continue to retain and attract qualified employees, it is essential to offer a competitive retirement program as part of an overall employee benefit package. An actuarial study analysis was completed in 2018 which explored potential plan amendments and associated costs.

The proposed plan amendment changes the cost of living adjustment (COLA) from a variable annual COLA up to a 5% cap to a fixed 3% annual COLA for participants and their beneficiaries who terminate on or after July 3, 2018. The fixed 3% annual COLA will also apply to participants who previously terminated employment with the City or vacated office but have returned to service and again terminate on or after July 3, 2018. The variable annual COLA not to exceed 5% will continue to apply to participants who terminated employment or vacated office prior to Jul 3, 2018, and do not thereafter return to service with the City.

Minimum contributions to the Retirement Plan are calculated in November for the upcoming calendar year and are remitted to GMA on a monthly basis. It is anticipated that this change will increase our monthly minimum required contribution by \$1,134.00.

The Adoption Agreement will become effective July 3, 2018 and per O.C.G.A. § 47-5-40, the Adoption Agreement must be approved in the form of an ordinance.

**RECOMMENDATIONS:**

Staff recommends the City council approve the attached Resolution to amend the Adoption Agreement for the City of Clarkston's Georgia Municipal Employees Benefit System ("GMEBS") Defined Benefit Retirement Plan ("Plan").

CITY OF CLARKSTON

ITEM NO: F3

CLARKSTON CITY WORK SESSION

HEARING TYPE:

Council Meeting

BUSINESS AGENDA / MINUTES

ACTION TYPE:

Resolution

MEETING DATE: July 5, 2018

SUBJECT: Adopt Resolution to Amend the Sanitation Fee Schedule

DEPARTMENT: Administration

PUBLIC HEARING:  YES  NO

ATTACHMENT:  YES  NO

Pages: 1

INFORMATION CONTACT: Keith Barker

PHONE NUMBER: 404-296-6489

PURPOSE:

To consider and approve the attached Resolution to amend the Sanitation Fee Schedule

NEED/ IMPACT:

The City of Clarkston contracts with a third party vendor to provide refuse collection services. Sanitation Services and the costs associated with providing this service, is set up as an Enterprise Fund. Enterprise Funds are meant to be self-funding with all associated costs being derived from fees for services provided exclusive of revenue received via the General Fund.

The current Sanitation Fee Assessment for FY' 2017 is \$185.40 charged per residential household. This fund operated in a deficit position for FY' 2016 and FY' 2017, (\$2,940) and (\$7,490) respectively. The contract with our third party vendor provides for a fee increase consistent with the CPI. Last year the contract increase was 2.5%. Additionally, the current refuse truck that we utilize for special pickups, is 18 years old and will need to be replaced within the next 2 to 3 years at an estimated costs of \$160,000.

The Sanitation Fee Assessment has not been adjusted since its initial adoption in April, 2009. Current revenue is insufficient to cover the cost of the contract and does not allow for accumulation of fund balance to fund anticipated capital equipment costs. A 15% increase will add \$27.81 per year to the Sanitation Fee amount per customer and generate a positive fund balance of \$21,186. The attached Resolution if approved, will increase the Sanitation fee from its current rate of \$185.40 to \$213.21. The change will be reflected on the 2018 tax bill.

RECOMMENDATIONS:

Staff recommends the City council approve the attached Resolution to amend the Sanitation Fee Schedule.

**RESOLUTION \_\_\_\_\_**  
**TO AMEND THE SANITATION FEE SCHEDULE**

**WHEREAS**, the City of Clarkston, Georgia is authorized by O.C.G.A. Title 12, Chapter 8, Article 2 to collect a fee from property owners in order to fund the collection of solid waste with the City; and

**WHEREAS**, City Code Chapter 19, Article III, adopted rules and procedures for the collection of solid waste and the imposition of a fee to fund the same; and

**WHEREAS**, City Code Section 19-78 contemplates that the City Council will establish a sanitation fee to cover the cost of the collection of solid waste; and

**WHEREAS**, for years 2016 and 2017, the amount collected in sanitation fees was less than the cost of collecting solid waste within the City; and

**WHEREAS**, the City Council desires to adjust the sanitation fee amount by means of this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Clarkston that the City of Clarkston hereby adopts the following amended fee schedule for solid waste collection and disposal, effective until and unless further amended by City Council:

Residential Property:                 \$213.21 per residence, to be collected annually

**BE IT FURTHER RESOLVED** that this Resolution shall be maintained as a public record by the City Clerk and shall be available for public inspection.

**SO RESOLVED**, this \_\_\_\_\_ day of July, 2018.

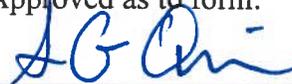
**CITY OF CLARKSTON, GEORGIA**

By: \_\_\_\_\_  
Mayor Ted Terry

Attest:

\_\_\_\_\_  
City Clerk Tracy Ashby

Approved as to form:

 6-21-18  
\_\_\_\_\_  
Stephen G. Quinn, City Attorney

CITY OF CLARKSTON

ITEM NO: F4

CLARKSTON CITY WORK SESSION

HEARING TYPE:  
Council Meeting

BUSINESS AGENDA / MINUTES

ACTION TYPE:  
Ordinance

MEETING DATE: July 5, 2018

SUBJECT: Amend Ordinance to Increase Storm Water Service Charge Rate

DEPARTMENT: Administration

PUBLIC HEARING:  YES  NO

ATTACHMENT:  YES  NO  
Pages: 1

INFORMATION CONTACT: Keith Barker  
PHONE NUMBER: 404-296-6489

PURPOSE:

To consider and approve the attached Ordinance to amend the Storm Water Service Charge Rate.

NEED/ IMPACT:

In order to fully recover the cost of providing storm water services and facilities and to fairly and reasonably apportion the cost among developed properties throughout the Clarkston service area, The City of Clarkston adopted a Storm Water Utility Fee Ordinance in March, 2006. Storm Water Utility Fees are based upon a unit of measurement called (ERU's) or Equivalent Residential Units. ERU is a unit of measurement used by the energy industry to denote the typical annual consumption by a single-family residential customer. **The current (ERU) rate of four dollars (\$4.00) per month, or forty-eight (\$48.00) per year has been unchanged since its original adoption in 2006.**

In Clarkston, all single dwelling lots are charged the rate applicable to one (1) ERU per year. All multiple dwelling lots are charged the rate applicable to one half (.5) ERU times the number of dwelling units located on the multiple dwelling unit property. All other developed lands are billed for one (1) ERU for each three thousand (3,000) square feet of impervious surface or increment thereof on the property. Undeveloped land, public rights-of-way. Railroad rights-of-way (tracks) and any property whereby one hundred (100) percent of the storm water runoff is contained on the premises and no runoff enters the storm water management system are all exempt from Storm Water Utility Fees.

The Storm Water Utility is established as an enterprise fund in our budget and therefore, fees generated should be sufficient to cover all expenses related to provision of this service. Given the backlog of storm water maintenance, repairs and especially capital improvements over the years coupled with the increased storm water infrastructure acquired as a result of annexation, it has become increasingly difficult to satisfy NPDES MS 4 permit requirements due to budgetary constraints.

For FY' 2016 and FY' 2017, the Clarkston Storm Water Utility Fees generated \$179,000 and \$ 227,000 in revenue respectively. Although for both years actual expenses were less than revenue, these expenditures did not include any large-scale capital construction improvements.

The attached Ordinance will increase the Storm Water Utility Fee from \$4 per month or \$48 per year to \$5.33 per month or \$64 per year. If approved, residential customers will see an increase on their tax bills of \$16 per year. The increase will apply to one (1) ERU and multiple dwelling lots and other developed lots will pay a fee based upon the number of units and amount of impervious surface.

The proposed fee change will increase Storm Water Fee revenue from \$227,000 in FY' 2017 to \$300,975 in FY' 2018. 78% of all Storm Water Fee revenue collections are derived from commercial and industrial parcels and 22% is derived from residential units. The additional revenue will allow the City of Clarkston to complete some badly needed capital improvement projects to alleviate recurring flooding events at several locations within the City.

RECOMMENDATIONS:

Staff recommends the City council approve the attached Ordinance to amend the Storm Water Service Charge Rate.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE BY THE CITY OF CLARKSTON TO  
SET THE STORMWATER SERVICE CHARGE RATE**

**WHEREAS**, City Charter § 1.03 (g) authorizes the City to operate a stormwater utility and to impose a service fee to fund the operations of such utility; and

**WHEREAS**, the City Council has determined that the current stormwater service fee rate is inadequate to fund large-scale capital construction improvements to the City's stormwater system that are necessary to protect the public health and welfare.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Clarkston as follows:

**SECTION 1.** City Code Section 19-133, subsection (b), is hereby repealed and replaced with the following language:

“b. The stormwater service charge per equivalent residential Unit (ERV) shall be Five Dollars and Thirty Three Cents (\$5.33) per month.”

**SECTION 2** This ordinance shall become effective immediately upon its adoption

**SO ORDAINED** by the Clarkston City Council this \_\_\_ day of July, 2018.

CITY COUNCIL  
CITY OF CLARKSTON, GEORGIA

\_\_\_\_\_  
TED TERRY, Mayor

ATTEST:

\_\_\_\_\_  
Tracy Ashby, City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Stephen G. Quinn, City Attorney

CITY OF CLARKSTON

ITEM NO: F5

CLARKSTON CITY COUNCIL WORK SESSION

HEARING TYPE:  
Council Meeting

BUSINESS AGENDA / MINUTES

ACTION TYPE:  
Resolution

MEETING DATE: July 5, 2018

SUBJECT: Rezoning of the property located at 801 Glendale Road from NR-3 High Density Neighborhood Residential to I- Light Industrial.

DEPARTMENT:  
Planning & Development

PUBLIC HEARING:  YES  NO

ATTACHMENT:  YES  NO  
Pages: 15

INFORMATION CONTACT:  
Shawanna Qawiy, Planning and Dev. Director  
PHONE NUMBER: 404-296-6489

PURPOSE: A request from Joseph C. Gargiulo d/b/a J. P. Enterprise to rezone the property located at 801 Glendale Road from NR-3 High Density Neighborhood Residential to I-Light Industrial

NEED/ IMPACT:

The property owner is requesting to rezone the subject property consisting of 0.109 acres from NR-3 High Density Neighborhood Residential to I-Light Industrial. The property owner is requesting to rezone the property that will potentially be included in a lot combination for a variance request. A review of the zoning files indicate that there has been a previous zoning request on this parcel in April 2018 that was approved to be rezoned to NR-3.

RECOMMENDATION(S):

PLANNING AND DEVELOPMENT STAFF:

Staff recommended approval of the rezoning request and to amend the zoning map to reflect the final approval of the rezoning of the property located at 801 Glendale Road from NR-3 High Density Neighborhood Residential to I-Light Industrial.

PLANNING AND ZONING BOARD:

The Planning and Zoning Board recommended to approve the rezoning request and to amend the zoning map to reflect the final approval of the rezoning of the property located at 801 Glendale Road from NR-3 High Density Neighborhood Residential to I-Light Industrial.

ATTACHMENTS:

Rezoning application, staff rezoning analysis report, future land use and zoning maps.

CITY OF CLARKSTON

ITEM NO:F6

CLARKSTON CITY COUNCIL WORK SESSION

HEARING TYPE:  
Council Meeting

BUSINESS AGENDA / MINUTES MEETING

ACTION TYPE:  
Resolution

DATE: July 5, 2018

SUBJECT: A variance request for the properties located at 795/ 801/803 Glendale Road to vary Section 1103- Driveways and Curb Cuts.

DEPARTMENT:  
Planning & Development

PUBLIC HEARING:  YES  NO

ATTACHMENT:  YES  NO  
Pages: 17

INFORMATION CONTACT:  
Shawanna Qawiy, Planning and Dev. Director  
PHONE NUMBER: 404-296-6489

PURPOSE: A request from Joseph C. Gargiulo d/b/a J. P. Enterprise to vary Section 1103- Driveways and Curb Cuts to allow more than two (2) curb cuts on a street frontage with less than 300 feet between curb cuts.

NEED/ IMPACT:

The property owner is requesting to vary **Section 1103 Driveways and Curb Cuts (f)... developments on properties with a single street frontage greater than four hundred (400) feet shall be permitted two (2) curb cuts along one street frontage provided that each curb is at least 300 feet apart.** The variance request is proposed as a lot combination of the properties located at 795/801/803 Glendale Road.

RECOMMENDATION(S):

PLANNING AND DEVELOPMENT STAFF:

Staff recommended to deny the variance request.

PLANNING AND ZONING BOARD:

The Planning and Zoning Board recommended to deny the variance request.

ATTACHMENTS:

Variance application, staff rezoning analysis report, City Ordinance- Section 1103-Driveways and curb cuts, and proposed site plan.

CITY OF CLARKSTON

CLARKSTON CITY WORK SESSION

ITEM NO: F7

BUSINESS AGENDA / MINUTES

ACTION TYPE:  
Resolution

HEARING TYPE:  
Council Meeting

MEETING DATE: July 5, 2018

SUBJECT: Approve Contract with Welcoming America

DEPARTMENT: Administration

PUBLIC HEARING:  YES  NO

ATTACHMENT:  YES  NO  
Pages: 1

INFORMATION CONTACT:

Andrea Cervone & Y.T. Bell

PHONE NUMBER: 404-296-6489

PURPOSE:

To consider and approve the attached contract with Welcoming America.

NEED/ IMPACT:

The City of Clarkston desires to enter into a contract with Welcoming America to pursue designation as a Certified Welcoming City.

RECOMMENDATIONS:

No staff recommendation.



CERTIFIED WELCOMING CERTIFICATION CONTRACT  
between  
Welcoming America  
And  
City of Clarkston

PARTIES

1. Welcoming America, Inc. (“Welcoming America”) a Georgia nonprofit corporation.
2. City of Clarkston, Georgia (“Client”), a Georgia municipal corporation.

AGREED TERMS

1. DEFINITIONS

The Parties agree that the following terms will have the meaning assigned to them below.

**Audit:** evidence gathering process that aims to assess the compliance of a Client with certain standards. Audits may be conducted on- or off-site and may be announced or unannounced.

**Auditor:** person qualified to carry out audits on behalf of the Certified Welcoming program of Welcoming America. The Auditor may be an employee of Welcoming America or an independently contracted natural or legal person.

**Certificate:** document issued by the Certified Welcoming program of Welcoming America which outlines the scope and duration of a Client’s Certification with Welcoming America. A valid Certificate serves as authorization for the Client to designate and market itself as Certified Welcoming, to use the Certified Welcoming mark and logo on internal and external materials, and for businesses, nonprofits, and other entities that are headquartered in or operate within the Client’s geographic limits to market themselves as based in a Certified Welcoming city and/or county.

**Certification:** process by which Certified Welcoming program of Welcoming America determines a Client’s compliance with the Welcoming Standard. In



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addition to the initial certification, the Client must go through Certification every three years in order to maintain their Certificate.

**Certification Fee:** amount payable by the Client to Welcoming America for services provided by the Certified Welcoming program, as set out in the Certified Welcoming Standard Operating Procedure.

**Certified Welcoming Standard Operating Procedure (SOP):** The Certified Welcoming Standard Operating Procedure describes the Certified Welcoming certification system and its underlying rules and principles such as the certification cycle and the concept of compliance. A copy is provided as an attachment to this contract. The SOP may be updated by Welcoming America from time to time to reflect changes in process, systems, fees, and other relevant content. The current version is publicly available at [www.certifiedwelcoming.org](http://www.certifiedwelcoming.org).

**Client:** any entity which has signed a Certified Welcoming Certification Contract with Welcoming America and is at any stage of the Certified Welcoming certification process.

**Confidential Information:** any information that would be regarded as confidential by a reasonable person relating to the affairs, operations, and interested parties to which the disclosing entity belongs or is related. The handling of Confidential Information is described in detail in the Certified Welcoming Standard Operating Procedure provided as an attachment to this document.

**Effective Date:** the date this contract is signed by both the Client and Welcoming America.

**Certified Welcoming Marks:** registered trademarks of the Certified Welcoming program owned by Welcoming America. The Certified Welcoming Marks are only for use by certified Clients and institutions headquartered or operating within the geographic limits of certified Clients. Guidelines for use of the Certified Welcoming Marks are set out in the Certified Welcoming Standard Operating Procedure.

**Welcoming America:** Welcoming America is a national nonprofit that believes when communities welcome newcomers they reach full economic and social potential. Welcoming America connects a broad network of nonprofits and local governments supporting efforts in developing plans, programs, and policies that transform their communities into vibrant places where people respect each other and everyone's talents are valued and



cultivated. Welcoming America is the organization which operates Certified Welcoming and develops the Welcoming Standard.

**Certified Welcoming:** Certified Welcoming is a program of Welcoming America. Cities and counties that meet the Welcoming Standard earn the title of Certified Welcoming. These communities build a competitive advantage, and have opportunities to share their welcoming practices on regional, national, and global stages.

**Welcoming Standard:** The Welcoming Standard captures the core of what it means to be welcoming. Developed by Welcoming America in collaboration with local governments, advocates, and diverse experts, and with input from the public at large, the Welcoming Standard provides a comprehensive roadmap for immigrant inclusion and welcome. The Welcoming Standard addresses a range of essential policies and programs, from language access to hiring practices. Clients must meet the core requirements outlined in the Welcoming Standard in order to obtain Certified Welcoming Certification. To be maintain certification, clients must continue to meet core requirements, and improve their score on additional requirements. The current Welcoming Standard is available at [www.certifiedwelcoming.org](http://www.certifiedwelcoming.org), and included in its entirety as an attachment to this contract.

## 2. PURPOSE OF THE CONTRACT

2.1 This contract is an agreement for the provision of Certification, including recertification, by the Certified Welcoming program of Welcoming America to the Client.

2.2 The purpose of this contract is to enable the Certified Welcoming program of Welcoming America to certify the Client against the Welcoming Standard.

## 3. OBLIGATIONS OF THE CLIENT

3.1 The Client will perform all actions required to receive and maintain Certification. This includes compliance with the Welcoming Standard which can be found at [www.certifiedwelcoming.org](http://www.certifiedwelcoming.org) and as an attachment to this contract. If the client fails to maintain compliance with the Welcoming Standard or violates Certified Welcoming policies outlined in the Certified Welcoming Standard Operating Procedure (SOP), Welcoming America is authorized to apply sanctions relating to the certification status of the Client. The Certified Welcoming Standard Operating Procedure is included in its entirety as an attachment to this contract. The Client explicitly acknowledges the validity of the list of sanctions included in the SOP.



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3.2 The Client will allow Welcoming America and its Auditor(s), free and unencumbered access to all areas, records, and personnel necessary for the purpose of granting Certification, to the extent that such access is permitted by applicable Federal and State laws.

3.3 The Client agrees that Welcoming America may appoint sub-contractors to conduct Audits.

3.4 The Client will not make use of its Certification in such a manner as to bring Welcoming America into disrepute and will not make any statement regarding its Certification which is misleading or unauthorized.

3.5 The Client will not make representations about its Certification beyond the scope outlined in its Certificate.

3.6 The Client only refers to its Certification in accordance with the guidelines outlined in the Certified Welcoming Standard Operating Procedure.

3.7 The Client has a duty to inform and will provide Welcoming America on a periodic and continuous basis with:

- a. Any information on changes related to the organization of the Client, such as a changes in administration or governance that may impact the Certification status.
- b. Any information regarding a potential or real conflict of interest present between the Client and an Auditor or Welcoming America employee in direct contact with the Client.

3.8 The Client will keep a record of all known complaints relating to compliance with the Welcoming Standard. The Client will take and document appropriate action with respect to such complaints and any deficiencies found in services that affect compliance with the Welcoming Standard. The Client will make these records available to the Certified Welcoming program when requested.

#### 4. CERTIFICATION FEES AND PAYMENT

Welcoming America agrees to waive the intake and certification fees for the City of Clarkston for its initial certification (usually totaling \$12,000) and agrees to waive all recertification fees for the City of Clarkston.



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## 5. OBLIGATIONS OF WELCOMING AMERICA

- 5.1 The Certified Welcoming program of Welcoming America will evaluate all Clients against the Welcoming Standard and Certified Welcoming Policies by means of Audits.
- 5.2 The Certified Welcoming program of Welcoming America will make available to Clients an up-to-date detailed description of the Audit and Certification procedures, and documents containing the requirements for Certification, the applicant's rights and duties, including Certification Fees.
- 5.3 The Certified Welcoming program of Welcoming America will provide Clients who are successful in their Certification with a Certificate.
- 5.4 The Certified Welcoming program of Welcoming America has procedures for receiving allegations, complaints, appeals and disputes received from Clients or third parties about issues related to Certification. Current procedures are described in the Standard Operating Procedures provided as an attachment to this contract.
- 5.5 The Certified Welcoming program of Welcoming America will only use properly trained and competent Auditors to conduct Audits.
- 5.6 Welcoming America will publish a list of certified Clients on its website.
- 5.7 Without disclosing confidential information, Welcoming America will promote certified communities on a regional, local, and international scale. Promotion may include opportunities to represent the Welcoming movement at international gatherings, media coverage, invitations to speak at national events, or inclusion in online and print promotional materials.

## 6. CONFIDENTIAL AND PUBLIC INFORMATION

- 6.1 Both Parties agree to maintain each other's Confidential Information confidential. Handling of Confidential Information is described in the Certified Welcoming Standard Operating Procedures provided as an attachment to this contract.
- 6.2 The following is not considered to be Confidential Information, and may be disclosed by either party:



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- a. Information that is in the public domain;
  - b. Information that is lawfully disclosed to either party by a third party without restriction on disclosure;
  - c. Information that is independently developed by either party, such as documents containing the name of the Client, scope and status of Certification;
  - d. Information the parties agree in writing is not confidential or may be disclosed;
  - e. Information that is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body; and
  - f. All data in aggregated form that is not traceable to an individual entity.

- 6.3 A party may disclose the other party's Confidential Information to those of its representatives and partners who need to know such Confidential Information for the stated purpose of performing the obligations under this contract provided that:
  - a. it informs such representatives and partners of the confidential nature of the Confidential Information prior to disclosure; and
  - b. at all times, it is responsible for such representatives' or partner's compliance with the confidentiality obligations set out in this clause.

- 6.4 Welcoming America warrants to the Client that it maintains agreements with all of its partners that receive Confidential Information ensuring that such Confidential Information will not be disclosed publicly or to the Client's competitors.

## 7. DURATION AND TERMINATION OF CONTRACT

- 7.1 This contract will be valid from the Effective Date and will continue in force until terminated according to this clause 7, superseding any previous contract on Certification by the Parties.
- 7.2 This contract may be terminated by either party for any reason with at least 3 calendar months written notice to the other party.
- 7.3 Welcoming America may terminate this contract with immediate effect if:



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- a. the Client makes incorrect references to the Certification system, uses Certificates or the Welcoming America Certification Mark in a misleading or improper way;
  - b. The Client fails to pay Certification Fees;
  - c. The Client is decertified;
  - d. For a breach of any provision of this contract by the Client where, in case of remedial breach, the Client has failed to remedy the breach within 30 days of receiving notice of the breach from Welcoming America. This includes nonpayment of Certification Fees.

7.4 Upon termination of this contract, Welcoming America is required to publish the change in Certification status as a result of the termination of this contract.

7.5 Termination of this contract does not relieve the Client from its obligation to pay all Certification Fees due.

7.6 Termination of this contract will lead to the Client losing its status as Certified Welcoming and result in the following:

- a. The Client will immediately discontinue making any, and will remove all prior, references to Certification with Welcoming America.

## 8. AMENDMENT

8.1 Any modification of this contract must be mutually agreed upon and shall generally be in writing.

8.2 For practical purposes Welcoming America may decide to modify this contract through written notification three months prior to the intended effectiveness of the change.

8.3 In the event the Client does not agree with the intended change, the Client may terminate this contract in writing

- a. within 30 days after receipt of the written notification by Welcoming America and
- b. with effectiveness of the termination on the date of the change.

## 9. INDEMNITY AND LIMITATION OF LIABILITY

9.1 Except in case of intent or gross negligence, liability of each party and its agents or assistants in performance shall be disclaimed. However,



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the foregoing does not apply in case of a breach of material contractual obligations or in the event of damages to life, limb, or health. Material contractual obligations are obligations which are essential to the contract, and whose fulfillment enables the due performance of the contract, and that the parties regularly rely on and may rely on for compliance. The liability for damages shall be limited to the typical foreseeable damage.

9.2 The Client will defend, indemnify and hold Welcoming America, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising from the negligence or intentional wrongful conduct of Client's agents, officers or employees in connection with the performance of the contract.

9.3 Welcoming America will defend, indemnify and hold Welcoming America, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising from the negligence or intentional wrongful conduct of Welcoming America's agents, officers or employees in connection with the performance of the contract.

9.4 Nothing in this clause shall restrict or limit either Party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

## 10. FORCE MAJEURE

10.1 Neither party will be liable in damages for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its reasonable control including, but not limited to natural disasters, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. The right to terminate will not be affected.

10.2 If either party is prevented from, or delayed in, performing any duty under this contract, then this party shall immediately notify the other party of the event, of the duty affected, and of the expected duration of the event.



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10.3 If any Force Majeure event prevents or delays performance of any duty under this contract for more than sixty days, then either party may on due notification to the other party terminate the contract.

11. ASSIGNMENT

11.1 Neither party may assign, transfer, or in any other manner hand over to any third party the rights or obligations of this contract unless agreed in writing by the other party.

12. LAW AND JURISDICTION

12.1 The exclusive place of performance and jurisdiction for all disputes arising from this contract will be the State of Georgia, for both parties, as far as applicable. Welcoming America reserves the right to institute legal proceedings at the place where the Client has its place of business.

12.2 In the event of a dispute arising out of this contract, the parties may choose to resort to arbitration. The Arbitrator will be agreed upon by both parties and any decision by the Arbitrator will be binding on the parties. The cost of arbitration will be borne by the parties in such proportion as decided by the Arbitrator.

12.3 This contract and all questions concerning its performance, validity, and interpretation shall be governed by the law of the United States.

13. SEVERABILITY

13.1 Should any individual provisions of this contract be or become invalid in part or in whole, or should there be an omission in the present contract, the remaining provisions of the present contract will remain valid.

Agreed and Signed on [Date].

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Melissa Bertolo  
Certified Welcoming Manager  
Welcoming America

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\_\_\_\_\_  
City of Clarkston