

# HABERSHAM COUNTY BOARD OF COMMISSIONERS

## EXECUTIVE SUMMARY

**SUBJECT:** Development Code Update Services Contract

**DATE:** May 10, 2024

**RECOMMENDATION**

**POLICY DISCUSSION**

**BUDGET INFORMATION:**

**STATUS REPORT**

**ANNUAL-**

**OTHER**

**CAPITAL- \$97,800 over two fiscal years**

FY2024 – \$48,900

FY2025 – \$48,900

**COMMISSION ACTION REQUESTED ON:** May 20, 2024

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**PURPOSE:** Make a recommendation to the Board regarding contract for services for a consultant to create a unified development code.

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### **BACKGROUND / HISTORY:**

1. The County's Comprehensive Land Development Ordinance was originally adopted in 1992. Only four land use or zoning districts were created in the original document.
  2. The uses allowed in each district had a pyramidal structure in that each district had certain uses permitted and the district above allowed those plus additional ones in a cascading manner where the top district allows almost anything. This has led to many incompatible land uses being located next to each other.
  3. In addition, there is a provision where anything is allowed countywide with a conditional use. This has led to a number of requests for incompatible land uses in traditional residential areas.
  4. With the increased development pressure expected to soon reach Habersham County, the current CLDO is unable to guide the growth strategies as outlined in the recently approved Comprehensive Plan. Consistent citizen comments in the plan mentioned the need to guide growth where we want it and protect other areas. The current CLDO is unable to accomplish this.
  5. The intention is to create a single document housing all of the development regulations. Currently, there are different ordinances located within overall structure of the Habersham County Code and staff thinks it would advantageous to have them all in one book with the Planning Commission being the variance authority and the BOC acting as the Appeals Board. As currently written, if a citizen wants relief from a requirement in the driveway ordinance, the BOC would need to hear it since it is a standalone ordinance. It is recommended this become a function of the Planning Commission and the BOC only getting involved when it is alleged the PC made an error.
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**FACTS AND ISSUES:** To streamline and quicken the rewrite process, staff requested RFPs for a consultant to work on the creation of a new Unified Development Code. Four firms were contacted to solicit proposals. Two firms responded. Staff contacted references and interviewed each firm. We recommend going with the low bidder of CPL Architects, Engineers, Landscape Architect and Surveyor, D.P.C. (CPL) in an amount of \$97,800. For cash flow purposes, CPL has agreed to spread the payment schedule over two fiscal years.

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**OPTIONS:** The Board of Commissioners could act on this application as follows:

1. Approval of the request as recommended by staff;
  2. Denial of the request as submitted;
  3. Commission defined alternative.
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**RECOMMENDED SAMPLE MOTION:** I motion to approve the contract with CPL.

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**DEPARTMENT:**

Prepared by: Mike Beecham

Director \_\_\_\_\_

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**ADMINISTRATIVE  
COMMENTS:** \_\_\_\_\_

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\_\_\_\_\_ **DATE:** \_\_\_\_\_

County Manager

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HABERSHAM COUNTY DEVELOPMENT CODE UPDATE SERVICES  
CONSULTANT CONTRACT

This **CONTRACT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between Habersham County, Georgia (Party of the First Part, hereinafter called the COUNTY), and CPL Architects, Engineers, Landscape Architect and Surveyor, D.P.C. (P.C.), (Party of the Second Part, hereinafter called the Consultant/Contractor)

**NOW THEREFORE**, for and in consideration of the mutual promises and obligations contained herein and under the conditions hereinafter set forth, the parties do hereby agree as follows:

1. **TERM:**

This contract shall commence upon execution of contract.

2. **ATTACHMENTS:**

Copies of the Consultant's proposal, including all drawings, specifications, price lists, Instructions to Bidders, General Conditions, Special Provisions, and Detailed Specifications submitted to the County during the Proposal process (hereinafter collectively referred to as the "Bid Proposal") are attached hereto (Exhibit A) and are specifically incorporated herein by reference. In the event of a conflict between the City's contract documents and the Bid Proposal, the contract documents shall control.

3. **PERFORMANCE:**

Consultant agrees to furnish all skill and labor of every description necessary to carry out and complete the services with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the services at the time when and the location in which the services were performed, and in strict conformity with the Bid Proposal.

4. **PRICE:**

As full compensation for the performance of this Contract, the City shall pay the Consultant for the actual quantity of work performed, which shall not exceed \$\$97,800 plus cost plus 15% for reimbursables. The fees for the work to be performed under this Contract shall be charged to the County in accordance with the rate schedule referenced in the Bid Proposal (Exhibit A). The County agrees to pay the Consultant following receipt by the County of a detailed invoice, reflecting the actual work performed by the Consultant.

5. **INDEMNIFICATION AND HOLD HARMLESS:**

The CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, COUNTY) against all damages or liabilities, to the extent caused by the CONSULTANT's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the CONSULTANT is legally liable.

The COUNTY agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and subconsultants (collectively, CONSULTANT) against all damages or liabilities, to the extent caused by the COUNTY's negligent acts, errors or omissions in connection with the Project as well as the acts, errors or omissions of its contractors, subcontractors or consultants or anyone for whom the COUNTY is legally liable.

Neither the COUNTY nor the CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence. Notwithstanding the foregoing agreement to indemnify and hold harmless, the parties expressly agree that the CONSULTANT has no duty to defend the COUNTY from and against any claims, causes of action, or proceedings of any kind.

**6. TERMINATION FOR CAUSE:**

Either party may terminate this Contract for cause upon thirty (30) days prior written notice to the other party of the other party's default in the performance of any term of this Contract after giving seven (7) days' notice to remedy the breach. Non-payment by the COUNTY of CONSULTANT's invoices within 60 days of the CONSULTANT rendering same is agreed to constitute a material breach of this agreement and, upon written notice as prescribed above, the duties, obligations and responsibilities of the Consultant are terminated. Such termination shall be without prejudice to any of the COUNTY's rights or remedies provided by law.

**7. TERMINATION FOR CONVENIENCE:**

The COUNTY may terminate this Contract for its convenience at any time upon 30 days written notice to the CONSULTANT. In the event of the COUNTY's termination of this Contract for convenience, the CONSULTANT will be paid for those services actually performed. Partially completed performance of the Contract will be compensated based upon a signed statement of completion to be submitted by the CONSULTANT, which shall itemize each element of performance.

**8. CONTRACT NOT TO DISCRIMINATE:**

During the performance of this Contract, the CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, or disability, which does not preclude the applicant or employee from performing the essential functions of the position. The CONSULTANT will also, in all solicitations or advertisements for employees placed by qualified applicants, consider the same without regard to race, creed, color, sex, national origin, age, or disability, which does not preclude the applicant from performing the essential functions of the job. The CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provision will be binding upon each subconsultant, providing that the foregoing provisions shall not apply to contracts or subconsultants for standard commercial supplies of raw materials.

**9. ASSIGNMENT:**

The CONSULTANT shall not sublet, assign, transfer, pledge, convey, sell or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm, or corporation without the previous consent of the COUNTY in writing.

**10. WAIVER:**

A waiver by either party of any breach of any provision, term, covenant, or condition of this

Contract shall not be deemed a waiver of any subsequent breach of the same or any other provision, term, covenant, or condition.

#### 11. SEVERABILITY:

The parties agree that each of the provisions included in this Contract is separate, distinct and severable from the other and remaining provisions of this Contract, and that the invalidity of any Contract provision shall not affect the validity of any other provision or provisions of this Contract.

#### 12. GOVERNING LAW

The laws of the State of Georgia shall govern the construction of this Contract without regard for conflicts of laws. Should any provision of this Contract require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction, that a document is to be construed more strictly against the party who itself or through its agent prepared same; it being agreed that the agents of all parties have participated in the preparation hereof, and all parties have had an adequate opportunity to consult with legal counsel. In interpreting this Contract in its entirety, the printed provisions of this Contract, and any additions written or typed hereon, shall be given equal weight, and there shall be no inference by operation of law or otherwise; that any provision of this Contract shall be construed against either party hereto.

#### 13. MERGER CLAUSE:

The parties agree that the terms of this Contract include the entire Contract between the parties, and as such, shall exclusively bind the parties. No other representations, either oral or written, may be used to contradict the terms of this Contract.

#### 14. LIMITATION OF LIABILITY

The total amount of all claims the COUNTY may have against the CONSULTANT under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the lesser of the fees or \$100,000. As the COUNTY's sole and exclusive remedy under this Agreement any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT and not against any of the CONSULTANT's employees, officers or directors.

Neither the COUNTY nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this Agreement or the performance of the services on this Project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

(Signature Next Page)

HABERSHAM COUNTY, GEORGIA

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized agents, have caused this **CONTRACT** to be signed, sealed and delivered.

**HABERSHAM COUNTY, GEORGIA**

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

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**ATTEST:**

**ATTEST:**

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

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CPL ARCHITECTS, ENGINEERS,  
LANDSCAPE ARCHITECT AND  
SURVEYOR, D.P.C. (P.C.)**

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

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**ATTEST:**

**ATTEST:**

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

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



# Exhibit A

May 3, 2024

Mike Beecham  
Planning and Development Director  
Habersham County  
130 Jacob's Way, Suite 104  
Clarkesville, GA 30523

VIA EMAIL

RE: Habersham County Comprehensive Land Use and Development Code Update Services Proposal

Dear Mr. Beecham,

CPL Architecture, Engineering, and Planning is pleased to offer this proposal for a comprehensive rewrite of Habersham County's Comprehensive Land Use and Development Ordinance.

## **Scope of Work**

CPL will perform the scope of work identified by the following Tasks:

1. Research and Analysis:
  - Conduct a comprehensive review of the existing ordinances, identifying strengths, weaknesses, and areas for improvement.
  - Analyze demographic trends, land use patterns, prior zoning decisions, and development needs to inform zoning updates.
  - Evaluate best practices and zoning models from comparable jurisdictions to incorporate into the ordinance.
  - Develop a Directions and Findings report to summarize policy priorities and outline recommendations to carry into the drafting phase.
  
2. Community Engagement:
  - Develop a community engagement plan tailored to Habersham County's needs, including outreach strategies for diverse stakeholders.
  - Facilitate public meetings, workshops, and focus groups to gather input on zoning priorities and concerns.
  - Utilize digital tools and online platforms to expand public participation and accessibility.
  - Engage with key stakeholders including government officials, community leaders, businesses, property owners, and residents to collect insight into the vision and preferences.
  - By example, the public engagement strategy will include the following (or other similarly-scaled combination of efforts):



- Facilitate up to three virtual stakeholder meetings to gather input and feedback.
  - Conduct monthly project management team meetings throughout the project timeline.
  - Facilitate up to two community workshops to educate the public and gather feedback on code revisions.
  - Host a website to collect project documents, communicate project timeline, and launch interactive tools like surveys and prioritization exercises.
3. Ordinance Development:
- Draft updated zoning regulations based on research findings, community input, and best practices.
  - Incorporate innovative zoning techniques to address Habersham County's unique challenges and goals.
  - Ensure consistency with the County's comprehensive plan and other planning documents.
  - Develop accompanying graphics, charts, and illustrations.
  - Incorporate feedback and make necessary adjustments to the text amendment document.
4. Public Hearings and Adoption Process:
- Coordinate with County officials to schedule public hearings and review sessions for ordinance review.
  - Present draft zoning updates to the public and stakeholders for feedback and revisions.
  - Provide support during the adoption process, including drafting resolutions, ordinance language, making presentations, and other necessary documentation.
  - Attend and present at up to one adoption meetings before the Planning Commission and one before the Board of Commissioners.

Timeline:

The proposed timeline for completion of this scope of work is 10-12 months for stakeholder engagement and code development, followed by an undetermined duration that aligns with the County's adoption process and legal deadlines.

**Fee Proposal**

CPL will perform the above referenced scope of work for the following lump sum fees:

- Task 1: \$18,800
- Task 2: \$25,200
- Task 3: \$44,200
- Task 4: \$9,600

Total: \$97,800 Lump Sum





Any additional work directed by Habersham County may be billed as indicated in the hourly rates listed in Appendix 'B.' If the County would like a fee proposal based on a specific project scope, CPL will develop a separate Task order, as-needed.

Direct expenses will be billed at cost plus 15%. Direct expenses include, but are not limited to, reproduction cost, courier service, mileage, telephone/fax cost, etc.

**Terms and Conditions**

This agreement shall be administered in accordance with the Terms and Conditions listed in Appendix "A" and the hourly rates listed in Appendix "B" attached hereto.

This document, together with the exhibits and/or appendices identified herein, constitutes the entire understanding between Habersham County and CPL with respect to the work to be performed by CPL for the benefit of Habersham County and may only be modified in writing signed by both parties. Please sign and return the enclosed copy of this letter if this document satisfactorily sets forth the understanding of the arrangement between Habersham County and CPL. Receipt of the signed agreement will serve as our notice to proceed. This Contract will be open for acceptance for sixty days from the date of this letter.

We look forward to working with you on this project.

Sincerely,

**CPL ARCHITECTURE ENGINEERING & PLANNING**

A handwritten signature in blue ink, appearing to read 'Rebecca Keefer'.

Rebecca Keefer, AICP  
Associate Principal

cc: file





## APPENDIX "A" TERMS AND CONDITIONS

1. CPL Architecture, Engineering, and Planning (hereinafter CPL) shall perform the services defined in this Letter Agreement and Client agrees to pay CPL for said services as set forth in the agreement. In providing services under this Agreement, CPL shall perform in a manner consistent with and limited to that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. CPL makes no warranty, express or implied, as to its professional services rendered under this Agreement. Accordingly, the Client should prepare and plan for clarifications and modifications, which may impact both the cost and schedule of the Project.
2. All documents including Drawings and Specifications prepared by CPL are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by CPL for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to CPL; and Client shall indemnify and hold harmless CPL from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle CPL to further compensation at rates to be agreed upon by Client and CPL.
3. Client agrees to additionally compensate CPL for services resulting from significant changes in general scope of Project, for revising previously accepted reports, studies, design documents, or Contract Documents, or for delays caused by others rather than CPL.
4. The lump sum prices and hourly rates outlined in this contract are subject to an automatic annual increase of up to 5 percent. This adjustment will take effect at the beginning of the calendar year.
5. Construction cost estimates prepared by CPL represents CPL's best judgment as professionals familiar with the construction industry. It is recognized, however, that CPL has no control over cost of labor, materials, or equipment, over contractors' methods of determining bid prices, or over competitive bidding or market conditions. CPL cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from cost estimates prepared by CPL.
6. If requested by Client or if required by the scope of services of the Agreement, CPL shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Contract Documents. However, CPL shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. CPL shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the contractor, subcontractors, or any other persons performing any of the work, or for the failure of any of them to carry out the work in accordance with the Contract Documents.
7. Surveying will be provided as stated in the Agreement. Surveying provided on an hourly basis will be charged with a 4-hour minimum at the hourly rates in effect at the time the service is performed. Replacement of survey markers resulting from contractor disturbance or vandalism will be accomplished on an hourly basis.
8. The cost of permits, fees, toll telephone calls, courier service, reproduction of reports, Drawings, and Specifications, transportation in connection with the Project, and other out of pocket expenses will be reimbursed to CPL by Client at cost plus 15%.
9. CPL shall submit monthly statements for services rendered and for reimbursable expenses incurred. Statements will be based upon CPL's time of billing. Payment is due upon receipt of CPL's Statement. If Client fails to make any payment due CPL for services and expenses within 30 days after the date of CPL's statement therefore, the amounts due CPL shall include a charge at the rate of 1.5% per month (18% per annum), or portion thereof, from said 30th day, and, in addition, CPL may, after giving 7 days' written notice to Client, suspend services under this Agreement until CPL has been paid in full all amounts due CPL are collected through an attorney or collection agency, Client shall pay all fees and costs of collection.
10. This Agreement may be terminated by either party upon 7 days' written notice should the other party fail substantially to perform in accordance with its terms through no fault to the party initiating termination, or in the event Project is cancelled. In the event of termination, CPL shall be paid the compensation plus Reimbursable Expenses due for services performed to termination date.
11. This Agreement shall be governed by the laws of the State Georgia. In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$50,000 or the Consultant's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action, including without limitation active and passive negligence, however alleged or arising, unless otherwise prohibited by law. In no event shall the



Consultant's liability exceed the amount of available insurance proceeds. In the event the Client does not wish to limit the Consultant's professional liability, the Consultant agrees to waive this limitation upon written notice from the Client and agreement of the Client to pay 25% of the Consultant's total fee within five (5) calendar days after this agreement is fully executed. This additional fee is in consideration of the greater risk involved in performing work for which there is no limitation of liability.

12. The services to be performed by CPL under this Agreement are intended solely for the benefit of the Client. Nothing contained herein shall confer any rights upon or create any duties on the part of CPL toward any persons not a party to this Agreement including, but not limited to, any contractor, subcontractor, supplier, or the agents, officers, employees, insurers, or sureties of any of them.

13. Client and CPL each binds himself and his partners, successors, executors, administrators, and assigns to the other party to this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Neither Client nor CPL shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other; however, CPL may employ others to assist in the carrying out of duties under this Agreement.

14. In the event the Client, the Client's contractors or subcontractors, or anyone for whom the Client is legally liable makes or permits to be made any changes to any reports, plans, specifications or other construction documents, including electronic files, prepared by CPL without obtaining CPL's prior written consent, the Client shall assume full responsibility for the results of such changes. Therefore, the Client agrees to waive any claim against CPL and to release CPL from any liability arising directly or indirectly from such changes. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless CPL from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, arising from such changes. The Client also agrees to include in any contracts for construction appropriate language that prohibits the Contractor or any subcontractors of any tier from making any changes or modifications to CPL's construction documents, including electronic files, without the prior written approval of CPL and that further requires the Contractor to indemnify both CPL and the Client from any liability or cost arising from such changes made without such proper authorization.



**APPENDIX "B"**  
**CPL HOURLY RATES**

<b>PRINCIPAL ARCHITECT/ENGINEER/PLANNER</b>	<b>\$240 - \$290/HR</b>
<b>PROJECT MANAGER</b>	<b>\$190 - \$210/HR</b>
<b>SR. STAFF ENGINEER/SR. ARCHITECT/SR. PLANNER</b>	<b>\$ 165 - 185/HR</b>
<b>STAFF ENGINEER/ARCHITECT/PLANNER</b>	<b>\$ 135 - 155/HR</b>
<b>JR. ENGINEER/JR. ARCHITECT/JR. PLANNER</b>	<b>\$ 85 - \$125/HR</b>
<b>DESIGNER/DRAFTPERSON</b>	<b>\$ 80 - \$95/HR</b>
<b>SECRETARIAL</b>	<b>\$ 80/HR</b>
<b>AUTO MILEAGE</b>	<b>IRS RATE+15%</b>
<b>MISCELLANEOUS</b>	<b>COST PLUS 15%</b>