



**MAYOR AND COUNCIL MEETING  
MONDAY, MARCH 16, 2026  
6:00 PM  
DALTON CITY HALL - COUNCIL CHAMBERS**

**AGENDA**

**Call to Order**

**Pledge of Allegiance**

**Approval of Agenda**

**Public Commentary:** *(Please Complete Public Commentary Contact Card Prior to Speaking for the Record - Limit of 3 Minutes/Person)*

**Presentations:**

1. Staff Reports

**Minutes:**

2. Mayor & Council Minutes of March 2, 2026

**Unfinished Business:**

3. Second Reading Ordinance 26-02 To Amend Chapter 26 of the 2001 Revised Code of The City of Dalton, Georgia Captioned "Businesses" To Reserve Sections 26-333 through 26-344 and By the Addition of a New Article X Captioned "Vape and Tobacco Stores"; To Provide for An Effective Date; To Provide for The Repeal of Conflicting Ordinances; To Provide for Severability; And for Other Purposes.

**New Business:**

4. Resolution 26-06 To Authorize Participation in Opioid Settlement Agreement
5. Resolution 26-08 Authorizing Municipal Property Easement - Mountain Ridge Baptist Church
6. Landlord's Consent to Assignment and Assumption of Easement Agreement at Raisin Way (Parcel 12-128-01-000) With Cellco Partnership D/B/A Verizon Wireless and The Towers, LLC
7. Agreement for the Development of Real Estate between Blackthorn House, LLC, the City of Dalton and Charles Whitener
8. Memorandum of Agreement - Army Corps of Engineers & The City of Dalton for the Replacement of Underwood Street Bridge
9. Approval of BOOST Grant from GRPA for \$35,000.

MAYOR AND COUNCIL MEETING AGENDA  
MARCH 16, 2026

- [10.](#) Kimley-Horn Amendment #1 to IPO #3 at Airport
- [11.](#) Kimley-Horn IPO #8 for Design and Construction Phase Services on Approach Light System Rehab at Airport
- [12.](#) Professional Services Agreement - Bion Security 2026
- [13.](#) FY25 Budget Amendment #6.
- [14.](#) First Reading Ordinance 26-05 Bond Ordinance Providing for The Issuance of City of Dalton Combined Utilities Revenue Bond, Series 2026 In the Principal Amount Of \$130,000,000.00.

**Supplemental Business:**

**Announcements:**

15. The Mayor and Council meeting scheduled for Monday, April 6, 2026, has been cancelled and rescheduled for Monday, March 30, 2026.

**Adjournment**

THE CITY OF DALTON  
MAYOR AND COUNCIL MINUTES  
MARCH 2, 2026

The Mayor and Council held a meeting this evening at 6:00 p.m. at City Hall. Present were Mayor Pro-tem Tyree Goodlett, Councilmembers Dennis Mock and Steve Farrow, City Administrator Andrew Parker and City Attorney Jonathan Bledsoe. Mayor Annalee Sams was absent.

CALL TO ORDER

Mayor Pro-tem Goodlett called the meeting of the Mayor and Council to order.

PLEDGE OF ALLEGIANCE

Councilmembers led the audience in the Pledge of Allegiance.

APPROVAL OF AGENDA

On the motion of Councilmember Mock, second Councilmember Farrow, the Mayor and Council approved the agenda. The vote was unanimous in favor. Mayor Pro-tem Goodlett, Council members Mock and Farrow voted aye.

PUBLIC COMMENTARY

Brooke Lee, a Dalton resident, requested that the city install a restroom facility at the Mill Line trail, a heavily used 3.5-mile recreational path. She explained that the trail attracts hundreds of users each week—walkers, runners, seniors, families with strollers, and pet owners—yet has no restroom access. Lee continued stating the nearest restroom at Hagmill Lake Park is more than two miles away, accessible only via rugged terrain and not usable by people with dogs or strollers. Further stating that due to the lack of facilities, sanitation issues have become common, with individuals relieving themselves along the trail. Lee noted strong community support for adding restrooms, with over 350 petition signatures collected in under a week and more than 200 social media posts within a day. Lee respectfully asked the council to consider funding options, whether permanent, phased, or temporary, and to place the issue on a future agenda for action.

Dee Goodwin, a lifelong Dalton resident and retired educator, spoke in strong support of installing a restroom facility at the Mill Line trail. Goodwin stated she uses the trail four to five times a week and emphasized how heavily it is used by diverse groups, including college environmentalists, special-needs adult daycare participants, seniors, families with strollers, pet owners, and large community groups. Goodwin described ongoing sanitation issues, including people needing to relieve themselves in the woods and leaving behind toilet paper, and recounted a story of a 72-year-old resident who apologized for doing so due to lack of options. Goodwin urged the city to consider practical solutions such as port-a-lets, locking facilities at night, or using approaches similar to other greenways that provide restrooms every mile. She concluded by asking the council to take action and stating that addressing this need would make someone a “community hero.” Goodwin submitted a petition with 300 signatures.

Response to Mill Line Restrooms

City Administrator Parker stated he will begin working on temporary options this week, especially given the strong community support shown through the petition. Parker stated the city is currently in the design phase for Phase Two of the Mill Line project, where the need for permanent restrooms has already been identified. Parker further stated that installing permanent facilities is challenging because much of the area lies in a floodplain, but staff have begun evaluating higher adjacent land that might be used through partnership or acquisition. In the meantime, Parker stated it is worthwhile to pursue temporary restroom solutions, noting that similar temporary facilities were used at Civitan Park until permanent ones were ready. Staff will research available options and report back to the council.

MINUTES

The Mayor and Council reviewed the Regular Meeting Minutes of February 16, 2026. On the motion of Councilmember Mock, second Councilmember Farrow, the minutes were approved. The vote was unanimous in favor.

ALCOHOL BEVERAGE APPLICATIONS

The Mayor and Council reviewed the following (3) three New 2026 Alcohol Beverage License Applications:

Business Owner: Neelkanth 0612, LLC  
d/b/a: Marathon (Gas Station)  
Applicant: Ami Gamoth  
Business Address: 2201 Chattanooga Rd.  
License Type: Package Beer, Wine (Retail Store / Gas Station)  
Disposition: New  
Staff Comments: None. Have approvals from Fire Department, Code Enforcement and City Attorney's Office

PSC Recommendation:  Approve

On the motion of Councilmember Mock, second Councilmember Farrow, the Mayor and Council approved the application. The vote was unanimous in favor. Mayor Pro-tem Goodlett, Council members Mock and Farrow voted aye.

ALCOHOL BEVERAGE APPLICATIONS Cont.

Business Owner: El Costeno Hardware Inc.  
d/b/a: El Costeno Hardware Inc.  
Applicant: Rosa E. Moreno  
Business Address: 1101 New Doris St. Suite 1  
License Type: Package Beer (Retail Store)  
Disposition: New  
Staff Comments: None. Have approvals from Fire Department, Code Enforcement and City Attorney's Office

PSC Recommendation:  Approve

On the motion of Councilmember Mock, second Councilmember Farrow, the Mayor and Council approved the application. The vote was unanimous in favor. Mayor Pro-tem Goodlett, Council members Mock and Farrow voted aye.

Business Owner: Shakti 1, LLC  
d/b/a: Dalton Food & Tobacco  
Applicant: Hirenkumar B. Patel  
Business Address: 601 N. Glenwood Ave  
License Type: Package Beer, Wine (Retail Store)  
Disposition: New  
Staff Comments: None. Have approvals from Fire Department, Code Enforcement and City Attorney's Office

PSC Recommendation:  Approve

On the motion of Councilmember Mock, second Councilmember Farrow, the Mayor and Council approved the application. The vote was unanimous in favor. Mayor Pro-tem Goodlett, Council members Mock and Farrow voted aye.

RESOLUTION 26-05 AUTHORIZING RELEASE OF LIEN - MASONIC LODGE AT 600 S. HAMILTON STREET

City Administrator Andrew Parker presented Resolution 26-05, will release the lien and cancel the security interest for the Masonic Lodge located at 600 South Hamilton Street. Parker stated several months earlier, the Council approved a demolition consent order, and the City's Public Works Department completed all required demolition work. Additionally, Parker stated the City then invoiced the Masonic Lodge trustees for the cost. Parker reported the trustees of the Masonic Lodge paid the full invoice, and the original agreement required the City to hold a security interest until payment was made. Parker explained Resolution 26-05 authorizes cancellation of that security interest and a quit claim deed provided to the Masonic Lodge trustees. On the motion of Councilmember Mock, second Councilmember Farrow, the Mayor and Council approved the Resolution. The vote was unanimous in favor. Mayor Pro-tem Goodlett, Council members Mock and Farrow voted aye.

AIRPORT GRAZING/HAY HARVESTING LEASE AGREEMENT WITH MR. KENNETH ROBERTSON

Airport Director Andrew Wiersma presented an airport grazing and hay harvesting lease agreement with Mr. Kenneth Robertson. Wiersma stated Robertson has leased airport property since the early 2000s, with the most recent update in 2019. Wiersma stated Mr. Robertson is requesting to release about 50 acres he currently leases and instead add approximately 60 acres located at the opposite end of the field with the understanding that these areas of airport property are kept mowed and maintained. Additionally, Wiersma stated the portion Robertson is releasing will be incorporated into a separate lease for Mr. Luis Magana. On the motion of Councilmember Mock, second Councilmember Farrow, the Mayor and Council approved the Lease. The vote was unanimous in favor. Mayor Pro-tem Goodlett, Council members Mock and Farrow voted aye.

Wiersma noted said property was purchased by the city in 2021 to clear obstructions in the Runway Protection Zone near Runway 32.

AIRPORT GRAZING/HAY HARVESTING LEASE AGREEMENT WITH MR. LUIS MAGANA

Airport Director Andrew Wiersma presented an airport grazing and hay harvesting lease agreement with Mr. Luis Magana. Wiersma stated Mr. Magana is requesting to lease about 50 acres that was previously leased by Mr. Robinson with the understanding that this area of airport property is kept mowed and maintained.

On the motion of Councilmember Mock, second Councilmember Farrow, the Mayor and Council approved the Lease. The vote was unanimous in favor. Mayor Pro-tem Goodlett, Council members Mock and Farrow voted aye.

ADJOURNMENT

There being no further business to come before the Mayor and Council, on the motion of Councilmember Mock, second Councilmember Goodlett the meeting was adjourned at approximately 6:14 p.m.

\_\_\_\_\_  
Bernadette Chattam  
City Clerk

\_\_\_\_\_  
Annalee Sams, Mayor

Recorded  
Approved: \_\_\_\_\_  
Post: \_\_\_\_\_



# CITY COUNCIL AGENDA REQUEST

## MEETING TYPE

Mayor & Council Meeting

## MEETING DATE

3/16/2026

## AGENDA ITEM

Second Reading Ordinance 26-02 Vape Shops

## DEPARTMENT

Administration

## REQUESTED BY

Andrew Parker

## REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

## COST

N/A

## FUNDING SOURCE IF NOT IN BUDGET

N/A

## PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

To Amend Chapter 26 of the 2001 Revised Code of The City of Dalton, Georgia Captioned "Businesses" To Reserve Sections 26-333 through 26-344 and By the Addition of a New Article X Captioned "Vape and Tobacco Stores"; To Provide for An Effective Date; To Provide for The Repeal of Conflicting Ordinances; To Provide for Severability; And for Other Purposes.

### PHONE

706-278-9500

### WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

### ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

## **Ordinance 26-02**

To Amend Chapter 26 of The 2001 Revised Code Of The City Of Dalton, Georgia Captioned “Businesses” To Reserve Sections 26-333 through 26-344 and By The Addition Of A New Article X Captioned “Vape and Tobacco Stores”; To Provide For An Effective Date; To Provide For The Repeal of Conflicting Ordinances; To Provide For Severability; And For Other Purposes.

**BE IT ORDAINED** by the Mayor and Council of the City of Dalton, and by the authority of the same, **IT IS HEREBY ORDAINED** as follows:

### **Section 1.**

Chapter 26 of The 2001 Revised Code of the City of Dalton, Georgia captioned “Businesses”, Article IX Mobile Food Vendors is hereby amended by the addition of certain reserved sections which shall read as follows: “Secs. 26-333 – 26-344. – Reserved.”

### **Section 2.**

Chapter 26 of The 2001 Revised Code of the City of Dalton, Georgia captioned “Businesses”, is hereby amended by the addition of a new Article X captioned “Vape and Tobacco Stores” which shall read as follows:

## ***ARTICLE X. VAPE AND TOBACCO STORES***

### **Sec. 26-345. Definitions.**

For purposes of this article, the following terms, phrases, words, and their derivatives shall have the meaning set forth in this section.

*Alternative nicotine product* means any material that contains nicotine, but does not contain tobacco leaf, and is intended for human consumption, whether such material is chewed, absorbed, dissolved, or ingested by any other means. Such term shall include, but shall not be limited to, nicotine gel, pouches, or gum or dissolvable nicotine strips, sticks, lozenges, or pellets. Such term shall not include little cigars, cigars, cigarettes, loose or smokeless tobacco, consumable vapor products, or any product regulated as a drug or

therapeutic device by the United States Food and Drug Administration under chapter V of the Federal Food, Drug, and Cosmetic Act.

*Authorized city official* means an individual appointed by the Mayor and Council or City Administrator to perform certain duties or services.

*Cannabinoid* means any of various naturally-occurring, biologically active, chemical constituents (such as cannabidiol or cannabinol) of hemp or cannabis including some (such as THC) that possess psychoactive properties.

*Cigar bar* means a retail establishment that derives at least seventy-five percent (75%) of its total annual gross revenue from the sale of cigars.

*Consumable vapor product* means any liquid solution, whether it contains nicotine or not, that is intended to be heated into an aerosol state and inhaled by an individual. Such term shall include, but shall not be limited to, e-liquid, e-juice, vape juice, and cartridges that are prefilled with such a solution. Such term shall not include any alternative nicotine product, cigar, cigarette, loose or smokeless tobacco, perfume, potpourri, essential oil, or product regulated as a drug or therapeutic device by the United States Food and Drug Administration under chapter V of the Federal Food, Drug, and Cosmetic Act.

*Floor space* means the floor area inside an establishment that is visible or accessible to patrons for any reason, including aisles, walkways, and cashier stations

*Gasoline station* means a retail establishment which meets all requirements of the state of Georgia to sell fuel and which sells fuel in the ordinary course of its business.

*Kratom* means the tropical evergreen known as *Mitragyna speciosa*, which contains the alkaloid mitragynine or metabolite 7-hydroxymitragynine.

*Non-traditional tobacco paraphernalia* means any device designed to facilitate the use, smoking, consumption or ingestion of tobacco, nicotine, chemicals, substances, illicit drugs, or other harmful additives in any form (such as grinders, bongs, hookah pipes, or faux jewelry, bracelets, or necklaces commonly associated with tobacco, vaping, or drug use, with one purpose of such items being the inhalation or ingestion of tobacco or drugs); provided, however, that the term "non-traditional tobacco paraphernalia" shall exclude products that contain nicotine, tobacco products, cigarette papers or wrappers, blunt wraps, tobacco pipes, holders, cigarette rolling machines, or other products, devices, or substances used for the purpose of making tobacco cigarettes; provided further that, said term shall also not include any item for which the sale or use of the same is regulated under state or federal law.

*Person* means any individual, natural person, partnership, firm, corporation, joint venture, proprietorship, business entity, association, agency, group, organization or group of persons or any other legal entity.

*Tobacco product* means any cigarettes, cigars, little cigars, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff powder; cavendish; plug and

twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing or smoking, or both for chewing and smoking. The term "tobacco product" shall not include any alternative nicotine product, vapor product, or product regulated as a drug or device by the United States Food and Drug Administration under chapter V of the Food, Drug, and Cosmetic Act.

*Vapor device* means any system or device developed or intended to deliver a consumable vapor product to an individual who inhales from the device.

*Vape and tobacco store* means any business whose principal business activity is the sale of any tobacco product, alternative nicotine product, consumable vapor product, vapor device, cannabinoid, kratom, non-traditional tobacco paraphernalia, or any combination thereof (all such items may be hereinafter referenced as "regulated products"). No cigar bar or gasoline station shall be considered a vape and tobacco store. A "principal business activity" means any one or more of the following exist:

- (1) Twenty-five percent (25%) or more of the establishment's annual gross revenue is derived from the sale of regulated products. In the case of an audit, the relevant time period shall be the 12 months immediately preceding the commencement of the audit. If the establishment being audited has been in operation for less than 12 months, the audit period shall be the period of time the entity has operated.
- (2) The establishment maintains at least twenty-five percent (25%) of its floor space for the display or sale of regulated products.
- (3) The establishment maintains at least five hundred (500) square feet of its floor space for the display or sale of regulated products.
- (4) The establishment regularly makes regulated products available for sale and holds itself out, in any medium, as an establishment that primarily caters to customer interest in the regulated products.

#### **Sec. 26-346. Purposes of article.**

This article has been enacted in accordance with a plan designed for the following purposes, among others:

- (1) Promoting the health and general welfare of the community;
- (2) Establishing reasonable and ascertainable standards for the regulation and control of the sale of regulated products;
- (3) Giving effect to existing land use and preserving certain residential areas, with reasonable considerations, among others, to the character of the area and the peculiar suitability for particular uses, the congestion in the roads and streets, and with a general view of promoting desirable living conditions and sustaining the stability of neighborhoods and property values; and
- (4) Protecting against the negative effects of concentration of retail outlets for regulated products, preventing underage persons from engaging in or having any interest in regulated products, and efficiently utilizing community resources required to enforce state and local laws with respect to the sale of regulated products.

**Sec. 26-347. Prohibition on new vape and tobacco stores.**

- (a) No vape and tobacco store shall be permitted within any zoning classification of the City of Dalton.
- (b) No occupational tax certificate, zoning approval, or permit of any kind shall issue for any vape and tobacco store within the City of Dalton.

**Sec. 26-348. Grandfathering of existing vape and tobacco stores.**

- (a) Notwithstanding any other provision in this article, existing vape and tobacco stores operating in the City of Dalton with a valid occupational tax certificate as of the effective date of this article shall be considered grandfathered. Grandfathered vape and tobacco stores may continue operations except as otherwise provided in this code.
- (b) Such grandfathered status shall terminate and the occupational tax certificate of any grandfathered vape and tobacco store shall be revoked upon the occurrence of any one or more of the following:
  - (1) The vape and tobacco store ceases operation for a period of 30 consecutive days;
  - (2) The death of the principal owner of any vape and tobacco store;
  - (3) Any bankruptcy, assignment for the benefit of creditors, or change in ownership of the vape and tobacco store;
  - (4) The vape and tobacco store relocates to a different premises within the City;
  - (5) The vape and tobacco store's occupational tax certificate is not timely renewed or it is revoked for any reason;
  - (6) Any permit or license to operate the vape and tobacco store is suspended, revoked, or limited in any way; or
  - (7) Any employee, owner, or agent of the vape and tobacco store is convicted of violating any federal, state, or local law in connection with the sale of any product at such vape and tobacco store.

**Sec. 26-349. Inspection of grandfathered establishments.**

Sworn officers of the police department, code enforcement officers, and any other authorized city official shall have the authority to inspect establishments grandfathered under this article during the hours in which the premises are open for business. The city attorney or any authorized city official may also require a vape and tobacco store to produce books and records and may conduct or oversee an audit of the books and records of a vape and tobacco store at any time. Such investigations may occur from time to time to determine compliance with the requirements of this article and state law.

**Sec. 26-350. General regulation of business operations.**

- (a) No vape and tobacco store, employee of any vape and tobacco store, or other person shall sell or permit to be sold any item of non-traditional tobacco paraphernalia to any person under the age of 18 years, either directly or indirectly.
- (b) No vape and tobacco store, employee of any vape and tobacco store, or other person shall sell or permit to be sold any regulated product in violation of state or federal law, either directly or indirectly.
- (c) Each vape and tobacco store shall maintain its entire inventory of regulated products in an area behind the sales counter where patrons of the vape and tobacco store may not handle such products without first interacting with an employee of the vape and tobacco store. Specifically, upon request to see any regulated products, employees of the vape and tobacco store shall verify that the patron requesting such product is of legal age to purchase said items. The vape and tobacco store and its employees shall not allow patrons who are not of lawful age to purchase such items to enter into the area behind the sales counter where regulated products are displayed or stored.

**Secs. 26-351 – 26-399. Reserved.**

**Section 2.**

This Ordinance shall be effective upon the posting of this Ordinance in two (2) public places in the City of Dalton for five (5) consecutive days following its enactment by the Mayor and Council, the public health, safety, and welfare requiring it.

**Section 3.**

All ordinances and parts of ordinances in conflict with this ordinance are repealed.

**Section 4.**

It is hereby declared to be the intention of the Mayor and Council of the City of Dalton that the section, paragraphs, sentences, clauses and phrases of this Ordinance are severable and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or otherwise invalid by a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance.

**SO ORDAINED** this \_\_\_\_ day of \_\_\_\_\_, 2026.

The foregoing Ordinance received its first reading on \_\_\_\_\_ and a second reading on \_\_\_\_\_. Upon second reading a motion for passage of the ordinance was made by Councilmember \_\_\_\_\_, second by Councilmember \_\_\_\_\_ and upon the question the vote is \_\_\_\_ ayes, \_\_\_\_ nays and the Ordinance is adopted.

\_\_\_\_\_  
MAYOR/MAYOR PRO TEM

ATTEST:

\_\_\_\_\_  
CITY CLERK



# CITY COUNCIL AGENDA REQUEST

## MEETING TYPE

Mayor & Council Meeting

## MEETING DATE

3/16/2026

## AGENDA ITEM

Resolution 26-06 A Resolution to Authorize Participation in Opioid Settlement Agreement

## DEPARTMENT

Administration

REQUESTED BY Andrew Parker

## REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

## COST

N/A

## FUNDING SOURCE IF NOT IN BUDGET

N/A

## PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

Resolution 26-06 A Resolution to Authorize Participation in Opioid Settlement Agreement with Associated Pharmacies, Inc. (and American Associated Pharmacies); JM Smith Corporation, Louisiana Wholesale Drug Company, Inc., Morris and Dickson Co., North Carolina Mutual Wholesale Drug Company, Inc., and United Natural Foods (SuperValu and Advantage Logistics) concerning alleged misconduct related to opioids.

## PHONE

706-278-9500

## WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

## ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

## RESOLUTION 26-06

### A RESOLUTION TO AUTHORIZE PARTICIPATION IN OPIOID SETTLEMENT AGREEMENT

**WHEREAS**, A proposed nationwide settlement agreement (“Settlement Agreement”) has been reached with Associated Pharmacies, Inc. (and American Associated Pharmacies); J M Smith Corporation; Louisiana Wholesale Drug Company, Inc.; Morris and Dickson Co.; North Carolina Mutual Wholesale Drug Company, Inc.; and United Natural Foods, Inc. (including its subsidiaries SuperValu and Advantage Logistics) (“Remnant Defendants”) concerning alleged misconduct related to opioids;

**WHEREAS**, the details of said settlement may be reviewed at <https://nationalopioidsettlement.com/remnant-settlements/>;

**WHEREAS**, the Settlement Agreement provides participants with funds to be used for the purpose of mitigating the effects of opioid abuse in their respective communities;

**WHEREAS**, it appears in the best interests of the City of Dalton to participate in the Settlement Agreement and receive and use settlement funds for the purpose of mitigating the effects of opioid abuse in this community;

**NOW THEREFORE BE IT RESOLVED**, that the Mayor and Council of the City of Dalton hereby authorize the City of Dalton to participate in the Settlement Agreement;

**BE IT FURTHER RESOLVED**, that the City Administrator and Chief Financial Officer of the City of Dalton are hereby authorized to execute all documents as may be required to opt in to the Settlement Agreement;

**BE IT FURTHER RESOLVED**, that the City Administrator and Chief Financial Officer of the City of Dalton be, and hereby are, authorized and empowered to take other such actions and to execute for and on behalf of the City any other such documents in connection with said transaction, including the filing of any required reports, along with such other documents, instruments, certificates, assignments, and papers which, in the judgment of the City Administrator or Chief Financial Officer, may be necessary and desirable to effect the proposed transaction. Such agreements, instruments, certificates, assignments, papers and/or documents shall be in such form and contain such terms and conditions as may be approved by the City Administrator and Chief Financial Officer on behalf of the City in accordance with this Resolution, and the execution of such agreements, instruments, certificates, assignments, papers, and documents by the City Administrator or Chief Financial Officer on behalf of the City are herein authorized and shall be conclusive evidence of any such approval.

**BE IT FURTHER RESOLVED**, that all acts and doings of the City Administrator and Chief Financial Officer in connection with the proposed transaction which are in conformity with the purposes and intents of these Resolutions and in furtherance of the transaction contemplated hereby and thereby shall be, and the same hereby are, in all respects approved and confirmed.

**BE IT FURTHER RESOLVED**, that the signature of the City Administrator and Chief Financial Officer to any of the consents, agreements, instruments, certificates, assignments, papers, and documents executed and delivered in connection therewith shall be conclusive evidence of the authority of the same to execute and deliver such consents, agreements, instruments, certificates, assignments, papers, and other documents on behalf of the City.

**BE IT FURTHER RESOLVED**, that the Clerk or any Assistant Clerk of the City of Dalton be, and each hereby is, authorized to attest the signature of any officer of the City of Dalton and impress or attest the City of Dalton's seal appearing on any agreement, instrument, certificate, financing statement, assignment, paper or document executed in connection with any of the foregoing Resolutions, but shall not be obligated to do so, and the absence of the signature of the Clerk or any Assistant Clerk of the City or the City's seal on any such document shall not affect its validity or the obligation of the Mayor and Council thereunder.

**BE IT FURTHER RESOLVED**, that all resolutions or parts thereof of the City of Dalton in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed;

**BE IT FURTHER RESOLVED**, that these Resolutions shall take effect immediately upon their adoption.

**SO RESOLVED**, this \_\_\_\_ day of \_\_\_\_\_, 2026.

**CITY OF DALTON, GEORGIA**

\_\_\_\_\_  
Mayor/Mayor Pro Tem

ATTESTED TO:

\_\_\_\_\_  
City Clerk



# CITY COUNCIL AGENDA REQUEST

## MEETING TYPE

Mayor & Council Meeting

## MEETING DATE

3/16/2026

## AGENDA ITEM

Resolution 26-08 – Municipal Property Easement Authorization

## DEPARTMENT

City Administration

## REQUESTED BY

City Attorney – Jonathan Bledsoe

## REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

## COST

N/A

## FUNDING SOURCE IF NOT IN BUDGET

N/A

## PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

Resolution 26-08 – Resolution authorizing municipal property easement for Mountain Ridge Baptist Church (MRBC).

### PHONE

706-278-9500

### WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

### ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

## **RESOLUTION 26-08**

### **RESOLUTION AUTHORIZING MUNICIPAL PROPERTY EASEMENT**

**WHEREAS**, Mountain Ridge Baptist Church (“MRBC”) owns certain real property upon which a cemetery is located, which is more particularly described as follows:

All that tract or parcel of land lying and being in Land Lot No 49 in the 13th District and 3rd Section of Whitfield County, Georgia, and being more particularly described according to a plat of survey prepared for DHLW LLC by Adam Thomas Bratton, Georgia Registered Land Surveyor No. 3489, dated January 6, 2026, and being more particularly described according to said survey as follows:

BEGINNING at an iron pin at the northwest corner of said Land Lot No. 49; thence south 01 degrees 36 minutes 07 seconds east, along the west line of said Land Lot No. 49, a distance of 210.23 feet to an iron pin; thence south 89 degrees 45 minutes 17 seconds east a distance of 210.03 feet to an iron pin; thence north 01 degrees 40 minutes 03 seconds west 209.91 feet to an iron pin; thence north 89 degrees 40 minutes 00 seconds west, along the north line of said Land Lot No. 49, a distance of 209.80 feet to an iron pin which is THE POINT OF BEGINNING.

For prior title see Deed Book I Page 325, Whitfield County Georgia Land Records.

(the “Cemetery”); and

**WHEREAS**, the City of Dalton, Georgia, an incorporated municipality of the State of Georgia (the “City”), owns certain real property (“City Property”) adjacent to the Cemetery; and

**WHEREAS**, MRBC has an implied easement for ingress and egress to the Cemetery;

**WHEREAS**, MRBC and the City have determined that it is in the best interests of each party to define the easement and specifically locate the access to the Cemetery by written agreement in the form of Exhibit 1 hereto (“Easement Agreement”);

**NOW, THEREFORE, BE IT RESOLVED**, that the City is hereby authorized to convey the easement rights as set forth in the Easement Agreement and to execute the same, subject to satisfaction of certain statutory formalities for effectuation of such transaction.

**BE IT FURTHER RESOLVED**, that the Mayor of the City of Dalton be, and she hereby is, authorized and empowered to take such action and to execute for and on behalf of the City the Easement Agreement and such other documents, instruments, and papers which, in the judgment of the Mayor, may be necessary and desirable to effect the proposed transaction. Such agreements, instruments, papers and/or documents shall be in such form and contain such terms and conditions as may be approved by the Mayor on behalf of the City in accordance with this Resolution, and the execution of such agreements, instruments, papers, and documents by the Mayor on behalf of the City is herein authorized and shall be conclusive evidence of any such approval.

**BE IT FURTHER RESOLVED**, that all acts and doings of the Mayor in connection with the proposed transaction which are in conformity with the purposes and intents of these Resolutions and in furtherance of the transaction contemplated hereby and thereby shall be, and the same hereby are, in all respects approved and confirmed.

**BE IT FURTHER RESOLVED**, that the signature of the Mayor to any of the consents, agreements, instruments, papers, and documents executed and delivered in connection therewith shall be conclusive evidence of the authority of the Mayor to execute and deliver such consents, agreements, instruments, papers, and other documents on behalf of the City.

**BE IT FURTHER RESOLVED**, that the Clerk or any Assistant Clerk of the City of Dalton be, and each hereby is, authorized to attest the signature of any officer of the City of Dalton and impress or attest the City of Dalton's seal appearing on the Easement Agreement, any agreement, instrument, paper or document executed in connection with any of the foregoing Resolutions, but shall not be obligated to do so, and the absence of the signature of the Clerk or any Assistant Clerk of the City or the City's seal on any such document shall not affect its validity or the obligation of the Mayor and Council thereunder.

**BE IT FURTHER RESOLVED**, that all resolutions or parts thereof of the City of Dalton in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**BE IT FURTHER RESOLVED**, that these Resolutions shall take effect immediately upon their adoption.

**SO RESOLVED**, this \_\_\_\_ day of \_\_\_\_\_, 2026.

**CITY OF DALTON, GEORGIA**

\_\_\_\_\_  
Mayor/Mayor Pro Tempore

ATTESTED TO:

\_\_\_\_\_  
City Clerk

**EXHIBIT "1"**

**Easement Agreement**

See attached.

[Space above this line for recording data.]

Please Record and Return To:

J. Tom Minor, IV  
The Minor Firm  
P.O. Box 2586  
Dalton, GA 30722-2586

## AGREEMENT TO LOCATE EASEMENT

Georgia, Whitfield County

**THIS INDENTURE** made this \_\_\_\_\_ day of \_\_\_\_\_, 2026, between the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, Grantor, and **Charlie Mariney Jr., Steve Austin, Johnny Mills, Herman Williams, Tremayne Pender, Rodrick Cobbs, Chris Pender, Reuben Suttles Jr., Ben Bonds, Ladale Howell, Bernard Betton, James Copeland, Eli Ellington, and Reuben Suttles Sr.**, as Deacons of the Mountain Ridge Baptist Church, Grantee.

The words “Grantee” and “Grantor” whenever used herein shall include all individuals, corporations and any other persons or entities, and all the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and all those holding under either of them, and the pronouns used herein shall include, when appropriate, either gender and both singular and plural, and the grammatical construction of sentences shall conform thereto. If more than one party shall execute this deed each Grantor shall always be jointly and severally liable for the performance of every promise and agreement made herein.

### WITNESSETH:

**THAT THE GRANTEE** is the owner of a cemetery located in Whitfield County and being more particularly described in Exhibit “A” attached hereto (the “Cemetery”); and

**THAT THE GRANTEE** has an implied easement right of ingress and egress to and from the Cemetery and the parties desire to specifically locate the access to the Cemetery by written agreement;

**NOW THEREFORE**, for and in consideration of Grantee releasing its implied rights of ingress and egress across the property of Grantor in exchange for an express grant of easement to and from the Cemetery, and the sum of **TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATIONS**, in hand paid at and before the sealing and delivering of these presents, the receipt of

which is hereby acknowledged, has bargained and sold, and by these presents does grant, bargain, sell and convey unto the said Grantee, a perpetual easement, 20 feet in width, for the purpose of ingress and egress, over, through and across the following lands, to-wit:

All that tract or parcel of land lying and being in Land Lot No. 49 in the 13th District and 3rd Section of Whitfield County, Georgia, and being more particularly described according to a plat of survey prepared for DHLW LLC by Adam Thomas Bratton, Georgia Registered Land Surveyor No. 3489, dated January 6, 2026, and being more particularly described according to said survey as follows:

BEGINNING at an iron pin at the intersection of the southeast right of way line of the South Dalton Bypass (200' R/W) and the west line of said Land Lot No. 24; thence south 00 degrees 51 minutes 49 seconds west a distance of 86.38 feet; thence south 00 degrees 42 minutes 35 seconds west a distance of 49.85 feet to the TRUE POINT OF BEGINNING of the easement herein described; from the TRUE POINT OF BEGINNING thus established, thence north 56 degrees 33 minutes 15 seconds east a distance of 67.86 feet; thence north 53 degrees 44 minutes 08 seconds east a distance of 95.21 feet; thence north 19 degrees 10 minutes 49 seconds west a distance of 22.25 feet; thence north 60 degrees 46 minutes 54 seconds east, along the southeast right of way line of Howell Drive, a distance of 20.31 feet; thence south 19 degrees 10 minutes 49 seconds east a distance of 40.56 feet; thence south 53 degrees 44 minutes 08 seconds west a distance of 110.48 feet; thence south 56 degrees 33 minutes 15 seconds west a distance of 57.75 feet; thence south 00 degrees 41 minutes 04 seconds west a distance of 24.72 feet; thence north 89 degrees 40 minutes 00 seconds west, along the south line of said Land Lot No. 24, a distance of 20.01 feet; thence north 00 degrees 42 minutes 35 seconds east, along the west line of said Land Lot 24, a distance of 35.45 feet, to the POINT OF BEGINNING.

**TO HAVE AND TO HOLD** the said tract of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in any wise appertaining, to the only proper use, benefit and behoof of the said Grantee forever. The said Grantor will warrant and forever defend the right and title to the above-described property unto the said Grantee against the lawful claims of all persons.

**IN WITNESS WHEREOF**, this easement has been duly executed and sealed by Grantor the day and year first above written.

Signed, sealed and delivered  
In the presence of:

**City of Dalton**

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_ (Seal)  
Mayor

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_ (Seal)  
Clerk

My commission expires:

[Notarial Seal]

[Seal]

## **EXHIBIT "A"**

All that tract or parcel of land lying and being in Land Lot No 49 in the 13th District and 3rd Section of Whitfield County, Georgia, and being more particularly described according to a plat of survey prepared for DHLW LLC by Adam Thomas Bratton, Georgia Registered Land Surveyor No. 3489, dated January 6, 2026, and being more particularly described according to said survey as follows:

BEGINNING at an iron pin at the northwest corner of said Land Lot No. 49; thence south 01 degrees 36 minutes 07 seconds east, along the west line of said Land Lot No. 49, a distance of 210.23 feet to an iron pin; thence south 89 degrees 45 minutes 17 seconds east a distance of 210.03 feet to an iron pin; thence north 01 degrees 40 minutes 03 seconds west 209.91 feet to an iron pin; thence north 89 degrees 40 minutes 00 seconds west, along the north line of said Land Lot No. 49, a distance of 209.80 feet to an iron pin which is THE POINT OF BEGINNING.

For prior title see Deed Book I Page 325, Whitfield County Georgia Land Records.





# CITY COUNCIL AGENDA REQUEST

## MEETING TYPE

Mayor & Council Meeting

## MEETING DATE

3/16/2026

## AGENDA ITEM

Landlord's Consent to Assignment and Assumption of Easement Agreement with Cellco Partnership d/b/a Verizon Wireless and The Towers, LLC

## DEPARTMENT

Administration

## REQUESTED BY

Andrew Parker

## REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

## COST

N/A

## FUNDING SOURCE IF NOT IN BUDGET

N/A

## PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

Landlord's Consent to Assignment and Assumption of Easement Agreement Located at Raisin Way (Parcel 12-128-01-000) With Cellco Partnership D/B/A Verizon Wireless and The Towers, LLC

### PHONE

706-278-9500

### WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

### ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

**LANDLORD’S CONSENT TO ASSIGNMENT  
AND ASSUMPTION OF EASEMENT AGREEMENT**

The undersigned (“Landlord”) is the owner of the property located at Raisin Way, Dalton, Georgia Parcel 12 128 01 000 (the “Property”).

Landlord and Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) entered into that certain Easement Agreement dated May 15, 2025 (the “Easement Agreement”). Verizon Wireless desires to assign its rights and obligations under the Easement Agreement to The Towers, LLC, which intends to assume all such rights and obligations under the Easement Agreement (“Assignment”). The Towers, LLC shall be considered the grantee under the Easement Agreement. By signing below, Landlord consents to the Assignment of the Easement Agreement, provided that The Towers, LLC assumes all obligations of Assignor pursuant to the Easement Agreement.

**LANDLORD:**

**The City of Dalton, Georgia**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# CITY COUNCIL AGENDA REQUEST

## MEETING TYPE

Mayor & Council Meeting

## MEETING DATE

3/16/2026

## AGENDA ITEM

Agreement for the Development of Real Estate between Blackthorn House, LLC, the City of Dalton and Charles Whitener

## DEPARTMENT

Administration

## REQUESTED BY

Andrew Parker

## REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

## COST

N/A

## FUNDING SOURCE IF NOT IN BUDGET

N/A

## PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

Agreement for the Development of Real Estate to construct a road on certain real property owned by the City, which may be extended onto the Blackthorn Property for the purpose of providing access to the public right of way to residential or commercial lots on the Blackthorn Property.

### PHONE

706-278-9500

### WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

### ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

## **AGREEMENT FOR THE DEVELOPMENT OF REAL ESTATE**

**This Agreement for the Development of Real Estate** (this “Agreement”) is made and entered into this \_\_\_\_\_ day of February, 2026, by and between **Blackthorn House, LLC**, a Georgia limited liability company (hereinafter called “Blackthorn”), the **City of Dalton, Georgia**, a Georgia municipal corporation (hereinafter called “City”) and **Charles Whitener**, an individual and resident of Walker County, Georgia (hereinafter called “Guarantor”).

### **WITNESSETH:**

**WHEREAS**, Blackthorn is the owner of certain real property, which real property is more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Blackthorn Property”); and

**WHEREAS**, Blackthorn owns the Blackthorn Property for the purpose of development into a mixed-use development to residential and commercial properties; and

**WHEREAS**, Blackthorn is in the business of land development and construction and is agreeable to develop the Property; and

**WHEREAS**, Blackthorn has obtained a preliminary site plan prepared by Goodwyn, Mills, Cawood dated April 30, 2025 which is incorporated into a concept plan of Kimley-Horn and Associates, Inc. dated October 22, 2025 (hereinafter the “Site Plan”); and

**WHEREAS**, the City presently owns the right of access from the North Dalton Bypass to the Dalton Utilities facility at the base of the Haig Mill Dam (the “Current Access Point”);

**WHEREAS**, the City has agreed to allow Blackthorn to construct a road (the “Roadway”) on certain real property owned by the City and more particularly described in Exhibit “B” attached hereto and made a part hereof (the “City Property”), in accordance with the terms and conditions hereinafter set forth, which Roadway may be extended onto the Blackthorn Property for the purpose of providing access to the public right of way to residential or commercial lots on the Blackthorn Property;

**NOW, THEREFORE**, for and in consideration of the above-recited premises, the mutual covenants and agreements hereinafter set forth, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

#### **1. Right to Develop.**

1.1 During the term of this Agreement Blackthorn is authorized to develop the Roadway across the City Property and to develop the Blackthorn Property to access into a mixed use development to be developed on the Blackthorn Property, and in connection therewith Blackthorn is authorized to enter the City Property for the purpose of the construction the Roadway, including above ground utilities, below ground utilities, all work contemplated by the Site Plan and this Agreement, and all other ancillary work necessary for the development of the Property (the “Development Work”). Following completion of all obligations set forth in this Agreement, the Roadway will be dedicated as a public right of way.

1.2 During the term of this Agreement, Blackthorn, at its sole expense, shall perform all actions required for the Development Work including but not limited to all surveying, plotting, grading,

curbing and guttering, obtaining all licensing, obtaining all zoning changes and variances, and obtaining any other consents and approvals required in connection with the Development Work.

1.3 During the term of this Agreement, Blackthorn and Blackthorn's agents and designees shall have the right to enter the City Property at reasonable times to complete the Development Work. Blackthorn shall indemnify and hold the City harmless from and against any and all liabilities, damages, losses, costs and expenses (including attorney's fees) suffered, incurred or sustained by the City as a direct result of the entry by Blackthorn or Blackthorn's agents and designees onto the City Property or the activities of such parties on or around the City Property.

1.4 During the term of this Agreement, Blackthorn is authorized to market and advertise lots within the Blackthorn Property for sale in any media of Blackthorn's choosing, including the internet and multiple listing services.

**2. Blackthorn's Duties.** Blackthorn shall perform the following duties and all Blackthorn's duties and obligations hereunder shall be diligently performed in good faith in a commercially reasonable manner.

2.1 Blackthorn shall comply with all applicable laws and regulations in performing its duties hereunder and shall supervise and direct the Development Work and shall provide and pay for all labor, materials, equipment, tools, construction equipment, machinery, water, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Development Work, the construction of the Roadway, and all other work contemplated by this Agreement. Blackthorn shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Development Work and any other work contemplated by this Agreement. Blackthorn shall provide proof of upon request and pay for permits and licenses, labor, equipment, tools, construction equipment and machinery, heat, transportation and other facilities and services necessary for the proper execution and completion of the Development Work.

2.2 Blackthorn shall construct the Roadway consistent with the Site Plan and in accordance with all specifications containing the Municipal Code for the City of Dalton including a one-year warranty for the construction of the Roadway from the time of its completion.

2.3 Blackthorn shall relocate the portion of the Haig Mill Trail that will be impacted by the Roadway to other areas consistent with the Site Plan and shall perform such work such that the public will have continuous access (during the normal hours of operation) to the Haig Mill Trail and so that access to the Haig Mill Trail is continuously open to the public.

2.4 Blackthorn shall construct a new trail head, parking lot, handicap ramps, and related work consistent with the Site Plan. All such work shall include a one-year warranty.

2.5 Blackthorn shall work with Dalton Utilities to relocate any affected utilities and shall pay to Dalton Utilities any and all costs of the relocation of any utility lines, pipes or other infrastructure. Blackthorn shall work with Dalton Utilities to relocate a certain motorized gate located on the existing access road leading from the Current Access Point, and any other related costs to a new access roadway that will provide convenient access to Dalton Utilities facilities consistent with the Site Plan. Blackthorn shall grant any additional temporary and permanent easements which may be required by Dalton Utilities in connection with this Agreement.

2.6 The City shall apply for the new access permit from the DOT consistent with the Site Plan for a new access point ("New Access Point"), and Blackthorn shall construct any deceleration lanes, traffic signaling, traffic lights and other traffic controls in connection therewith. Blackthorn shall be

responsible for all fees and costs associated with applying for the new access permit and being granted the New Access Point, including but not limited to the cost to purchase any property interest or access rights required by the DOT or otherwise to complete the New Access Point even if such property interests to be acquired are greater than the Current Access Point. Any funds which the City is required to pay as a result of the transactions set forth in this Agreement, including any funds required to be remitted to the DOT, shall be paid by Blackthorn to the City in advance of the City's obligation to remit such funds to the DOT or other third parties. The City shall issue an invoice to Blackthorn for any such fees and costs which shall be due and payable immediately.

2.7 Blackthorn shall pay all costs and expenses in connection with the Roadway, the Development Work and any other costs incurred in connection with this Agreement, including any work performed on the City Property and the Blackthorn Property, and will pay all expenses in connection therewith and handling its own administrative matters regarding its own employees, materials, equipment, third-party contracts, and such miscellaneous items. For avoidance of doubt, the City shall bear no expenses for any of the Development Work.

2.8 Blackthorn will reimburse the City for all attorney's fees, costs, and expenses incurred in connection with the transaction, including but not limited to such fees and costs associated with consideration of the Site Plan, due diligence, title searches, negotiation with the Georgia Department of Transportation (the "DOT"), and any other costs of any kind or nature associated with the transaction, up to \$15,000.00.

2.9 Blackthorn or its agent shall furnish the City with a performance bond and a payment bond, each in the amount of one hundred twenty percent (120%) of the good-faith estimated value of the Development Work as estimated by a licensed professional engineer in the state of Georgia agreed upon by the parties, which shall guarantee complete compliance by Blackthorn with the terms and conditions of this Agreement and the faithful performance of all required obligations hereunder. If the parties cannot agree on an engineer to provide this estimate, the City and Blackthorn shall each choose an engineer with such qualifications to provide a good faith estimate of the Development Work, and one hundred twenty percent (120%) of the average value of such estimates shall be the value required for each bond. Bonds may be in the form of surety bonds, cash, cashier's or certified check, money order, assignment of surety, irrevocable letters of credit, or other securities as determined acceptable by the City. Surety bonds must be written by a surety company authorized to do business in the State of Georgia, on a form provided by the City. Bonds will be retained for one year after the completion of the Development Work.

2.10 At the completion of the Development Work, or at the end of the term of this Agreement, whichever is first to occur:

(A) Blackthorn shall remove all materials and rubbish from and about the City Property and the Blackthorn Property, as well as all tools, construction equipment and machinery.

(B) Blackthorn shall donate to the City a portion of the Blackthorn Property located within the boundaries of the existing fencing at no cost to the City. Blackthorn agrees to obtain at its sole cost and expense a survey within 60 days from the date of this Agreement, said survey to be performed by a licensed Georgia surveyor which survey locates the line of the existing fencing along the northwest portion of the Blackthorn Property. Blackthorn agrees to convey the area between the existing fencing as surveyed and the westerly line of the existing Blackthorn Property to the City by warranty deed, free and clear of all liens and other encumbrances at no cost to the City.

**3. The City's Duties.** At the completion of the Development Work, and provided that the Development Work is completed in accordance with the terms of this Agreement and that the New

Access Point is granted by the DOT, the City shall be responsible for completing the items in subsections 3.1 and 3.2 below:

3.1 The City shall relinquish its access rights to the Current Access Point by granting to DOT the necessary documents required by DOT to release the City's access rights.

3.2 The City will cooperate with Blackthorn to obtain from DOT any curb cut, access point and general access point in order to facilitate the construction of and the access of the Roadway to the North Bypass.

3.3 The City shall have no duty to develop any property nor to assist with the Development Work in any way.

3.4 The City shall not be liable for any incidental damages or consequential damages arising out of or in any way related to this Agreement. The parties further specifically acknowledge and agree that Georgia law restricts the City's ability to bind a future Mayor and Council, and the City has no control over whether the DOT grants the New Access Point. Therefore, the City's liability pursuant to this Agreement shall not exceed the total collective sum of one thousand dollars (\$1,000.00), notwithstanding any claim asserted against the City or party asserting such claim.

**4. Nature of Relationship.** This Agreement does not create a fiduciary or other special relationship between the Parties or constitute a partnership or joint venture between the parties. The parties agree that Blackthorn is an independent contractor with entire, control and direction of the development, marketing, and sale of the Blackthorn Property, subject only to the conditions and covenants established by this Agreement. The sole relationship between the Parties is a commercial arms' length business relationship and there are no third-party beneficiaries.

**5. Insurance.**

5.1 During the term of this Agreement, Blackthorn shall keep in effect, at its sole expense, satisfactory comprehensive general, public liability and property damage insurance covering the City Property and providing coverage with maximum limits of liability of not less than \$1,000,000 for bodily injury to one person, \$2,000,000 for bodily injury to any group of persons as a result of one accident, and \$1,000,000 for property damage.

5.2 During the term of this Agreement, Blackthorn shall keep in effect, at its sole expense, satisfactory worker's compensation insurance coverage.

5.3 The policies required by Sections 5.1 and 5.2 shall name the City as an additional insured and shall contain an agreement by the insurer that it will provide not less than thirty (30) days' prior written notice of any cancellation of the policy to the City and that any loss otherwise payable under the policy shall be payable notwithstanding any act or negligence of the City that might, absent such agreement, result in a forfeiture of all or a part of the insurance payment.

5.4 At the commencement of the term of this Agreement, Blackthorn shall deliver to the City certificates of the insurance required to be maintained under this Section. Blackthorn shall also deliver to the City not more than thirty (30) days prior to the expiration date of such policy or policies (or of any renewal policy or policies), certificates for the renewal policy of this insurance.

5.5 Should Blackthorn fail to effect, maintain or renew any insurance provided for in this Section, or to pay the premium therefor, or to deliver to the City any of such certificates, then and in any

of said events the City, at its option, but without obligation to do so, may procure such insurance. Any sums expended by the City to procure any such insurance shall be paid by Blackthorn to the City within ten (10) days following the receipt of a written demand for payment thereof.

## **6. Indemnification and Ownership of Improvements.**

6.1 Blackthorn shall indemnify and hold harmless the City from and against all claims, damages, expenses, liabilities, actions, or causes of action of any kind or nature arising out of or related to this Agreement or the Development Work, including but not limited to breaches of Blackthorn's representations, warranties or covenants hereunder or from acts or failures to act occurring, or conditions existing, during the Term of this Agreement.

6.2 Any of the improvements constructed as a part of the Development Work or otherwise that are located on the City Property shall be owned by the City, irrespective of when such improvements were constructed and irrespective of whether or not this Agreement has been terminated.

7. **Liens.** Blackthorn shall promptly discharge, bond over, or otherwise satisfy any mechanics or materialmen's lien which has been filed against the City Property arising out of work done for, or materials furnished to the City Property or to Blackthorn, its contractors or subcontractors, and in no event within thirty (30) days following the of the filing of said lien, or if Blackthorn is contesting any such lien or the claims on which it is based, Blackthorn shall have provided the City adequate assurances against loss or damage reasonably satisfactory to Blackthorn.

8. **Term.** At the option of the City, this Agreement shall terminate on the earlier of the following:

8.1 The first anniversary of the date of this Agreement;

8.2 The date Blackthorn breaches the terms of this Agreement; or

8.3 Upon the occurrence of any of the following events: (i) Blackthorn becomes insolvent or makes an assignment for the benefit of its creditors; or (ii) Blackthorn files, or has filed against it, any petition under any bankruptcy or similar laws which is not discharged within sixty (60) days of such filing; or (iii) a receiver shall be appointed for Blackthorn's business.

## **9. Guaranty.**

9.1 Guarantor hereby absolutely, unconditionally, and irrevocably jointly and severally guarantees to City the full and prompt payment of all sums and charges payable by Blackthorn under this Agreement (collectively, the "Payment Obligations") and hereby further guarantees the full and timely performance and observance of all of the covenants, terms conditions and agreements therein provided to be performed and observed by Blackthorn (the "Performance Obligations" and together with the Payment Obligations collectively, the "Obligations"). In the event of a default under this Agreement, Guarantor hereby covenants and agrees with the City: (i) to make the due and full punctual payment of all Payment Obligations payable by Blackthorn under this Agreement; (ii) to effect prompt and complete performance of all and each of the Performance Obligations, contained in this Agreement on the part of Blackthorn to be kept, observed and performed; and (iii) to indemnify and save harmless the City from any loss, costs or damages arising out of any failure by Blackthorn to pay or perform any Obligation including, without limitation, attorneys' fees and costs of collection. The guaranty in this section of this Agreement (the "Guaranty") is a continuing guaranty of payment and performance and is not conditional or contingent upon any attempt to collect from the City or upon any other condition or contingency.

9.2 Guarantor hereby expressly waives: (a) any right of setoff, counterclaim or deduction against amounts due under this Guaranty; (b) notice of the acceptance of this Guaranty and notice of default of the City under this Agreement; and (c) the right to interpose all substantive and procedural defenses of the law of guaranty, indemnification and suretyship, except the defenses of prior payment or prior performance.

9.3 Without limiting the generality of the foregoing, the liability of Guarantor under this Guaranty shall not be deemed to have been waived, released, discharged, impaired or affected by: (a) reason of any waiver or failure to enforce or delay in enforcing any of the Obligations, or (b) the granting of any indulgence or extension of time to the City, or (c) the assignment of this Agreement, with or without Blackthorn's consent, or (d) the expiration of the term of this Agreement, or (e) any merger or reorganization or the release or discharge of Blackthorn in any voluntary or involuntary receivership, bankruptcy, winding-up or other creditors' proceedings, or (f) the rejection, disaffirmance or disclaimer of this Agreement by any party in any action or proceeding, or (g) any defect or invalidity of this Agreement.

9.4 The liability of Guarantor under this Guaranty shall not be released by any modification or amendment to this Agreement (including any extension or renewal of the term of this Agreement), and in the case of any such modification, the liability of Guarantor shall be modified in accordance with the term of any such modification of this Agreement.

9.5 Guarantor shall pay Lessor's reasonable attorneys' fees and all costs and other expenses incurred in any collection or attempted collection of this Guaranty or in any negotiations relative to the Obligations guaranteed under this Guaranty whether or not a lawsuit is commenced. All rights and remedies of Lessor under this Guaranty shall be cumulative and may be exercised singly or concurrently.

9.6 This Guaranty shall remain in full force and effect until the payment or performance of all Obligations and the other amounts payable under this Guaranty (whether or not this Agreement shall have been terminated). Until the payment and performance of all Obligations and the amounts payable under this Guaranty, Guarantor:

(A) Shall have no right of subrogation against the City by reason of any payments or acts of performance by the Guarantor in compliance with the obligations of the Guarantor under this Guaranty;

(B) Waives any right to enforce any remedy which Guarantor now or hereafter shall have against the City by reason of any one or more payments or acts of performance in compliance with the obligations of Guarantor under this Guaranty; and

(C) Subordinates any liability or indebtedness of the City now or hereafter held by Guarantor to the obligations of the City to Blackthorn under this Agreement.

## **10. Miscellaneous.**

10.1 This Agreement may be executed in multiple counterparts each of which may be deemed an original.

10.2 This Agreement and all rights, remedies, obligations and liabilities arising hereunder or by reason hereof shall not be assignable by any party hereto without the prior written consent of the other party hereto. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns. Except as expressly provided in this Agreement, nothing herein is intended to imply nor shall confer on any person other than the parties

hereto, and their respective heirs, legal representatives, successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

10.3 This Agreement shall be deemed to be made in and shall be construed by the Laws of the State of Georgia.

10.4 The terms of this Agreement may be amended, modified or eliminated, and the observance or performance of any term, covenant, condition or provision herein may be omitted or waived (either generally or in a particular instance and either prospectively or retroactively) only by the written consents of all parties hereto. No omission or waiver shall be deemed to excuse any future observance or performance or to constitute an amendment, modification or elimination unless it expressly so states. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

10.5 Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

10.6 Handwritten signatures to this Agreement transmitted by telecopy or electronic transmission (for example, through the use of a Portable Document Format or "PDF" file) shall be valid and effective to bind the parties so signing. It is expressly agreed that each party to this Agreement shall be bound by its own telecopied or electronically transmitted handwritten signature and shall accept the telecopy or electronically transmitted handwritten signature of the other party to this Agreement. The parties hereto agree that the use of telecopied or electronic signatures for the execution of this Agreement shall be legal and binding and shall have the same full force and effect as if originally signed.

10.7 All notices, demands, consents, approvals, and other requests which may be given or which are required to be given by either party to the other (each a "Notice") shall be in writing and may be: (A) hand delivered, (B) delivered by way of overnight delivery service (such as Federal Express Corporation or United Parcel Service, or other nationally recognized overnight courier service with confirmation of delivery), or (C) transmitted via electronic mail provided that the sender must obtain a written confirmation of receipt by way of electronic confirmation showing the date and time of the transmission. In the event Notice is provided by electronic mail a copy of the Notice must also be delivered the next day by method (A) or (B) above. Notices cannot be given through the United States Postal Service or by mail under any means. All Notices shall be deemed effective either: (A) upon delivery if hand delivered, as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed; (B) on the day deposited into the custody of a nationally recognized overnight delivery service for overnight next day delivery, addressed to such party at the address indicated herein; or (C) the date of the receipt of a confirmation of electronic mail is received by the sender if a confirmation of receipt is received by the sender. Refusal to accept, or inability to deliver because of changed address of which no notice was given, shall be deemed receipt on the date of such refusal of delivery or inability to deliver. Either party may, from time to time, change the address to which Notices shall be sent by like Notice given to the other party hereto, except that no party may change its address to other than a street address. Any Notice given that does not conform to this paragraph shall be effective only upon receipt.

(A) If to Blackthorn, to:  
  
Thomas C. Causby  
P.O. Box 488  
Dalton, GA 30722-0488  
[tom@causbyfirm.com](mailto:tom@causbyfirm.com)

(B) If to City, to:  
  
Andrew Parker, City Administrator  
Dalton City Hall  
300 West Waugh Street  
Dalton, Georgia 30720

10.8 Time is of the essence of each and every provision of this Agreement.

10.9 Each Party acknowledges that it has had full opportunity to seek separate legal counsel in order to prepare, review, be advised, execute, and consummate this Agreement.

10.10 The sections and other headings contained in this Agreement are for reference purposes only and shall not be deemed to be part of this Agreement, or to affect the meaning or interpretation of this Agreement.

10.11 Wherever any words are used herein in the masculine gender they shall be construed as though they were also used in the feminine and neuter gender in all cases where they would so apply, and wherever any words are used herein in the singular form they shall be construed as though they were also used in the plural form in all cases where they would so apply.

10.12 This Agreement and any other agreement contemplated hereby supersede all prior negotiations, agreements, and understandings between the parties with respect to the subject matter hereof and thereof, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof.

10.13 The agreements, indemnities, representations and warranties set forth in this Agreement shall survive the consummation of the purchase and sale of the Lots on the Closing Dates.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year above written.

**Blackthorn House, LLC**

By:  \_\_\_\_\_ (Seal)  
Title: Managing Member

**City of Dalton, Georgia**

By: \_\_\_\_\_ (Seal)  
Title:

 \_\_\_\_\_ (Seal)  
**Charles Whitener**

## EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lot No. 144 in the 12th District and 3rd Section of Whitfield County, Georgia containing 54.28 acres of land, more or less, and being more particularly described according to a plat of survey prepared by Hopkins Surveying Group, Drawing No. 2015-56-2, dated May 20, 2015, and being more particularly described as follows:

BEGINNING at an iron pin located at the northwest corner of said Land Lot No. 144; thence south 84 degrees 54 minutes 38 seconds east, along said Land Lot line, a distance of 855.22 feet to an iron pin; thence south 15 degrees 28 minutes 50 seconds west a distance of 275.01 feet to an iron pin; thence south 35 degrees 34 minutes 59 seconds east, a distance of 1,601.76 feet to an iron pin; thence with a curve to the left having a radius of 139.15 feet and an arc length of 183.83 feet with a chord bearing of south 34 degrees 25 minutes 22 seconds east, a distance of 170.75 feet to an iron pin; thence south 86 degrees 57 minutes 28 seconds east a distance of 529.96 feet to an iron pin located in the west right of way line of Neely Road; thence along said right of way of Neely Road the following courses and distances: south 26 degrees 06 minutes 06 seconds east, 283.37 feet; south 08 degrees 57 minutes 31 seconds east, 130.67 feet; south 21 degrees 30 minutes 34 seconds west, 101.77 feet; and north 51 degrees 33 minutes 35 seconds west, 19.63 feet to a right of way monument on the north right of way of the North Dalton Bypass; thence along the north right of way line of the North Dalton Bypass the following courses and distances: north 85 degrees 14 minutes 04 seconds west, 251.21 feet to a right of way monument; north 45 degrees 01 minute 17 seconds west, 104.73 feet to a right of way monument; south 88 degrees 58 minutes 39 seconds west, 346.26 feet to a right of way monument; north 69 degrees 59 minutes 46 seconds west, 202.47 feet to a right of way monument; north 55 degrees 44 minutes 04 seconds west, 200.34 feet to a right of way monument; north 61 degrees 11 minutes 49 seconds west, 99.91 feet to a right of way monument; north 50 degrees 24 minutes 08 seconds west, 101.83 feet to a right of way monument; north 72 degrees 41 minutes 36 seconds west, 204.07 feet to a right of way monument; north 64 degrees 30 minutes 59 seconds west, 194.82 feet to a right of way monument; north 64 degrees 22 minutes 52 seconds west, 324.69 feet to a right of way monument; north 72 degrees 46 minutes 13 seconds west, 190.04 feet to a right of way monument; north 72 degrees 37 minutes 09 seconds west, 240.48 feet to a right of way monument; north 83 degrees 48 minutes 27 seconds west, 94.43 feet to a right of way monument; and south 70 degrees 39 minutes 36 seconds west; 46.43 feet to an iron pin found; thence leaving said right of way of North Dalton Bypass, north 00 degrees 55 minutes 24 seconds west, along the east property line of property owned by the City of Dalton, a distance of 1,487.10 feet to THE POINT OF BEGINNING.

## **EXHIBIT “B”**

All that tract or parcel of land lying and being in Land Lots Nos. 145 and 160 in the 12th District and 3rd Section of Whitfield County, Georgia, and being that part of said lots which are located north of the Western and Atlantic Railroad and the old right of way of the old highway where the same intersects with the Western and Atlantic Railroad, and being more particularly described as follows:

COMMENCING at the northwest corner of lands now or formerly owned by Hamilton where the same intersects the north side of Western and Atlantic Railroad, and running in a westward direction, along the north side of the Western and Atlantic Railroad, to where the old highway intersects with said railroad; thence following the old highway, with its meanderings, northward to the lands now or formerly owned by Hardwick and McCutchen; thence in a northern direction, along said lands to the lands now or formerly owned by Baker; thence in an eastern direction, along said lands, to the lands now or formerly owned by Hamilton; thence in a southern direction, along the said Hamilton lands to the point of beginning and containing 170 acres, more or less.

LESS AND EXCEPT from the above described property that property conveyed by Mrs. Lina Rogers to the State of Georgia for the use and benefit of the Western and Atlantic Railroad of record in Deed Book 100 Page 230, Whitfield County Land Records.

LESS AND EXCEPT that portion of the above described property condemned as right of way for the Dalton North By-Pass in Civil Action File No. 29,264 in the Superior Court of Whitfield County, Georgia; this conveyance being further subject to any easements and conditions placed upon the above described property by virtue of said condemnation proceeding.

LESS AND EXCEPT that portion of the above described property lying south of the property condemned as right of way for the Dalton North By-pass as shown in Civil Action File No. 29,264 in the Superior Court of Whitfield County, Georgia.



# CITY COUNCIL AGENDA REQUEST

## MEETING TYPE

Mayor & Council Meeting

## MEETING DATE

3/16/2025

## AGENDA ITEM

MOA – Army Corps of Engineers & The City of Dalton for the Replacement of Underwood St. Bridge

## DEPARTMENT

Public Works

## REQUESTED BY

Chad Townsend

## REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

## COST

N/A

## FUNDING SOURCE IF NOT IN BUDGET

N/A

## PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

This request is to approve the MOA with the Army Corps of Engineers that outlines the steps necessary for the approval to remove a dated bridge that qualifies to be historical in nature given its age. The bridge would need to be removed to improve flooding issues experienced on Underwood as well as removal of the safety concern given the delapidated state of the bridge.

### PHONE

706-278-9500

### WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

### ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

**MEMORANDUM OF AGREEMENT  
AMONG  
THE UNITED STATES ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,  
THE GEORGIA STATE HISTORIC PRESERVATION OFFICER,  
AND THE CITY OF DALTON  
REGARDING THE  
REPLACEMENT OF THE UNDERWOOD STREET BRIDGE  
WHITFIELD COUNTY, GEORGIA  
SAS 2024-00419  
HP-250430-003**

**WHEREAS**, the United States Army Corps of Engineers, Savannah District (USACE) has been delegated the responsibility of overseeing the implementation of Section 404 of the Clean Water Act (CWA) (33 United States Code (U.S.C.) 1344), and the authority to issue permits under this Act; and,

**WHEREAS**, the USACE issues permits under Section 404 of the CWA in accordance with regulations set forth in Title 33 Code and in accordance with regulations set forth in Title 33 Code of Federal Regulations (CFR) Parts 320-332; and,

**WHEREAS**, in accordance with the regulations at 33 CFR Parts 320-332, the USACE is responsible for considering effects of its permit actions on historic properties in the processing and issuance of permits under its authorities, as one of several public interest factors, and is further required to make its permit decisions consonant with other related Federal environmental laws, including the National Historic Preservation Act of 1966, as amended (NHPA; formerly 16 U.S.C. 470 et seq.; now 54 U.S.C. 300101 et seq.), especially Sections 106 (formerly 16 U.S.C. 470(f); now 54 U.S.C. 306108) and 110 (formerly 16 U.S.C. 470h-2; now 54 U.S.C. 306101 et seq.) and its implementing regulation, 36 CFR 800 of that Act; and,

**WHEREAS**, the heads of all Federal agencies are required to take into account the effects of their actions and decisions (i.e., undertakings) on historic properties listed in or eligible for inclusion in the National Register of Historic Places (NRHP) and to allow the Advisory Council on Historic Preservation (Council) a reasonable opportunity to comment on those effects, in accordance with Section 106 of the NHPA (54 U.S.C. 306108), as amended; and,

**WHEREAS**, the USACE is delegated the regulatory responsibility for implementing Sections 404 of the CWA within the geopolitical boundaries of the State of Georgia, and Section 106 for permit actions on which it is the Lead Federal agency, or the sole Federal agency; and,

**WHEREAS**, the Georgia Department of Community Affairs Historic Preservation Division, acting as the professional staff for the Georgia State Historic Preservation Officer (GA SHPO), advises Federal agencies in making determinations of eligibility for inclusion in the NRHP and on effects of the undertaking, and comments on those agencies' determinations; and,

**WHEREAS**, the City of Dalton plans to carry out the replacement of the Underwood Street Bridge pursuant to permitting under Section 404 of the CWA administered by the

USACE (undertaking); and,

**WHEREAS**, the undertaking consists of constructing a bridge to carry Underwood Street over Mill Creek, west of Bermuda Street and east of Beechland Circle in Dalton, Whitfield County, Georgia, including demolition of the circa (ca.) 1921 closed spandrel deck arch bridge and the contemporary abandoned bridge, replacing the historic bridge with a larger bridge; and,

**WHEREAS**, the USACE has defined the undertaking's Scope of Analysis (Scope) for the project as a 100-meter radius around the impacts to jurisdictional waters and further defined the Area of Potential Effects (APE). The APE consists of the 1000-foot-long project corridor, containing 5.27-acres and its immediate vicinity (viewshed); and,

**WHEREAS**, the USACE has determined that the undertaking will have an adverse effect on the ca. 1921 Underwood Street bridge, which is eligible under Criteria A, B, and C for listing in the NRHP; and,

**WHEREAS**, the City of Dalton is a consulting party as an applicant for federal permitting and is therefore an invited Signatory, pursuant to 36 CFR § 800.2(c)(4); and,

**WHEREAS**, the USACE has consulted with the Alabama-Quassarte Tribal Town, Alabama-Coushatta Tribe of Texas, Cherokee Nation, Coushatta Tribe of Louisiana, Eastern Band of Cherokee Indians, Kialegee Tribal Town, Seminole Nation of Oklahoma, Seminole Tribe of Florida, Muscogee Nation, Poarch Band of Creek Indians, Thlopthlocco Tribal Town, and the United Keetoowah Band of Cherokee Indians in Oklahoma, and none have requested to enter into this agreement as an invited Signatory/Concurring party; and,

**WHEREAS**, the USACE notified the following potential Consulting parties regarding the nature of the undertaking and informed those entities of our efforts to identify historic properties and were invited to participate in the Section 106 process: The Whitfield-Murray Historical Society and the Historic Bridge Foundation, and as a result of these efforts, both have elected not to participate; and,

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), the USACE has notified the Council of its adverse effect determination with specified documentation, and the Council has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii);

**NOW, THEREFORE**, the USACE, GA SHPO, and City of Dalton agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on the historic property.

## STIPULATIONS

The USACE shall ensure that the following measures are carried out by a person meeting the applicable Secretary of the Interior's (SOI) Professional Qualifications Standards pursuant to 36 CFR § 800.2 Section 112 (a) (1) (A):

### I. PHOTOGRAPHIC PERMANENT ARCHIVAL RECORD (PAR)

- A. Prior to commencing demolition of the Underwood Street bridge, digital photographs will be taken of the Underwood Street bridge including views of all elevations of the exterior, views of the interior public spaces and/or interior rooms, and structural and/or architectural/decorative detailing on both the exterior and interior of the building. Digital photographs showing the building within its setting will also be included.
- B. Utilizing the digital photographs, a photographic permanent archival record (PAR) will be produced in accordance with the *Guidelines for Establishing a Photographic Permanent Archival Record* (PAR Guidelines; Appendix A) found on SHPO's website (<https://dca.georgia.gov/document/resources/par-guidelines-2020/download>). The document will comply with the minimum level standards necessary for document retention at the SHPO. A digital draft copy of the PAR will be provided to SHPO for review/comment. The City of Dalton, will respond to SHPO comments regarding the draft PAR. After the draft has been revised, as applicable, a final archival copy of the PAR will be produced utilizing instructions provided in the PAR Guidelines document and will be provided to SHPO for retention.

### II. DURATION

This Memorandum of Agreement (MOA) will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, the USACE may consult with the other Signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VI below.

### III. POST-REVIEW DISCOVERIES

If the Undertaking's scope of work (SOW) changes after execution of this MOA, and/or if previously unknown properties are discovered as the undertaking is carried out that may be historically significant, and/or if unanticipated effects on historic properties are found, the City of Dalton will notify the USACE who will consult with the GA SHPO and all other applicable parties, including appropriate Indian tribes, to determine if additional impacts have or may occur. If the unanticipated discovery of human burials occurs, including burial features with no identifiable human remains, all work and ground disturbing activities within a 100-meter diameter of the burial shall immediately cease and the City of Dalton shall immediately notify the medical examiner, USACE, and City of Dalton within the same business day (8 hours). The USACE shall then notify the Office of the State Archaeologist and the GA SHPO. If the unanticipated discovery is determined to be Native American, in consultation with GA SHPO, the USACE will notify all concerned Tribal Historic Preservation Officers (THPO) within 48-

hours of the discovery. No photography of the human remains, burials or funerary objects is permitted. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the USACE may modify, suspend, or revoke the permit in accordance with 33 C.F.R. Part 325.7. The USACE, in consultation with the City of Dalton, GA SHPO, and THPO(s), shall develop a treatment and disposition plan. The USACE, in consultation with GA SHPO and the City of Dalton, will implement a discovery plan in accordance with applicable state and federal laws (36 C.F.R. Part 800.13; 43 C.F.R. Part 10, Subpart B; Official Code of Georgia (OCGA) 36-72; OCGA 44- 12-260, OCGA 31-21-6), if necessary. Undertaking activities shall not resume without written authorization from the State Archaeologist, the GA SHPO, and the USACE.

#### **IV. MONITORING AND REPORTING**

Following the execution of this MOA, the City of Dalton shall provide the USACE and the GA SHPO yearly updates that summarize all work undertaken pursuant to the terms of this MOA. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the City of Dalton's efforts to carry out the terms of this MOA.

#### **V. DISPUTE RESOLUTION**

Should any Signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the USACE shall consult with such party to resolve the objection. If the USACE determines that such objection cannot be resolved, the USACE will:

- A. Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the Council. The Council shall provide the USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories and concurring parties, and provide them with a copy of this written response. The USACE will then proceed according to its final decision.
- B. If the Council does not provide its advice regarding the dispute within the thirty (30)-days, the USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the Council with a copy of such written response.
- C. The USACE's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

#### **VI. AMENDMENTS**

This MOA may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the Council.

## **VII. TERMINATION**

If any Signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any Signatory may terminate the MOA upon written notification to the other Signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, the USACE must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the Council under 36 CFR § 800.7. The USACE shall notify the Signatories as to the course of action it will pursue.

Execution of this MOA by the USACE, GA SHPO, and City of Dalton, its filing with the Council, and implementation of its terms evidence that the USACE has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

**MEMORANDUM OF AGREEMENT  
AMONG  
THE UNITED STATES ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,  
THE GEORGIA STATE HISTORIC PRESERVATION OFFICER,  
AND THE CITY OF DALTON  
REGARDING THE  
REPLACEMENT OF THE UNDERWOOD STREET BRIDGE  
WHITFIELD COUNTY, GEORGIA  
SAS 2024-00419  
HP-250430-003**

**SIGNATORY:**

U.S. Army Corps of Engineers, Savannah District

\_\_\_\_\_  
Jason O’Kane, PMP Chief, Regulatory Division

Date \_\_\_\_\_

**MEMORANDUM OF AGREEMENT  
AMONG  
THE UNITED STATES ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,  
THE GEORGIA STATE HISTORIC PRESERVATION OFFICER,  
AND THE CITY OF DALTON  
REGARDING THE  
REPLACEMENT OF THE UNDERWOOD STREET BRIDGE  
WHITFIELD COUNTY, GEORGIA  
SAS 2024-00419  
HP-250430-003**

**SIGNATORY:**

Georgia State Historic Preservation Officer

\_\_\_\_\_ Date \_\_\_\_\_  
Jennifer Flood, Division Director, Deputy State Historic Preservation Officer

**MEMORANDUM OF AGREEMENT  
AMONG  
THE UNITED STATES ARMY CORPS OF ENGINEERS, SAVANNAH DISTRICT,  
THE GEORGIA STATE HISTORIC PRESERVATION OFFICER,  
AND THE CITY OF DALTON  
REGARDING THE  
REPLACEMENT OF THE UNDERWOOD STREET BRIDGE  
WHITFIELD COUNTY, GEORGIA  
SAS 2024-00419  
HP-250430-003**

**INVITED SIGNATORY:**

City of Dalton

\_\_\_\_\_  
Annalee Sams, Mayor

Date \_\_\_\_\_



# CITY COUNCIL AGENDA REQUEST

## MEETING TYPE

Mayor & Council Meeting

## MEETING DATE

3/16/2026

## AGENDA ITEM

Approval to accept BOOST Grant from GRPA for \$35,000

## DEPARTMENT

Parks and Recreation

## REQUESTED BY

Steve Roberts

## REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

## COST

No Matching it is a reimbursement grant

## FUNDING SOURCE IF NOT IN BUDGET

N/A

## PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

Dalton Parks and Recreation was awarded \$35,000 from GRPA for the BOOST grant. The funds are to be used for after school programs and our summer camps. It is a reimbursement grant that does not require matching funds. These funds will help us bolster the programs we use it for. Our summer camp grew last year and we anticipate the camp growing again. The Parks and Recreation Department recommends approval.

### PHONE

706-278-9500

### WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

### ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

**Georgia Recreation and Park Association – BOOST 2.0 Program  
2025 MOU & Assurances for Contractors Receiving State Funding in  
partnership with GSAN**

Georgia Recreation and Park Association, Inc.  
2025 Boost 2.0 Memorandum of Agreement (MOU)

**Georgia Recreation and Park Association, Inc.** (hereinafter referred to as “**GRPA**”), a Georgia non-profit corporation with its principal place of business located at 1285 Parker Road SE, Conyers, Georgia 30094-5957, enters into this Memorandum of Understanding (“**MOU**”) with Dalton Parks and Recreation (hereinafter referred to as the “**Contractor**”) in the total amount of 35000.00 to provide comprehensive out-of-school time services under the terms and conditions set forth in this MOU.

**The Contractor agrees to deliver professional services that meet the general scope of work required for the GRPA BOOST Program, as described here:**

- Operate comprehensive afterschool and/or summer programming that expands and improves high-quality learning and supports for K-12 students in the Contractor’s local community
- Prepare students for success in the present and ready students for new learning
- Jump-start underperforming students into learning new concepts
- Create opportunities for struggling students to learn alongside their more successful peers
- Address students’ comprehensive needs through the shared responsibility of students, families, schools, and communities
- Acknowledge and address non-academic factors that impact academic outcomes while expanding learning opportunities
- Create environments where students are healthy, safe, engaged, supported, and challenged.
- Directly support learning acceleration and whole child approaches to positive youth development
- Learning acceleration, such as literacy and numeracy instruction, STEAM, and college readiness.
- Healthy eating & physical activity
- Expand access to serve more youth, with an emphasis on children who typically do not have access to these programs.
- Reduce barriers to participation to ensure access for all.
- Increase programmatic quality and expand or enhance supports/services offered.
- Combat learning loss and meet students’ well-being and connectedness, such as mentoring, problem solving, and team building.

**As a condition of this MOU, the parties agree as follows:**

**1. Use of Funds.**

The overall purpose of the services provided under this MOU is to support learning acceleration, academic development, connectedness, and well-being of Georgia’s students, utilizing a whole child approach ( <https://gadoe.org/whole-child-supports/> ). Funds will be expended only in accordance with this MOU and as specified as allowable expenses (**no single expenditure may exceed \$4,999.99**) in the GRPA RFP and/or in any approved budgets. This funding cannot be utilized for any capital items. Any changes in the implementation of the contracted services will require the prior written approval of GRPA.

**2. Contract Period, Invoicing & Payment.**

The contract period for this MOU **October 1, 2025 – May 31, 2026 for ASP and June 1, 2026 - July 30, 2026 for SE (“Contract Period”)**, subject to the terms contained in this MOU. The Contractor shall invoice GRPA as set forth by GaDOE and GSAN for services provided during the Contract Period. GRPA will pay the Contractor’s invoice within 30 days **with the condition that GRPA must first successfully receive those funds from GaDOE through a separate process (Please remember the first Drawdown request may take longer to receive as stated in the Original GSAN RFP).**

**Drawdown Deadlines: Once GSAN provides GRPA with our final drawdown schedule it will be shared with contractors. Grantees must draw down a minimum percentage of funds for incurred or proposed expenses based on the outlined schedule above.** While grantees must draw down a minimum of 25% at each drawdown deadline, grantees may draw down a higher percentage with adequate justification in expense narratives. If grantee draws down funds ahead of the minimum schedule it does not change the total amount awarded. YOUR AGENCY ENTIRE EXPENDITURES FOR ASP OR SE ARE NOT FULLY REIMBURSABLE.

**3. GRPA BOOST Project Administrator:** The GRPA BOOST Statewide Program Administrator (Craig Sowell) in Consultation with the GRPA Executive Director (Steve Card) will manage this Statewide Project. The GRPA BOOST Statewide Program Administrator shall

**Georgia Recreation and Park Association – BOOST 2.0 Program  
2025 MOU & Assurances for Contractors Receiving State Funding in  
partnership with GSAN**

direct the Program and control the manner of its performance. If the GRPA BOOST Statewide Program Administrator is no longer employed by GRPA or becomes unable or unwilling to complete the Program for any reason, the GRPA Executive Director will be the point of contact. The Contractor shall establish persons to be accountable at the local level for all funds paid under this MOU and communicate regularly and in a timely manner with the appropriate GRPA Staff. Failure to communicate and provide required reporting in a timely manner may jeopardize current and/or future funding under the GRPA Statewide BOOST Program.

4. **Reports:** The Contractors agrees to abide by any programmatic or fiscal reporting deadlines established by GRPA/GaDOE/GSAN to effectively administer the Program. Required reporting shall include financial reporting for the period covered; narrative description of provided activities, dosage, duration and detailed information on Program objectives and outcomes. Other information may be required by GRPA to maintain Program compliance. The Contractor must complete the Evaluation Form and Final Reports as required. The Final Report for each year of the Program shall be set by GRPA/GaDOE/GSAN and due by set deadlines. GRPA may add supporting materials (i.e., news articles, evaluation reports, etc.) if such materials help to convey the significance of the work completed under this Program. Observation and inspection visits may be unannounced or scheduled from various partners of the GRPA BOOST Program.

5. **Accounts & Recordkeeping:**

The Contractor will be responsible for their own bookkeeping and submittal of reports to GRPA by deadlines required for drawdown of funds. Books and records may be requested by GRPA or GRPA’s grantor, Georgia Department of Education (GaDOE), at any time during the Contract Period. Contractor shall maintain books and records regarding the Program and the funds provided under this MOU and make them available for inspection, subject to any limitations imposed by applicable law. GRPA and Contractor shall maintain copies of any records and reports under the Program for a period of at least (7) years after the Contract Period ends (or according to Georgia Secretary of State Record Retention Policies).

6. **Assurances, Warranties, & Representations:**

The Contractor named in this MOU is a recipient of BOOST 2.0 State of Georgia funds in the GRPA BOOST Program, which utilizes relief funds provided by the Georgia General Assembly as administered by GaDOE & GSAN. The Georgia Department of Education (GaDOE) is the primary grantee. As the contractor providing purchased services to the State-wide subgrantee (GRPA), you are bound to the assurances contained in this document; these assurances will be in effect for the period of the contract agreement. **Failure to be in compliance with any aspect of the contract agreement, including these assurances or aspect of the contract award, may result in the delay, reduction, or termination of said agreement and accompanying funds.**

**These assurances are integral to this MOU; by signing this MOU, the Contractor agrees to the assurances. The contractor hereby assures that it will comply with the following:**

<b>Assurances</b>	
1.	The signatory for these assurances certifies that he/she/they has the authority to bind the Contractor. The program assurances must be signed and submitted with the application ( <b>see additional document</b> ).
2.	Commit to and participate in GSAN’s Assess, Plan and Improve continuous quality improvement framework.
3.	Adhere to the Financial Requirements and invoicing draw down deadlines.
4.	Adhere to all applicable licensing and/or exemption rules and regulations from the Georgia Department of Early Care and Learning <a href="https://www.decal.ga.gov/ccs/rulesandregulations.aspx">https://www.decal.ga.gov/ccs/rulesandregulations.aspx</a> .
5.	Participate in any data collection that is required for the use of this funding. <ul style="list-style-type: none"> <li>○ The Contractor will submit reports to the Subgrantee as may reasonably be required. The Contractor will maintain such fiscal and programmatic records and provide access to those records, as necessary, for the Subgrantee to perform its duties.</li> <li>○ The Contractor will adhere to all service evaluation requirements, reporting deadlines and data certification processes established by the Subgrantee for the purpose of the annual summative evaluation, formative assessment and summer evaluation reports.</li> </ul>
6.	Unannounced, on-site monitoring visits conducted by GaDOE/GSAN/GRPA staff or their subcontractor at any time during the program
7.	Submit a report at the end of each grant period to GRPA as required by GSAN/ GaDOE.

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8.	Respond within provided deadlines to program implementation monitoring activities, such as site visits and financial audits.
9.	The application must be completed by the entity that maintains full responsibility and therefore is the operator of the program, regardless of any partnership, volunteer, or subcontract arrangements.
10.	Make every reasonable effort to be accessible to individuals with disabilities. This includes making all materials available in accessible formats (e.g., printed, digital and web-based information).
11.	Complete the Georgia Department of Education Conflict of Interest and Disclosure Policy <a href="https://www.afterschoolga.org/wp-content/uploads/2021/07/GaDOE-Conflict-Of-Interest-Disclosure-Policy.pdf">https://www.afterschoolga.org/wp-content/uploads/2021/07/GaDOE-Conflict-Of-Interest-Disclosure-Policy.pdf</a> (see <b>additional document</b> ).
12.	Contractor certifies that neither it nor its related corporations and vendors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any State/Federal department or agency.
13.	The Contractor certifies that it will have information available regarding its services that can be provided to community stakeholders upon request.
14.	The Contractor certifies the instruction and content offered are secular, neutral, and non-ideological.
15.	The services will take place in a safe and easily accessible facility. <b>Acknowledge and abide by all Program Quality and Safety Requirements as outlined in the GSAN RFP (section X page 11)</b>
16.	The services will be administered in accordance with all applicable statutes, regulations, program plans, and applications.
17.	Prior to any material change affecting the purpose, administration, organization, budget, or operation of the contracted services, the Contractor agrees to submit an appropriately amended application or project description to the Subgrantee for approval.
18.	The Contractor agrees to notify the Subgrantee, in writing, of any change in the contact information provided in its application.
19.	The Contractor will use fiscal control and sound accounting procedures that will ensure proper disbursement of and account for State/federal funds paid to the Contractor to perform its duties.
20.	The Contractor will cooperate in carrying out any evaluation of services provided by or for the Subgrantee, the Georgia Department of Education, the U.S. Department of Education, or other State or Federal officials.
21.	The Contractor is responsible for ensuring that all applicable liability insurance requirements are met and will submit proof of minimum liability transportation insurance to the Subgrantee within 60 days if requested.
22.	The Contractor certifies that state and national criminal background checks will be conducted annually for any and all individuals acting on behalf of the Contractor including regular volunteers, employees, contractors, relatives, etc. prior to their employment, whether or not they have direct contact with students. In addition, the Contractor agrees to develop and utilize written policies on how the criminal background check results will be used in hiring and volunteer practices.
23.	The Contractor will comply with the Family Education Rights and Privacy Act of 1974.
24.	Contractor will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicaps; and the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age, and the Americans with Disabilities Act of 1990, which prohibits discrimination on a basis of disability.
25.	In accordance with the Federal Drug-Free Workplace and Community Act Amendments of 1989 and the Drug-Free Workplace Act of 1988, the Contractor understands that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, marijuana, or dangerous drug is prohibited at geographic locations at which individuals are directly engaged in the performance of work pursuant to BOOST Program.

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Additionally, all Contractors agree to the following quality standards for services provided. Note that nothing in this section shall be construed to affect existing legal requirements established for individuals with access to minor children, including but not limited to those related to camps, employee criminal background checks, and any relevant licenses and permits. All subcontracted/partner staff must meet the same requirements as if they were actual staff of the Contractor.

- In addition to safety training, all staff must receive training on safe operations, hand hygiene, cleaning, and disinfecting), infection control requirements, and Centers for Disease Control and Prevention (CDC) and state guidelines and protocols.
- Directors in charge of programs must be 21 years of age and responsible for the day-to-day operations of the program. Teacher/Lead Caregivers must be at least 18 years of age, and the assistant caregiver/aide may be 16 years of age. There shall be a designated staff person in charge, who is 18 years of age or older, always on site when the afterschool or summer program is in operation. No caregiver/aide who is 16 or 17 years of age shall be solely responsible for children.
- Any Contractor whose program includes activities at a waterfront or swimming area, whether as a regular part of their service location or as an off-site educational service trip, must have at least one person with current evidence of having successfully completed a training program in lifeguarding offered by a water-safety instructor certified by the American Red Cross, YMCA, YWCA or other recognized standard-setting agency for water safety instruction. Such person may be a program staff member or an employee of a water facility (e.g., local swimming pool) and be at least 18 years of age.
- Programs must maintain the continuous supervision when students are participating in water-related activities (such as swimming, fishing, boating, or wading) as follows:  
water activities in water less than two (2) feet deep \*continuous supervision must be provided in accordance with normal staff child ratios
- Age of Children - Staff: Child Ratio
  - Four (4) year olds 1:18
  - Five (5) year olds 1:20
  - Six (6) years and older 1:25
- Water activities in water over two (2) feet deep:
  - Age of Children Staff: Child Ratio
  - Four (4) yrs and older who cannot swim a distance of fifteen (15) yards unassisted 1:6
  - Four (4) yrs and older who can swim a distance of fifteen (15) yards unassisted 1:15
- At least one additional staff member above the required staff to child ratios for any water-related activity (such as swimming, fishing, boating, or wading) shall be available to rotate among the age groups as needed when any of the following circumstances are present:
  - most of the children in a group are not accustomed to or are afraid of the water
  - most of the children in a group comprised of children who cannot swim 15 yards unassisted cannot touch the bottom of the water facility without submerging their heads
  - the water facility is particularly crowded or the children have special needs which impact on their ability to participate safely in the water-related activity.
- Contractor must maintain a staff to child ratio of at least 1:20 for children aged five years with a maximum group size of 40 and at least 1:25 for children aged six years and older with a maximum group size of 50. The ratio of staff to children shall always be maintained. The staff to child ratios for a mixed-age group shall be based on the age of the youngest group of children that includes more than twenty percent (20%) of the total number of children in the mixed-age group. The ratio of staff to children, as specified in this subsection, shall always be maintained, including during all outings and trips except for structured activities offered exclusively for school age children.
- Prior to the start of the contracted service, the Contractor’s administrators shall develop a written plan for handling emergencies, including but not limited to severe weather, loss of electrical power or water and death, serious injury or loss of a child, a threatening event, or natural disaster which may occur at the program’s location. The organization will have in place procedures for evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, and continuity of operations. The plan must apply to all children in care and will include specific accommodations for infants and toddlers, children with disabilities, and children with chronic medical conditions. Such plan shall include assurance that the Contractor’s personnel will not impede in any way the delivery of emergency care or services to a child by licensed or certified emergency health care professionals.
- The Contractor shall conduct drills for fire, tornado, and other emergency situations. The fire drills will be conducted monthly,

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and tornado and other emergency drills will be conducted every six months. The Contractor shall maintain documentation of the dates and times of these drills for two years.

**GRPA Agency Contractor represents and warrants to GRPA, Inc.:**

- a. This MOU is the legal and binding obligation to GRPA, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, or other applicable laws.
- b. GRPA Contractor confirms that it is an organization that is currently recognized by the Internal Revenue Service (the “IRS”) as governmental (City/County) entity or Authority.
- c. The Program and the use of funds will comply with the objectives set forth in this MOU and other BOOST requirements, as well as all applicable laws, rules, and regulations to which the GRPA is subject.
- d. GRPA contractor agencies shall maintain insurance with responsible and reputable companies in such amounts and covering such risks as is prudent and is usually carried by entities engaged in operations similar to that of GRPA and shall furnish to GRPA Inc. with evidence of compliance upon request. To the extent permitted by law, GRPA contractor agencies hereby agrees to indemnify, defend, and hold harmless GRPA Inc. from and against, and in respect to, all losses, expenses, costs, obligations, liabilities, and damages, including interest, penalties and reasonable attorney’s fees and expenses, that GRPA Inc. may incur as a result of any negligent or willful acts or omissions of GRPA Agency or any of its agents or employees.

**7. No Lobbying:**

GRPA Contractor agrees that no portion of the funds provided under this MOU will be used for any of the following: (i) to lobby or otherwise attempt to influence legislation; (ii) to influence outcome of any specific public election or participate or intervene in any political campaign on behalf of any candidate for public office or conduct, directly or indirectly, any voter registration drive; or (iii) to distribute funds to any entity or individual, other than as detailed in the Application.

**8. Compliance: See above Assurances.**

**9. Additional Obligations of GRPA Contractor:**

In consideration of the contractual funding herein, CONTRACTOR shall provide GRPA with the elements set forth above and attached herein and incorporated herein by reference.

**10. Miscellaneous:**

- a. No failure to exercise, and no delay in exercising, on the part of GRPA, Inc., any right under this MOU shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right.
- b. This MOU shall be construed in accordance with and governed by the laws of the State of Georgia.
- c. In the event that any provision or any part of a provision of this MOU shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions thereof, which shall remain in full force and effect as if the unenforceable provision or part were deleted.
- d. GRPA Contractor understands that there is no commitment by the GRPA, Inc. to supply any further support for the Program. GRPA, Inc. considers each request on an individual basis, and that this MOU is not to be construed as establishing a precedent for further support.
- e. This MOU constitutes the entire agreement between the parties hereto. No oral representations or other agreements have been made by the parties except as stated herein. The MOU may not be changed in any way except as herein provided, and no term or provision hereof may be waived except in writing signed by a duly authorized officer or agent. The titles of any paragraph of this MOU are for convenience only and shall not be deemed to limit, restrict, or alter the content, meaning or effect thereof.

**11. Standard Terms and Conditions: This MOU is subject to the above.**

**Georgia Recreation and Park Association – BOOST 2.0 Program  
2025 MOU & Assurances for Contractors Receiving State Funding  
in partnership with GSAN**

IN WITNESS WHEREOF, the parties have set their hands as of the date(s) written below.

GEORGIA RECREATION AND PARK  
ASSOCIATION, INC

GRPA BOOST AGENCY CONTRACTOR:

[Organization Name:] Dalton Parks and Recreatio

Signature: Steve Card

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

Name: Steve Card

Name: Annalee Sams

Title: Executive Director

Title: Mayor

Date: 3/11/26

Date: 3/16/26



# CITY COUNCIL AGENDA REQUEST

## MEETING TYPE

Mayor & Council Meeting

## MEETING DATE

3/16/2026

## AGENDA ITEM

Amendment #1 to IPO #3 with Kimley-Horn at Dalton Airport

## DEPARTMENT

Airport

## REQUESTED BY

Andrew Wiersma

## REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

## COST

68,950.28

## FUNDING SOURCE IF NOT IN BUDGET

GDOT Grant Contract #45

## PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

Due to previously approved hangar construction contract extensions, it also became necessary to extend the contract with Kimley-Horn for construction admin and inspection services. This amendment was reviewed and approved by Georgia Department of Transportation.

### PHONE

706-278-9500

### WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

### ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

**AMENDMENT NUMBER 1 TO THE AGREEMENT  
“INDIVIDUAL PROJECT ORDER (IPO) NUMBER THREE”  
BETWEEN CLIENT AND KIMLEY-HORN AND ASSOCIATES, INC.**

This is Amendment Number 1 dated March \_\_\_\_\_, 2026 to the agreement “Individual Project Order (IPO) Number Three” between City of Dalton (“Client”) and Kimley-Horn and Associates, Inc. (“Consultant”) dated March 17, 2025 (“the Agreement”) concerning Hangar Site Development – Construction Phase Services (the “Project”).

The Consultant has entered into the Agreement with Client for the furnishing of professional services, and the parties now desire to amend the Agreement.

The Agreement is amended to include services to be performed by Consultant for compensation as set forth below in accordance with the terms of the Agreement, which are incorporated by reference.

The services currently authorized to be performed by Consultant in accordance with the Agreement and previous amendments, if any, shall be modified as followed:

**Element 2 – Contract Administration Services**

**Amendment 1** shall add the following services to this element:

1. **Extended Contract Time.** An additional four (4) months of Contract Administration Services are required due to a construction contract time extension of 118 calendar days granted by the Owner. The following contract administration tasks from the original IPO will be extended to cover the additional contract time:
  - a. **Site Visits and Construction Observation.** The Kimley-Horn Project Manager will make one (1) periodic site visit each month to observe the progress of the work. Observations will not be exhaustive or extend to every aspect of Contractor's work, but will be limited to spot checking, and similar methods of general observation of the site demolition, grading, drainage, utilities, paving, foundations, and markings for finished construction and are not intended to cover Contractor equipment and methods unless specifically required in Contract Documents. Based on the site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Document and keep Client informed of the general progress of the work. **(4 additional Site Visits)**
  - b. **Recommendations with Respect to Defective Work.** Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations and / or testing results, Consultant believes that such work will not produce a completed Project that generally conforms to the Contract Documents.
  - c. **Clarifications and Interpretations.** Consultant will coordinate with the Engineer of Record to provide a response to reasonable and appropriate Contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations based on information received from the Engineer of Record. Any orders authorizing variations from the Contract Documents will be issued by the Client.
  - d. **Change Orders.** Consultant may recommend Change Orders to the Client and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.
  - e. **Shop Drawings and Samples.** Consultant will review Shop Drawings and Samples and other data which Contractor is required to submit, but only for general conformance with the Contract Documents. Such review and any action taken in response will not extend to

means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders. Submittals that require interpretation of design intent will be coordinated with the Engineer of Record. Response to those submittals will be based on information received from the Engineer of Record.

- f. **Disputes between Client and Contractor.** Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision.
  - g. **Applications for Payment.** Based on its observations and on review of applications for payment and supporting documentation, Consultant will recommend amounts that Contractor be paid. Recommendations will be based on Consultant's knowledge, information and belief, and will state whether in Consultant's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. Consultant's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.
2. This element also consists of expenses for project manager's attendance at site visits or progress meetings. Expenses will consist of mileage, meals, postage, and printing costs.

### Element 3 – Construction Observation Services

**Amendment 1** shall add the following services to this element:

1. Consultant will provide additional daily observation (Daily Observer) and reporting for a maximum of 12 days up to 10 hours/day to meet with the Contractor, observe the condition and progress of the work, discuss schedule, and prepare observation/status report. Observations by Daily Observer will not be exhaustive or extend to every aspect of Contractor's work, but will be limited to spot checking, and similar methods of general observation of finished construction and are not intended to cover Contractor equipment and methods unless specifically required in Contract Documents. Based on the site visits, Daily Observer will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Document and keep Client informed of the general progress of the work. Any additional time will be charged at cost, based on the hourly rate schedule.
2. This element also consists of expenses for Daily Observer's attendance at daily observation.

### Element 4 – Construction Materials Testing Services

**Amendment 1** shall add the following services to this element:

1. **Field Services** consist of up to twenty (20) days of additional field services provided by 2MNext Quality Assurance Testing staff. The following tasks from the original IPO will be extended to cover the additional days of field services:
  - a. **Proof Rolling Observation:** Consist of a visual observation of the exposed subgrades upon completion of undercutting and observing proof rolling of these materials by a staff professional before proceeding with site grading and concrete/asphalt placement in the proposed building and parking areas to identify possible near-surface soil conditions that may cause future building slab or pavement distress. These services also consist of proof rolling of the aggregate base course before proceeding with slab and asphalt placement.
  - b. **Engineered Fill Monitoring and Testing:** These services will consist of monitoring fill placement, verifying lift thicknesses, character, and continuity of the fill, and randomly

performing field density tests to verify the compaction of the fill. In addition, 2MNext will perform proctor moisture/density relationships on the different materials used as fill.

- c. **Steel Reinforcement Inspection:** Reviewing the project documents regarding the steel reinforcement requirements for placement, number, cover, and size and field verification of these items are provided as part of this scope. In addition, 2MNext's representative will verify the reinforcement steel and dowel placement for the concrete pavement.
- d. **Concrete Sampling and Testing:** 2MNext services consist of reviewing project specifications concerning the design strength and mixes, reviewing concrete delivery tickets to verify that the proper mix is being delivered to the site for the intended usage, sampling fresh concrete for the slump, air content, temperature and unit weight tests and preparing one (1) set of four (4) 6"x12" or one (1) set of five (5) 4"x8" concrete specimens, as per specifications for the interval as directed by the specifications for concrete. The 2MNext representative will also remain on-site after completion of the pour to observe and verify additional curing methods and protection efforts are made.
- e. **Graded Aggregate Base Course Testing:** 2MNext services consist of verifying thickness and performing nuclear density tests to verify the compaction of the material as outlined in the project specifications. In addition, proctor moisture/density relationships will be performed on the graded aggregate base course per specifications.
- f. **Asphalt Observations and Testing services:** 2MNext services consist of monitoring the placement of asphalt and performing nuclear density testing on binder and surface course to verify the density and thickness of the material as it is being placed. Per GDOT testing standards, Air Voids, Mat and Joint Density, thickness, and coring services (as specified) are performed for acceptance of the Asphalt product. Additionally, confirmation of the CQC process at the plant for AC content, gradation, moisture content of asphalt, and aggregates are checked by our staff.

Consultant and Client agree to the following general schedule in connection with the services set forth above: An additional 118 days of contract time has been added to the schedule.

For the services set forth above, Client shall pay Consultant the amount of **\$ 68,950.28**, payable according to the following terms.

1. A lump sum fee applies for each task as follows.
2. All permitting, application, and similar project fees will be paid directly by the Client.
3. Expenses such as mileage, meals, postage, and printing costs are part of the lump sum fee.

Element 2	Contract Administration Services – Amendment 1	\$ 22,770.40
Element 3	Construction Observation Services – Amendment 1	\$ 28,179.88
Element 4	Construction Materials Testing Services – Amendment 1	\$ 18,000.00
Total Consultant Fee – Amendment 1		\$ 68,950.28

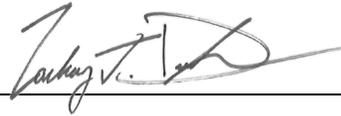
Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

ACCEPTED:

**CITY OF DALTON**

**KIMLEY-HORN AND ASSOCIATES, INC.**

SIGNED: \_\_\_\_\_

SIGNED:  \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

PRINTED NAME Zachary J. Dufour

TITLE: \_\_\_\_\_

TITLE: Vice President

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

DATE: March 12, 2026



## CITY COUNCIL AGENDA REQUEST

### MEETING TYPE

Mayor & Council Meeting

### MEETING DATE

3/16/2026

### AGENDA ITEM

IPO #8 with Kimley-Horn for Design and Construction Phase Services on Approach Light System Rehab at Airport

### DEPARTMENT

Airport

### REQUESTED BY

Andrew Wiersma

### REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

### COST

\$224,284.41

### FUNDING SOURCE IF NOT IN BUDGET

GDOT Grant Contract #48

### PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

Contract with Kimley-Horn for construction drawings, bid phase services, contract administration, construction observation and inspection reporting, record drawings, final engineer's report and contract close out for MALSR approach lighting system replacement at the Dalton Airport.

#### PHONE

706-278-9500

#### WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

#### ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

## INDIVIDUAL PROJECT ORDER (IPO) NUMBER EIGHT

**THIS INDIVIDUAL PROJECT ORDER (“IPO”)** is made this \_\_\_\_\_ day of March 2026, by and between CITY OF DALTON (“the Client”) and KIMLEY-HORN AND ASSOCIATES, INC. (“the Consultant” or “Kimley-Horn”) in accordance with the terms of the Five (5) Year Master General Planning and Engineering Consultant Agreement Between City of Dalton and Kimley-Horn and Associates, Inc. for Continuing Professional Services dated July 15<sup>th</sup>, 2024, which is incorporated herein by reference. The specifics of this engagement are set forth below.

### **Identification of Project:**

**Project Name: MEDIUM INTENSITY APPROACH LIGHTING SYSTEM (MALSRL)  
REHABILITATION – DESIGN AND CONSTRUCTION PHASE SERVICES**

**KH Project Manager: REBECCA COLLINS**

**Project Number: 017739006**

### **Scope of Services:**

The Engineering Design Services will consist of project formulation, preparation of construction drawings and specifications necessary to complete the project, support services required to complete the design, and coordination with the Georgia Department of Transportation – Aviation Program. The Construction Phase Services will consist of bid phase services, contract administration, construction observation and inspection reporting, record drawings, final engineer’s report, and contract close-out for the project. This project consists of the electrical rehabilitation of the Runway 14 Medium Intensity Approach Lighting System (MALSRL) and associated electrical vault. The design and construction phase services for this project are detailed below and will include the following elements of work:

1. Medium Intensity Approach Lighting System (MALSRL) and Circuitry
2. Electrical Vault Rehabilitation
3. Replacement of Mounting Stand Assemblies and Foundations

**Element 1 – Project Formulation and Coordination** will consist of the preparation of work scope, fees, on-site pre-design/scoping meeting with GDOT, client meeting, application for funding assistance, and coordination with regulatory agencies, as well as one (1) site visit to observe existing site conditions and discuss project scope with airport sponsor. Kimley-Horn will also prepare and coordinate a Categorical Exclusion per FAA Order 5050.4B and 1050.1F.

**Element 2 – Survey Services** will consist of a topographic survey of the extended Runway 14 centerline profile along the MALSRL alignment. MALSRL structures and equipment will also be surveyed. Survey will be performed by a subconsultant, Patterson and Dewar, using conventional ground survey methods and will provide the following elements:

- a) Recover horizontal and vertical control established by previous surveyor.
- b) Collect the following data:
  - o Elevation ground shot along the extended runway centerline from the threshold of Runway 14 to the fenced boundary (2,475 LF +/-) at 50 ft intervals (51 shots).
  - o Foundation elevations at each structure (12 shots).
  - o Top of each light tower at the cross bar (12 shots).

Survey Services will also include the location and marking of the AWOS site elevation and true south bearing to address an additional action item noted in GDOT's 2025 Inspection Letter for DNN.

**Element 3 – Construction Plans** will consist of:

1. **Cover Sheet** listing the name of the airport, description of the project, vicinity and location maps, & project number.
2. **Sheet Index Sheets** listing the drawings title, drawings number, and number of the drawing in the overall set as well as identifying drawing sheets that are issued in subsequent revisions of the project plan set.
3. **Summary of Quantities** Sheets listing the pay item number, specification number, name of each pay item, unit of measure and estimated quantities determined during the design phase.
4. **General Notes** listing the overall project notes and any otherwise pertinent information to the project or project site as a whole.
5. **Abbreviations & Legend** listing the abbreviations used in the design set and including the guide to the common symbols used in the design set.
6. **Project Layout and Construction Safety Phasing Plan** consisting of a sketch of the airport, existing property lines, the airport operation area, contractor access route and staging area, and general project safety relative to the airport during construction.
7. **Existing Conditions and Demolition Plan** will show existing conditions, utilizing new survey of MALSR equipment and base mapping provided by the owner, illustrating the current condition of the project site. These plans will show the items that are to be removed or relocated for the development of the base bid project site, including, but not limited to MALSR equipment, mounting stands, circuitry, electrical vault or vault equipment, etc.
8. **MALSR Plan and Profile** will provide the lighting layout and design details for a new LED MALSR System consisting of new lighting, equipment, and structures.
9. **MALSR Circuitry Plan** will provide the circuitry design and cable layout for a new LED MALSR System consisting of new lighting, equipment, and structures.
10. **MALSR Details** will be provided to support the design.
11. **Electrical Vault Rehabilitation Plan** will show the location of the MALSR electrical vault, layout of the interior, rehabilitation of vault equipment including control cabinet and all pertinent details.
12. **Electrical Vault Details** will be provided to support the design.

**Element 4 – Contract Documents** (booklet) will consist of the advertisement for bids, instructions to bidders, bid documents, contract documents, bid bond, performance bond, payment bond, and Federal Aviation Administration (FAA) and/or Georgia Department of Transportation (GDOT) specifications to include Special Provisions to published specifications. Kimley-Horn will prepare an engineering cost estimate for the project as a part of this element.

**Element 5 – Engineers/Design Report** will consist of a detailed description of the project construction, design calculations, and discussion of rationale for design decisions.

**Element 6 – Coordination, Review and Comments** will provide an opportunity for review of the design documents and coordination of the project with the GDOT and the Owner. Comments provided by GDOT and the Owner will be addressed after the 90 percent submittal to GDOT. This element also consists of the preparation and submittal of a FAA 7460 form and Construction Safety Phasing Plan for regulatory agency coordination. The 7460 and CSPP will be submitted to GDOT for review prior to submission to the regulatory agencies.

**Element 7 – Bid Phase Services** will consist of preparation of an advertisement for bids, response to contractor questions during the bidding process, preparation of addenda as needed, receipt of bids at a scheduled bid opening, preparation of the bid tabulation, and recommendation of award to the lowest

responsive and responsible bidder. This element also consists of preparation and attendance at a non-mandatory Pre-Bid Meeting with the Airport and interested Contractors.

**Element 8 – Construction Administration Services** for a 60-calendar day Contract Time will consist of the following services:

1. **Pre-construction Meeting.** Preparation for and attendance by the Kimley-Horn Project Manager at Pre-construction Meeting. The meeting will be scheduled to permit Owner, GDOT, Contractor representatives, and Project Engineer to attend. Minutes will be prepared and distributed after the conference. **(1 Site Visit)**
2. **Site Visits and Construction Observation.** The Kimley-Horn Project Manager will make one (1) periodic site visit each month to observe the progress of the work. Observations will not be exhaustive or extend to every aspect of Contractor's work, but will be limited to spot checking, and similar methods of general observation. Based on the site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Document and keep Client informed of the general progress of the work. **(2 Site Visits)**
3. **Recommendations with Respect to Defective Work.** Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations and / or testing results, Consultant believes that such work will not produce a completed Project that generally conforms to the Contract Documents.
4. **Clarifications and Interpretations.** Consultant will respond to reasonable and appropriate Contractor requests for information made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents will first be approved by Client.
5. **Change Orders.** Consultant may recommend Change Orders to the Client and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.
6. **Shop Drawings and Samples.** Consultant will review Shop Drawings and Samples and other data which Contractor is required to submit, but only for general conformance with the Contract Documents. Such review and any action taken in response will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders.
7. **Substitutes and "or-equal/equivalent."** Consultant will evaluate the acceptability of substitute or "or-equal/equivalent" materials and equipment proposed by Contractor in accordance with the Contract Documents.
8. **Inspections and Tests.** Consultant may require special inspections or tests of Contractor's work and may receive and review certificates of inspections within Consultant's area of responsibility. Consultant's review will be solely to determine that the results indicate compliance with the Contract Documents and will not be an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the Contract Documents. Consultant is entitled to rely on the results of such tests.
9. **Disputes between Client and Contractor.** Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision.
10. **Applications for Payment.** Based on its observations and on review of applications for payment and supporting documentation, Consultant will recommend amounts that Contractor be paid. Recommendations will be based on Consultant's knowledge, information and belief, and will state whether in Consultant's opinion Contractor's work has progressed to the point indicated, subject to any qualifications stated in the recommendation. Consultant's recommendations will not be a representation that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work, or involved detailed inspections.

11. **Substantial Completion.** When requested by Contractor or Client, the Kimley-Horn Project Manager will make a substantial completion site visit to determine if the project was satisfactorily constructed in accordance with the plans and contract documents and determine if the Work is substantially complete. The meeting will be scheduled to permit the Owner, GDOT, Contractor representatives, and Project Engineer to attend. A Final Punch List will be prepared and distributed following the meeting. **(1 Site Visit)**
12. **Final Notice of Acceptability of the Work.** The Kimley-Horn Project Manager will conduct a final site visit to evaluate whether the completed Work of Contractor is generally in accordance with the Contract Documents and review any corrective work items included on the final punch list so that Consultant may recommend final payment to Contractor. Consultant will coordinate with contractor to perform all punch list items prior to final payment of the contract. Consultant will provide a letter confirming that all punch list items have been completed prior to any submittals for final payment. A Final Inspection Report will be prepared and distributed following the meeting. **(1 Site Visit)**
13. **Close-Out Documentation.** Consultant will distribute close-out documentation to consist of Final Release and Waiver of Lien, Final Acceptance Letter, Material Certifications, Affidavit of Payment of Debts and Claims, Consent to Surety of Final Payment, and other contract requirements. Final Pay Request and other project documentation as required will also be included.
14. This element also consists of expenses for project manager's attendance at pre-construction meeting, progress meetings, final observation and follow up site visit for punch list items. Expenses will consist of mileage, meals, postage, and printing costs.

**Element 9 – Construction Observation Services** will consist of the following:

1. Consultant will provide part-time daily observation (Daily Observer) and reporting for a maximum of 2 days per week of construction field observation up to 10 hours/day to meet with the Contractor, observe the condition and progress of the work, discuss schedule, and prepare observation/status report. Observations by Daily Observer will not be exhaustive or extend to every aspect of Contractor's work, but will be limited to spot checking, and similar methods of general observation of finished construction and are not intended to cover Contractor equipment and methods unless specifically required in Contract Documents. Based on the site visits, Daily Observer will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Document and keep Client informed of the general progress of the work. Any additional time will be charged at cost, based on the hourly rate schedule.
2. Daily Observer will attend Pre-construction Meeting organized by Kimley-Horn Project Manager.
3. Daily Observer will attend one (1) site visit for the final observation in support of Element 8, task 11. The final observation will determine if the project is substantially complete and was satisfactorily constructed in accordance with the plans.
4. Daily Observer will attend one (1) follow up site visit to the Final Observation in support of Element 8, task 12 to review any corrective work items identified on the punch list and assist the Kimley-Horn Project Manager with preparation of a Final Observation Report.
5. This element also consists of expenses for Daily Observer's attendance at pre-construction meeting, weekly observation, final observation and follow up site visit for punch list items.

**Element 10 – Record Drawings and Final Engineer's Report** will include the following:

1. Preparation of Record Drawings showing significant changes reported by the Contractor or made to the design by Consultant. Record drawings are not guaranteed to be as-built but will be based on information made available by the Contractor during and post-construction activities. Record drawings will be provided in PDF format.
2. Preparation of a Final Engineer's Report detailing the construction activity upon project completion.

**Deliverables:**

In conjunction with the performance of the above scope, Kimley-Horn will provide the following deliverables (documents) to the Client and GDOT:

- One (1) set of electronic Plans and Specifications to GDOT for review and comment prior to the bidding phase.
- One (1) electronic copy of the final plan set in pdf format.
- One (1) electronic copy of the plan set in AutoCAD format.
- One (1) electronic copy of the CatEx Checklist Document.
- 7460s will be submitted to GDOT for review and concurrence prior to initial submittal to FAA.
- Contractor's Affidavit of Payment of Debts and Claims will be coordinated for execution by the Contractor and provided as a part of the final pay application.
- Contractor's Final Release and Waiver of Lien will be coordinated for execution by the Contractor and provided as a part of the final pay application.
- Consent of Surety to Final Payment will be coordinated for execution by the Contractor and provided as a part of the final pay application.
- Final DBE Participation Letter will be provided by the Contractor and reviewed by Kimley-Horn for submittal as a part of the final pay application.
- One (1) electronic set of red-lined Record Drawings in PDF format and one (1) electronic copy of the Final Engineer's Report in PDF format will be delivered following project completion.

**Services not Included:**

Any other services, including but not limited to the following, are not included in this agreement:

- 50% submittal to GDOT will be one (1) pdf of an "In-progress" set of drawings and draft engineer's design report, submitted solely to show design progression.
- No ALP update is included in this project scope.
- No drainage design, calculations, or report is included in this project scope.
- No pavement design is included in this project scope.
- No erosion control services are included in this project scope.

**Additional Services if required:**

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Contract Administration Services (beyond 60 Calendar Day Contract Time)
- Construction Observation Services (beyond 60 Calendar Day Contract Time)
- Sediment and Erosion Control Services
- Design Changes due to unforeseen field conditions
- Environmental Services

**Responsibilities of Client:**

In addition to other responsibilities set out in this Agreement, the Client shall:

- N/A

**Schedule:**

Services shall commence after receipt of a fully executed agreement. We will provide our services as expeditiously as practicable with the goal of meeting the following schedule:

- Work shall begin within 10 days of Notice to Proceed. Execution date of this IPO shall be considered the Notice to Proceed date.

**Terms of compensation:**

In return for performance of the tasks described in the above Scope of Services, the Client shall pay the Consultant the amount of **\$ 224,284.41**, payable according to the following terms.

1. Kimley-Horn will perform the services outlined above for the lump sum fee as indicated below. Individual task amounts are for information only.
2. All permitting, application, and similar project fees will be paid directly by the Client.
3. Expenses such as mileage, meals, postage, and printing costs are part of the lump sum fee.

Element 1	Project Formulation and Coordination	\$ 8,352.50
Element 2	Survey Services	\$ 10,688.51
Element 3	Construction Plans	\$ 50,788.80
Element 4	Contract Documents	\$ 11,014.00
Element 5	Engineer’s Design Report	\$ 5,550.95
Element 6	Coordination, Review and Comments	\$ 20,998.02
Element 7	Bid Phase Services	\$ 14,557.10
Element 8	Construction Administration Services	\$ 49,068.68
Element 9	Construction Observation Services	\$ 48,200.58
Element 10	Record Drawings and Final Engineer’s Report	\$ 5,065.26
	<b>Total Consultant Fee</b>	<b>\$ 224,284.41</b>

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

**Other special terms of Individual Project Order:**

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in a PDF. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

\_\_\_\_\_ Please email all invoices to [awiersma@daltonga.gov](mailto:awiersma@daltonga.gov)

ACCEPTED:

**CITY OF DALTON**

**KIMLEY-HORN AND ASSOCIATES, INC.**

SIGNED: \_\_\_\_\_

SIGNED: John D. Walker

PRINTED NAME: \_\_\_\_\_

PRINTED NAME: John D. Walker, P.E.

TITLE: \_\_\_\_\_

TITLE: Senior Vice President

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

DATE: 3/11/2026



# CITY COUNCIL AGENDA REQUEST

## MEETING TYPE

Mayor & Council Meeting

## MEETING DATE

3/16/2025

## AGENDA ITEM

2026 Bion Professional Services Contract

## DEPARTMENT

Information Technology

## REQUESTED BY

Jorge Paez

## REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

## COST

Not to exceed \$80,000

## FUNDING SOURCE IF NOT IN BUDGET

FY2026 Information Technology Department Operating Budget

## PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

The IT department is seeking approval to renew the Professional services agreement with BION security LLC, for another year. BION security has helped the city of Dalton since 2021 and has been an essential part of daily operations with Dalton IT department. This contract is to purchase blocks of professional services as needed and set not to exceed \$80,000/year.

### PHONE

706-278-9500

### WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

### ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722



# **BION**

Security

## **PROSERV PROFESSIONAL SERVICES AGREEMENT**

**EFFECTIVE DATE: January 1, 2026**

## Overview

**THIS AGREEMENT IS GOVERNED BY THE BION SECURITY MASTER SERVICES AGREEMENT agreed upon by the parties which is attached hereto and incorporated herein .**

This Professional Service Agreement ("Agreement") is entered into on January 1, 2026, by and between City of Dalton, hereinafter referred to as the "Customer" and BION Security, LLC, hereinafter referred to as the "Company."

BION SECURITY, LLC dba BION Security  
710 Dacula Road, Suite 4A  
Dacula, GA 30019

City of Dalton  
300 W Waugh St  
Dalton, GA 30720

## Scope of Services

### DESCRIPTION OF SERVICES

The Customer shall engage the Company to perform IT services as described in this Agreement and any attached exhibits. Initial services to be provided under this Agreement are detailed in Exhibit A: Scope of Work - City of Dalton GIS Enhancement Project, attached hereto and incorporated by reference. The specific engineering expertise required for each task or project will determine the applicable hourly rate, as outlined below.

### AMENDMENT FOR ADDITIONAL PROJECTS

The Customer may elect to engage the Company for additional projects or services beyond the initial scope by purchasing ProServ Blocks of Hours (as defined below) or by mutually agreeing to a new scope of work. Such additional projects shall be documented in an amendment to this Agreement or as a new exhibit (e.g., Exhibit B, Exhibit C, etc.), specifying the scope, deliverables, and applicable hourly rates or block hour purchases. Amendments shall be executed in writing by both parties and incorporated into this Agreement.

### HOURLY RATE STRUCTURE

The hourly rates for services performed by the Company will vary based on the qualifications and experience level of the engineer required to perform the work. The applicable hourly rate for each category of engineer is as follows:

- **Level 1 Engineer (Entry Level/Junior Engineer) \$125/hour:** Services include basic technical support, routine maintenance, troubleshooting, and lower-complexity tasks.
- **Level 2 Engineer (Mid-Level Engineer) \$150/hour:** Services include intermediate technical support, system configuration, advanced troubleshooting, and project coordination.
- **Level 3 Engineer (Senior Engineer/Architect) \$200/hour:** Services include high-level system architecture, design, advanced problem solving, strategic consulting, and project management.

**Determination of Engineer Level.** The level of engineer assigned to each task shall be mutually agreed upon by the Customer and the Company prior to the commencement of work. If the complexity of the task is beyond the scope initially estimated and requires a higher level engineer, the Company shall notify the Customer for approval before proceeding.

**Overtime and After Hours Work.** In the event that services are required outside of regular business hours (8AM to 6PM, Monday through Friday) or during weekends and holidays, an additional surcharge of 50% may apply to the hourly rates listed above. Overtime work will also require prior approval from the Customer.

**Fee Structure.** The fees for services provided under this Agreement shall be determined based on the Engineering Level at the respective hourly rate, and depreciated accordingly. *\*Special Projects or requires Statement of Work.*

● **Hourly Fixed Fee Structure with BION ProServ Block of Hours:**

- ProServ 10 Hour Block @ \$1,850;
- ProServ 15 Hour Block @ \$2,700;
- ProServ 25 Hour Block @ \$4,500.

**Invoicing.** Unless otherwise agreed to, invoices for ProServ Block of Hours are invoiced upfront. For all other services rendered under this Agreement shall be issued on a (Insert Time Frame) basis, and the Customer shall receive the invoice via electronic delivery on or before the due date.

**Payment Terms.** Payment for hourly blocks are due upfront. Payment for services performed as a separate project or scope of work rendered under this Agreement is due within 30 days from the date of the invoice.

**Retainer (if applicable).** In the event that a retainer is required, the Customer shall provide an initial retainer amount of \$ (Insert Initial Retainer Amount) upon the execution of this Agreement. When retainer funds are within \$2,000 of being depleted for unfinished project(s), Customer may renew retainer at initial retainer amount or revert to ProServ Hourly Fees as described above.

**Additional Costs.** The Customer shall be responsible for reimbursing the Company for any reasonable and documented expenses or disbursements incurred in connection with the provision of IT services. Such expenses may include but are not limited to travel, meals, and hotel expenses to/from on-site(s) if required.

**Credit for Hardware Purchased through BION Security.** Should Customer choose to purchase hardware from BION Security, Customer may be eligible to receive a credit to be applied toward BION ProServ Hourly Blocks at the following rates:

- \$40,000 minimum and incrementally = One 10 Hour Block of ProServ
- Example: \$100,000 in hardware = Two 10 Hour Blocks of ProServ.

No more than \$80,000 in purchases or Two 10 Hour Blocks of ProServ are eligible per Customer per year. Unused hours in a calendar year will be carried over to the following year, and may be used until expired.

**(Customer)**

**BION Security, LLC.**

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EXHIBIT A: SCOPE OF WORK - CITY OF DALTON GIS ENHANCEMENT PROJECT





# **BION**

Security

## **MASTER SERVICE AGREEMENT TERMS & CONDITIONS**

**EFFECTIVE DATE: February 2025**

## Overview

These Master Service Agreement Terms and Conditions ("Terms and Conditions") govern the provision of Services and Products by BION Security, LLC. dba BION Security ("Company") to the customer ("Customer") named on a professional services quote, statement of work, or purchase order (each, an "Order") that incorporates these Terms and Conditions by reference and is signed by Customer. Each Order, these Terms and Conditions, the Master Service Level Agreement ("Master SLA"), any specific Service Level Agreement ("Service Level Agreement"), if applicable (all of which can be found at <https://www.bionsecurity.com>, and any other writing that by its terms is intended to be made a part of any such Order (collectively, this "Agreement") collectively shall constitute an independent and separate contract between the parties for the services ("Services") and the software, hardware and equipment (collectively, "Products") specified therein. Services may include telecommunications services, managed information technology ("IT") services, managed security services, remote backup, Internet, hosting, infrastructure supply and support, consulting, or other services set forth in a signed Order. Products may include software or equipment developed by a party other than Company or in which any third party has intellectual property or other ownership rights ("ThirdParty Software" or "Third-Party Equipment" as applicable), or other products manufactured or developed by parties other than Company, that are provided by Company as a reseller or sublicensor. Company agrees to provide, and Customer agrees to purchase, the Services and Products described on the Order at the price, for the term, and on the other terms and conditions set forth herein and therein. This Agreement shall be effective and binding at the time of Company's acceptance of the Order and shall be deemed dated the date accepted by Company, as indicated on the Order.

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## **1. TERMS AND CONDITIONS APPLICABLE TO ALL SERVICES AND PRODUCTS.**

**1.1 TERM OF SERVICE.** Services shall commence on the service commencement date ("Service Commencement Date"), which shall be the day immediately following the date on which Company notifies Customer that each Service is installed and/or ready for use, and shall continue for the length of the Service Term stated in the Order (the "Service Term"). Unless the Services consist of one-time implementation or consulting Services (collectively, "Professional Services"), following the expiration of the Service Term, this Agreement and each Service shall automatically renew at current Company list rates for successive one (1) year terms (each a "Renewal Term" and collectively with the Service Term, the "Term"), unless canceled by either party giving at least sixty (60) days written notice of termination prior to the end of the then current Term.

**1.2 FEES AND CHARGES.** (a) Recurring Charges. Except as otherwise provided in any Applicable Tariff (as defined below), the monthly recurring charge for each Service provided by Company during the Service Term shall be that charge stated on the Order, and the charges for each month's Service during the Renewal Term(s), if any, shall be based upon the then current monthly charges provided by any Applicable Tariff or Company's then standard charge for the same or similar services ("Monthly Service Charge"). Company shall invoice Customer for Services on a monthly basis for the Monthly Service Charge, and Customer's payment for each invoice shall be received by Company within thirty (30) days of the invoice date ("Due Date"). The first Monthly Service Charge shall be prorated from the Service Commencement Date through the end of the calendar month in which the Service Commencement Date occurs. (b) Non-Recurring Fees. Except as expressly set forth to the contrary in an Order, all non-recurring charges for Professional Services and Products ("Non-Recurring Fees," and collectively with Monthly Service charges, "Fees") stated on the Order shall be due on the Due Date set forth in the Order, and any non-recurring installation charges stated on the Order shall be due on the Due Date of the first invoice. (c) Taxes. Any applicable surcharge, federal, state, local, excise, sales tax, or similar levy, chargeable to or against Company because of the Services and Products provided by Company to Customer, shall be charged to and paid by Customer in addition to the Fees. (d) Pass-Through Expenses. Unless an Order provides for a fixed cost, in addition to the Fees provided in the Order, Customer shall reimburse Company for its reasonable and documented out-of-pocket expenses, including without limitation, travel expenses, lodging, meals, shipping or other similar expenses, incurred by Company in performing the Services or providing the Products ("Expenses"). Any such Expenses will be billed at cost, invoiced monthly and paid as provided herein and in the Order. (e) Usage Fees. If Fees due under this Agreement are based on the number of users, volume of use, or other usage metrics, Company may, upon ten (10) days' advance written notice to Customer, audit Customer's use of the Services, including through the use of third-party monitoring software installed or run on Customer's system, and increase billing for any and all usage-based fees to the extent, but only to the extent that thereupon Customer's fees paid match the level of use

of the Services. Notwithstanding the foregoing, in no event will Customer's Fees for Services at any time fall below any minimums set forth in the Order. (f) Moves; Termination Fees. If Customer terminates a Service before the expiration of the Service Term due to a change of Customer's location, then Customer shall pay any applicable Termination Fees (as defined in Section 1.20(b)) in accordance with this Agreement. Notwithstanding the foregoing, however, and except for construction and equipment costs to deliver a custom-designed and engineered circuit(s) for fiber internet to Customer's business, Company will waive the Termination Fees if Customer purchases another Service from Company for its new location that is of the same or greater contract value. (g) Missed Appointment Fees. If Company schedules an appointment with Customer to deliver or install Products or Services, Customer or its authorized representative must be available at Customer's location for the scheduled appointment date and time to grant Company access or to accept delivery of the Products or Services, or to work with Company's technician to activate Service. If Customer fails to have an authorized representative available at the scheduled appointment time, Company's technician will attempt to contact Customer or its authorized representative by phone for up to fifteen (15) minutes after which time the appointment may be rescheduled. Company reserves the right to charge Customer a reasonable appointment rescheduling fee. Such appointment rescheduling fee must be paid before the appointment is rescheduled.

**1.3 PAYMENT METHODS.** Company will accept payments from Customer using any of the following payment methods: (a) check mailed to Company at the payment address set forth in the Order, (b) Electronic Funds Transfer ("EFT") using the CTX (Corporate Trade Exchange) format, and (c) VISA, MasterCard, and American Express, **subject to a 3% convenience fee.**

**1.4 APPLICABLE TARIFFS.** For certain telecommunications Services, this Agreement is subject to and controlled by the provisions of Company's lawfully filed and approved state and federal tariffs relating to certain telecommunications Services covered by this Agreement, and all changes and modifications to said tariffs as may be made from time to time, including all provisions limiting Company's liability and disclaiming warranties ("Applicable Tariffs"), are incorporated herein by reference. All appropriate tariff rates and charges shall be included in the provision of the Services. The Applicable Tariffs shall supersede any conflicting provisions of this Agreement in the event any part of this Agreement conflicts with terms and conditions of the Applicable Tariffs. Company is a Competitive Local Exchange provider. Analog lines purchased from Company are subject to the applicable state tariffs. Company may, as a billing convenience to Customer, acquire and invoice to Customer analog lines from the local provider in the region. In such cases, Company is not the provider of services. Company renders this invoice service to Customer to support consolidated billing for Customer's convenience. Rates for analog lines fluctuate over time and are subject to change upon thirty (30) days' written notice to Customer.

**1.5 LATE FEES; SUSPENSION OF SERVICE.** (a) Late Fees. If any invoice for Products or Services is not paid in full within ten (10) days after the Due Date, then Customer shall also pay a late charge equal to the lesser of 1.5% of the unpaid balance of the invoice per month or the maximum lawful rate under applicable state law ("Late Fee"). (b) Suspension of Service. If Customer fails to pay all amounts owed to Company under an Agreement when due, then upon at least ten (10) business days' prior written notice (including via email) to Customer, and in addition to any other remedies available at law or in equity, Company may suspend Services under an Agreement until full payment is made. Company further reserves the right to retain any Customer Equipment stored in any Company facilities as part of rendered Services until full payment is made. Customer shall pay a reasonable reactivation fee for Service restoration, to be determined by Company. Company's right to suspend Services and retain Customer Equipment under this Section is in addition to Company's right to terminate an Agreement for non-payment.

**1.6 CREDIT INVESTIGATION.** By execution of this Agreement, Customer authorizes Company to conduct an investigation into its creditworthiness, including obtaining credit histories and making inquiries of other businesses, banks, and lending institutions concerning the creditworthiness of Customer. Customer hereby releases Company from any and all claims arising against Company or its affiliates in connection with such investigation. Customer acknowledges and agrees that Company may terminate this Agreement any time before the Service Commencement Date in the event Company determines in its sole discretion that Customer's creditworthiness is not acceptable and Customer cannot provide sufficient additional security to Company.

**1.7 EQUIPMENT.** (a) Equipment. Company equipment located at Customer's premises and either leased from or furnished by Company ("Company Equipment") remains the property of Company. Customer agrees to maintain all Company Equipment located at Customer's premises in a reasonable operational environment, including without limitation the provision of reasonable lighting, HVAC, security, custodial services, and all minimum requirements set forth in any applicable Order. Customer shall not allow any lien or encumbrance to be placed on any Company Equipment at any time and shall maintain any Company identification tags or other markings placed on the Company Equipment by Company. (b) Ownership and Risk of Loss. Customer bears all risk of loss of, theft of, casualty or damage to the Company Equipment and any equipment purchased by Customer from Company ("Customer Equipment"), from the time it is shipped or delivered to Customer's location and, with respect to Company Equipment, until recovered by or returned to Company. If any Company Equipment is damaged or defaced while at Customer's premises, or is returned to Company damaged or defaced, Customer will be responsible for repair or replacement fees for the damaged or defaced Company Equipment. If any such Company Equipment cannot be recovered from Customer's premises or returned by Customer to Company at the end of the Term, then Customer will pay Company its cost of purchasing the Company Equipment.

**1.8 TAMPERING WITH CONFIGURED EQUIPMENT.** The Company Equipment and the equipment purchased by Customer from Company ("Customer Equipment") may be configured exclusively for Customer's use of the Service purchased. Unless expressly authorized by Company, Customer shall not tamper with the Equipment or modify its configuration. Customer agrees not to change the electronic serial number or identifier of the Equipment, or perform a factory reset of the Equipment without prior written permission from the Company. Company reserves the right to terminate the Service should Customer tamper with the Equipment, and in such case, Customer shall be responsible for all outstanding balances due for the Service, unbilled charges under the Order, a disconnect fee, if applicable, and a Termination Fee, if applicable, all of which shall become immediately due and payable.

**1.9 LAWFUL AND NON-FRAUDULENT USE OF SERVICES.** Customer agrees to use the Services only for lawful purposes. Customer will not use the Services for any unlawful, abusive, or fraudulent purpose, including, without limitation, using the Services: (a) in any manner that threatens the integrity, performance or availability of the Service to others; (b) in any manner that avoids Customer's obligation to pay for the Service; (c) for transmitting or receiving any communication or material of any kind when in Company's sole judgment the transmission, receipt or possession of such communication or material (i) would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable local, state, national, or internal law, or (ii) encourages conduct that would constitute a criminal offense or give rise to civil liability, or otherwise violate any applicable local, state, national, or international law. If Company has reason to believe that Customer, its employees, agents, representatives or anyone using the Services or Products provided to Customer (collectively, "Customer Parties") is using the Service in violation of this Section, abusing the Service or using it fraudulently or unlawfully, Company reserves the right to terminate, suspend or restrict the Service immediately and without advance notice to Company. If Company terminates for such violations, Customer shall be responsible for all outstanding balances due for the Service, unbilled Fees under the Order, a disconnect fee, if applicable, and a Termination Fee, if applicable, all of which shall become immediately due and payable.

**1.10 USE OUTSIDE UNITED STATES.** While Company encourages use of the Service within the United States to other countries, Company does not presently offer or support the Service to customers located in other countries. The Products are intended for use only in the United States. If Customer removes Products to a country other than the United States and uses the Service from there, Customer does so at Customer's own risk including the risk that such activity violates the laws of the country where Customer does so. Customer is liable for any and all use of the Service and Products by Customer and any Customer Parties. Should removal of Products from the United States violate any export control law or regulation, Customer will be solely liable for such violation. If Company determines that Customer is using the Service from outside the United States, Company reserves the right to terminate the Service immediately and without advance

notice, and Customer shall be responsible for all outstanding balances due for the Service, unbilled charges under the Order, a disconnect fee, if applicable, and a Termination Fee, if applicable, all of which shall become immediately due and payable.

**1.11 NO RESALE OR TRANSFER.** Customers are prohibited from reselling or transferring the Services or Products (other than Customer-Owned Equipment) to any other person for any purpose, without the express prior written consent of the Company. In addition, customers are prohibited from using the Service or Products for any uses that result in excessive usage inconsistent with normal business usage patterns. If Company determines, in its sole discretion, that Customer is reselling or transferring the Service or Products (other than Customer Equipment), then the Company reserves the right to immediately terminate without advance notice or modify the Service and to assess additional charges for each month in which the excessive usage occurred. Customer is liable for any and all reselling or transferring of the Service and Products by Customer and any Customer Parties, and Customer agrees to hold Company harmless from and against any and all liability associated with such use.

**1.12 NETWORK MANAGEMENT.** Company uses reasonable network management practices to protect the network from harmful elements such as viruses, malicious Internet traffic and spam, to ensure Customer compliance with this Agreement, and to avoid network congestion in order for Company to provide the best possible service for the most customers. Company may, among other things and without advance notice, prioritize the usage of the small percentage of customers who use the highest amount of data below that of other customers during "peak times" or locations experiencing network congestion. Company's network management practices change frequently due to the evolving nature of Internet, and may be viewed on the Network Management Policy located on <https://www.bionsecurity.com/web/business/resources/agreements-policies>, which is incorporated herein by reference.

**1.13 INTELLECTUAL PROPERTY RIGHTS.** (a) Company Rights. Except for any rights expressly granted herein, the Agreement does not transfer from Company to Customer any right, title or interest in or to any technology, which Company uses to provide the Services ("Company Technology"). All websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively the "Marks") of Company are and shall remain the exclusive property of Company, and nothing in this Agreement shall grant Customer the right or license to use any of such Marks. Customer acknowledges that the Services and Marks are the exclusive property of Company. Company or its licensors, as applicable, retain all intellectual property rights in and to all and any part of the Services, Marks and the Company Technology used to provide the Services ("Intellectual Property Rights"). Customer shall not acquire hereunder any right, title, or interest in the Services, except the right to use them in accordance with this Agreement. (b) Customer Rights. Except for any rights expressly granted in this Agreement, this Agreement does not transfer from Customer to Company any right, title or interest in or to any process, system, software, service, or device in which Customer

has any Intellectual Property Rights or other ownership or use rights ("Customer Technology"). Except for any rights expressly granted in this Agreement, this Agreement does not transfer to Customer any right, title, or interest in or to any Third-Party Software or Intellectual Property Rights therein, and all right, title, and interest therein remains with the party providing the same, or with the Third-Party Software owner, as appropriate. If Customer decides to use the Service through an interface device not provided by Company, which Company reserves the right to prohibit in particular cases or generally, Customer warrants and represents that it possess all required rights, including software and/or firmware licenses, to use the interface device with the Service. Customer shall not reverse engineer, reverse compile, decompile, or otherwise attempt to derive the source code from the binary code of the Service Software. (c) Services Software. Where applicable, Company may install certain Third-Party Software and Company Technology on Equipment in Customer's network to deliver Services (collectively, "Services Software"). Company has a license or other rights to allow use of such Services Software to deliver the Services. Company hereby grants to Customer a limited, non-exclusive, non-transferable, personal license to use the Services Software on the Equipment for the Term of this Agreement and strictly in accordance with this Agreement subject to all applicable Third-Party Software license terms and requirements. If Customer decides to use Services through an interface device not provided by Company, which Company reserves the right to prohibit in particular cases or generally, Customer warrants and represents that it possesses all required rights, including software and/or firmware licenses, to use the interface device with Services. Customer shall not reverse engineer, reverse compile, decompile, or otherwise attempt to derive the source code from the binary code of the Service Software. (d) General Knowledge. Customer may obtain Services and Products directly from third parties, and Company may provide services, products, and Company Technology to third parties, without restriction or accounting to the other party. (e) Derivative Works. If Customer, at any time during the Term, provides Company with comments, suggestions or other feedback (collectively, "Feedback"), Company's use of Feedback will not cause any documentation incorporating or derived from such Feedback to be licensed to or otherwise shared with Customer or any third party. If Customer is deemed to own any Feedback, Customer hereby grants to Company a nonexclusive, royalty-free, fully paid up, perpetual, irrevocable, worldwide license to use, disclose, modify, reproduce, license, distribute, practice, commercialize, further develop and otherwise freely exploit without restriction or payment of any kind all such Feedback.

**1.14 CONFIDENTIALITY; NON-DISCLOSURE; CPNI.** (a) **Non-Disclosure Agreement.** If the parties have executed a separate Confidentiality and NonDisclosure Agreement ("NDA"), the terms and provisions of such NDA are incorporated herein by reference, and the parties agree that such NDA sets forth the obligations and responsibilities of the parties with regard to the use, treatment, and disclosure of certain confidential and proprietary information of the parties. If there is a conflict between the terms of the NDA and the terms of an Agreement, the terms of the NDA shall govern and control to the extent of

such conflict. The terms of the NDA shall survive the expiration or termination of an Agreement for any reason in accordance with the NDA's terms and conditions. The parties agree to cause any and all of their subcontractors and sub- servicers, if any, to observe the terms and provisions of the NDA as though they were parties thereto, and the parties shall be responsible for any breach of the NDA by or on behalf of their subcontractors or sub-servicers. Notwithstanding the foregoing, should the NDA expire or terminate while an Agreement is still in effect, the terms, conditions, representations, warranties, covenants, and agreements contained in the NDA will nevertheless apply to an Agreement.

**(b) Confidential Information.** If the parties have not executed a separate NDA, the terms of this Section 1.14(b) through Section 1.14(f), inclusive, will apply. Each party acknowledges that it and its employees, agents, representatives and contractors, and their respective successors and assigns (collectively, "Receiving Party") may be exposed to or acquire information that is proprietary or confidential to the other party ("Disclosing Party") in connection with the performance of this Agreement ("Confidential Information"). The Receiving Party shall hold such Confidential Information in strict confidence and shall not use or disclose any such Confidential Information to any third party other than as required to perform an Agreement. Confidential Information includes, without limitation: (i) any technical information, design, process, procedure, formula, or improvement, as well as any formulae, specifications, business or work processes and procedures, instructions, and other data relating to the Disclosing Party's business, services or products, the development, production of any work done specifically for the Customer; (ii) the business plans and financial information of the Disclosing Party, regardless of whether such information would be protected at common law; and (iii) such other information that, due to its nature, the Receiving Party knows or should have known the same was the proprietary or confidential information of the Disclosing Party. Each party will cause any and all persons or entities that have access to Confidential Information by or through such party, including (without limitation) any Receiving Party, to observe and comply with the terms of such party's confidentiality obligations hereunder as if they were parties hereto. Customer's Feedback relating to Services and Company Technology, even if designated as confidential by Customer, shall not, absent a separate written agreement, create any confidentiality obligation for or upon Company, and Company will own and may utilize the same in accordance with Section 1.13(e). The financial terms of this Agreement that are not otherwise publicly available may not be disclosed to any third party, except to a party's legal or accounting firms or as required by regulators with jurisdiction over Customer's or Company's businesses, without the prior written consent of the Disclosing Party.

**(c) Non-Confidential Information.** Notwithstanding Section 1.14(b), Confidential Information does not include the following: (i) information that at the time of disclosure is or was, without fault of the Receiving Party, available to the public by publication or otherwise; (ii) information that the Receiving Party can show was in its possession at the

time of disclosure and was not acquired, directly or indirectly, from the Disclosing Party; (iii) information received from a third party with the right to transmit same without violation of any confidentiality agreement; and (iv) information that must be disclosed pursuant to court order or by legal or administrative process; provided, however, that if information must be disclosed pursuant to court order or by legal or administrative process, the Receiving Party shall inform the Disclosing Party of such requirement (unless prohibited by law) and shall cooperate with the Disclosing Party in seeking a protective order or other limitation on disclosure.

**(d) Nonpublic Personal Information.** To the extent that any Confidential Information of Customer obtained by Company is Nonpublic Personal Information (as that term is defined by the GrammLeach-Bliley Act ("GLBA")) and Company is a service provider, Company covenants and agrees that it will implement or has implemented security measures designed to: (i) ensure the security and confidentiality of Nonpublic Personal Information about Customer's employees or consumers served directly or indirectly by or through Customer (each, a "Consumer"); (ii) protect against any anticipated threats or hazards to the security or integrity of such Nonpublic Personal Information; (iii) protect against unauthorized access to or use of such Nonpublic Personal Information that could result in substantial harm or inconvenience to any Consumer; and (iv) ensure proper disposal of such Nonpublic Personal Information. As a service provider, Company will implement written security and disaster recovery plans consistent with industry standards. Company will comply with all applicable laws and regulations regarding the security, handling, use and disclosure of such Nonpublic Personal Information in its role as a service provider. Upon termination of any Agreement pursuant to which Company obtains Nonpublic Personal Information, Company shall delete and erase from Company's systems all such Nonpublic Personal Information relating to this Agreement and shall certify in writing to Customer that all such Nonpublic Personal Information has been deleted and erased in accordance with applicable laws.

**(e) HIPAA.** As applicable, Customer shall comply with all federal and state regulations regarding the use and disclosure of Protected Health Information, as that term is defined at 45 C.F.R. § 160.103 ("PHI"), including, but not limited to the privacy and security regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). If Company will have access to the PHI of Customer's patients or employees, Company will execute its form Business Associate Agreement in favor of Customer, as a covered entity under HIPAA.

**(f) CPNI.** The Federal Communications Commission ("FCC") has established rules related to Customer Proprietary Network Information ("CPNI") as codified in 47 C.F.R. 64.2010. The rules require procedures to verify and authenticate customers before providing access to CPNI, which includes call detail and certain billing information. Company is committed to customer privacy and security of customer information and our privacy practices are described in further detail at [bionsecurity.com/privacypolicy.com](http://bionsecurity.com/privacypolicy.com). Company's authentication and verification practices with respect to CPNI access are

similar for our residential and business customers. However, because Company and Customer have executed this contractual business relationship and Customer has access to a Company dedicated representative, pursuant to the FCC's rules, Company may implement different requirements regarding the authentication procedures to be used to verify authorized users prior to providing access to Customer's CPNI. In all cases, this business relationship with Company will reflect Company's long-standing protection of customer account information and our practices of not using or disclosing such information except to provide services or as permitted or required by law. These authentication procedures, which will result in a password selected by a representative of Customer to protect their on-line account, may include, but are not limited to: (1) verification via a PIN code sent to a Customer's mailing address or email address that has been on file with Company for more than 30 days; (2) verification of Customer's email address via multi-factor authentication; and (3) authentication through an authorized administrator of Customer requesting CPNI access for another representative of Customer. In certain situations, Company may verify and authenticate a Customer representative's authority to discuss account information through communications with the person claiming to be the account holder, or based on the personal relationship between the Company representative and the Customer representative.

**(g) Press Release.** Company may publicly refer to Customer, orally and in writing, as a customer of Company and may refer to the publicly releasable titles of any Order with Customer. Any other reference to Customer by Company may be made only in accordance with this Section. The parties shall consult with each other in preparing any press release, public announcement, case study or other form of release of information concerning an Agreement or the transactions contemplated hereby that is intended to provide such information to the news media or the public (a "Press Release"). Neither party may issue or cause the publication of any such Press Release without the prior written consent of the other party. However, nothing herein prohibits either party from issuing or causing publication of any such Press Release to the extent that such action is required by applicable law or the rules of any national stock exchange applicable to such party or its named affiliates, in which case the party wishing to make such disclosure will, if practicable under the circumstances, notify the other party of the proposed time of issuance of such Press Release and shall consult with and allow the other party reasonable time to comment on such Press Release in advance of its issuance.

**(h)** Notwithstanding anything contained herein to the contrary, nothing contained within this Agreement will prohibit, prevent, delay, or exclude Customer's lawful compliance with, and disclosure of Confidential Information pursuant to, the Georgia Open Records Act or any similar law or regulation that requires it as a municipality to disclose information or produce documents and other records upon a lawful request.

**1.15 VENDOR TERMS OF USE.** Company does not develop or manufacture any Products but is an authorized reseller and sub-licensor of certain Third-Party Software and Third-

Party Equipment provided by third-party vendors, manufacturers and developers unrelated to Company (collectively, "Vendors"). All Intellectual Property Rights relating to Products are and shall remain the exclusive property of Vendors or their licensors. Vendor terms and conditions of sale or license may apply to Products provided by Company to Customer under this Agreement, and such Vendor terms and conditions are incorporated herein by reference.

**1.16 LIMITED WARRANTIES ON PROFESSIONAL SERVICES.** Company warrants and covenants that Professional Services will be performed: (a) in accordance with the terms of the applicable Order, including the location, time, and manner for performing the Services; (b) in a workmanlike manner and in accordance with generally accepted professional practices, using qualified Company Parties; and (c) in accordance with any plans, drawings, or specifications furnished to Company, if any. In the event of a breach of this warranty, as Customer's exclusive remedy, Company will re-perform the defective Professional Services at no charge to Customer within a reasonable time or within the limits of the Master SLA or any applicable Service Level Agreement under an Order. Company's warranty does not apply to services performed pursuant to plans, drawings, or specifications furnished to Company that have been modified by Customer or a third party, unless Company has specifically agreed in writing to warrant its services under the revised plans, drawings, or specifications.

**1.17 DISCLAIMER OF WARRANTIES ON SERVICES.** EXCEPT AS EXPRESSLY SET FORTH ABOVE WITH RESPECT TO PROFESSIONAL SERVICES, COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OF THE SERVICE FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, OR ANY WARRANTY THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING, COMPANY DOES NOT WARRANT THAT THE SERVICE WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF QUALITY OUTSIDE THE PARAMETERS OF ANY SERVICE LEVEL AGREEMENT, OR LOSS OF CONTENT, DATA, OR INFORMATION. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY COMPANY, ITS AGENTS OR EMPLOYEES WILL IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTIES OR LIMIT ANY DISCLAIMER OF WARRANTIES UNDER THIS AGREEMENT. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICES, IF ANY, BY COMPANY OR ITS AGENTS OR INSTALLERS ARE INFORMATIONAL ONLY AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND. COMPANY DOES NOT AUTHORIZE ANYONE, INCLUDING, BUT NOT LIMITED TO, COMPANY EMPLOYEES, AGENTS, OR REPRESENTATIVES, TO MAKE A WARRANTY OF ANY KIND ON COMPANY'S BEHALF, AND CUSTOMER SHOULD NOT RELY ON ANY SUCH STATEMENT.

**1.18 DISCLAIMER OF WARRANTIES ON PRODUCTS.** CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY IS NOT THE DEVELOPER OR MANUFACTURER OF ANY EQUIPMENT, HARDWARE, SOFTWARE, SERVICE SOFTWARE OR OTHER PRODUCTS,

INCLUDING WITHOUT LIMITATION ANY PRODUCTS PROVIDED UNDER THIS AGREEMENT. CUSTOMER AGREES TO LOOK SOLELY TO THE VENDORS OF PRODUCTS PROVIDED HEREUNDER FOR ANY REMEDY. CUSTOMER ACKNOWLEDGES AND AGREES THAT ALL PRODUCTS ARE BEING MADE AVAILABLE AND PROVIDED TO CUSTOMER ON AN "AS IS" BASIS AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTY WHATSOEVER BY COMPANY. COMPANY MAKES NO, AND EXPRESSLY DISCLAIMS ALL, WARRANTIES WITH RESPECT TO PRODUCTS, EXPRESS OR IMPLIED, INCLUDING THE ADEQUACY, AVAILABILITY, STABILITY, UTILITY, INTEGRITY OR QUALITY OF THE PRODUCTS, WHICH BOTH PARTIES ACKNOWLEDGE WERE MANUFACTURED OR DEVELOPED BY THIRD-PARTY VENDORS, LICENSORS OR SUPPLIERS. COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND THOSE ARISING FROM TRADE USAGE OR COURSE OF DEALING. COMPANY DOES NOT WARRANT THAT THIRD-PARTY SOFTWARE OR SERVICE SOFTWARE WILL PERFORM UNINTERRUPTED, ERROR FREE OR VIRUS FREE, NOR DOES COMPANY WARRANT THAT THE SAME WILL MEET CUSTOMER'S REQUIREMENTS OR RESULT IN INCREASED REVENUES OR PROFITS OF CUSTOMER. COMPANY HAS NO LIABILITY FOR VIOLATION OF LAWS BY CUSTOMER OR OTHER USERS OF PRODUCTS. CUSTOMER HEREBY RELEASES COMPANY FROM ANY AND ALL CLAIMS FOR BREACH OF WARRANTY ARISING OUT OF CUSTOMER'S OR ANY CUSTOMER PARTIES' USE OF PRODUCTS. To the extent allowed by the Vendor of any Products, Company shall pass through to Customer all end-user warranties, indemnities and guarantees relating to the Products, if any, including without limitation any indemnities or warranties regarding infringement claims related to Third-Party Software and ThirdParty Equipment. To the extent Company is not permitted to pass such warranties or indemnities through to Customer, Company agrees to enforce such warranties and indemnities, if any, on behalf of Customer at Customer's request and expense.

#### **1.19 [INTENTIONALLY OMITTED]**

**1.20 LIMITATION OF LIABILITY.** COMPANY'S LIABILITY TO CUSTOMER ON ACCOUNT OF ANY ACT OR OMISSION OF COMPANY OR ANY COMPANY PARTIES OR RELATED TO THIS AGREEMENT, INCLUDING ACTS OR OMISSIONS RELATED TO 911 DIALING IF APPLICABLE, SHALL BE LIMITED TO THE ACTUAL, DIRECT DAMAGES INCURRED BY CUSTOMER ARISING OUT OF OR RELATED TO COMPANY'S PERFORMANCE OF THIS AGREEMENT AND SHALL IN NO EVENT EXCEED THE AMOUNT PAID FOR THE SERVICE GIVING RISE TO THE CLAIM OF LOSS FOR THE AFFECTED TIME PERIOD. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, PUNITIVE OR THIRD-PARTY DAMAGES OR CLAIMS, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST SAVINGS, LOST PRODUCTIVITY, LOSS OF DATA, LOSS OF USE OF EQUIPMENT, AND LOSS FROM INTERRUPTION OF BUSINESS, EVEN IF PREVIOUSLY ADVISED OF THEIR POSSIBILITY AND REGARDLESS OF

WHETHER THE FORM OF ACTION IS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY. COMPANY AND COMPANY PARTIES AND REPRESENTATIVES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY UNAUTHORIZED ACCESS, DAMAGES, OR MODIFICATIONS TO, OR LOSS OR DESTRUCTION OF, ANY OF CUSTOMER'S SOFTWARE, FILES, DATA, OR PERIPHERALS OR FOR COPYRIGHT, TRADEMARK, PATENT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT. COMPANY WILL NOT BE LIABLE FOR ANY DELAY OR FAILURE TO PROVIDE THE SERVICE, INCLUDING 911 DIALING, AT ANY TIME OR FROM TIME TO TIME, OR ANY INTERRUPTION OR DEGRADATION OF SERVICE QUALITY THAT IS CAUSED BY ANY OF THE FOLLOWING: (A) ACTS OR OMISSIONS OF AN UNDERLYING CARRIER, SERVICE PROVIDER, VENDOR OR OTHER THIRD PARTY; (B) THE EQUIPMENT, NETWORK, OR FACILITY FAILURE; (C) THE EQUIPMENT, NETWORK, OR FACILITY UPGRADE OR MODIFICATION; (D) OUTAGE OF CUSTOMER'S BROADBAND SERVICE PROVIDER; (E) CUSTOMER'S AND CUSTOMER PARTIES' ACTS OR OMISSIONS; OR (F) ANY OTHER CAUSE THAT IS BEYOND COMPANY'S CONTROL INCLUDING, BUT NOT LIMITED TO, FAILURE OF OR DEFECT IN ANY EQUIPMENT OR PRODUCTS, THE INABILITY OF THE SERVICE CONNECTIONS TO BE COMPLETED, OR THE DEGRADATION OF SERVICE QUALITY. WITH RESPECT TO COPPER-BASED INTERNET SERVICES, COPPER-BASED INTERNET RELIES ON COPPER AVAILABILITY FROM A THIRD PARTY. IF COPPER AVAILABILITY FROM A THIRD PARTY SHOULD CEASE, COMPANY RESERVES THE RIGHT TO TERMINATE CUSTOMER'S INTERNET SERVICE BY PROVIDING CUSTOMER SIXTY (60) DAYS WRITTEN NOTICE OF TERMINATION. FURTHERMORE, COMPANY WILL NOT BE LIABLE TO CUSTOMER OR OTHERS FOR ANY DAMAGES ARISING FROM THE CONTENT OF ANY DATA TRANSMISSION, COMMUNICATION, OR MESSAGE TRANSMITTED OR RECEIVED BY CUSTOMER, ANY CUSTOMER PARTIES OR ANY PERSON USING THE SERVICE OR EQUIPMENT PROVIDED TO CUSTOMER, OR LOSSES RESULTING FROM ANY GOODS OR SERVICE PURCHASED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. ADDITIONAL LIMITATIONS MAY BE OUTLINED IN THE ORDER. THE LIMITATIONS OF LIABILITY IN THIS AGREEMENT SHALL BE ON A CUMULATIVE BASIS AND NOT PER INCIDENT. CUSTOMER IS RESPONSIBLE FOR THE SECURITY, INTEGRITY, AND CONFIDENTIALITY OF ITS DATA AND SYSTEMS. COMPANY WILL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY OF THE FOLLOWING: (A) LOSS, DESTRUCTION, OR CORRUPTION OF DATA OR SYSTEMS; (B) LOSS RESULTING FROM SYSTEM FAILURE, MALFUNCTION, OR SHUTDOWN; (C) FAILURE TO ACCURATELY STORE, TRANSFER, READ, OR TRANSMIT INFORMATION; OR (D) UNAUTHORIZED DELETION, ACCESS, EXFILTRATION, OBFUSCATION, OR ENCRYPTION OF DATA OR SYSTEMS. COMPANY'S AGGREGATE LIABILITY FOR: (A) ANY FAILURE OR MISTAKE, (B) ANY CLAIM WITH RESPECT TO COMPANY'S PERFORMANCE OR NONPERFORMANCE HEREUNDER, OR (C) ANY ACT OR OMISSION OF COMPANY HEREUNDER SHALL IN NO WAY EXCEED THE CHARGES FOR THE SERVICE FOR THE AFFECTED TIME PERIOD.

**1.21 REMEDIES.** Upon the occurrence of any default or breach of this Agreement by Customer, and at any time thereafter, Company may, in its sole discretion, do any one or more of the following: (a) terminate this Agreement as set forth in Section 1.21, (b) exercise any other right or remedy which may be available to it under this Agreement and applicable law; and (c) terminate, restrict or suspend any Service and retrieve any Products (other than Company Equipment) from Customer's premises. Customer shall be liable for all reasonable attorneys' fees and other costs and expenses resulting from Customer's default and the exercise of Company's remedies. No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Company at law or in equity. No express or implied waiver by Company of any Customer default shall constitute a waiver of any other default by Customer or a waiver of any of Company's rights. The parties agree and acknowledge that the remedies afforded by this Section are an agreed measure of damages and are not a forfeiture or penalty.

**1.22 TERMINATION.** (a) Termination for Cause. Company reserves the right to cancel and terminate Service immediately and without advance notice if Company deems such action is necessary to prevent or protect against fraud or to otherwise protect Company's personnel, agents, facilities, or services. Without limitation, Company may take such actions if: (i) Customer refuses to furnish information or furnishes false information that is essential for billing, or pertains to Customer's creditworthiness or use of the Service and Products; (ii) Customer indicates that Customer will not comply with a request for security for the payment of Fees for the Service and Products; (iii) Customer's Monthly Service Charges exceed established parameters based on Customer's history of usage, which may indicate a likelihood of non-payment or fraud; (iv) Customer has been given notice by Company of any past due Fees and such amount remains unpaid, in whole or in part; (v) Customer refuses to pay Fees by the Due Date when billed for the Service and Products; (vi) Customer uses, or attempts to use, the Service with the intent to avoid the payment, in whole or in part, of the charges for the Service by using or attempting to use the Service by rearranging, tampering with, or making connections to the Service in an unauthorized manner, or using fraudulent means or devices; (vii) Customer acts in a manner that is threatening, obscene, or harassing to Company personnel; (viii) Customer is insolvent or has a petition in bankruptcy filed against it; (ix) Customer is adjudicated a bankrupt; (x) Customer makes a general assignment for the benefit of its creditors; (xi) Customer has a receiver, trustee or agent appointed with respect to its business or any significant portion thereof; (xii) Customer ceases to do business in any manner that would affect Company's performance under this Agreement; (xiii) Customer fails to comply with any applicable laws in connection with its activities under this Agreement; or (xiv) Customer is in breach of any other provision of an Agreement and fails to correct and cure such breach within thirty (30) days after the written notice of such default from Company ("Termination of Cause"). In addition, Company may cancel and terminate Service after thirty (30) days written notice if a third-party product supported by Company has been declared "end-of-life" by the manufacturer or if any customer

monitoring software required as part of existing services is not remediated within thirty (30) days written notice. Customer shall have the right to terminate this Agreement if Company is in material default of any provision of this Agreement and fails to correct and cure such breach within thirty (30) days after Customer provides written notice of such default ("Company Default"). (b) Termination Fees. Upon termination of this Agreement for any reason, Customer shall be obligated to pay to Company on demand all Fees and other amounts due up to the effective date of termination ("Outstanding Amounts"). If Fees are calculated on a monthly, quarterly or other periodic basis, then Customer shall be liable for the pro-rata portion thereof up to the effective date of termination. Upon a Termination for Cause by Company, or an early termination by Customer without cause ("Early Termination"), in addition to Outstanding Amounts, Customer also shall be obligated to pay to Company on demand all Fees and other amounts (including any residual amount) for the remainder of the Term that would have been paid had this Agreement not been terminated (such sum being the "Early Termination Fees" or "ETFs"). Upon a termination for a Company Default by Customer, no ETFs will be owed. (c) Effect of Termination. Upon termination or expiration of this Agreement, Customer will no longer have access to, or be able to use the Service and Products (other than Customer Equipment) except as Customer may require and Company shall allow, acting reasonably and in good faith, to facilitate Customer's move to another service. Upon termination or expiration of this Agreement, Customer is responsible for: (i) making any firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in Customer Equipment and provided by Company as part of the Service (collectively, "Service Software") and any Company Equipment located at Customer's location available to Company for uninstallation and return to Company; and (ii) providing Company with access to Customer's location for the purpose of retrieving any Service Software and Company Equipment. Fees owed by Customer to Company for Services and Products shall continue under this Agreement until such time as Customer has notified Company in writing that Customer has made all such Service Software and Company Equipment available for retrieval by Company or has returned the same to Company as required pursuant to an Order. Company will make available to Customer any archive, backup, or copies of data for thirty (30) days after notice of termination, after which time said archive, backup, or copies of data will be deleted from Company systems and irrevocably lost.

**1.23 FORCE MAJEURE.** Neither party will be liable for any delay or failure in performance under this Agreement due to any cause that is beyond its reasonable control and for which it is without fault or negligence, including, but not limited to, acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, cable cuts, power blackouts affecting facilities other than facilities of a kind commonly protected by redundant power systems, unless such redundant power systems are also affected by such condition, unusually severe weather conditions, fuel or energy shortages, inability to secure products or services of other persons or transportation

facilities, acts or omissions of transportation common carriers, or other causes beyond a party's reasonable control, whether or not similar to the foregoing (collectively, "Force Majeure Events"). The parties agree that the party whose performance is affected by the Force Majeure Events shall use commercially reasonable efforts to minimize the delay caused by the Force Majeure Events. In the event the delay caused by a Force Majeure Event lasts for a period of more than thirty (30) days, the parties shall negotiate an equitable modification to this Agreement. If the parties are unable to agree upon an equitable modification within fifteen (15) days after such thirty (30) day period has expired, then either party will be entitled to serve thirty (30) days' notice of termination on the other party with respect to this Agreement.

**1.24 ASSIGNMENT.** This Agreement and any contractual rights or remedies available to Company hereunder shall be freely assignable, in whole or in part, by Company. Additionally, the Company may sell or assign its interest, in whole or in part, in any telecommunications facilities utilized to provide the Service. Customers shall not assign this Agreement or its rights hereunder without the prior written consent of the Company to such assignment. Any such transfer without such consent of the Company is void.

**1.25 SITE REVIEW.** Provision of Services may be subject to an on-site technical review by Company engineering personnel. Such review may uncover site obstructions and/or issues that affect Company's ability to provide Services to the site, or the review may uncover that bandwidth upgrades are necessary to provide Services. In such cases, a new or amended Agreement may be required for Company to provide Services, such Agreement to be approved by both parties.

**1.26 GOVERNING LAW.** This Agreement shall be binding when accepted in writing by Company and shall be governed by the laws of the State of GEORGIA without regard to its conflict of laws principles. The provisions of this Section shall survive the termination of this Agreement and the use of the Services and Products pursuant hereto.

**1.27 COMPLIANCE WITH LAWS; PAYMENT OF TAXES.** Customer agrees to comply with all laws, regulations, and orders relating to this Agreement and the use of the Services and Products. Customer agrees and acknowledges that it is solely responsible for the payment of all license fees, assessments and sales, rental, use, property, excise, and other taxes or surcharges or fees now or hereafter imposed by any governmental body or agency upon the Services and Products. Any fees, taxes or other lawful charges paid by Company in connection with the Products or use thereof or provision of the Service hereunder (exclusive of any taxes based on the net income of Company), shall become immediately due from Customer to Company. This provision shall survive the termination of this Agreement and the use of the Services and Products pursuant hereto.

**1.28 NO SOLICITATION.** During the Term of an Agreement and for a one (1) year period immediately following the termination or expiration of an Agreement, neither party shall, directly or indirectly, for itself, or on behalf of any other person, firm, corporation or other entity, whether as principal, agent, employee, stockholder, partner, member, officer,

director, sole proprietor, or otherwise, solicit, participate in, or promote the solicitation of any employee of the other party to leave such employment, or hire or engage such employee; provided, however, that nothing in an Agreement shall prohibit either party from offering employment to or hiring any employee of the other party in response to notices of employment addressed to the general public and not to the other party's employees in particular. In the event either party violates this non-solicitation agreement, the violating party shall pay to the other party, as reasonable liquidated damages, an amount equal to one hundred fifty percent (150%) of the employee's annualized salary at the non-violating party, including bonuses.

**1.29 INDEPENDENT CONTRACTOR; SUBCONTRACTOR.** Company will perform all Services solely in Company's capacity as an independent contractor and not as an employee, agent or representative of Customer. Company will not be entitled to any privileges or benefits that Customer may provide to its employees. Company may utilize subcontractors or suppliers to perform all or any portion of the Services or to provide any Products under an Agreement, but Company shall at all times remain primarily liable to Customer under such Agreement. Company may utilize subcontractors or suppliers to perform all or any portion of the Services or to provide any Products under this Agreement, but Company shall at all times remain primarily liable to Customer under this Agreement. If Customer requests Company to utilize a Customer designated subcontractor or supplier for any of the Services or Products to be provided by Company, Customer shall provide to Company a written request for the same including any information reasonably required by Company and evidence of the insurance coverage required under this Agreement. Company shall have the right, acting in good faith, to accept or reject such Customer-designated subcontractor or supplier. Consent by Company to use a Customer designated subcontractor or supplier shall not constitute a waiver of any right of Company to reject defective subcontractor Services or Products, and Company shall retain all such rights under its subcontract.

**1.30 INSURANCE.** (a) General. Company and Customer each shall maintain reasonable insurance coverage through their respective carriers. Such insurance must include, at a minimum, general liability coverage in amounts of at least \$1 million per occurrence, \$3 million annual aggregate, and workers compensation coverage in amounts required by law. (b) Equipment. For any Company Equipment located at a Customer location, Customer shall maintain special form insurance against loss, theft or damage, in an amount not less than the new replacement value of the Equipment. Customer shall name Company as an additional insured/loss payee by policy endorsement. Customer shall deliver written evidence of such insurance satisfactory to Company prior to delivery of Company Equipment to Customer's location and thereafter within thirty (30) days of request. If Customer fails to obtain or maintain such insurance, Company will have the right, but not the obligation, to obtain insurance in such forms and amounts as Company deems reasonable to protect Company's interests, and the expense for said insurance shall be paid by Customer on demand by Company. Company will discontinue such

insurance (and refund to Customer any premiums refunded to Company) when Customer provides satisfactory evidence of the insurance required hereunder. For any Customer Equipment located at any Company location, Customer shall maintain special form insurance against loss, theft, or damage, in an amount not less than such Customer Equipment's new replacement value. Customer shall bear all risk of loss to Customer Equipment at any Company location.

**1.31 WAIVER.** No waiver of any provision, right or remedy contained in this Agreement, including the terms of this Section, is binding on, or effective against, a party unless expressly set forth in writing and signed by such party's authorized representative. Customer expressly agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance or trade usage. Customer expressly agrees and acknowledges that reliance on any waiver without Company's written consent is unreasonable. Waiver by Company of any breach shall be limited to the specific breach so waived and shall not be construed as a waiver of any subsequent breach. Company's approval or consent to any action proposed by Customer will not be considered an agreement to the propriety, fitness or usefulness of the proposed action, and will not affect Customer's obligation to strictly comply with this Agreement.

**1.32 ENTIRE AGREEMENT.** Subject to any Applicable Tariff, this Agreement correctly sets forth the entire agreement between Company and Customer with respect to the Services and Products to be provided by Company to Customer. To the extent, if any, the terms of this Agreement and any Applicable Tariff conflict, then the Applicable Tariff shall control.

**1.33 INTERPRETATION OF CONFLICTING TERMS.** In the event of a conflict between or among the terms of the components of this Agreement, the following order of precedence shall control: if applicable, an Agreement Addendum, the SLA, the Master SLA, the Service Agreement, these Terms and Conditions, the Order and any other document made a part of the Agreement.

**1.34 AMENDMENT.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

**1.35 MISCELLANEOUS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Any provision of this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Time is of the essence with respect to this Agreement. Customer agrees that the Services and Products will be used primarily for commercial purposes and will not be used primarily for personal, family or household use. Customer shall promptly execute and deliver to Company such further documents and take such further action as Company may request in order to give effect to the intent and purpose of this Agreement. All indemnifications, releases, limitations of liability, disclaimers of warranties, limitations

of remedies, the restrictions upon use of the Services and Products and the rights of Company to take action necessary to remain in compliance with any Applicable Tariff or license, including its right to retake possession of or disable the Services and Equipment, all as more particularly set for herein, shall survive the termination of this Agreement and discontinuation of the Service.

**1.36 NOTICES.** Except as otherwise provided under an Agreement, all notices, demands, or requests to be given by a party to the other party shall be in writing and shall be deemed to have been duly given on the date delivered (or the date of written refusal to accept delivery) in person, by courier service, by postage prepaid United States certified mail, return receipt requested, or electronic mail or fax with follow up copy by one of the other methods, and addressed to Customer at the address and contact specified in the Order, and if to Company, addressed to the General Manager, with a copy to General Counsel as follows:

BION Security  
Attn: General Counsel  
710 Dacula Road, Suite 4A  
Dacula, Georgia 30019

**1.37 EXCLUDED SERVICES.** Company provides only those Services specified in an Order. During any disruption of Services, Company's investigation and response is limited to restoring only those Services being provided by Company. Company is not responsible for preserving forensic artifacts in the course of such investigation and response, and Company expressly disclaims all related liability. Company does not provide or perform (a) identification, collection, examination, and analysis of data for purposes other than restoration of Services ("Digital Forensic Services") or (b) containment and recovery from an incident outside of the work necessary to restore Services ("Incident Response Services"). As such, and notwithstanding anything to the contrary, Digital Forensic Services and Incident Response Services are specifically excluded from all Services purchased by Customer.

**2. SPECIFIC TERMS APPLICABLE TO FIREWALL SERVICES.** The following additional Terms and Conditions are applicable only to Firewall Services purchased by Customer from Company. To the extent of a conflict between the Terms and Conditions set forth in Section 1 of this Agreement and the Terms and Conditions set forth in this Section 3, with respect to Firewall Services only, the Terms and Conditions set forth in this Section 3 shall control.

**3.1 DEFINED TERMS.** "Firewall Services" may include Services on Firewall Services Equipment shared by Customer with other customers of Company that: (i) establish a boundary for Customer's network by managing inbound and outbound data traffic between Customer's network and other networks to secure Customer's network from unwarranted data intrusions; (ii) intrusion data prevention software intended to detect malicious code and harmful attacks on Customer's data within Customer's network; (iii) content filtering; or (iv) support for Firewall Services as described in this Agreement. "Firewall Services Equipment" means the servers and related components owned and

maintained by the Company that are utilized to provide Firewall Services under this Agreement.

**3.2 FIREWALL SERVICES.** Customers may purchase varying types and levels of Firewall Services and charges for Firewall Services will be separately itemized within the Monthly Services Charges set forth in this Agreement. Customers may utilize Company's portal to make modifications to Firewall Services, run certain reports, and perform certain administrative tasks in connection with Firewall Services. Company is obligated to provide only those Firewall Services purchased by Customer.

**3.3 CUSTOMER OBLIGATIONS.** Company will not provide any equipment for Customer's use of Firewall Services other than Firewall Services Equipment. Customer shall be solely responsible for its activities in using Firewall Services, including the activities of Company Parties, employees and contractors (and the activities of anyone else who obtains access to Customer's passwords). Company is not responsible for the unauthorized use of Firewall Services whether by ex-employees of Customer, compromised Customer passwords, or any other misuse of Customer's account. Customer is responsible for providing Company at Customer's expense and in a timely manner the following: (a) access to Customer's system used or accessible in connection with Firewall Services; (b) cooperative testing of all Customer provided hardware and software for compatibility with Firewall Services; and (c) designating an authorized contact(s) to be the point of contact to interface with Company's customer support. Customer acknowledges that in the event of interruption of Firewall Services, Customer will be responsible for cooperative testing with Company's technical support to assist in the diagnosis of the interruption. Company shall not be liable for late or delayed data transfers, no matter what the root cause. Customer acknowledges that should Customer, Customer Parties, or its employees or contractors, or any other party that has physical access to Customer's network create a potential point of entry either by adding another circuit, an unsecure Wi-Fi access point, remote communications software running on a personal computer, or any other method that bypasses Company's Firewall Services, Customer will be solely responsible for any degradation in the effectiveness of Firewall Services caused by such act. Customer understands that it may make a change request to Firewall Services that provides for a lower level of security for its network. Customer acknowledges and agrees that it assumes all risk and liabilities resulting from such change.

**3.4 SUPPORT.** Company will use commercially reasonable efforts to assist Customer through Customer's authorized contact(s) to resolve issues related to Firewall Services. Only Customer's authorized account contact(s) may request information, changes, or technical support. Company's technical support response time depends on the complexity of the inquiry and support request volume. Firewall Services include technical support from 8:00 a.m. to 6:00 p.m. Central Time Monday – Friday, except holidays. Company's obligation to provide technical support does not apply to any malfunction of Customer's equipment or software. Company does not guarantee compatibility of Firewall Services with any specific configuration of hardware or software. Company encourages Customers to discuss any technical and compatibility issues with Company's technical support personnel.

**3.5 DATA LOSS AND RETENTION.** Notwithstanding Company's physical security and cybersecurity of Firewall Services Equipment, in the event of a casualty event or cyberattack, Company does not guarantee the recoverability of any Customer data that is lost for any reason. For more information on collection, retention, and use of Customer information, please refer to Company's Privacy Policy at

<https://www.bionsecurity.com/resources/docs/business/resources/PrivacyPolicy>, the terms of which are incorporated herein by reference.

**3.6 ADDITIONAL CUSTOMER OBLIGATIONS.** Customer remains solely responsible for the security of its network. Customer further agrees to do all of the following at its expense: (a) use reasonable security precautions in connection with its use of Firewall Services; (b) create or maintain a current copy of all content provided by Customer to Company; (c) comply with all laws applicable to Customer's use of Firewall Services, and the terms of this Agreement.

**3.7 DISCLAIMER OF WARRANTIES.** COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH FIREWALL SERVICES. WITHOUT LIMITING THE FOREGOING, COMPANY DOES NOT WARRANT THAT FIREWALL SERVICES WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, OR LOSS OF CONTENT, DATA, OR INFORMATION. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION, AND PROPERTY. COMPANY IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION, OR SECURITY OF FIREWALL SERVICES THAT ARISE FROM CUSTOMER'S EQUIPMENT, SOFTWARE, CONTENT, APPLICATIONS, OR THIRD PARTY CONTENT. FIREWALL SERVICES ARE PROVIDED ON AN "AS IS" BASIS.

#### **4. SPECIFIC TERMS APPLICABLE TO MANAGED INFORMATION TECHNOLOGY SERVICES.**

The following additional Terms and Conditions are applicable only to managed IT Services purchased by Customer from Company. To the extent of a conflict between the Terms and Conditions set forth in Section 1 of this Agreement and the Terms and Conditions set forth in this Section 4, with respect to managed IT Services only, the Terms and Conditions set forth in this Section 4 shall control.

**4.1 SERVICE CONDITIONS.** (a) Outside Conditions. Customer acknowledges that certain conditions outside of Company's control may adversely impact the ability of Company to perform functions of certain managed IT Services. Examples of such conditions include, without limitation: (i) Customer task, software, scheduled job, or other human intervention, intentional or otherwise, renders portions, complete files, or complete file systems unavailable through the Service; (ii) failure of Customer software, operating systems, or equipment; and (iii) network connectivity issues between Customer devices and Company backup platform, when network connectivity is not provided as part of a 20 Company's Service. (b) Non-Exclusive, Non-Transferable Right. Customer shall have a nonexclusive, non-transferable right to use the managed IT Services solely for Customer's own internal business purposes for the Term and number of users or other applicable managed IT Service metrics specified in this Agreement. (c) Restrictions on Use. Customer will not use, and will not permit others to use, Customer's account to: (i) copy, distribute, rent, lease, transfer or sublicense all or any portion of the Service to any third party; (ii) modify or prepare derivative works relating to the Service; (iii) use the Service (other than for Customer's or a named affiliates' internal use) in any commercial context or for any commercial purpose or in any commercial product including reselling the Service; (iv) use the Service in any manner that threatens the integrity, performance or availability of the Service to others; (v) reverse engineer, decompile, or disassemble the Service; or (vi) use the Service to help design a competing or similar service. (d) Service Level Agreements. The service level agreements applicable to a particular Service include those service level and support services terms set forth in the Master SLA and the respective Service Level Agreement identified on the applicable Order. Additional terms and conditions applicable to a Service may be set forth in the respective Service

Level Agreement, which will be provided to Customer for its review and approval prior to the provision of any Services by Company. Customer's use of Services will be deemed acceptance of the terms of the Master SLA and Service Level Agreement.

**4.2 CUSTOMER RESPONSIBILITIES.** (a) Compatibility. It is Customer's responsibility to ensure that any version change planned on Customer's system is compatible with Company's hardware and software. Customer shall be fully responsible for providing to Company at Customer's own expense and in a timely manner, all security credentials necessary for Company to use and access Customer's system in connection with the Service. If Customer's system is not compatible with any Service, the parties will work together in good faith to develop and implement modifications, patches, workarounds, updates, upgrades, and any other commercially reasonable changes necessary or appropriate to achieve such compatibility. If after such efforts to achieve such compatibility have failed, Company shall have the right to terminate the Agreement for such Service with not less than thirty (30) days' written notice to Customer. (b) Software Rights. Customer has title to, or a license or other rights to use, access and modify, and has or will obtain for Company a right or license to use, access or modify, any Customer software or Third-Party Software that Customer has requested Company to use, access or modify as part of the Services. (c) Access to Resources. Customer shall supply Company with access to appropriate personnel, documentation, records, Customer's system and facilities as requested by Company from time to time in order for Company to perform and provide Services. (d) Internet Use. Where Company's Services include Internet access, Customer shall be solely responsible for providing and maintaining all computer equipment, software, cabling and telecommunications services necessary to access Internet Services.. (e) On-site Testing. Customer acknowledges that in the event of a support issue, Customer is responsible for on-site cooperative testing with Company's technical support to assist in the diagnosis of the problem. (f) Restrictions on Use. Customer will not use, and will not permit others to use, Customer's account to: (i) copy, distribute, rent, lease, transfer or sublicense all or any portion of the Service to any third party; (ii) modify or prepare derivative works relating to the Service; (iii) use the Service (other than for Customer's internal use) in any commercial context or for any commercial purpose or in any commercial product including reselling the Service; or (iv) use the Service to help design a competing or similar service.

**4.3 COMPLIANCE AND CONTROL REQUIREMENTS.** Customer is responsible for providing Company with a documented list of compliance and control requirements, if any, that are expected to be outsourced to Company as part of an Agreement (collectively, "Controls"). In cases where all requested Controls cannot be covered, the Company will notify Customer in writing. Customer is responsible for notifying the Company of any Control evidence or audit assistance requirements. All such requests should be submitted in writing via e-mail and addressed to [askus@bionsecurity.com](mailto:askus@bionsecurity.com). Company will provide information or assistance within seventy-two (72) hours of Customer's request.

**5. SPECIFIC TERMS APPLICABLE TO SOFTWARE AND SECURE OFFICE SERVICES.** The following additional Terms and Conditions are applicable only to software and secure office Services purchased by Customer from Company. To the extent of a conflict between the Terms and Conditions set forth in Section 1 of this Agreement and the Terms and Conditions set forth in this Section 5, with respect to software and secure office Services only, the Terms and Conditions set forth in this Section 5 shall control.

**5.1 CUSTOMER ACKNOWLEDGEMENT.** With respect to Customer's use of Microsoft Office 365 and Other Software Services, Customer acknowledges through execution of

this Agreement that Customer has read, understands, and agrees to terms, restrictions, and obligations as set forth in the SOFTWARE RESALE SERVICE AGREEMENT posted to <https://www.bionsecurity.com/resources/docs/SoftwareResellServiceAgreement.pdf>.

**5.2 RIGHT TO MONITOR/AUDIT CLOUD SERVICES.** In addition to Company's right to audit Customer's usage under 1.2(e) of this Agreement, Company may audit or monitor Customer's access to applicable services or environment for consistency under this Agreement and under the Software Resale Service Agreement. As a result of any such audit, if services that pose a financial liability to Company are identified as utilized by Customer but not invoiced to Customer, Company reserves the right to invoice Customer for previously unbilled services up to one (1) year from the audit.

**6. SPECIFIC TERMS APPLICABLE TO PRODUCTS.** The following additional Terms and Conditions are applicable only to Products purchased by Customer from Company. To the extent of a conflict between the Terms and Conditions set forth in Section 1 of this Agreement and the Terms and Conditions set forth in this Section 6, with respect to Products only, the Terms and Conditions set forth in this Section 6 shall control.

**6.1 QUOTATIONS.** Where this Agreement is used by Company to place a bid, the quotation stated herein is for prompt acceptance, and Company may change and/or withdraw without notice. Customer's prompt acceptance of all quotations is a material term of the bid and any subsequent Agreement. In cases where freight allowance is included in the quotation, Customer is liable for any rate increase and/or additional expense over the calculated allowance resulting from compliance with Customer's shipping instructions.

**6.2 DELIVERY.** All prices are F.O.B. Vendor's plant, unless otherwise specified by Company in the Order. All shipping dates are approximate, and any time period indicated for a shipment shall not commence until receipt at Vendor's office of the purchase order. Acceptance of shipment by designated shipper, allocation of Products to Customer at premises other than the Company's, delivery to Customer's representative or designee, or mailing of an invoice to Customer, whichever first occurs, shall constitute tender of delivery. Upon tender of delivery, title shall pass to Customer, subject to Company's right of stoppage in transit and to any interest of Company reserved to secure Customer's payment or performance, irrespective of any freight allowance or prepayment of freight. Products held subject to Customer's instructions, Products for which Customer has failed to supply shipping instructions, or in any case where Company, in its sole discretion, determines any part of Products should be held for Customer's account, Company may invoice for Products and Customer agrees to make payment at the maturity of the invoice rendered. Products invoiced and held at any location for whatever reason shall be at Customer's risk and Company may charge for (but is not obligated to carry) insurance, storage and other expenses incident to such delay at its prevailing rates. Partial deliveries shall be accepted by Customer and paid for at contract prices and terms. When Customer has declared or manifested an intention not to accept delivery, no tender shall be necessary but Company may, at its option, give notice in writing to Customer that Company is ready and willing to deliver and such notice shall constitute a valid tender of delivery. In the absence of directions, Products will be delivered by the method and via carrier Company believes dependable. Delivery by truck will be made to nearest points reasonably accessible by truck as determined by the driver. Customer will furnish and pay for necessary labor to unload and store Products. Customer must report any shortages within three (3) days of receipt of the initial shipment, or claims will be waived.

**6.3 LOSS OR DAMAGE IN TRANSIT.** In no event shall Customer be entitled to make any deduction from any payment due hereunder by reason of loss or damage in transit. Upon the written request of Customer, Company, at its sole discretion, may agree as a service to Customer to process Customer's claim against the carrier for any loss or damage in transit, provided that such claim is received by Company within five (5) days after the receipt of Products. Any such claims must be accompanied by a delivery receipt, signed by carrier's agent at time of delivery, on which receipt the loss or damage has been noted. Customer shall note loss or damage on truck shipments upon delivery ticket returned to Company, or such claims shall be waived.

**6.4 PARTIAL SHIPMENTS; PARTIAL PAYMENT.** Company may make partial shipments of Products and payment for that portion will be due as provided on Company's Order or invoice document based on time of shipment.

**6.5 CANCELLATION; CHANGES; RETURNS.** In the event of a proper cancellation, change or return request from Customer under this Agreement, Company may, at its option: (a) charge Customer for any costs Company incurred prior to or as a result of such cancellation, change or return; (b) revise its prices and delivery dates to reflect such change; and (c) accept returned Products for credit if, in Company's sole discretion, it finds such Products to be standard stock and in good condition. The credit will be, in Company's sole discretion, either the invoice price less a percentage to be determined by Company, along with shipping and handling charges to be determined by Company. All returned Products must be securely packed by Customer to ensure that returned Products are not damaged during shipment.

**6.6 DELAY IN OR PREVENTION OF PERFORMANCE.** If there is a delay in delivery or prevention of performance caused by any Force Majeure Event, Company will have such additional time for performance as may be reasonably necessary under the circumstances and may adjust the price of Products to reflect increases occasioned by such Force Majeure Event. Customer's acceptance of any Products will constitute Customer's waiver of any claim for damages on account of any delay in delivery of such Products. If delivery is delayed or interrupted by Force Majeure, Company may store the Products at Customer's expense and risk and charge Customer a reasonable storage rate. If Company is delayed because it is awaiting Customer's approval or acceptance of designs, drawings, prints or engineering or technical data, or is awaiting Customer's approval or acceptance of Products, Company will be entitled to an adjustment in price commensurate with any increase in Company's production costs and any other losses and expenses incurred by Company attributable to such delays.

**6.7 DEFERRED DELIVERY.** If Customer requests a deferred delivery on any Order and Company approves in writing, Company may charge Customer for the completed portion of the Order and warehouse all other Products at Customer's expense and risk of loss. As to any uncompleted portion of an Order, Company may, at its option, cancel said uncompleted portion in accordance with Section 6.5 above or revise its prices and delivery schedules on the portion not completed to reflect its increased costs and expenses attributable to the delay.

**6.8 SECURITY INTEREST.** To secure Customer's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Customer to Company under this Agreement, Customer hereby grants Company a first-priority security interest, prior to all other liens and encumbrances, in all Products purchased under this Agreement, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and

replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Customer acknowledges that the security interest granted under this Section 6.8 is a purchase-money security interest under the Uniform Commercial Code of the State of Mississippi. Company may file a financing statement for the security interest and Customer shall execute any statements or other documentation, if necessary, to perfect Company's security interest in Products. Customer also authorizes Company to execute, on Customer's behalf, statements or other documentation, if necessary, to perfect Company's security interest in Products. Company is entitled to all applicable rights and remedies of a secured party under applicable law.

**6.9 CREDIT RISK ON RESALE TO END USERS.** If Customer purchases Products for resale to end-users, Customer is responsible for all credit risks regarding, and for collecting payment for, all Products sold to third parties. The inability of Customer to collect the purchase price for any Products so resold does not affect Customer's obligation to pay Company for any Products on the terms set forth herein.

**6.10 LIMITATION OF LIABILITY.** IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, WILL COMPANY BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF USE OF PRODUCTS OR OTHER PROPERTY OR EQUIPMENT, DAMAGE TO OTHER PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, DOWNTIME OR CLAIMS OF CUSTOMER'S CUSTOMERS FOR ANY OF THE AFORESAID DAMAGES.

In any contract by Customer for resale of Products, Customer will effectively disclaim, as against Company, any implied warranty of merchantability and all liability for property damage or personal injury resulting from the handling, possession or use of Products, and will exclude, as against Company, any liability for any punitive, special, incidental or consequential damages.

**7. SPECIFIC TERMS APPLICABLE TO PROFESSIONAL SERVICES.** The following additional Terms and Conditions are applicable only to Professional Services purchased by Customer from Company. To the extent of a conflict between the Terms and Conditions set forth in Section 1 of this Agreement and the Terms and Conditions set forth in this Section 8, with respect to Professional Services only, the Terms and Conditions set forth in this Section 8 shall control.

**7.1 DEFINED TERMS.** "Deliverables" means all documents, work product, and other materials that are delivered to Customer hereunder or prepared by or on behalf of Company in the course of performing the Professional Services, including any items identified as such in an Order. "Milestone" means an event or task described in an Order which shall be completed by the relevant date set forth in the Order. "Pre-Existing Materials" means all documents, data, knowhow, methodologies, software, and other materials, including computer programs, reports and specifications, provided by or used by Company in connection with performing the Professional Services, in each case developed or acquired by the Company prior to the commencement or independently of this Agreement.

**7.2 PERFORMANCE OF PROFESSIONAL SERVICES.** The Company is not required to perform the Professional Services during a fixed hourly or daily time. If the Professional Services are performed at the Customer's premises, the Company's time spent at the Customer's premises will be within the Company's sole discretion, subject to the Customer's normal business hours and security requirements. The Company shall not be

required to devote the Company's full time nor the full time of the Company's staff to the performance of the Professional Services. Except to the extent that the Company's work must be performed on or with Customer's equipment, systems, cabling, software, or facilities, all materials used in providing the Professional Services shall be provided by the Company.

**7.3 COMPANY'S OBLIGATIONS.** Company shall: (a) before the date on which Professional Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Professional Services; (b) comply with, and ensure that all Company personnel comply with, all rules, regulations, and policies of Customer that are communicated to Company in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, and general health and safety practices and procedures; (c) maintain complete and accurate records relating to the provision of the Professional Services under this Agreement. During the Term, upon Customer's written request, Company shall allow Customer or Customer's representative to inspect and make copies of such records; provided that any such inspection shall take place during regular business hours no more than once per year and Customer provides Company with at least ten (10) business days' advance written notice; and (d) require all subcontractors to be bound by the confidentiality and intellectual property assignment or license provisions of this Agreement.

**7.4 CUSTOMER'S OBLIGATIONS.** Customer shall: (a) cooperate with Company in all matters relating to the Professional Services and appoint a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of Customer with respect to matters pertaining to this Agreement (the "Customer Representative"); (b) provide such access to Customer's premises, and such office accommodations and other facilities as may reasonably be requested by Company, for the purposes of performing the Professional Services; (c) respond promptly to any Company request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Company to perform Professional Services in accordance with the requirements of this Agreement; and (d) provide such information and access to Customer personnel as Company may request in order to carry out the Professional Services, in a timely manner, and ensure that it is complete and accurate in all material respects; and (e) obtain and maintain all necessary licenses and consents and comply with all applicable law in relation to the Professional Services before the date on which the Professional Services are to start. If Company's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer, Customer personnel, or Customer's agents, subcontractors or employees, Company shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

**7.5 TERMINATION.** In addition to the termination rights and obligations set forth in Section 1, either Party, in its sole discretion, may terminate this Agreement for Professional Services, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to the other party. Upon expiration or termination of this Agreement for any reason: (a) Company shall (i) promptly deliver to Customer all Deliverables (whether complete or incomplete) for which Customer has paid and all materials delivered by Customer to Company; and (ii) promptly remove any Company equipment located at Customer's premises, and (b) Customer shall promptly pay to Company all amounts for Professional Services rendered to Customer. Each party shall (i)

return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other party's Confidential Information; (ii) permanently erase all of the other party's Confidential Information from its computer systems; and (iii) certify in writing to the other party that it has complied with the requirements of this clause; provided, however, that Customer may retain copies of any Confidential Information, including Pre-Existing Materials, of Company solely to the extent necessary to allow it to make use of the Professional Services and any Deliverables.

**7.6 ADDITIONAL PAYMENT TERMS.** (a) Time and Material Basis. Where Professional Services are provided on a time and materials basis: (i) the fees payable for the Professional Services shall be calculated in accordance with Company's hourly fee rates for the Company personnel set forth in the Order; and (ii) Company shall issue invoices to Customer monthly for its Fees for time for the immediately preceding month; (b) Fixed Fee Basis. Where Professional Services are provided for a fixed price, the total Fees for the Professional Services shall be the amount set out in the Order. The total price shall be paid to Company in installments, as set out in the Order, and, where conditioned on the achievement of any Milestone, upon the occurrence of such Milestone. At the end of a period specified in the Order in respect of which an installment is due, Company shall issue invoices to Customer for the Fees that are then payable; and (c) Block Billing. Where Professional Services are provided on a block billing basis, Company shall invoice Customer upfront for a fixed block of hours at an hourly rate based on the pre-set block of hours selected by Customer in the Block Rate Agreement. Unused time expires 18 months from purchase.

**(Customer)**

**BION Security, LLC.**

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**END OF MASTER TERMS AND CONDITIONS**



# MAYOR COUNCIL AGENDA REQUEST

## MEETING TYPE

**Mayor & Council Meeting**

MEETING DATE **MARCH 16, 2026**

## AGENDA ITEM

**Budget Amendment #6**

## DEPARTMENT

**Finance**

## REQUESTED BY

**Cindy Jackson**

## REVIEWED/APPROVED BY CITY ATTORNEY?

**No**

COST **NA**

FUNDING SOURCE IF NOT IN BUDGET

PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

**FY 2025 BUDGET AMENDMENT #5 TO ADJUST BETWEEN FUNDS**

## PHONE

706-278-9500

## WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

## ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

**2025 Budget Amendment  
Amendment #6**

<b>General Fund</b>	<b>Increase (Decrease)</b>	
<b>Revenues &amp; Transfers-in</b>		
Transfer-in HMT	\$ 44,575	(1)
Rental income	\$ (820)	(3)
	<u>\$ 44,575</u>	
<b>Expenditures &amp; Transfers-out</b>		
PD - patrol wages	\$ (100,000)	(2)
PW - roads & walkways wages	(50,000)	(2)
PW - street lights	(50,000)	(2)
Building & Grounds - maintenance	(13,000)	(2)
Transfer to airport grants	213,000	(2)
Various departments	(390)	(3)
	<u>\$ (390)</u>	
<b>Net Increase (Decrease) Budgeted Fund Balance</b>	<u><u>\$ 44,965</u></u>	
(1) Additional HMT funds		
(2) Adjustment to reflect transfers for airport grants		
(3) Round budget down to nearest \$1,000		

<b>HOTEL-MOTEL TAX FUND</b>	<b>Increase (Decrease)</b>	
<b>Revenues &amp; Transfers-in</b>		
Tax revenue	\$ 152,000	(1)
	<u>\$ 152,000</u>	(1)
<b>Expenditures &amp; Transfers-out</b>		
Convention Center Special	\$ 7,080	(2)
CVB - DMO	20,345	(3)
Transfer out - CIP	80,000	(4)
Transfer to - GF	44,575	(5)
	<u>\$ 152,000</u>	
<b>Net Increase (Decrease) Budgeted Fund Balance</b>	<u><u>\$ -</u></u>	
(1) To adjust to actual		
(2) Conasauga Theater Event		
(3) Additional funding for CVB DMO contract		
(4) Tourism funding for recreation projects		
(5) Transfer excess funds to general fund		

<b>2024 SPLOST FUND</b>	<b>Increase (Decrease)</b>	
<b>Revenues &amp; Transfers-in</b>		
Transfer in - LMIG	\$ 424,000	(1)
	<u>\$ 424,000</u>	
<b>Expenditures &amp; Transfers-out</b>		
Infrastructure	\$ 424,000	(1)
	<u>\$ 424,000</u>	
<b>Net Increase (Decrease) Budgeted Fund Balance</b>	<u><u>\$ -</u></u>	
(1) Additional LMIG received for road projects		

<b>CIP Fund</b>	<b>Increase (Decrease)</b>	
<b>Revenues &amp; Transfers-in</b>		
Transfer in - HMT	\$ 80,000	(1)
	<u>\$ 80,000</u>	
<b>Expenditures &amp; Transfers-out</b>		
Recreation projects	\$ 80,000	(1)
	<u>\$ 80,000</u>	
<b>Net Increase (Decrease) Budgeted Fund Balance</b>	<u><u>\$ -</u></u>	
(1) Transfer for tourism product development for compliance		



## CITY COUNCIL AGENDA REQUEST

### MEETING TYPE

Mayor & Council Meeting

### MEETING DATE

3/16/2026

### AGENDA ITEM

First Reading Ordinance 26-05 Bond Ordinance

### DEPARTMENT

Administration

### REQUESTED BY

Andrew Parker

### REVIEWED/APPROVED BY CITY ATTORNEY?

Yes

### COST

\$130,000,000.00

### FUNDING SOURCE IF NOT IN BUDGET

Revenue Bonds

### PLEASE PROVIDE A SUMMARY OF YOUR REQUEST, INCLUDING BACKGROUND INFORMATION TO EXPLAIN THE REQUEST:

FIRST READING ORDINANCE 26-05 BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF CITY OF DALTON COMBINED UTILITIES REVENUE BOND, SERIES 2026 IN THE PRINCIPAL AMOUNT OF \$130,000,000.00

#### PHONE

706-278-9500

#### WEBSITE

[www.daltonga.gov](http://www.daltonga.gov)

#### ADDRESS

300 W Waugh Street  
PO Box 1205 Dalton,  
Georgia 30722

ORDINANCE 26-05  
CITY OF DALTON, GEORGIA

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SERIES 2026 BOND ORDINANCE

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Enacted March 30, 2026

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PROVIDING FOR ISSUANCE OF  
CITY OF DALTON COMBINED UTILITIES  
REVENUE BOND, SERIES 2026  
IN THE PRINCIPAL AMOUNT OF  
\$130,000,000.00

## **SERIES 2026 BOND ORDINANCE**

**THIS SERIES 2026 BOND ORDINANCE** (this “**Series 2026 Bond Ordinance**”), enacted March 30, 2026, by the Mayor and Council of the City of Dalton (the “**City**”);

### **PREAMBLE**

1. Under and by virtue of authority of the Revenue Bond Law of Georgia, codified in O.C.G.A. § 36-82-60, et seq., the Constitution of the State of Georgia, the general laws of the State of Georgia, and the laws of the State of Georgia relating to the City, a municipal corporation of the State of Georgia as defined in said Revenue Bond Law, the City has heretofore authorized the issuance of its revenue bonds payable from revenue derived from the operation and ownership of the electric generation and electric and gas distribution systems, water and sewerage systems, and telecommunications system of the City’s combined utilities system as such now exist and as such may be hereafter added to, extended, improved and equipped (collectively, the “System”) and the City is authorized to improve the System for its own use and for the use of public and private consumers both within and without the territorial limits of the City. The City is further authorized to prescribe and revise rates and collect fees, tolls and charges for the services and facilities furnished by the System and, in anticipation of the collection of revenues from the System, to issue revenue bonds to finance, in whole or in part, the cost of any such improvements, to refund revenue bonds previously issued, to prepay loans obtained by the City to provide improvements to the System and to pay the expenses incident thereto.

2. Pursuant to a Bond Ordinance enacted on October 6, 2017, as supplemented by a Supplemental Bond Ordinance enacted on November 6, 2017 (collectively, the “Original Bond Ordinance”), the City has heretofore authorized and actually issued and delivered its Combined Utilities Revenue Bonds, Series 2017, in the original aggregate principal amount of \$66,660,000 (the “Series 2017 Bonds”) to finance in whole or in part the costs of (a) renovating, adding, extending and expanding the City’s water, waste water treatment and natural gas distribution facilities of the System and expanding and upgrading the System’s supervisory control and data acquisition system (the “2017 Projects”) and (b) paying costs of issuance of the Series 2017 Bonds. The Series 2017 Bonds are currently outstanding in the aggregate principal amount of \$47,410,000.

3. Capitalized terms used and not otherwise defined in this preamble shall have the meanings given such terms in Article I of this Original Bond Ordinance.

4. The Series 2017 Bonds are secured by a first and prior pledge of and charge or lien on the Net Revenues of the System superior to any other charge or lien now existing or which may hereafter be created thereon, except for additional Parity Bonds which may be issued from time to time by the City.

5. In anticipation of the need to further renovate, add to, extend and expand the System or to refund outstanding revenue bonds, the Original Bond Ordinance provides for the issuance of Parity Bonds from time to time having as their security the same pledge of and lien on the Net Revenues as the Series 2017 Bonds upon certain terms and conditions being met as provided in the Original Bond Ordinance.

6. The Original Bond Ordinance provides that Parity Bonds may be issued from time to time, pursuant to a Series Ordinance duly enacted by the Mayor and Council of the City and that such Series Ordinance shall establish the date or dates of the pertinent series of Bonds, the schedule of maturities of such Bonds, whether any such Bonds will be Reserve Fund Bonds and/or Hedged Bonds, the name of the Purchaser(s) of such series of Bonds, the purchase price thereof, the rate or rates of interest to be borne thereby, whether fixed or variable, the interest payment dates for such Bonds, the terms and conditions, if any, under which such Bonds may be made subject to redemption (mandatory or optional) prior to maturity, the form of such Bonds, and such other details as the City may determine.

7. Pursuant to the Original Bond Ordinance and a Series 2020 Bond Ordinance enacted on October 19, 2020, as supplemented by a Supplemental Series 2020 Bond Ordinance enacted on November 16, 2020 (collectively, the “Series 2020 Bond Ordinance”), the City has heretofore authorized and actually issued and delivered its Combined Utilities Revenue Bonds, Series 2020, in the original aggregate principal amount of \$84,510,000 (the “Series 2020 Bonds”) to finance in whole or in part the costs of (a) renovating, adding, extending and expanding the City’s electric generation, transmission and distribution facilities and the facilities of the other systems of the City’s combined utilities system (the “2020 Projects”) and (b) paying costs of issuance of the Series 2020 Bonds. The Series 2020 Bonds are currently outstanding in the aggregate principal amount of \$70,155,000.

8. The Series 2020 Bonds were issued as Parity Bonds pursuant to Original Bond Ordinance, and the Series 2020 Bond Ordinance constitutes a Series Ordinance for the Series 2020 Bonds.

9. The City has determined that there is a need for the renovation, addition, extension and expansion of the City’s electric generation, transmission and distribution facilities and the facilities of the other systems of the System (the “2026 Projects”). The Series 2026 Projects shall include the electricity generating power plant equipment (the “Chateau Generation Equipment”) to be supplied by Chateau Generation, LLC (the “Supplier”) pursuant to the Equipment Supply Agreement, dated as of January 29, 2026, between the Board of Water, Light, and Sinking Fund Commissioners of the City of Dalton, GA d/b/a Dalton Utilities and the Supplier (the “Equipment Supply Agreement”).

10. The City has determined that the most feasible way to fund the costs of the 2026 Projects and to pay for issuance costs is by issuing its Combined Utilities Revenue Bond, Series 2026, in the original principal amount of \$130,000,000.00 (the “Series 2026 Bond”). The Series 2026 Bond shall be issued as a Parity Bond, and this Series 2026 Bond Ordinance shall constitute a Series Ordinance for the Series 2026 Bond.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Dalton in a public meeting properly and lawfully called and assembled, and it is hereby ordained by authority of the same, as follows:

Section 1. Definitions. For the purpose of this Series 2026 Bond Ordinance, the definitions set forth in the Original Bond Ordinance shall have the same meanings when used in this Series 2026 Bond Ordinance except that the definitions set forth below shall be and are hereby amended effective as of the date of the issuance and delivery of the Series 2026 Bond herein authorized to be issued as follows:

“Bonds” means, after the issuance of the Series 2026 Bond, the outstanding Series 2017 Bonds, the outstanding Series 2020 Bonds and Series 2026 Bond, and, from and after the issuance of any Parity Bonds, unless the context clearly indicates otherwise, such Parity Bonds.

“Change in Law” means the occurrence of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any governmental authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority regardless of the date adopted, enacted or issued.

“Ordinance” means the Original Bond Ordinance, the Series 2020 Bond Ordinance, this Series 2026 Bond Ordinance, and any supplements or amendments hereto, and any Series Ordinances or supplements or amendments hereto or thereto, which authorizes the future issuance, subject to certain conditions, of Parity Bonds.

“Original Bond Ordinance” means that certain bond ordinance of the City enacted on October 6, 2017, as supplemented by a Supplemental Bond Ordinance enacted on November 6, 2017, authorizing the issuance of the Series 2017 Bonds.

“Parity Bonds” means any Combined Utilities Revenue Bonds of the City which may be issued hereafter on a parity with the Series 2017 Bonds, the Series 2020 Bonds, and the Series 2026 Bond in accordance with the Ordinance.

“Series 2020 Bond Ordinance” means that certain Series 2020 Bond Ordinance of the City enacted on October 19, 2020, as supplemented by a Supplemental Series 2020 Bond Ordinance enacted on November 16, 2020, authorizing the issuance of the Series 2020 Bonds.

“Series 2020 Bonds” mean the City’s Combined Utilities Revenue Bonds, Series 2020, authorized to be issued pursuant to the Original Bond Ordinance, as supplemented by the Series 2020 Bond Ordinance.

“Series 2026 Bond” means the City’s Combined Utilities Revenue Bond, Series 2026, authorized to be issued pursuant to the Original Bond Ordinance, as supplemented by this Series 2026 Bond Ordinance.

Section 2. Authorization of Series 2026 Bond.

(a) The City hereby certifies that the conditions contained in Section 510 of the Original Bond Ordinance have been met in order to issue the Series 2026 Bond as a Parity Bond.

(b) That all the terms, provisions and conditions contained in the Original Bond Ordinance having been met and complied with, the Series 2026 Bond is hereby authorized to be issued for the purposes aforesaid pursuant to the Revenue Bond Law of Georgia, codified in O.C.G.A. § 36-82-60, et seq., the Constitution of the State of Georgia, the general laws of the State of Georgia, the laws of the State of Georgia relating to the City and pursuant to the Original Bond Ordinance and this Series 2026 Bond Ordinance, and all the covenants, agreements and provisions of this Series 2026 Bond Ordinance shall be for the equal and proportionate benefit and security of all owners of the Bonds without preference, priority or distinction as to the charge, lien or otherwise of any one Bond over any other Bond.

Section 3. Designation, Date, Denominations, Maturities, Interest Payment Dates and Other Particulars of the Series 2026 Bond.

(A) The Series 2026 Bond shall be designated the “CITY OF DALTON COMBINED UTILITIES REVENUE BOND, SERIES 2026”. The Series 2026 Bond shall be issued in the original principal amount of \$130,000,000.00, shall bear interest at a rate of [3.85%] per annum, calculated on the basis of a 360-day year of twelve 30-day months, payable on March 1 and September 1 (each and “Installment Date”) of each year, commencing September 1, 2026, and shall be paid in principal installments on March 1 of each year, commencing March 1, 2027, as described in Schedule 1 attached hereto.

(b) The principal of, prepayment premium, if any, and interest on the Series 2026 Bond shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

(c) Principal and interest installments other than the final principal and interest installment on the Series 2026 Bond shall be paid by check or draft mailed by first class mail to the Bondholder at such owner’s address as it shall appear on the bond register kept by the Bond Registrar (or by wire transfer to a wire transfer address which the Bondholder has provided to the Paying Agent not less than five days prior to an Installment Date, which wire instructions shall remain in effect until the Paying Agent is notified to the contrary). The final principal and interest installment of the Series 2026 Bond shall be payable upon the presentation and surrender of the same at the office of the Paying Agent and no presentment or surrender of the Series 2026 Bond shall be required for regularly scheduled payments of principal or interest thereon.

(d) Only on \_\_\_\_\_, 2028, and upon five (5) business days’ written notice from the City to the Bondholder, the Series 2026 Bond is subject to a one-time optional redemption in part in a principal amount up to but not exceeding \$30,000,000 at a price of 100% of the principal amount to be redeemed. In addition, commencing on May 1, 2035, and upon five (5) business days’ written notice from the City to the Bondholder, the Series 2026 Bond is subject to optional redemption in whole or in part on any business day at a price of 100% of the principal amount to be redeemed. All partial redemptions of principal shall be applied in the inverse order of scheduled principal payments or maturities.

(e) The Series 2026 Bond shall be initially sold to Regions Capital Advantage, Inc., an Alabama state banking corporation (the “Bondholder”) at a purchase price equal to 100% of the par amount of the Series 2026 Bond. There shall be delivered to the Bondholder a properly executed Series 2026 Bond in the original principal amount, maturing and bearing interest as set forth above and in the form of the Series 2026 Bond in Section 7 hereof.

Upon receipt of the purchase price for the Series 2026 Bond, the Mayor of the City or his designee is authorized to physically deliver the Series 2026 Bond to the Bondholder, and the Mayor of the City or his designee is authorized to execute for and on behalf of the City such receipt for the proceeds of the Series 2026 Bond and such other closing certificates and proofs as may be necessary and proper.

Section 4. Application of Proceeds. From the proceeds derived from the sale of the Series 2026 Bond, the following payments shall be made, simultaneously with the issuance and delivery of the Series 2026 Bond, to the extent and in the manner herein set forth:

(a) \$ \_\_\_\_\_ shall be deposited in the Series 2026 General Account of the Series 2026 Project Account of the Construction Fund created pursuant to Section 9 below and used to finance the 2026 Projects other than the Chateau Generation Equipment;

(b) \$ \_\_\_\_\_ shall be deposited in the Chateau Generation Equipment Purchase Subaccount of the Series 2026 Project Account of the Construction Fund created pursuant to Section 9 below and used to finance the Chateau Generation Equipment; and

(c) \$ \_\_\_\_\_ shall be deposited into the Series 2026 Costs of Issuance Account of the Cost of Issuance Fund created pursuant to Section 10 below and used to pay costs of issuance of the Series 2026 Bond.

Section 5. Limited Obligations. The Series 2026 Bond is a limited obligation of the City as described in Section 209 of the Original Bond Ordinance.

Section 6. Reserve Fund Bonds and/or Hedged Bonds. The Series 2026 Bond is not being issued as a Reserve Fund Bond or a Hedged Bond.

Section 7. Form of Series 2026 Bond. The Series 2026 Bond and the certificate of validation and certificate of authentication to be endorsed thereon will be in substantially the following terms and forms, with such variations, omissions and insertions as may be required to complete properly the Series 2026 Bond and as may be approved by the officer or officers executing the Series 2026 Bond, which approval shall be conclusively evidenced by such execution:

[Form of Series 2026 Bond]

*This Bond shall not be sold or transferred if such sale or transfer would void the exemption, contained in U.S. Securities and Exchange Commission Rule 15c2-12(d)(1)(i), from the disclosure requirements of Securities and Exchange Commission Rule 15c2-12(b)(5) or any similar rules or statutes in effect at the time of such sale or transfer.*

No. R-1

UNITED STATES OF AMERICA  
STATE OF GEORGIA

CITY OF DALTON COMBINED UTILITIES  
REVENUE BOND,  
SERIES 2026

Maturity Date: March 1, 2038

Principal Amount:

Interest Rate: [3.85%]

Bond Date: March \_\_\_, 2026

Registered Owner: Regions Capital Advantage, Inc.

The City of Dalton, a municipal corporation of the State of Georgia (the “City”), in Whitfield County, for value received hereby promises to pay to or cause to be paid to the registered owner specified above or to payee’s registered assigns (the “owner”), the principal sum specified above, in annual installments due on March 1 of each year beginning March 1, 2027, and to pay interest on the outstanding principal amount due (calculated on the basis of a 360-day year of twelve 30-day months), on March 1 and September 1 of each year beginning September 1, 2026 (each an “Installment Date”) as set forth in Exhibit A, which is attached hereto and made a part hereof, by check or draft mailed by first class mail to such owner at such owner’s address as it shall appear on the bond register kept by the Bond Registrar (or by wire transfer to the registered owner at a wire transfer address which said registered owner has provided to the Paying Agent not less than five days prior to an Installment Date, which wire instructions shall remain in effect until the Paying Agent is notified to the contrary). Both the principal of and interest on this bond are payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This bond is the duly authorized bond designated CITY OF DALTON COMBINED UTILITIES REVENUE BOND, SERIES 2026 (this “Series 2026 Bond”), issued in the principal amount of \$\_\_\_\_\_ to provide funds to (i) pay the costs of making renovations, additions, extensions and expansions to the City’s electric generation, transmission and distribution facilities and facilities of the other systems of the System (hereinafter defined) and (ii) pay the expenses incurred in connection with the issuance of this Series 2026 Bond. This Series 2026 Bond is issued pursuant to authority of and in accordance with the provisions of the Constitution of the State of Georgia, the Revenue Bond Law of Georgia, codified in O.C.G.A. § 36-82-60, et seq., the general laws of the State of Georgia, and the laws of the State of Georgia relating to the City, and was duly authorized by an ordinance enacted by the governing body of the City on October

6, 2017, as supplemented on November 6, 2017 (collectively, the “Original Bond Ordinance”) and a series ordinance enacted by the governing body of the City on March 30, 2026 (the “Series 2026 Bond Ordinance” and, together with the Original Bond Ordinance, the “Ordinance”).

This Series 2026 Bond and the City’s Combined Utilities Revenue Bonds, Series 2017 (the “Series 2017 Bonds”) and the City’s Combined Utilities Revenue Bonds, Series 2020 (the “Series 2020 Bonds”) are secured by, and shall have equal rank with respect to, a first and prior pledge of and lien on the Net Revenues (as such term is defined in the Ordinance) of the City’s combined electric generation and electric and gas distribution systems, water and sewerage systems, and telecommunications system as such now exist and as such may be hereafter added to, extended, improved and equipped (collectively, the “System”).

The City may, under certain conditions as provided in the Ordinance, issue additional revenue bonds (“Parity Bonds”) which, if issued in accordance with such provisions, will rank *pari passu* with the Series 2017 Bonds, the Series 2020 Bonds and this Series 2026 Bond with respect to the pledge of and the charge or lien on the revenue pledged to the payment thereof.

Reference to the Ordinance is hereby made for a complete description of the funds charged with and pledged to the payment of the principal of and interest on this Series 2026 Bond, a complete description of the nature and extent of the security provided for the payment of this Series 2026 Bond, a statement of the rights, duties and obligations of the City, the rights of the owner of this Series 2026 Bond, and the terms and conditions under which Parity Bonds may be issued, to all the provisions of which the owner hereof, by the acceptance of this Series 2026 Bond, assents.

The Ordinance provides, *inter alia*, for prescribing, establishing and revising rates and collecting fees, tolls and charges for the services, facilities and commodities furnished by the System as the same now exists and as it may be hereafter extended, improved and equipped, sufficient in amount to provide funds to pay into a special fund, designated CITY OF DALTON, GEORGIA - COMBINED UTILITIES SINKING FUND (the “Sinking Fund”), an amount sufficient, together with the investment income thereon, if any, to pay the principal of and the interest on the Series 2017 Bonds, the Series 2020 Bonds, this Series 2026 Bond and any future series of Parity Bonds hereafter issued pursuant to the provisions of the Ordinance, as such principal and interest shall become due and be payable, and to create and maintain a reserve for that purpose. The Sinking Fund, by the provisions of the Ordinance, is pledged to and charged with the payment of the principal of this Series 2026 Bond and the interest thereon.

The pledge of and charge or lien on the Net Revenues of the System securing the payment of this Series 2026 Bond is a first and prior pledge of and charge or lien on such revenues.

This Series 2026 Bond does not constitute a debt of the City within the meaning of any constitutional or statutory limitation or provision nor a pledge of the faith and credit of the City nor shall the City be subject to any pecuniary liability thereon, and the taxing power of the City is not pledged to the payment thereof, either as to principal or interest. This Series 2026 Bond shall not be payable from nor a charge upon any funds other than the funds pledged to the payment thereof and are payable solely from the funds provided therefor including the Net

Revenues to be derived from the operation of the System of the City. No owner of this Series 2026 Bond shall ever have the right to compel the exercise of the taxing power of the City to pay the same or the interest thereon or to enforce payment thereof against any property of the City nor shall this Series 2026 Bond or any interest payment thereon constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City other than said funds and Net Revenues.

Only on \_\_\_\_\_, 2028, and upon five (5) business days' written notice from the City to the Bondholder, the Series 2026 Bond is subject to a one-time optional redemption in part in a principal amount up to but not exceeding \$30,000,000 at a price of 100% of the principal amount to be redeemed. In addition, commencing on May 1, 2035, and upon five (5) business days' written notice from the City to the Bondholder, this Series 2026 Bond is subject to optional redemption in whole or in part on any business day at a price of 100% of the principal amount to be redeemed. All partial redemptions of the principal amount hereof shall be applied in the inverse order of scheduled principal payments or maturities.

If any payment under this Series 2026 Bond is received by the Bondholder more than ten (10) days following the due date, the City shall pay to the Bondholder a late fee of five percent (5%) of the total payment due.

Upon a default in payment of the amounts due hereunder or an [Event of Default] under the Ordinance, the interest rate on this Series 2026 Bond shall be increased by 4.0% (400 basis points) for so long as the default or Event of Default continues.

Upon the occurrence of a "Determination of Taxability" as defined below, the interest rate payable hereunder shall be an increased rate of interest (the "Adjusted Rate") equal to \_\_\_%, effective retroactively from the "Date of Taxability" as defined below.

"Date of Taxability" shall mean the earliest date as of which interest on this Series 2026 Bond shall have been determined to be includable in the gross income of a Bondholder as a result of a Determination of Taxability.

An "Event of Taxability" shall mean the taking of, or the failure to take, any action by the City, or the making by the City of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of this Series 2026 Bond, which has the effect of causing the interest payable on this Series 2026 Bond to become includable in the gross income of the Bondholder.

A "Determination of Taxability" shall be deemed to have occurred on the first to occur of the following:

- (a) on that date when the City files any statement, supplemental statement of other tax schedule, return or document which discloses that an Event of Taxability shall have occurred (a "Supplemental Statement");
- (b) on that date when the City is advised in writing by the Commissioner or any District Director of Internal Revenue that, based upon the filings of the City

hereunder, or upon any review or audit of the City, or upon any other ground whatsoever, an Event of Taxability shall have occurred;

- (c) on that date when the City receives notice from the Bondholder that the Bondholder has been advised by the Commissioner or any District Director of Internal Revenue that the interest on this Series 2026 Bond is includable in the gross income of Bondholder due to the occurrence of an Event of Taxability;
- (d) on that date when the City is advised in writing by the Commissioner or any District Director of Internal Revenue that there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service in which the City has participated or have been given the opportunity to participate which concludes that the interest on this Series 2026 Bond is includable in the gross income of the Bondholder due to the occurrence of an Event of Taxability; or
- (e) on that date when the City is advised in writing that a final determination, from which no further right of appeal exists, has been entered by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the City has been given written notice and an opportunity to participate and defend, which concludes that the interest on this Series 2026 Bond is includable in the gross income of the Bondholder due to the occurrence of an Event of Taxability.

No Determination of Taxability shall occur under subparagraph (b) above unless the City has been afforded the opportunity, at its expense, to contest any such conclusion and/or assessment and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined.

The rate of interest payable on this Series 2026 Bond shall be adjusted to the Adjusted Rate effective retroactively to the Date of Taxability. Any deficiency resulting from such retroactive adjustment in the interest rate shall be payable within sixty (60) days of the date of Determination of Taxability, together with an amount equal to any interest, penalties on overdue interest and additions to tax as referred to in Subchapter A of Chapter 68 of the Internal Revenue Code owing by Bondholder. The City shall also pay all reasonable administrative out-of-pocket and other expenses incurred by the Bondholder that are attributable to such event, including, without limitation, the costs incurred by the Bondholder to amend any of its tax returns, notwithstanding the repayment of the entire principal amount of the Series 2026 Bond or any transfer or assignment of the Series 2026 Bond. The obligation to pay interest retroactively as detailed above shall survive the payment in full of the principal of this Series 2026 Bond.

The person in whose name this Series 2026 Bond is registered shall be deemed and regarded as the absolute owner hereof for all purposes, and payment of or on account of either principal or interest made to such registered owner shall be valid and effectual to satisfy and discharge the liability upon this Series 2026 Bond to the extent of the sum or sums so paid. This Series 2026 Bond is registrable as transferred by the owner hereof in person or by his attorney

duly authorized in writing at the principal corporate trust office of the Bond Registrar, all subject to the terms and conditions of the Ordinance.

To the extent and in the manner permitted by the Ordinance, modifications or alterations of the provisions thereof or of any supplement thereto or of the Bonds may be made by the City with the consent of the owners of at least two-thirds in principal amount of the Bonds then outstanding without necessity for notation hereon or reference thereto.

This Series 2026 Bond shall not be entitled to any benefit under the Ordinance or be valid or become obligatory for any purpose until this Series 2026 Bond shall have been authenticated by the execution by the Authentication Agent of the certificate of authentication hereon.

This Series 2026 Bond is issued with the intent that the laws of the State of Georgia shall govern its construction, and, in case of default, the owner hereof shall be entitled to the remedies provided by the Ordinance and by all applicable laws.

It is hereby recited and certified that all acts, conditions and things required to exist, happen or be performed precedent to and in the issuance of this Series 2026 Bond do exist, have happened and have been performed in due and legal time, form and manner as required by law and that provision has been made for the allocation of the anticipated revenue and receipts to be derived from the ownership and operation of the System in amounts sufficient to pay the principal of and interest on the Series 2017 Bonds, the Series 2020 Bonds, this Series 2026 Bond and any future series of Parity Bonds as the same shall mature and become due and, if needed, to maintain a reserve for that purpose and that said funds are irrevocably allocated and pledged to the payment of all of this Series 2026 Bond and any Parity Bonds and the interest thereon.

**IN WITNESS WHEREOF**, the City of Dalton has caused this Series 2026 Bond to be executed by the manual or facsimile signature of its Mayor and its corporate seal to be hereunto produced and attested by the manual or facsimile signature of its Clerk of Council, as of the day first above written.

(S E A L)

CITY OF DALTON

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

CERTIFICATE OF AUTHENTICATION

This Series 2026 Bond is the City of Dalton Combined Utilities Revenue Bond, Series 2026, described in the within-mentioned Ordinance.

Date of Authentication: \_\_\_\_\_

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
Authentication Agent

By: \_\_\_\_\_  
Authorized Signatory

STATE OF GEORGIA        )  
                                  )  
WHITFIELD COUNTY        )        VALIDATION CERTIFICATE

I, the undersigned Clerk of the Superior Court of Whitfield County, State of Georgia, keeper of the records and seal thereof, hereby certify that this Bond was validated and confirmed by judgment of the Superior Court of Whitfield County, Georgia, on \_\_\_\_\_, 2026.

IN WITNESS WHEREOF, I have hereunto set my hand or caused my official signature and the seal of the Superior Court of Whitfield County, Georgia, to be produced hereon.

\_\_\_\_\_  
CLERK, SUPERIOR COURT  
WHITFIELD COUNTY, GEORGIA

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER  
OF ASSIGNEE

\_\_\_\_\_

\_\_\_\_\_

Please print or typewrite name and address, including postal zip code of transferee.

\_\_\_\_\_

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_ Agent to transfer the within Bond on the  
\_\_\_\_\_ books kept for registration thereof, with full power of substitution in the premises.

\_\_\_\_\_

Assignor

NOTICE: The signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Date: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a member firm of the STAMP, SEMP or MSP signature guarantee medallion programs.

EXHIBIT A  
DEBT SERVICE SCHEDULE

\* \* \*

[END OF SERIES 2026 BOND FORM]

Section 8. Registration, Transfer and Exchange of Bonds. U.S. Bank Trust Company, National Association, Atlanta, Georgia, as Bond Registrar and Paying Agent for the Series 2026 Bond, shall keep registers for registration of transfer of the Series 2026 Bond. U.S. Bank Trust Company, National Association, Atlanta, Georgia, is also hereby designated Authentication Agent for purposes of authenticating any Series 2026 Bond issued hereunder or issued in exchange or in replacement for Series 2026 Bond previously issued.

Section 9. Creation of Series 2026 Projects Account. There has heretofore been created and established in the Original Bond Ordinance a trust fund to be designated as the “CITY OF DALTON, GEORGIA COMBINED UTILITIES - CONSTRUCTION FUND” (the “**Construction Fund**”). Simultaneously with the issuance and delivery of the Series 2026 Bond, the City shall deposit, or shall cause to be deposited, into a special account in the Construction Fund which is hereby created and designated the “Series 2026 Project Account,” the amount from the proceeds of the sale of the Series 2026 Bond, as specified in Section 4 hereof, and any other funds acquired for such purpose by gift, donation, grant or otherwise. Such monies as are deposited in the Series 2026 Project Account of the Construction Fund shall be held by the Construction Fund Custodian and withdrawn only in accordance with the provisions and restrictions set forth in Article IV of the Original Bond Ordinance for the purpose of financing the Series 2026 Projects, and the City will not cause or permit to be paid therefrom any sums except in accordance herewith.

There shall be created two subaccounts within the Series 2026 Project Account designated the Series 2026 General Subaccount and the Chateau Generation Equipment Purchase Subaccount.

The Construction Fund Custodian is hereby authorized and directed to make each disbursement from the Series 2026 Project Account required by the provisions hereof upon receipt by the Construction Fund Custodian of a requisition executed by an officer of the Board of Water, Light & Sinking Fund Commissioners of the City (the “Commission”), properly authorized to sign on its behalf (the “**Authorized Representative**”), in substantially the form attached hereto as Exhibit A. Notwithstanding the foregoing, draws on the Construction Fund will be limited to a maximum of one (1) draw per month, in a minimum amount of \$250,000.

Notwithstanding the foregoing, the amounts held in the Chateau Generation Equipment Purchase Subaccount of the Series 2026 Project Account shall be used and applied to finance the Chateau Generation Equipment pursuant to the terms of the Equipment Supply Agreement. Regions Bank (the “Letter of Credit Provider”) has provided a standby letter of credit in connection with financing of the Chateau Generation Equipment as required by the Equipment Supply Agreement (the “Standby Letter of Credit”). The Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia, d/b/a Dalton Utilities and the Letter of Credit Provider entered into that certain Agreement for Irrevocable Standby Letter of Credit, dated as of \_\_\_\_\_, 2026, in connection with the issuance of the Standby Letter of Credit. The City is hereby authorized to enter into any security agreement and/or collateral account control agreement with the Letter of Credit Provider pledging the Letter of Credit Provider a security interest in the amounts held in the Chateau Generation Equipment Purchase Subaccount of the Series 2026 Project Account. In addition, any disbursements from the Chateau Generation

Equipment Purchase Subaccount of the Series 2026 Project Account shall be approved in writing by the Letter of Credit Provider.

All monies in and all securities held for the Construction Fund shall be subject to a lien and charge in favor of the holders of the Series 2017 Bonds, the Series 2020 Bonds the Series 2026 Bond and any additional Parity Bonds and shall be held for the security of such holders until paid out as hereinafter provided.

The completion of the 2026 Projects and payment or provision for payment of all costs of the 2026 Projects shall be evidenced by the filing with the Construction Fund Custodian of a completion certificate signed by an Authorized Representative and delivered to the Construction Fund Custodian stating that, except for amounts retained by the Construction Fund Custodian for costs of the 2026 Projects not then due and payable, or the liability for which the Commission is, in good faith, contesting or disputing, (a) the 2026 Projects have been completed to the satisfaction of the Commission, and (b) the 2026 Projects are suitable and sufficient for the efficient operation as a “project” (as defined in the Revenue Bond Law). As soon as practicable and in any event not more than 60 days from the date of the certificate referred to in the preceding sentence, any balance remaining in the Series 2026 Project Account of the Construction Fund (except amounts the Commission shall have directed the Construction Fund Custodian in writing to retain for any cost of the 2026 Projects not then due and payable) shall without further authorization be transferred into the Sinking Fund and used to pay the next occurring installment of principal due on the Series 2026 Bonds.

Said account shall be used for the purposes herein provided and for the applicable purposes provided in Article IV of the Original Bond Ordinance, and moneys therein shall be expended in the manner and by the procedure established under the provisions of said Article IV of the Original Bond Ordinance. Said Article IV and each appropriate provision thereof are hereby declared applicable to the Series 2026 Bond and they are specifically reaffirmed and enacted as a part of this Series 2026 Bond Ordinance as if set forth verbatim herein.

Section 10. Creation of Series 2026 Costs of Issuance Fund. There has heretofore been created and established in the Original Bond Ordinance a trust fund to be designated as the “CITY OF DALTON, GEORGIA COMBINED UTILITIES – COSTS OF ISSUANCE FUND” (the “**Cost of Issuance Fund**”). Simultaneously with the issuance and delivery of the Series 2026 Bond, the City shall deposit, or shall cause to be deposited, into a special account in the Costs of Issuance Fund which is hereby created and designated the “Series 2026 Costs of Issuance Fund,” the amount from the proceeds of the sale of the Series 2026 Bond as specified in Section 4 hereof. Such monies as are deposited in the Series 2026 Costs of Issuance Account of the Costs of Issuance Fund shall be held by the Costs of Issuance Fund Custodian and withdrawn only in accordance with the provisions and restrictions set forth in Article IV of the Original Bond Ordinance to pay the costs of issuance of the Series 2026 Bond, and the City will not cause or permit to be paid therefrom any sums except in accordance herewith.

Said fund shall be used for the purposes herein provided and for the applicable purposes provided in Article IV of the Original Bond Ordinance, and moneys therein shall be expended in the manner and by the procedure established under the provisions of said Article IV of the Original Bond Ordinance. Said Article IV and each appropriate provision thereof are hereby

declared applicable to the Series 2026 Bond and they are specifically reaffirmed and enacted as a part of this Series 2026 Bond Ordinance as if set forth verbatim herein.

Section 11. Designation of Bond Registrar, Paying Agent, and Authentication Agent; Designation of Depositories and Custodians.

(a) U.S. Bank Trust Company, National Association, in the City of Atlanta, Georgia, is hereby designated as Bond Registrar, Paying Agent, and Authentication Agent for the Series 2026 Bond and the Sinking Fund Custodian.

(b) [Truist Bank], in the City of Dalton, Georgia, is hereby designated as Revenue Fund Depository, the Renewal and Extension Fund Custodian, the Rebate Fund Custodian and the Rate Stabilization Fund Depository.

(c) Regions Bank is hereby designated as the Construction Fund Custodian and the Costs of Issuance Fund Custodian.

(d) The City or the Commission, from time to time, may designate in writing, by an authorized officer of the City or the Commission, a successor Bond Registrar, Paying Agent, and Authentication Agent, depository or custodian of any fund or account described in the Original Ordinance; provided such successor agrees to comply with the relevant provisions of Original Ordinance, as supplemented.

Section 12. Non-Arbitrage and Tax Covenants. The City covenants not to make or permit the use of, nor direct any depository or custodian to make any investment of, any proceeds of the Series 2026 Bond which, if such use or investment had been reasonably expected on the date of issuance of the Series 2026 Bond, would have caused the Series 2026 Bond to be “arbitrage” bonds within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”), and such regulations promulgated from time to time thereunder as may be applicable to the Series 2026 Bond. The City further covenants that it will comply throughout the term of the bond with the requirements of said Code and any such applicable regulations to the end of preventing the bond from becoming an “arbitrage” bond. In addition, the City will take or cause to be taken all actions required to comply with all provisions of Federal law applicable to the Series 2026 Bond necessary to be complied with in order for the interest on the Series 2026 Bond to be exempt from Federal income taxation and it will not take nor permit anyone under its direction or control to take any action which would cause the exemption from Federal income taxation to be lost. Nothing contained in this Section 12 shall be construed to impose contractual obligations on the City which are more onerous or burdensome than the requirements (as they shall exist from time to time) of said Code and any such applicable regulations which must be observed in order to prevent the interest on the Series 2026 Bond from becoming subject to Federal income taxation. The City shall not knowingly invest or participate in the investment of any money held hereunder which investment would render interest on any bonds subject to Federal income taxation. The City will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the tax-exempt status of the interest on the Series 2026 Bond under Section 103 of the Code.

Section 13. Particular Covenants. All of the terms, covenants, conditions and provisions of the Original Bond Ordinance, except to the extent specifically amended by the terms of this Series 2026 Bond Ordinance relating to the Series 2026 Bond, are hereby declared applicable and are broadened and extended so long as to cover the Series 2026 Bond and they are specifically reaffirmed and enacted as a part of this Series 2026 Bond Ordinance as if set forth verbatim herein.

Section 14. Bondholder Provisions. (a) The Bondholder and its representatives are not registered municipal advisors and do not provide advice to municipal entities or obligated persons with respect to municipal financial products or the issuance of municipal securities (including regarding the structure, timing, terms and similar matters concerning municipal financial products or municipal securities issuances) or engage in the solicitation of municipal entities or obligated persons for the provision by non-affiliated persons of municipal advisory services and/or investment advisory services. With respect to any information, materials or communications provided by the Bondholder: (a) the Bondholder and its representatives are not recommending an action to any municipal entity or obligated person; (b) the Bondholder and its representatives are not acting as an advisor to any municipal entity or obligated person and do not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to any municipal entity or obligated person with respect to information, materials or communications; (c) the Bondholder and its representatives are acting for their own interests; and (d) the City has been informed that the City should discuss any information, materials or communications with any and all internal and external advisors and experts that the City deem appropriate before acting on any such information, materials or communications.

(b) The City acknowledges and agrees that the Bondholder is purchasing the Series 2026 Bond in evidence of a privately negotiated loan and in that connection the Series 2026 Bond shall not be (i) assigned a separate rating by any municipal securities rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of offering document or official statement or (iv) assigned a CUSIP number.

(c) The City represents and warrants to the Bondholder that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a Person named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of any such person. The City further represents and warrants to the Bondholder that the City and its principals, shareholders, members, partners, or affiliates, as applicable, are not directly or indirectly, engaged in, nor facilitating, the transactions contemplated by this transaction on behalf of any Person named as a Specially Designated National and Blocked Person.

Section 15. Validation. The Series 2026 Bond shall be validated in the manner provided in the Revenue Bond Law, as amended, and to that end notice of the adoption of this Series 2026 Bond Ordinance and a certified copy thereof shall be served immediately on the District Attorney of the Conasauga Judicial Circuit in order that proceedings for the confirmation and validation of the Series 2026 Bond by the Superior Court of Whitfield County may be instituted by said District Attorney.

Section 16. Continuing Disclosure. The City covenants that the disclosure requirements of U.S. Securities and Exchange Commission Rule 15c2-12 do not apply to the Series 2026 Bond because the issuance and delivery of the Series 2026 Bond to the purchaser thereof comply with the exemption contained in Section 15c2-12(d)(1)(i) of said rule.

Section 17. Authorization of Execution of 8038-G and Other Documents. The Mayor or Chief Financial Officer of the City is hereby authorized to direct the filing with the Internal Revenue Service a form 8038-G upon closing of the Series 2026 Bond. The proper officers and agents of the City are hereby authorized, empowered, and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of this Series 2026 Bond Ordinance and are further authorized to take any and all further actions and execute and deliver any and all other documents as may be necessary in the issuance of the Series 2026 Bond. All actions heretofore taken and all documents heretofore executed in connection with the issuance of the Series 2026 Bond are ratified and approved.

Section 18. Waiver of Performance Audit. The City hereby specifically waives the requirements of O.C.G.A. § 36-82-100 that the expenditure of the proceeds of the Series 2026 Bond be subject to an ongoing performance audit or performance review, and authorizes such waiver to be published in the notice of hearing relating to the validation of the Series 2026 Bond.

Section 19. Severability. In case anyone or more of the provisions of this Series 2026 Bond Ordinance, or the Series 2026 Bond, shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Series 2026 Bond Ordinance, or the bonds, but this Series 2026 Bond Ordinance and the Series 2026 Bond shall be construed and enforced as if such illegal or invalid provisions had not been contained therein.

Section 20. Proceedings Authorizing Parity Bonds. The provisions of the Original Bond Ordinance, the Series 2020 Ordinance and this Series 2026 Bond Ordinance and every sentence thereof and herein shall be construed as including and as being applicable to the Series 2017 Bonds, the Series 2020 Bonds, the Series 2026 Bond and any future series of Parity Bonds, and the Series 2017 Bonds, the Series 2020 Bonds, the Series 2026 Bond and any such Parity Bonds shall be treated for all intents and purposes, unless otherwise specifically stated, just as if they had been issued together with the initial series of bonds and pursuant to the terms of the Original Bond Ordinance, the Series 2020 Bond Ordinance and this Series 2026 Bond Ordinance.

Section 21. Audited Financial Statements; Rate Covenant.

(a) The City shall deliver to the Bondholder the annual audited financial statements of The Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, within 270 days of the end of each fiscal year of the City, commencing with the fiscal year ending \_\_\_\_\_, 2026.

(b) The City shall prescribe, fix, maintain and collect rates, fees and other charges for the services, facilities and commodities furnished by the System during each Fiscal Year in order to produce [Adjusted Available Revenues] for such [Fiscal Year] equal

to at least the [Coverage Requirement] for such Fiscal Year. The Issuer may make adjustments from time to time in such fees and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates, fees and charges then in effect unless the Adjusted Available Revenues from such reduced rates, fees and charges are estimated to be sufficient to meet the requirements of this section.

Section 22. Increased Costs and Capital Requirements.

(a) If any Change in Law shall: (i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bondholder; (ii) subject the Bondholder to any Taxes (other than taxes related to changes to the tax rate on the overall net income of the Bondholder) on the Series 2026 Bond or other obligations, or its deposits, reserves or other liabilities or capital attributable thereto; or (iii) impose on the Bondholder any other condition, cost or expense affecting the Series 2026 Bond; and the result of any of the foregoing shall be to increase the cost to the Bondholder related to issuing or maintaining the Series 2026 Bond, or to reduce the amount of any sum received or receivable by the Bondholder with respect to the Series 2026 Bond hereunder (whether of principal, interest or any other amount) then, upon written request of the Bondholder, the City shall promptly pay to the Bondholder, as the case may be, such additional amount or amounts as will compensate the Bondholder, as the case may be, for such additional costs incurred or reduction suffered.

(b) If the Bondholder determines that any Change in Law affecting the Bondholder or the Bondholder's parent or holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on the Bondholder's capital or liquidity or the capital or liquidity of the Bondholder's parent or holding company holding, if any, as a consequence of the Series 2026 Bond, or for maintaining the Series 2026 Bond, to a level below that which the Bondholder or the Bondholder's parent or holding company could have achieved but for such Change in Law (taking into consideration the Bondholder's policies and the policies of the Bondholder's parent or holding company with respect to capital adequacy), then from time to time upon written request of the Bondholder the City shall promptly pay to the Bondholder such additional amount or amounts as will compensate the Bondholder or the Bondholder's parent or holding company for any such reduction suffered.

Section 23. Waiver of Jury Trial. To the extent permitted by applicable law, each of the City and Bondholder irrevocably and voluntarily waives any right it may have to a trial by jury with respect to any controversy or claim between the City and Bondholder, whether arising in contract or tort or by statute, including but not limited to any controversy or claim that arises out of or relates to the term sheet provided by the Bondholder to the City, the Series 2026 Bond or any of the other documents associated with the Series 2026 Bond. This provision is a material inducement for the Bondholder's determination to make the loan represented by its purchase of the Series 2026 Bond and for the parties to enter into the associated documents and agreements.

Section 24. Transfer of Series 2026 Bond. Subject only to the restrictions set forth in the form of Series 2026 Bond above, the Bondholder have the right to transfer and/or assign, in whole or in part, the Series 2026 Bond and its rights hereunder, or, in either case, any interest therein, to any person or entity in its sole and absolute discretion. The City may not assign its rights hereunder or under the Series 2026 Bond to any person without the prior written consent of the Bondholder.

Adopted and approved on the 30<sup>th</sup> day of March, 2026, at the regular meeting of the Mayor and Council of the City of Dalton.

CITY OF DALTON, GEORGIA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

The foregoing Ordinance received its first reading on March 16, 2026. Upon the motion for passage of the Ordinance made by Council member \_\_\_\_\_, second by Council member \_\_\_\_\_, and upon the question the vote is \_\_\_\_\_ ayes, \_\_\_\_\_ nays and the Ordinance is adopted.

Schedule 1  
DEBT SERVICE

[Attached.]

EXHIBIT A

**FORM OF REQUISITION**

In accordance with the terms of the Bond Ordinance enacted October 6, 2017, as supplemented (the “Original Bond Ordinance”) by the Mayor and Council of the City of Dalton, Georgia (the “City”) and the Series 2026 Bond Ordinance enacted March 30, 2026 (the “Series 2026 Bond Ordinance” and, together with the Original Bond Ordinance, the “Ordinance”) by the Mayor and Council of the City, the Commission (as defined in the Ordinance), acting on behalf of the City, hereby requests the Custodian of the Construction Fund to pay the following persons the following amounts from the “2026 Project Account” within the Construction Fund for the following purposes:

<u>Payee’s Name and Address</u>	<u>Invoice Number</u>	<u>Dollar Amount</u>	<u>Purpose</u>
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The Commission hereby certifies as follows:

1. An obligation in the stated amount has been incurred, is a proper charge against the Construction Fund and has not been paid.
2. A bill or statement of account for such obligation, or a copy thereof, is attached hereto or is on file in the office of the director of the Commission.
3. The undersigned has no notice of any vendor’s, mechanic’s or other liens or rights to liens, security interests, chattel mortgages, or conditional sales contracts which should be satisfied or discharge before such payment is made.
4. This requisition contains no item representing payment on account or any retained percentages which the Commission is, as of the date of this certification, entitled to retain.
5. Insofar as such obligation was incurred for work, materials, supplies or equipment, such work was actually performed or such materials, supplies or equipment were actually installed in or about the construction or delivered at the site of the work for that purpose.

THE BOARD OF WATER, LIGHT AND  
SINKING FUND COMMISSIONERS OF THE  
CITY OF DALTON

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Title: Authorized Representative

For each Draw on Chateau Generation Equipment Purchase Subaccount:

**Approved:**

REGIONS BANK, as Letter of Credit Provider

By: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT - A

CITY CLERK'S CERTIFICATE

I, the undersigned City Clerk of the City of Dalton, keeper of the records and seal thereof, hereby certify that the foregoing is a true and correct copy of an ordinance enacted by the Mayor and City Council of the City of Dalton in public meeting properly and lawfully assembled on March 30, 2026, the original of which resolution has been entered in the official records of the City under my supervision and is in my official possession, custody and control.

I further certify that the meeting was held in conformity with the requirements of Title 50, Chapter 14 of the Official Code of Georgia Annotated.

(SEAL)

\_\_\_\_\_  
City Clerk