

**MAYOR AND COUNCIL MEETING
MONDAY, JUNE 19, 2023
6:00 PM
DALTON CITY HALL**

AGENDA

Call to Order

Pledge of Allegiance

Approval of Agenda

Public Hearing:

- 1.** Ordinance 23-10 - An Ordinance to Amend Article II Captioned "Occupation Taxes; Administrative Fees; Regulatory Fees" Of Chapter 26 "Businesses" of the 2001 Revised Code of Ordinances for The Purpose of Increasing the Administrative Fee Levied and Assessed on All Occupational Tax Accounts; To Establish an Effective Date; To Repeal Conflicting Ordinances, Laws, And Regulations; And for Other Purposes.

Public Commentary: *(Please Complete Public Commentary Contact Card Prior to Speaking)*

Minutes:

- 2.** Mayor & Council Meeting Minutes of June 5, 2023

Unfinished Business:

- 3.** Ordinance 23-10 - Second Reading - To Amend Article II Captioned "Occupation Taxes; Administrative Fees; Regulatory Fees" Of Chapter 26 "Businesses" of the 2001 Revised Code of Ordinances for The Purpose of Increasing the Administrative Fee Levied and Assessed on All Occupational Tax Accounts; To Establish an Effective Date; To Repeal Conflicting Ordinances, Laws, And Regulations; And for Other Purposes.
- 4.** Ordinance 23-12 - Second Reading - The Request of the Whitfield County Board of Commissioners, Mayor and Council of the City of Dalton, and Mayor and Council of the City of Varnell to amend the Dalton-Whitfield-Varnell Unified Zoning Ordinance regarding compliance with GA HB 1405.

New Business:

- 5.** General Construction Agreement with The Surface Masters, Inc. for Resurfacing of the Lakeshore Park Track
- 6.** Terms and Conditions for the American Rescue Plan Act- Improving Neighborhood Outcomes in Disproportionately Impacted Communities Grant Program - Heritage Point Park Project

- [7.](#) Improving Neighborhood Outcomes Grant Terms and Conditions Form for the Pentz and Cuyler Street Corridor Improvements
- [8.](#) 615 Birchfield Avenue Stormwater Improvement Corrective Action Plan, Temporary Construction, and Permanent Drainage Easements
- [9.](#) Resolution 23-08 To Make Findings of Fact Concerning the Public Use and Necessity of a Section of Unopened Cooper Street; To Consider the Vacating and Abandonment of Public Interest in And to The Said Portion of Cooper Street for Public Transportation Use; To Declare the Closing of Such Section of Cooper Street, To Authorize Delivery of a Quitclaim Deed of Any Interest of The City of Dalton Except Utility Easement to Adjacent Property Owners; To Establish an Effective Date; And for Other Purposes.
- [10.](#) Resolution 23-11 Authorizing Municipal Utility Property Easements
- [11.](#) Resolution 23-13 Authorizing Conservation Easements and Declaration of Conservation Covenants and Restrictions

Supplemental Business

Announcements:

12. The City Council Meeting scheduled for Monday, July 3, 2023 has been cancelled. City offices will be closed Tuesday, July 4, 2023 for Independence Day. The next City Council Meeting will be held Monday, July 17, 2023.

Adjournment

**CITY OF DALTON
ORDINANCE**

Ordinance No. 23-10

AN ORDINANCE TO AMEND ARTICLE II CAPTIONED “OCCUPATION TAXES; ADMINISTRATIVE FEES; REGULATORY FEES” OF CHAPTER 26 “BUSINESSES” OF THE 2001 REVISED CODE OF ORDINANCES FOR THE PURPOSE OF INCREASING THE ADMINISTRATIVE FEE LEVIED AND ASSESSED ON ALL OCCUPATIONAL TAX ACCOUNTS; TO ESTABLISH AN EFFECTIVE DATE; TO REPEAL CONFLICTING ORDINANCES, LAWS, AND REGULATIONS; AND FOR OTHER PURPOSES

WHEREAS, pursuant to State law the City of Dalton levies an occupation tax for revenue purposes on persons, partnerships, corporations, or other entities for engaging in an occupation, profession or business in the City of Dalton; and

WHEREAS, the City presently levies and assesses an Administrative fee on all occupational tax accounts; and

WHEREAS, the City has determined that its administrative cost to process the Occupational Tax Program exceeds the amount presently collected under the Administrative fee being levied and wishes to increase the Administrative fee to support the Occupation Tax Program costs of the City; and

WHEREAS, the Mayor and Council has held a public hearing on the passage of this Ordinance prior to its second reading; and

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

-1-

The foregoing statements are hereby adopted as findings of fact by the Mayor and Council and form the grounds for its action to increase the Administrative fee.

-2-

Section 26-32 of the 2001 Revised Code is hereby amended by striking the first sentence thereof in its entirety and inserting in lieu thereof the following:

An administrative fee of \$200.00 per annum is levied and assessed on all occupational tax account.”,

so that as amended said Section 26-32 shall hereafter read as follows:

“An administrative fee of \$200.00 per annum is levied and assessed on all occupational tax accounts. No administrative fee shall be assessed or collected on any state or local authority or non-profit organization.

-3-

This Ordinance shall be effective after its passage upon publication in two (2) public places for five (5) consecutive days.

-4-

All ordinances, laws, or regulations of the City of Dalton in conflict herewith are hereby repealed.

SO ORDAINED, this _____ day of _____, 2023.

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 Council member _____, second by Council member _____, and upon the question the vote is _____ AYES, _____ NAYS and the Ordinance DOES/DOES NOT pass.

By: _____
Mayor

ATTEST:

City Clerk

A true copy of the foregoing Ordinance has been published in two public places in the
City of Dalton for five (5) consecutive days following its passage and its effective date is thereby
the _____ day of _____, 2023.

City Clerk
City of Dalton

THE CITY OF DALTON
MAYOR AND COUNCIL MINUTES
JUNE 5, 2023

The Mayor and Council held a meeting this evening at 6:00 p.m. at City Hall. Present were Mayor David Pennington, Council members Annalee Sams, Tyree Goodlett and Steve Farrow and City Administrator Andrew Parker and City Attorney Terry Miller. Council member Dennis Mock was absent.

CALL TO ORDER

Mayor Pennington called the meeting of the Mayor and Council to order.

APPROVAL OF AGENDA

On the motion of Council member Sams, second Council member Goodlett, the Mayor and Council approved the agenda. The vote was unanimous in favor.

MINUTES

The Mayor and Council reviewed the Mayor & Council Regular Meeting Minutes of May 15, 2023. On the motion of Council member Farrow, second Council member Goodlett, the minutes were approved. The vote was unanimous in favor.

PUBLIC COMMENTARY

There were no public comments.

SPECIAL RECOGNITION

Miss Jordyn Davis - GRPA State Track Meet Champion

Mayor Pennington presented Miss Jordyn Davis with a Certificate of Recognition for competing in the Georgia Recreation and Parks Association State Track meet in August where she won the state championship in 100-meter, 200 meter and the running long jump event.

PROCLAMATION

"Municipal Court Clerk's Week" - June 5-9, 2023 - Jason James and Misty Wimpey

Mayor Pennington presented Jason James and Misty Wimpey with a proclamation for Municipal Court Clerk's Week" - June 5-9, 2023 for all the vital services they perform and their exemplary dedication to the community.

CIVIC PLUS (FORMERLY MUNICODE) SUPPLEMENTATION SUBSCRIPTION RENEWAL

Assistant City Clerk Gesse Cabrera presented the Civic Plus (formerly Municode) Supplementation Subscription Renewal with a billing model change for Code supplementation services effective 06-01-2023. Cabrera stated the amount of the subscription renewal is \$4717.20 and is a budgeted item. On the motion of Council member Sams, second Council member Goodlett, the renewal agreement was approved. The vote was unanimous in favor.

PROFESSIONAL SERVICE AGREEMENT - GOODWYN MILLS CAWOOD, LLC.

Public Works Director Chad Townsend presented the Professional Service Agreement for Design Services with Goodwyn Mills Cawood, LLC for the Underwood Street Bridge Over Mill Creek Project in the amount of \$349,850.00. Townsend stated the services will be paid from the 2015 SPLOST SP184. On the motion of Council member Goodlett, second Council member Sams, the agreement was approved. The vote was unanimous in favor.

RSC WEST HILL DRAINAGE IMPROVEMENTS PROJECT CONTRACT - CHANGE ORDER REQUEST NO. 001

Public Works Director Chad Townsend presented RSC West Hill Drainage Improvements Project Contract Change Order Request No. 001. Townsend stated the request for additional armoring of the RSC boulder complex to mitigate the risk of deterioration over time of the finished grade and installing a four (4) foot apron at the base of each boulder complex to provide protection against scouring. Townsend further stated the cost of this change is \$60,300.00 and will be paid from the 2015 SPLOST SP190. On the motion of Council member Sams, second Council member Goodlett, the Change Order Request was approved. The vote was unanimous in favor.

SUTPHEN PURCHASE AGREEMENT FOR (1) NEW SUTPHEN HEAVY RESCUE APPARATUS

Fire Chief Todd Pangle presented the Sutphen Purchase Agreement for (1) New Sutphen Heavy Rescue Apparatus in the amount of \$1,149,786.00. Pangle stated this apparatus will replace the 2006 apparatus and delivery time should be 24-26 months. On the motion of Council member Sams, second Council member Goodlett, the purchase agreement was approved. The vote was unanimous in favor.

CROY ENGINEERING TASK ORDER #8

Airport Director Andrew Wiersma presented the Croy Engineering Task Order #8 to Prepare Design Plans and Contract Documents for Hangar Development at Dalton Municipal Airport in the amount a State Grant of \$157,778.60. Wiersma stated the task order is for Croy Engineering to begin design work for hangar development of up to (4) corporate hangers and up to ten (10) t-hangers on three (3) different building sites. On the motion of Council member Sams, second Council member Goodlett, the Task Order was approved. The vote was unanimous in favor.

CROY TASK ORDER #9 FOR DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS

Airport Director Andrew Wiersma presented the Croy Task Order #9 for Disadvantaged Business Enterprise (DBE) Goals update for the Dalton Municipal Airport for years 2024-2026. Wiersma stated that Federal Regulations require grant recipients that receive over \$250,000 in FAA Funds must have a DBE Program. On the motion of Council member Sams, second Council member Goodlett, the DBE Goals were approved. The vote was unanimous in favor.

GENERAL CONSTRUCTION AGREEMENT WITH THE SURFACE MASTERS, INC. FOR RESURFACING OF THE LAKESHORE PARK TRACK

On the motion of Council member Farrow, second Council member Sams, this item was tabled for further information. The vote was unanimous in favor.

PROFESSIONAL SERVICES AGREEMENT WITH MAGOBA, LLC.

Recreation Director Caitlyn Sharpe presented the Professional Services Agreement with MAGOBA, LLC for Asbestos Abatement at John Davis Recreation Center prior to demolition. Sharpe stated the cost is \$16,475. On the motion of Council member Goodlett, second Council member Farrow, the Agreement was approved. The vote was unanimous in favor.

RESOLUTION 23-12 TO SUBMIT A PRE-APPLICATION FOR LAND AND WATER CONSERVATION FUNDS (LWCF)

Ethan Calhoun of NWGRC presented the Resolution 23-12 to Submit a Pre-application for Land and Water Conservation Funds (LWCF) for the Expansion of the Mack Gaston Community Center Splash Pad. On the motion of Council member Farrow, second Council member Goodlett, the Pre-Application was approved. The vote was unanimous in favor. Calhoun stated in the event the LWCF grant is awarded to the City the grant would cover 50% of the total project cost.

ORDINANCE 23-11 ANNEXATION REQUEST OF EDWIN AND JOSE MACHADO

On the motion of Council member Goodlett, second Council member Sams, the Mayor and Council adopted Ordinance 23-11 a Request of Edwin and Jose Machado to Annex a Tract of Land Totaling 0.17-Acre Zoned Medium-Density Single-Family Residential (R-3) Located at 1232 Frazier Drive into the City of Dalton. Parcel (12-179-02-059). The vote was unanimous in favor.

FIRST READING ORDINANCE 23-10 – AN ORDINANCE TO AMEND ARTICLE II CAPTIONED “OCCUPATION TAXES

The Mayor and Council held a first Reading of Ordinance 23-10 – An Ordinance to Amend Article II Captioned “Occupation Taxes; Administrative Fees; Regulatory Fees” of Chapter 26 “Businesses” of the 2001 Revised Code of Ordinances for The Purpose of Increasing the Administrative Fee Levied and Assessed on All Occupational Tax Accounts; To Establish an Effective Date; To Repeal Conflicting Ordinances, Laws, And Regulations; And for Other Purposes.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 6:14 p.m.

Bernadette Chattam
City Clerk

David Pennington, Mayor

Recorded
Approved: _____
Post: _____



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 06/19/2023

Agenda Item: Ord. 23-10 – Occupation Taxes Article II Amendment

Department: City Clerk

Requested By: Bernadette Chattam

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:

Ordinance No. 23-10

AN ORDINANCE TO AMEND ARTICLE II CAPTIONED “OCCUPATION TAXES; ADMINISTRATIVE FEES; REGULATORY FEES” OF CHAPTER 26 “BUSINESSES” OF THE 2001 REVISED CODE OF ORDINANCES FOR THE PURPOSE OF INCREASING THE ADMINISTRATIVE FEE LEVIED AND ASSESSED ON ALL OCCUPATIONAL TAX ACCOUNTS; TO ESTABLISH AN EFFECTIVE DATE; TO REPEAL CONFLICTING ORDINANCES, LAWS, AND REGULATIONS; AND FOR OTHER PURPOSES.

**CITY OF DALTON
ORDINANCE**

Ordinance No. 23-10

AN ORDINANCE TO AMEND ARTICLE II CAPTIONED “OCCUPATION TAXES; ADMINISTRATIVE FEES; REGULATORY FEES” OF CHAPTER 26 “BUSINESSES” OF THE 2001 REVISED CODE OF ORDINANCES FOR THE PURPOSE OF INCREASING THE ADMINISTRATIVE FEE LEVIED AND ASSESSED ON ALL OCCUPATIONAL TAX ACCOUNTS; TO ESTABLISH AN EFFECTIVE DATE; TO REPEAL CONFLICTING ORDINANCES, LAWS, AND REGULATIONS; AND FOR OTHER PURPOSES

WHEREAS, pursuant to State law the City of Dalton levies an occupation tax for revenue purposes on persons, partnerships, corporations, or other entities for engaging in an occupation, profession or business in the City of Dalton; and

WHEREAS, the City presently levies and assesses an Administrative fee on all occupational tax accounts; and

WHEREAS, the City has determined that its administrative cost to process the Occupational Tax Program exceeds the amount presently collected under the Administrative fee being levied and wishes to increase the Administrative fee to support the Occupation Tax Program costs of the City; and

WHEREAS, the Mayor and Council has held a public hearing on the passage of this Ordinance prior to its second reading; and

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

-1-

The foregoing statements are hereby adopted as findings of fact by the Mayor and Council and form the grounds for its action to increase the Administrative fee.

Section 26-32 of the 2001 Revised Code is hereby amended by striking the first sentence thereof in its entirety and inserting in lieu thereof the following:

An administrative fee of \$200.00 per annum is levied and assessed on all occupational tax accounts.”,

so that as amended said Section 26-32 shall hereafter read as follows:

“An administrative fee of \$200.00 per annum is levied and assessed on all occupational tax accounts. No administrative fee shall be assessed or collected on any state or local authority or non-profit organization.

This Ordinance shall be effective as to all new applications and renewals after its passage and publication in two (2) public places for five (5) consecutive days but not sooner than January 1, 2024.

All ordinances, laws, or regulations of the City of Dalton in conflict herewith are hereby repealed.

SO ORDAINED, this _____ day of _____, 2023.

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 Council member _____, second by Council member _____, and upon the question the vote is _____ AYES, _____ NAYS and the Ordinance DOES/DOES NOT pass.

By: _____
Mayor

ATTEST:

City Clerk

A true copy of the foregoing Ordinance has been published in two public places in the City of Dalton for five (5) consecutive days following its passage and its effective date is thereby the _____ day of _____, 2023.

City Clerk
City of Dalton



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 6/19/2023

Agenda Item: The request of the Whitfield County Board of Commissioners, Mayor and Council of the City of Dalton, and Mayor and Council of the City of Varnell to amend the Dalton-Whitfield-Varnell Unified Zoning Ordinance regarding compliance with GA HB 1405.

Department: Zoning

Requested By: Ethan Calhoun

Reviewed/Approved by City Attorney? Sent for Review

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:

See attached ordinance

DALTON-VARNELL-WHITFIELD COUNTY PLANNING COMMISSION
503 WEST WAUGH STREET
DALTON, GA 30720

MEMORANDUM

TO: City of Dalton Mayor and Council
Andrew Parker
Terry Miller
Jacob Bearden

FROM: Jim Lidderdale
Chairman

DATE: June 1, 2023

SUBJECT: The request of the Whitfield County Board of Commissioners, Mayor and Council of the City of Dalton, and Mayor and Council of the City of Varnell to amend the Dalton-Whitfield-Varnell Unified Zoning Ordinance regarding compliance with GA HB 1405.

The most recent meeting of the Dalton-Varnell-Whitfield County Planning Commission was held on May 22, 2023 at 6:00 p.m. at the Whitfield County Courthouse meeting room. A portion of the agenda included a public hearing concerning the above matter. A quorum of four members of the Planning Commission was present. All legal requirements for advertising and posting the public hearing were met. The petition was represented by Ethan Calhoun.

Public Hearing Summary:

Mr. Calhoun summarized the staff analysis which recommended the text amendments be approved as written based on the understanding that the amendments are to be in compliance with HB1405. Octavio Perez asked why there was a 180-day window for Zoning Board of Appeals decisions in section 11-3-9 to which Robert Smalley stated that additional time was granted in order to compensate for the additional advertising time. Commissioner Jones and Perez expressed interest in reducing the 180 days to the minimum amount of time to ensure decisions were not to be delayed longer than necessary. Smalley stated that staff could revisit this section and reduce the 180 days to the minimum amount of time as legally necessary. There were no further questions for Calhoun.

Vicky Alt stated that she did not feel as though sufficient time had been given for citizens to review the proposed text amendments. Some discussion occurred regarding the text amendments draft having had a first reading at the May Commissioner's meeting as well as the opportunity for additional public comment at the upcoming June Commissioner's meeting.

With no other comments heard for or against, this hearing closed at approximately 6:29pm.

Recommendation:

Chairman Lidderdale sought a motion on the requested UZO text amendment. Robert Smalley stated that one reading of the ordinance took place at the May Commissioner's meeting in addition to the public meeting held earlier at this meeting, and Smalley stated that there will be a second reading at the June Commissioner's meeting. Smalley stated that staff will reduce the 180-day appeal window for decisions to the least amount of time as legally allowed per the request of the Planning Commission and Board of Commissioners. **Chris Shiflett then made a motion to approve the text amendment with the conditions discussed in the public hearing regarding. Octavio Perez then seconded the motion and a unanimous recommendation to approve the text amendments followed, 3-0.**

CITY OF DALTON
ORDINANCE
Ordinance No. 23-12

ORDINANCE OF THE CITY OF DALTON AMENDING THE UNIFIED ZONING
ORDINANCE OF THE CITY OF DALTON, THE CITY OF VARNELL, AND
UNINCORPORATED WHITFIELD COUNTY BY REPEALING AND REPLACING
THEREWITH THE UNIFIED ZONING ORDINANCE OF THE CITY OF DALTON, THE
CITY OF VARNELL AND UNINCORPORATED WHITFIELD COUNTY; TO PROVIDE
FOR AN EFFECTIVE DATE; TO REPEAL ALL CONFLICTING ORDINANCES; TO
PROVIDE FOR SEVERABILITY, AND FOR OTHER PURPOSES

WHEREAS, the Mayor and Council was authorized to adopt zoning regulations by Ga. L. 1939, pages 965, Section 2; and

WHEREAS, the Mayor and Council adopted *the Unified Zoning Ordinance of the City of Dalton, the City of Varnell, and Unincorporated Whitfield County* ("**UZO**") on or about August 10, 2015; and

WHEREAS, the Mayor and Council has, from time to time, amended said ordinance in order to protect the health, welfare, and safety of the public; and

WHEREAS, the Mayor and Council finds such amendments to be useful, necessary, and proper, and protective of the health, welfare, and safety of the public; and

WHEREAS, it is the desire of the Mayor and Council to promote the goals, objectives, and policies of the *Joint Comprehensive Plan for Whitfield County and the Cities of Cohutta, Dalton, Tunnel Hill and Varnell*; and

WHEREAS, it is the mutual desire of the Whitfield County Board of Commissioners, the Mayor and Council of the City of Dalton, and the Mayor and Council of the City of Varnell to have consistent regulations across political boundaries within Whitfield County; and

WHEREAS, it is the belief of the Mayor and Council that in so doing, it protects the health, welfare, and safety of the public.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Dalton that the **UZO**, otherwise known as Appendix A of the Code of Ordinances of the City of Dalton, is herewith amended, repealed, and replaced with the following text, also to be entitled the "*Unified Zoning Ordinance of the City of Dalton, the City of Varnell and Unincorporated Whitfield County*," including all text and appendices set forth herein, and for other purposes.

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

1. Appendix A of the Code of Ordinances of the City of Dalton, also known as the *Unified Zoning Ordinance of the City of Dalton, the City of Varnell, and Unincorporated Whitfield County*, shall be herewith amended, repealed in its entirety, and replaced with the following Ordinance, also to be entitled the *Unified Zoning Ordinance of the*

City of Dalton, the City of Varnell and Unincorporated Whitfield County, as follows,
in its entirety, including all appendices thereto:

UNIFIED ZONING ORDINANCE

OF

***THE CITY OF DALTON,
THE CITY OF VARNELL,
and
UNINCORPORATED WHITFIELD
COUNTY***

**Adopted
August 10, 2015
Re-adopted June 12, 2023**

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WHITFIELD COUNTY, GEORGIA UNIFIED ZONING ORDINANCE

Article I - Introduction

Preamble. An Ordinance of Whitfield County, Georgia, the City of Dalton, Georgia, and the City of Varnell, Georgia, regulating the location, height, bulk, and size of buildings and other structures; the density of population; the uses of land, buildings and structures for business, industry, agriculture, conservation, recreation, residence, public activities and other purposes; defining certain terms used herein; creating districts for said purposes and establishing the boundaries thereof; providing for a method of administration, amendment, and enforcement and for the imposition of penalties for violation; repealing conflicting ordinances; and other matters.

Short Title. This Ordinance shall be known as, referred to as, and cited as the *Unified Zoning Ordinance of Whitfield County, Georgia*.

Purpose. The purpose of this Ordinance is to establish minimum standards for the use of land and improvements thereon within Whitfield County, Georgia and the participating municipalities. This Ordinance shall serve as a tool to promote health, safety, morals, convenience, order, prosperity, and/or the general welfare of the present and future residents of Whitfield County; to lessen congestion in the roads; to secure safety from fire, panic, and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to provide adequate transportation, water, sewerage, parks and open spaces and other public requirements; to protect properties against blight and depreciation; to encourage the most appropriate use of land, building and other structures throughout the County; to protect and conserve irreplaceable natural resources; to secure economy in government expenditures; to minimize visual blight and enhance scenic characteristics and for other purposes, all in accordance with the Joint Comprehensive Plan of Whitfield County. The Governing Authority does hereby ordain and enact into law the following Articles, Sections and Maps of the *Unified Zoning Ordinance of Whitfield County, Georgia*.

Rules of Construction of this Ordinance. In the construction of this Ordinance, the rules contained in this Article shall be observed and applied, except when the context clearly indicates otherwise:

- 1-4-1 Words used in the present tense include the future tense.
- 1-4-2 Words used in the singular number include the plural number and words used in the plural include the singular.
- 1-4-3 The word "shall" or "must" are mandatory and not discretionary.
- 1-4-4 The word "may" is permissive.
- 1-4-5 The word "structure" includes the word "building."

- 1-4-6 The word "erected" includes the word "constructed," "moved," "located," or "relocated."
- 1-4-7 The word "lot" includes the word "plot" or "parcel."
- 1-4-8 The word "map" or "zoning map" means the Zoning Map of Whitfield County, Georgia.
- 1-4-9 The word "person" includes the words "individual," "firms," "partnerships," "corporations," "associations," "governmental bodies," and all other similar legal entities.
- 1-4-10 The words "used" or "occupied" include the words "arranged or designed here to be used or occupied" here.
- 1-4-11 The word "and" indicates that all of the conditions, requirements, or factors so connected must be met or fulfilled, while the word "or" indicates that at least one condition, requirement, or factor so connected must be met.
- 1-4-12 The term "such as" is intended to introduce one or more examples in illustration of a requirement or point, and is intended to mean "including, but not limited to, the following."
- 1-4-13 The masculine gender includes the feminine and vice-versa.
- 1-4-14 All measured quantities shall be to the nearest integral unit of measure, and if a fraction is one-half (1/2) or greater, the next highest integral unit shall be used, except when computing density, in which case next lowest whole unit shall be used.
- 1-4-15 Where requirements are set based upon numbers of days, days are computed based upon the calendar, except that when the final date falls on a weekend or holiday, in which case the day due shall continue until the next regular working day.

Article II - Definitions

2-1 **Use of Definitions.** For purposes of this Ordinance, certain words, terms, or phrases are defined hereinbelow. These definitions and all other provisions of this Ordinance are subject to the rules of interpretation as provided hereinabove. Any word or term not herein defined shall be as defined elsewhere in this Ordinance or, if not defined elsewhere in this Ordinance, as defined in *Webster's Collegiate Dictionary*, latest edition, the said definition to be read in context with the purposes and provisions of part of the ordinance it is being used to define. The following is not intended to be an exhaustive listing of all words or phrases used within this Ordinance. Several sections hereinafter contain definitions of words or phrases which relate particularly to the subject matter of such section.

2-2 **Definitions:**

Accessory Structure. A structure detached from a principal building on the same lot and customarily incidental and subordinate to the principal building or use. Accessory structures include, but are not limited to: satellite dishes, open sheds and shelters that contain two hundred (200) square feet or less, or water or storage tanks for either liquid, semi-liquid, or gaseous substances, of one thousand (1,000) gallons or more. A building permit shall not be required for accessory structures.

Accessory Use. A use of land or of a structure, or portion thereof, customarily incidental to and subordinate to the principal use of the land or structure and located or utilized upon the same lot or parcel as the principal use.

Adult Business. 1) any business where employees or patrons expose specified anatomical areas, or engage in specified sexual activities, or 2) any other business or establishment which offers its patrons services, products, or entertainment characterized by an emphasis on matter depicting, describing, discussing, or relating to specified sexual activities or specified anatomical areas.

Agritourism. A portion of the travel industry which, for a fee, offers education, entertainment, relaxation, hospitality, shopping, or dining experiences in the context of outdoor adventures, while visiting working farms, orchards, ranches, wineries, and other agricultural operations.

Alley. A public or private thoroughfare which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

Alteration of Building. Any change in the supporting members of a building (such as bearing walls, beams, columns, or girders) except such change as may be required for its safety; any addition to a building; or of a building from one location to another.

Amusements, Commercial. Businesses that operate for a profit by amusing or entertaining patrons through the use of electronic/ video pinball games; pool/ping pong tables; miniature racetracks, gaming devices, etc.; services may include light

food/refreshment services, but not including establishments serving alcoholic beverages or indoor/outdoor shooting ranges.

Animal Hospital. A building used for the treatment, housing, or boarding of small domestic animals such as dogs, cats, rabbits, birds, or fowl by a veterinarian.

Animal Shelter. See “Kennel.”

Apartment. See "Dwelling, Multi-family."

Assisted Living Home. Synonymous with Personal Care Home.

Bed and Breakfast Home. A dwelling, not a hotel, which while retaining its residential appearance and character, offers nightly lodging and a morning meal for a combined fee to persons who are unrelated to the resident owner or resident tenant of the dwelling. Such accommodations shall be provided in not more than five (5) bedrooms on any given night and shall be provided to no person for more than five (5) consecutive nights.

Bed and Breakfast Inn. A dwelling, not a hotel, which while retaining its residential appearance and character, offers nightly lodging and a morning meal for a combined fee to persons who are unrelated to the resident owner or resident tenant of the dwelling. Such accommodations shall be provided to no greater than eighteen (18) persons on any given night and shall be provided to no person for more than five (5) consecutive nights.

Berm. A mound of earth, or the act of pushing earth into a mound.

Board of Zoning Appeals, Unified. The Board authorized to hear and decide appeals and variance requests relating to the enforcement of this Ordinance.

Boarding House – See Rooming House.

Boutique Hotel. A small lodging facility with fifty (50) or fewer guest rooms that are rented to occupants on a daily basis for not more than 14 consecutive days. Access to each guest room shall be through an inside lobby supervised at all times.

Brewery/Distillery/Winery. Facilities using traditional brewing/distilling/vintnering practices and producing more than 10,000 barrels per year. Also subject to other locally adopted ordinances.

Brewpubs. Any eating establishment in which beer or malt beverages are manufactured or brewed, subject to the barrel production limitation prescribed in O. C. G. A. 3-5-36 (10,000 barrels per year for on-site consumption and 5,000 barrels per year for sale to a licensed wholesale dealer) for retail consumption on the premises and solely in draft form. As used in this definition, the term “eating establishment” is one which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food. Also, per O.C.G.A. 3-5-36 (2) (C), barrels of beer sold per year to licensed wholesale dealers shall

not be used when determining the total annual gross food and beverage sales. Also subject to other locally adopted ordinances.

Buffer, Stream. The area of land immediately adjacent to the banks of State waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat. In contrast, see “Buffer, Zoning.”

Buffer, Zoning. An area of natural vegetation or man-made construction that is intended to provide a visual and dimensional separation between dissimilar land uses. In contrast, see “Buffer, Stream.”

- a. **Natural buffer:** A visual screen created by vegetation of such density so as to present an opaque visual separation when viewed from one side to the other throughout the year.
- b. **Structural buffer:** A visual screen created through construction of a solid wooden fence, decorative masonry wall, earthen berm, or combination of fence or wall with an earthen berm, which may be supplemented with vegetation, so as to present an opaque visual separation when viewed from one side to the other throughout the year.

Building. Any structure attached to the ground which has a roof and which is designed for the shelter, housing, or enclosure of persons, animals or property of any kind.

Building Height. The vertical distance measured from the finished grade of a building measured from the middle of the front of the building to the highest point of roof surface of a flat roof or parapet wall; the deck line of a mansard floor; and to the mean height level between eaves and ridges of a gable, hipped, or gambrel roof. Height shall not include vertical projections from a building, including chimneys, flagpoles, flues, spires, steeples, belfries, and cupolas.

Building Line. A line parallel to the street right-of-way line at a distance therefrom equal to the depth of the front yard required for the zoning district in which the lot is located. When the lot frontage is an arc and less than the minimum required lot width, the building line is parallel to the chord of the arc and located where the minimum lot width requirement is obtained.

Building, Principal. A building in which is conducted the main use of the lot on which said building is located.

Camp, Private. A lot or parcel which may include multiple structures owned and/or operated for fraternal, social, educational, recreational, cultural, or religious enrichment and which may or may not be a for-profit operation. Such facilities may provide overnight camping, cabin, or lodging facilities when such accommodations are directly related to and utilized in connection with the overall purpose of the camp. A private camp shall not include for-profit campgrounds or motor lodges.

Cemetery. A place for the exclusive burial of dead persons, including a mausoleum and/or columbarium.

Cemetery, Pet. A parcel of land used for the interring of animal remains.

Chief Building Official. The officer or other designated authority charged with the administration and enforcement of the State of Georgia construction codes, as adopted.

Child Caring Institution, (*also known as Group Home.*) A child-welfare facility licensed by the Georgia State Department of Human Services, which either primarily or incidentally provides full-time room, board, and watchful oversight to six (6) or more children through eighteen (18) years of age outside their own homes.

Church. A building in which persons regularly assemble for religious worship of the same faith and which is publicly designated as a church, but shall not include a parsonage, thrift, or clothing store, food service, or accessory uses of a church.

Church, Accessory Use of. A use customarily incidental and subordinate to the principal use of a building as a church, including uses, such as day care facilities, kindergartens, family exercise or sport facilities, cemeteries, mausoleums, and columbariums.

Clinic. A building or a portion of a building where patients are not lodged overnight, but are admitted for medical examination and treatment by one or more physicians, licensed professional counselors, or dentists practicing together.

Club, Lodge, Civic or Fraternal Organization. An incorporated or unincorporated association for civic, social, cultural, literary, political, recreational, or like activities, operated for the benefit of its members and not open to the general public. Excludes clubs which are operated for profit, shooting clubs, and places of religious worship or assembly.

Columbarium. A vault with niches for urns containing the ashes of cremated human remains.

Communication Transmission Tower. A structure that is intended to support antennae that or receive radio, television, or telephone communications, or for dispatching communications.

Community Center. A building or facility used to provide recreational, social, educational and cultural activities for an area of a community, which is owned and operated by the management agency of that community, or the Homeowner's Association of that community. A community can be an incorporated area, a developed subdivision, or a planned development.

Community Living Arrangement. An establishment regulated by the Georgia Department of Community Health and operated by any person, firm, partnership, association, proprietorship, company or corporation, which, for a fee, provides or arranges

for the provision of daily personal services, supports, care, or treatment exclusively for two (2) or more adults who are not related to the owner or administrator by blood or marriage and whose residential services are financially supported, in whole or in part, by funds designated through the Department of Behavioral Health and Developmental Disabilities (DBHDD.)

Condominium. A building, or group of buildings, in which units are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis.

Conference/Convention Center. A facility typically designed to accommodate three hundred (300) or more people and used for conventions, conferences, seminars, product displays, recreation activities, and entertainment functions, along with accessory functions, including outdoor displays, food and beverage preparation, and service for on-premise consumption of alcoholic beverages. The accommodations can include sleeping, eating, and recreation. The site shall be of sufficient size to accommodate all off-street parking associated with an individual event.

Convenience Center. A site where one or more containers are located for temporary storage of solid waste brought to the site by persons transporting only their own household solid waste. A convenience center may also include a recycling collection station.

Convenience Store. Any retail establishment offering for sale prepackaged food products, household items, and other goods commonly associated with the same.

Crosswalk. A right-of-way within a block dedicated to public use, intended primarily for pedestrian use designed to provide access to adjacent roads and lots.

Cul-de-sac. A road having one end open to traffic and the other end terminated in a minimum right-of-way and paved turnaround with a minimum outside diameter of eighty (80) feet.

Cultural Facility. A structure or portion of a structure used as an art gallery, museum, historical display, performing arts theatre, library, and other uses similar in character to those listed.

Day Care Facility. A facility at which day time care, supervision, and recreation for children of pre-school age, for children before and/or after school, for adults with disabilities, or for the elderly is provided. There are four (4) separate sub-categories of day care facilities recognized by this Ordinance:

Family Day Care Home. A private residence operated by a resident thereof who, for a fee, supervises and/or cares for not less than three (3) and not more than six (6) children under eighteen (18) years of age who are (a) not related to such person; (b) whose parents or guardians are not residents thereof; and (c) and who remain at such establishment for not more than sixteen (16) hours per day.

Group Day Care Home. An establishment regulated by the Georgia Department of Family and Children's Services (DFCS) and operated by any person, firm, partnership, association, proprietorship, company, or corporation which, for a fee, supervises and/or cares for not less than seven (7) and not more than eighteen (18) children under eighteen (18) years of age who remain at such establishment for not more than sixteen (16) hours per day.

Child Care Learning Center. An establishment regulated by the Georgia Department of Family and Children's Services (DFCS) and operated by any person, society, agency, firm, partnership, proprietorship, company, or corporation, which, for a fee, supervises and/or cares for not less than nineteen (19) children under eighteen (18) years of age, who remain at such establishment for not more than sixteen (16) hours per day.

Adult Day Center. An establishment regulated by the Georgia Department of Community Health and operated by any person, firm, partnership, association, proprietorship, company, or corporation which, for a fee, supervises, cares for, provides recreational and social services and/or health and rehabilitative services for three (3) or more persons eighteen (18) years of age or older who, because of some mental or physical impairment, which either limits either the person's major life activities or has a record of impairing such activities, remain at such establishment for not more than sixteen (16) hours per day.

Debris. All sand, gravel, slag, brickbats, rubbish, waste material, metal cans, refuse, garbage, trash, litter, dead animals, or discarded materials of every kind and description, including loose or scattered handbills, newspapers, posters and other such items which may be carried by the wind or water.

Density. The number of dwelling units per acre of land. Gross density refers to the number of units per acre of the total land to be developed. Net density refers to the number of units per acre of land devoted to residential use.

District. A section or sections of Whitfield County for which the zoning regulations governing the use of buildings and premises are uniform.

Dwelling. A building which is designed or used exclusively for residential purposes, including single-family, and multi-family residential buildings, boarding houses, fraternities, sororities, dormitories, manufactured homes, and industrialized homes, but not including hotels and motels.

Dwelling, Loft. A dwelling unit with the following characteristics:

- (1) A dwelling unit(s) located above the ground floor level of a building;
- (2) Each loft dwelling(s) shall have a private entry door;
- (3) Shall have either a private access stairway to the ground floor or a common stairway in conjunction with a common upstairs foyer;
- (4) Shall be located in the rear of the building if a commercial use is carried on in any

portion of a floor above the ground level of the building.

- (5) Where applicable, reference is made to Section 54-34 in the City of Dalton Code of Ordinances.

Loft dwelling(s) located on the first floor above ground level shall be permitted by right, but units proposed two or more floors above ground level shall require approval as a Special Use as set forth in this Ordinance.

Dwelling, Multi-family. A building in single ownership containing three (3) or more dwelling units, including what is commonly known as apartment buildings, triplexes and fourplexes, rooming and boarding houses, fraternities, sororities, dormitories, townhouses and condominiums.

Dwelling, Single-Family. A detached building containing one (1) dwelling unit only.

Dwelling, Single Family Attached. A structure subdivided by a coincidental property line and common wall which separates the structure into a maximum of two (2) dwelling units, each occupying its own lot. Such structure must meet all front, rear, and side yard setback requirements in the zoning district in which it is located, except for the coincidental property line and wall. Such wall shall be at a minimum two (2) hour fire rated masonry construction with no openings or penetrations and shall extend from the foundation through the roof line for a minimum of thirty (30) inches. The same fire wall shall extend front and rear for a minimum distance of eighteen (18) inches unless the units are staggered by three (3) feet or more. The fire wall separating single story units and units of two or more stories must extend only to the roof decking of the higher roof.

Dwelling, Two-Family (duplex). A single structure situated upon a single lot or parcel which contains two (2) separate and distinct dwelling units, each of which is completely separated from the other by an un-pierced wall, extending from ground to roof, or an un-pierced ceiling/floor, extending from exterior wall to exterior wall, except possibly for a common stairwell exterior to each unit.

Dwelling Unit. One or more rooms within a dwelling constituting a separate, independent housekeeping establishment, with provisions for cooking, eating, personal hygiene (sanitary and bathing facilities) and sleeping, and physically set apart from any other rooms or dwelling units in the same structure.

Dwelling, Urban. A dwelling unit with the following characteristics:

- (1) A dwelling unit(s) located within a structure that maintains a commercial storefront;
- (2) No more than 90 percent of the gross leasable floor area of the building in which such dwelling unit(s) is located is dedicated to residential purposes;
- (3) Each dwelling unit(s) shall have a private entry door which exits to the outside or to a common interior hallway;
- (4) Shall have no doorway or window inter-connection between other urban dwellings;
- (5) Where applicable, reference is made to Section 54-34 in the City of Dalton Code of

Ordinances.

To preserve the commercial purpose of the building in which the dwelling is located, any residential frontage shall be limited to the width of the exterior doorway providing ingress and egress to the dwelling unit.

Dwelling, Zero Lot Line. A type of single-family detached residence in which one interior side yard may be lawfully reduced to zero on any lot within an approved development for the purpose of creating larger, more useable, and more easily maintained yard spaces, particularly on smaller lots.

Easement. The right of a person, governmental agency, or public utility company to use public or private land owned by another for a specific purpose.

Event Center. A facility used for weddings, anniversaries, birthdays, showers, reunions, recitals, dances, and ethnic and religious celebrations, etc. The accommodations can include sleeping, eating, and recreation. The site shall be of sufficient size to accommodate all off-street parking associated with an individual event.

Facade. The architectural details of the face of a building which are intended to be viewed by the public. The front facade of the building is the wall which contains the primary entrance to the building.

Farming. The business of cultivating land, or employing it for the purposes of animal husbandry, including the cultivation and fertilization of the soil as well as caring and harvesting the crops. (Also see Organic Farming and Processing.)

Fence. An artificially constructed barrier of any materials or combination of material erected to enclose or to screen areas of lands. A privacy fence is one which is solid and is otherwise designed to limit visibility.

Flea Market. A commercial marketing use, temporary or permanent in nature, held in an open area or structure where groups of individual sellers, leasing or renting spaces from the owner, offer goods for sale to the public.

Flood plain. Any land area susceptible to being inundated by from any source.

Floor Area, Heated. The gross floor area of all spaces within a building that are heated by mechanical means, known also in dwelling units as “living area.” Heated floor area does not include garages, unheated basements or cellars, attic storage areas, partially unenclosed decks or lanais, and areas open to the sky.

Frontage. The side of a lot abutting upon a road.

Garage, Parking. A building or portion thereof designed or used primarily for the parking and storage of motor-driven vehicles.

Garage, Private. An accessory building designed or used for the storage of motor-driven vehicles owned and used by the occupants of the buildings to which it is accessory.

Garage, General Service. A building or portion thereof, other than a private storage or parking garage, designed or used for equipping, servicing, repairing, hiring, selling or storing of motor-driven vehicles, but not including the storage of wrecked or junked vehicles.

Garage, Yard or Carport Sales. Any sale of used household goods, clothes, or other items of personal property conducted at or near a residential dwelling by the owner or occupant of said dwelling who is not a merchant with respect to the goods sold.

Governing Authority. With respect to unincorporated Whitfield County, Georgia, the Governing Authority is the duly elected Whitfield County Board of Commissioners. With respect to any city located within Whitfield County, the Governing Authority is the duly elected Mayor and Council of such city.

Gross Floor Area. The floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deductions for corridors, stairways, closets, the thickness of the interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the useable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts.

Group Home, (also known as Child Caring Institution.) A child-welfare facility licensed by the Georgia State Department of Human Services, which either primarily or incidentally provides full-time room, board, and watchful oversight to six (6) or more children through eighteen (18) years of age outside their own homes.

Habitable Floor Area. The total floor area of all habitable rooms within a dwelling unit. No portion of any room which is less than seven (7) feet in width shall be included in determining habitable floor area.

Habitable Room. Any room within a dwelling unit other than kitchens, bathrooms, toilet rooms, laundry rooms, mud rooms, pantries, dressing rooms, storage spaces, closets, foyers, hallways, utility rooms, garages, car ports, boiler rooms, heater rooms, recreation rooms, interior rooms not provided with natural light and ventilation, and special purpose rooms shared by more than one (1) dwelling unit.

Halfway House. A building for temporary residence by non-related persons, who are recovering from alcohol abuse or other chemical-based substances, with one or more surrogate parents that provide services that include room, meals, supervision, rehabilitation, and counseling to enable residents to move back into society and live independently.

Health Clubs. A facility designed for the major purpose of physical fitness or weight loss which includes, but is not limited to, such equipment as weight resistance machines,

whirlpools, saunas, showers, and lockers. This shall not include municipal or privately owned recreation buildings.

Health Department. Depending upon the proper context, either the Georgia Department of Community Health, and/or the Whitfield County Health Department and/or the Whitfield County Board of Health.

Historic Preservation Commission. The duly appointed group of persons who are authorized by a Governing Authority to administer any historic or similar ordinance within the territorial boundary of the respective Governing Authority.

Holiday Tree and Produce Farm. A lot or parcel whereby pumpkins, corn, gourds, and the like, evergreen trees, and/or greenery for use as holiday decorations are grown or produced. A corn maze may be included thereon.

Holiday Tree Lot, temporary. A lot or parcel whereby retail sales of Holiday trees, wreaths, garlands, and related accessories are conducted seasonally during the months of November and/or December only.

Home Occupation. An occupation, profession, business activity, or use which is clearly customary, incidental, and subordinate to the use of a residential dwelling unit and which is carried on wholly within such dwelling unit by a member of the family who resides upon the premises. General farming and gardening activities are not considered home occupations. See Article VII.

Hospice. A building or portion thereof in which terminally ill persons live in order to receive appropriate Medicare-certified hospice services.

Hotel. A building offering overnight sleeping accommodations for travelers; ingress and egress to and from all rooms are made through an inside lobby or office supervised by a person in charge at all hours. Such use has eighty (80%) percent of the rooms occupied by a different registered guest at least every five (5) days, provides patrons with daily maid service and a telephone switchboard service to receive incoming/outgoing messages, and shall comply with the applicable requirements of the Health Department and **OCGA § 31-28-1 et seq.**, and may provide additional services such as restaurants, retail gift shops, meeting rooms, swimming pools, and exercise facilities.

Hotel, Boutique. A small lodging facility with 35 or fewer guest rooms that are rented to occupants on a daily basis for not more than 14 consecutive days. Access to each guest room shall be through an inside lobby supervised at all hours.

Impervious Surface. A man-made structure or surface which prevents the infiltration of stormwater into the ground below the structure or surface. Examples are buildings, roads, driveways, parking lots, decks, swimming pools, or patios.

Industrialized Building. Any structure or component thereof which is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for

installation on a building site and has been manufactured in such a manner that all parts or processes cannot be inspected at the installation site without disassembly, damage to, or destruction thereof.

Inert Waste Landfill. A disposal site accepting only wastes which will not or are not likely to cause production of leachate of environmental concern. Such wastes are limited to earth and earth-like products, concrete, cured asphalt, rock, bricks, yard trimmings, stumps, limbs, and leaves. This definition excludes industrial and demolition wastes as defined by Georgia Department of Natural Resources, Environmental Protection Division Rules and Regulations, Solid Waste Management.

Junk Vehicles. Any automobile, vehicle, or part thereof which is in an inoperative condition, by reason of its having been wrecked, dismantled, partially dismantled, abandoned, or discarded, and which does not have a valid license plate and current year tag attached thereto. For purposes of this Ordinance, a vehicle is "inoperative" if it is incapable of movement by its own power. This definition shall not apply to any vehicle in a carport, shed, or other accessory structure.

Junk Yard. A property used for indoor or outdoor storage, keeping or abandonment, whether or not for sale or resale, of junk, including scrap metal, rags, paper or other scrap materials, used lumber, household appliances or furniture, salvaged house wrecking and structural steel materials and equipment or for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

Kennel, Commercial. Any premises at which three (3) or more dogs, cats, or other domestic or non-domestic animals, four (4) months old or older, are kept either permanently or temporarily for the purpose of sale, care, breeding, or training, and for which a fee is incurred by the owner of such animal.

Livestock. The term "livestock" as used herein shall mean and include cattle, horses, goats, sheep, swine, poultry, ducks, geese, and other fowl; and rabbits, minks, foxes and other fur or hide-bearing animals customarily bred or raised in captivity for the harvesting of their skins; whether owned or kept for pleasure, utility or sale.

Lot. A developed or undeveloped tract of land in single ownership, legally transferable as a single unit of land. Synonymous with "Parcel."

Lot Area. The gross area of any lot shall be the area bounded by the lot lines, the right-of-way line of any road adjoining the lot, and the centerline of the right-of-way of any private access easement adjoining the lot.

Lot Area Requirement. For the purpose of determining the lot area per dwelling unit, the total lot area shall be measured with the exclusion of land in the public or private road right-of-way/easement and land dedicated for park or school purposes or common purposes.

Lot, Corner. A lot or parcel of land abutting upon two (2) or more roads at their intersection and having two (2) front setbacks and two (2) side lines.

Lot Depth. The mean horizontal distance between the front and rear lot lines measured within the lot boundaries.

Lot, Double Corner. A corner lot which has frontage on three (3) or more roads.

Lot, Flag. Lots or parcels where the panhandle is an access corridor to a lot located behind lots or parcels with normal street frontage.

Lot Frontage. The width of a lot in linear feet where it abuts the right-of-way of any public or private street.

Lot Line. The boundary dividing a given lot from the street or adjacent lots; the boundary defining the limit of ownership of a property.

1. **Front lot line:** Any boundary line of a lot that abuts a street. A lot adjacent to more than one street will have more than one front lot line.
2. **Rear lot line:** Any boundary line of a lot that does not intersect with a street right-of-way line and is not a front lot line.
3. **Side lot line:** Any boundary line of a lot that intersects with a street right-of-way line and is not a front lot line.

Lot of Record. A lot which lawfully existed prior to the adoption or subsequent amendment of this Ordinance, as shown or described on a plat or deed in the records of the Whitfield County Superior Court Clerk.

Lot, Through (Also known as Double Frontage Lot). A lot which fronts upon two (2) parallel roads, or which fronts upon two roads which do not intersect at the boundaries of the lot.

Lot Width. Measured along the established front building line, the lot width shall be the distance between the side lot lines, and measured at right angles to the lot depth.

Lot Width, curvilinear road. For a lot or parcel having frontage upon a curvilinear road, the lot width shall be the distance between the side lines of the lot or parcel where the minimum lot width is obtained, measured parallel to the chord formed by the two (2) outermost points of intersection of such lot or parcel with the road right-of-way line. The lot width line is synonymous with the building line in this circumstance.

Manufactured Home. A building, transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. Such Buildings shall be constructed in accordance with the Federal Manufactured Home Construction and Safety Standard, which came into effect

June 15, 1976, and shall bear an insignia issued by the U. S. Department of Housing and Urban Development (HUD).

Mausoleum. A building where bodies are interred above ground in stacked vaults.

Microbrewery. A craft or designer facility, absent food service, for the brewing of beer that produces less than 10,000 barrels per year and can include a tasting room and retail space to sell the beer to patrons for consumption on the premises or sale of packaged products to wholesalers. Also subject to other locally adopted ordinances.

Micro-distillery/winery. A craft or designer facility, including a tasting room, in which wine or alcoholic spirits are produced from non-animal agricultural products (fruits, grains, or vegetables), subject to production limits of 60,000 gallons per year, and subject to applicable Georgia law, as amended. Also subject to other locally adopted ordinances.

Mini-Warehouse. A building in a controlled access and fenced compound that contains varying sizes of individual, compartmentalized and controlled-access stalls or lockers for storing the excess personal property of an individual or family when such is not with their residence, such as a passenger motor vehicle, house trailer, motorcycle, boat, camper, furniture, limited commercial storage (items of local retail merchants, small contractors, and professionals), and other items of personal property generally stored in residential accessory structures. No business activities other than the rental of storage units shall be conducted on the premises.

Mobile Home. A structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein and manufactured prior to June 15, 1976. In contrast, see the definition of “Manufactured Home.”

Modular Home. See “Industrialized Building.”

Motel. A permanent building or group of permanent buildings in which overnight sleeping accommodations are provided for travelers and having a parking space near or adjacent to the entrance of the room. Such use has eighty (80%) percent of the rooms occupied by a different registered guest every five (5) days, provides patrons with daily maid service, twenty-four (24) hour desk/counter clerk service, and a telephone switchboard service to receive incoming/outgoing messages, and shall comply with the applicable requirements of the Health Department and *OCGA §31-28-1 et.seq.*, and may provide additional services such as restaurants, retail gift shops, meeting rooms, swimming pools, and exercise facilities.

Motor Lodge. Synonymous with “Motel.”

Non-Conforming Use. A use or activity that was lawfully established prior to the adoption or amendment of this Unified Zoning Ordinance, but which, by reason of such adoption or amendment, is no longer a use or activity permitted by right or no longer meets or conforms to the use regulations of this Ordinance.

Non-Conforming Structure. A structure or building whose size, dimensions, location on a property or other features were lawful prior to the adoption or amendment of this Unified Zoning Ordinance, but which, by reason of such adoption or amendment, no longer meets or conforms to one or more such requirements of this Ordinance.

Non-Conforming Lot. A lot of record whose area, frontage, width or other dimensions, or location were lawful prior to the adoption or amendment of this Ordinance, and which, by reason of such adoption or amendment, no longer meets or exceeds one or more such requirements of the applicable zoning district.

Nuisance. An interference with the enjoyment and use of real property.

Nursing Home. An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness, or infirmity, are unable to care for themselves. A twenty-four (24) hour facility providing skilled nursing care.

Office, Professional. Includes offices for professionals such as accountants, architects, attorneys, chiropractors, dentists, doctors, engineers, etc.

Office, Business. Includes offices for general business, insurance, real estate, etc.

Off-Street Parking Space. The area required to park one motor vehicle.

Off-Street Loading Space. The area designated for the loading or unloading of goods or other material.

Open Space. [Synonymous with “Greenspace,” as defined at *OCCA §36-22-3(3)*] shall mean permanently protected land and water, including agricultural and forestry land, that is in its undeveloped, natural state or that has been developed only to the extent consistent with, or is restored to be consistent with, one or more of the following goals:

- (a) Water quality protection for rivers, streams, and lakes;
- (b) Flood protection;
- (c) Wetlands protection;
- (d) Reduction of erosion through protection of steep slopes, areas with erodible soils, and stream banks;
- (e) Protection of riparian buffers and other areas that serve as natural habitat and corridors for native plant and animal species;
- (f) Scenic Protection;
- (g) Protection of archaeological and historic resources;

- (h) Provision of recreation in the form of boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, and similar outdoor activities; and
- (i) Connection of existing or planned areas contributing to the goals set out in *OCGA §36-22- et seq.*

Organic Farming and Processing. A unique farm environment often holding State or National certifications regarding the natural purity of grown or raised farm products free from typical agricultural chemicals or vaccines. Such farms, an integral part of the agritourism business, can process some of those same agricultural products for retail purchase or public consumption on-site, or for off-site wholesale or retail marketing.

Parking Lot. An off-street, ground level area, usually surfaced and improved for the temporary storage of motor vehicles.

Personal Care Home. Any dwelling, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food service, and one (1) or more personal services for two (2) or more adults who are not related to the owner or administrator by blood or marriage.
For purposes of this Ordinance, Personal Care Homes are sub-classified, as follows:

Family Personal Care Home. A home for adults in a family type residence, non-institutional in character, which offers care to two (2) to six (6) persons.

Group Personal Care Home. A home for adults in a residential setting, non-institutional in character, which offers care to seven (7) to fifteen (15) persons.

Congregate Personal Care Home. A home for adults which offers care to sixteen (16) or more persons.

Planning Commission. The Dalton-Whitfield County Planning Commission or any successor entity.

Premises. A lot, parcel, tract, or plot of land together with all buildings and structures existing thereon.

Principal Use. The primary and/or predominant reason for which a lot or parcel is occupied and/or used.

Putrescible Wastes. Wastes that are capable of being quickly decomposed by microorganisms. Examples of putrescible wastes includes, but are not necessarily limited to, kitchen wastes, animal manure, offal, hatcher and poultry processing plant wastes, and garbage.

Recreational Facilities, Indoor. Any commercial or non-commercial indoor facility such as bowling alley, shooting gallery, video game center etc.

Recreational Facilities, Outdoor. Any commercial or non-commercial outdoor facility such as a miniature golf course, a golf or baseball driving range, tennis courts, swimming pools, drive-in theater, etc.

Recreational Vehicles. A vehicular type portable structure without permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreational, camping and travel use and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

Recycling Center. A non-governmental facility in which recoverable resources, such as paper, glass, plastics, and metal cans are stored, flattened, crushed or bundled by hand or machines. Vehicles, internal combustion engines, vehicle parts, tires, and the like shall not be considered recoverable resources within the meaning of Recycling Center for the purposes of this Ordinance.

Recycling Collection Station. An incidental use which serves as a neighborhood drop off point for temporary storage of recoverable resources. No processing of such items shall be allowed. Such facility would generally be located in a commercial parking lot, or at other public/quasi-public areas, such as churches or schools.

Right-of-way. A strip of land occupied or intended to be occupied by a road, crosswalk, railroad, electric transmission line, gas pipeline, water main, sanitary or storm sewer main, shade trees, or other special use.

Rooming House (or “Boarding House” or “Boarding Home.”) A dwelling, not a hotel, where for a fee and by prearrangement for definite periods of time, either meals or meals and lodging are provided for three (3) or more persons, who are unrelated to the residents of the dwelling.

Salvage Yard. Synonymous with “Junk Yard.”

Screening. A method of visually shielding or obscuring one abutting or nearby structure or use from another by fencing, walls, berms or densely planted vegetation.

Service Buildings. A building, housing facilities such as recreational, maintenance, laundry, and offices necessary to the successful management of a manufactured home park.

Setback. The required minimum distance from the road right-of-way line or any other lot line that establishes the area within which the principal structure(s) and accessory structure(s) must be erected or placed.

Sewage Management System, Central On-Site. A community-wide on-site sewage management system regulated by EPD (Environmental Protection Division of the Department of Natural Resources.)

Sewage Management System, On-Site. A sewage management system other than a public or community sewage treatment system, whether serving single or multiple buildings, mobile homes or manufactured homes, recreational vehicles, residences or other facilities designed or used for human occupancy or congregation. Included are conventional septic tank systems, chamber septic tank systems privies, experimental and alternative on-site sewage management systems that may be approved by the Health Department.

Sewage Treatment System, Public or Community. Any sewage treatment system, including pipe lines or conduits, pumping stations, force mains and all other construction, devices, and appliances appurtenant thereto, designed for treating or conducting sewage for treatment and disposal into lakes, streams, or other bodies of surface water.

Shopping Center. A group of commercial establishments planned, constructed and managed as a total entity with customer and employee parking provided on-site, and including provision for goods delivery separated from customer access.

Small Animals. Domestic small livestock, poultry and fowl, including rabbits, chinchillas, or similar animals, chickens, turkeys, pigeons, and small birds and ducks kept for non-commercial purposes.

Solid Waste. Putrescible and non-putrescible wastes, except water-carried body waste, but shall include garbage, rubbish, ashes, road refuse, dead animals, sewage sludge, animal manures, industrial wastes, abandoned automobiles, dredging wastes, construction wastes, hazardous wastes and other waste material in a solid or semi-solid state not otherwise defined in these regulations.

Solid Waste Handling Facility. Any facility, the primary purpose of which is the storage, collection, transportation, treatment, utilization, processing, or disposal, or any combination thereof, of solid waste. This term encompasses the terms Solid Waste Landfill, Inert Waste Landfill and Transfer Station.

Solid Waste Landfill. A disposal site where putrescible wastes are disposed of using solid waste landfilling techniques.

Solid Waste Landfilling. An engineered method of disposing of putrescible wastes on land by spreading them in thin layers, compacting them to the smallest practical volume, placing an earthen cover thereon, and such other measures as are necessary to protect human health and the environment.

Specialty Food Stores. A retail store specializing in a specific type or class of foods such as an appetizer store, bakery, butcher, delicatessen, fish, gourmet and similar foods.

Structure. Anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on the ground. Structures include, but are not limited to the following: site built buildings, industrialized buildings, manufactured homes, mobile homes, billboards, swimming pools, advertising signs, fall-out shelters,

stadiums, reviewing stands, platforms, staging, observation towers, radio and television towers, trestles, and open sheds, garages, carports, and shelters, any of which have a floor area over one hundred forty-four (144) square feet.

Swimming Pool. A body of water in an artificial or semi-artificial receptacle or other container intended for swimming, which has a minimum depth of eighteen (18) inches of water.

Temporary Structure. A structure with neither foundation nor footings which is removed, when either the designated time period or activity or use for which the temporary structure was erected has ceased.

Townhouse (Row House) A single-family dwelling unit constructed in a group of three (3) or more attached units. Each unit extends from foundation to roof, not more than three (3) stories in height, with a separate means of egress, and with an open space/yard or public way on at least two (2) sides. Each townhouse shall be considered a separate building with independent exterior walls and shall be separated by a two-hour fire-resistance-rated wall assembly.

Transfer Station. A facility used to transfer solid waste from one (1) transportation vehicle to another for transportation to a solid waste handling facility.

Transitional Housing. A single or multi-family dwelling housing persons experiencing an abrupt transition in lifestyle such as, but not limited to, recently incarcerated individuals, displaced families, or elderly individuals, operating as a single housekeeping unit under a common housekeeping management plan based on an intentionally structured relationship providing the organization and stability of home environment.

Utility Facilities. Structures that provide for the distribution of services of public or private utilities, such as electrical transformer stations, gas regulator stations, telephone exchanges, water pump stations, and sewer lift stations, etc.

Vendor Stands. Any cart, table, equipment, or apparatus which is not a structure, which is designed and intended so as to not be a permanent fixture on a lot, and which is used for the retail sale, display, and accessory advertising of merchandise or food.

Yard. An area that lies between the principal building on a lot and the nearest lot line.

1. **Front yard:** a yard extending the full width of the lot, located between the street line and the front line of a principal building, projected to the side lines of the lot.
2. **Rear yard:** a yard extending the full width of the lot and situated between the rear lot line of the lot and the rear of a principal building projected to the side lines of the lot.

3. **Side yard:** a yard located between the side of a principal building and the side line of the lot and extending from the rear line of the front yard to the front line of the rear yard.

Work Day. Monday through Friday of any week, exclusive of official holidays established by the federal, state or local government during which the local government is not open for business.

Zoning. The power of local governments and local governing authorities within Whitfield County to provide, within its respective territorial boundaries, for the zoning of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation or development and the improvement of real estate within such zones or districts in accordance with the uses of property for which said zones or districts were established.

Zoning Administrator. The official designated by a Governing Authority to manage, administer and coordinate enforcement of this Unified Zoning Ordinance on behalf of the Governing Authority.

Article III - General Provisions

3-1 Interpretation of this Ordinance.

3-1-1 In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, morals and welfare, including those purposes, intents, objectives, or similar language as set forth throughout this Ordinance.

3-1-2 Where the conditions imposed by any provision of this Ordinance upon the use of land or buildings or upon the bulk of buildings are either more restrictive or less restrictive than comparable conditions imposed by any other provisions of this Ordinance or of any other law, ordinance, resolution, rule, or regulation, the regulation which is more restrictive (or which imposes higher standards or requirements) shall govern.

3-2 **Scope of Regulations.** All existing structures, uses, and buildings, and all structures, uses of land or buildings that are erected or established after the adoption or subsequent amendment of this Ordinance, including all structural alteration or relocation of existing buildings or the enlargements of or additions to existing uses shall be subject to the provisions of this Ordinance, which are applicable to the zoning districts in which such structures, uses, or lots or parcels shall be located.

3-3 **Building Permits.** Building permits shall be required for all structures erected, converted, enlarged, restructured, moved, or structurally altered.

3-4 Access to Lots or Parcels.

3-4-1 Lot Access to Roads.

Except as may be set for herein below, every principal structure or building erected hereafter shall be upon a lot or parcel having not less than fifty (50) feet of frontage upon either a public road or upon a private road, which meets the same standards and requirements of a public road but whose ownership remains with the developer or a property owners association, either of which shall meet the requirements of the applicable *Subdivision Regulations* and any other applicable road design and standards regulations.

3-4-2 **Acknowledgment of Responsibility for Maintenance of Private Road.** When a building permit is requested for a lot which fronts upon a private road described in Section 3-4-1 above, such permit shall contain a signed statement that the property owner acknowledges the private access to his property and that the Governing Authority is not responsible for its maintenance, upkeep, or repair.

3-4-3 Driveway Access upon Corner Lot. On any lots having frontage with more than one (1) road at any intersection, driveway access shall not be located within twenty-five (25) feet of the intersection of any right-of-way lines.

3-5 Lots of Record. Any lot of record lawfully established and recorded as of the date of the enactment of this Ordinance, the size of which does not meet current minimum lot size requirements, may be used as a non-conforming lot, as set forth hereinafter, for zoning purposes, provided that such lot meets current setback requirements. However, lots of record shall remain subject to current Health Department requirements concerning the placement of on-site sewage management systems thereon.

If two (2) or more adjoining lots with continuous frontage area shall come in to single ownership after the enactment of this Ordinance and such lots individually are too small to meet the requirements of the district(s) in which they are located, such groups of lots shall be considered as a single lot or several lots of minimum permitted size and such lots shall be subject to the requirements of this Ordinance.

3-6 Density. No building or structure shall hereafter be erected, constructed, reconstructed, or altered in any way which accomplishes any of the following:

3-6-1 Houses a greater number of dwelling units per acre or occupies a smaller lot area per dwelling unit than are herein permitted.

3-6-2 Has a narrower or smaller front, rear, or side yard than are herein required.

3-7 Lot Area, Floor Area, Setback, Yard, and Height Requirements are set forth in chart 3-7 herein below.

CHART 3-7

AREA, FLOOR, SETBACK, YARD AND HEIGHT REQUIREMENTS

DISTRICT	MINIMUM LOT AREA IN SQUARE FEET		MIN. SITE AREA	ADDIT'NL REQ'MNT	MIN LOT WIDTH AT BLDG LINE	MIN. FLOOR AREA	FRONT YARD ³ SETBACK		SIDE ¹ YAR D	REAR YARD	MAX BLDG HEIGHT
							MAJ. & COLLECTR STREETS	LOCAL STREET			
GA	All Uses	---	5 acres		100	---	50	25	25	25	35
SA	All Uses	---	3 acres		100	---	50	25	25	25	35
R-1	Single-Family Detached	(on-site) (sewer)	1 acre		100 50	1500 s.f.	50	25	25	25	35
R-2	Single-Family Detached	27,500 (on-site) 15,000 (sewer)	---		100 80	1200 s.f.	40	25	10	15	35
R-3	Single-Family Detached	7,500	---		50	1000 s.f.	40	25	10	15	35
R-4	Single-Family Detached	4,356 gross sq. ft / unit	2 acres	Sec 4-6-25	40	900 sf (Dalton only)	20	20	10	10	35
R-5	Single-Family Detached	TBD (on-site) 7,500 (sewer)	---		100 50	900 sf (Dalton only)	40	25	10	15	35
	Duplex/Single- Family Attached	TBD (on-site) 10,000 (sewer)	---		100 50	---	40	25	10	15	35
R-6	Single-Family Detached	TBD (on-site) 7,500 (sewer)	---		100 50	900 sf (Dalton only)	40	25	10	15	35
	Duplex/SF Attached	TBD (on-site) 10,000 (sewer)	---		100 50	---	40	25	10	15	35
	Triplex	TBD (on-site) 12,000 (sewer)	---		100 60	---	40	25	10	15	35
	Fourplex	TBD (on-site) 15,000 (sewer)	---		100 80	---	40	25	10	15	35
	Fee-Simple Townhouse (max 4 units)	5,445/gross per unit (sewer)		Sec 3-8	Sec3-8-7	---	40	25	10	15	35
R-7 ³	Multi-Family/ Condominiums	7,500 s.f. for 1 st unit, 1,000 s.f. for 2 nd unit, plus 1,945 s.f. for units thereafter/acre	---	Sec 3-8	100	Dalton- See footnote #4	40	25	10	15	35 Dalton- See footnote #5
	Fee-Simple Townhouses	5,445/gross per unit (sewer)	---	Sec 3-8	Sec 3-8- 7		40	25	10	15	35
PUD	Planned Unit Development (PUD)		15acre	Sec 4-7;4-5	To Be Determined						
MU	All Uses	TBD	---	Sec 4-7;4-5	To Be Determined						
C-1A	All Uses	No minimum required			---	---	25	15	10	20	40

DISTRICT	MINIMUM LOT AREA IN SQUARE FEET		MIN. SITE AREA	ADDIT'NL REQ'MNT	MIN LOT WIDTH AT BLDG LINE	MIN. FLOOR AREA	FRONT YARD ³ SETBACK		SIDE ¹ YAR D	REAR YARD	MAX BLDG HEIGHT
							MAJ. & COLLECTR STREETS	LOCAL STREET			
C-1	All Uses	No minimum required			---	---	25	25	15	20	40
C-2	All Uses	No minimum required			---	---	25	25	15	20	140
C-3	All Uses	No minimum required			---	---	0	0	0	0	100
C-4	All Uses	No minimum required			---	---	25	15	10	20	100
M-1	All Uses	No minimum required			---	---	25	15	15	25	75
M-2	All Uses	No minimum required			---	---	25	20	15	25	75

FOOTNOTES

1. Side setbacks apply to buildings; for zero lot line dwellings the side yard is waived on one side of the lot.
2. Measured at the building line.
3. The maximum allowed density shall not exceed 20 dwelling units per gross acre; the formula within the table is used to compute density for areas less than one (1) acre. (For example: A site containing 2.3 acres allows 40 units + 4 = 44 units)
4. 70% of the total dwelling units must be 900 SF or larger and no dwelling unit shall be less than 700 SF. (Dalton only)
5. No maximum height. (Dalton only)

3-8 Townhouses and Condominiums. Townhouses and condominiums shall comply with the following requirements:

3-8-1 Separation between buildings. The front or rear face of a building shall be not less than fifty (50) feet from the front or rear face of another building. The unattached side of a building shall be not less than twenty feet from the side face of another such building. The unattached side of a building shall be not less than forty (40) feet from the front or rear face of another such building.

3-8-2 Alignment. No dwelling unit shall be situated so as to face the rear of another dwelling unit unless terrain differences or vegetation will provide effective visual separation, as determined by the Zoning Administrator.

3-8-3 Public Sewerage. Townhouse and condominium developments shall be served with public sewer or approved package system and a public water system.

3-8-4 Common Open Space. If a portion of the land is set aside for common open space to be developed for recreational use, such areas shall be developed in accordance with the approved site development plan. Common open space shall be preserved and maintained by a Homeowners

Association created by the developer in accordance with the *Georgia Condominium Act*.

- 3-8-5 **Subdivision Rules.** The development of townhouses involves a subdivision of land and all applicable rules of the applicable *Subdivision Regulations* shall apply.
- 3-8-6 **Contiguous Dwelling Units.** Not more than eight (8) contiguous townhouses shall be built in a single building in the R-7 district.
- 3-8-7 **Minimum Width.** The minimum allowed width for the portion of the lot upon which a townhouse is to be constructed shall be sixteen (16) feet, but the average width of units in a contiguous group of three (3) or more units shall be twenty (20) feet.
- 3-9 **Maximum Occupancy of Dwellings.** In order to protect the health, safety, and welfare of the public, no person shall occupy any dwelling which does not meet the following minimum size requirements per occupant thereof: There shall be at least one hundred fifty (150) square feet of habitable floor area within a habitable room for the first occupant of each dwelling, with at least seventy-five (75) square feet of habitable floor area within a habitable room for each additional occupant thereof. For purposes of this requirement, an occupant shall be considered any person who spends, on average, more than two (2) nights per week or eight (8) nights per month, whichever is greater, at such dwelling.
- 3-10 **Health, Safety, and Aesthetics Standards.**
- 3-10-1 All structures shall be sound in construction and safe for human use.
- 3-10-2 No item not ordinarily designed for exterior use shall be permitted in open areas or yards. This shall include, but is not limited to, plumbing fixtures and household appliances.
- 3-10-3 No lot or parcel shall be allowed by the owner, tenant, resident, or occupant thereof to become unsafe or to endanger the health, safety and welfare of the neighborhood because of growth of vegetation or the accumulation of brush, trash, or debris.
- 3-10-4 No junk vehicles shall be allowed to remain upon any lot or parcel not operating as a conforming junk yard. It shall, however, be an affirmative defense hereto if the owner shall provide current paid receipts for parts which shall confirm that the vehicle in question is then being actively restored.

Article IV - District Uses and Regulations

4-1 **Establishment of Districts.** For purposes of this Ordinance, Whitfield County is hereby divided into the following zoning districts:

4-1-1 **General Agriculture (GA.)** This district is established to protect and to preserve agricultural and forest resources and associated rural characteristics by allowing only low-density residential uses, farming, animal husbandry, forestry, saw milling, and other similar uses upon lots or parcels not less than five (5) acres. Provided the applicable lot or parcel conforms to all requirements herein, no more than two (2) single-family detached dwelling units per lot or parcel shall be allowed in this district. Under certain conditions as set forth hereinafter, an accessory structure may contain tools, currently tagged vehicles and/or equipment utilized in the trade or business occupation of the person or persons occupying the principal dwelling structure thereon.

4-1-2 **Suburban Agriculture (SA.)** This district is established as a transitional district for low density residential uses in conjunction with typical agricultural pursuits primarily for the residents living there, including, but not limited to the growing of food, flowers, the raising of chickens, and the tending of horses and cattle for personal pleasure. Lots and parcels in this district shall be not less than three (3) acres. Only one (1) single family dwelling unit per lot shall be allowed in this district. Under certain conditions as set forth hereinafter, an accessory structure may contain tools, currently tagged vehicles and/or equipment utilized in the trade or business occupation of the person or persons occupying the principal dwelling structure thereon.

4-1-3 **Estate Residential (R-1.)** This district is established to preserve open space in both urban and rural environments and typically rural environments by encouraging larger than average lot formats of at least one (1) acre or more for low density single family detached dwellings in excess of one thousand five hundred (1,500) square feet heated floor area. There shall be no manufactured or mobile homes within this district, in order to maintain the traditional residential character of such districts. Only one (1) single family dwelling unit per lot shall be allowed in this district.

4-1-4 **Low Density Single Family Residential (R-2.)** This district is established to protect single family detached dwellings, including typical residential subdivisions, on lots of not less than twenty-seven thousand five hundred (27,500) square feet if served by on-site sewage management systems and not less than fifteen thousand (15,000) square feet if served by public sewer or an approved central on-site sewage management system. All dwellings in this district shall contain in excess of one thousand two hundred (1,200) square feet of heated floor area upon a permanent foundation and shall have the electrical meter base serving such dwelling

attached directly to such dwelling. There shall be no manufactured or mobile homes within this district in order to maintain the traditional residential character of such districts. If served by on-site sewage management system, the lots in this district shall conform at least with the minimum standards for lot sizes as promulgated by the Health Department or other authority having proper jurisdiction over such minimum lot sizes, as amended from time to time. Only one (1) dwelling unit per lot shall be allowed in this district.

- 4-1-5 **Medium Density Single Family Residential (R-3.)** This district is established to protect single-family detached dwellings, typically within a more urban atmosphere, including residential subdivisions, on smaller lots of not less than seven thousand five hundred (7,500) square feet and which are served by public sewer or an approved central on-site sewage management system. All dwellings in this district shall contain not less than one thousand (1,000) square feet of heated floor area. There shall be no manufactured or mobile homes within this district, in order to maintain the traditional residential character of such districts. Only one (1) dwelling unit per lot shall be allowed in this district.
- 4-1-6 **Zero Lot Line Residential (R-4.)** This district is established for single family detached dwellings, configured upon "zero lot lines," which may be located upon lots at a density of up to ten (10) dwellings per acre, exclusive of rights-of-way or other restrictive easements. Any such lots must be served by public sewer or an approved central on-site sewage management system. Such districts encourage the creation of compatible open spaces for enjoyment by several surrounding dwellings. There shall be no manufactured or mobile homes within this district, in order to maintain the traditional residential character of such districts. Only one (1) dwelling unit per lot shall be allowed in this district.
- 4-1-7 **Rural Residential (R-5.)** This district is established to protect single family detached dwellings, including typical residential subdivision development of all varieties of housing stock, and duplexes. Manufactured housing in this district shall remove all wheels and the tongue (or hitch,) so as to maintain the site-built residential character of the district. The lots in this zoning district that are served by on-site sewage management systems shall conform at least with the minimum standards for lot sizes as promulgated by the Health Department or other authority having proper jurisdiction over such minimum lot sizes, as amended from time to time. The lots in this zoning district that are served by public sewer or an approved central on-site sewage management system shall be not less than seven thousand five-hundred (7,500) square feet for a single family dwelling and not less than ten thousand (10,000) square feet for a duplex. Only one (1) principal structure, containing two (2) dwelling units or less, per lot shall be allowed in this district.
- Under certain conditions as set forth hereinafter, an accessory structure

may contain tools, currently tagged vehicles and/or equipment utilized in the trade or business occupation of the person or persons occupying the principal dwelling structure thereon.

- 4-1-8 **Transitional Residential (R-6.)** This district is established as a transition residential district of either medium or high density, which may accommodate dwellings such as single family detached dwellings, individual manufactured homes, duplexes, triplexes, or four-plexes only. No more than one (1) principal structure per lot, containing not more than one (1) four unit building shall be allowed in this district.
- 4-1-9 **High Density Residential (R-7.)** This district is established as a high-density residential district allowing as many as twenty (20) dwelling units per acre. Multiple structures per lot shall be permitted in this district. Because of the increased density allowed in this district, any such lots must be served by public sewer or an approved central on-site sewage management system.
- 4-1-10 **Planned Unit Development (PUD.)** This district is established to permit greater flexibility and more imaginative design for the development of compatible, multi-use residential and neighborhood commercial land uses on a scale larger than not less than fifteen (15) acres. The PUD district is intended to promote an orderly and harmonious variety of housing options, along with higher levels of amenities and preservation of open space. To be considered for the PUD district, a full and complete application for rezoning shall include a preliminary site plan. Establishing a PUD district requires the implementation and adherence to the approved site plan as required by: 1) these regulations; 2) any other applicable regulations; or 3) any conditions resulting from the review process. Once submitted, if there are any material alterations to the site plan, the altered site plan shall be resubmitted.
- 4-1-11 **Limited Commercial (C-1A.)** This transitional district is established to provide for specific limited commercial uses, including professional service establishments, often conducted within structures converted from residential uses.
- 4-1-12 **Neighborhood Commercial (C-1.)** This district is established to provide for limited retail activities and personal or professional services designed to serve the convenience needs of nearby neighborhoods. The size of the buildings and parking allowed in this district are limited to create minimal negative impact upon nearby neighborhoods. This district allows uses which will result in a minimum of traffic from outside the surrounding neighborhoods.
- 4-1-13 **Mixed Use (MU.)** This transition district is established to provide for appropriate mixed use opportunities on parcels smaller than those required

for the PUD district. Typically, such uses would include apartment or condominium style multi-family housing situated above compatible retail/service commercial or light manufacturing uses that are intended to serve such residents and the general public. However, the use(s) may also be entirely commercial or light manufacturing, creating more flexibility with respect to access, setbacks, etc., as shown on an approved site plan. To be considered for the MU district, a full and complete application for rezoning shall include a preliminary site plan. Establishing a MU district requires the implementation and adherence to the approved site plan as required by: 1) these regulations; 2) any other applicable regulations; or 3) any conditions resulting from the review process. Once submitted, if there are any material alterations to the site plan, the altered site plan shall be resubmitted.

- 4-1-14 **General Commercial (C-2.)** This district is established to provide for and to encourage appropriate development along collector and arterial thoroughfares, which includes the broadest mix of commercial retail and service uses with associated storage capabilities, and other commercial activities which will both accommodate the needs of residents and those of the traveling public. Shopping centers and large retail stores would be common, along with a host of supporting commercial uses.
- 4-1-15 **Central Business District (C-3.)** The central business district is the historic center of town, city, or community for commercial retail and service uses, financial institutions, office, and government uses, with limited residential uses. This district would typically be characterized by shared parking and loading, and by buildings occupying most, if not all, of the lot or parcel on which it is located. The central business district defines the core activity center around which the community has historically developed.
- 4-1-16 **Transitional Commercial (C-4.)** This district is considered an expansion and transitional area out from the central business district, allowing uses similar to those allowed in the central business district, but with conventional lot designs, requiring off street parking and loading, and typical setbacks. This district is envisioned to accommodate lower traffic, lower visibility commercial operations that are nonetheless near the Central Business District.
- 4-1-17 **Light Manufacturing (M-1.)** This district is established to act as a transition between heavy industrial uses and other commercial or residential uses by providing for industrial activities which are more limited in scope, size, or negative impacts upon surrounding properties. Permitted uses in this district will create a minimum of environmental pollution in the form of traffic, noise, odors, smoke, fumes, glare, or heat.

4-1-18 Heavy Manufacturing (M-2.) This district is established to provide suitable areas for general industrial, carpet manufacturing, distribution, or warehousing activities and/or other intensive activities of industrial nature which may generate external traffic and may include moderate amounts of environmental pollution in the form of traffic, noise, odors, smoke, fumes, glare, or heat.

4-2 Zoning District Map. The boundaries of the various zoning districts are shown upon that map designated as the Official Zoning Map of Whitfield County, Georgia, which is sometimes referred to as the “Zoning Map.” The Zoning Map and all notations, references and other information shown thereon are a part of this Ordinance and have the same force and effect as if the Zoning Map and all the notations, references, and other information shown thereon were fully set forth and described herein, which Zoning Map is properly attested and is on file with the Clerks of Whitfield County and of each city, and with the Zoning Administrator, and is available for public inspection during normal business hours.

4-3 District Boundaries. All roads, alleys, and railroad rights-of-way, if not otherwise specifically designated, shall be deemed to be in the same zone as the property immediately abutting upon such alleys, roads and railroad right-of-way. Where the center line of a road, alley or railroad right-of-way serves as a district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line. Where district boundary lines are indicated as approximately following lot lines, such lot lines shall be construed to be such boundaries. Wherever any uncertainty exists as to the boundary line of any use district as shown on the zoning map incorporated herein, the following rules shall apply:

4-3-1 Where a lot held in one ownership contains more than one actual principal use, such actual uses may be delineated and assigned zone designations consistent with such uses within the parcel. The existence of principal uses and the area assigned to such uses shall be based upon objective physical evidence of separate actual uses of the parcel present at the site at which it occurs. Any disputes regarding actual principal uses shall be resolved by the Zoning Administrator.

4-3-2 In all other cases, the district boundary lines shall be determined by use of the scale appearing on the Official Zoning Map.

4-3-3 Certain parcels located within any historic district designated by any historic preservation commission and noted on the Official Zoning Map shall also be subject to any regulation set forth by the applicable governing authority specifically related to historic properties or historic districts.

4-4 Permitted Uses. No principal structure, accessory structure, or land use shall be allowed except in the zoning districts indicated and for the purposes or uses as set forth upon the permitted use table set forth hereinafter.

4-5 **Approval Procedures.**

4-5-1 Preliminary Site Plan. For all parcels which seek rezoning/annexation to R-6, R-7, MU, or PUD for a proposed use or which require a Special Use for a proposed use, a Preliminary Site Plan, as described herein, shall be submitted with such application unless specifically waived, in whole or in part, by the Zoning Administrator. Such application shall remain incomplete without such required information. The Governing Authority may hereafter conditionally approve such request based upon information set forth in such site plan. Each Preliminary Site Plan shall include, but not be limited to, the following information:

- (a) Preliminary Name of the proposed development; name(s), address(es), and telephone number of the owner(s) and the designer(s) of the site plan.
- (b) Scaled Boundaries. Scaled boundaries of the entire tract and their relationship to adjoining properties, public rights-of-way, and easements.
- (c) Sewage Management Systems, On-Site (Septic Systems); Sewage Treatment System, Public or Community (Central Sewage Treatment Plant). Written statement from the Environmental Health Department indicating the optimum number of units the property will accommodate based on a soils report by a soils scientist and an on-site inspection by a county environmental specialist. If public sewer is available, written approval shall be provided from Dalton Utilities for the number of desired sewer taps.
- (d) Septic System Absorption Field and Replacement Area and Building Locations. Approximate location of the septic fields, all proposed buildings, their shape, size, and setback in appropriate scale.
- (e) Rights-of-Way. Location and right-of-way of streets, roads, alleys, railroads, public crosswalks, with lengths and widths, road names, or designations.
- (f) Buffers and vegetation. Existing and proposed vegetation and the use of vegetation to provide buffers and landscaping for the proposed development.
- (g) Flood Plain areas. Location of the 100-year flood plain as determined by the past history of flooding or the best available data.

- (h) Proposed improvements. The names, where appropriate, and locations and dimensions of proposed roads, alleys, sidewalks, easements, buildings, parking and loading, dumpsters, recreation areas and facilities, yards and other open spaces.

4-5-2 Final Site Plan. All other parcels zoned R-6, R-7, C-1A, C-1, C-2, C-3, C-4, MU, PUD, M-1, or M-2 which are already zoned for the use intended or for which a Special Use has been applied for and approved hereunder, shall submit a Final Site Plan prior to the issuance of a building permit, unless specifically not required in whole or in part by the Whitfield County Engineer or his or her designee. Each Final Site Plan shall include the following information:

- (a) Preliminary Name of the proposed development; name(s), address(es), and telephone number of the owner(s) and the designer(s) of the site plan.
- (b) Date, north arrow, and graphic scale.
- (c) Survey Boundaries. Surveyed boundaries of the entire tract and their relationship to adjoining properties, public rights-of-way, and easements.
- (d) Location Map. A general location map at a scale of one (1) inch equals two thousand (2,000) feet indicating existing zoning on or adjacent to the site, adjoining roads and the adjacent areas are required.
- (e) Sewage Management Systems, On-Site (Septic Systems); Sewage Treatment System, Public or Community (Central Sewage Treatment Plant). Written statement from the Health Department indicating the optimum number of units the property will accommodate based on a soils report by a soils scientist and an on-site inspection by a county environmental specialist. If public sewer is available, written approval shall be provided from Dalton Utilities for the number of desired sewer taps.
- (f) Building locations. Final location of all proposed buildings, their shape, size, and setback in appropriate scale.
- (g) Rights-of-Way. Location and right-of-way of streets, roads, alleys, railroads, public crosswalks, with lengths and widths, road names, or designations.
- (h) Buffers and vegetation. Existing and proposed vegetation and the use of vegetation to provide buffers and landscaping for the proposed development.

- (i) Environmentally sensitive areas. Location of major river corridors, water supply watersheds, groundwater recharge areas, wetlands, the boundary and elevation of the 100-year floodplain as determined by the past history of flooding or the best available data.
- (j) Proposed improvements. The names, where appropriate, and locations and dimensions of proposed roads, alleys, sidewalks, easements, buildings, parking and loading, dumpsters, recreation areas and facilities, yards and other open spaces.
- (k) Proposed protective covenants. A preliminary outline of proposed protective covenants, including provisions for the organization and financing of a Homeowners' Association where appropriate.
- (l) Soil Erosion and Sedimentation Control. Where applicable, the site development plan shall provide information on soil erosion and sedimentation measures according to the technical standards provided by the applicable jurisdiction's *Soil Erosion and Sedimentation Control Ordinance*.
- (m) Development Report. If the proposed development has more than one (1) phase, a report setting forth the proposed development schedule, indicating the sequences of the development, and the approximate time period for completion of each phase shall be required. Statistical or technical data as necessary to accurately describe the proposed development including, but not limited to, the following shall be included in the Development Report:
 - (1) Total land area.
 - (2) Total number of dwelling units and gross density by type of land use.
 - (3) Amount of space to be occupied by roads and parking areas.
 - (4) Amount of any submerged land within the project boundary.
 - (5) The total ground coverage and floor area of all buildings.
 - (6) A breakdown of the number of kinds of proposed buildings, including square footage, and number and range of lot sizes and proposed setback and yard dimensions for typical lots and/or building types.
 - (7) Deed record names of adjoining property owners or subdivisions.

- (8) The plat shall be drawn to a scale of not less than one (1) inch equals one hundred (100) feet.
- (9) Topography by contours at vertical intervals of not more than five (5) feet for subdivisions of more than twenty (20) lots unless necessary for determining road or sanitary sewerage system design.

4-6 Additional Requirements for Specific Uses.

4-6-1 Amusements Parks are permitted in the General Commercial (C-2) zone district, and motor vehicle racetracks are permitted in the General Agricultural (GA) and General Commercial (C-2) districts, provided that:

- (a) Any such development which is located closer than one thousand (1,000) feet from any property line for which the adjoining property is zoned GA, SA, R-1, R-2, R-3, R-4, R-5, R-6, R-7, PUD, or MU shall operate only vehicles with adequate muffler devices, unless the affected property owner(s) waive this provision, in writing. This requirement shall apply to all such operations whether currently in existence or to be built in the future.
- (b) No structures or racetracks shall be located within one hundred (100) feet of any property line.

4-6-2 Animal husbandry, including dairies, livestock raising, poultry and egg operations, fish hatcheries, and/or riding stables and academies are permitted within the General Agriculture (GA) district, provided that no structures for housing said animals shall be located closer than twenty-five (25) feet from any property line and the minimum required lot area for the above uses shall be five (5) acres.

4-6-3 Neither a Bed and Breakfast Home nor a Bed and Breakfast Inn may serve any meals to the general public, except for breakfast to its overnight guests only, unless such establishment is located within a C-1, C-2, C-3, or C-4 commercial zone district and such use as a restaurant or café otherwise qualifies as a permissible use thereunder. Additionally, regardless of the zone district in which such establishment shall be located, except in the C-3 district there shall be off street parking available for at least one (1) vehicle per available room and at least one (1) vehicle per employee.

4-6-4 Business and Professional Offices are permitted outright in the General Commercial (C-2) and Manufacturing (M-1, M-2) districts. Development of such uses in the Limited Commercial (C-1A) and Neighborhood Commercial (C-1) district shall limited to one (1) building per lot or parcel.

- 4-6-5 Cemeteries, not including governmentally-owned cemeteries, fraternal cemeteries, church or synagogue cemeteries, or family burial plots, are allowed in the GA, SA, R-1, R-2, R-5, and C-2 districts and shall have minimum site areas of twenty-five (25) acres and shall also comply with the *Georgia Cemetery Act of 1983*, as amended. Churches and synagogues, and fraternal organizations may operate cemeteries as an accessory use, wherever the principal use is allowed, but only if a minimum site area of five (5) acres is available for the cemetery. A minimum site area is not required for a columbarium that is an accessory use. In all zone districts, family burial plots shall only be allowed as an accessory use to a residential dwelling on parcels or tracts containing five (5) acres or more.
- 4-6-6 All commercial developments, including shopping centers, regional shopping malls, and retail outlet malls, shall meet the following requirements:
- (a) If adjoining parcels are interconnected to each other through access easements, such easements shall have a minimum width of twenty (20) feet.
 - (b) Shopping centers and shopping malls shall be permitted only in the General Commercial (C-2) district.
 - (c) Neighborhood shopping centers shall contain only the uses that are permitted in the Neighborhood Commercial (C-1) district, and the maximum size of the developed lot shall not exceed three (3) acres.
- 4-6-7 Convenience Stores in the Neighborhood Commercial (C-1) district shall have a gross floor area of less than five thousand (5,000) square feet and shall comply with the following if fuel service is available:
- (a) Convenience Stores, with fuel pump services located in the Neighborhood Commercial (C-1) district, are limited to four (4) pump islands with no more than two (2) pumps per island each as an accessory use to the convenience store.
- 4-6-8 All fuel pumps, canopies over fuel pumps (whether attached or detached,) and underground storage tanks shall be at least fifteen (15) feet from any road right-of-way.
- 4-6-9 All day care facilities, as defined hereinabove, are permitted as an accessory use in a church or place for religious worship, schools, commercial or manufacturing facilities, provided that such uses shall conform to all federal, state, and local day care requirements and shall comply with all health regulations.

4-6-10 Accessory Structures.

- (a) Accessory structures constructed concurrent with, or subsequent to, the primary dwelling structure, including, but not limited to, open sheds, garages, carports, and shelters are permitted upon a parcel less than three (3) acres in area and zoned for or used for single-family residential purposes only if the accessory structure is no larger than the gross floor area of the primary dwelling or fifteen hundred (1,500) square feet, whichever is lesser, and shall not exceed twelve (12) feet in height at the eave level for a single story or eighteen (18) feet in height at the eave level for two (2) stories.
- (b) Within the R-5, SA, or GA zoning districts, accessory structures constructed concurrent with, or subsequent to, the primary dwelling, may also store tools, currently tagged vehicles and/or equipment utilized in the trade or business occupation of the person or persons occupying the principal dwelling structure only if all of the following additional conditions are met:
 - (1) The accessory structure is no larger than the gross floor area of the primary dwelling or fifteen hundred (1,500) square feet, whichever is lesser, and provided that all applicable building setbacks are met.
 - (2) The accessory structure shall be constructed in accordance with applicable building codes, including, but not limited to, all setback requirements, and shall be fully enclosed.
 - (3) The accessory structure shall not be used for the manufacture, construction, shipping or processing of commercial goods or services.
 - (4) There shall be no business invitees or customers upon the residential property for business purposes.
 - (5) No more than two (2) commercially licensed or titled vehicles weighing not more than fourteen thousand pounds US (14,000 lbs.) gross vehicle weight (GVW) each shall be stored on site.
 - (6) Nothing herein shall be construed to allow large commercial equipment, including, but not limited to bulldozers, dump trucks, backhoes, earth moving equipment, and the like, within an accessory structure upon any residentially zoned lot or parcel.

- 4-6-11 Flea markets, farmers' markets, produce stands, and similar facilities are permitted in the General Commercial (C-2) district, provided that:
- (a) Permanent sanitary facilities are required and shall be approved by the Health Department or applicable authority.
 - (b) No overnight camping on the property is permitted.
 - (c) Such use shall be located upon a major or minor collector road only.
- 4-6-12 Garage, yard or carport sales shall be allowed on the lot or parcel occupied by the residential dwelling in the GA, SA, R-1, R-2, R-3, R-4, R-5, R-6, and R-7 zoning districts provided that:
- (a) No sale shall be allowed to continue for more than one (1) continuous seventy-two (72) hour period.
 - (b) Not less than three (3) months shall lapse between sales held at the same location.
- 4-6-13 Hazardous waste processing and handling facilities are permitted as a Special Use in the M-1 and M-2 districts provided that such facilities shall conform to all local, state, and federal regulations for hazardous waste management.
- 4-6-14 Junk Yards or Salvage Yards.
- (a) Such use shall not be located closer than twenty-five (25) feet to any adjacent boundary line or right-of-way.
 - (b) Such use shall be enclosed with a sight impermeable fence or earthen berms not less than eight (8) feet high.
- 4-6-15 Except for within certain Commercial (C-1, C-2, C-4) and Manufacturing (M-1, M-2) districts, recreational facilities within a public park shall meet the following requirements:
- (a) Lighting shall be established in such a way that no direct light is cast upon adjacent properties or roadway.
 - (b) All lighted recreational facilities shall be a least fifty (50) feet from any property boundary line.
- 4-6-16 Laundry services, including dry cleaning pick-up and delivery stations, are allowed in the Neighborhood Commercial (C-1) district, provided that the total floor area shall not exceed four thousand (4,000) square feet.

4-6-17 Animals.

- (a) Except within the City of Dalton, raising and keeping livestock, ten (10) or more pounds in weight shall be permitted upon a lot or parcel in the GA, SA and R-5 Residential zoning districts, or upon a lot in a commercial or manufacturing zoning district upon which there is located a non-conforming single family dwelling occupied as a residence, provided that there is a minimum of two (2) acres, with no more than four (4) total animals per two (2) acres prorated, and all structures used for housing and feeding the animals shall be located at least twenty-five (25) feet from any lot line.
- (b) Raising and keeping small animals, under ten (10) pounds in weight, shall be permitted upon a lot or parcel in the GA, SA and R5 Residential zoning districts, or upon a lot in a commercial or manufacturing zoning district upon which there is located a non-conforming single-family dwelling occupied as a residence, subject to the following:
 - (1) Condition, size. All such animals must be provided with adequate, secure enclosure(s) while not within the immediate presence of the owner. The pens or other enclosures wherein such animals are kept shall have a solid floor of suitable washable material, except when the pens are seventy-five (75) feet or more from the nearest neighbor's dwelling or place of business. Floor space in all such pens or enclosures, wherever located, shall contain not less than six (6) square feet per animal. In order to promote good hygiene and to eliminate nuisance odors, pens must be regularly cleaned and animal waste must be properly disposed.
 - (2) Location. Pens or yards where such animals are kept shall be placed at the following minimum distances from any dwelling or business structure:
 - i. Distance from any dwelling, except that of owner, or any business structure, fifty (50) feet
 - ii. Distance from owner's dwelling, five (5) feet.
 - (3) Maximum number. The maximum number of such animals, in any combination, which may be kept upon a single lot or parcel shall be limited as follows:
 - i. On lots up to five (5) acres in size, a total of no more than ten (10) small animals. No roosters, peafowl or any other fowl whose calls are audible to an adjoining lot shall be permitted.

- ii. On lots five (5) or more acres in size, there is no limit to the number of non-commercial small animals permitted.
- 4-6-18 Unless otherwise provided herein, all uses in the Neighborhood Commercial (C-1) district shall have a gross floor area of less than ten thousand (10,000) square feet, including outdoor storage and accessory structures.
- 4-6-19 RV parks and campgrounds are allowed outside the City of Dalton in the GA and C-2 districts provided that:
 - (a) Public water is supplied;
 - (b) If public sewer is not available, such developments shall provide an approved dump station of private sewer disposal.
 - (c) Occupancy shall be for a period of not more than fourteen (14) days.
- 4-6-20 Recycling Centers with processing facilities and Recycling Collection Stations shall comply with the following regulations:
 - (a) All operations and collections shall be set back at least twenty five (25) feet from each property line and shall comply with the screening standards as applicable and set forth in Article VIII of this Ordinance.
 - (b) The owner or operator of the station shall inspect the site at regular time periods to assure that no litter accumulates and that containers are emptied as often as necessary.
- 4-6-21 Restaurants and/or cafeterias in the Neighborhood Commercial (C-1) district, shall have a seating capacity of no more than eighty (80) patrons.
- 4-6-22 Only during the seasonal holiday months of October, November, and December, Holiday Tree Farms which are located within the General Agriculture (GA) or Suburban Agriculture (SA) zone district containing not less than five (5) acres shall be allowed to conduct retail sales of pumpkins, corn, gourds, hay bales, Christmas, or other holiday trees, garlands, or wreaths which are grown, cut, or produced thereon. Such Holiday Tree Farms may also conduct retail sales of other similar seasonal decorative items, such as tree stands or tree ornaments, or may provide hayrides, hay mazes, or other similar activities for its customers during such months only.
- 4-6-23 Temporary Holiday Lots shall be allowed to conduct retail sales only during the seasonal holiday months of November and December.

4-6-24 It is the intent of this article to act concurrently with the Dalton-Whitfield Regional Solid Waste Management Authority, Solid Waste Management Plan to protect the health, safety, and welfare of the citizens and natural resources of Whitfield County. As such, in addition to the requirements contained herein, any new, not yet operational, or expansion of any Solid Waste Handling Facility shall be consistent with the Dalton Whitfield Regional Solid Waste Management Authority, Solid Waste Management Plan.

- (a) Solid Waste Landfills are allowed as a Special Use in the General Agriculture (GA) district. Siting of a solid waste landfill shall meet all the criteria provided under the rules of the Georgia Department of Natural Resources, Environmental Protection Division, and Solid Waste Management Regulations.
- (b) Inert Waste Landfills are permitted as a Special Use in the General Agriculture (GA) or Suburban Agriculture (SA) district.
- (c) Solid Waste Transfer Stations are permitted as a Special Use in the GA, SA, M-1, and M-2 districts provided that:
 - (1) All transfer stations shall be located adjacent to a collector or arterial road so designated by the Georgia Department of Transportation on their Functional Classification Map for Whitfield County.
 - (2) Such facility shall have a minimum buffer of twenty-five (25) feet and comply with the screening standards set forth hereinafter.
 - (3) No portion of a new transfer station shall be located within a two (2) mile radius of the property lines of an existing transfer station or solid waste handling facility.
 - (4) The hours of operation shall be limited to not more than 6:00 a.m. to 6:00 p.m., Monday through Saturday.
 - (5) Transfer stations shall be sited and operated in accordance with State Regulations 391-3-4.06 Permit by Rule for Collection, Transportation, Processing, and Disposal; Official Code of Georgia Annotated 12-8-20 Georgia Comprehensive Solid Waste Management Act; and the Dalton Whitfield Regional Solid Waste Management Authority, Solid Waste Management Plan.

4-6-25 The R-4 district permits single-family detached dwellings to develop at a maximum density of ten (10) dwelling units per acre. All such developments are required to be reviewed subject to the presentation of a site plan, subdivision regulations, when applicable, and a rezoning

application, as set forth hereinabove. A minimum site area of two (2) acres is required. The minimum separation distance between all detached dwellings in the R-4 district, side to side, is ten (10) feet. The front setback shall be a minimum of twenty (20) feet and the rear setback shall be a minimum of ten (10) feet. Zero-lot line dwellings shall be constructed against the lot line on one (1) side of a lot or parcel, and no windows, doors, or other openings shall be constructed on that side. For the solid wall positioned upon the property line, a maintenance easement of not less than five (5) feet shall be designated on the adjacent lot; and the final subdivision plat for all zero-lot line developments shall show and provide for such maintenance easements.

- 4-6-26 Private Camps shall be located upon a lot or parcel with a minimum total area of eight (8) acres. All regulations of the Whitfield County Health Department regarding on-site sewage management systems shall be fully applicable. Such camp shall be served by public water rather than by individual water supply. Where such camps adjoin residentially used lots or parcels or residentially zoned lots or parcels, a minimum thirty (30) foot buffer, as set forth in Article VIII, shall be placed along any such borders and adjacent to any public or private road.
- 4-6-27 All facilities used in conjunction with an Event Center shall comply with all local, state, and federal building requirements with respect to group assembly, and shall comply with all local, state, and federal environmental requirements with respect to sewage disposal, flood plain management, erosion and sediment control, and storm water management.
- 4-6-28 In compliance with OCGA §36-66-4, any such halfway house, drug rehabilitation center, or other facility for the treatment of drug dependency, location or relocation, shall require a public hearing at least six (6) months and not more than nine (9) months prior to the date of final action by the Governing Authority on any zoning decision (*e.g.* rezoning, annexation, or special use review). A sign posted on the subject property and a published notice shall contain a prominent statement that the proposed zoning decision relates to or will relocate a halfway house, drug rehabilitation center, or other facility for the treatment of drug dependency. The above public hearing is in addition to the public hearing that may be required nearest to making a zoning decision per the requirements of the governing authorities' applicable zoning procedures and standards ordinance. The latter posted and published notices shall appear at least fifteen (15) days and not more than forty-five (45) days prior to the date of this public hearing. For either public hearing, the published notice shall be at least six (6) column inches in size and shall not be located in the classified advertising section of the newspaper.

- 4-6-29 Agritourism and organic farming and processing shall be subject to the following minimum criteria: 1) in both the GA, SA, and R-5 zone districts the minimum tract size shall be five (5) acres; 2) facilities for processing products or those facilities on-site that are supportive of agritourism shall not be located within one hundred (100) feet of side or rear property lines, and shall be located in the interior of the property three hundred (300) feet or more from the public road R/W; and 3) on-site signage along any public road R/W shall be limited to an unlighted ground sign.
- 4-6-30 Kennels for boarding and breeding are permitted outright in the C-2 and C-4 zoning districts and are permitted on parcels with a minimum lot size of five (5) acres in the GA and SA zoning districts.
- 4-6-31 For Brewpubs, Microbreweries, Micro-distillery/wineries, special conditions shall apply as follows:
(1) an off-street or alley loading dock is required;
(2) drive through service is not allowed.
- 4-6-32 Self Service Storage Warehouses or Climate Controlled are permitted as a Special Use in the C-3, Central Business District provided that:
(1) Such use is prohibited in the local historic district boundary designated within the C-3 zoning district.
(2) Flammable, explosive, or any hazardous materials are prohibited.
(3) An interior sign and an exterior sign, each measuring at least one foot by two feet in size, shall be installed at the facility. The signage shall clearly state that hazardous and flammable materials are prohibited within the storage facility.
(4) Trucks or trailers with cargo space in excess of sixteen feet are prohibited.
- 4-6-33 Homeless Facilities are permitted as a Special Use in the C-3, Central Business District and C-4, Transitional Commercial district provided that:
(1) Such use is prohibited in the local historic district boundary designated within the C-3 zone district.
(2) Any Homeless facility planned to redevelop and occupy an existing non-residential structure must submit a preliminary site plan.
- 4-6-34 Wholesale Trade, Warehouse and Distribution Facilities are only permitted for existing commercial or industrial structures within the C-4 zone district. No Wholesale Trade, Warehouse or Distribution Facility in excess of 10,000 square feet will be permitted within the C-4 zone district.

4-7 Additional Requirements for PUD and/or MU Districts.

- 4-7-1 No PUD shall be permitted upon less than fifteen (15) total contiguous acres. For purposes of this Section, lands bisected by streets, railroads, creeks, or gas/electricity/utility easements can be considered contiguous.
- 4-7-2 The maximum gross density per acre within the PUD district shall not exceed eight (8) dwelling units per acre.
- 4-7-3 No manufactured home nor mobile home shall be permitted within the PUD or MU district.
- 4-7-4 Not less than twenty percent (20%) of the total acreage or three (3) acres, whichever is greater, shall be set aside as open space within any PUD district.
- 4-7-5 No lot or parcel within the PUD district may be served by an on-site sewage management system but shall be served by a Public or Community Sewage Treatment System.
- 4-7-6 If a PUD is proposed to be developed in phases, not less than 80 percent of all lots and/or parcels within the first phase must be sold prior to the issuance of any permit for phase II, and so on.
- 4-7-7 Any proposed PUD shall provide for the creation of a homeowners' association, which shall provide for mandatory membership by all owners of a lot or parcel within the PUD, ownership of all common areas, and a perpetual maintenance responsibility for all such common areas.
- 4-7-8 Any minimum lot area and yard requirements may be waived upon the approval of the site plan.
- 4-7-9 All single family detached dwellings shall be limited to one principal building per lot.
- 4-7-10 Approval of a PUD site plan does not exempt the PUD from any applicable subdivision regulations.
- 4-7-11 The only signs that shall be permitted in PUDs are ground signs, window signs, and wall signs.
- 4-7-12 All building permits shall lapse twelve (12) months after issuance. Building permits may be renewed prior to expiration, for another twelve (12) month period.

Article V – Parking, Loading, and Driveway Standards

5-1 Intent. The intent of this Article is to provide regulations to:

- (a) Foster safe and efficient circulation of vehicles and pedestrians both on private and public streets.
- (b) Minimize nuisances arising from on-street parking.

5-2 Off-Street Automobile Parking and Storage. Off-street automobile parking and storage space shall be provided on every lot on which any of the uses mentioned in this Article are established, except in the C-3 Commercial District. Such automobile parking or storage space shall be provided with vehicular access to a public road, street, or alley and shall be equal in area to at least the minimum requirements for the specific uses, as set forth below.

All off-street automobile parking and storage space, except for single-family residential uses, shall be so arranged that vehicles will not be required to back onto a public street, road, or highway when leaving the premises. Each required off-street parking space and/or loading berth shall open directly upon an aisle or driveway of such width and design as to provide safe and efficient access to a public or private street.

5-2-1 Submission of a Parking Plan. Except for single-family residential developments, a fully dimensioned parking plan shall accompany a permit application for any use required to provide over four (4) off-street parking spaces. All off-street parking plans shall provide a clear parking layout according to the requirements of Section 5-3-2.

5-2-2 Use of Spaces. Except as otherwise indicated, off-street parking facilities provided for uses shall be solely for the parking of motor vehicles of patrons, occupants, visitors, or employees of such uses.

5-2-3 Location.

- (a) On Same Lot. Except as otherwise provided herein, all off-street parking shall be provided on the same lot as the use served.
- (b) Common Off-Street Parking Areas. Two (2) or more principal uses may use a common parking area to comply with off-street requirements, provided that the total number of individual spaces available in such common area is not less than the sum of the spaces required for the individual uses. The owner of said lot shall relinquish his development rights over the property until such time as parking space is provided elsewhere.

- (c) **Required Off-Street Parking Spaces on Other Property.** If the required off-street parking spaces cannot reasonably be provided on the same lot on which the principal use is located, such spaces may be provided on other off-street property lying not more than three hundred (300) feet from the property of the principal use. In this situation, the applicant shall submit a legal instrument, duly executed and acknowledged, citing the permanent availability of such off-street parking spaces to serve his principal use.

5-3 Design Standards for Off-Street Parking Facilities. All off-street parking facilities, whether public or private, shall meet the following requirements:

5-3-1 Size. A required off-street parking space shall be striped and provide a rectangular parking area at least eight and one-half (8 ½) feet in width and at least eighteen (18) feet in length (regardless of the angle of the space to the access aisle). The parking space shall have a vertical clearance of at least seven (7) feet.

5-3-2 Parking Layout.

- (a) The layout of parking spaces may be arranged parallel, perpendicular, or diagonal to the aisles. Minimum standards for aisle widths is one-way, twelve (12) feet; two-way, twenty-four (24) feet.
- (b) If a development includes a drive-in window or pick-up station, the driveway or stacking lane for such addition shall be at least ten (10) feet wide.

5-3-3 Improvement and Maintenance. All off-street parking areas intending to serve commercial uses, including ingress and egress, shall be graded to ensure proper drainage, surfaced with concrete, asphaltic material, or porous pavers (See Section 5-4-4) and maintained in a clean, orderly condition.

- (a) **Bumper Guards.** If bumper guards are placed on the edge of the property line adjacent to a sidewalk or right-of-way, the bumper guards must be arranged so that the bumper of each car will not extend over the sidewalk or right-of way.
- (b) **Marking.** Each off-street parking space shall be painted with stripes, not less than three (3) inches wide, running the length of each of the longer sides of the space or by other acceptable methods which clearly delineate the parking space within the parking lot.
- (c) **Fire Lanes.** Fire lanes shall be clearly striped and constructed to Fire Department standards.

5-3-4 Landscaping Standards. The owners of parking lots are required to landscape with trees and shrubs to reduce the visual impact of glare, headlights, and parking lot lights from the public right-of-way and from adjoining properties. See City of Dalton Landscaping Ordinance for additional requirements for parking lots within the city of Dalton.

5-3-5 Residential Parking. All parking areas serving single-family detached or attached dwellings shall conform to the following additional requirements:

- (a) If garages or carports are converted to living area, then the off-street parking requirements must be met elsewhere on the lot.
- (b) At no time shall such parked or stored camping and recreational vehicles be occupied or used for living, sleeping, or housekeeping purposes.
- (c) No commercial vehicle as licensed by the State with gross vehicle weight (GVW) exceeding eleven thousand (11,000) pounds or which shall have three (3) or more axles shall be allowed to park in the R-1, R-2, R-3, R-4, R-5, R-6, or R-7 residential zone districts.
- (d) Commercial vehicles, licensed by the State, buses, and recreational vehicles shall not be allowed to park overnight on the street in a residential district, but shall be permitted to park temporarily to make delivery or pickup of goods or to perform work at the residence.

5-4 Off-Street Parking Requirements for Uses. The minimum number of required off-street parking spaces for each use is provided in Chart 5-4. For uses not specifically listed, the off-street parking requirements shall be those of the most similar use. Gross leasable area (GLA) is the total building floor area in square feet that an owner may lease. Gross floor area (GFA) is the sum of the areas of several floors of a building, including all areas for human occupancy, as measured from the interior faces of the walls, but excluding unenclosed porches, interior parking spaces, or any space where the floor to ceiling height is less than six (6) feet, six (6) inches.

5-4-1 Computation. When determination of the number of off-street parking spaces required by this Ordinance results in a requirement of a fractional space, any fraction in excess of one-half shall be counted as one (1) parking space.

5-4-2 Handicapped Parking. Parking for the handicapped within a multi-family or non-residential district shall be provided at a size, number, and location according to the requirements of the Georgia Handicapped Accessibility Code.

- 5-4-3 In lieu of the specific standards shown in Chart 5-4, a detailed parking study that evaluates site-specific circumstances and demand or off-site parking relative to any uses or combination of uses, may be required in the discretion of the Building Inspector.
- 5-4-4 In lieu of the specific standards shown in Chart 5-4, a ten percent (10%) reduction in the total required minimum number of parking spaces may be allowed at the discretion of the Chief Building Official if presented with a detailed parking study that evaluates site-specific circumstances and demand or documented evidence relative to the uses or combination of uses that are proposed on-site. The Board of Zoning Appeals shall determine the standards beyond the discretion of the Chief Building Official.

CHART 5-4

Table: Minimum Parking Spaces Required by Use		
Use	Minimum Number of Parking Spaces:	Required for Each:
a. RESIDENTIAL		
1. Single-Family Residence	2	Dwelling Unit
2. Two-Family Residence	2	Dwelling Unit
3. Multi-Family Residence:		
(a) Efficiency apartment	1	Dwelling Unit
(b) 1-bedroom unit or larger	1.5	Dwelling Unit
(c) Manufactured Home Park	2	Per Unit
4. Retirement Community	1	Dwelling Unit
5. Nursing Homes, Personal Care Homes, Fraternity or Sorority Houses	1	Each 2 residents or beds
6. Bed & Breakfast, Rooming House, Boarding House	1 2	Room to be rented, plus Dwelling Unit
7. Hotel or Motel:		
(a) Convention hotel, or a motel with a restaurant or lounge.	1½	Room
(b) Non-convention hotel or a motel with no restaurant	1	Room
b. COMMERCIAL		
1. Offices: general and professional offices, insurance and real estate offices	3½	1,000 sf ¹ of GFA ²

1 Square feet.

2 GFA—Gross floor area as defined in this Article.

Table: Minimum Parking Spaces Required by Use		
Use	Minimum Number of Parking Spaces:	Required for Each:
2. Banks	3½	1,000 sf of GFA
3. Offices - Medical & Dental	5	1,000 sf of GFA
4. Funeral Home	20	Viewing Room
5. Daycare Center	1	400 sf of GFA
6. Movie Theater	1	4 Seats
7. Service Station, Gas Station, Auto Repair Shop or Garage	3	Service bay, plus
	5	1,000 sf of retail space
8. Automobile, Truck, Recreation Vehicle, Manufactured Home or Utility Structure Sales	2	1,000 sf of indoor sales area, plus
	1	2,500 sf of outdoor display, plus
	3	Service bay
9. Custom Service Restaurant:3		
(a) Quality restaurant	16	1,000 sf of GFA
(b) Family Restaurant	9½	1,000 sf of GFA
10. Fast Food Restaurant	14	1,000 sf of GFA
11. Bowling Center	4	Lane
12. Amusement Parlor, Recreational Attraction, Roller Skating or Ice Skating Rink	5	1,000 sf of GFA
13. Health Club or Fitness Center	4½	1,000 sf of GFA
14. Shopping Centers		
(a) Less than 100,000 sf of GLA4	4	1,000 sf of total GLA, plus
	3	100 movie theater seats, plus
	10	1,000 sf of food service area
(b) 100,000-199,999 sf of GLA	4	1,000 sf of total GLA, plus
	3	100 theater seats over 450, plus
	6	1,000 sf of food service area
(c) 200,000-399,999 sf of GLA	4	1,000 sf of total GLA, plus
	3	100 theater seats over 750
(d) 400,000-599,000 sf of GLA	4½	1,000 sf of total GLA, plus
	3	100 theater seats over 750
(e) 600,000 or more sf of GLA	5	1,000 sf of total GLA, plus
	3	100 theater seats over 750
15. Supermarket	5	1,000 sf of GFA
16. Furniture or Carpet Store	1	1,000 sf of GFA

3 As defined in this Article.

4 GLA—Gross leasable area as defined in this Article.

Table: Minimum Parking Spaces Required by Use		
Use	Minimum Number of Parking Spaces:	Required for Each:
17. Building Supplies, Brick or Lumber Yard	2 1	1,000 sf of indoor sales area, plus 2,500 sf of outdoor display
18. Retail Sales or Service establishments not listed above	5	1,000 sf of GFA
c. INDUSTRIAL AND MANUFACTURING		
1. Wholesale, Office-Warehouse	1 1	200 sf of office space, plus 1,000 sf of storage area
2. Open storage of sand, gravel, petroleum, etc.	1	2,500 sf of outdoor sales area, if any
3. Warehouse, Transfer and Storage	1	600 sf of GFA
4. Warehouse including commercial sales to the public	1 1	200 sf of sales or office, plus 1,000 sf of storage area
5. Manufacturing	2½	1,000 sf of GFA
d. INSTITUTIONAL AND OTHER		
1. Hospital	1.8	Bed
2. Auditoriums, churches, theatres, stadiums, private clubs, fraternal lodges and other places of assembly	1 1 1	4 seats in the largest assembly room, or 12 feet of pew in the largest assembly room, or 100 sf in the largest assembly room
3. College (instructional space)	10	Classroom
4. Technical College, Trade School	10	Classroom
5. Senior High Schools	6	Classroom
6. Elementary & Jr. High Schools	2	Classroom
7. Library or museum	2	1,000 sf of GFA

5-5 General Regulations for Off-Street Loading/Unloading.

(a) Off-street truck loading; where required.

Areas proposed for loading and unloading motor vehicles in off-street locations shall be provided at the time of the initial construction of any building or structure used or arranged to be used for commercial, industrial, hospital, institutional, hotel/motel or multifamily residential purposes in any zoning district. Such off-street loading areas shall have access to a public alley or street and shall be provided and maintained in accordance with the following requirements, the computation of which shall not be included in the off-street parking requirements.

- (1) Loading spaces provided. Any such business or use shall provide adequate off-street facilities for the loading and unloading of merchandise, supplies, goods, freight, provisions or furnishings within or adjacent to the building as deemed appropriate by the owner or occupants of the property. Such loading facilities, if provided, shall not obstruct freedom of vehicular traffic or pedestrian movement on the public streets and sidewalks.
- (2) Location of off-street loading areas. Off-street loading and unloading areas shall in all cases be located on the same lot or parcel of land as the structure they are intended to serve. In no case shall the off-street loading space be considered as part of the area provided to satisfy off-street parking requirements as listed herein.
- (3) Adequacy of loading area. All such uses shall provide off-street loading areas sufficient for their requirements. Such space shall be adequate if no vehicle being loaded or unloaded in connection with normal operations shall stand in or project into a public street, walk, alley or way.

(b) Setback requirements; loading areas.

- (1) Off-street truck loading areas shall be set back from the front property line by at least 10 feet. An additional 10-foot setback from any buffer required along a side or rear property line shall also be maintained.
- (2) The required setback area between the front property line and the truck loading area shall be used for landscaping and/or screening as referenced in Section 5-3-4.

(c) Truck loading on public streets restricted.

The loading or unloading of business merchandise, supplies, goods or freight within a street right-of-way is prohibited in all zoning districts.

5-6 Driveway Regulations.

- 5-6-1 Frontage and Boundaries. The frontage of any parcel of property adjacent to a public highway shall be considered to be confined between lines drawn from the intersection of the property lines with the right-of-way lines of the highway, to the roadway surface or the curbing, if any, and perpendicular to the axis of the highway; or if the axis is a curve, to the center of curvature, or a combination of the two. Those lines shall be known as boundaries.
- 5-6-2 Five-Foot Reserve. No entrance or exit shall be so constructed that any part of such entrance or exit shall be less than five (5) feet from the boundaries, as defined in Section 5-6-1, except for returns which may extend to and become tangent at the boundary line but shall not extend beyond same. For the purposes of topography and/or public safety, the Zoning Administrator or Chief Building Official may consider and authorize the shared driveways on a common property line.
- 5-6-3 Number of Driveways Authorized. No more than two (2) combined entrances and exits shall be allowed to any parcel the frontage of which is less than two hundred (200) feet. Additional entrances or exits for parcels of property having a frontage in excess of two hundred (200) feet shall be permitted only after showing actual requirements of convenience and necessity. When frontage is fifty (50) feet or less, only one combined entrance-exit is permitted, the width of which shall not exceed the frontage.
- 5-6-4 Driveway Design. (1) Width: The width of any entrance or combined entrance-exit driveway shall not exceed fifty (50) feet measured parallel with the roadway or, if roadway is on a curve, parallel with the tangent of the curve at the point where the center line of the driveway intersects the curb, or edge of pavement where curb does not exist. (2) Angle: The angle of driveways shall not be less than forty-five (45) degrees with the edge of the road or street except on divided highways the entrance angle to roadside commercial establishments may be reduced to thirty (30) degrees. Exit drives from roadside commercial establishments on divided highways shall have an angle of not less than sixty (60) degrees with the roadway.
- 5-6-5 Sight Distance. No portion of an entrance or exit drive shall enter the right-of-way at a point less than twenty-five (25) feet from the intersection of the right-of-way lines or street property lines.

Article VI - Towers and Antennae

6-1 Purposes. The purposes of this Article shall be:

- 6-1-1 To provide for the appropriate location and development of tower facilities in such locations which promote public safety and general welfare and serve the residents and businesses of Whitfield County, while complying with the federal Telecommunications Act of 1996.
- 6-1-2 To minimize, through proper siting, screening, and design the potential for visual blight and incompatibility and the proliferation of towers and antennae.
- 6-1-3 To promote tower safety through proper engineering and siting.
- 6-1-4 To promote and maximize the shared-use or co-location of new and existing towers.
- 6-1-5 To encourage the use of existing structures for antenna locations as an alternative to the development of additional single use towers.
- 6-1-6 To accommodate the increased demand for tower facility development.

6-2 Definitions. For the purposes of this Article, the following specific terms shall be defined as follows:

Alternative Tower Structures: Shall mean man-made structures such as clock towers, bell towers, church steeples, water towers, light poles, man-made trees, existing conforming towers, warehouses, factories, commercial buildings, multi-family buildings fifty (50) feet or more in height and publicly-used structures, such as police and fire stations, libraries, community centers, civic centers, utilities structures, elevated roadways, bridges, flag poles, schools, hospitals, and other structures which can, from the stand point of structural integrity and engineering safety, be used for the mounting of antennae or serving a similar function as a tower, as defined hereinbelow.

Antenna: Shall mean any exterior apparatus designed for the sending and/or receiving of electromagnetic waves.

FAA: Shall mean the Federal Aviation Administration.

FCC: Shall mean the Federal Communications Commission.

Guy Tower: Shall mean a tower supported, in whole or in part, by guy wire(s) and ground anchors.

Height: Shall mean the vertical distance of any tower as measured from the bottom of the base of the tower at ground level to the highest point of such tower.

Lattice Tower: Shall mean a telecommunications tower not exceeding three hundred fifty (350) feet in height and having open-framed supports on three or four sides and constructed without guy wires and ground anchors.

Monopole Tower: Shall mean a telecommunications tower not exceeding two hundred fifty (250) feet in height and constructed of a single pole, without guy wire(s) or ground anchors.

Preexisting Towers and Antennas: Shall mean any conforming, pre-existing tower or antenna for which a permit has been properly issued prior to the effective date of this Article. Any non-conforming, pre-existing tower or antenna which sustains a casualty equaling fifty percent (50%) or more of its value shall not be reconstructed or restored unless otherwise in conformity with this Article.

Tower: Shall mean any vertical structure which is designed and constructed primarily for the purpose of supporting one (1) or more antennae, including self-supporting lattice towers, guy towers, or monopole towers. This general term includes radio, television, microwave, common carrier, P.C.S., analog, digital, cellular telephone, alternative tower structures, and the like.

6-3 Review Process: Exempt from further review or Special Use Review

6-3-1 Towers in the C-1, C-2, C-4, M-1, and M-2 Zone designations, which otherwise meet the General Requirements set forth hereunder and which additionally meet the following specific conditions are a permitted use hereunder and may apply directly to the Zoning Administration for a permit, pursuant to Section 6-6:

- (a) In addition to the setback requirements for all towers as set forth in Section 6-5-10, the proposed tower shall not be within two hundred (200) feet of any dwelling, regardless of the zoning district in which any such dwelling may be located.
- (b) With respect to the construction of a monopole tower, the proposed tower facility shall contain at least two-thousand five hundred (2,500) square feet of ground area available at the tower base, so as to accommodate up to three (3) maintenance/operation structures. With respect to the construction of either a guy tower or lattice tower, the proposed tower facility shall contain at least six thousand (6,000) square feet of ground area available at the tower base, so as to accommodate up to three (3) maintenance/operation structures.
- (c) Any person or entity proposing to co-locate an antenna upon a pre-existing tower or either an antenna or tower upon an alternative

tower structure, except where such alternative tower structure is itself a non-conforming use pursuant to its zoning classification, may apply directly to the Zoning Administrator for a permit.

6-3-2 Government Owned Property. Any person or entity proposing to locate a tower upon a lot or parcel owned, leased, or otherwise controlled by Whitfield County, the City of Dalton, the City of Varnell, or any other unit of local government, or which is owned and operated for the sole purpose of municipal use, in the pursuit of the general public safety and public welfare, may apply directly to the Whitfield County Engineer for a permit regardless of the zoning of such lot or parcel. Any unit of local government desiring to erect a tower upon its own property for its own governmental purposes need not apply to the Whitfield County Engineer or his or designee for a permit, but shall ensure that all applicable building or other safety codes are met.

6-3-3 Towers Under Seventy Feet in Height. Any person or entity proposing to locate a tower or antenna less than seventy (70) feet in height, which is owned and operated by and for an amateur radio operator and licensed by the FCC, may apply directly to the Whitfield County Engineer or his or designee for a permit.

6-4 Review Process: Required Special Use Review

6-4-1 Towers in the GA, SA, R-1, R-2, R-3, R-4, R-5, R-6 and R-7 Zone designations and those in the C-1, C-1A, C-2, C-3, C-4, M-1, and M-2 Zone designations which do not meet those conditions set forth in Section 6-3 above are allowed only pursuant to Special Use approval.

6-4-2 Towers proposed to locate upon any alternative tower structure which is a non-conforming use are allowed only pursuant to Special Use approval.

6-5 General Requirements. The location and construction of towers governed by this Article shall comply with the following general requirements:

6-5-1 Construction/Inspections. Towers shall be constructed and maintained in compliance with applicable building codes, industry standards, and standards for towers published by the Electronic Industries Association, as amended.

(a) Tower owners shall conduct and be solely responsible for periodic written inspections of such towers at least every twelve (12) months to ensure structural integrity. Such inspections shall be conducted by a structural engineer with a current license issued by the State of Georgia. The results of such inspection shall be submitted to the Whitfield County Engineer or his or designee and shall be maintained by the tower owner(s) and available for public review upon request.

- (b) If, upon a review of the results of such inspections or upon physical inspection, the Whitfield County Engineer or his or designee concludes that a tower fails to comply with such codes and standards and poses a danger to persons or property, then upon written notice thereof to the owner, the owner shall have thirty (30) days to bring such tower into compliance. Should the owner fail to bring the tower into compliance within thirty (30) days, Whitfield County may remove such tower at the owner's expense pursuant to **OCGA §41-2-8** through **§41-2-12**.

- 6-5-2 **Regulatory Compliance.** Tower owners shall provide documentation showing that each tower is in compliance with standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennae. Such evidence of compliance, which may consist of a certification by the tower owner, shall be submitted to the Building Inspector at least every twelve (12) months. If such standards and regulations are changed, then the owner(s) of the towers and antennae governed by this Article shall bring such tower or antennae into compliance with such revised standards and regulations as mandated by the controlling agency.
- 6-5-3 **Security.** All towers, except alternative tower structures, shall be enclosed by decay-resistant security fencing not less than six (6) feet in height and shall be equipped with an anti-climbing device.
- 6-5-4 **Advertising.** Except for the owner's identifying name plate, including emergency telephone number(s), to be located upon the gate or security fence surrounding the tower base, advertising on towers shall be prohibited.
- 6-5-5 **Tower Lighting.** Illumination is prohibited on towers, except where required by the FCC or FAA, as necessary for air traffic safety. When illumination is required, documentation shall be provided to the Building Inspector identifying the type of illumination required and any available alternatives. The Building Inspector may review alternative permissible illumination and may mandate the design causing the least disturbance to the surrounding uses and views.
- 6-5-6 **Access.** Access for maintenance vehicles shall be the right of way which would most minimize interference with public traffic. Proposed sites which lack frontage on a public or private road shall provide an easement at least twenty-five (25) feet wide with at least twelve (12) feet graveled or paved travel way.
- 6-5-7 **Hazardous/Volatile Substances.** Use of a lot by a tower shall be prohibited when another principal use, on the same lot, includes the

storage, distribution, or sale of volatile, flammable, explosive or hazardous materials such as propane, gasoline, natural gas, dangerous chemicals, or hazardous waste when such materials are not part of an emergency power source for the tower facilities.

6-5-8 Maintenance/Operation Structures. Maintenance/Operation structures adjacent to any tower facility area shall be used only to house equipment and other supplies directly in support of the tower. Such structures shall not be used for offices, vehicle storage or for any continuous human occupation. Any equipment not used in direct support of a tower site shall not be stored on the site.

6-5-9 Historic Sites. Tower facilities shall not be attached to or mounted to historically significant buildings, structures, or places identified by placement upon the National Register of Historic Places, by designation as a State Historical site, by designation by the Governing Authority, by designation by the Whitfield-Murray County Historical Society as a historic site, or as part of a locally-designated historic district.

6-5-10 Setbacks and Separations. All towers shall comply with the following standards, except that existing alternative tower structures are exempt from the minimum setback and separation requirements of this section; provided, however, that such alternative tower structure must be a conforming use within the zoning district in which it is located for this setback exemption to apply as of right.

(a) All Towers, regardless of the zoning district in which such tower is proposed to be located, shall set back at least a distance equal to the height of the tower plus fifteen (15) feet or two hundred (200) total feet, whichever is less, from any dwelling, GA, SA, R-1, R-2, R-3, R-4, R-5, R-6, or R7 zoning district line, or public property, regardless of whether such distance shall cross any public or private right-of-way or roadway. This requirement shall be in addition to but concurrent with all other setbacks required by the zoning district in which a proposed tower is to be located.

(b) All towers and maintenance/operation structures (including guy wires) shall comply with the setbacks as required by the zoning district in which the tower is to be located.

6-6 Buffering Tower Sites.

6-6-1 Tower sites shall be landscaped with a buffer of plant materials such that the view of the base of the tower is screened from any public rights-of-way, public property, and any GA, SA, R-1, R-2, R-3, R-4, R-5, R-6, or R-7 zoned property.

- 6-6-2 In locations where the visual impact of the tower would be minimal, this landscaping requirement may be reduced or waived altogether by the Board of Zoning Appeals.
- 6-6-3 Existing mature growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as when towers are sited upon large, wooded lots, natural growth around the perimeter of the property may be sufficient if so determined by the Board of Zoning Appeals.
- 6-6-4 In buffer construction, native vegetation shall be preserved to the fullest extent possible.
- 6-7 **Visual Impact.**
- 6-7-1 Towers shall maintain a galvanized matte steel finish or be painted a neutral, earth-toned color, unless otherwise required by the FAA.
- 6-7-2 The design of maintenance/operation buildings and/or accessory structures at the tower site shall use materials, colors, textures, screening, and landscaping which create the greatest level of compatibility with the natural environment and existing land use patterns.
- 6-7-3 Antennae installed on an alternative tower structure and supporting electrical and mechanical equipment shall be of a neutral color which is similar to or complements the color of the alternative tower structure.
- 6-7-4 Tower antennae shall be designed to be visually compatible with the exterior of the alternative tower structure to which they are to be attached.
- 6-8 **Shared Use/Co-location.** New tower sites may not be permitted if there is technically and commercially reasonable space available for shared use/co-location on a conforming pre-existing tower.
- 6-8-1 The application for a permit to develop a tower shall demonstrate that no existing tower or alternative tower structure can accommodate the proposed antenna. Evidence submitted to demonstrate that no existing tower or alternative tower structure can accommodate the proposed antenna shall consist of the following:
- (a) Certification that no existing tower or alternative tower structures are located within the geographic area necessary to meet the applicant's engineering requirements.
 - (b) Certification that existing tower or alternative tower structures have insufficient height and cannot be modified to accommodate the applicant's engineering requirements.

- (c) Certification that existing tower or alternative tower structures do not have sufficient integrity or strength and cannot be modified to support the proposed antenna and related equipment.
- (d) Certification that the proposed antenna would cause interference with the antenna on the existing tower or alternative tower structure, or that the antenna on the existing tower or alternative tower structure would cause interference with the applicant's proposed antenna.
- (e) Certification that the fees, costs, or contractual provisions required by the owner in order to share an existing tower or alternative tower structure or to adapt an existing tower or alternative tower structure for sharing unreasonably exceed market costs.
- (f) The applicant demonstrates that there are other objective limitations which render existing towers unsuitable.

6-8-2 Permit applicants for towers shall certify and demonstrate their intent to allow the shared use of such facilities with other tower apparatus which does not interfere with the primary purpose of the tower or such applicant shall document that the reserved space on the tower is to fulfill the owner's future needs. All applicants shall identify how the applicant will make available such shared use/co-location.

6-9 **Application Procedures.** Application for a permit for any tower, antenna, or use of an alternative tower structure shall be made to the Zoning Administrator. All applicants, whether exempt from further review or whether Special Use approval is necessary hereunder, shall complete an application in accordance with this section. If the permit application is not exempt from further review and if Special Use approval is required, the permit application and Special Use application shall be forwarded to the Planning Commission and, thereafter, to the Governing Authority for Special Use review. If the Special Use is approved, the permit application may then be presented to the Chief Building Official for review. Incomplete applications shall not be considered. A complete permit application shall contain, in addition to the information contained upon every application for a building permit in Whitfield County, the following information specifically relating to towers:

6-9-1 **Inventory of Existing Towers.** An inventory of the applicant's existing towers which are either within Whitfield County, including all municipal corporations located therein and including areas within one-half (1/2) mile of the border thereof, including the specific locations, heights, and designs of each such tower.

6-9-2 A description of the proposed tower's area of service.

- 6-9-3 Photo simulations or renderings of the proposed tower illustrating the potential visual impact, for Special Use review only. For towers exempt from further review, this Section shall be satisfied by photos or drawings of similar towers.
- 6-9-4 A site plan or plans to scale specifying the proposed location and dimensions of tower(s), size of maintenance/operation buildings or uses, access, parking, fences, landscape plans, existing and adjacent land uses.
- 6-9-5 A site plan for alternative tower structures shall show adjacent rights-of-way, buildings, and structures, including the structure=s height and dimensions, proposed antenna location on the structure or building and adjacent land uses.
- 6-9-6 A report from a Professional Engineer, currently licensed in Georgia, documenting the following information:
- (a) Tower height and design, including technical, engineering, economic, and other pertinent data and/or factors governing the proposed tower design.
 - (b) Total anticipated capacity of the structure, including number and types of antennae which can be accommodated.
 - (c) Evidence of structural integrity of the tower structure.
 - (d) Failure characteristics of the tower and demonstration that the site, setbacks, and separation from other uses are of adequate size or distance to protect the safety of the general public and of all nearby landowners.
- 6-9-7 A written statement from the owner of the tower certifying that the proposed tower site complies with regulations administered by the FAA and FCC, or stating that the tower is exempted from these regulations.
- 6-9-8 Evidence of compliance with the co-location requirements set forth herein.
- 6-9-9 If the proposed tower is to be located upon property owned by any unit of local government pursuant to Section 6-3-2, then the applicant shall file either a copy of the lease agreement or other written certification or agreement from such unit of local government that such applicant has the permission of the land owner for the proposed tower facility project.
- 6-9-10 Any additional information which may be reasonably requested by the Whitfield County Engineer, Chief Building Official, Zoning Administrator, Planning Commission, or Governing Authority, in order to evaluate fully

and to review the proposed tower site and the potential impact of a proposed tower and/or antenna.

- 6-10 **Abandoned Towers.** Any tower found to be abandoned and not in compliance with these regulations, or found to constitute a danger to persons or property, shall, upon written notice by the Whitfield County Engineer or his or her designee to the owner(s) of such tower, be brought into compliance or removed within thirty (30) days. Any tower or antenna not operated for a continuous period of twelve (12) months shall be considered abandoned and the owner of such tower or antenna shall remove the same within thirty (30) days of receipt of written notice.

Article VII - Home Occupations

- 7-1 **Purpose and Intent of Article.** It is the purpose and intent of this Article:
- 7-1-1 To protect residential areas from the potentially adverse effects of commercial activities associated with home occupations;
 - 7-1-2 To allow residents the reasonable opportunity to use their dwelling for the production of or supplementation of family income;
 - 7-1-3 To establish performance criteria and development standards for home occupations.
- 7-2 **Performance Criteria.** Home occupations shall be allowed only if:
- 7-2-1 Incidental to the use of the premises as a dwelling;
 - 7-2-2 Compatible with residential use;
 - 7-2-3 No exterior alterations which affect the residential character of the property are necessary.
 - 7-2-4 The use is limited in extent.
- 7-3 **Standards.** In addition to the requirements of the definition of Home Occupation set forth in Article II of this Ordinance, the following standards shall apply to all proposed home occupations:
- 7-3-1 Home occupations shall not include the employment of any person not otherwise residing upon the premises;
 - 7-3-2 All retail sales upon the premises shall be prohibited, except for products or goods fabricated or produced at the premises as a result of the home occupation;
 - 7-3-3 All home occupations shall be conducted within the enclosed living area, including basement, if any, of the dwelling provided that no more than twenty-five percent (25%) of the total enclosed square footage of the dwelling may be used in furtherance of a home occupation;
 - 7-3-4 No products, materials, equipment, fixtures, or machinery fabricated or used in the home occupation may be visible from the exterior of the dwelling;
 - 7-3-5 No alteration of the residential appearance of the dwelling shall occur;

7-3-6 No entrance to the dwelling shall be used exclusively for the home occupation;

7-3-7 No increased traffic flow or increased on or off-street parking shall occur;

7-3-8 No hazardous or other materials or equipment adverse to the public health, welfare, safety shall be used in the home occupation;

7-3-9 No increased noise, glare, vibration, fumes, odors, or electrical interference shall occur;

7-3-10 Not more than one (1) non-commercially licensed or titled vehicle with a carrying capacity of no more than one (1) ton shall be used in the home occupation. No commercially licensed or titled vehicles shall be used in the home occupation.

7-4 **No Permit Required; Enforcement.** No permit is required to establish a home occupation. Enforcement of compliance with the criteria and standards set forth herein shall be by the Zoning Administrator.

Article VIII -- Buffers

- 8-1 **Buffer Requirement.** A buffer, as specified herein below, shall be required when a proposed development abuts property in a less intense zone district, unless the adjacent zone district is already developed with uses similar to the proposed uses. Refer to the following table for the required buffer:

	DISTRICTS REQUIRED TO BUFFER										
	R-6	R-7	PUD	MU	C-1A	C-1	C-2	C-3	C-4	M-1	M-2
<i>Abutting District</i>	Width of Required Buffer										
GA	15'	15'	TBD	TBD	15'	20'	20'	20'	20'	30'	30'
SA	15'	15'	TBD	TBD	15'	20'	20'	20'	20'	30'	30'
R-1	15'	15'	TBD	TBD	15'	20'	20'	20'	20'	30'	30'
R-2	15'	15'	TBD	TBD	15'	20'	20'	20'	20'	30'	30'
R-3	15'	15'	TBD	TBD	15'	20'	20'	20'	20'	30'	30'
R-4	15'	15'	TBD	TBD	15'	20'	20'	20'	20'	30'	30'
R-5	None	15'	TBD	TBD	15'	20'	20'	20'	20'	30'	30'
R-6	None	None	TBD	TBD	15'	15'	15'	15'	15'	30'	30'
R-7	None	None	TBD	TBD	15'	15'	15'	15'	15'	30'	30'
PUD	None	None	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
MU	None	None	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
C-1A	None	None	TBD	TBD	None	None	None	None	None	None	None
C-1	None	None	TBD	TBD	None	None	None	None	None	None	None
C-2	None	None	TBD	TBD	None	None	None	None	None	None	None
C-3	None	None	TBD	TBD	None	None	None	None	None	None	None
C-4	None	None	TBD	TBD	None	None	None	None	None	None	None
M-1	None	None	TBD	TBD	None	None	None	None	None	None	None
M-2	None	None	TBD	TBD	None	None	None	None	None	None	None

TBD – To be determined by the applicable governing body during the Special Use review approval process.

- 8-1-1 Buffers shall be located within and along the outer perimeter of a lot or parcel along the side and/or rear lot lines. Buffers shall not be located upon any portion of existing, dedicated, or reserved public or private road right-of-way.

- 8-1-2 No building permit shall issue for any lot or parcel development requiring a buffer until such time as that buffer, as specified herein, shall be

substantially in place or until acceptable surety for the cost of the buffer installation shall be provided to the Building Inspector. Acceptable surety shall consist either of an irrevocable letter of credit from an approved lending institution or a performance bond from an approved insurer in an amount not less than fifteen dollars (\$15.00) per linear foot of area to be buffered. The required buffer must be completed and in place within thirty (30) days before any such surety shall lapse or within six (6) months of the issuance of the building permit, whichever shall occur sooner.

8-1-3 If the required buffer shall not be completed and in place as set forth herein, then, in such circumstance, the Zoning Administrator or designee shall have authority to go upon such areas of the subject parcel as reasonable and necessary to construct the required buffer, utilizing the surety previously provided. The Governing Authority shall not be liable for such action unless the Zoning Administrator or his or her designee shall act with gross negligence in coming upon and/or damaging such parcel.

8-2 **Passive Use.** A buffer may be used for some forms of passive recreation such as pedestrian, bicycle, or equestrian trails; or a buffer may be used to locate a stormwater retention area provided that:

8-2-1 No planted materials shall be eliminated.

8-2-2 The total width of the buffer shall be maintained.

8-2-3 A buffer shall not be used for any active recreational use such as playfields, stables, swimming pools and tennis courts.

8-3 **More Intense Use Must Provide Buffer.** When adjoining properties are zoned in dissimilar use districts, the property within the more intensive use district shall be required to provide the buffer. However, when adjoining vacant parcels are in dissimilar use districts, no buffer is required when the parcel zoned for the less intensive use seeks a building permit.

8-4 **General Buffer Design.** All buffers required by this Article shall conform to the following specifications:

8-4-1 Prior to development, a buffer plan shall be required to show the types and locations of all screening devices within a required buffer. If a site development plan is required, a buffer plan may be incorporated as part of the site development plan.

8-4-2 Landscaping within buffer areas shall be used to screen objectionable views or nuisances, such as parking and service areas, refuse containers, air conditioning units and transformers. Existing on-site plantings may be credited as landscaped open space meeting the requirements of this section if such plant materials achieve the purposes of this section.

8-5 Zoning Buffer Standards.

8-5-1 General.

- (a) Buffer areas shall contain no driveways, access easements, parking areas, patios, storm water detention facilities, or any other structures or accessory uses except for a fence, wall or earthen berm constructed to provide the visual screening required to meet the standards of this Article.
- (b) Underground utilities including closed storm drains may be permitted to cross perpendicular to a buffer if the screening standards of this Article will be subsequently achieved.
- (c) Vehicular access through a buffer may be allowed only as a condition of rezoning, Special Use or Planned Unit Development zoning approval by the Governing Authority.

8-5-2 Minimum required screening.

A required zoning buffer must create a barrier that substantially blocks the sight lines, noise transmission, and the transfer of artificial light and reflected light up to a height of not less than six (6) feet at the property line (or such greater height as required by conditions of zoning approval on a particular property).

8-5-3 Natural buffers.

Natural buffers shall be composed of healthy plants with growth characteristics to produce a dense, compact visual screen not less than six (6) feet in height. Natural buffers may contain deciduous or perennial vegetation, but shall contain existing or planted evergreen shrubs and trees suitable to local growing conditions that will provide an opaque visual screen during all seasons of the year.

8-5-4 Structural buffers.

A structural buffer shall provide a continuous visual screen throughout its entire length, and may consist of any combination of the following, as approved by the Zoning Administrator: Opaque fencing constructed of cedar, redwood, treated and stained or painted wood, vinyl replicating wood, or other suitable all-weather material; masonry walls of brick or stone; concrete block walls treated with a decorative finish; planted or natural vegetation; or earthen berms. Structural buffers shall meet the following criteria:

- (a) Structural buffers shall be vegetated throughout the minimum area required for the buffer around any fences or walls and upon any earthen berms, which may include ground covers, shrubs and trees, and areas that are mulched.

- (b) All earthen berms shall have a maximum side slope of fifty percent (50 %) (one (1) foot of vertical rise to two (2) feet of horizontal run.) Earthen berms shall not be constructed within the drip line of any existing trees that will remain on the property; new trees that overhang the berm may be planted after the berm is constructed.
- (c) Trees shall be located or planted within any structural buffer at a density of not less than one tree for each twenty-five (25) feet of buffer length or portion thereof (or every thirty-five (35) feet for shade trees). New deciduous trees shall have a caliper of not less than two (2) inches upon planting, and new evergreens shall be at least six (6) feet tall when planted. Trees may be clustered following professional landscaping standards for spacing, location and design
- (d) Fences and freestanding walls shall present a finished and decorative appearance to the abutting property, and shall be located not closer to the property line than two (2) feet. Shrubs, ground covers, or other vegetation shall be provided between the fence or wall and the property line so as to provide a decorative effect, following professional landscaping standards for spacing, location and design.
- (e) Examples of buffers are shown in the following illustration:

8-6 Maintenance of buffers. Every buffer required under this Article shall be maintained by the owner of the property where the buffer is located, so as to provide an opaque visual screen to a height of six (6) feet on a continuous, year-round basis. Dead or dying plants or trees must be replaced immediately with the same or an equivalent species.

8-7 Reduction for unnecessary buffers. The Governing Authority may reduce a zoning buffer requirement to a temporarily appropriate level of screening if the Comprehensive Plan anticipates future development on the adjoining property in a land use category such that a zoning buffer would not be required or may be reduced by this Ordinance once the adjoining property is rezoned or developed. Such determination shall be based upon the Future Development Map in the Comprehensive Plan, surrounding land use and zoning patterns, and the propriety of a future zoning change on the adjoining property.

8-8 Variances. The requirements of this Article may be altered, amended, or waived by the Board of Zoning Appeals, depending upon circumstances, if it is shown by clear and convincing evidence either that the existing topography and/or vegetation will achieve the purposes of the Article or that, because of the topography, no required screening device could screen the ground level activities of the more intense use from the ground level activities of the abutting less intense use.

Article IX - Non-Conforming Use, Structure, or Lot

- 9-1 Any use of land legally established at the time of enactment or subsequent amendment of this Ordinance, which would not be permitted as a new use in the zone district in which it is located, or any structure or accessory structure which is legally established at the time of enactment or subsequent amendment of this Ordinance and is not built in conformity with the current requirements of this Ordinance, or any lot of record whose area, frontage, width or other dimensions, or location which no longer meets or exceeds one or more such requirements of the applicable zoning district, may be continued pursuant to compliance with all of the following limitations:
- 9-1-1 A non-conforming use may not be changed, altered, or amended to any other non-conforming use.
- 9-1-2 A non-conforming use may not be re-established after discontinuance of such use for a period of twelve (12) months.
- 9-1-3 A non-conforming use, structure, or accessory structure may not be enlarged beyond its size at the time it shall become non-conforming, nor shall the intensity of the use therein increase. This provision shall include, but shall not be limited to, the size of the building, the use of additional land, or the use of additional or more powerful equipment. Approval for such expansion of a non-conforming use shall require a successful rezoning of the lot or parcel in order to bring such use or parcel into compliance with this Ordinance. This provision shall not apply to any residential addition onto an existing non-conforming single family dwelling, provided such addition does not further encroach upon the required setback area. This provision also shall not apply to the replacement of an existing, non-conforming mobile or manufactured home used for residential purposes with another manufactured home, with the same or fewer bedrooms.
- 9-1-4 A non-conforming structure may be rebuilt, altered without enlargement or expansion in any sense, repaired, or replaced at a size, use, or impact not larger than the original size and in substantially the same location for the same use within twelve (12) months following damage or loss to such structure. This provision, however, shall not apply to condemnation or voluntary demolition, the effect of which shall be immediate forfeiture of the non-conforming use upon the affected lot or parcel or portion thereof.

Article X - Administration, Enforcement, and Penalties

- 10-1 **Administration by Zoning Administrator's Office.** The provisions of this Ordinance shall be administered by the Zoning Administrator, who is hereby given the authority to perform such functions and/or to designate such other persons as he or she shall deem necessary to administer and to enforce the requirements of this Ordinance, including, but not limited to, the issuance of stop work orders, the issuance of citations (in any appropriate form) to the Whitfield County Magistrate Court for violation hereof, and the seeking of injunctive relief in the Whitfield County Superior Court.
- 10-2 **Fees.** A schedule of permit, application, and/or use fees, as adopted from time to time by the Governing Authority, shall be attached hereto as **Appendix "A."**
- 10-3 **Permit.** It shall be unlawful to commence the excavation or filling of any lot for the construction of any structure which requires a permit to build or to commence construction of any structure which requires a permit to build or to commence the moving or alteration of any structure which requires a permit to build or to commence the development or improvement of land for a use not requiring a structure until a permit has issued for all such work.
- 10-4 **Enforcement.** The Zoning Administrator, any Code Enforcement Officer, or any duly authorized Whitfield County Sheriff's Deputy or City Police Officer within the applicable municipality, or the lawful designee of any such person, shall have the authority to issue citations for violations of this Ordinance. Any such person shall investigate every written complaint received which shall charge that a specific lot or parcel is not in compliance herewith.
- 10-5 **Owner, Occupant, or Tenant May be Cited.** An owner, as shown by the records of the Whitfield County Tax Assessor's Office, or any occupant, tenant, or other person in lawful possession of any lot, parcel, or premises determined to be in violation hereof may be cited therefor.
- 10-6 **Continuing Violation.** Any violation of this Ordinance shall be considered a continuing violation, subject to separate citation each day in which such violation remains.
- 10-7 **Penalties for Violation.** Pursuant to **OCGA §36-1-20(b,)** any person convicted of violating this Ordinance or any provision thereof shall be sentenced to a maximum fine of one-thousand dollars (**\$1,000.00**) or imprisonment for a term of sixty (60) days, or both. Every day a violation continues shall be subject to a separate penalty.
- 10-8 **Remedies - Injunctive Relief.** When any structure or accessory structure which is erected, constructed, reconstructed, altered, repaired, converted or maintained; or any structure, accessory structure, land use, or land condition violates any portion of this Ordinance, the Zoning Administrator or his or her

designee may seek injunctive or other equitable relief in any court of competent jurisdiction. Such remedy shall be in addition to, and not in lieu of, any similar remedy which adjacent or neighboring property holders may already have pursuant to the laws of Georgia and shall have no effect thereon.

- 10-9 **Remedies - Effect of Non-Compliance; Notice and Hearing before Governing Authority.** In addition to any other remedies provided hereunder, so as to promote the health, morals, safety, and general welfare of the residents of Whitfield County, if the owner, occupant, tenant, lessee, and/or any other person in lawful possession of any lot, parcel, or premises shall fail to maintain such parcel in conformity with the provisions of this Ordinance, the Zoning Administrator, if he or she shall choose to proceed pursuant to the purview of this section, shall notify in writing all such person(s), specifically including, but not limited to, the owner of record, as may be reasonably determined by records contained in the Whitfield County Tax Assessor's Office, by certified mail, return receipt requested, that such person(s) shall have thirty (30) days from receipt of such notice in which to bring such lot, parcel, or premises into conformity with the provisions of this Ordinance. If such notice shall be returned "unclaimed" or is otherwise undeliverable, then notice by publication in the *The Daily Citizen* (Dalton, Georgia) once a week for four (4) consecutive weeks shall constitute due and proper notice as of the date of the fourth publication. Notice, whether by mail or by publication, shall advise with reasonable specificity the condition(s) which do not comply with the provisions of this Ordinance. Such notice shall further advise that if no response is forthcoming within thirty (30) days, the Zoning Administrator shall cause such matter to be placed upon the agenda of the next regularly scheduled meeting of the Governing Authority for public hearing. At such hearing, the Zoning Administrator or designee shall advise the Governing Authority of the unlawful condition(s) thereon and then the Governing Authority shall hear any other person(s) wishing to address it with regard to the condition of the lot, parcel, or premises. The Governing Authority shall then determine whether it shall cause such condition(s) to be brought into compliance with the provisions of this Ordinance, as the particular facts may warrant, and whether it shall cause the costs of such efforts to be charged against the lot or parcel upon which the condition existed as a real property lien and/or cause to be levied as a special tax against the land upon which such conditions existed and/or to recover such costs in an action at law against the owner of such lot or parcel.

- 10-10 **Adoption and Amendments.** The governing authorities of Whitfield County and the municipalities of Dalton and Varnell shall adopt this Ordinance and the zoning map that is part of this Ordinance only after public notice(s) and public hearing(s) and final action of each Governing Authority, as required by the adopted Zoning Procedures and Standard Ordinance of the respective governments.

Further, the Governing Authorities may from time to time amend the text of this Ordinance or the Official Zoning Map that is part of this Ordinance, according to the procedures in their respective Zoning Procedures and Standards Ordinance,

which is included herein in **Appendix “E.”** Appendix E fully describes all applicable final zoning decisions as defined by State Law, including but not limited to rezoning, special use review, and annexation, the notice and posting requirements to the public, the procedures for conducting the public hearings, the standards used to review zoning decisions, and the procedures to obtain a final zoning decision.

10-10-1 Application Process. Any amendment to the text of this Ordinance or the Zoning Map or any final action upon any other zoning decision shall begin upon an application form. Annexations shall begin on a form provided by the respective municipal governments and all other zoning decisions shall begin on a form provided by the Zoning Administrator. Such application forms shall include a listing of any and all requirements for consideration of any matter requiring a final zoning decision. Failure to comply with the requirements of the application shall constitute an incomplete application which will not be processed for conclusion of the requested final zoning decision. An application fee, which is established by the Governing Authority of the County or the municipalities, as applicable, may apply and be adjusted from time to time. Failure of the Zoning Administrator or City Clerks, as applicable, to collect a fee from the Governing Authority or the respective municipalities or from the Planning Commission (or equivalent), when they are initiating a proposed zoning decision, shall not void the validity of the application.

10-11 Conflict with Other Laws. Whenever the regulations of this Ordinance require a greater width or size of yards, building, or smaller number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other more restrictive standards than are required in or pursuant to any other statute, law, rule, or regulation, the requirements of this Ordinance shall govern. Whenever the provisions of any other statute require more restrictive standards than are required by this Ordinance, the provisions of such statute shall govern.

10-12 Separability. Should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

10-13 Repeal of Conflicting Ordinances and Validity of Prior Approvals and Actions. All ordinances and parts of ordinances in conflict herewith are repealed.

10-13-1 This is the Unified Zoning Ordinance, and all other conflicting ordinances or resolutions are hereby repealed; provided, that nothing herein shall be construed as repealing or modifying the condition of operation or conditions of site development accompanying those zoning approvals or use permits issued under previous zoning ordinances or resolutions; however, modification or repeals of these past conditions of approval may be accomplished as provided by this ordinance.

10-13-2 Except as otherwise provided herein with respect to non-conforming uses, all variances and exceptions heretofore granted by the respective Planning Commission or Board of Zoning Appeals shall remain in full force and effect and all terms, conditions and obligations imposed by the respective Planning Commissions, Board of Zoning Appeals, or governing authority shall remain in full force and effect and be binding. Prior ordinances shall remain in effect insofar as required for the initiation of any proceedings against violations thereof and for the prosecution of any violations heretofore commenced.

10-13-3 Notwithstanding anything contained herein and notwithstanding any zoning classification change, all previous special stipulations, conditions, restrictions, agreements and terms contained in prior zoning ordinances shall remain in full force and effect and shall not be amended by this document and shall carry forward to any new zoning classification and shall be binding upon said property. Prior ordinances shall remain in effect and shall remain as such special stipulations, conditions, restrictions, agreements and terms, even though the zoning category itself may be changes hereunder.

10-14 Appeals.

10-14-1 To ensure that the public is afforded due process in seeking judicial review of the exercise of zoning, administrative, or quasi-judicial powers, as guaranteed by Article I, Section I, Paragraphs IX and XII of the Georgia Constitution, the following procedures set forth the manner by which such powers may be reviewed by the Whitfield County Superior Court, which shall have exclusive jurisdiction thereof:

- (a) Zoning decisions, as described herein, being legislative in nature, shall be subject to direct constitutional challenge regarding the validity of maintaining the existing zoning upon the subject property, or the validity of conditions imposed, or an interim zoning category other than what was requested, in the Whitfield County Superior Court, pursuant to its original jurisdiction over declaratory judgments, as set forth in Chapter 4 of Title 9, and pursuant to its equity jurisdiction, as set forth in Title 23. Any such challenge shall seek *de novo* review by the Whitfield County Superior Court, wherein such review shall consider the entire record from below, and all competent evidence shall be admissible in the trial thereof, whether adduced in the local government process or not. The Court shall employ the presumption that a governmental zoning decision is valid and can be overcome substantively by a petitioner only by clear and convincing evidence that the zoning classification is a

significant detriment to the petitioner and is insubstantially related to the valid exercise of Police Powers of the local government to ensure public health, safety, morality or general welfare; or

- (b) Quasi-judicial decisions, as described herein, and zoning decisions in accordance with subparagraph (E) of paragraph (4) of **OCGA §36-66-3** shall be subject to appellate review by the Whitfield County Superior Court pursuant to its appellate jurisdiction from a lower judicatory body and shall be brought by way of a Petition for Review, as set forth in Title 5. Such matters shall be reviewed upon the Record below.

10-14-2 All such challenges or appeals shall be brought within thirty (30) days of the date shown on the written decision of the challenged or appealed action, or shall be deemed forfeited.

10-14-3 To ensure that appellants are not unnecessarily burdened by the review process as a mechanism of appeal, the following persons shall be authorized to take certain actions:

- (a) The Zoning Administrator or, if he or she shall be unavailable, the Whitfield County Administrator, shall have authority to approve or issue any form or certificate necessary to perfect the petition described in Title 5 for review of lower judicatory bodies and upon whom service of such petition may be effected or accepted on behalf of the lower judicatory board or agency, during normal business hours, at the regular offices of the local government; and
- (b) The Chairman of the Whitfield County Board of Commissioners or the Whitfield County Attorney shall have authority to accept service and upon whom service of an appeal or a quasi-judicial decision may be effected or accepted on behalf of the local governing authority, during normal business hours, at such persons' regular offices.

10-14-4 An appeal filed by an opponent of such action pursuant to this article shall stay all legal proceedings in furtherance of the action appealed from or challenged, unless the local government, officer, board, or agency from which or from whom the appeal or challenge is taken certifies that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property. In such circumstances, the applicant of the zoning decision or the quasi-judicial decision shall be a necessary party and shall be named as a defendant in the action and served in accordance

with the requirements of Title 5 or Title 9, as appropriate. The Whitfield County Superior Court shall thereafter resolve any issue regarding the appropriateness of a stay.

Article XI – Unified Board of Zoning Appeals

11-1 Appointment. The Unified Board of Zoning Appeals for the City of Dalton, City of Varnell, and for Whitfield County is hereby created.

11-1-1 The membership of the Board shall consist of five (5) members.

11-1-2 The City of Dalton and Whitfield County shall appoint two (2) members each, and the City of Varnell shall appoint one (1) member. Each Governing Authority shall appoint members with overlapping terms. One member each from Whitfield County and the City of Dalton shall be appointed initially to a five-year term. One member each from Whitfield County and the City of Dalton shall be appointed initially to a four-year term. The City of Varnell member shall be appointed initially to a three-year term. Thereafter, each appointment shall be for a five-year term. If the City of Varnell shall fail to appoint its member within sixty (60) days of notice of expiration of the term, then Whitfield County shall make such appointment for the applicable term.

11-1-3 A member of the Board shall be appointed to not more than two (2) consecutive full terms.

11-1-4 A member shall serve at the pleasure of the appointing Governing Authority and may be removed from the Board by a majority vote of the Governing Authority that appointed the member in the event of absenteeism at three (3) successive called meetings or for other reasons the Governing Authority may deem appropriate.

11-1-5 When a position becomes vacant before the end of a term, the Governing Authority that appointed the vacating member shall appoint a new member for the duration of the term remaining consistent with the original appointment.

11-2 Powers and Duties. The Board shall have the following powers and duties:

11-2-1 To hear and to decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any representative, officer, or agent of the applicable Governing Authority. Any such reversal shall be based upon reliable evidence adduced at the hearing, as provided for below, that such decision was erroneous under the facts as the Board finds them to be and under the Board's reasonable interpretation of the provisions of this Ordinance;

11-2-2 To authorize, upon request in specific cases, such variance from the regulations or requirements of this Ordinance, as the case may be, as will

not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in such individual case, result in unnecessary hardship, so that the spirit of the Ordinance shall be observed, public welfare and safety secured, and substantial justice done. In order to grant a variance from the requirements of this Ordinance, the Board must find that every one of the following conditions is met:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;
- (b) The application of this Ordinance to the particular piece of property would create an unnecessary hardship;
- (c) Such conditions are peculiar to the particular piece of property involved;
- (d) Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this Ordinance, provided, however, that no variance may be granted for the use of land or building or structure which is prohibited by this Ordinance or for an increase in the density allowed by this Ordinance.
- (e) The applicant must provide either formal or informal written evidence that the intended use, if a variance were granted, would be allowed, either by the Whitfield County Health Department or Dalton Utilities, as applicable, with respect to wastewater treatment.

11-3 **Procedures.** Any person having a legal interest in affected property, or his or her attorney-in-fact, shall have standing to file an appeal or variance request to the Board. The appeal or variance request shall be filed upon forms provided by the office of the Zoning Administrator. The office of the Zoning Administrator may charge a reasonable fee for the filing of such appeal or variance request, so as to defray the costs of advertisement and case preparation. Any such fee shall be paid with the filing of the notice of appeal or variance request.

11-3-1 The request for an appeal or variance shall be either hand delivered or mailed and must be received by the office of the Zoning Administrator on or before the 30th day following denial of a permit.

11-3-2 If the 30th day falls upon a Saturday, Sunday, or legal holiday, then the appeal or variance request shall be due on the next business day upon which the office of the Zoning Administrator is open to the public.

- 11-3-3 An appeal or variance request not received by the office of the Zoning Administrator on or before the 30th day following decision or determination shall be considered untimely and shall be automatically denied.
- 11-3-4 A timely filed appeal or variance request shall stay all legal proceedings in furtherance of the action from which the appeal is taken unless the Zoning Administrator or his/her agent shall certify by sworn affidavit, a copy of which shall be provided to the appellant, that a stay would cause imminent peril to life and/or property. In such circumstance, there shall be no stay unless ordered by any court of competent jurisdiction.
- 11-3-5 At least thirty (30) days but not more than forty-five (45) days prior to the public hearing date, a written notice shall be published in a newspaper of general circulation within the territorial boundaries of the County, setting forth the time, place, and purpose of the hearing. In addition, a sign shall be placed in a conspicuous location upon the lot or parcel for which a variance is sought, setting forth the time, place, and purpose of the public hearing. Acts of vandalism or natural occurrences limiting the effectiveness of such notice shall not invalidate any proceeding or action taken upon the proposed variance.
- 11-3-6 The appellant may represent himself or herself before the Board or may be represented by an attorney at law, a registered land surveyor, and/or other engineers or professionals, as he or she deems appropriate or helpful. The appellant may not be represented by a layperson unless such person shall be the appellant's attorney-in-fact.
- 11-3-7 The order of proceeding shall be as follows: An authorized representative of the office of the Zoning Administrator shall first present all of his or her reasons for the order, requirement, decision, or determination being appealed or requested for a variance. In presenting said reasons, such representative shall present all of the findings of fact and conclusions of law that form the bases for said decision. Then the individual appellant shall present his or her grounds for requesting a waiver or variance, calling witnesses if desired. Any member of the Board may question any witness at any point during the proceeding. Following all witnesses, either side may present rebuttal testimony. At the conclusion of the evidence, the Chair may give both sides an opportunity to summarize briefly if the Chair shall deem it helpful.
- 11-3-8 Hearings before the Board shall not be governed by the strict rules of evidence as in a court of law, though the Chair shall be empowered to disallow any evidence or testimony deemed by him or her to be irrelevant, speculative, or otherwise inappropriate to the issues being

heard. Any remark amounting to an attack upon the character or personal integrity of another individual or comment not actually supportable or comment in the form of an emotional outburst shall be non-germane to the purpose of the hearing and shall be ruled out of order by the Chair. The Chair shall have the authority to remove or censure any person who continues to make such comments or who is otherwise disruptive to the hearing process.

- 11-3-9 The deliberation and vote by the Board must be made in open session, either upon motion and second at the meeting at which the appeal or variance request is presented or at any subsequent regular or special called meeting of the Board. The Board shall make a decision not later than either thirty-five (35) days following the initial hearing upon any appeal or variance request or ninety (90) days from the time the application for Appeal or Variance is filed with the office of the Zoning Administrator or said request shall be deemed granted.

The appellant shall be notified in writing at the address provided in the appeal or variance request within fifteen (15) days of the decision of the Board.

- 11-3-10 Any appellant seeking judicial review of any decision of the Board shall proceed in accordance with Section 10-14(1)(b,) Appeals, hereinabove. There shall be no intermediate appeal to the applicable Governing Authority, or to any other administrative body.
- 11-3-11 Any appellant whose appeal or variance request shall be denied by the Board shall be required to wait not less than six (6) months before seeking an appeal or variance for the same real property and/or for the same or similar request. Such waiting period shall apply to any agent for appellant, co-owner with appellant, or successor in appellant's interest.

APPENDIX A PERMIT, APPLICATION, AND OTHER LAND DEVELOPMENT FEES FOR WHITFIELD COUNTY	
LAND DEVELOPMENT TYPE	FEE
REZONING REQUEST	\$200
SPECIAL USE PERMIT REQUEST	\$200
VARIANCE REQUEST	\$100
MAJOR SUBDIVISION PLAT REVIEW	\$100 + \$2 per lot
MINOR SUBDIVISION PLAT REVIEW	\$30 + \$1 per lot
EXEMPT SUBDIVISION PLAT REVIEW	\$20
LAND DISTURBANCE PERMIT	\$40 per disturbed acre
STORM WATER MANAGEMENT PLAN REVIEW	Fee to be determined by Plan Reviewer Fee paid by developer directly to Plan Reviewer
STORM WATER PERMIT	\$250

APPENDIX B

RECORD OF AMENDMENTS TO THE ORDINANCE

RECORD OF AMENDMENTS TO THE ORDINANCE

DATE OF CHANGE	AMENDMENTS
<i>May 9, 2016</i>	DEFINITIONS <i>Brewery/Distillery/Winery</i> <i>Brewpubs</i> <i>Dwelling, Loft</i> <i>Dwelling, Single Family Attached</i> <i>Dwelling, Urban</i> <i>Microbrewery</i> <i>Micro-distillery/winery</i> <i>Townhouse</i> <i>Chart 3.7</i> <i>3-8-6</i> <i>4-5-1</i> <i>4-6-17</i> <i>4-6-29</i> <i>4-6-30</i> <i>4-6-31</i> <i>Board of Zoning Appeals name change</i> <i>11-1</i> <i>Appendix C</i> <i>Permitted Use Table</i>
<i>November 14, 2016</i>	DEFINITIONS <i>Clinic</i> <i>Section 4-6-32</i> <i>Permitted Use Table</i>
<i>March 20, 2018</i>	<i>4-6-33</i> <i>Permitted Use Table</i>
<i>April 24, 2018</i>	DEFINITIONS <i>Transitional Housing</i> <i>Permitted Use Table</i>
<i>February 19, 2019</i>	DEFINITIONS <i>Boutique Hotel</i> <i>Permitted Use Table</i>
<i>March 11, 2019</i>	DEFINITIONS <i>Urban Dwelling</i>
<i>April 23, 2019</i>	<i>4-6-34</i> <i>Permitted Use Table</i>

RECORD OF AMENDMENTS TO THE ORDINANCE, Cont.

<i>DATE OF CHANGE</i>	<i>AMENDMENTS</i>
<i>August 10, 2020</i>	<i>DEFINITIONS</i> <i>Boutique Hotel</i> <i>Group Day Care Home</i> <i>Child Care Learning Center</i> <i>Adult Day Center</i> <i>Community Living Arrangement</i> <i>Group Home</i> <i>Child Caring Institution</i> <i>Health Department</i> <i>Personal Care Home</i> <i>Permitted Use Table</i>
<i>August 16, 2021</i>	<i>DEFINITIONS</i> <i>Small Animals</i> <i>Townhouse (Row House)</i> <i>4-1-1, 4-1-2, 4-1-7</i> <i>4-6-10</i> <i>Appendix E Section 1-7.9</i> <i>Permitted Use Table</i>
<i>May 9, 2022</i>	<i>Chart 3.7</i> <i>Permitted Use Table</i>
<i>June 12, 2023</i>	<i>Re-adoption of full UZO to comply with HB 1405</i>

APPENDIX C

RULES FOR WHITFIELD COUNTY HEALTH DEPARTMENT

Department of Public Health Chapter (511-3-1) Minimum Lot Sizes or Land Area Required.

(1) Lot Size

- (a) To provide for orderly and safe development utilizing on-site sewage management systems, minimum lot sizes have been established. These lot sizes permit flexibility to suit soil conditions, topography and ground or surface water limitations. The following shows the minimum lot sizes based on soil groups. Larger lot sizes may be required to meet the requirements of these rules in some circumstances.

		SOIL GROUPING*				
SLOPE CLASS	SLOPE %	1	2	3	4	5
AB	0-5	30,000	39,000	48,000	51,000	60,000
C	5-15	33,000	42,000	51,000	54,000	66,000
D	15-25	36,000	45,000	54,000	57,000	N/A
E	25-35	39,000	48,000	57,000	60,000	N/A

* Refer to Table CT-2 Georgia Department Human Resources Manual for On-site Sewage Management Systems.

- (b) Where on-site sewage management systems and community or public water is used, minimum lot sizes may be reduced by up to 50%.
- (c) The lot sizes in (1)(a) are for single family residences. The square footage for multi-family residences shall be increased by 25% per unit.

APPENDIX D

By-Laws of the Unified Board of Zoning Appeals

- a. At its first meeting of each calendar year, the Board shall elect a Chair and a Vice-Chair from its members, each of whom shall serve for one (1) year or until his or her successor is elected. The Vice-Chair shall preside at meetings in the absence of the Chair.
- b. The Chair or, in his or her absence, the Vice-Chair or other member designated to conduct an official meeting, may administer oaths and compel the attendance of witnesses.
- c. The Board may adopt such by-laws, rules or procedures as are appropriate and not in conflict with the Unified Zoning Ordinance.
- d. A meeting of the Board shall occur not more than forty-five (45) days from receipt by the Board of a properly completed appeal request. Notice of the meeting date shall be provided to the individual appellant not later than thirty (30) days prior to the meeting date by regular United States Mail at the address shown upon the appeal request or by e-mail if an e-mail address is provided by an appellant.
- e. A special called meeting of the Board may be called by any member of the Board or the Zoning Administrator upon not less than forty-eight (48) hours' written notice to the other Board members and to the Zoning Administrator, with a brief explanation of the purpose of the special called meeting. If a special called meeting involves an individual appellant and is called at the request of such appellant, such individual shall receive not less than twenty-four (24) hours' written notice as well.
- f. A quorum of at least three (3) members of the Board must be physically present to hear any appeal and to render a decision. A majority of the quorum present shall be entitled to take action either to grant a variance hereunder or to deny such a request, even if such majority of the quorum present does not constitute a majority of the entire membership of the Board.
- g. Voting on all matters shall be by voice or by show of hands, as determined by the Chair.
- h. The conduct of the meeting shall be governed by Robert's Rules of Order, or the latest revision thereof.
- i. All meetings of the Board shall comply fully with the Georgia Open Meetings Act and shall be open to the public.
- j. All meetings of the Board shall take place within Whitfield County, Georgia at a public location as may be designated by the Chair.

- k. All Board members attending a meeting shall vote on each matter placed before it. A member may abstain from voting only in the instance of a conflict of interest, the nature of which must be stated for the record.
- l. The Zoning Administrator or his or her designee shall serve as secretary to the Board. The secretary shall cause minutes of the Board's proceedings to be kept, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall cause records of the Board's examinations and other official actions to be kept, all of which shall be of public record.

APPENDIX E

UNIFIED ZONING PROCEDURES AND STANDARDS ORDINANCE

SECTION 1-1 PREAMBLE AND ENACTMENT CLAUSE:

For the purpose of ensuring that due process is afforded to the general public of Whitfield County, Georgia, when Whitfield County, Georgia, regulates the use of property through the exercise of zoning power, and pursuant to the authority and mandates of Chapter Sixty-Six of Title Thirty-Six of the Official Code of Georgia Annotated (O.C.G.A. & 36-66-1 et. seq.), Whitfield County, Georgia does hereby adopt, order, and enact into law this Ordinance.

SECTION 1-2 SHORT TITLE:

This Ordinance shall be known as and may be cited as "The Unified Zoning Procedure and Standards of Whitfield County ."

SECTION 1-3 DEFINITIONS:

As used within this Ordinance, the following terms shall have the definitions and meanings hereinafter set forth.

SECTION 1-3.1 "COMMISSION"

Commission shall mean the Dalton-Whitfield County Planning Commission.

SECTION 1-3.2 "BOARD"

Board shall mean the Unified Board of Zoning Appeals.

SECTION 1.3.3 "GOVERNING AUTHORITY"

Governing Authority means the group of officials responsible for governance of a governmental entity located within the territorial boundaries of Whitfield County.

SECTION 1-3.4 "GOVERNMENTAL ENTITY"

Governmental entity means the City of Dalton, the City of Varnell, the unincorporated areas of Whitfield County, as the case may be.

SECTION 1-3.5 "SPECIAL USE"

Special Use means a land use which is not allowed in a particular zoning district or in any zoning district because of the inherent and special characteristics of the land use in relationship to the land use of surrounding areas to the subject property.

SECTION 1-3.6 "LOCAL GOVERNMENT"

Local government means the governing authority which exercises zoning power within its territorial boundaries.

SECTION 1-3.7 "TERRITORIAL BOUNDARIES"

Territorial boundaries means the respective corporate boundaries of the governmental entities within Whitfield County and the unincorporated areas of Whitfield County, as the case may be.

SECTION 1-3.8 "ZONING"

Zoning means the power of the governing authority to provide within its respective territorial boundaries for the zoning or districting of property for various uses and the prohibition of other or different uses within such zones or districts and for the regulation of development and the improvement of real estate within such zones or districts in accordance with the uses of property for which such zones or districts were established.

SECTION 1-3.9 "ZONING ADMINISTRATOR"

The official designated by the governing authority to manage, administer and coordinate enforcement of the Zoning Ordinance on behalf of the governing authority.

SECTION 1-3.10 "ZONING DECISIONS"

Zoning decision means final action by the Governing Authority or Board which results in:

- (a) the adoption of a zoning ordinance;
- (b) the adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;
- (c) the adoption of an amendment to a zoning ordinance and/or zoning map which rezones property from one zoning classification to another;
- (d) the adoption of an ordinance annexing a land into the city with a specified zoning classification; or
- (e) the adoption of a Special Use.
- (f) the approval of a variance request.

SECTION 1-3.11 "ZONING ORDINANCE"

Zoning Ordinance means an ordinance of the governing authority establishing procedures and zones or districts within its respective territorial boundaries which regulate the uses and development standards of property within such zones or districts. The term also includes the Unified Zoning Map of Whitfield County (as hereinafter amended,) adopted in conjunction with the Unified Zoning Ordinance of Whitfield County, which shows the zones and districts and zoning classification of property therein.

SECTION 1-4 PROCEDURES FOR AMENDMENT TO THE ZONING ORDINANCE TEXT, APPLICATION FOR A SPECIAL USE, VARIANCE AND/OR AMENDMENT TO THE ZONING MAP:

The text of the Zoning Ordinance and the Zoning Map may be amended from time to time and Special Uses and Variances may be granted, subject to the following conditions and procedures contained herein:

SECTION 1-4.1

An amendment to the Zoning Ordinance and/or Zoning Map or application for Special Use or Variance shall not become effective unless initiated or requested by the governing authority, the property owner(s) of the particular parcel affected by the Zoning Ordinance and/or Zoning Map, or any individual who has written power of attorney of a property owner of the particular parcel affected by the Zoning Ordinance and/or Zoning Map, or a request signed by sixty percent (60%) of the property owners who own legal or equitable title to not less than sixty percent (60%) of the affected land requested to be rezoned or for which a Special Use is sought. All governing authorities that have adopted the Zoning Ordinance and this Ordinance shall confer not less than thirty (30) days before initiating an amendment to the text of the Zoning Ordinance or this Ordinance.

SECTION 1-4.2

Any proposed Amendment to the Zoning Ordinance and/or Zoning Map or application for a Special Use or Variance shall be initiated by an application submitted to the staff of the Zoning Administrator upon forms provided by the Zoning Administrator.

SECTION 1-4.3

Upon the submission of an application for an Amendment to the Zoning Ordinance and/or Zoning Map or application for Special Use or Variance, the person or persons submitting such application shall pay an administrative fee.

SECTION 1-5 PUBLIC NOTICE OF PROPOSED AMENDMENTS TO THE ZONING ORDINANCE AND/OR ZONING MAP AND/OR APPLICATION FOR A SPECIAL USE:

Public notice of hearings upon a proposed Amendment to the Zoning Ordinance and/or Zoning Map and/or proposed Special Use or Variance shall be given as hereinafter set forth.

SECTION 1-5.1

At least thirty (30) but not more than forty-five (45) days prior to the date set by the Dalton Whitfield Planning Commission for a public hearing, a written notice shall be published in a newspaper of general circulation within the territorial boundaries of Whitfield County, State of Georgia, setting forth the time, place, and purpose of the hearing.

SECTION 1-5.2

In addition to the requirements of subsection 1-5.1, if the proposed amendment to the Zoning Ordinance and/or Zoning Map or proposed Special Use calls for a zoning decision for the rezoning of a lot or parcel or for the granting of a Special Use thereon, and the proposed Amendment or proposed Special Use is initiated other than by the governmental authority, the following additional conditions apply:

- (i) The published notice shall include the general location of the lot or parcel and shall state the present zoning classification of the lot or parcel and the proposed zoning classification of the lot or parcel or proposed Special Use or Variance sought.
- (ii) A sign shall be placed by the Zoning Administrator in a conspicuous location upon the lot or parcel sought to be rezoned or for which a Special Use or Variance is sought, setting forth the time, place, and purpose of the public hearing, the present zoning classification of the lot or parcel, and the proposed zoning classification or proposed Special Use or Variance. Acts of vandalism or natural occurrences limiting the effectiveness of such notice shall not invalidate any proceeding or action taken upon the proposed amendment.
- (iii) For subject properties within the unincorporated area of Whitfield County, the Zoning Administrator shall reasonably attempt to notify each owner of a lot or parcel abutting and/or adjoining the subject property proposed for amendment to the Zoning Map or Special Use by mailing to each such adjoining owner a copy of the application for amendment to the Zoning Map or Special Use by regular United States mail. In determining the name, address and ownership of each abutting and/or adjoining lot or parcel entitled to notice, the Zoning Administrator or its designee may conclusively rely upon the records of the office of the Whitfield County Tax Assessor as of the date of the filing of the application for amendment to the Zoning Map or application for Special Use with the Zoning Administrator. The Zoning Administrator's office may place reasonable requirements upon the applicant to assist in obtaining accurate information concerning adjoining owners and shall require the applicant to reimburse actual mailing costs. The determination by the Zoning Administrator that the requirements of this Section 1-5.2(iii) have been satisfied shall be final.

SECTION 1-5.3

This subsection shall not apply to zoning decisions for the rezoning of property from a single-family residential use of property to a multifamily residential use of property when the rezoning is initiated by the owner or authorized agent of the owner of such property but shall apply only to such rezoning requests initiated by the Local Government.

- (1) Notwithstanding any other provisions of this chapter to the contrary, when a proposed zoning decision relates to an amendment of the zoning ordinance to revise one or more zoning classifications or definitions relating to single-family residential uses of property so as to authorize multifamily uses of property pursuant to such classification or definitions, or to grant blanket permission, under certain or all circumstances, for property owners to deviate from the existing zoning requirements of a single-family residential zoning, such zoning decision must be adopted in the following manner:
 - (i) The zoning decision shall be adopted at two regular meetings of the local government making the zoning decision, during a period of not less than 21 days apart; and

- (ii) Prior to the first meeting provided for in subparagraph (i) of this paragraph, at least two public hearing shall be held on the proposed action. Such public hearings shall be held at least three months and not more than nine months prior to the date of final action on the zoning decision. Furthermore, at least one of the public hearings must be held between the hours of 5:00 P.M. and 8:00 P.M. The hearings required by this paragraph shall be in addition to any hearing required under subsection 1-5.1 of this Code section. The local government shall give notice of such hearing by:
 - (a) Posting notice on each affected premises in the manner prescribed by subsection 1-5.2 of this Code section; provided, however, that when more than 500 parcels are affected, in which case posting notice is required every 500 feet in the affected area; and
 - (b) Publishing in a newspaper of general circulation within the territorial boundaries of the local government a notice of each hearing at least 15 days and not more than 45 days prior to the date of the hearing.

Both the posted notice and the published notice shall include a prominent statement that the proposed zoning decision relates to or will authorize multifamily uses or give blanket permission to the property owner to deviate from the zoning requirements of a single-family residential zoning of property in classification previously relating to single-family residential uses. The published notice shall be at least nine column inches in size and shall not be located in the classified advertising section of the newspaper. The notice shall state that a copy of the proposed amendment is on file in the office of the clerk or the recording office of the local government and in the office of the clerk of the superior court of the county of the legal situs of the local government for the purpose of examination and inspection by the public. The local government shall furnish anyone, upon written request, a copy of the proposed amendment, at no cost.

- (2) The provisions of paragraph (1) of this subsection shall also apply to any zoning decision that provide for the abolition of all single-family residential zoning classifications within the territorial boundaries of a local government or zoning decisions that result in the rezoning of all property zoned for single-family residential uses within the territorial boundaries of a local government to multifamily residential uses of property.

SECTION 1-6 PUBLIC HEARING FOR AMENDMENTS TO THE ZONING ORDINANCE AND/OR ZONING MAP AND FOR SPECIAL USE APPROVAL:

A public hearing upon any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use shall be provided for by the Dalton Whitfield Planning Commission. A public hearing upon any proposed Amendment to the Zoning Ordinance and/or Zoning Map of Whitfield County or Special Use properly initiated shall be conducted at the time and place as set forth in subsection 1-5.1. Any affected governmental authority may, at its discretion, join the Dalton Whitfield County Planning Commission during the public hearing process, such that both bodies simultaneously are present for such public hearing(s). The Chairman of the Dalton-Whitfield County Planning Commission shall conduct such public hearing(s), unless he or she shall designate that another person shall serve as Chair of the proceedings for such public hearing(s). The purpose of such public hearing(s) shall be to present to the public any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use and to receive comments thereon from the public. The governing authority shall consider the comments presented by the public at such public hearing(s) in making their respective decisions on the proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use in accordance with the standards as enumerated in Section 1-8 or 1-9 of this Ordinance, as applicable.

SECTION 1-7 CONDUCT AND PROCEDURES OF PUBLIC HEARINGS HELD BEFORE THE WHITFIELD COUNTY BOARD OF COMMISSIONERS AND THE DALTON-WHITFIELD COUNTY PLANNING COMMISSION:

The following policies and procedures shall govern the conduct of hearings before the Dalton-Whitfield County Planning Commission and the governmental authority if jointly convened (the joint hearing body is hereinafter, the "joint panel").

SECTION 1-7.1

The Chairman of the Dalton-Whitfield County Planning Commission or his or her designee (hereinafter, "the Chair") shall open the hearing(s) with an explanation of the purpose of the hearing(s) and a description of the general rules for the conduct of the hearing(s). The Chair may describe the authority and role of both the Dalton-Whitfield County Planning Commission, in providing a recommendation only, and of the governmental authority, for final action, in any zoning decision. An individual requesting to be heard upon a matter germane to the purpose of the hearing must be called and recognized by the Chair before addressing the joint panel. The Chair shall determine the germaneness of any proposed comment or presentation and is authorized to rule any individual or portion of the presentation out of order if not germane to the published purpose of the hearing. Any person recognized by the Chair, shall first state his name and residence address before proceeding with any comment, remarks, or presentation. Any person addressing the joint panel shall respond to questions from the Chair or anyone he or she shall recognize. The Chair may predetermine the length of any hearing, allotting equal time to proponents and opponents of any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use to the extent that there are both proponents and opponents who desire to be heard. The Chair shall be required to offer equal time to both the proponents and opponents of any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use and the fact that equal time is not in fact utilized by either shall not invalidate any proceeding or action taken upon any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use. The Chair, however, shall allow a minimum time period no less than ten (10) minutes per side for the presentation of data, evidence, and opinion.

SECTION 1-7.2

A proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use applications may be called in any order in the discretion of the Chair. The Chair shall confirm that proper public notice of the public hearing(s) in accordance with the provisions of this article has been given prior to taking any comments from the public.

SECTION 1-7.3

The Chair shall allow the person initiating the proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use, or his or her designee (hereinafter, "the applicant,") to present a description of the request and the reason(s) supporting it. The failure of the applicant to be present for the hearing when called shall result in an automatic continuance in the public hearing thereon until the next regular monthly meeting of the Dalton-Whitfield County Planning Commission, with public notice thereof to all in attendance. Additionally, the Zoning Administrator shall re-post the sign setting forth the new public hearing date. The failure of the applicant to be present for the hearing when called at the next meeting of the Dalton-Whitfield County Planning Commission shall result in an automatic negative decision from the governing authority when such request shall come before it.

SECTION 1-7.4

The Chair shall enter into the record after the presentation of the applicant any written comment, petition or similar written statement, photographs, or any other evidence submitted during the public hearing and such documents and/or exhibits shall be considered by the Dalton-Whitfield County Planning Commission, and subsequently by the governing authority in its analysis of the relevant zoning standards and factors as set forth in Section 1-8 or 1-9 of this Ordinance, as applicable.

SECTION 1-7.5

The Chair shall then give persons opposed to the proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use the opportunity to address the assembled panel.

SECTION 1-7.6

The Chair may then alternate the presentation of persons speaking in favor of and opposed to the proposal, beginning with the applicant, or the Chair may divide such presentation into blocks of time beginning with the proponents and thereafter move into the presentation of the opponents, if any. The Chair may poll the public assemblage at the hearing concerning its concurrence with the remarks of any speaker.

SECTION 1-7.7

Any remark amounting to an attack on the character or personal integrity of another individual or comment not actually supportable or comment in the form of emotional outburst shall be non-germane to the purpose of the hearing and may be ruled out of order. The Chair shall have the power to remove or censure any person who continues to make any remarks amounting to an attack on the character or personal integrity of another individual or any comment not factually supportable or any comment in the form of emotional outburst during the proceeding.

SECTION 1-7.8

Upon the conclusion of the presentation of persons, if any, opposing the proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use, the Chair may grant to the applicant an allotted time for rebuttal of any new issues raised by opponents, if any. The Chair may rule out of order the raising of any new issues in rebuttal unless he or she shall determine that the raising of such new issue is useful to the purpose of the hearing, in which case opponents, if any, shall be allotted an equal amount of time to address such issue(s).

SECTION 1-7.9

When the applicant/proponent(s) and opponents, if any, have been heard in accordance with the foregoing procedures, the Chair shall declare the public hearing closed. No further public hearing upon the proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use shall be permitted prior to the final zoning decision by the governing authority, unless the governing authority shall determine that such public hearing should be re-opened for the presentation of additional information, in which case the same must be advertised in conformity with subsection 1-5.1. The application for zoning amendment or conditional use shall not be withdrawn once the public hearing thereon commences.

SECTION 1-8 ZONING STANDARDS:

Exercise of zoning power by the governing authority shall constitute an effort to balance the interests of Whitfield County in promoting the public health, safety, morality, and/or general welfare against the right of lot or parcel owners to the unrestricted use of their lot or parcel. The following factors are determined to be relevant in balancing the interest and promoting the public health, safety, morality, and/or general welfare against the right to unrestricted use of lot or parcel:

SECTION 1-8.1 "FACTORS"

SECTION 1-8.1(A)

Whether the proposed amendment would allow a use that is generally suitable for the site compared to other possible uses and whether the proposed change is consistent with the established land use pattern and zoning of adjacent and nearby properties.

SECTION 1-8.1(B)

Whether the proposed amendment would adversely affect the economic value or the uses of adjacent and nearby properties.

SECTION 1-8.1(C)

Whether the subject property has a reasonable economic use as currently zoned, considering the suitability of the subject property for the proposed zoned uses.

SECTION 1-8.1(D)

Whether there is relative gain to the health, safety, morals, or general welfare of the public as compared to any hardship imposed upon the individual owner under the existing zoning.

SECTION 1-8.1(E)

Whether the proposed amendment, if adopted or approved, would result in a use which would or could cause an excessive or burdensome use of existing streets, schools, sewers, water resources, police and fire protection, or other utilities, as contrasted with the impact under the existing zoning.

SECTION 1-8.1(F)

Whether the property sought to be rezoned (or annexed) is in conformity with the policy and intent of the adopted joint comprehensive plan or equivalent. If not, has the plan already been amended, officially or unofficially, by the development of uses which are contrary to the plan recommendation, and if the plan has been amended, does this rezoning or annexation request allow uses which are compatible to the existing uses in the vicinity.

SECTION 1-8.1(G)

Whether there are any other conditions or transitional patterns affecting the use and development of the property to be rezoned or annexed, which give grounds for approval or disapproval of the proposed zoning proposal. Whether the proposed zoning change constitutes an "entering wedge" and is a deterrent to the use, improvement, or development of adjacent property within the surrounding zone districts or would create an isolated, unrelated district (spot zone) as interpreted by current Georgia law.

SECTION 1-8.1(H)

Whether the subject property, as currently zoned, is vacant and undeveloped for a long period of time, considered in the context of land development in the vicinity or whether there are environmental or cultural factors, like steep slopes, flood plain, storm water, or historical issues, that influence the development of the subject property under any zoning designation.

SECTION 1-8.2

The governing authority shall consider any proposed zoning amendment properly initiated in light of the factors set forth in section 1-8.1. In evaluating the factors set forth in 1-8.1, it shall be the policy of the governing authority to exercise its zoning power in conformity with the policy intent of the Joint Comprehensive Plan for Whitfield County and the cities of Dalton and Varnell insofar as that plan is current in its application to the specific subject lot or parcel sought to be rezoned. It is further the policy of the governing authority to exercise the zoning power for the purposes of assuring the compatibility of use of adjacent and nearby properties and the preservation of the economic value of adjacent, abutting, and nearby properties while enabling a reasonable use of all lot or parcel within the territorial boundaries of the governmental entity.

SECTION 1-9 SPECIAL USE STANDARDS: As set forth in Section 10-10-1 of the Unified Zoning Ordinance, a request for a Special Use shall be duly evaluated pursuant to the following factors, which are intended to be objective in character:

SECTION 1-9.1 "FACTORS"**SECTION 1-9.1(A)**

Whether the proposed use would impact upon anticipated traffic volume and/or traffic flow and/or pedestrian safety within the vicinity;

SECTION 1-9.1(B)

Whether the hours and manner of operation of the proposed use would impact upon nearby properties and uses within the vicinity;

SECTION 1-9.1(C)

Whether parking, loading/service, and/or refuse areas of the proposed use would impact upon nearby properties and uses within the vicinity, particularly with regard to noise, light, glare, smoke, and/or odor;

SECTION 1-9.1(D)

Whether the height, size, and/or location of any proposed structure is compatible with the height, size, and/or location of structure(s) upon nearby properties and uses within the vicinity;

SECTION 1-9.1(E)

Whether the size of the lot or parcel is sufficiently large for the proposed use, and for reasonable growth opportunity of such proposed use, within the parameters of the Zoning Ordinance and within the probable limits of the soils thereon if an on-site sewage system is to be installed;

SECTION 1-9.1(F)

Whether the benefits of and need for the proposed use are, on balance, greater than reasonable anticipated depreciating effects and/or damages, if any, to nearby properties within the vicinity.

SECTION 1-10 OFFICIAL ACTION BY THE GOVERNING AUTHORITY:

Consideration of any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use properly initiated and subsequent to the public hearing(s) shall be as follows:

SECTION 1-10.1

After the close of all the public hearings, the Dalton-Whitfield County Planning Commission shall make a recommendation, which shall later be reduced to writing, to the applicable governmental authority, as to the advisability of adoption of any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use, and which shall be based upon the "Factors" set forth in Section 1-8 or 1-9, as applicable.

SECTION 1-10.2

If consideration of any proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use shall be tabled by the Dalton-Whitfield County Planning Commission, it shall be reconsidered not later than its next regular monthly meeting. Under any circumstances, however, if no recommendation shall be forthcoming within sixty (60) days of the date upon which the advertisement of the public hearing referenced in Section 1-5.1 hereinabove, it shall be deemed that the recommendation of the Dalton-Whitfield County Planning Commission shall have been favorable to the request.

SECTION 1-10.3

The authority of the Dalton-Whitfield County Planning Commission regarding any zoning decision shall be advisory only. However, the governing authority shall await either such recommendation or the sixty (60) days referenced in Section 1-10.2 hereinabove prior to taking final action upon any such proposed amendment to the Zoning Ordinance and/or Zoning Map or Special Use.

SECTION 1-10.4

If the governing authority shall take official action defeating a proposed amendment to the Zoning Map which seeks to rezone a lot or parcel or Special Use, the same property may not be considered again for rezoning or for a Special Use until the expiration of twelve (12) months from the date of the official action of the governing authority. This subsection shall specifically include, but not be limited to, an automatic denial due to the failure of the applicant to appear at the public hearing when called.

SECTION 1-11 ANNEXATION OF UNINCORPORATED ISLANDS BY MUNICIPALITIES.

In order to accommodate the timing requirements of state law concerning the annexation of unincorporated islands, the following procedure will be used for such annexations.

SECTION 1-11.1

Prior submission to commission not required. Annexations of unincorporated islands, or any part thereof, to a governmental entity may be accomplished by the mayor and council without prior submission to the commission. Not less than one public hearing shall be held by the governing entity prior to the enactment of an ordinance to annex an unincorporated island or any portion thereof.

SECTION 1-11.2

Notice of public hearing and notice of intent to annex an unincorporated island. A public notice of the date, time, place and purpose of any public hearing precedent to the enactment of an ordinance to annex an unincorporated island or any portion thereof shall be given not less than 30 days but not more than 45 days prior to any public hearing upon the subject of the annexation of an unincorporated island or any portion thereof. Such public notice shall be published in the legal organ for Whitfield County, Georgia.

SECTION 1-11.3

Conduct and procedure for public hearing held precedent to the enactment of an ordinance to annex an unincorporated island or any portion thereof. Any public hearing shall be called by the mayor or his designee (hereinafter the term "mayor" shall include his designee). Any person in attendance who requests to be heard concerning any matter shall be heard, subject to the rules set forth herein, after the call to order of the public hearing. The mayor shall preside at the public hearing and may recognize persons requesting to be heard. The mayor shall open any public hearing with an explanation of the purpose for the public hearing and a description of the general rules in conducting the public hearing. Any individual requesting to be heard on a matter germane to the purpose of the public hearing must be recognized by the mayor before addressing the governing authority. Whether any comment or presentation before the governing authority is germane to the public hearing shall be the sole determination of the mayor or his designee. The mayor is authorized to rule any person or any portion of any person's presentation out of order and not germane to the published purpose for the public hearing. Any person, upon being recognized by the mayor will give his/her name and residence address before making any comment, remark, or presentation. Any person recognized shall respond to questions from the governing authority. The mayor may pre-determine the length of any hearing and allot equal time to proponents and opponents of the proposed annexation and rezoning. The fact that equal time is not utilized by either the proponents or opponents shall not invalidate any proceeding or final action taken by the governing authority. Provided, however, the proponents of annexation and the opponents of annexation shall be allowed a minimum aggregate time period of not less than ten minutes per side for presentation of data, evidence, or opinion. Any person may present written comments concerning the proposed annexation to the mayor and council by submittal to the city clerk not later than the close of the public hearing. Written comments submitted to the governing authority shall become public records available for inspection upon proper request. The city clerk will present all written comments to the governing authority for its consideration prior to final action by the governing authority on the proposed annexation.

SECTION 1-11.4

Enactment of an ordinance to annex an unincorporated island or any portion thereof. The governing authority will consider the enactment of an ordinance to annex an unincorporated island or any portion thereof at the next regular meeting of the governing authority following the public hearing referred to above. The governing authority may review, or have reviewed by staff, any modifications to the proposed annexation prepared as a consequence of the public hearing or public comments. In enacting any proposed ordinance to annex an unincorporated island or any portion thereof, the governing authority shall apply the standards and factors enumerated in section 1-10 of this ordinance, as well as the Joint Comprehensive Plan for Whitfield County and the cities of Dalton and Varnell.

SECTION 1-12 DISTRIBUTION:

Copies of this Ordinance shall be printed and copies thereof made available for distribution to the general public in the office of the Zoning Administrator. Distribution to the general public shall be upon request of a member of the general public, who shall be entitled to one copy. The Zoning Administrator is authorized to print copies of the zoning procedures standards and Amendments

thereto from time to time for the purposes compliance requirements of "The Zoning Procedure Law," (Title Thirty-Six, Chapter Sixty-Six of the Official Code of Georgia Annotated).

2. The currently existing City of Dalton Zoning Map, including all conditions, special use permits, and previous actions shall remain in full force and effect and shall not be repealed hereby.
3. These amendments shall become effective immediately following enactment by the Mayor and Council and after its publication in two public places therein of the City of Dalton, Georgia, the public health, safety, and welfare requiring it.
4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.
5. It is hereby declared to be the intention of the Mayor and Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and if any section, paragraph, sentence, clause, or phrase shall be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases herein.

SO ORDAINED, this _____ day of June, 2023.

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 Council member _____, second by Council member _____, and upon the question the vote is _____ AYES, _____ NAYS and the Ordinance DOES/DOES NOT pass.

By: _____
Mayor

ATTEST:

City Clerk

A true copy of the foregoing Ordinance has been published in two public places in the City of Dalton for five (5) consecutive days following its passage and its effective date is thereby the _____ day of _____, 2023.

City of Dalton

City Clerk



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: June 19, 2023

Agenda Item: General Construction Agreement with The Surface Masters, Inc. for Resurfacing of the Lakeshore Park Track

Department: Recreation

Requested By: Caitlin Sharpe

Reviewed/Approved by City Attorney? Yes

Cost: \$212,800.00

Funding Source if Not in Budget 2022 CIP

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

This request is to approve the General Construction Agreement with The Surface Masters, Inc. for the resurfacing of the Lakeshore Park track. This is an approved 2022 capital improvements project. The total cost of the project will be \$212,800.00.

CITY OF DALTON
PARKS AND RECREATION DEPARTMENT
GENERAL CONSTRUCTION AGREEMENT

THIS GENERAL CONSTRUCTION AGREEMENT is made and entered into on this _____ by and between the City of Dalton, a Georgia Municipal Corporation, hereinafter referred to as "CITY", and The Surface Masters, Inc., hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR desires to construct the project to the CITY's specifications; and

WITNESSETH: That the parties hereto for the considerations hereinafter mentioned covenant and agree as follows:

1. CONSTRUCTION SITE: The real property upon which the project shall be constructed is located on the project site located at 1212 Dennard Drive, Dalton, GA, 30736 hereinafter "subject property".

2. USE OF PROPERTY: CONTRACTOR shall have use and possession of the subject property to complete the project: The subject property shall be occupied and used in conformity with all laws, statutes, ordinances, rules, restrictions, and orders of any federal, state or municipal governments or agencies thereof having jurisdiction over the use of the subject property. The subject property shall be used for the construction of the subject project and related storage only and not for any other commercial operations. The storage of flammable liquids, gases, fuels, lubricating or waste oil, acids, paint, and solvents or, other dangerous materials is prohibited except that such materials may be kept and stored in proper receptacles and secured from access by the public at the subject property during construction as may be necessary for use in the operation of the CONTRACTOR for completion of the subject project. Any such substances shall be delivered in such amount and stored and used only as approved by the CITY and in accordance with applicable federal, state, and local statutes, ordinances, rules and regulations in force during the term of this Agreement.

3. PROJECT: The CONTRACTOR shall complete the project and perform the services specified in the Request for Seal Competitive Proposals – "Lakeshore Park Asphalt Track Resurfacing" which is included herein by reference and the specifications provided in the CONTRACTOR's proposal attached hereto as Exhibit "A", hereinbefore and after "the project".

4. DATE OF COMMENCEMENT: The CONTRACTOR shall commence work on the project within ten (10) days after receipt of the dated Notice to Proceed.

5. DATE OF COMPLETION: The CONTRACTOR shall complete the project on or before September 1, 2023.

6. CONTRACT SUM: The CITY shall pay to CONTRACTOR the unit price contract sum of \$ 212,800 Dollars for the complete performance of the project and terms of this Agreement. In addition, CITY shall pay to CONTRACTOR for any additional work performed pursuant to any mutually agreed to change orders. All change orders shall be in writing and signed by both parties.

7. CONTRACT PENALTY: The CONTRACTOR shall pay to the CITY the amount of \$ 100.00 Dollars per calendar day for unexcused delay in completion of the project past the date of completion.

8. PAYMENT: The CITY shall pay the contract sum to CONTRACTOR upon complete performance of the project and terms of this Agreement. CONTRACTOR shall provide to CITY an Affidavit from the CONTRACTOR stating the CONTRACTOR has fully performed all terms of the Agreement. Final payment shall be made no later than 30 days after receipt of said Affidavit. Upon completion of any additional services, said additional services shall be paid within 30 days of receipt of invoice from CONTRACTOR. Payment shall be made via electronic funds transfer (EFT).

9. SURRENDER OF subject property: CONTRACTOR shall, no later than 5 days after completion of the project, surrender possession of the subject property and remove all vehicles, equipment, supplies, construction debris, waste and refuse from the subject property. CONTRACTOR shall reimburse CITY for the cost of removal of any such items remaining on the subject property after 5 days. CITY may have any such items stored at CONTRACTOR'S risk and expense. All personal property of CONTRACTOR, or SUBCONTRACTOR, remaining on the subject property or in possession of the CITY after 30 days shall be deemed abandoned by the CONTRACTOR, or the SUBCONTRACTOR, and may be disposed of by CITY without liability to CONTRACTOR, or SUBCONTRACTOR. All permanent improvements to the subject property shall become the Subject property of the CITY.

10. CITY COVENANTS: CITY covenants and agrees:

- (a) to provide all available information, data, reports, records and maps of or to which CITY has possession or control which are necessary for CONTRACTOR to perform the scope of services provided for herein;
- (b) to provide reasonable assistance and cooperation to CONTRACTOR in obtaining any information or documentation which are necessary for CONTRACTOR to perform the scope of services provided for herein;

- (c) to designate a representative authorized to act on the CITY's behalf with respect to the project. Unless otherwise provided, said CITY representative shall be the Director of Parks and Recreation Department;
- (d) to permit access to the subject property and obtain permission to access necessary private property for CONTRACTOR to complete the scope of services;
- (e) to provide reasonable assistance to CONTRACTOR in applying for and obtaining any necessary Federal, State or local government permits for the scope of services;

11. CONTRACTOR COVENANTS: CONTRACTOR covenants and agrees:

- (a) to perform the scope of services in a skilled, qualified, and professional manner, using that degree of care and skill ordinarily exercised by contractors practicing in the same or similar field;
- (b) to use only employees and subcontractors qualified to complete the work with sufficient experience on same or substantially similar projects;
- (c) to use only properly licensed employees or subcontractors for any work requiring a specialty, occupational, or professional license issued by the State of Georgia;
- (d) to designate a representative authorized to act on the CONTRACTOR's behalf with respect to the project.
- (e) to use the subject property in a safe, careful and lawful manner;
- (f) to promptly report in writing to CITY any unsafe or defective condition of the subject property and any adverse site condition, which shall include but not be limited to limited access, extremely dense vegetation, subsurface conditions, damaged property, or existing utilities, that may adversely affect CONTRACTOR's ability to complete the scope of services or other terms of this Agreement;
- (g) to promptly report in writing to CITY any damage to or injuries sustained on the subject property and to promptly repair any damage to the subject property which is made necessary by any act of CONTRACTOR, its employees, agents, subcontractors, or invitees;
- (h) to keep the subject property in a clean and orderly condition and to remove any personal property of CONTRACTOR upon completion of the project, and require all SUBCONTRACTOR's to do the same unless otherwise permitted by the

CITY;

- (i) to perform all work on the project in a good and workmanlike manner, free from faults and defects, and in conformance with the terms of this Agreement;
- (j) to determine the appropriate method, details and means of performing the scope of services provided by this Agreement;
- (k) to exercise the ordinary standard of care in complying with the laws, codes, and regulations applicable to the CONTRACTOR's services;
- (l) to exercise diligence and to complete delivery of the scope of services in a timely manner consistent with the exercise of due care;
- (m) to attend meetings to make presentations or to otherwise review the progress of the work as set out in the scope of services at the reasonable request of the CITY;
- (n) to prepare and submit to the CITY reports required by the scope of services or upon the written request of the CITY.
- (o) to keep the subject property in a clean and orderly condition and to protect from loss, damage or theft any supplies or materials necessary for completion of the project;
- (p) to permit CITY and its employees and agents access to the subject property at all reasonable times for the purposes of making repairs, inspecting the subject property, and inspecting the progress of the project;
- (q) to use only new materials appropriate for completion of the project;

12. INDEMNITY: CONTRACTOR shall indemnify CITY from and hold CITY harmless against all claims, demands, and judgments for loss, damage, or injury to person or property, resulting from or incurring by reason of CONTRACTOR'S use and occupancy or non-occupancy of the subject property or by the negligence or willful acts of CONTRACTOR, its agents, officers, employees, invitees or licensees and from all expenses incurred by CITY as a result thereof including, without limitation, reasonable attorneys' fees and expenses and court costs, except if arising from or caused by the sole fault or negligence of CITY or any of CITY's employees, agents or representatives acting on behalf of the CITY.

Additionally, pursuant to State law, CITY does not indemnify or hold harmless CONTRACTOR for any claims arising from the actions or omissions of CONTRACTOR or any third party.

Additionally, CONTRACTOR agrees that all personal property that may be at any time at the subject property shall be at CONTRACTOR's sole risk or at the risk of those claiming

through CONTRACTOR and that CITY shall not be liable for any damage to or loss of such personal Subject property except if arising from or caused by the sole fault or negligence of CITY.

13. INSURANCE: CONTRACTOR agrees to carry at its own expense through the term of this Agreement the types and amounts of insurance required to maintain status as a Vendor of the City of Dalton. CONTRACTOR shall provide CITY with copies or evidence of such insurance coverage prior to the commencement date of the Agreement. Such insurance policies shall name CITY as an additional insured and shall be issued by such insurance companies and on such forms as may be approved by CITY. Said insurance shall include the following:

- (a) General Liability Coverage - General Liability policy with a minimum limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (b) Workers' Compensation Coverage – Workers' Compensation policy with the following minimum limits:
 - (1) Workers' Compensation statutory limits;
 - (2) Employer's Liability:
 - a. Bodily Injury by Accident - \$100,000.00
 - b. Bodily Injury by Disease - \$500,000.00 policy limit
 - c. Bodily Injury by Disease - \$100,000.00 each employee.

CONTRACTOR shall complete the Workers' Compensation Insurance Affidavit of the City of Dalton to determine if any exemption to Workers' Compensation Insurance is applicable.

- (c) Auto Liability Coverage – Auto Liability policy with a combined single limit of \$1,000,000.00 per occurrence for bodily injury and property damage, if motor vehicle is used in performance of scope of services. Comprehensive form covering all owned, non-owned, and hired vehicles.
- (d) Property Coverage or Builder's Risk Coverage - Property Coverage or Builder's Risk policy with a minimum equal to or greater than the existing building value for renovations, equal to or greater than the total cost of construction per contract for new construction, and equal to or greater than the existing building value being renovated plus the total cost of new construction per contract for mixed renovation and new construction.

14. ASSIGNMENT: CONTRACTOR may not assign all or any portion of the Agreement without the prior written permission of CITY.

15. SUBCONTRACTORS: The CONTRACTOR shall provide written notice to CITY of CONTRACTOR'S intent to use a subcontractor for any portion of the project. CITY shall be entitled to reject any subcontractor it deems not qualified. Any subcontractor approved for work on the project shall abide by any and all terms of this Agreement.

16. NON-WAIVER OF DEFAULT: The failure or delay by either party hereto to enforce or exercise at any time any of the rights or remedies or other provisions of this Agreement shall nor be construed to be a waiver thereof, not affect the validity of any part of this Agreement or the right of either party thereafter to enforce each and every such right or remedy or other provision. No waiver of any default or breach of the Agreement shall be held to be a waiver of any other default and breach.

17. NOTICES: Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if reduced in writing and delivered in person or mailed by certified mail, return receipt requested, postage prepaid to the party who is to receive such notice.

Such notice to CITY shall be mailed to: City of Dalton
ATTN: City Administrator/Andrew Parker
300 W Waugh Street
P.O. Box 1205
Dalton, GA 30722-1205

Such notice to CONTRACTOR shall be mailed to: The Surface Master, Inc.
Attn: Justin Meier
1393 Cobb Industrial Way
Marietta, GA, 30066

When so mailed, the notice shall be deemed to have been given as of the third (3rd) day after the date it was mailed. The addresses may be changed by giving written notice thereof to the other party.

18. CONTRACT DOCUMENTS: This Agreement shall include the advertisement or invitation to sealed competitive proposals, Instructions to proposers, sample forms, the Addenda relating to bidding and proposal requirements, and any other written information provided by the CITY in anticipation of receiving bids or proposals, if any, except as specifically excluded herein, and the CONTRACTOR'S bid or proposal. The terms of this Agreement shall supersede any terms in the above-referenced documents in direct conflict with the terms of this Agreement.

Additionally, the Contract Documents and all drawings, plans, specifications and other related construction or service-related documents shall be the sole property of the CITY. The CONTRACTOR shall be permitted to retain copies thereof for its records and for its future professional services.

Additionally, CITY shall be authorized to rely upon all documents, whether in hard copy or electronic format, provided by CONTRACTOR. Any changes to the material terms of any document shall be clearly identified and noted to CITY.

19. VENDOR: CONTRACTOR shall register and remain active as a Vendor of the CITY by completing the City of Dalton Vendor Packet and fully comply with any and all requirements of said Vendor.

20. TERMINATION OF CONTRACT: In the event that CONTRACTOR defaults or neglects to perform work on the project in accordance with the terms of this Agreement, CITY may terminate this Agreement by providing written notice of termination. Prior to termination of this Agreement, CITY shall provide written notice to CONTRACTOR of any default and provide CONTRACTOR ten (10) days to correct said default or deficiency.

21. WARRANTY: CONTRACTOR shall provide to CITY a general warranty for labor and materials and guarantees that the work on the project it performs shall be free from any defects in workmanship and materials for a period of two 1 year from the date of completion in addition to any additional warranty provided in Section 3 - Project description. Within ten days of completion of the terms of the Agreement, CONTRACTOR shall provide to CITY all original warranty documents from any third party.

22. BONDS: CONTRACTOR shall provide and maintain the types and amounts of bonds as required by the City of Dalton Bid Package for Request for Seal Competitive Proposals – “Lakeshore Park Asphalt Track Resurfacing,” including but not limited to a Performance Bond, in the amount proscribed by law, which is equal to the full value of the Contract Sum and must be increased proportionate to any increase in the contracted sum.

23. MISCELLANEOUS PROVISIONS:

(a) Governing Law; Venue. This Agreement is being executed and delivered in the State of Georgia and shall be construed and enforced in accordance with the laws of that state. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive any and all objections or defenses thereto.

(b) Successors and Assigns. This Agreement and the respective rights and obligations of the parties hereto shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. CONTRACTOR shall not assign its rights or obligations under this Agreement without the prior written consent of the CITY.

(c) Severability of Invalid Provisions. If any provision of this Agreement shall be deemed invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

(d) Complete Agreement; Amendments. This Agreement constitutes the entire agreement between the parties hereto; it supersedes all previous understandings and agreements between the parties, if any, and no oral or implied representation or understanding shall vary its terms, and it may not be amended except by written instrument executed by both parties hereto.

(e) Remedies Cumulative. All rights, powers, and privileges conferred hereunder upon

the parties hereto shall be cumulative, but not restrictive to those given by law.

(f) **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement in each and all of its provisions.

(g) **Attorney Fees.** In the event the CITY must enforce the terms of this Agreement by filing a civil action against CONTRACTOR, then CONTRACTOR shall pay to CITY an amount equal to fifteen percent (15%) of the contract sum as attorneys' fees, if the CITY is the prevailing party.

(h) **Confidentiality.** All information and documentation regarding the project and the CONTRACTOR's services shall be maintained in confidence and shall not be disclosed to any third party by CONTRACTOR, without CITY's written authorization, except as may be required by the Georgia Open Records Act. CONTRACTOR shall promptly notify CITY of any third party request for said information or documentation prior to any disclosure. CITY agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by CONTRACTOR pertaining to this Agreement shall be considered confidential and proprietary, and shall not be disclosed to any third party, except as may be required by the Georgia Open Records Act.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

(Signatures on the NEXT page.)

CONTRACTOR:

CONTRACTOR:

By: _____

Title: _____

CITY:

CITY OF DALTON, GEORGIA

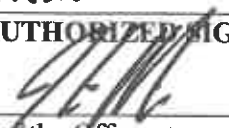
By: _____
MAYOR

Attest: _____
CITY CLERK

Exhibit “A”

The City of Dalton
Parks and Recreation Department
REQUEST FOR SEALED COMPETITIVE PROPOSAL – advertised on 03/13/2022
Sealed Envelope shall be marked with the following information:

“Lakeshore Asphalt Track Resurfacing”

SCHEDULE OF EVENTS	
RFP Conference and site visit – 1212 DENNARD DRIVE, DALTON, GEORGIA, 30721	2:00 PM March 27, 2023
Deadline for requests for clarifications and questions. Any possible exceptions to the bid specification and/or terms and conditions should be addressed during this phase. These requests will be answered in an addendum and must be emailed to: csharpe@daltonga.gov AND mhendricks@daltonga.gov	3:00 PM April 17th
Sealed competitive proposals will be accepted until the due date and time. Any late submittals received will not be considered. Proposals must be submitted to The City of Dalton Finance Department located at 300 West Waugh Street, Dalton, Georgia, 30720.	2:00 PM April 21st, 2023
THIS FORM MUST BE SIGNED AND SUBMITTED TO BE CONSIDERED FOR AWARD	
COMPANY NAME: <i>The Surface Masters, Inc.</i>	DATE: <i>4/20/23</i>
MAILING ADDRESS: <i>1393 Cobb Industrial Way</i>	PHONE: <i>770-250-6392</i>
CITY: <i>Marietta</i>	FAX: <i>770-674-6086</i>
STATE: <i>GA</i> ZIP: <i>30066</i>	SSN OR FEDERAL TAX ID: <i>27-2212631</i>
EMAIL: <i>justin.meier@thesurfacemasters.com</i>	TITLE OF AUTHORIZED REPRESENTATIVE: <i>President</i>
PRINTED NAME: <i>Justin Meier</i>	AUTHORIZED SIGNATURE: 

*The posting of additional addenda may be required, and it is the responsibility of the Offeror to ensure that they review the City's website for any additional addenda, and that they submit an acknowledgement of all applicable addenda (on the included form) with their solicitation. Offerors should not expect to be individually notified by the City of Dalton.

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DALTON SOCCER COMPLEX PROJECT

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NAME OF PROJECT: “Lakeshore Asphalt Track Resurfacing”

NAME OF OWNER: THE CITY OF DALTON, GEORGIA

THE CITY OF DALTON (the “City”), pursuant to the provisions of O.C.G.A. § 36-91-1, *et. seq.* herein seeks sealed competitive Proposals from Contractors for the construction of the: **“Lakeshore Asphalt Track Resurfacing”**, located at 1212 DENNARD DRIVE, DALTON, GEORGIA, 30721.

The requirements for the construction of the Project, and the duties and responsibilities of the contractor whose Proposal is accepted, are set forth in the Request for Proposals issued by the City. Contractors interested in submitting Proposals must obtain Request for Proposals (RFP) on City’s website <https://www.daltonga.gov/rfps>.

Caitlin Sharpe, csharpe@daltonga.gov and Michael Hendrick, mhendricks@daltonga.gov will be the contact persons for questions. **All Proposers are required to email Caitlin Sharpe to be added to the Plan Holders list.**

Included in the RFP packet will be Instructions to Proposers, and Proposal Form, Price which must be fully completed and submitted along with Bid Bond and Executed E-Verify affidavit. Proposals not including executed E-verify affidavit will be automatically rejected. The Contract Documents require, among other things, the furnishing of all materials, labor, and equipment for the construction of the Project. The City reserves the right to make available other relevant documents or information concerning the Project.

Any Proposal submitted in response to this Request should comply strictly with all requirements set forth in the Instructions to Proposers. Any such Proposal must contain the completed Proposal Form setting forth the contractor’s proposed lump sum contract price for the full and complete construction of the Project in conformity with all requirements of this RFP. When a proposal lump sum exceeds \$100,000 then the proposal must include a fully executed Bid Bond in the amount of five percent (5%) of the proposed lump sum contract price and performance bonds.

Any Contractor that intends to submit a proposal must complete the City of Dalton Vendor Packet and be an approved active Vendor with the City. This includes meeting the insurance requirements listed in the Vendor packet. Applications can be obtained from the Finance Department or online at <https://www.daltonga.gov/finance/page/vendor-packets>

For any work requiring a specialty or professional license, only licensed subcontractors may be submitted for consideration, and copies of all applicable licenses shall be attached to the Contractor’s proposal.

In evaluating Proposals, the City may seek additional information from any contractor concerning such contractor's Proposal or its qualifications to construct the Project. The City reserves the right to short-list and interview Contractors to obtain further information on the proposed products or qualifications.

The City intends to award the construction contract to the responsible and responsive contractor whose Proposal is determined in writing to be the most advantageous according to the following evaluation factors which are listed in their order of relative importance:

1. Proposed Price- 25
2. Project Timeline - 25
3. Completeness of proposal- 25
4. Reputation and reliability of contractor -25

All Proposals must include the label on the last page of this document on the front of their RFP package. This label must be affixed to the outside of the envelope or package. Failure to attach the label may result in your Proposal being opened in error or not routed to the proper location for consideration. No RFP will be accepted after the date and time specified. The document should be received by the City of Dalton Finance Department located at 300 West Waugh Street, Dalton, Georgia 30720 no later than April 21, 2023 at 2 pm.

A total of 2 copies of the RFP are required. At the discretion of the City, and in conformity with the applicable provisions of Georgia Law, the City may afford contractors an opportunity for subsequent discussion, negotiation, and revision of Proposals. The City reserves the right to reject any or all Proposals and to waive any technicalities or formalities. Incomplete proposals will not be considered by the City.

Contractors are responsible for ensuring Proposals comply with Georgia law, including but not limited to all state and local laws, rules, regulations, ordinances, and policies. Any Proposal must include an affidavit meeting all requirements of O.C.G.A. § 13-10-91 verifying compliance with the applicable Federal work authorization program. The form for such an affidavit is attached as an exhibit to the Instructions to Proposers.

Any Proposal submitted in response to this Request shall remain open for acceptance by the City, and same shall be honored by the contractor, for a period of sixty (60) days from the date set forth hereinabove for the receipt of Proposals. Any questions or comments concerning this Request for Proposals should be addressed in writing to The City of Dalton Finance Department, 300 West Waugh Street, Dalton, Ga 30720.

SECTION 00020: INSTRUCTIONS TO PROPOSERS / SCOPE OF WORK

NAME OF PROJECT: “Lakeshore Asphalt Track Resurfacing”

NAME OF OWNER: THE CITY OF DALTON, GEORGIA

The City, through its Parks and Recreation Department, wishes to resurface the track at Lakeshore Park. The track is approximately 5,695 sy. Interested contractors must furnish all material and perform all labor necessary to complete the project. The City does not have a core sample of the track. The selected contractor should plan to complete their own drilling to obtain samples of the track.

Scope:

1. Mill existing track oval to a depth of approximately 3’’
2. Haul Millings off-site
3. Proof Roll existing stone base
4. Install & Compact approximately 250 tons of graded aggregate base
5. Fine-grade stone base using laser-guided equipment
6. Proof roll newly installed & graded stone base
7. Install Prime Coat – 0.25 Gallons Per SY
8. Install 2’’ 9.5 mm Type II asphalt topping and compact
9. ~~Stripe Track According to GHSA specifications with white lines.~~
Stipe track according to match existing track lines
10. Add Alternate – Undercut existing subgrade to 1.5’, replace with #34 stone
11. The North-West end of the track, approximately 100 SY+/-, straight away near the pavilion, the track should not be striped and should not be included in the striping cost. The City may decide to remove this area of the track from the contract. See RFI #1 of addendum: 01 issued on April 17, 2023.

Before submitting, the Contractor shall be responsible for reviewing the RFP and Specifications and visiting the work location. Each Contractor shall fully inform themselves as to all existing conditions and limitations under which the work is to be performed and shall include in the proposal a total sum to cover all costs of materials and labor to perform the work as set forth in the RFP and Specifications.

The Contractor, in undertaking the work under this contract, shall have visited the site and take into consideration all conditions that might affect his work. No consideration will be given to any claim based on a lack of knowledge of existing conditions, except where the Contract Documents make definite provisions for adjustment of cost or extension of time due to existing conditions that cannot be readily ascertained (unforeseen conditions).

Installer's Qualifications:

The Contractor's proposal shall include the qualifications of its installer. Include a minimum of three similar installations. Provide three Owner references. The proposal shall also include the installer's certifications from the manufacturer and professional associations.

Warranty:

The Contractor's proposal shall include the proposed manufacturer's warranty along with any information/pricing on available extended warranties. Include a detailed description of the Owner's responsibilities or obligations throughout the warranty period. The proposal shall include the history of warranty issues and or recalls and how these have been addressed.

Lump Sum Price:

On the attached proposal form, provide the lump sum price and prices per area of request. The pricing for any additional warranties/maintenance programs shall be offered under a separate form within the Contractor's proposal.

Contractor Schedule:

Contractors should provide a timeline of proposed work to begin and end.

Form of Agreement:

The successful proposer will enter into a contract with the City of Dalton and for the project.

SECTION: 00080 PROPOSAL FORM

EXHIBIT "A"

NAME OF PROJECT: "Lakeshore Asphalt Track Resurfacing"

NAME OF OWNER: THE CITY OF DALTON, GEORGIA

NAME OF PROPOSED CONTRACTOR: The Surface Masters, Inc. (The "Contractor")

THE CITY OF DALTON (the "City"), pursuant to the provisions of O.C.G.A. § 36-91-1, *et. seq.*, herein seeks competitive Proposals from Contractors for the construction of the: "Lakeshore Asphalt Track Resurfacing" at 1212 Dennard Drive, Dalton, GA, 30721. This Proposal is submitted in response to the City's Request for Proposals dated 3/13/2023.

This Proposal is for the full and complete construction of the Project in conformity with all requirements of the RFP. The submission of this Proposal constitutes a representation by the

The contractor submits herewith its duly executed affidavit in accordance with the applicable Federal work authorization program. The contractor acknowledges that upon execution of any contract with the City, said affidavit shall be deemed a public record to the extent provided by Georgia law.

The Contractor further acknowledges that the Contract Documents provide no incentive provisions for early Completion of the Work.

Base Proposal

The Contractor proposes to properly resurface the track to meet safety standards in conformity with all requirements of the RFP and furnish all necessary labor, material, and equipment for such construction, and, furthermore, to fully, completely, and strictly perform all obligations of the Contractor as set forth in the Contract Documents, for the lump sum contract price of:

~~\$256,525.00~~ \$212,800.00 (unit price contract)

The contractor must include a price sheet that is included at the end of the document with their submitted package. Said lump sum contract price is allocated, in its entirety, to the following elements of the work: Attached hereto, and incorporated herein as part of this Proposal, Contractor submits the contractor's qualifications and proposal. The contractor acknowledges that the City may rely upon the truthfulness and accuracy of the responses set forth therein. In addition, Contractor has submitted herewith as part of this Proposal such documentation and information as the Contractor deems appropriate to establish that it is a responsible and responsive Contractor and that its Proposal is the most advantageous to the City, taking into consideration the specific evaluation factors, listed in their order of relative importance, as set forth in the

above-referenced Request for Proposals. Contractor acknowledges that the City may rely upon the truthfulness and accuracy of such documentation and information.

The Contractor proposes and agrees to commence actual construction (i.e., physical work) on site with adequate management, labor, materials and equipment within ten (10) days after receipt of Notice to Proceed and prosecute the Work diligently and faithfully to completion within the required Contract Time. Prior to commencing such Work, and prior to the issuance of the Notice to Proceed, Contractor shall furnish to the City duly executed Payment and Performance Bonds complying with all requirements of the Contract Documents along with Certificates of Insurance demonstrating that all required coverages are in place. Contractor submits herewith its executed Bid Bond in accordance with the requirements of the City as set forth in the Instruction to Proposers.

Contractor herein acknowledges that this Proposal shall constitute an offer by Contractor to contract with the City for construction of the Project in conformity with all requirements of the Contract Documents for the lump sum contract price as set forth hereinabove. Said offer by Contractor is irrevocable and subject to acceptance by the City until the expiration of sixty (60) days following the date set forth in the Request for Proposals for receipt of Proposals by the City.

[CONTRACTOR]

By: _____

[SEAL]



Witness: _____

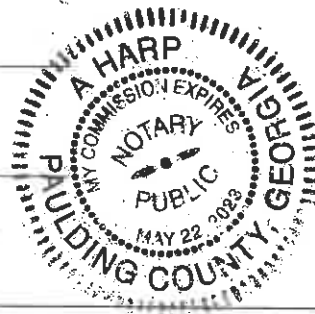
[SEAL]

Sworn and subscribed to before me this 20 day of April, 2023

NOTARY PUBLIC: _____

Commission Expirations: _____

May 22, 2023



SECTION 00130 – BID BOND

EXHIBIT “B”

NAME OF PROJECT: “Lakeshore Asphalt Track Resurfacing”

NAME OF OWNER: THE CITY OF DALTON, GEORGIA

NAME OF PROPOSED CONTRACTOR:

THE SURFACE MASTERS, INC.

(THE “CONTRACTOR”)

KNOW ALL MEN BY THESE PRESENTS that

ATLANTIC SPECIALTY INSURANCE COMPANY

as Surety (the “Surety”), and THE SURFACE MASTERS, INC., as

Principal (the “Contractor”) are held and firmly bound unto the City of Dalton, Georgia (the “City”), pursuant to the terms and conditions of this Bond (the “Bid Bond”) as set forth herein:

WHEREAS, the Contractor, in response to a Request for Proposals issued by the City, has submitted its Proposal for the construction by Contractor of the: **“Lakeshore Asphalt Track Resurfacing”**

NOW, THEREFORE, the condition of this obligation is such that if the City accepts the Proposal of the Contractor as submitted, or as revised or negotiated in accordance with the provisions of O.C.G.A. § 36-91-21(c)(2), and


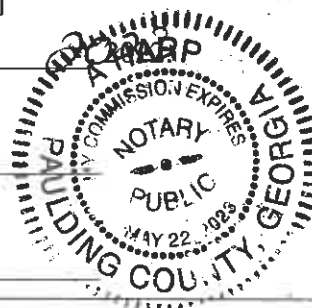

- (a) The Contractor timely executes the Agreement between the City and Contractor (the “Agreement”) as provided by the City and as included in the Contract Documents; and,
- (b) The Contractor furnishes to the City fully executed Payment and Performance Bonds as required by the Agreement, then this obligation shall be void: otherwise, the Surety and the Contractor, shall be jointly and severally liable to the City, and shall make payment to the City, in the amount of five percent (5%) of the lump sum contract price (exclusive of any pricing for Alternates or unit prices) as set forth in the Proposal of the Contractor.

The Contractor agrees that the amount of this Bid Bond as set forth hereinabove constitutes a proper and lawful sum for liquidated damages which the City will sustain in the event Contractor fails or refuses to execute the Agreement or fails or refuses to furnish the required Payment and Performance Bonds.

The Surety shall cause to be attached to this Bid Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of the Surety to execute and deliver same.

This Bid Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bid Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bid Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bid Bond that is not in conflict therewith shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this Bid Bond to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this 19th day of April, 2023.

THE SURFACE MASTERS [CONTRACTOR]		
By: <u>[Signature]</u>	[SEAL]	
Witness: _____ [SEAL]		
Sworn and subscribed to before me this <u>20</u> day of <u>April</u>		
NOTARY PUBLIC: <u>[Signature]</u>		
Commission Expirations: <u>May 22, 2023</u>		
ATLANTIC SPECIALTY INSURANCE COMPANY [NAME OF SURETY]		
By: <u>[Signature]</u>	[SEAL]	
Francesca Kazmierczak, Attorney-In-Fact		
Witness: <u>[Signature]</u>	[SEAL]	
Aklina Noorhassan, Witness		
Sworn and subscribed to before me this <u>19th</u> day of <u>April</u> , 2022.		
NOTARY PUBLIC: Sandra Diaz <u>[Signature]</u>		
Commission Expirations: <u>May 13, 2025</u>		
[ATTACH PROPERLY EXECUTED POWER OF ATTORNEY]		

Mandatory Price Proposal Form

Task	Cost
Mill existing track oval to a depth of approximately 3"	\$ 10,495.00
Haul Millings off-site to Dalton Public Works Department	\$ 12,600.00
Proof Roll existing stone base	Included
Install & Compact approximately 250 tons of graded aggregate base	\$ 11,165.00
Fine-grade stone base using laser-guided equipment	\$ 6,150.00
Install Prime Coat - 0.25 Gallons Per SY	\$ 7,090.00
Install 2" 9.5 mm Type II asphalt topping and compact	\$ 112,225.00
Apply 2 two coats of black acrylic resurface material	\$ 43,725.00
Apply 2 two coats of acrylic color coating - DPBD to select the colors	\$ 43,725.00
Stripe Track According to GHSA specifications with white lines.	
Stripe track to match existing track lines	\$ 9,350.00
Add Alternate- Cost to mill, grade, test roll, install toping and compact of the 100 +/- sy of the North-West end of the track <i>This portion of the project could be removed from the contract</i>	\$ 2750.00
Add Alternate - Undercut existing subgrade to 1.5', replace with #34 stone	\$ 255,060.00
Lump Sum Total:	\$ 256,525.00
The City of Dalton will consider proposals for products equal to or better. If not providing the exact product, complete details and specifications for the product must be submitted with the RFP.	
Expected completion timeline of the project: 14 days	

\$212,800.00

* Add Alternate SMI Recommended* - Full Depth Reclamation Base Fully Blended and Amended
SUBMITTED: with 50 lbs Per SY of Portland Cement at 10" depth \$110,830.00
 The Surface Masters, Inc.

(See attached
 Proposal)

Company Name

1393 Cobb Industrial Way Marietta, GA 30066
Company Address

Authorized Signature

Justin Meier - President
Print Name & Title

TRACK INSTALLATION REFERENCES

Must list references of three similar projects and site contact information

Project #1

School, Department Name: Cherokee County Schools, Sixes Elementary School

Address: 20 Ridge Rd

City: Canton State: GA Zip Code: 30114

Contact Person: Trey Moores

Phone number: 404-623-5919

Date of Installation: 5/31/22 - 6/12/22

Project #2

School, Department Name: Forsyth County Schools, Vickery Creek Middle School

Address: 6240 Post Rd

City: Cumming State: GA Zip Code: 30040

Contact Person: Lee Rowe

Phone number: 404-569-2923

Date of Installation: 6/3/22 - 6/24/22

Project #3

School, Department Name: Whitfield County Schools, Varnell Elementary School

Address: 4421 GA-2

City: Dalton State: GA Zip Code: 30721

Contact Person: Kenneth Harless / Eric Patterson

Phone number: 706-260-9884 / 706-876-7280

Date of Installation: 6/15/21 - 6/24/21

Checklist for Bid Documents

Failure to include all required documents will result in proposal being removed for consideration for award.

- ☒ **Document Description**
 - ☒ **Completed City Vendor Packet**
 - ☒ **Solicitation Form (Page 1 of this Document)**
 - ☒ **References of Past Similar Jobs**
 - ☒ **Price Proposal Form**
 - ☒ **Vendor Affidavit and Agreement**
 - ☒ **Checklist for Documents/Addenda Acknowledgement (this page)**
-

Addenda Acknowledgement

Failure to acknowledge any addenda will result in a non-responsive bid.

The vendor has examined and carefully studied the Request for Proposals and the following Addenda, receipt of all of which is hereby acknowledged:

Addendum No. 1 Dated: 4/17/23
Addendum No. _____ Dated: _____
Addendum No. _____ Dated: _____
Addendum No. _____ Dated: _____

This affirms that all documents are included with the bidders bid package.

Company's Name:

The Surface Masters, Inc. Date: 4/20/23

Authorized Representative's Name: Justin Meier

Authorized Representative's Signature: 

Mill & Resurface with Full Depth Reclamation Option

1. The area under consideration comprises approx. **5,695 square yards**.
2. **Trips:** The work described herein will be completed in up to **16** trips.
3. **Barricading:** All areas will be barricaded during and after the paving process. It is the owner's responsibility to make sure all barricades remain effective after our crews leave the jobsite.
4. **Pre-Pave Milling:** Prior to paving, mill pavement to a depth of **3 inches**. After milling is completed, saw cut edges of pavement to establish a clean joint to tie into. Repair area/s will be shaped symmetrically where possible. Asphalt millings and debris will be removed from job site and hauled off and properly disposed of. Work area will then be swept and blown clean in order to receive the pre-pave tack coat. To have a better understanding of the Milling process, please view our video: [The Surface Masters Milling Process](#)
5. **Full Depth Reclamation/Soil Stabilization:** Area to receive Full Depth Reclamation Base Fully Blended and Amended with 50 lbs of Portland Cement Per Square Yard at a depth of 10 inches.
6. **Stone Base/Fine-Grading:** Install and Compact approximately 250 TN of graded aggregate base and fine-grade stone base using laser-guided equipment.
7. **Pre-Pave Qualification:** The existing surface should be able to sustain the weight of our loads of new asphalt as well as equipment. Our firm will conduct a "Proof-Roll" of the existing surface. We will have an 18-ton (approx.) loaded dump truck slowly drive over existing sub-base to test and make certain that the sub-base can sustain the load. If it is deemed necessary by contractor and owner's representative to repair base, additional charges could apply and will be treated as a change order.
8. **Pre-Pave Prime Coat:** Install Prime Coat - 0.25 Gallons Per SY
9. **Surface Asphalt:** Area will be paved with **2 inches** (compacted thickness) of 9.5mm Type II Surface Asphalt and properly compact.
10. Apply two (2) coats of black acrylic resurface material.
11. Apply two (2) coats of acrylic color coating - *DPRD to select colors*
12. Stripe track to match existing track lines.
13. **Cleaning:** The repair area/s to be paved will be cleaned of all loose materials with power sweepers, blowers, asphalt brooms, etc. At job completion all work areas will be left clean and all construction debris will be removed from job site.
14. **Owner/Manager Conditions:** It is the owner's responsibility to have all material, cars, equipment, obstructions, etc. removed from the area where the work will take place. ***Please see the attached Owner's Responsibility & Conditions page.***
15. ****Price includes BASE BID LUMP SUM TOTAL.****

Total Price: \$367,355.00



Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Debra A. Deming, Sandra Diaz, Anne Potter, Peter Healy, Susan A. Welsh, Frances Rodriguez, Aklima Noorhassan, Francesca Kazmierczak, Jennifer Jakaitis, Kemal Brkanovic, Valerie I. Spates, Beverly A. Woolford**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **unlimited** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-seventh day of April, 2020.

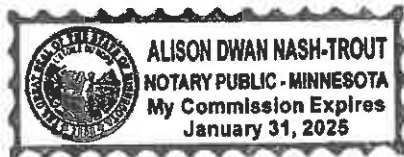
STATE OF MINNESOTA
HENNEPIN COUNTY



By

Paul J. Brehm, Senior Vice President

On this twenty-seventh day of April, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.



Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 19th day of April, 2023

This Power of Attorney expires
January 31, 2025



Kara Barrow, Secretary

STATE OF GEORGIA
WHITFIELD COUNTY
CITY OF DALTON

VENDOR AFFIDAVIT AND AGREEMENT (E-Verify)

COMES NOW before me, the undersigned officer duly authorized to administer oaths, the undersigned contractor, who, after being duly sworn, states as follows:

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Dalton, Georgia has registered with and is participating in a federal work authorization program and will continue using the program throughout the contract period in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

The undersigned contractor further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to the contract with the City of Dalton, Georgia of which this affidavit is a part, the undersigned contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02 through the subcontractor's execution of the subcontractor affidavit required by Georgia Department of Labor Rule 300-10-1-.08 or a substantially similar subcontractor affidavit. The undersigned contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Dalton, Georgia at the time the subcontractor(s) is retained to perform such service.

FURTHER AFFRANT SAYS NOTHING.

BY: [Signature] 04/20/23
Authorized Officer or Agent Date

The Surface Masters, Inc.
Contractor Name

01-09-2013
Authorization Date for EEV Program
629558
Employment Eligibility (EEV) #

President
Title of Authorized Officer or Agent of Contractor

Justin Meier
Printed Name of Authorized Officer or

Agent Sworn to and subscribed before me

This 20th day of April 2023

Notary Public

My Commission Expires May 22, 2023

*MUST BE NOTARIZED

*Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603. As of the effective date of O.C.G.A. § 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration.

Checklist for Bid Documents

Failure to include all required documents will result in proposal being removed for consideration for award.

- ☒ **Document Description**
- ☒ **Completed City Vendor Packet**
- ☒ **Solicitation Form (Page 1 of this Document)**
- ☒ **References of Past Similar Jobs**
- ☒ **Price Proposal Form**
- ☒ **Vendor Affidavit and Agreement**
- ☒ **Checklist for Documents/Addenda Acknowledgement (this page)**

Addenda Acknowledgement

Failure to acknowledge any addenda will result in a non-responsive bid.

The vendor has examined and carefully studied the Request for Proposals and the following Addenda, receipt of all of which is hereby acknowledged:

Addendum No. 1 Dated: 4/17/23
Addendum No. _____ Dated: _____
Addendum No. _____ Dated: _____
Addendum No. _____ Dated: _____

This affirms that all documents are included with the bidders bid package.

Company's Name:

The Surface Masters, Inc. Date: 4/20/23

Authorized Representative's Name: Justin Meier

Authorized Representative's Signature: 

This label must be affixed to the outside of the envelope or package, even if it is a “No RFP” response. Failure to attach the label may result in your bid being opened in error or not routed to the proper location for consideration. No RFP will be accepted after the date and time specified.



SEALED BID ENCLOSED

“Lakeshore Asphalt Track Resurfacing”

Due Date and Time: April 21, 2023 at 2 pm

Vendor Name

Address

City, State, Zip Code

DELIVER TO:

The City of Dalton – Finance Department
300 West Waugh Street
Dalton, GA, 30720



"EXHIBIT A"

FINANCE DEPARTMENT
P.O. BOX 1205
DALTON, GEORGIA 30722
PHONE: (706) 278-6006
FAX: (706) 277-4640



Dear City of Dalton, DWRSWMA, Nob North Golf Course, & Senior Center Vendors:

Thank you for your interest in becoming an approved vendor with the City of Dalton. We are providing this vendor packet in order to place your company on the approved active vendor list for the City. The requested information allows us to comply with all applicable laws and regulations governing the City of Dalton. Although there is a lot of information enclosed in this packet, it is our intention to make this process as easy as possible.

Please complete all documents as listed on the enclosed return documentation checklist and mail your packet to the Finance Department at the following address:

City of Dalton
Attn: Accounts Payable
P.O. Box 1205
Dalton, GA 30722

In addition, please find attached a copy of the W-9 and ST-5 exemption form for the City of Dalton. Please retain this information for your records.

Should you have further questions, please do not hesitate to contact our Finance Department at (706) 278-6006, or via email to vendor@daltonga.gov.

Thank you for your interest in doing business with the City of Dalton.

Return Documentation Checklist:

REQUIRED FROM ALL VENDORS:

- ☐ 1. Completed vendor application.
- ☐ 2. Completed W-9 Form, only remit the first page of the four page document.
- ☐ 3. If you are providing **labor or services** to the City of Dalton, it is **Mandatory** to complete either option a or b.
 - ☐ a. If you have an employee other than yourself, and you are providing labor or services to the City of Dalton, (Pursuant to O.C.G.A. §13-10-91 (b)(1)), a Vendor affidavit and Agreement (E-Verify) must be submitted. If you are unsure if you are required to fill out this form, please contact the Finance office (706-278-6006) and we will advise you.

OR

- ☐ b. If you have no employees other than yourself, and you are providing labor or services to the City of Dalton, please provide a copy of State issued identification card/driver's license from an approved state as provided on the Attorney General's website. Subcontractors and sub-subcontractors are also required to follow these requirements.
- ☐ 4. Copy of your company's most recent insurance certificate(s). This certificate must be kept current. If service is performed on City of Dalton property, additional insurance requirements apply. See attached explanation of insurance requirements.
- ☐ 5. Completed Workers' Compensation Affidavit.
- ☐ 6. Information Security Affidavit.

OPTIONAL FORM

☐ Completed ACH Payment Approval Form. (Please complete optional form to receive vendor payments through automated fund transfer.)

****If any required forms are returned incomplete, an active vendor status will not be granted and subsequent payments may be delayed. Please remember that documents requiring notary verification must be notarized to be considered complete.**

FINANCE DEPARTMENT
P.O. BOX 1205
DALTON, GEORGIA 30722
PHONE: (706) 278-6006
FAX: (706) 277-4640



FOR CITY USE ONLY

<input type="checkbox"/> Initial Application		<input type="checkbox"/> Revision	
Vendor ID			
Month	Day	Year	
Initial Below when complete Packet Completion verified _____			

VENDOR APPLICATION

Contract Number _____

Project Name _____

Company/Individual Name: The Surface Masters, Inc.

Doing Business As: —

Physical Address: 1393 Cobb Industrial Way

City: Marietta State: GA Zip Code: 30066

Remittance Address for payments: " "

City: _____ State: _____ Zip Code: _____

Principal line of business, please briefly describe any services or products provided: _____

Asphalt Maintenance

Phone Number: 772-50-6392 Fax Number: 770-74-6086

E-Mail Address: Griffin.Duncan@thesurfacemasters.com

Vendor Contact/Representative: Griffin Duncan

Organized as: ☐ Individual ☐ Partnership ☒ Corporation Date: 2010 State: GA

Federal Tax ID Number (if company): 27-2212631

Social Security Number (if individual): _____

DUNS Number: 967699310

Special Status: ☐ DBE-Disadvantaged Business Enterprises (Please submit copy of certificate)
☐ MBE-Minority Owned (Please submit copy of certificate)
☐ WBE-Women Business Enterprises (Please submit copy of certificate)

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

The Surface Masters, Inc.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☒ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____
Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ► _____

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

1393 Cobb Industrial Way

Requester's name and address (optional)

6 City, state, and ZIP code

Marietta, GA 30066

7 List account number(s) here (optional)

Print or type.
See Specific Instructions on page 3.

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

____ - ____ - _____

or

Employer identification number

2 7 - 2 2 1 2 6 3 1

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign this certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ►

Date ►

Feb 23, 2023

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

E-VERIFY FREQUENTLY ASKED QUESTIONS

There has been some confusion regarding E-VERIFY, what it is, who needs to have a number, and how they obtain a number. As designed, E-VERIFY is an Internet-based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows employers to electronically verify the employment eligibility of newly hired employees. E-VERIFY is currently the best means available for employers to electronically verify the employment eligibility of their newly hired employees. E-VERIFY virtually eliminates Social Security mismatch letters, improves the accuracy of wage and tax reporting, protects jobs for authorized workers, and helps U.S. employers maintain a legal workforce.

Q: Why should I consider participating in E-VERIFY?

A: The state of Georgia has mandated that government entities comply with E-VERIFY. The State of Georgia and the City of Dalton requires a vendor's affidavit from any vendor who may provide labor or services to the City.

Q: How do I register for participation in E-VERIFY?

A: You can register for E-VERIFY at <https://e-verify.uscis.gov/enroll>, which provides instructions for completing the registration process. You will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you the employer, the SSA, and USCIS. Any employee who has signatory authority for the employer can sign the MOU.

Q: What should the EEV# that I am required to fill in on the E-VERIFY affidavit look like?

A: Your EEV# should be 5 or 6 digits long, and should contain no letters. This number can be found on your MOU.

Q: Do I have to sign a vendor's affidavit if I have no other employees besides myself?

A: No, if you have no other employees besides yourself, you can provide a copy of most state issued ID's, and this will meet the qualifications for E-VERIFY.

Q: How can I get help with enrolling if I have a question?

A: DHS offers assistance in enrolling, phone number 1-888-464-4218 or email E-verify@dhs.gov

Q: I have recently filled out an E-VERIFY affidavit for the City of Dalton, do I need to fill one out every year?

A: Yes, the City is required to update E-VERIFY affidavits annually.

Q: Who is required to submit an E-Verify affidavit?

A: All businesses that contract with the City for labor or services by bid or contract in which the labor or services exceed \$2,499.99 must submit an E-Verify affidavit unless the contractor has no employees or the contract is with an individual licensed under Title 26, Title 43, or the State Bar of Georgia who is in good standing and that individual is performing the service.

Q: If the contract is exclusively for goods and there are no services being provided does the local governing authority need to collect an E-Verify vendor affidavit?

A: If the contract is solely for goods, there is no requirement that the vendor register with the federal E-Verify program.

Q: Does the local governing authority have to collect affidavits from subcontractors and sub-subcontractors?

A: The local governing authority is only responsible for collecting contractor affidavits for the parties with whom the local governing authority has directly signed a contract. The contractor is responsible for collecting subcontractor affidavits, the subcontractors must collect from their sub-subcontractors, and so on.

Q: If there is only one contractor that can provide a certain service to the local governing authority and they refuse to follow the E-Verify contractor requirements, can the local governing authority contract with them?

A: Local governing authorities can only enter into contracts with contractors that follow the E-Verify requirements as provided in O.C.G.A. §13-10-91.

Q: Is the local governing authority required to verify the information provided in the E-Verify Vendor affidavit?

A: No. The contractor is responsible for the information provided. If any of the information provided is determined to be erroneous, the liability is with the contractor and not the local governing authority.

What Your Business Needs to Know about Georgia's E-Verify Requirements (Effective July 1, 2013)

E-Verify Contractor Requirements

Georgia law, **O.C.G.A. § 13-10-91**, requires **all businesses** that contract with a public employer for **labor or services** by bid or by contract in which the labor or services **exceed \$2499.99** to sign an affidavit attesting that they are registered for and use E-Verify **unless** 1) the contractor has **no employees** (in which case they must present an approved state issued identification card/drivers' license from an approved state as provided on the Attorney General's website) or, 2) the contract is with an **individual** licensed under Title 26, Title 43, or the State Bar of Georgia who is in good standing and **that individual** is performing that service. Anyone your business subcontracts with for labor and services, as well as the subcontractors of your subcontractors, in furtherance of that contract is also subject to this requirement. E-Verify Contractor, Subcontractor, and Sub-Subcontractor affidavits can be found here.

E-Verify Private Employer Requirements

Georgia law, **O.C.G.A. § 36-60-6**, requires all businesses, **with more than 10 employees** that are seeking an occupation tax certificate/business license or other document required to operate a business with a county or city to sign an affidavit attesting that they are registered for and use E-Verify. Businesses with **10 or fewer employees** are required to sign an affidavit attesting that they are exempt from this requirement. Once a business has provided this affidavit to the county, all subsequent renewals can be provided with the submission of the E-Verify number, as long as it is the same number as provided on the affidavit, or assertion that your business is exempt. The county will provide the format in which renewal information is collected. E-Verify Private Employer and Exemption Affidavits can be found here.

What Is E-Verify?

E-Verify is a federal Web-based system that electronically verifies the employment eligibility of newly hired employees. It works by allowing participating employers to electronically compare employee information taken from the I-9 Form (the paper-based employee eligibility verification form used for all new hires) against records in the Social Security Administration's database and the records in the Department of Homeland Security immigration databases.

Where Do I Find My E-Verify Number?

The Human Resources Department for your business should have that information, if you have registered. The E-Verify number, which consists of four to six numerical characters, is located directly below the E-Verify logo on the first page of the memorandum of understanding (MOU) entered into between your business and the Department of Homeland Security (DHS) to use E-Verify.

What if I cannot locate or do not have access to my MOU?

If the HR director/program administrator for E-Verify from your business has taken the E-Verify tutorial, you may obtain your company ID number by: 1) Logging in to E-Verify with your assigned user ID and password; 2) From 'My Company,' select 'Edit Company Profile;' 3) The Company Information page will display the company ID number. If your HR director/program administrator has not completed the tutorial, you must contact E-Verify Customer Support at 888-464-4218 or at E-Verify@dhs.gov for assistance.

Is the Federal Tax Identification Number/Employer Identification Number (EIN) the same as the E-Verify Number?

No. While you will be required to provide the Federal Tax Identification Number/EIN for your business to DHS in order to register for E-Verify, a separate number, which consists of four to six numerical characters, will be provided as the E-Verify number for your business by DHS, which will be located on the MOU.

How Do I Register for E-Verify? To register for E-Verify, please visit the DHS website. If you need assistance in completing the registration process or need additional information relating to E-Verify, call their customer service number at 1-888-464-4218, email them at E-Verify@dhs.gov or visit their website at http://www.dhs.gov/e-verify.

STATE OF GEORGIA
WHITFIELD COUNTY
CITY OF DALTON

VENDOR AFFIDAVIT AND AGREEMENT (E-Verify)

COMES NOW before me, the undersigned officer duly authorized to administer oaths, the undersigned contractor, who, after being duly sworn, states as follows:

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Dalton, Georgia has registered with and is participating in a federal work authorization program and will continue using the program throughout the contract period in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

The undersigned contractor further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to the contract with the City of Dalton, Georgia of which this affidavit is a part, the undersigned contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02 through the subcontractor's execution of the subcontractor affidavit required by Georgia Department of Labor Rule 300-10-1-.08 or a substantially similar subcontractor affidavit. The undersigned contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Dalton, Georgia at the time the subcontractor(s) is retained to perform such service.

FURTHER AFFIANT SAYETH NOT.

BY: Authorized Officer or Agent

The Surface Masters, Inc.
Contractor Name

President

Title of Authorized Officer or Agent of Contractor

Justin Meier

Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me

This 18 day of April, 2023

A. Harp

Notary Public

My Commission Expires: May 22, 2023

*MUST BE NOTARIZED



4/18/23
Date

1/9/13
Authorization Date for EEV Program
U29558
Employment Eligibility (EEV) #

*Any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603. As of the effective date of O.C.G.A. § 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration.

FINANCE DEPARTMENT

P.O. BOX 1205
DALTON, GEORGIA 30722
PHONE: 706-278-6006
FAX: 706-277-4640



Insurance Requirements

General Liability Coverage - Before commencing any work for the City of Dalton, you must furnish a valid *General Liability Certificate of Insurance* with a minimum limit of \$1,000,000 per occurrence for bodily injury and property damage. **The City of Dalton, GA must be shown as an additional insured.**

Workers Compensation - Please complete the Workers' Compensation Insurance Affidavit to determine if any exemption to Workers' Compensation Insurance is applicable. However, if no exemption is met, a valid Worker's Compensation Certificate of Insurance must be submitted evidencing:

- Workers' Compensation Statutory Limits
- Employer's Liability:
 - Bodily Injury by Accident - \$100,000 each accident
 - Bodily Injury by Disease - \$500,000 policy limit
 - Bodily Injury by Disease - \$100,000 each employee

Auto Liability Certificate of Insurance (if autos used in the performance of work):

- Minimum \$1,000,000 limit per occurrence for bodily injury and property damage. Comprehensive form covering all owned and non-owned and hired vehicles.

Professional Services Insurance-Errors & Omissions - Including consultants, counselors, engineers, attorneys, accountants, etc.

- Minimum \$1,000,000 per claim

Additional Insurance Requirements based on type of service:

Type of Service	Additional Insurance Requirements
Asbestos Abatement	Contractor's Pollution Liability (w/ 1 year extended reporting period) <ul style="list-style-type: none"> ○ Each Occurrence \$3,000,000
Building Remodeling & Construction: (This includes all aspects of building work, including, but not limited to: ducts, electrical, HVAC, painting, plumbing, roofing, etc. *The City of Dalton must be listed as an additional insured on contracts of this type*	For Renovations: Property Coverage or Builders Risk Policy – equal to or greater than the existing building value For New Construction: Property Coverage or Builders Risk Policy – equal to or greater than the total cost of construction per contract For Mixed Renovation and New Construction: Property Coverage or Builders Risk Policy – equal to or greater than the existing building value being renovated plus the total cost of new construction per contract If hazardous substances are involved: Contractor's Pollution Liability w/ 1 year extended reporting period) <ul style="list-style-type: none"> ○ Each Occurrence \$1,000,000 ○ Aggregate \$2,000,000
Landscaping & Lawn Care: (If herbicide, fungicide, pesticide or other chemical application is involved)	Environmental Impairment Liability (w/ 1 year extended reporting period) <ul style="list-style-type: none"> ○ Each Occurrence \$1,000,000 ○ Aggregate \$2,000,000
Pest Control	Environmental Impairment Liability (w/ 1 year extended reporting period) <ul style="list-style-type: none"> ○ Each Occurrence \$1,000,000 ○ Aggregate \$2,000,000
Refuse Transportation & Disposal	Contractor's Pollution Liability (w/ 1 year extended reporting period) <ul style="list-style-type: none"> ○ Each Occurrence \$1,000,000 ○ Aggregate \$2,000,000
Transportation – this applies primarily to the transport of people	Automobile Liability – seating capacity of 15 or less <ul style="list-style-type: none"> ○ Combined Single Limit \$3,000,000 Automobile Liability – seating capacity greater than 15 <ul style="list-style-type: none"> ○ Combined Single Limit \$5,000,000

WORKERS' COMPENSATION INSURANCE AFFIDAVIT

Vendor/Contractor Name: The Surface Masters, Inc. Vendor Number: _____
Address: 1393 Cobb Industrial Way, Marietta GA 30066
Contact: Griffin Duncan Phone No.: 770-250-6392

Vendor/Contractor is: (check the appropriate box)

1. ☒ An employer that employs two or more persons, part-time or full-time.
2. ☐ A sole proprietor with no employees*
3. ☐ A sole proprietor with two employees who has filed a Form WC-10 with contractor's insurance company making election to be included as an employee for workers' compensation purposes.
4. ☐ A partnership of less than three partners and no employees.
5. ☐ A partnership with less than three employees but whose combined total of employees and partners includes three or more persons and the partners have filed a Form WC-10 with contractor's insurance company making election to be included as an employee for workers' compensation purposes.
6. ☐ A corporation or limited liability company with less than three employees but whose combined total of employees, officers and/or members includes three or more persons.

If box Nos. 1, 3, 5, or 6 was checked above, please fill out the following insurance information:

Workers Compensation Insurance Company
Name: Sterling Seacrest Pritchard, Inc.

Workers Compensation Insurance Policy No. 100054394

Expiration Date 9/30/2023

If self-insured, SBWC ID# _____

By executing this affidavit, the undersigned verifies that the information supplied above is true and correct.

Sworn to this 18 day of April 2023.

Subscribed and sworn before me
on this 18 day of April

Signature: _____

Name: Justin Meier

Title: President

Notary Public

* "Employee" shall include every person, including minors, working full-time or part-time under a contract of hire, written or implied.

STATE OF GEORGIA

WHITFIELD COUNTY

CITY OF DALTON

Information Security Affidavit

I understand that as a vendor with the City of Dalton, there is a possibility that the employee of The Surface Masters, Inc. (vendor) may be exposed to confidential information including, but not limited to social security numbers, credit card numbers, checking account information, and/or personal health information of customers or employees.

In consideration of the active vendor status with the City of Dalton, and as an integral part of the terms and conditions of the continued active status, I hereby pledge as a representative of my company to safeguard the integrity of this information and agree that The Surface Masters, Inc. (vendor) will not at any time disclose any information to any person(s) within or outside the City of Dalton except as may be required in the performance of the duties my company has been hired for.

The Surface Masters, Inc. (vendor) will not reproduce any confidential information or take any confidential information outside the office without authorization from the City.

The Surface Masters, Inc. (vendor) also agrees to notify the City if any of its employees witness another individual divulging such confidential information for any purpose other than the performance of his/her duties.

Any vendor in violation of any part of this policy will be subject to vendor status termination, up to and including any necessary legal action.

The Surface Masters, Inc.
Vendor Name (Please Print)

4/18/23
Date


Vendor Signature

N/A

FOR CITY USE ONLY

Vendor #: _____
Setup Date: _____
Initials: _____

City of Dalton ACH Payment Approval Form

Dear City of Dalton Vendor or Contractor:

The City of Dalton has a program that allows vendors the option of receiving payments for goods and/or services by electronic funds transfers (EFT) through the Automated Clearing House Network (ACH) in the NACHA CCD Format. If the City of Dalton sets you up for EFT processing, payments will be deposited directly to your account, as opposed to mailing you a check. If you give us your e-mail address, a payment notice will be sent out each time an ACH transfer is executed. We anticipate that this alternate method payment will introduce collection/payment efficiencies for both your institution and ours.

This form is a request for you to authorize us to pay by EFT. By completing this form and providing an authorized signature, you (1) authorize the City of Dalton to make payments for goods and/or services by EFT, (2) certify that your company has selected the designated depository financial institution, and (3) direct that all such electronic funds transfers be made as provided below. If you have questions about this form, please contact the Finance Department at 706-278-6006.

Depository Institution Name:			
Depository Institution Address:			
Routing Number:	Account Number:	Checking <input type="checkbox"/>	Savings <input type="checkbox"/>
E-mail address for Payment Notification:			

The below named company acknowledges and agrees that the terms and conditions of all agreements with the City of Dalton concerning the method of payment for goods and/or services shall be amended to allow for ACH payments as described above.

The below named company will give thirty (30) days written notice to the City of Dalton of any changes in depository financial institution or other payment instructions. When properly executed, this Authorization will become effective fifteen (15) days after its receipt by the City of Dalton.

Company Name:	Contact Person Name:
Contact Person Phone Number:	Contact Person E-mail Address:

X _____
Authorized Signature and Title

Date



Please return completed form to Attn: Accounts Payable at the address below or by fax to (706) 277-4640.

City of Dalton
Attn: Accounts Payable
P.O. Box 1205
Dalton, GA 30722-1205



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/18/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Sterling Seacrest Pritchard, Inc.
2500 Cumberland Pkwy
Suite 400
Atlanta GA 30339

CONTACT NAME: Natalie Mitchell
PHONE (A/C, No. Ext): 678-424-6500
E-MAIL: nmitchell@sspins.com
ADDRESS: nmitchell@sspins.com

FAX (A/C, No):

INSURED
The Surface Masters, Inc.
1393 Cobb Industrial Way
Marietta GA 30066

SURFMAS-01

INSURER(S) AFFORDING COVERAGE**NAIC #****INSURER A:** Selective Way Insurance Co

26301

INSURER B: Accident Fund National Insurance Co**INSURER C:****INSURER D:****INSURER E:****INSURER F:****COVERAGES****CERTIFICATE NUMBER:** 1859738368**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBROGATION	POLICY NUMBER	POLICY EFFECT DATE	POLICY EXPIRATION DATE	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	Y Y	S 2487650	9/30/2022	9/30/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$500,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
	CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					
	GEN'L AGGREGATE LIMIT APPLIES PER:					
	POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
	OTHER:					
A	AUTOMOBILE LIABILITY	Y Y	S 2487650	9/30/2022	9/30/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input checked="" type="checkbox"/> ANY AUTO					
	OWNED AUTOS ONLY	SCHEDULED AUTOS				
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY	<input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY				
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR	S 2487650	9/30/2022	9/30/2023	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
	EXCESS LIAB	CLAIMS-MADE				
	DED <input checked="" type="checkbox"/> RETENTION \$					
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y	100054394	9/30/2022	9/30/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N <input type="checkbox"/> N <input type="checkbox"/> I/A				
	If yes, describe under DESCRIPTION OF OPERATIONS below					
A	Leased/Rented Equipment		S 2487650	9/30/2022	9/30/2023	Limit 200,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

The City of Dalton, GA
Finance Department
P.O. Box 1205
Dalton GA 30722

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

AGENCY CUSTOMER ID: _____

LOC #: _____

**ADDITIONAL REMARKS SCHEDULE**

Page _____ of _____

AGENCY Sterling Seacrest Pritchard		NAMED INSURED The Surface Masters, Inc.
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance: Notes

Certificate Holder is included as an additional insured on the General Liability policy as per attached forms CG 79 21 (06/22) & CG 73 00 (06/22).
Waiver of Subrogation is in place in favor of Certificate Holder for General Liability as per attached form CG 73 00 (01/19).
General Liability coverage provided for additional insured is primary and non-contributory with respect to any similar insurance held by the additional insured to the extent provided via forms CG 79 21 (06/22) & CG 73 00 (06/22).
Certificate Holder is included as an additional insured on the Auto Liability policy as per attached form CA 78 09 (11/17).
Waiver of Subrogation is in place in favor of Certificate Holder for Auto Liability as per attached form CA 78 09 (11/17).
Waiver of Subrogation is in place in favor of Certificate Holder for Workers Compensation as per attached form WC 00 03 (13).
Umbrella policy is excess of General Liability, Auto Liability and Employers Liability subject to terms and provisions within policy.

ElitePac®

General Liability Extension Endorsement

COMMERCIAL GENERAL LIABILITY
CG 73 00 06 22

SUMMARY OF COVERAGES (including index)

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary. Refer to the actual endorsement (Pages 3-through-9) for changes affecting your insurance protection.

DESCRIPTION	PAGE FOUND
Additional Insureds — Primary and Non-Contributory Provision	Page 8
Blanket Additional Insureds — As Required By Contract	Page 5
<ul style="list-style-type: none"> • Owners, Lessees or Contractors (includes Architects, Engineers or Surveyors) • Lessors of Leased Equipment • Managers or Lessors of Premises • Mortgagees, Assignees and Receivers • Any Other person or organization other than a joint venture • Grantors of Permits 	
Broad Form Vendors Coverage	Page 7
Damage To Premises Rented To You (Including Fire, Lightning or Explosion)	Page 3
Electronic Data Liability (\$100,000)	Page 4
Employee Definition Amended	Page 9
Employees As Insureds Modified	Page 5
Employer's Liability Exclusion Amended (Not applicable in New York)	Page 3
Incidental Malpractice Exclusion modified	Page 8
Knowledge of Occurrence, Claim, Suit or Loss	Page 8
Liberalization Clause	Page 8
Mental Anguish Amendment (Not applicable to New York)	Page 10
Newly Formed or Acquired Organizations	Page 5
Non-Owned Aircraft	Page 3
Non-Owned Watercraft (under 60 feet)	Page 3
Not-for-profit Members — as additional insureds	Page 5
Personal And Advertising Injury — Discrimination Amendment (Not applicable in New York)	Page 9
Products Amendment (Medical Payments)	Page 4
Supplementary Payments Amended — Bail Bonds (\$5,000) and Loss of Earnings (\$1,000)	Page 4
Two or More Coverage Parts or Policies Issued By Us	Page 9
Unintentional Failure to Disclose Hazards	Page 8
Waiver of Transfer of Rights of Recovery (subrogation)	Page 8
When Two or More Coverage Parts of this Policy Apply to a Loss	Page 3

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CG 73 00 06 22
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ElitePac®

General Liability Extension Endorsement

COMMERCIAL GENERAL LIABILITY
CG 73 00 06 22

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The **SECTIONS** of the Commercial General Liability Coverage Form identified in this endorsement will be amended as shown below. However, if (a) two or more Coverage Parts of this policy, or (b) two or more forms or endorsements within the same Coverage Part apply to a loss, coverage provision(s) with the broadest language will apply, unless specifically stated otherwise within the particular amendment covering that loss.

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

COVERAGES — Amendments

SECTION 1 — COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

EXCLUSIONS

Employer's Liability Amendment

(This provision is not applicable in the State of New York).

The following is added to Exclusion e. **Employer's Liability** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**:

This exclusion also does not apply to any "temporary worker".

Non-Owned Aircraft, Auto or Watercraft

A. Paragraph (2) of Exclusion g. **Aircraft, Auto Or Watercraft** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** is deleted in its entirety and replaced with the following:

(2) A watercraft you do not own that is:

- (a) Less than 26 feet long and not being used to carry persons or property for a charge; or
- (b) At least 26 feet, but less than 60 feet long, and not being used to carry persons or property for a charge. Any person is an insured who uses or is responsible for the use of such watercraft with your expressed or implied consent. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to Condition 4. **Other Insurance, b. Excess Insurance** under **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**.

B. The following is added to Exclusion g. **Aircraft, Auto Or Watercraft** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**:

This exclusion does not apply to:

- (6) Any aircraft, not owned or operated by any insured, which is hired, chartered or loaned with a paid crew. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to Condition 4. **Other Insurance, b. Excess Insurance** under **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**.

Damage To Premises Rented to You

A. The last paragraph of Paragraph 2. **Exclusions** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE** is deleted in its entirety and replaced with the following:

Exclusions c. through n. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE**.

B. Paragraph 6. under **SECTION III — LIMITS OF INSURANCE** is deleted in its entirety and replaced with the following:

6. Subject to Paragraph 5. above, the most we will pay under **COVERAGE A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage caused by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner, for all such damage caused by fire, lightning or explosion proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of the three, is the amount shown in the Declarations for the Damage To Premises Rented To You Limit.

C. Paragraph a. of Definition 9. "Insured contract" under **SECTION V — DEFINITIONS** is deleted in its entirety and replaced with the following:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with the permission of the owner is not an "insured contract";

Electronic Data Liability

A. Exclusion p. **Access or Disclosure Of Confidential Or Personal Information And Data-related Liability** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** is deleted in its entirety and replaced by the following:

p. **Access or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

B. The following paragraph is added to **SECTION III — LIMITS OF INSURANCE**:

Subject to 5. above, the most we will pay under **COVERAGE A** for "property damage" because of all loss of "electronic data" arising out of any one "occurrence" is a sub-limit of \$100,000.

SECTION I — COVERAGE C MEDICAL PAYMENTS EXCLUSIONS

Any Insured Amendment

Exclusion a. **Any Insured** under **COVERAGE C MEDICAL PAYMENTS, 2. Exclusions** is deleted in its entirety and replaced with the following:

a. **Any Insured**

To any insured.

This exclusion does not apply to:

- (1) "Not-for-profit members";
- (2) "Golfing facility" members who are not paid a fee, salary, or other compensation; or
- (3) "Volunteer workers".

This exclusion exception does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded by another endorsement to this Coverage Part.

Product Amendment

Exclusion f. **Products-Completed Operations Hazard** under **COVERAGE C MEDICAL PAYMENTS, 2. Exclusions** is deleted in its entirety and replaced with the following:

f. **Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

This exclusion does not apply to "your products" sold for use or consumption on your premises, while such products are still on your premises.

This exclusion exception, does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded by another endorsement to this Coverage Part.

SECTION I — SUPPLEMENTARY PAYMENTS — COVERAGES A AND B

Expenses For Bail Bonds And Loss Of Earnings

A. Subparagraph 1.b. under **SUPPLEMENTARY PAYMENTS — COVERAGES A AND B** is deleted in its entirety and replaced with the following:

b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

B. Subparagraph 1.d. under **SUPPLEMENTARY PAYMENTS — COVERAGES A AND B** is deleted in its entirety and replaced with the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

**SECTION II — WHO IS AN INSURED — Amendments
Not-for-Profit Organization Members**

The following paragraph is added to **SECTION II — WHO IS AN INSURED**:

If you are an organization other than a partnership, joint venture, or a limited liability company, and you are a not-for-profit organization, the following are included as additional insureds:

1. Your officials;
2. Your trustees;
3. Your members;
4. Your board members;
5. Your commission members;
6. Your agency members;
7. Your insurance managers;
8. Your elective or appointed officers; and
9. Your "not-for-profit members".

However only with respect to their liability for your activities or activities they perform on your behalf.

Employees As Insureds Modified

- A. Subparagraph 2.a.(1)(a) under **SECTION II — WHO IS AN INSURED** does not apply to "bodily injury" to a "temporary worker" caused by a co-"employee" who is not a "temporary worker".
- B. Subparagraph 2.a.(2) under **SECTION II — WHO IS AN INSURED** does not apply to "property damage" to the property of a "temporary worker" or "volunteer worker" caused by a co-"employee" who is not a "temporary worker" or "volunteer worker".
- C. Subparagraph 2.a.(1)(d) under **SECTION II — WHO IS AN INSURED** does not apply to "bodily injury" caused by cardio-pulmonary resuscitation or first aid services administered by a co-"employee".

With respect to this provision only, Subparagraph (1) of Exclusion 2. e. **Employer's Liability** under **SECTION I — COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** does not apply.

Newly Formed Or Acquired Organizations

- A. Subparagraph 3.a. under **SECTION II — WHO IS AN INSURED** is deleted in its entirety and replaced with the following:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier. However, **COVERAGE A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

- B. The following paragraph is added to **SECTION II — WHO IS AN INSURED**, Paragraph 3:

If you are engaged in the business of construction of dwellings three stories or less in height, or other buildings three stories or less in height and less than 25,000 square feet in area, you will also be an insured with respect to "your work" only, for the period of time described above, for your liability arising out of the conduct of any partnership or joint venture of which you are or were a member, even if that partnership or joint venture is not shown as a Named Insured. However, this provision only applies if you maintain or maintained an interest of at least fifty percent in that partnership or joint venture for the period of that partnership or joint venture.

This provision does not apply to any partnership or joint venture that has been dissolved or otherwise ceased to function for more than thirty-six months.

With respect to the insurance provided by this provision, **Newly Formed or Acquired Organizations**, the following is added to **SECTION IV — COMMERCIAL GENERAL LIABILITY**, Paragraph 4. **Other Insurance**, Subparagraph b. **Excess Insurance**:

The insurance provided by this provision, **Newly Formed or Acquired Organizations**, is excess over any other insurance available to the insured, whether primary, excess, contingent or on any other basis.

(All other provisions of this section remain unchanged)

Blanket Additional Insureds — As Required By Contract

- A. Subject to the **Primary and Non-Contributory** provision set forth in this endorsement, **SECTION II — WHO IS AN INSURED** is amended to include as an additional insured:

1. **Owners, Lessees or Contractors/Architects, Engineers and Surveyors**
 - a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your commercial general liability policy; and

- b. Any other person or organization, including any architects, engineers or surveyors not engaged by you, whom you are required to add as an additional insured under your policy in the contract or agreement in Paragraph a. above:

Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts of omissions of those acting on your behalf;

in the performance of your ongoing operations performed for the additional insured in Paragraph a., above.

However, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services by or for you, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
- (2) Supervisory, inspection, architectural or engineering activities.

Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

A person or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph a. above are completed.

2. Other Additional Insureds

Any of the following persons or organizations with whom you have agreed in a written contract, written agreement or written permit that such persons or organizations be added as an additional insured on your commercial general liability policy:

a. Lessors of Leased Equipment

Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

b. Managers or Lessors of Premises

Any person or organization from whom you lease premises, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the premises leased to you.

This insurance does not apply to any "occurrence" which takes place after you cease to be a tenant of that premises.

c. Mortgagees, Assignees or Receivers

Any person or organization with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance or use of your premises.

This insurance does not apply to any "occurrence" which takes place after the mortgage is satisfied, or the assignment or receivership ends.

d. Any Person or Organization Other Than A Joint Venture

Any person or organization (other than a joint venture of which you are a member), but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts of omissions of those acting on your behalf in the performance of your ongoing operations or in connection with property owned by you.

e. State or Governmental Agency or Political Subdivision — Permits or Authorizations

Any state or governmental agency or subdivision or political subdivision, but only with respect to:

- (1) Operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization; or

(2) The following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
- (b) The construction, erection or removal of elevators; or
- (c) The ownership, maintenance or use of any elevators covered by this insurance.

This insurance does not apply to:

- i. "Bodily injury" or "property damage" arising out of operations performed for the federal government, state or municipality; or
- ii. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to Paragraphs 2.b. through 2.d., this insurance does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

B. The insurance coverage afforded to the additional insureds in this coverage extension:

- 1. Does not apply unless the written contract or written agreement has been signed by the Named Insured or written permit issued prior to the "bodily injury" or "property damage" or "personal and advertising injury";
- 2. Only applies to the extent permitted by law; and
- 3. Will not be broader than that which you are required by the written contract, written agreement, or written permit to provide to such additional insured.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III — Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the written contract, written agreement or written permit you have entered into with the additional insured; or

2. Available under the applicable limits of insurance;

whichever is less.

The insurance provided by this extension shall not increase the applicable limits of insurance.

Broad Form Vendors Coverage

Subject to the **Primary and Non-Contributory** provision set forth in this endorsement, **SECTION II — WHO IS AN INSURED** is amended to include as an additional insured any person or organization (referred to below as vendor) for whom you have agreed in a written contract or written agreement to provide coverage as an additional insured under your policy. Such person or organization is an additional insured only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business. However, the insurance afforded the vendor does not apply to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement; however this exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product; or
- f. Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part of ingredient of any other thing or substance by or for the vendor; however this insurance does not apply to any insured person or organization, from who you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

The provisions of this coverage extension do not apply unless the written contract or written agreement has been signed by the Named Insured prior to the "bodily injury" or "property damage".

Incidental Malpractice

Subparagraph 2.a.(1)(d) under **SECTION II — WHO IS AN INSURED** is deleted in its entirety and replaced with the following:

- (d) Arising out of his or her providing or failing to provide professional health care services.

This does not apply to nurses, emergency medical technicians or paramedics if you are not in the business or occupation of providing any such professional services.

This also does not apply to "bodily injury" caused by cardio-pulmonary resuscitation or first aid services administered by a co-"employee".

This provision does not apply if you are a Social Service or Senior Living risk.

SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS — Amendments

Knowledge Of Occurrence, Claim, Suit Or Loss

The following is added to Paragraph 2. **Duties In the Event of Occurrence, Offense, Claim or Suit** under **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The requirements under this paragraph do not apply until after the "occurrence" or offense is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An "executive officer" or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company; or
5. Your elected or appointed officials, officers, members, trustees, board members, commission members, agency members, or your administrator or your insurance manager if you are an organization other than a partnership, joint venture, or limited liability company.

Primary and Non-Contributory Provision

The following is added to Paragraph 4. **Other Insurance, b. Excess Insurance** under **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is primary to and we will not seek contribution from any other insurance available to an additional insured under this policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in a written contract, written agreement or written permit that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

Unintentional Failure To Disclose Hazards

The following is added to Paragraph 6. **Representations** under **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**:

However, if you should unintentionally fail to disclose any existing hazards in your representations to us at the inception date of the policy, or during the policy period in connection with any additional hazards, we shall not deny coverage under this Coverage Part based upon such failure to disclose hazards.

Waiver Of Transfer Of Rights Of Recovery

The following is added to Paragraph 8. **Transfer of Rights Of Recovery Against Others To Us** under **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**:

We will waive any right of recovery against a person or organization because of payments we make under this Commercial General Liability Coverage Part. This waiver applies only if the insured has agreed in a written contract or written agreement to:

1. Waive any right of recovery against that person or organization; or
2. Assume the liability of that person or organization pursuant to a written contract or written agreement that qualifies as an "insured contract"; and
3. Include such person or organization as an additional insured on your policy.

Such waiver by us applies only to that person or organization identified above, and only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

Liberalization

The following condition is added to **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If we revise this Coverage Part to provide more coverage without additional premium charge, subject to our filed company rules, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

Two or More Coverage Parts or Policies Issued By Us

(This provision is not Applicable in the state of New York or Wisconsin).

The following condition is added to **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS:**

It is our intention that the various coverage parts or policies issued to you by us, or any company affiliated with us, do not provide any duplication or overlap of coverage. We have exercised diligence to draft our coverage parts and policies to reflect this intention. However, if the facts and circumstances that will respond to any claim or "suit" give rise to actual or claimed duplication or overlap of coverage between the various coverage parts or policies issued to you by us or any company affiliated with us, the limit of insurance under all such coverage parts or policies combined shall not exceed the highest applicable limit under this coverage, or any one of the other coverage forms or policies.

This condition does not apply to any Excess or Umbrella policy issued by us specifically to apply as excess insurance over this coverage part or policy to which this coverage part is attached.

SECTION V — DEFINITIONS

Discrimination

(This provision does not apply in New York).

A. The following is added to Definition 14. "Personal and advertising injury":

"Personal and advertising injury" also means "discrimination" that results in injury to the feelings or reputation of a natural person, however only if such "discrimination" or humiliation is:

1. Not done by or at the direction of:

- a. The insured; or b. Anyone considered an insured under **SECTION II — WHO IS AN INSURED;**

2. Not done intentionally to cause harm to another person.

3. Not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.

4. Not arising out of any "advertisement" by the insured.

B. The following definition is added to **SECTION V — DEFINITIONS:**

"Discrimination" means:

- a. Any act or conduct that would be considered discrimination under any applicable federal, state, or local statute, ordinance or law;

- b. Any act or conduct that results in disparate treatment of, or has disparate impact on, a person, because of that person's race, religion, gender, sexual orientation, age, disability or physical impairment; or

- c. Any act or conduct characterized or interpreted as discrimination by a person based on that person's race, religion, gender, sexual orientation, age, disability or physical impairment.

It does not include acts or conduct characterized or interpreted as sexual intimidation or sexual harassment, or intimidation or harassment based on a person's gender.

Electronic Data

The following definition is added to **SECTION V — DEFINITIONS:**

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cell, data processing devices or any other media which are used with electronically controlled equipment. For the purpose of the Electronic Data Liability coverage provided by this endorsement, Definition 17. "Property damage" is deleted in its entirety and replaced by the following:

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For the purpose of the Electronic Data Liability coverage provided by this endorsement, "electronic data" is not tangible property.

Employee Amendment

Definition 5. "Employee" under **SECTION V — DEFINITIONS** is deleted in its entirety and replaced by the following:

- 5. "Employee" includes a "leased worker", or a "temporary worker". If you are a School, "Employee" also includes a student teacher.

Golfing Facility

The following definition is added to **SECTION V — DEFINITIONS:**

"Golfing facility" means a golf course, golf club, driving range, or miniature golf course.

Mental Anguish Amendment

(This provision does not apply in New York).

Definition 3. "Bodily injury" under **SECTION V — DEFINITIONS** is deleted in its entirety and replaced with the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. This includes mental anguish resulting from any bodily injury, sickness or disease sustained by a person. (In New York, mental anguish has been determined to be "bodily injury").

Not-for-profit Member

The following definition is added to **SECTION V — DEFINITIONS**:

"Not-for-profit member" means a person who is a member of a not-for-profit organization, including clubs and churches, who receives no financial or other compensation.

ADDITIONAL INSURED — OWNERS, LESSEES OR CONTRACTORS — COMPLETED OPERATIONS — AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

COMMERCIAL GENERAL LIABILITY
CG 79 21 06 22

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION II — WHO IS AN INSURED is amended to include as an additional insured:

1. Any person or organization for whom you are performing or have performed operations when you and such person or organization have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your Commercial General Liability Coverage Part; and
2. Any other person or organization, including any architects, engineers or surveyors not engaged by you, whom you are required to add as an additional insured under your policy in the contract or agreement in Paragraph 1. above:

Such person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. The insurance afforded to such additional insured will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

This coverage shall be excess with respect to the person or organization included as an additional insured by its provisions; any other valid and collectible insurance that person or organization has shall be primary with respect to this insurance, unless this coverage is required to be primary and/or not contributory in the contract or agreement referred to above.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III — Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement; or
2. Available under the applicable limits of insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable limits of insurance.

40000FS 2487650 316

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

POLICY NUMBER: s 2487650

COMMERCIAL GENERAL LIABILITY
CG 25 03 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):

ALL CONSTRUCTION PROJECTS OF YOURS AND LOCATIONS AT WHICH
YOU ARE PERFORMING SERVICE WORK FOR WHICH COVERAGE IS
PROVIDED UNDER THIS POLICY.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I — Coverage A, and for all medical expenses caused by accidents under Section I — Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
- 4.** The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I — Coverage A, and for all medical expenses caused by accidents under Section I — Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

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- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of **SECTION III — Limits Of Insurance** not otherwise modified by this endorsement shall continue to apply as stipulated.

ElitePac®
Commercial Automobile Extension

COMMERCIAL AUTO
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Business Auto Coverage Form apply unless modified by the endorsement.

AMENDMENTS TO SECTION II - LIABILITY COVERAGE

- A. If this policy provides Auto Liability coverage for Owned Autos, the following extensions are applicable accordingly:

NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following is added to **SECTION II, A.1. - Who Is An Insured:**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no similar insurance available to that organization. However:

1. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
2. Coverage does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization.

No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

EXPENSES FOR BAIL BONDS AND LOSS OF EARNINGS

Paragraphs (2) and (4) of **SECTION II, A.2.a. - Supplementary Payments** are deleted in their entirety and replaced with the following:

- (2) Up to the Limit of Insurance shown on the ElitePac Schedule for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" covered under this policy. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request. This includes actual loss of earnings because of time off from work, which we will pay up to the Limit of Insurance shown on the ElitePac Schedule.

EMPLOYEE INDEMNIFICATION AND EMPLOYER'S LIABILITY AMENDMENT

The following is added to **SECTION II, B.4. - Exclusions:**

This exclusion does not apply to a "volunteer worker" who is not entitled to workers compensation, disability or unemployment compensation benefits.

FELLOW EMPLOYEE COVERAGE

The Fellow Employee Exclusion, **SECTION II, B.5. -** is deleted in its entirety.

CARE, CUSTODY OR CONTROL AMENDMENT

The following is added to **SECTION II, B.6. - Exclusions:**

This exclusion does not apply to property owned by anyone other than an "insured", subject to the following:

1. The most we will pay under this exception for any one "accident" is the Limit of Insurance stated in the ElitePac Schedule; and
2. A per "accident" deductible as stated in the ElitePac Schedule applies to this exception.

- B. If this policy provides Auto Liability coverage for Owned Autos or Non-Owned Autos, the following extension is applicable accordingly:

LIMITED LIABILITY COMPANIES

The following is added to **SECTION II, A.1. - Who Is An Insured:**

If you are a limited liability company, your members and managers are "insureds" while using a covered "auto" you don't own, hire or borrow during the course of their duties for you.

BLANKET ADDITIONAL INSURED - As Required By Contract

The following is added to **SECTION II, A.1. - Who Is An Insured:**

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Any person or organization whom you have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional "insured" on your policy. Such person or organization is an additional "insured" only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by your ownership, maintenance or use of a covered "auto". This coverage shall be primary and non-contributory with respect to the additional "insured". This provision only applies if:

1. It is required in the written contract, written agreement or written permit identified in this section;
2. It is permitted by law; and
3. The written contract or written agreement has been executed (executed means signed by a named insured) or written permit issued prior to the "bodily injury" or "property damage".

- C. If this policy provides Auto Liability coverage for Non-Owned Autos, the following extension is applicable accordingly:

EMPLOYEES AS INSURED

If this policy provides Auto Liability coverage for Non-Owned Autos, the following is added to **SECTION II, A.1. - Who Is An Insured:**

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name with your permission, while performing duties related to the conduct of your business.

AMENDMENTS TO SECTION III - PHYSICAL DAMAGE COVERAGE

If this policy provides Comprehensive, Specified Causes of Loss or Collision coverage, the following extensions are applicable for those "autos" for which Comprehensive, Specified Causes of Loss or Collision coverage is purchased:

TOWING AND LABOR

SECTION III, A.2. - Towing is deleted in its entirety and replaced with the following:

We will pay all reasonable towing and labor costs up to the maximum Limit of Insurance shown on the ElitePac Schedule per tow each time a covered "Private Passenger Auto", "Social Service Van or Bus" or "Light Truck" is disabled and up to the maximum Limit of Insurance per tow each time a covered "Medium Truck", "Heavy Truck" or "Extra Heavy Truck" is disabled.

For labor charges to be eligible for reimbursement the labor must be performed at the place of disablement.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

GLASS BREAKAGE DEDUCTIBLE

The following is added to **SECTION III, A.3. - Glass Breakage - Hitting A Bird Or Animal - Falling Objects or Missiles:**

If damaged glass is repaired rather than replaced, no deductible will apply for such repair. This extension does not apply to Emergency Services Organizations and Governmental Entities.

ADDITIONAL TRANSPORTATION EXPENSES
SECTION III, A.4.a. - Transportation Expenses is deleted in its entirety and replaced with the following:

We will pay up to the maximum Limit of Insurance shown on the ElitePac Schedule for temporary transportation expenses that you incur because of any "loss" to a covered "auto", but only if the covered "auto" carries the coverages and meets the requirements described in 1. or 2. below:

1. We will pay temporary transportation expenses for total theft of a covered "auto". We will only pay for such expenses incurred during the period beginning 24 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".
2. For "loss" other than total theft of a covered "auto" under Comprehensive or Specified Causes of Loss Coverage, or for any "loss" under Collision Coverage to a covered "auto", we will only pay for those temporary transportation expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the number of days reasonably required to repair or replace the covered "auto" or 30 days.

Paragraph 2. of this extension does not apply while there are spare or reserve "autos" available to you for your operations.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

HIRED AUTO PHYSICAL DAMAGE COVERAGE

The following is added to **SECTION III, A.4. - Coverage Extensions:**

Physical Damage coverage is hereby extended to apply to Physical Damage "loss" to "autos" leased, hired, rented or borrowed without a driver. We will provide coverage equal to the broadest coverage available to any covered "auto" shown in the Declarations. But, the most we will pay for "loss" to each "auto" under this coverage extension is the lesser of:

1. The Limit of Insurance stated in the ElitePac Schedule; or
2. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
3. The actual cost of repairing or replacing the damaged or stolen property with other property of like kind and quality. A part is of like kind and quality when it is of equal or better condition than the pre-accident part. We will use the original equipment from the manufacturer when:
 - (a) The operational safety of the vehicle might otherwise be impaired;
 - (b) Reasonable and diligent efforts to locate the appropriate rebuilt, aftermarket or used part have been unsuccessful; or
 - (c) A new original equipment part of like kind and quality is available and will result in the lowest overall repair cost.

For each leased, hired, rented or borrowed "auto" our obligation to pay "losses" will be reduced by a deductible equal to the highest deductible applicable to any owned "auto" for that coverage. No deductible will be applied to "losses" caused by fire or lightning.

SECTION IV, B.5. Other Insurance Condition, Paragraph 5.b. is deleted in its entirety and replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

1. Any covered "auto" you lease, hire, rent, or borrow; and
2. Any covered "auto" hired or rented by your "employee" under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

HIRED AUTO LOSS OF USE COVERAGE

The following is added to **SECTION III, A.4. - Coverage Extensions**:

We will pay expenses for which you are legally responsible to pay up to the Limit of Insurance shown on the ElitePac Schedule per "accident" for loss of use of a leased, hired, rented or borrowed "auto" if it results from an "accident".

This coverage extension does not apply to Emergency Services Organizations, Governmental Entities, and Schools.

AUTO LOAN/LEASE GAP COVERAGE (Not Applicable in New York)

The following is added to **SECTION III, A.4. - Coverage Extensions**:

In the event of a total "loss" to a covered "auto" we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the Physical Damage Coverage Section of the policy; and
2. Any:
 - a. Overdue lease/loan payments at the time of "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear, high mileage or similar charges;
 - c. Security deposits not refunded by the lessor or financial institution;
 - d. Costs for extended warranties, credit life, health, accident, or disability insurance purchased with the loan or lease; and
 - e. Carry-over balances from previous leases or loans.

You are responsible for the deductible applicable to the "loss" for the covered "auto".

PERSONAL EFFECTS

The following is added to **SECTION III, A.4. - Coverage Extensions**:

If this policy provides Comprehensive Coverage for a covered "auto" you own and that covered "auto" is stolen, we will pay up to the Limit of Insurance shown on the ElitePac Schedule, without application of a deductible, for lost personal effects that were in the covered "auto" at the time of theft. Personal effects do not include jewelry, tools, money, or securities. This coverage is excess over any other collectible insurance.

AIRBAG COVERAGE

The following is added to **SECTION III, B.3.a. - Exclusions**:

Mechanical breakdown does not include the accidental discharge of an airbag.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

EXPANDED AUDIO, VISUAL, AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III, B.4. - Exclusions

This exclusion does not apply to the following:

1. Global positioning systems;
2. "Telematic devices"; or
3. Electronic equipment that reproduces, receives or transmits visual or data signals and accessories used with such equipment, provided such equipment is:

- a. Permanently installed in or upon the covered "auto" at the time of the "loss";
- b. Removable from a housing unit that is permanently installed in the covered "auto" at the time of the "loss";
- c. Designed to be solely operated by use of power from the "auto's" electrical system; or
- d. Designed to be used solely in or upon the covered "auto".

For each covered "loss" to such equipment, a deductible of \$50 shall apply, unless the deductible otherwise applicable to such equipment is less than \$50, at which point the lower deductible, if any, will apply.

COMPREHENSIVE DEDUCTIBLE - LOCATION TRACKING DEVICE

The following is added to **SECTION III, D. - Deductible:**

Any Comprehensive Coverage Deductible shown in the Declarations will be reduced by 50% for any "loss" caused by theft if the covered "auto" is equipped with a location tracking device and that device was the sole method used to recover the "auto".

PHYSICAL DAMAGE LIMIT OF INSURANCE

SECTION III, C. - Limit Of Insurance is deleted in its entirety and replaced with the following:

The most we will pay for a "loss" in any one "accident" is the lesser of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

AMENDMENTS TO SECTION IV - BUSINESS AUTO CONDITIONS

DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The following is added to **SECTION IV, A.2.a. - Duties In The Event Of Accident, Claim, Suit Or Loss:**

The notice requirements for reporting "accident" claim, "suit" or "loss" information to us, including provisions related to the subsequent investigation of such "accident", claim, "suit" or "loss" do not apply until the "accident", claim, "suit" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;

3. An executive officer or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company;
5. Your elected or appointed officials, trustees, board members or your insurance manager, if you are an organization other than a partnership, joint venture or limited liability company.

But, this section does not amend the provisions relating to notification of police or protection or examination of the property that was subject to the "loss".

WAIVER OF SUBROGATION

SECTION IV, A.5. - Transfer Of Rights Of Recovery Against Others To Us is deleted in its entirety and replaced with the following:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" resulting from the ownership, maintenance or use of a covered "auto" but only when you have assumed liability for such "bodily injury" or "property damage" in an "insured contract". In all other circumstances, if a person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us.

MULTIPLE DEDUCTIBLES

The following is added to **SECTION IV, A. - Loss Conditions:**

If a "loss" from one event involves two or more covered "autos" and coverage under Comprehensive or Specified Causes of Loss applies, only the highest applicable deductible will be applied.

CONCEALMENT, MISREPRESENTATION OR FRAUD

The following is added to **SECTION IV, B.2. - Concealment, Misrepresentation Or Fraud:**

If you should unintentionally fail to disclose any existing hazards in your representations to us prior to the inception date of the policy or during the policy period in connection with any newly discovered hazards, we will not deny coverage under this Coverage Form based upon such failure.

POLICY PERIOD, COVERAGE TERRITORY

SECTION IV, B.7. - Policy Period, Coverage Territory is deleted in its entirety and replaced with the following:

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the "Coverage Territory".

We also cover "loss" to or "accidents" involving a covered "auto" while being transported between any of these places.

TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US - DEDUCTIBLES

The following is added to **SECTION IV, B.8. - Two Or More Coverage Forms Or Policies Issued By Us:**

If a "loss" covered under this Coverage Form also involves a "loss" to other property resulting from the same "accident" that is covered under this policy or another policy issued by us or any member company of ours, only the highest applicable deductible will be applied.

AMENDMENTS TO SECTION V - DEFINITIONS

BODILY INJURY INCLUDING MENTAL ANGUISH (Not Applicable in New York)

The definition of bodily injury is deleted in its entirety and replaced by the following:

"Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death resulting from any of these. "Bodily injury" includes mental anguish resulting from bodily injury, sickness or disease sustained by a person.

ADDITIONS TO SECTION V - DEFINITIONS

COVERAGE TERRITORY

"Coverage Territory" means:

1. The United States of America (including its territories and possessions), Canada and Puerto Rico; and
2. Anywhere in the world, except for any country or jurisdiction that is subject to trade or other economic sanction or embargo by the United States of America, if a covered "auto" is leased, hired, rented, or borrowed without a driver for a period of 30 days or less, and the insured's responsibility to pay "damages" is determined in a "suit" on the merits in and under the substantive law of the United States of America (including its territories and possessions), Puerto Rico, or Canada, or in a settlement we agree to.

If we are prevented by law, or otherwise, from defending the "insured" in a "suit" brought in a location described in Paragraph 2. above, the insured will conduct a defense of that "suit". We will reimburse the "insured" for the reasonable and necessary expenses incurred for the defense of any such "suit" seeking damages to which this insurance applies, and that we would have paid had we been able to exercise our right and duty to defend.

EXTRA HEAVY TRUCK

"Extra Heavy Truck" means a truck with a gross vehicle weight rating of 45,001 pounds or more.

HEAVY TRUCK

"Heavy Truck" means a truck with a gross vehicle weight rating of 20,001 pounds to 45,000 pounds.

LIGHT TRUCK

"Light Truck" means a truck with a gross vehicle weight rating of 10,000 pounds or less.

MEDIUM TRUCK

"Medium Truck" means a truck with a gross vehicle weight rating of 10,001 pounds to 20,000 pounds.

PRIVATE PASSENGER AUTO

"Private Passenger Auto" means a four-wheel "auto" of the private passenger or station wagon type. A pickup, panel truck or van not used for business is included within the definition of a "private passenger auto".

SOCIAL SERVICE VAN OR BUS

"Social Service Van or Bus" means a van or bus used by a government entity, civic, charitable or social service organization to provide transportation to clients incidental to the social services sponsored by the organization, including special trips and outings.

TELEMATIC DEVICE

"Telematic Device" includes devices designed for the collection and dissemination of data for the purpose of monitoring vehicle and/or driver performance. This includes Global Positioning System technology, wireless safety communications and automatic driving assistance systems, all integrated with computers and mobile communications technology in automotive navigation systems.

VOLUNTEER WORKER

"Volunteer worker" means a person who performs business duties for you, for no financial or other compensation.

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SCHEDULE OF COVERAGE EXTENSIONS AND LIMITS OF INSURANCE

This ElitePac Schedule is a summary of additional coverages, coverage modifications and corresponding Limits of Insurance that supplements the Business Auto Coverage Form. No coverage is provided by this summary. Refer to the actual endorsement for changes affecting your insurance protection.

DESCRIPTION	
AMENDMENTS TO SECTION II - LIABILITY COVERAGE	
Newly Acquired Or Formed Organizations	Coverage Extension
Limited Liability Companies	Coverage Extension
Employees As Insureds	Coverage Extension
Blanket Additional Insureds	Coverage Extension
Expenses For Bail Bonds And Loss Of Earnings	
Bail Bonds	\$3,000 Per "Accident"
Loss Of Earnings	\$1,000 Per Day
Employee Indemnification and Employer's Liability Amendment	Coverage Extension
Fellow Employee Coverage	Coverage Extension
Care, Custody Or Control Amendment	\$1,000 Per Accident \$500 Deductible Per "Accident"
AMENDMENTS TO SECTION III - PHYSICAL DAMAGE COVERAGE	
Towing And Labor	Coverage Extension
Private Passenger Auto, Social Service Van or Bus, Light Truck Medium, Heavy and Extra Heavy Trucks	\$75 Per Tow \$150 Per Tow
Glass Breakage Deductible	Coverage Extension
Additional Transportation Expenses	\$60 per day up to a maximum of \$1,800
Hired Auto Physical Damage Coverage	\$75,000 per "loss"
Hired Auto Loss of Use Coverage	\$750 Per "Accident"
Auto Loan/Lease Gap Coverage (Not Available in New York)	Coverage Extension
Personal Effects	\$500 Per "Accident"
Airbag Coverage	Coverage Extension
Expanded Audio, Visual, And Data Electronic Equipment Coverage	Coverage Extension
Comprehensive Deductible - Location Tracking Device	Coverage Extension
Physical Damage Limit Of Insurance	Coverage Extension

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DESCRIPTION	
AMENDMENTS TO SECTION IV - BUSINESS AUTO CONDITIONS	
Duties In The Event Of Accident, Claim, Suit Or Loss	Coverage Extension
Waiver of Subrogation	Coverage Extension
Multiple Deductibles	Coverage Extension
Concealment, Misrepresentation Or Fraud	Coverage Extension
Policy Period, Coverage Territory	Coverage Extension
Two Or More Coverage Forms Or Policies Issued By Us - Deductibles	Coverage Extension
AMENDMENTS TO SECTION V - DEFINITIONS	
Bodily Injury Including Mental Anguish (Not Applicable in New York)	Broadened Definition
Coverage Territory	Broadened Definition

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **09/30/2022** Policy No. **AF WCP 100054394 01**
Insured **THE SURFACE MASTERS, INC.**

Endorsement No.
Premium: **\$0**

Insurance Company **ACCIDENT FUND NATIONAL** Countersigned by _____
INSURANCE COMPANY

WC 00 03 13
(Ed. 4-84)

Service Provider Information

Company Info



The Surface Masters
1393 Cobb Industrial Way
Marietta, Georgia 30066

P: 770-250-6392

F: 770-250-6392

<http://www.thesurfacemasters.com>

Contact Person

Griffin Duncan
Account Manager
Griffin.Duncan@thesurfacemasters.com
Cell: 404-450-9812
Office 770-250-6392 Ext 1709

About Us

We Solve Problems & Make Pavement Maintenance Simple!

The Surface Masters (SMI) provides pavement maintenance & construction services to the commercial, recreational and industrial markets throughout the Southeastern United States!

Our mission is to enhance our company, community, and lives one parking lot at a time by achieving complete client satisfaction resulting from constant delivery of high quality, cost effective, and timely resurfacing projects.

We are committed to complete client satisfaction and being the most responsive asphalt maintenance contractor in the industry. We appreciate the opportunity to provide these services and look forward to serving you as a client.

Price Breakdown: Lakeshore Park Asphalt Track Resu RFP



Please find the following breakdown of all services we have provided in this proposal.

This proposal originated on April 21, 2023.

Item	Description	Cost
1.	Mill & Resurface with Full Depth Reclamation Option	\$367,355.00
Total:		\$367,355.00

Authorization to Proceed & Contract

You are hereby authorized to proceed with the work as identified in this contract. By signing and returning this contract, you are authorized to proceed with the work as stated.

We understand that if any additional work is required different than stated in the this proposal/contract it must be in a new contract or added to this contract.

Please see all attachments for special conditions that may pertain to aspects of this project.

Acceptance

We agree to pay the total sum or balance in full 30 days after the completion of work.

I am authorized to approve and sign for this project as described in this proposal as well as the identified payment terms and options stated below:

****A signed proposal is required prior to the scheduling of the work.****

****Price is valid for 15 days from proposal date****

****Proposal is based on the current price of liquid asphalt. If there is a price increase in liquid asphalt, there could be an additional charge for the difference.****

Date: _____

Caitlin Sharpe | Owner's Representative
City Of Dalton
300 W Waugh St
Dalton, GA 30720
csharpe@daltonga.gov
C: 706-278-5404
O: 706-278-5404

Griffin Duncan | Account Manager
The Surface Masters
1393 Cobb Industrial Way
Marietta, Georgia 30066
E: Griffin.Duncan@thesurfacemasters.com
C: 404-450-9812
P: 770-250-6392 Ext 1709
F: 770-250-6392
<http://www.thesurfacemasters.com>

Additional Info: Lakeshore Park Asphalt Track Resurfacing RFP



Contract Terms & Conditions

1. This proposal and contract become effective as a contract, after the client/purchaser and the seller have both executed its acceptance. Conditions which are not incorporated in this contract will not be recognized as part of this agreement unless made in writing and approved by both parties via signatures. Additionally, this contract shall become a legally binding attachment to any contract entered into between The Surface Masters and the financially responsible company for which the work will be performed.
2. All credit must be approved as part of this contract prior to any work being done.
3. This proposal and contract may be withdrawn pending the results of a credit investigation, or it may be necessary to post a bond or establish an escrow account with sufficient funds, and a guarantee of payment upon completion of the work, or establish contract payment terms as detailed above.
4. The Surface Masters will not be responsible for failure to complete the work covered in this contract or by project deadline when prevented by strikes, labor troubles, accidents, necessary repairs to equipment, fire, flood, weather conditions or any other contingencies beyond our control.
5. All work will be completed in a neat and workmanlike manor and only materials meeting state commission specifications for the type of construction will be used unless otherwise specified by architect, engineer, or owner and specified in this contract.
6. All invoices are due upon invoice or completion date unless other terms have been agreed upon in writing such as extended terms or corporate billing cycles.
7. Quantities stated above in the proposal are approximate only. Payment will be based on actual field measurements. Owner agrees to pay necessary material overages. Prices listed in the proposal and contract will be valid for 15 days from date of proposal.
8. Payments not received within 30 days of invoice date will be subject to a 1 ½% monthly and 18% annual interest charge which will be added to monthly statements. Full payment for principal and interest is personally guaranteed by the individual signatory purchaser of this contract, as well as the company they represent and the financially responsible company for which the work is being performed.
9. Withholding of a retainer of invoiced work will constitute a breach of contract unless retainer is specifically detailed in the payment terms listed above.
10. Client shall in good faith: a) secure and pay for all notifications, bonds, permits, fees, licenses, police details, and inspections necessary for proper execution and completion of the work unless otherwise specified; b) provide all lines, grades, stakes, traffic control, engineering, and layout necessary for proper execution and completion of the work; c) proper marking of all utility lines, manholes, gas lines, poles, and other work impediments which are not listed by Dig Safe or any other utility based organization; d) a water supply for use by The Surface Masters, Inc. during this project; and e) assume the sole risk responsibility, and liability for damages arising from or related to the work performed and indemnify, defend, and hold harmless The Surface Masters, Inc. from any and all such claims for damages, including but not limited to attorney's fees, and/or losses resulting directly or indirectly from this installation. If, in the opinion of The Surface Masters, Inc., the Client has failed to perform in accordance with this paragraph, The Surface Masters, Inc. may refuse to perform work until Client makes the conditions suitable for commencement, continuation, and/or completion of the work.
11. Final payment, in full, is required upon contract completion invoice unless detailed previously above.
12. In the event of non or late payment of client/purchaser, the contract shall be considered by the client/purchaser, and any and all legal means will be pursued to the fullest extent of GA law to recover any uncollected funds, additionally the signatory party of this proposal and contract agrees that by signing and authorizing this contract they will be responsible for and reimburse any legal, or collection agency fees incurred by the seller, as per GA law or any other applicable state laws if work is performed in a different state other than GA.
13. If a specific time for completion is stated in the contract documents or in the Proposal/Contract, the time for completion will be extended to allow for any delays beyond the control of The Surface Masters, Inc. including, but not limited to, delays due to weather, the presence of hazardous materials and wastes, and the acts of other contractors. The Surface Masters, Inc. is not liable for any damages or delays in completion of the work.
14. The Surface Masters, Inc. reserves the right to withdraw this proposal for any reason at any time prior to approval. The PRICE is based on acceptance and approval as a contract by PRINCIPLE/OWNER within a maximum of fifteen (15) calendar days, however; due to the current volatility of the market, prices may adjust anytime. Additionally, The Surface Masters, Inc. may terminate this contract/agreement for any reason whatsoever, or for no reason. The

Proposal: Lakeshore Park Asphalt Track Resurfacing



Surface Masters, Inc. shall give written notice of such termination to the Owner specifying when termination becomes effective.

15. The client/purchaser will be responsible for towing. A tow truck service should be available at client/purchaser's expense to relocate, in a timely fashion, any vehicles, trailers, equip., etc. that prevent the scheduled work from being completed. If there is a shut down and/or halt of operations due to a failure to notice and/or a lack of expeditious movement of obstructions hindering the scheduled work, additional charges may apply. In the event The Surface Masters incur towing fees, they will be billed as a change order to Owner/Authorized Agent. The change order will include processing fees in addition to the actual towing charge.
16. The owner is responsible to notify all landscapers, garbage companies, and/or any other routinely scheduled work/services to not show on the area of work the day we are performing work. In the event of a reschedule due to unforeseen conditions, you are required to let all service providers know about the change.
17. 90% of contract amount and change orders must be paid prior to completing punch list items and/or any changes for additional work required by owners/managers, cities or municipalities.
18. It is understood and agreed upon that all work is performed and scheduled "weather permitting."
19. This proposal does not include cost of permit fees, inspection fees, impact fees, or survey fees, unless specified in above scope, which may be required from the various agencies or municipalities having jurisdiction. If Owner/Authorized Agent directs this work to be completed without required permitting, all costs including, but not limited to, fees, expediting and fines are the responsibility of the Owner/Authorized Agent.
20. Change Orders, additions or extras requested by Owner, Contractor, or Municipality will be invoiced as an addition to the contract and shall not delay payment of the original contract sum. All Change Orders must be approved and signed by Owner/Authorized Agent.
21. All underground utilities including, but not limited to, electrical, cable, internet, plumbing and irrigation lines if damaged or broken are the responsibility of the Owner and not The Surface Masters. If The Surface Masters needs to repair damages, the costs will be billed to the Owner as a Change Order.
22. The Surface Masters will not be responsible for traffic control, unless specified otherwise in proposal, paint/product tracking, or damage to vehicles or persons trespassing in designated work areas.
23. Plans, engineers, layout, testing, bonds and as-builts by others.
24. The prices used in this proposal are based on the condition that all work quoted will be accepted in total.
25. In the event of a dispute regarding this contract, the prevailing party agrees to pay reasonable attorney fees, collection costs and all related costs incurred until such dispute is settled.
26. Unless specified in the scope, this proposal is based on work being completed during the hours of 8:00AM and 5:00PM, Monday through Friday, excluding holidays and weekends.
27. No warranties are honored unless payment is made in full. The Surface Masters will provide a one (1) year warranty, starting on last day of substantial completion, on materials and workmanship. Normal wear and tear is not covered under this warranty.

Paving Commercial | Owner Responsibility & Conditions

1. **Sprinklers:** should be off 24 hours prior until 48 hours after service. Avoid lawn cutting during this same period of time. The surface must be dry for our arrival. Areas where the pavement is wet could delay project start and/or prevent project from being completed on schedule.
2. **Rain:** If it's raining the day of scheduled service, assume we aren't coming and we will contact you to reschedule as soon as possible. If it rains after our installation, please contact your representative. We monitor the weather closely and can generally predict this very well. In the event that an unexpected storm happens, we will touch up any areas where the asphalt has been affected.
3. **Site Services:** The property is responsible to notify all routine service providers such as but not limited to landscapers, garbage companies, and moving companies to not show on the area of work the day we are performing work. In the event of a reschedule due to unforeseen conditions, you are required to let all service providers know about the change.
4. **Incidental Damage:** SMI is not responsible for incidental damage caused by heavy equipment required to conduct the project herein.
5. **Unsuitable Subgrade:** If asphalt repair areas require removal and replacement of unsuitable subgrade material in

Proposal: Lakeshore Park Asphalt Track Resurfacing



order to properly repair the damaged area, additional charges may apply.

6. **Tree Damage:** SMI is not responsible for tree damage due to asphalt repairs in areas where root repair/removal is required in order to properly patch asphalt—additionally, SMI will not be responsible for future damage to these patched areas due to future root growth.
7. **Deteriorated Surroundings:** If area surrounding the new asphalt patch is severely deteriorated, loose asphalt from these areas may be displaced in the removal process – this may leave the patch not perfectly square. This could also cause the new patch to fail in the future.
8. **Two Percent (2%) Fall:** Areas with less than two percent (2%) fall are not guaranteed for surface water drainage off of asphalt pavement.
9. **Elevation Change:** When overlaying a surface, elevations are changed and can sometimes cause different drainage patterns than the original design which can result in water back up, ponding, etc.—SMI is not responsible for correction of said problems, since this is unavoidable in most cases.
10. **Additional Mobilizations:** If additional mobilizations/move-ins are required by owner or as a result of work zone inaccessibility, **additional mobilizations will be billed at a minimum of (\$7,500 for Paving and \$5,000 for Milling) each.** This charge may be billed due to, but not limited to, site unavailability for commencement of the work due to vehicles encroaching on the work area, change of schedule by Owner/Authorized Agent without prior consent of contractor, failure to notice by Owner/Authorized Agent or repairs to work caused by trespassing.
11. **Cleaning:** Customer is responsible for any "heavy cleaning", otherwise; SMI will bill for this additional cleaning.
12. **Water:** Owner to supply water and hydrant for mill, soil cement equipment, rollers, and other required equipment needed to properly conduct the project.
13. **Reflective Cracking:** The Surface Masters will not accept responsibility for reflective cracking of new asphalt overlay due to the cracked condition of the existing asphalt pavement.
14. SMI is not responsible for permits, poor sub-soil, removal of rocks and boulders, landscaping, and/or utility location and relocation.
15. **Unforeseeable and Pre-Existing Conditions:** SMI is not responsible for failures in base and pavement due to any underground installations, settlement of fills, poor subsoil, wet weather springs, or improper drainage conditions; not for the correction of any such condition determined to exist prior to our work, including landscaping. Additionally, SMI is not responsible for permits nor utility location or relocation. A utility locate will be done to locate the proximity of utilities, however; this is just an approximation. It does let us know the depth at which these utilities are located nor an exact location. We have utility locates done prior to any dig work in order to enhance our chances to avoid such utilities, however; we cannot guarantee a utility won't be hit as they are unforeseeable.
16. **Cleaning Expenses:** The owner understands the scope of work called for in this agreement can be a messy process. To provide the owner with a quality product, The Surface Masters, Inc. uses industry standard techniques along with modern equipment to clean, prepare, and execute the project scope which can create a dusty and dirty environment. The Surface Masters, Inc. is not responsible for cleaning, repairing, or replacing any surfaces that have been soiled, stained, or have accumulated dust as a result of the process, equipment, and/or materials needed to complete the project.
17. **Driving on Surface:** Once you start driving on paved/sealed surface, avoid turning your wheels unless your vehicle/equipment is moving. We understand this may be difficult to do, but understand that when wheels are turned on a freshly paved/sealed asphalt surface, scuffing and turn marks will be evident. Consequently, we are not responsible for any such scuffing, indentation, or damage caused by the turning action of these vehicles and/or equipment, especially heavy trucks/equipment and 18-wheelers. ***This is not uncommon and is NOT a sign of poor workmanship or improper materials. New asphalt and sealer can take up to 90 days to fully cure. No worries, in time most scuffs will blend in with surrounding surface depending on severity.***
18. **Barricaded Parking Lot:** It is vital that all vehicles are removed from our area of work no later than 7:15 am, unless otherwise agreed. As you can imagine, our project costs are based on the property having all cars, people and objects off the area of work. Tow Trucks need to be arranged 5 days prior to the start of any work and must be on call to remove cars from the scheduled work zone in a timely fashion. If any cars are left in the area of work, we cannot be held responsible for any damage to the vehicles. It is our understanding that The Surface Masters (SMI) will have full access to the designated parking area which will be free of any obstructions causing zero work delays. Additional fee may be incurred due to work stoppage or delays as a result of lack of expeditious movement of vehicles in scheduled work areas. SMI is not responsible for any tracking of tack caused by any vehicles and/or pedestrians if the barricades are moved prematurely or without authorization. The Project Manager will remove the barricades once the material has cured.

Warranty & Conditions

1. All material guaranteed to be installed exactly as specified.
2. Due to unforeseeable conditions during excavation, depths may go deeper than anticipated. A change order may be necessary should this occur.
3. Any necessary permits or permit fees are owners' responsibility.
4. ***NOTE: This proposal may be withdrawn by us if not accepted within 20 days.***
5. The cost of and obtaining of all permits, bonds, stakeouts, cut sheets, layout engineering, testing, etc. are excluded.
6. If, after being made aware of undesirable sub-base or base coarse conditions, the owner or owner agent insists on the installation of any part of the pavement without authorizing corrective action, our firm will not be responsible for any subsequent pavement failures, and will be paid as stated in the contract. Our firm shall not be liable for any failure to undertake or complete the work for causes beyond our control.
7. Unless weekend work is clearly identified in the proposal, price is for work to be completed during the week (Monday-Friday). Night or weekend work available at additional cost.
8. **Proposal is based on the current price of liquid asphalt. If there is a price increase in liquid asphalt, there will be additional charge for the difference.**
9. **Existing Surface:** The existing surface will be expected to support the weight of all required construction equipment. In the event that due to poor sub-grade conditions sinking may occur when we drive onto your site, Our firm will not be held responsible for damages to any concrete or asphalt due to the weight of our trucks & equipment.
10. Our firm assumes no liability for damage to any utilities such as but not limited to gas, electric, plumbing, phone, cable, dog fencing, sprinklers, culvert pipes, etc.
11. Unless stated otherwise in the above scopes, all work will be warranted for a period of (1) one year from date of installation on materials and workmanship, **except cracks.**

Attachments



Please click any of the links below to view and print all documents.

Company Attachments

[Certificate of Insurance](#)

[FDR Diagram](#)

[Form W9](#)

[Full Depth Reclamation](#)

[Project and Billing Contact Form](#)



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: June 19, 2023

Agenda Item: Terms and Conditions for the American Rescue Plan Act- Improving Neighborhood Outcomes in Disproportionately Impacted Communities Grant Program – Heritage Point Park Project

Department: Recreation

Requested By: Caitlin Sharpe

Reviewed/Approved by City Attorney? Yes

Cost: N/A

Funding Source if Not in Budget Grant Funded

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

This agenda item is for the approval of the terms and conditions for the Improving Neighborhood Outcomes in Disproportionately Impacted Communities grant. This must be signed and returned to the Governor’s Office of Planning and Budget to move into the next steps of the post-grant award process. If approved, an electronic copy of the terms and conditions will be emailed to Mayor Pennington for the execution of the document. An electronic signature is a requirement of the grant post-approval process.

In November 2022, The Governor’s Office of Planning and Budget requested applications for the Improving Neighborhood Outcomes in Disproportionately Impacted Communities grant opportunity. This program is made available through the American Rescue Plan Act State Fiscal Recovery Funds. This grant opportunity will allow agencies to develop neighborhood features in disproportionately impacted communities by selecting projects that will promote improved health and safety outcomes, such as parks, green spaces, recreational facilities, sidewalks, pedestrian safety, and projects to revitalize public spaces.

The Parks and Recreation Department submitted an application to request funding for improvements at the Heritage Point Park Complex. The improvements include the installation of synthetic turf on all ten softball infields. The application submitted requested \$2,000,000; the City was awarded \$2,200,000. The expected total cost of the project will be \$2,540,000. A local match will be required for the remaining project amount. The estimated amount of the local match will be \$337,500.



AMERICAN RESCUE PLAN ACT
IMPROVING NEIGHBORHOOD
OUTCOMES IN DISPROPORTIONATELY
IMPACTED COMMUNITIES
GRANT PROGRAM

TERMS AND CONDITIONS

GRANT APPLICATION NAME

Heritage Point Park Project

About This Document

This agreement (the “Grant Agreement” or “Agreement”) is entered into between the Governor’s Office of Planning and Budget (“OPB”) on behalf of the State of Georgia (the “State”) and the undersigned grantee (“Grantee”) (hereinafter collectively referred to as the “Parties”). This Grant Agreement sets forth the terms and conditions applicable to payments distributed by the OPB on behalf of the State in the form of reimbursement payments using grant funds to Grantee, City of Dalton, from the State of Georgia’s allocation of funds from the State Fiscal Recovery Fund (“SFRF”) established within 42 U.S.C.A. § 802 via the American Rescue Plan Act of 2021 (hereinafter referred to as “Grant”). The Grantee’s official representative, whose signature appears below, will execute the interest and responsibilities of the Grantee.

These requirements are in addition to those that can be found within GeorgiaGrants, (the grant management system administered by OPB), to which the Grantee agrees when accepting the Grant. Other state and federal requirements and conditions may apply to the Grant, including but not limited to 2 C.F.R. § 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and applicable subparts; the State funding announcement under which Grant payments are distributed; and any applicable documents referenced in the documents listed above.

To the extent the terms and conditions of this Grant Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be construed consistent with the general objectives, expectations, and purposes of this Grant Agreement and in all cases, according to its fair meaning. The Grantee acknowledges that it and its counsel have reviewed this Grant Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Grant Agreement. Any vague, ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Grant Agreement.

1. Definitions

1.1 As used in this Agreement, the following terms shall have the following meanings:

1. **“ARPA”** means the federal American Rescue Plan Act of 2021.
2. **“SFRF”** means the funds allocated to Georgia as its share of the State Fiscal Recovery Fund created by the American Rescue Plan Act of 2021.
3. **“GeorgiaGrants”** means the grant management system administered by OPB to facilitate distribution or reimbursement of allowable expenditures of State Fiscal Recovery Funds to the Grantee.
4. **“Grant”** means the payments distributed by the State in the form of a grant or reimbursement to the Grantee from the State Fiscal Recovery Fund (“SFRF”).
5. **“Grant Project” or “Project”** means the project proposed by Grantee in its application to OPB as approved by OPB for funding under this Grant.
6. **“Grant Agreement” or “Agreement”** means this agreement between the State of Georgia and the Grantee as defined by the State Fiscal Recovery Fund Terms and Conditions and its incorporated documents.
7. **“Grantee”** means the undersigned
City of Dalton
8. **“OPB”** means the Governor’s Office of Planning and Budget.
9. **“Parties”** means collectively the parties to this Agreement, namely, the State and the Grantee.
10. **“State”** means the State of Georgia.

2. General Requirements and Conditions

2.1 Applicability of Grant Agreement and Provisions

This Grant Agreement is subject to the additional terms, conditions and requirements of other laws, rules, regulations, and plans recited herein and is intended to be the full and complete expression of and constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and all prior and contemporaneous understandings, agreements, promises, representations and terms and conditions, both oral and written, are superseded, and replaced by this Grant Agreement.

Notwithstanding any expiration or termination of this Grant Agreement, the rights and obligations pertaining to the Grant close-out, cooperation, and provision of additional information, return of Grant funds, audit rights, records retention, public information, and any other provision implying survivability shall remain in effect after the expiration or termination of this Grant Agreement.

2.2 Legal Authority

The Grantee certifies that it possesses legal authority to enter into this Grant Agreement and accept payments for which the Grantee is eligible pursuant to the funding announcement. By submitting requests or receiving reimbursement for requests made within the scope of this Grantee Agreement, Grantee certifies that it is authorized to submit such requests as defined in this Agreement, and that requests for reimbursement will pertain only to eligible and reasonable expenses incurred to fund the completion of the Project as approved by OPB and described in this Agreement.

Grantee hereby represents and warrants that it has the power and is duly authorized to enter into this Grant Agreement with regard to all matters described herein upon the terms set forth and that the persons executing this Agreement on behalf of Grantee are the authorized agents of Grantee for the purpose of executing this Agreement. The Parties acknowledge and agree that this Agreement constitutes a valid and legally binding obligation of each Party, enforceable in accordance with its terms.

2.3 Grant Acceptance

The state funding announcement remains an offer until the fully and appropriately executed copy of this Grant Agreement is received by OPB. Upon approval of the Grant Agreement, OPB or its designee will issue a statement of confirmation or acceptance (“funding announcement”) to the Grantee through Grantee’s representative listed in “Exhibit A” attached to this Agreement, upon receipt of which the Grantee may begin submissions to Georgia Grants for reimbursement as specified in this Agreement.

2.4 Performance Period

Funding has been authorized for eligible expenditures incurred by the Grantee during the performance period for this Grant which is between the date of execution of this Agreement and October 31, 2026, or the date of exhaustion of funding for the purpose of this Grant as solely determined by OPB, whichever is earlier (“performance period”). All expenditures must be incurred on or before October 31, 2026, and the Grantee must submit expenses for reimbursement through GeorgiaGrants during the Performance Period for this Grant by no later than December 31, 2026. The State will not be obligated to reimburse expenses incurred prior to or after the performance period.

2.5 General Responsibility and Compliance

In order to qualify as an expense eligible for reimbursement, an expenditure shall be reasonable and shall be incurred solely to facilitate the completion of the Project identified in the Grantee's application as awarded and approved by OPB. Additionally, Grantee shall submit a proposed final Project budget to OPB prior to beginning work on the Project. Work on the Project shall not begin until the proposed final Project budget is approved in writing by OPB.

Any proposed revision to either the scope of the approved Project or to the approved final Project budget thereof shall be submitted to OPB along with a detailed justification for the proposed revision. Approval of any proposed revision to the scope of the Project or the Project budget shall be left at the sole discretion of OPB.

The Grantee certifies compliance with these eligible expenses by executing this Grant Agreement.

The Grantee is responsible for the integrity of the documents submitted through GeorgiaGrants in support of claims for reimbursement of expenditures; accountability for all funds awarded; and compliance with state guidelines, policies and procedures and applicable federal and state laws and regulations.

The Grantee will document appropriate protocols and procedures to support the types of expenditures claimed for reimbursement and to ensure that all terms, conditions and specifications of the Grant are met.

The Grantee agrees to maintain an accounting system or process integrated with adequate internal fiscal and management controls to capture and report Grant data with accuracy, providing full accountability for expenditures. This system or process shall provide reasonable assurance that the Grantee is managing federal and state financial assistance programs in compliance with all applicable laws and regulations.

2.6 Amendments and Changes to the Grant Agreement

The State may make changes to the Grant. Changes include, but are not limited to, modifying the scope of the Grant Project, adding funds to previously un-awarded cost items or categories, or changing funds in any awarded cost items or category. In the event the State determines that changes are necessary to the Grant award document after an award has been made, including changes to the performance period or terms and conditions, the Grantee will be notified of the changes in writing, and any such changes shall be documented in GeorgiaGrants.

The Grantee has no right or entitlement to payment or reimbursement with Grant funds. The Grantee agrees that nothing in this Grant Agreement will be interpreted to create an obligation or liability of the state in excess of the availability of funds for reimbursement as described in the funding announcement. The Grantee agrees that any act, action or representation by either party, their agents or employees that purports to waive or alter the terms of this Grant Agreement or increase the maximum liability of the state is void unless an amendment to this Grant Agreement is consented to by both parties in writing and is documented in GeorgiaGrants. Notwithstanding

this requirement, it is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Grant Agreement and that any such changes shall be automatically incorporated into this Grant Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law.

2.7 Public Information and Meetings

Notwithstanding any provisions of this Grant Agreement to the contrary, the Grantee acknowledges that the State of Georgia, OPB, and this Grant Agreement are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-71, *et seq* (ORA). The Grantee acknowledges that OPB will comply with the ORA, as interpreted by judicial opinions and opinions of the Attorney General of the State of Georgia.

The Grantee acknowledges that information created or exchanged in connection with this Grant Agreement, including all reimbursement documentation submitted to OPB, is subject to the ORA, whether created or produced by the Grantee or any third party, and the Grantee agrees that information not otherwise excepted from disclosure under the ORA will be available in a format that is accessible by the public at no additional charge to OPB or the State. The Grantee will cooperate with the State and OPB in the production of documents or information responsive to a request for information.

2.8 Remedies for Non-Compliance

If the State determines that the Grantee fails to comply with any term of this Grant Agreement, whether stated in a federal or state statute or regulation, an assurance, a state plan or application, a funding announcement, or any other applicable requirement, the State, in its sole discretion, may take actions including:

1. Temporarily withholding payments pending correction of the deficiency or imposing a corrective action plan intended to bring the Grantee into compliance with this Grant Agreement. A corrective action plan shall be a compulsory set of actions mandated by OPB that will ensure the Grantee will take certain actions to bring it into compliance with the terms of this Grant Agreement. If the Grantee fails to complete any imposed corrective action plan within 60 days, OPB reserves the right to require the Grantee to return any previous Grant fund reimbursements in a manner and timeframe as determined by OPB;
2. Requiring the Grantee to return or offset previous reimbursements to OPB in a manner and timeframe as determined by OPB. By entering into this Grant Agreement, Grantee specifically accepts and acknowledges that any noncompliance with the terms of this Grant Agreement shall entitle the State to implement this remedy, regardless of whether or not the previous reimbursements were made for allowable costs;
3. Disallowing or denying use of funds for all or part of the cost of the activity or action not in compliance;

4. Disallowing claims for reimbursement;
5. Wholly or partially suspending or terminating the Grant;
6. Prohibiting the Grantee from applying for or receiving additional funds for other grant programs administered by the State until repayment to OPB is made and any other compliance or audit finding is satisfactorily resolved; or
7. Taking other remedies or appropriate actions as determined solely by OPB.

If OPB elects to implement whole or partial suspension or termination of the Grantee's Grant in accordance with this Section of the Grant Agreement, the Grantee's costs resulting from Grant eligible expenditures incurred during any such suspension or after termination of the Grant are not allowable costs unless OPB expressly authorizes them either in the notice of suspension or termination or subsequently.

OPB, at its sole discretion, may impose any of the remedies enumerated in this section without first requiring a corrective action plan.

The Grantee acknowledges and agrees that the State has the rights and remedies stated above and any other rights and remedies set forth in this Grant Agreement which are fair and reasonable, and further acknowledges and agrees that no action taken by the State to assert or enforce any of these rights or remedies shall excuse the Grantee from performance of its obligations under this Agreement.

To the extent allowed by law, the Grantee waives any claims to dismiss obligations to pay the State for amounts owed due to non-compliance stemming from the Grantee's actions to dissolve, become insolvent, seek bankruptcy protection, or exercise other actions appearing to affect its ability to pay.

2.9 False Statements by Grantee

By acceptance of this Grant Agreement, the Grantee makes all the statements, representations, warranties, guarantees, certifications and affirmations included in this Grant Agreement. If applicable, the Grantee will comply with the requirements of 31 U.S.C. § 3729-3733, which set forth that no grantee of federal payments shall submit a false claim for payment.

If any of the statements, representations, certifications, affirmations, warranties or guarantees are false or if the Grantee signs or executes this Grant Agreement with a false statement or it is subsequently determined that the Grantee has violated any of the statements, representations, warranties, guarantees, certifications or affirmations included in this Grant Agreement, then the State may consider this action or activity a possible default under this Grant Agreement and may terminate or void this Grant Agreement for cause and pursue other remedies available to the State under this Grant Agreement and applicable law. False statements or claims made in connection with grants may result in fines, imprisonment and debarment from participating in federal grants or contracts and/or any other remedy available by law, potentially including the provisions of 31

U.S.C. § 3801-3812, which details the administrative remedies for false claims and statements made.

2.10 Conflict of Interest Safeguards

The Grantee will establish safeguards to prohibit its employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain, whether for themselves or others, particularly those with whom they have family, business, or other ties. The Grantee will operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to its performance under this Grant Agreement in accordance with Title 45 Chapter 10 of the O.C.G.A., 18 U.S.C. § 666, 18 U.S.C. § 1031, and 2 C.F.R. § 200.318.

2.11 Fraud, Waste and Abuse

The Grantee acknowledges and assents that the State of Georgia shall not tolerate fraud, waste or misuse of funds received from any state entity (*See* Title 45 Chapter 10 of the O.C.G.A.) and that any violation of state or federal law, state policies or standards of ethical conduct shall result in penalties including, but not limited to, suspension of current and future funds or reimbursement, suspension or debarment from federal and state grants, recoupment of monies reimbursed or provided under an award, remedies set forth in 2 C.F.R. § 200.338, and civil and/or criminal penalties.

In the event the Grantee becomes aware of any allegation or a finding of fraud, waste or misuse of funds received from OPB that is made against the Grantee or of fraud, waste, false statements, or other errors in any submission for reimbursement, the Grantee is required to immediately report said allegation or finding to the U.S. Department of the Treasury Office of the Inspector General¹ and to OPB and must continue to inform OPB of the status of any such on-going investigations. The Grantee must also promptly refer to OPB as well as the appropriate federal authorities, including, but not limited to, the U.S. Department of the Treasury Office of the Inspector General, any credible evidence that a principal, employee, agent, grantee, contractor, subcontractor or other person has -- (1) submitted a claim for reimbursement or award funds that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving reimbursement or award funds. Grantees must also immediately notify OPB in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with grant requirements. Grantees must notify the local prosecutor's office of any possible criminal violations. Grantees must immediately notify OPB in writing if this Grant Project or personnel, as it pertains to the scope of this Grant, become involved in any litigation, whether civil or criminal, and the Grantee must immediately forward a copy of any demand, notices, subpoenas, lawsuits or indictments to OPB.

¹ See 2 C.F.R. § 200.113. Disclosure, in a timely manner, to the Federal awarding agency or pass-through entity is mandatory for all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 C.F.R. § 200.338.

2.12 Termination of the Agreement

The State may, at its sole discretion, terminate this Grant Agreement, without recourse, liability or penalty against the State, upon written notice to the Grantee. In the event the Grantee fails to perform or comply with an obligation or a term, condition or provision of this Grant Agreement, the State may, upon written notice to the Grantee, terminate this Grant Agreement for cause, without further notice or opportunity to cure. Such notification of termination for cause will state the effective date of such termination, and if no effective date is specified, the effective date will be the date of the notification.

The State and the Grantee may mutually agree to terminate this Grant Agreement at any time. The State, in its sole discretion, will determine if, as part of the agreed termination, the Grantee is required to return any or all of the reimbursed funds.

Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law or under this Grant Agreement, including those remedies listed at 2 C.F.R. § 200.207 and 2 C.F.R. § 200.338 – 200.342. Following termination by the State, the Grantee shall continue to be obligated to OPB for the return of reimbursed Grant funds in accordance with applicable provisions of this Grant Agreement. In the event of termination under this Section, the State may elect to reimburse the Grantee, but any such reimbursement shall be limited to allowable costs incurred and paid by the Grantee prior to the effective date of termination. Termination of this Grant Agreement for any reason or the expiration of this Grant Agreement shall not release the parties from any liability or obligation set forth in this Grant Agreement that is expressly stated to survive any such termination or expiration.

2.13 Limitation of Liability

TO THE EXTENT ALLOWED BY LAW, THE GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF GEORGIA, OPB AND/OR THEIR OFFICERS, REGENTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS, OMISSIONS, OR NEGLIGENCE OF THE GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS GRANT AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY THE GRANTEE WITH THE OFFICE OF THE GEORGIA ATTORNEY GENERAL WHEN STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE GEORGIA ATTORNEY GENERAL. THE GRANTEE AND THE STATE AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

The Grantee agrees that no provision of this Grant Agreement is in any way intended to constitute a waiver by the State, OPB, or their officers, regents, employees, agents, or contractors, of any privileges, rights, defenses, remedies, or immunities from suit and liability that OPB or the State

may have by operation of law.

2.14 Dispute Resolution

The parties' designees will meet as needed to implement the terms of this Grant Agreement and will make a good faith attempt to informally resolve any disputes.

Notwithstanding any other provision of this Grant Agreement to the contrary, unless otherwise requested or approved in writing by OPB, the Grantee shall continue performance and shall not be excused from performance during the period any breach of this Grant Agreement, claim or dispute is pending.

The laws of the State of Georgia govern this Grant Agreement and all disputes arising out of or relating to this Grant Agreement, without regard to any otherwise applicable conflict of law rules or requirements. Venue for any action, suit, litigation, or other proceeding arising out of or in any way relating to this Grant Agreement shall be commenced exclusively in the Superior Court of Fulton County, Georgia.

The Grantee hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the court referenced above for the purpose of prosecuting and/or defending such litigation. The Grantee hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that the Grantee is not personally subject to the jurisdiction of the above-named courts; the suit, action or proceeding is brought in an inconvenient forum; and/or the venue is improper.

2.15 Liability for Taxes

The Grantee agrees and acknowledges that Grantee is entirely responsible for the liability and payment of Grantee and Grantee's employees' wages, insurance, and taxes of whatever kind, arising out of or related to the performances in this Grant Agreement. The Grantee agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance and workers' compensation. Neither OPB nor the State shall be liable to the Grantee, its employees, its agents or others for the payment of taxes or the provision of unemployment insurance or workers' compensation or any benefit available to a State employee or employee of OPB.

2.16 Required Assurances

The Grantee must comply with the applicable Grantee Assurances, which are attached hereto and incorporated for all purposes as Exhibit A.

2.17 System for Award Management (SAM) Requirements

To the extent applicable to Grantee's reimbursement under this Grant, the Grantee agrees to comply with applicable requirements regarding registration with the System for Award Management (SAM) or with a successor government-wide system officially designated by OMB

and, if applicable, the federal funding agency. These requirements include maintaining current registrations and the currency of the information in SAM. The Grantee will review and update information at least annually until submission of the final financial report required under the award or receipt of final payment, whichever is later, as required by 2 C.F.R. § 25.

The Grantee will comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) as provided in 2 C.F.R. § 200 (2013) as well as with 2 C.F.R. § 180 (2005) implementing Exec. Order 12549, 3 C.F.R. § 189 (1986) and Exec. Order 12689, 3 C.F.R. § 235 (1989) that require “a contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM)”, in accordance with the OMB guidelines at 2 C.F.R. § 180 (2005) implementing Exec. Order 12549, 3 C.F.R. § 189 (1986) and Exec. Order 12689, 3 C.F.R. § 235 (1989), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. The Grantee certifies it will verify each vendor’s status to ensure the vendor is not debarred, suspended, otherwise excluded or declared ineligible by checking the SAM before doing/renewing business with that vendor.

The Grantee certifies by executing Exhibit B of this Agreement that it and its principals are eligible to participate in this Grant Agreement and have not been subjected to suspension, debarment or similar ineligibility determined by any federal, state or local governmental entity; the Grantee is in compliance with the State of Georgia statutes and rules relating to procurement; and the Grantee is not listed in the federal government’s terrorism watch list as described in federal Exec. Order 13224.

2.18 No Obligation by Federal Government

The parties acknowledge and agree that the federal government is not a party to this Grant Agreement and is not subject to any obligations or liabilities to either party, third party or subcontractor pertaining to any matter resulting from this Grant Agreement.

2.19 Notice

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail with return receipt requested, to a party hereto and shall be addressed to the person who signed the Grant Agreement on behalf of the party at the address set forth below or to such other address as the parties may designate by notice from time to time in accordance with this Grant Agreement.

If to Grantee:

NAME	Caitlin Caitlin
ADDRESS	
EMAIL	csharp@daltonga.gov
PHONE	

If to OPB:

Governor's Office of Planning and Budget
2 Capitol Square SW
Atlanta
Georgia 30334
grants@opb.georgia.gov

2.20 Force Majeure

Neither the Grantee nor the State shall be required to perform any obligation under this Grant Agreement or be liable or responsible for any loss or damage resulting from its failure to perform so long as performance is delayed by force majeure or acts of God, including but not limited to labor shortages caused by strikes or lockouts, embargo, war, terrorism, flood, natural disaster. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

2.21 Severability

If any provision of this Grant Agreement is rendered or declared illegal for any reason, or shall be invalid or unenforceable, this Grant Agreement shall be interpreted as though such provision was modified or deleted in such manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Grant Agreement, as modified, enforceable, and the remainder of this Grant Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

3. Warranties

3.1 E-Verify

Grantee, by signing this Agreement, represents and warrants that it will comply with the requirements of O.C.G.A. § 50-36-1 entitled "Verification of Lawful Presence Within United States" and verify the lawful presence in the United States of any natural person 18 years of age who has applied for state or local public benefits, as defined in 8 U.S.C. § 1621, or for federal public benefits, defined in 8 U.S.C. § 1611, that is administered by an agency or a political subdivision of this State.

Grantee, by signing this Agreement, represents and warrants that it will comply with the requirements of O.C.G.A. § 13-10-90 entitled "Security and Immigration Compliance." This requires, among other things, that every public employer, including, but not limited to, every municipality and county, will register and participate in the federal work authorization program to verify employment eligibility of all newly hired employees.

3.2 Compliance with Federal Law, Regulations and Executive Orders

Grantee represents and warrants that federal financial assistance funds will be used to fund or reimburse claims made under this Grant Agreement. The Grantee will comply with all applicable federal law, regulations, executive orders, policies, procedures and directives.

3.3 Clean Air Act

The following is only applicable if the amount of the contract exceeds \$165,000.

1. Grantee represents and warrants that it shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*
2. Grantee represents and warrants to report each violation to the appropriate federal authorities as well as OPB and acknowledges and agrees that the State will, in turn, report each violation as required to assure notification to the appropriate federal authorities and the appropriate Environmental Protection Agency Regional Office.
3. Grantee represents and warrants to include these requirements in each subcontract exceeding \$165,000 financed in whole or in part with federal assistance provided by this Grant Agreement.

3.4 Federal Water Pollution Control Act

Grantee represents and warrants that it shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*

Grantee represents and warrants to report each violation to the appropriate federal authorities as well as OPB and acknowledges and agrees that the State will, in turn, report each violation as required to assure notification to the appropriate federal authorities and the appropriate Environmental Protection Agency Regional Office.

Grantee represents and warrants that it shall include these requirements in each subcontract exceeding \$165,000 financed in whole or in part with federal assistance provided by this Grant Agreement.

3.5 Energy Conservation

If applicable, Grantee represents and warrants that it shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

3.6 Procurement of Recovered Materials

Grantee represents and warrants that it shall comply with Section 6002 of the Solid Waste Disposal

Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency at 40 C. F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

3.7 Copyright, Patents and Intellectual Property Rights

Grantee represents and warrants that it shall affix the applicable copyright notices of 17 U.S.C. § 401 or 402 and an acknowledgement of United States Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Unless otherwise provided by law, Grantee is subject to 35 U.S.C. § 200, *et seq.* All Grantees are subject to the specific requirements governing the development, reporting and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. § 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

3.8 Federal Debt Status

Grantee represents and warrants they are and will be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances and benefit overpayments.

3.9 Terminated Contracts

Grantee represents and warrants it has not had a contract terminated or been denied the renewal of any contract for noncompliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Grantee does have such a terminated contract, the Grantee shall identify the contract and provide an explanation for the termination. The Grantee acknowledges that this Grant Agreement may be terminated, and payment withheld or return of grant funds or reimbursement required if this certification is inaccurate or false.

3.10 Reporting Requirements

The Grantee represents and warrants that it shall provide adequate support for the reimbursement of Grant funds in GeorgiaGrants. Financial documentation to support each request for reimbursement shall be submitted in GeorgiaGrants no later than December 31, 2026, for expenses incurred between the date of execution of this Agreement, and October 31, 2026, or the date of exhaustion of funding as solely determined by OPB, whichever is earlier.

Grantee shall comply with any reporting deadline(s) or schedule(s) that OPB may create to govern the submission of reimbursement requests. Failure to timely or properly submit expenses for reimbursement according to any such deadline(s) or schedule(s) may result in Grantee's disbursements being delayed or withheld by OPB until all reporting requirements are met by Grantee.

3.11 Drug-Free Workplace

The Grantee certifies by executing Exhibit B of this Agreement that it is in compliance with the Drug-Free Workplace Act of 1988, implemented at 34 C.F.R. § 85(f), for Grantee, as defined at 34 C.F.R. § 85, § 85.605 and 85.610.

4. Property and Procurement Requirements

4.1 [Reserved]

5. Audit and Records Requirements

5.1 Cooperation with Monitoring, Audits, Records Requirements, Assessments and Evaluations

All records and expenditures are subject to, and the Grantee agrees to comply with, monitoring, examinations, demand for documents, production of personnel, access to systems, and/or audits conducted by any and all federal or state officials and auditors, including but not limited to, the U.S. Department of the Treasury Inspector General, OPB, the Georgia Department of Audits and Accounts, the State of Georgia Inspector General, and the Department of Community Affairs, or their duly authorized representatives or designees. The Grantee shall maintain, under GAAP or GASB, adequate records that enable federal and state officials and auditors to ensure proper accounting for all costs, reimbursement, and performances related to this Grant Agreement. Records and expenditures may be requested of Grantee at any time. Grantee shall provide requested records and expenditures within ten (10) business days of the date of request. Failure to comply with the terms of this subsection may result in termination of the grant and recoupment of distributed funds.

5.2 Single Audit Requirements

To the extent applicable to Grantee's reimbursement under this Grant, Grantees that are reimbursed \$750,000.00 or more of federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the Government Accountability Office's Government Auditing Standards, which may be accessed online at <http://www.gao.gov/govaud/ybkOl.htm>, and in accordance with 2 C.F.R. § 200.514 Scope of Audit. Audit reports are currently due to the Federal Audit Clearinghouse no later than nine months after the end of the Grantee's fiscal year.

In addition, Grantee must submit the audit report to the State, by sending a copy to the Georgia Department of Audits and Accounts, 270 Washington Street, SW, Room I-156, Atlanta, Georgia 30334-8400.

If required to submit an audit report under the requirements of 2 C.F.R. § 200(f), the Grantee shall provide OPB with written documentation showing that it has complied with the single audit

requirements. The Grantee shall immediately notify OPB in writing at any time that it is required to conduct a single audit and provide documentation within a reasonable time period showing compliance with the single audit requirement.

5.3 Requirement to Address Audit Findings

If any audit, monitoring, investigations, review of awards or other compliance review reveals any discrepancies, inadequacies or deficiencies which are necessary to correct in order to maintain compliance with this Grant Agreement, applicable laws, regulations, or the Grantee's obligations hereunder, the Grantee agrees to propose and submit to OPB a corrective action plan to correct such discrepancies or inadequacies within thirty (30) calendar days after the Grantee's receipt of the findings. The Grantee's corrective action plan is subject to the approval of OPB.

The Grantee understands and agrees that the Grantee must make every effort to address and resolve all outstanding issues, findings or actions identified by federal or state officials and auditors through the corrective action plan or any other corrective plan. Failure to address these findings promptly and adequately may result in grant reimbursement being withheld, other related requirements being imposed, or other penalties. The Grantee agrees to complete any corrective action approved by OPB within the time period specified by OPB and to the satisfaction of OPB, at the sole cost of the Grantee. The Grantee shall provide to OPB periodic status reports regarding the Grantee's resolution of any audit, corrective action plan, or other compliance activity for which the Grantee is responsible.

5.4 Records Retention

The Grantee shall maintain appropriate audit trails to provide accountability for all reimbursement of expenditures using grant funds. Audit trails maintained by the Grantee will, at a minimum, identify the supporting documentation prepared by the Grantee to permit an audit of its accounting systems and payment verification with respect to the reimbursement of any expenditures under this Grant Agreement.

The Grantee must maintain fiscal records and supporting documentation for all expenditures reimbursed under this Grant Agreement pursuant to 2 C.F.R. § 200.333 and state law, except that the period for retention of records shall be as set forth herein. The Grantee must retain these records and any supporting documentation for a minimum of seven (7) years from the later of the completion of conclusion of the Grant Project; submission of the final expenditure report; or any litigation, dispute or audit. Records related to expenses being reimbursed under this Grant must be retained for seven (7) years after final disposition. OPB may direct the Grantee to retain documents for longer periods of time or to transfer certain records to OPB or federal custody when it is determined that the records possess long term retention value in accordance with retention schedules approved by the State Records Committee or the federal government.

6. Prohibited and Regulated Activities and Expenditures

6.1 Prohibited Costs

The following are nonexclusive examples of ineligible expenditures. These requirements are required by federal rule. Therefore, any question about their meaning or to what extent certain activities or action are allowed should be resolved by referencing the guidance provided by the United States Treasury Department²:

1. Funds may not be used or reimbursed to Grantee to fill shortfalls in revenue to cover expenditures that would not otherwise qualify under the statute. Revenue replacement is not a permissible use of these grant funds. All records and expenditures are subject to review;
2. Damages covered by insurance;
3. Duplication of benefits including expenses that have been or will be reimbursed under any other federal program;
4. Reimbursement to donors for donated items or services;
5. Severance pay; and
6. Legal settlements.

The above are in addition to the non-reimbursable expenses set forth below in Section 6.2 of this Agreement.

6.2 Political Activities

Grant funds may not be used in connection with or to reimburse the following acts:

1. Unless specifically authorized to do so by federal law, grant recipients or their Grantee or contractors are prohibited from using grant funds directly or indirectly for political purposes, including lobbying or advocating for legislative programs or changes; campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties; and voter registration or get-out-the-vote campaigns. Generally, organizations or entities which receive federal funds by way of grants, contracts or cooperative agreements do not lose their rights as organizations to use their own, private, non-federal resources for “political” activities because of or as a consequence of receiving such federal funds. These recipient organizations must thus use private or other non-federal money, receipts, contributions or dues for their political activities, and may not charge off to or be reimbursed from federal contracts or grants for the costs of such activities.
2. Grant officials or grant funded employees may not use official authority or influence or permit the use of a program administered by the Grantee of which the person is an officer or employee

² [SLFRF-Final-Rule.pdf \(treasury.gov\)](#)

to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.

3. Grant-funded employees may not coerce, attempt to coerce, command, restrict, attempt to restrict or prevent the payment, loan or contribution of anything of value to a person or political organization for a political purpose.
4. As applicable, the Grantee and each contracting tier will comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an award may be expended by the Grantee to pay or reimburse any person to influence, or attempt to influence, an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with any federal action concerning the award or renewal. Each contracting tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures must be forwarded from tier to tier up to the recipient. The Grantee certifies its compliance with the provisions of this section through the execution of Exhibit B of this Grant Agreement.

7. Financial Requirements

7.1 Payments and Required Documentation

Funding for this Grant Agreement is appropriated under the American Rescue Plan Act of 2021. All expenditures under this Grant Agreement must be made in accordance with this Grant Agreement and any other applicable laws, rules or regulations. Further, the Grantee acknowledges that all funds are subject to recapture and repayment for non-compliance pursuant to Section 7.6.

The Grantee will be authorized to submit requests for reimbursement during the performance period set forth in Section 2.4 of this Agreement, which will be paid to the Grantee specified in GeorgiaGrants pursuant to the funding announcement. All documentation of expenditures reimbursed must be submitted in GeorgiaGrants prior to reimbursement.

The State may provide additional funds available to Grantee for reimbursable expenses within the scope of this Agreement beyond the total amount initially available to all Grantees. Such provision of additional funding will be at the State's discretion and will be disbursed in accordance with a subsequent funding announcement. All terms and conditions of this Grant Agreement shall apply to any payments made pursuant to such funding announcement, unless otherwise provided therein.

To receive payments, a Grantee must be an eligible vendor in the State Accounting Office's vendor management system. Payments will be made via electronic funds transfer to the bank account associated with the vendor in the vendor management system. If the Grantee fails to meet reporting obligations, the State may implement sanctions as necessary up to and including grant termination and recoupment of all payments made to the Grantee.

7.2 [Reserved]

7.3 Reporting

The Grantee must provide adequate support for expenditures to receive reimbursement using grant Funds in GeorgiaGrants. The State, in its sole discretion, will determine whether supporting documentation is adequate. Financial documentation to support reimbursement must be submitted in GeorgiaGrants by no later than December 31, 2026, for expenses incurred between the date of execution of this Agreement, and October 31, 2026, or the date of exhaustion of funding as solely determined by OPB, whichever is earlier.

Grantee is required to comply with the requirements set forth in the government-wide Award Term on Reporting Subawards and Executive Compensation located at 2 C.F.R. § 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

If the total value of the Grantee's currently active grants, cooperative agreements and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, the Grantee must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. § 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

The Grantee shall complete any other reports as requested by OPB or any other relevant State or state agency in regard to this award and shall cooperate and assist the State in complying with any and all federal tracking and reporting requirements.

7.4 Reimbursements

The State will reimburse the Grantee for the expenditure of actual and allowable allocable costs incurred and paid by the Grantee pursuant to this Grant Agreement and rules promulgated by the State for the purpose of determining reimbursable expenses. The State is not obligated to pay unauthorized costs or to reimburse expenses that were incurred by the Grantee prior to or after the performance period or after the termination of this Grant Agreement. No claims for reimbursement from any vendor, supplier, contractor, agent or other party will be accepted from any party asserting it is acting on behalf of the Grantee. Reimbursement for eligible expenses will be made directly to the Grantee only.

7.5 Refunds and Deductions

If the State determines that the Grantee has been overpaid any grant funds under this Grant Agreement, including payments made inadvertently or payments made but later determined to not be actual and allowable allocable costs, the Grantee shall return to OPB the amount identified by the State as an overpayment. The Grantee shall refund any overpayment to OPB within thirty (30) calendar days of the receipt of the notice of the overpayment from the State unless an alternate payment plan is specified by OPB. Refunds may be remitted to: Governor's Office of Planning and Budget, 2 Capitol Square SW, Atlanta, Georgia 30334, Attention: State Fiscal Recovery Fund Payments.

7.6 Recapture of Funds

The discretionary right of the State to terminate under Section 2.12 notwithstanding, the State shall have the right to terminate this Grant Agreement and to recapture and be reimbursed for any payments made by the State: (i) that are not allowed under applicable laws, rules and regulations; or (ii) that are otherwise inconsistent with this Grant Agreement, including any unapproved expenditures.

7.7 Liquidation Period

Unless the Grant Agreement is terminated prior to October 31, 2026, the grant liquidation period shall be between October 31, 2026, and December 31, 2026, or the date of exhaustion of funding for the purpose of this Grant as solely determined by OPB, whichever is earlier.

7.8 Project Close Out

The State will close-out the Grant award following the performance period.

The Grantee must submit all financial, performance and other reports as required by the terms and conditions of this Grant Agreement.

To the extent applicable to this Agreement, the Grantee must promptly refund to OPB any balances of cash that the State paid in advance and that are not authorized to be retained by the Grantee for use in other projects.

8. Allocated Amount

Grantee shall be limited to a maximum total reimbursement of \$2,200,000.00 for expenses deemed eligible under the terms of this Grant.

9. Authorized User

The following list identifies the user(s) authorized to perform tasks in GeorgiaGrants on behalf of Grantee (Authorized User(s)). Any action carried out by an Authorized User in GeorgiaGrants is an action of the Grantee.

1. Authorized User One – Authorized Representative of Grantee (Required)

First Name: ~~Caitlin~~ Last Name: ~~Caitlin~~
Title: ~~Sharpe~~
Email: ~~csharp@daltonga.gov~~
Phone:

2. Authorized User Two (Optional)

First Name: Last Name:
Title:
Email:
Phone:

[EXHIBITS AND SIGNATURE PAGES FOLLOW]

EXHIBIT A

Grantee Assurances

As the duly authorized representative of the Grantee, I certify that the Grantee:

1. Has the legal authority to request grant payments for reimbursable expenses from the federal funds allocated to the State of Georgia's State Fiscal Recovery Fund ("SFRF") created by the American Rescue Plan Act of 2021, and the institutional, managerial and financial capability to ensure proper planning, management and completion of the Grant Project contemplated by this application.
2. Shall give any and all federal or State officials and auditors, or their duly authorized representative or designee, access to and the right to examine all records, books, papers or documents related to reimbursements; and will establish a proper accounting system in accordance with generally accepted accounting standards or awarding agency directives.
3. Shall carry out all activities and endeavors with strict adherence to the Code of Ethics for Government Service as established within Title 45, Chapter 10 and Section 1 of the Official Code of Georgia Annotated and Executive Order 04.01.21.57 and shall establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
4. Shall submit allowable expenditures in GeorgiaGrants in accordance with the documentation requirements established by OPB.
5. Shall comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990 including Titles I, II and III of the Americans with Disability Act which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, and places of public accommodation, 44 U.S.C. § 12101-12213; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101, *et seq.*), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) § 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. § 290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601, *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this grant.
6. Shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. § 276a

to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327-333), regarding labor standards for federally assisted construction sub agreements.

7. Shall comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646), which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for Project purposes regardless of federal participation in purchases.
8. Shall comply with the provisions of the Hatch Political Activity Act (5 U.S.C. § 1501-1508 and 7321-29), which limit the political activity of employees whose principal employment activities are funded in whole or in part with federal funds.
9. Shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.
10. Shall comply with all applicable federal, State and local environmental and historic preservation (EHP) requirements and shall provide any information requested by the appropriate authority to ensure compliance with applicable laws and regulations, including: federal EHP regulations, laws, and executive orders; the National Environmental Policy Act; the National Historic Preservation Act; the Endangered Species Act; and the executive orders on floodplains (Exec. Order 11988, 3 C.F.R. § 117 (1977), wetlands (Exec. Order 11990, 3 C.F.R. § 121 (1977) and environmental justice (Exec. Order 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994)). Failure of the Grantee to meet federal, state and local EHP requirements and obtain applicable permits may jeopardize federal funding.
11. Shall ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the Project is under consideration for listing by the EPA, Exec. Order 11,738, 3 C.F.R. § 799 (1971-1975).
12. Shall comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. § 4712 and 10 U.S.C. § 2324, and 41 U.S.C. §§ 4304 & 4310.
13. Shall comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. § 175-175c and comply with Exec. Order 13224, 60 Fed. Reg. 49079 (2001) and U.S. law prohibiting transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism.
14. Shall comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban

Development as an area having special flood hazards.

15. Shall comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Exec. Order 11514, 3 C.F.R. § 902 (1966-1970); (b) notification of violating facilities pursuant to Exec. Order 11738, 3 C.F.R. § 799 (1971-1975); (c) protection of wetlands pursuant to Exec. Order 11990, 3 C.F.R. § 121 (1977); (d) evaluation of flood hazards in floodplains in accordance with Exec. Order 11988, 3 C.F.R. § 117 (1977); (e) assurance of Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401, *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.
17. Shall assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Exec. Order 11593 3 C.F.R. § 559 (1971-1975), (identification and protection of historic properties) and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1, *et seq.*).
18. Shall comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. § 2131, *et seq.*) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals.
19. Shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801, *et seq.*) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.
20. Will comply with the requirements of Section 106(9) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) engaging in trafficking in persons during the period of time that the award is in effect (2) procuring a commercial sex act during the period of time that the award is in effect or (3) using forced labor in the performance of the award or subawards under the award.
21. Shall comply with the Pro-Children Act of 1994 (Public Law 103-277), which prohibits smoking within any portion of any indoor facility used for the provision of services for children.
22. Shall cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States,

Local Governments, and Non-Profit Organizations."

23. Shall comply with P.L. 93-348 regarding the protection of human subjects involved in research, development and related activities supported by this award of assistance.
24. Shall comply with all federal tax laws and is solely responsible for filing all required State and federal tax forms.
25. And its principals are eligible to participate and have not been subjected to suspension, debarment or similar ineligibility determined by any federal, State or local governmental entity and it is not listed on a State or federal government's terrorism watch list as described in EO 13224. Entities ineligible for federal procurement have Exclusions listed at <https://www.sam.gov/portal/public/SAM/>.
26. Shall comply with all applicable federal and State Drug-Free Workplace laws and rules.
27. Shall comply with all applicable requirements of all other federal and State laws, executive orders, regulations and policies governing this program.

By signing below on behalf of the Grantee, I hereby acknowledge and agree that I am an authorized representative of the Grantee with power to bind the Grantee to the terms of this Exhibit A, and agree to abide by the requirements stated herein, including any amendments thereto.

By:

Signature:

(Authorized Representative of Grantee)

Name: ~~Caitlin~~ Caitlin

Title: ~~Sharpe~~

Date:

EXHIBIT B
Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility
Matters; and Drug-Free Workplace Requirements

As the duly authorized representative of the Grantee, I certify the following on behalf of the Grantee:

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 C.F.R. § 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 C.F.R. § 82, § 82.105 and 82.110, the applicant certifies that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Exec. Order 12549, 3 C.F.R. § 189 (1986), Debarment and Suspension, and implemented at 34 C.F.R. § 85, for prospective participants in primary covered transactions, as defined at 34 C.F.R. § 85, § 85.105 and 85.110--

A. The Grantee certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or

commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false Statements, or receiving stolen property;

- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default; and
- B. Where the applicant is unable to certify to any of the Statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEE OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 C.F.R. § 85(f), for Grantee, as defined at 34 C.F.R. § 85, § 85.605 and 85.610-

- A. The Grantee certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a Statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an on-going drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the Statement required by paragraph (a);
 - (d) Notifying the employee in the Statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the Statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - (e) Notifying OPB, in writing, within 10 calendar days after receiving notice under subparagraph

(d)(2) from an employee or otherwise receiving actual notice of such conviction. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The Grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance

ADDRESS 1

ADDRESS 2

CITY

STATE

ZIP

ZIP+4

4. DRUG-FREE WORKPLACE (GRANTEE WHO IS AN INDIVIDUAL)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 C.F.R. § 85(f), for Grantee, as defined at 34 C.F.R. § 85, 85.605, and 85.610.

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to OPB. Notice shall include the identification number(s) of each affected grant.

By signing below on behalf of the Grantee, I hereby acknowledge and agree that I am an authorized representative of the Grantee with power to bind the Grantee to the terms of this Exhibit B, and agree to abide by the requirements stated herein, including any amendments thereto.

By:

Signature:

(Authorized Representative of Grantee)

Name: ~~Caitlin~~ Caitlin

Title: ~~Sharpe~~

Date:

EXHIBIT C

American Rescue Plan State Fiscal Recovery Fund Eligibility Certification

I, ~~Caitlin~~ ~~Caitlin~~
am the ~~Sharpe~~
of City of Dalton
Unique Entity Identifier

(Print Name),
(Title)
("Grantee")
and I certify that:

1. I have the authority on behalf of the Grantee to submit, or designate persons to submit on my behalf, requests for reimbursement for eligible expenses incurred to prevent or mitigate the spread of COVID-19 from the federal funds allocated to the State of Georgia's State Fiscal Recovery Fund ("SFRF") created by the American Rescue Plan Act of 2021.
2. I understand that the State will rely on this certification as a material representation in making reimbursement payments to the Grantee.
3. I acknowledge that pursuant to this Agreement, Grantee must keep records sufficient to demonstrate that the expenditure of reimbursement it has received is in accordance with the terms of this Grant.
4. I acknowledge that all records and expenditures are subject to audit by the United States Department of the Treasury's Inspector General, the Governor's Office of Planning and Budget, the Georgia Department of Audits and Accounts, the State of Georgia Office of Inspector General, and the Department of Community Affairs, or representative or designee.
5. I acknowledge that Grantee has an affirmative obligation to identify and report any duplication of benefits. I understand that the State has an obligation and the authority to de-obligate or offset any duplicated benefits.
6. I acknowledge and agree that the Grantee shall be liable for any costs disallowed pursuant to financial or compliance audits of reimbursement received.
7. I acknowledge and agree that all submissions for reimbursement, supporting documentation, reports, and any other record upon which the State relied to reimburse expenses pursuant to this Grant Agreement are true and accurate to the best of my knowledge and belief, and that federal and State authorities may exercise any and all legal and equitable remedies against the Grantee involving any false records created or submitted, or in relation to findings concerning fraud, waste, or misuse of funds received.
8. I acknowledge that the Grantee's requests submitted for reimbursement from the federal funds allocated to the State of Georgia's State Fiscal Recovery Fund ("SFRF") as created by the American Rescue Plan Act of 2021 will be used only to cover those costs that:

- a. Are expenditures made in accordance with the terms of this Agreement
- b. Were expenditures incurred during the period beginning the date of execution of this Agreement, and ending October 31, 2026, (or before the date funds are exhausted for the purpose of this Grant as solely determined by OPB), whichever is earlier.

By signing below on behalf of the Grantee, I hereby acknowledge and agree that I am an authorized representative of the Grantee with power to bind the Grantee to the terms of this Exhibit C, and agree to abide by the requirements stated herein, including any amendments thereto.

By:

Signature:

(Authorized Representative of Grantee)

Name: ~~Caitlin Cartlin~~

Title: ~~Sharpe~~

Date:

Please initial by each exhibit, acknowledging you have received them, understand them, and agree to abide by them.

Exhibit A – Grantee Assurances

Exhibit B – Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; And Drug-Free Workplace Requirements

Exhibit C – American Rescue Plan State Fiscal Recovery Fund Eligibility Certification

By signing below the Grantee acknowledges acceptance of the Grant, all terms and conditions of this Grant Agreement, and all exhibits to this Grant Agreement, and agrees to abide by all such terms and conditions.

By:

Signature:

(Authorized Representative of Grantee)

Name: ~~Caitlin Caitlin~~

Title: ~~Sharpe~~

Date:

SIGNATURE PAGE



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 6/19/2023

Agenda Item: Improving Neighborhood Outcomes Grant Terms and Conditions Form for the Pentz and Cuyler Street Corridor Improvements

Department: Public Works

Requested By: Jackson Sheppard

Reviewed/Approved by City Attorney? Yes

Cost: N/A

Funding Source if Not in Budget -----

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

This request is to approve the Terms and Conditions form for the Improving Neighborhood Outcomes Grant pertaining to the Pentz and Cuyler Street Corridor Improvements Project. Please refer to the attached Terms and Conditions copy included in this agenda packet as a sample copy. Given the digital signature requirement by the Georgia Office of Planning and Budget, the digital form will be delegated to Mayor Pennington by the Public Works Department Project Manager, Jackson Sheppard who is listed by default initially as the Authorized Representative for this form following approval by Mayor and Council for full execution. The listed authorized representative on the sample form will also change to Mayor Pennington following approval by Mayor and Council, and the delegation procedure has been completed in such order.

See attached Terms and Conditions form for additional information.

AMERICAN RESCUE PLAN ACT
IMPROVING NEIGHBORHOOD
OUTCOMES IN DISPROPORTIONATELY
IMPACTED COMMUNITIES
GRANT PROGRAM

TERMS AND CONDITIONS

GRANT APPLICATION NAME

Pentz and Cuyler Street Corridor Improvements Project

About This Document

This agreement (the “Grant Agreement” or “Agreement”) is entered into between the Governor’s Office of Planning and Budget (“OPB”) on behalf of the State of Georgia (the “State”) and the undersigned grantee (“Grantee”) (hereinafter collectively referred to as the “Parties”). This Grant Agreement sets forth the terms and conditions applicable to payments distributed by the OPB on behalf of the State in the form of reimbursement payments using grant funds to Grantee, City of Dalton Georgia, from the State of Georgia’s allocation of funds from the State Fiscal Recovery Fund (“SFRF”) established within 42 U.S.C.A. § 802 via the American Rescue Plan Act of 2021 (hereinafter referred to as “Grant”). The Grantee’s official representative, whose signature appears below, will execute the interest and responsibilities of the Grantee.

These requirements are in addition to those that can be found within GeorgiaGrants, (the grant management system administered by OPB), to which the Grantee agrees when accepting the Grant. Other state and federal requirements and conditions may apply to the Grant, including but not limited to 2 C.F.R. § 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and applicable subparts; the State funding announcement under which Grant payments are distributed; and any applicable documents referenced in the documents listed above.

To the extent the terms and conditions of this Grant Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be construed consistent with the general objectives, expectations, and purposes of this Grant Agreement and in all cases, according to its fair meaning. The Grantee acknowledges that it and its counsel have reviewed this Grant Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Grant Agreement. Any vague, ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of the Grant Agreement.

1. Definitions

1.1 As used in this Agreement, the following terms shall have the following meanings:

1. **“ARPA”** means the federal American Rescue Plan Act of 2021.
2. **“SFRF”** means the funds allocated to Georgia as its share of the State Fiscal Recovery Fund created by the American Rescue Plan Act of 2021.
3. **“GeorgiaGrants”** means the grant management system administered by OPB to facilitate distribution or reimbursement of allowable expenditures of State Fiscal Recovery Funds to the Grantee.
4. **“Grant”** means the payments distributed by the State in the form of a grant or reimbursement to the Grantee from the State Fiscal Recovery Fund (“SFRF”).
5. **“Grant Project” or “Project”** means the project proposed by Grantee in its application to OPB as approved by OPB for funding under this Grant.
6. **“Grant Agreement” or “Agreement”** means this agreement between the State of Georgia and the Grantee as defined by the State Fiscal Recovery Fund Terms and Conditions and its incorporated documents.
7. **“Grantee”** means the undersigned
City of Dalton Georgia
8. **“OPB”** means the Governor’s Office of Planning and Budget.
9. **“Parties”** means collectively the parties to this Agreement, namely, the State and the Grantee.
10. **“State”** means the State of Georgia.

2. General Requirements and Conditions

2.1 Applicability of Grant Agreement and Provisions

This Grant Agreement is subject to the additional terms, conditions and requirements of other laws, rules, regulations, and plans recited herein and is intended to be the full and complete expression of and constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and all prior and contemporaneous understandings, agreements, promises, representations and terms and conditions, both oral and written, are superseded, and replaced by this Grant Agreement.

Notwithstanding any expiration or termination of this Grant Agreement, the rights and obligations pertaining to the Grant close-out, cooperation, and provision of additional information, return of Grant funds, audit rights, records retention, public information, and any other provision implying survivability shall remain in effect after the expiration or termination of this Grant Agreement.

2.2 Legal Authority

The Grantee certifies that it possesses legal authority to enter into this Grant Agreement and accept payments for which the Grantee is eligible pursuant to the funding announcement. By submitting requests or receiving reimbursement for requests made within the scope of this Grantee Agreement, Grantee certifies that it is authorized to submit such requests as defined in this Agreement, and that requests for reimbursement will pertain only to eligible and reasonable expenses incurred to fund the completion of the Project as approved by OPB and described in this Agreement.

Grantee hereby represents and warrants that it has the power and is duly authorized to enter into this Grant Agreement with regard to all matters described herein upon the terms set forth and that the persons executing this Agreement on behalf of Grantee are the authorized agents of Grantee for the purpose of executing this Agreement. The Parties acknowledge and agree that this Agreement constitutes a valid and legally binding obligation of each Party, enforceable in accordance with its terms.

2.3 Grant Acceptance

The state funding announcement remains an offer until the fully and appropriately executed copy of this Grant Agreement is received by OPB. Upon approval of the Grant Agreement, OPB or its designee will issue a statement of confirmation or acceptance (“funding announcement”) to the Grantee through Grantee’s representative listed in “Exhibit A” attached to this Agreement, upon receipt of which the Grantee may begin submissions to Georgia Grants for reimbursement as specified in this Agreement.

2.4 Performance Period

Funding has been authorized for eligible expenditures incurred by the Grantee during the performance period for this Grant which is between the date of execution of this Agreement and October 31, 2026, or the date of exhaustion of funding for the purpose of this Grant as solely determined by OPB, whichever is earlier (“performance period”). All expenditures must be incurred on or before October 31, 2026, and the Grantee must submit expenses for reimbursement through GeorgiaGrants during the Performance Period for this Grant by no later than December 31, 2026. The State will not be obligated to reimburse expenses incurred prior to or after the performance period.

2.5 General Responsibility and Compliance

In order to qualify as an expense eligible for reimbursement, an expenditure shall be reasonable and shall be incurred solely to facilitate the completion of the Project identified in the Grantee's application as awarded and approved by OPB. Additionally, Grantee shall submit a proposed final Project budget to OPB prior to beginning work on the Project. Work on the Project shall not begin until the proposed final Project budget is approved in writing by OPB.

Any proposed revision to either the scope of the approved Project or to the approved final Project budget thereof shall be submitted to OPB along with a detailed justification for the proposed revision. Approval of any proposed revision to the scope of the Project or the Project budget shall be left at the sole discretion of OPB.

The Grantee certifies compliance with these eligible expenses by executing this Grant Agreement.

The Grantee is responsible for the integrity of the documents submitted through GeorgiaGrants in support of claims for reimbursement of expenditures; accountability for all funds awarded; and compliance with state guidelines, policies and procedures and applicable federal and state laws and regulations.

The Grantee will document appropriate protocols and procedures to support the types of expenditures claimed for reimbursement and to ensure that all terms, conditions and specifications of the Grant are met.

The Grantee agrees to maintain an accounting system or process integrated with adequate internal fiscal and management controls to capture and report Grant data with accuracy, providing full accountability for expenditures. This system or process shall provide reasonable assurance that the Grantee is managing federal and state financial assistance programs in compliance with all applicable laws and regulations.

2.6 Amendments and Changes to the Grant Agreement

The State may make changes to the Grant. Changes include, but are not limited to, modifying the scope of the Grant Project, adding funds to previously un-awarded cost items or categories, or changing funds in any awarded cost items or category. In the event the State determines that changes are necessary to the Grant award document after an award has been made, including changes to the performance period or terms and conditions, the Grantee will be notified of the changes in writing, and any such changes shall be documented in GeorgiaGrants.

The Grantee has no right or entitlement to payment or reimbursement with Grant funds. The Grantee agrees that nothing in this Grant Agreement will be interpreted to create an obligation or liability of the state in excess of the availability of funds for reimbursement as described in the funding announcement. The Grantee agrees that any act, action or representation by either party, their agents or employees that purports to waive or alter the terms of this Grant Agreement or increase the maximum liability of the state is void unless an amendment to this Grant Agreement is consented to by both parties in writing and is documented in GeorgiaGrants. Notwithstanding

this requirement, it is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Grant Agreement and that any such changes shall be automatically incorporated into this Grant Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law.

2.7 Public Information and Meetings

Notwithstanding any provisions of this Grant Agreement to the contrary, the Grantee acknowledges that the State of Georgia, OPB, and this Grant Agreement are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-71, *et seq* (ORA). The Grantee acknowledges that OPB will comply with the ORA, as interpreted by judicial opinions and opinions of the Attorney General of the State of Georgia.

The Grantee acknowledges that information created or exchanged in connection with this Grant Agreement, including all reimbursement documentation submitted to OPB, is subject to the ORA, whether created or produced by the Grantee or any third party, and the Grantee agrees that information not otherwise excepted from disclosure under the ORA will be available in a format that is accessible by the public at no additional charge to OPB or the State. The Grantee will cooperate with the State and OPB in the production of documents or information responsive to a request for information.

2.8 Remedies for Non-Compliance

If the State determines that the Grantee fails to comply with any term of this Grant Agreement, whether stated in a federal or state statute or regulation, an assurance, a state plan or application, a funding announcement, or any other applicable requirement, the State, in its sole discretion, may take actions including:

1. Temporarily withholding payments pending correction of the deficiency or imposing a corrective action plan intended to bring the Grantee into compliance with this Grant Agreement. A corrective action plan shall be a compulsory set of actions mandated by OPB that will ensure the Grantee will take certain actions to bring it into compliance with the terms of this Grant Agreement. If the Grantee fails to complete any imposed corrective action plan within 60 days, OPB reserves the right to require the Grantee to return any previous Grant fund reimbursements in a manner and timeframe as determined by OPB;
2. Requiring the Grantee to return or offset previous reimbursements to OPB in a manner and timeframe as determined by OPB. By entering into this Grant Agreement, Grantee specifically accepts and acknowledges that any noncompliance with the terms of this Grant Agreement shall entitle the State to implement this remedy, regardless of whether or not the previous reimbursements were made for allowable costs;
3. Disallowing or denying use of funds for all or part of the cost of the activity or action not in compliance;

4. Disallowing claims for reimbursement;
5. Wholly or partially suspending or terminating the Grant;
6. Prohibiting the Grantee from applying for or receiving additional funds for other grant programs administered by the State until repayment to OPB is made and any other compliance or audit finding is satisfactorily resolved; or
7. Taking other remedies or appropriate actions as determined solely by OPB.

If OPB elects to implement whole or partial suspension or termination of the Grantee's Grant in accordance with this Section of the Grant Agreement, the Grantee's costs resulting from Grant eligible expenditures incurred during any such suspension or after termination of the Grant are not allowable costs unless OPB expressly authorizes them either in the notice of suspension or termination or subsequently.

OPB, at its sole discretion, may impose any of the remedies enumerated in this section without first requiring a corrective action plan.

The Grantee acknowledges and agrees that the State has the rights and remedies stated above and any other rights and remedies set forth in this Grant Agreement which are fair and reasonable, and further acknowledges and agrees that no action taken by the State to assert or enforce any of these rights or remedies shall excuse the Grantee from performance of its obligations under this Agreement.

To the extent allowed by law, the Grantee waives any claims to dismiss obligations to pay the State for amounts owed due to non-compliance stemming from the Grantee's actions to dissolve, become insolvent, seek bankruptcy protection, or exercise other actions appearing to affect its ability to pay.

2.9 False Statements by Grantee

By acceptance of this Grant Agreement, the Grantee makes all the statements, representations, warranties, guarantees, certifications and affirmations included in this Grant Agreement. If applicable, the Grantee will comply with the requirements of 31 U.S.C. § 3729-3733, which set forth that no grantee of federal payments shall submit a false claim for payment.

If any of the statements, representations, certifications, affirmations, warranties or guarantees are false or if the Grantee signs or executes this Grant Agreement with a false statement or it is subsequently determined that the Grantee has violated any of the statements, representations, warranties, guarantees, certifications or affirmations included in this Grant Agreement, then the State may consider this action or activity a possible default under this Grant Agreement and may terminate or void this Grant Agreement for cause and pursue other remedies available to the State under this Grant Agreement and applicable law. False statements or claims made in connection with grants may result in fines, imprisonment and debarment from participating in federal grants or contracts and/or any other remedy available by law, potentially including the provisions of 31

U.S.C. § 3801-3812, which details the administrative remedies for false claims and statements made.

2.10 Conflict of Interest Safeguards

The Grantee will establish safeguards to prohibit its employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain, whether for themselves or others, particularly those with whom they have family, business, or other ties. The Grantee will operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to its performance under this Grant Agreement in accordance with Title 45 Chapter 10 of the O.C.G.A., 18 U.S.C. § 666, 18 U.S.C. § 1031, and 2 C.F.R. § 200.318.

2.11 Fraud, Waste and Abuse

The Grantee acknowledges and assents that the State of Georgia shall not tolerate fraud, waste or misuse of funds received from any state entity (*See* Title 45 Chapter 10 of the O.C.G.A.) and that any violation of state or federal law, state policies or standards of ethical conduct shall result in penalties including, but not limited to, suspension of current and future funds or reimbursement, suspension or debarment from federal and state grants, recoupment of monies reimbursed or provided under an award, remedies set forth in 2 C.F.R. § 200.338, and civil and/or criminal penalties.

In the event the Grantee becomes aware of any allegation or a finding of fraud, waste or misuse of funds received from OPB that is made against the Grantee or of fraud, waste, false statements, or other errors in any submission for reimbursement, the Grantee is required to immediately report said allegation or finding to the U.S. Department of the Treasury Office of the Inspector General¹ and to OPB and must continue to inform OPB of the status of any such on-going investigations. The Grantee must also promptly refer to OPB as well as the appropriate federal authorities, including, but not limited to, the U.S. Department of the Treasury Office of the Inspector General, any credible evidence that a principal, employee, agent, grantee, contractor, subcontractor or other person has -- (1) submitted a claim for reimbursement or award funds that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving reimbursement or award funds. Grantees must also immediately notify OPB in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with grant requirements. Grantees must notify the local prosecutor's office of any possible criminal violations. Grantees must immediately notify OPB in writing if this Grant Project or personnel, as it pertains to the scope of this Grant, become involved in any litigation, whether civil or criminal, and the Grantee must immediately forward a copy of any demand, notices, subpoenas, lawsuits or indictments to OPB.

¹ See 2 C.F.R. § 200.113. Disclosure, in a timely manner, to the Federal awarding agency or pass-through entity is mandatory for all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 C.F.R. § 200.338.

2.12 Termination of the Agreement

The State may, at its sole discretion, terminate this Grant Agreement, without recourse, liability or penalty against the State, upon written notice to the Grantee. In the event the Grantee fails to perform or comply with an obligation or a term, condition or provision of this Grant Agreement, the State may, upon written notice to the Grantee, terminate this Grant Agreement for cause, without further notice or opportunity to cure. Such notification of termination for cause will state the effective date of such termination, and if no effective date is specified, the effective date will be the date of the notification.

The State and the Grantee may mutually agree to terminate this Grant Agreement at any time. The State, in its sole discretion, will determine if, as part of the agreed termination, the Grantee is required to return any or all of the reimbursed funds.

Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law or under this Grant Agreement, including those remedies listed at 2 C.F.R. § 200.207 and 2 C.F.R. § 200.338 – 200.342. Following termination by the State, the Grantee shall continue to be obligated to OPB for the return of reimbursed Grant funds in accordance with applicable provisions of this Grant Agreement. In the event of termination under this Section, the State may elect to reimburse the Grantee, but any such reimbursement shall be limited to allowable costs incurred and paid by the Grantee prior to the effective date of termination. Termination of this Grant Agreement for any reason or the expiration of this Grant Agreement shall not release the parties from any liability or obligation set forth in this Grant Agreement that is expressly stated to survive any such termination or expiration.

2.13 Limitation of Liability

TO THE EXTENT ALLOWED BY LAW, THE GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF GEORGIA, OPB AND/OR THEIR OFFICERS, REGENTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS, OMISSIONS, OR NEGLIGENCE OF THE GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS GRANT AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY THE GRANTEE WITH THE OFFICE OF THE GEORGIA ATTORNEY GENERAL WHEN STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND THE GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE GEORGIA ATTORNEY GENERAL. THE GRANTEE AND THE STATE AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

The Grantee agrees that no provision of this Grant Agreement is in any way intended to constitute a waiver by the State, OPB, or their officers, regents, employees, agents, or contractors, of any privileges, rights, defenses, remedies, or immunities from suit and liability that OPB or the State

may have by operation of law.

2.14 Dispute Resolution

The parties' designees will meet as needed to implement the terms of this Grant Agreement and will make a good faith attempt to informally resolve any disputes.

Notwithstanding any other provision of this Grant Agreement to the contrary, unless otherwise requested or approved in writing by OPB, the Grantee shall continue performance and shall not be excused from performance during the period any breach of this Grant Agreement, claim or dispute is pending.

The laws of the State of Georgia govern this Grant Agreement and all disputes arising out of or relating to this Grant Agreement, without regard to any otherwise applicable conflict of law rules or requirements. Venue for any action, suit, litigation, or other proceeding arising out of or in any way relating to this Grant Agreement shall be commenced exclusively in the Superior Court of Fulton County, Georgia.

The Grantee hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the court referenced above for the purpose of prosecuting and/or defending such litigation. The Grantee hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that the Grantee is not personally subject to the jurisdiction of the above-named courts; the suit, action or proceeding is brought in an inconvenient forum; and/or the venue is improper.

2.15 Liability for Taxes

The Grantee agrees and acknowledges that Grantee is entirely responsible for the liability and payment of Grantee and Grantee's employees' wages, insurance, and taxes of whatever kind, arising out of or related to the performances in this Grant Agreement. The Grantee agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance and workers' compensation. Neither OPB nor the State shall be liable to the Grantee, its employees, its agents or others for the payment of taxes or the provision of unemployment insurance or workers' compensation or any benefit available to a State employee or employee of OPB.

2.16 Required Assurances

The Grantee must comply with the applicable Grantee Assurances, which are attached hereto and incorporated for all purposes as Exhibit A.

2.17 System for Award Management (SAM) Requirements

To the extent applicable to Grantee's reimbursement under this Grant, the Grantee agrees to comply with applicable requirements regarding registration with the System for Award Management (SAM) or with a successor government-wide system officially designated by OMB

and, if applicable, the federal funding agency. These requirements include maintaining current registrations and the currency of the information in SAM. The Grantee will review and update information at least annually until submission of the final financial report required under the award or receipt of final payment, whichever is later, as required by 2 C.F.R. § 25.

The Grantee will comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) as provided in 2 C.F.R. § 200 (2013) as well as with 2 C.F.R. § 180 (2005) implementing Exec. Order 12549, 3 C.F.R. § 189 (1986) and Exec. Order 12689, 3 C.F.R. § 235 (1989) that require “a contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM)”, in accordance with the OMB guidelines at 2 C.F.R. § 180 (2005) implementing Exec. Order 12549, 3 C.F.R. § 189 (1986) and Exec. Order 12689, 3 C.F.R. § 235 (1989), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. The Grantee certifies it will verify each vendor’s status to ensure the vendor is not debarred, suspended, otherwise excluded or declared ineligible by checking the SAM before doing/renewing business with that vendor.

The Grantee certifies by executing Exhibit B of this Agreement that it and its principals are eligible to participate in this Grant Agreement and have not been subjected to suspension, debarment or similar ineligibility determined by any federal, state or local governmental entity; the Grantee is in compliance with the State of Georgia statutes and rules relating to procurement; and the Grantee is not listed in the federal government’s terrorism watch list as described in federal Exec. Order 13224.

2.18 No Obligation by Federal Government

The parties acknowledge and agree that the federal government is not a party to this Grant Agreement and is not subject to any obligations or liabilities to either party, third party or subcontractor pertaining to any matter resulting from this Grant Agreement.

2.19 Notice

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail with return receipt requested, to a party hereto and shall be addressed to the person who signed the Grant Agreement on behalf of the party at the address set forth below or to such other address as the parties may designate by notice from time to time in accordance with this Grant Agreement.

If to Grantee:

NAME	Jackson Sheppard
ADDRESS	
EMAIL	jsheppard@daltonga.gov
PHONE	

If to OPB:

Governor's Office of Planning and Budget
2 Capitol Square SW
Atlanta
Georgia 30334
grants@opb.georgia.gov

2.20 Force Majeure

Neither the Grantee nor the State shall be required to perform any obligation under this Grant Agreement or be liable or responsible for any loss or damage resulting from its failure to perform so long as performance is delayed by force majeure or acts of God, including but not limited to labor shortages caused by strikes or lockouts, embargo, war, terrorism, flood, natural disaster. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

2.21 Severability

If any provision of this Grant Agreement is rendered or declared illegal for any reason, or shall be invalid or unenforceable, this Grant Agreement shall be interpreted as though such provision was modified or deleted in such manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Grant Agreement, as modified, enforceable, and the remainder of this Grant Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

3. Warranties

3.1 E-Verify

Grantee, by signing this Agreement, represents and warrants that it will comply with the requirements of O.C.G.A. § 50-36-1 entitled "Verification of Lawful Presence Within United States" and verify the lawful presence in the United States of any natural person 18 years of age who has applied for state or local public benefits, as defined in 8 U.S.C. § 1621, or for federal public benefits, defined in 8 U.S.C. § 1611, that is administered by an agency or a political subdivision of this State.

Grantee, by signing this Agreement, represents and warrants that it will comply with the requirements of O.C.G.A. § 13-10-90 entitled "Security and Immigration Compliance." This requires, among other things, that every public employer, including, but not limited to, every municipality and county, will register and participate in the federal work authorization program to verify employment eligibility of all newly hired employees.

3.2 Compliance with Federal Law, Regulations and Executive Orders

Grantee represents and warrants that federal financial assistance funds will be used to fund or reimburse claims made under this Grant Agreement. The Grantee will comply with all applicable federal law, regulations, executive orders, policies, procedures and directives.

3.3 Clean Air Act

The following is only applicable if the amount of the contract exceeds \$165,000.

1. Grantee represents and warrants that it shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.*
2. Grantee represents and warrants to report each violation to the appropriate federal authorities as well as OPB and acknowledges and agrees that the State will, in turn, report each violation as required to assure notification to the appropriate federal authorities and the appropriate Environmental Protection Agency Regional Office.
3. Grantee represents and warrants to include these requirements in each subcontract exceeding \$165,000 financed in whole or in part with federal assistance provided by this Grant Agreement.

3.4 Federal Water Pollution Control Act

Grantee represents and warrants that it shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*

Grantee represents and warrants to report each violation to the appropriate federal authorities as well as OPB and acknowledges and agrees that the State will, in turn, report each violation as required to assure notification to the appropriate federal authorities and the appropriate Environmental Protection Agency Regional Office.

Grantee represents and warrants that it shall include these requirements in each subcontract exceeding \$165,000 financed in whole or in part with federal assistance provided by this Grant Agreement.

3.5 Energy Conservation

If applicable, Grantee represents and warrants that it shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

3.6 Procurement of Recovered Materials

Grantee represents and warrants that it shall comply with Section 6002 of the Solid Waste Disposal

Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency at 40 C. F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

3.7 Copyright, Patents and Intellectual Property Rights

Grantee represents and warrants that it shall affix the applicable copyright notices of 17 U.S.C. § 401 or 402 and an acknowledgement of United States Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Unless otherwise provided by law, Grantee is subject to 35 U.S.C. § 200, *et seq.* All Grantees are subject to the specific requirements governing the development, reporting and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. § 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

3.8 Federal Debt Status

Grantee represents and warrants they are and will be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances and benefit overpayments.

3.9 Terminated Contracts

Grantee represents and warrants it has not had a contract terminated or been denied the renewal of any contract for noncompliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If the Grantee does have such a terminated contract, the Grantee shall identify the contract and provide an explanation for the termination. The Grantee acknowledges that this Grant Agreement may be terminated, and payment withheld or return of grant funds or reimbursement required if this certification is inaccurate or false.

3.10 Reporting Requirements

The Grantee represents and warrants that it shall provide adequate support for the reimbursement of Grant funds in GeorgiaGrants. Financial documentation to support each request for reimbursement shall be submitted in GeorgiaGrants no later than December 31, 2026, for expenses incurred between the date of execution of this Agreement, and October 31, 2026, or the date of exhaustion of funding as solely determined by OPB, whichever is earlier.

Grantee shall comply with any reporting deadline(s) or schedule(s) that OPB may create to govern the submission of reimbursement requests. Failure to timely or properly submit expenses for reimbursement according to any such deadline(s) or schedule(s) may result in Grantee's disbursements being delayed or withheld by OPB until all reporting requirements are met by Grantee.

3.11 Drug-Free Workplace

The Grantee certifies by executing Exhibit B of this Agreement that it is in compliance with the Drug-Free Workplace Act of 1988, implemented at 34 C.F.R. § 85(f), for Grantee, as defined at 34 C.F.R. § 85, § 85.605 and 85.610.

4. Property and Procurement Requirements

4.1 [Reserved]

5. Audit and Records Requirements

5.1 Cooperation with Monitoring, Audits, Records Requirements, Assessments and Evaluations

All records and expenditures are subject to, and the Grantee agrees to comply with, monitoring, examinations, demand for documents, production of personnel, access to systems, and/or audits conducted by any and all federal or state officials and auditors, including but not limited to, the U.S. Department of the Treasury Inspector General, OPB, the Georgia Department of Audits and Accounts, the State of Georgia Inspector General, and the Department of Community Affairs, or their duly authorized representatives or designees. The Grantee shall maintain, under GAAP or GASB, adequate records that enable federal and state officials and auditors to ensure proper accounting for all costs, reimbursement, and performances related to this Grant Agreement. Records and expenditures may be requested of Grantee at any time. Grantee shall provide requested records and expenditures within ten (10) business days of the date of request. Failure to comply with the terms of this subsection may result in termination of the grant and recoupment of distributed funds.

5.2 Single Audit Requirements

To the extent applicable to Grantee's reimbursement under this Grant, Grantees that are reimbursed \$750,000.00 or more of federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the Government Accountability Office's Government Auditing Standards, which may be accessed online at <http://www.gao.gov/govaud/ybkOl.htm>, and in accordance with 2 C.F.R. § 200.514 Scope of Audit. Audit reports are currently due to the Federal Audit Clearinghouse no later than nine months after the end of the Grantee's fiscal year.

In addition, Grantee must submit the audit report to the State, by sending a copy to the Georgia Department of Audits and Accounts, 270 Washington Street, SW, Room I-156, Atlanta, Georgia 30334-8400.

If required to submit an audit report under the requirements of 2 C.F.R. § 200(f), the Grantee shall provide OPB with written documentation showing that it has complied with the single audit

requirements. The Grantee shall immediately notify OPB in writing at any time that it is required to conduct a single audit and provide documentation within a reasonable time period showing compliance with the single audit requirement.

5.3 Requirement to Address Audit Findings

If any audit, monitoring, investigations, review of awards or other compliance review reveals any discrepancies, inadequacies or deficiencies which are necessary to correct in order to maintain compliance with this Grant Agreement, applicable laws, regulations, or the Grantee's obligations hereunder, the Grantee agrees to propose and submit to OPB a corrective action plan to correct such discrepancies or inadequacies within thirty (30) calendar days after the Grantee's receipt of the findings. The Grantee's corrective action plan is subject to the approval of OPB.

The Grantee understands and agrees that the Grantee must make every effort to address and resolve all outstanding issues, findings or actions identified by federal or state officials and auditors through the corrective action plan or any other corrective plan. Failure to address these findings promptly and adequately may result in grant reimbursement being withheld, other related requirements being imposed, or other penalties. The Grantee agrees to complete any corrective action approved by OPB within the time period specified by OPB and to the satisfaction of OPB, at the sole cost of the Grantee. The Grantee shall provide to OPB periodic status reports regarding the Grantee's resolution of any audit, corrective action plan, or other compliance activity for which the Grantee is responsible.

5.4 Records Retention

The Grantee shall maintain appropriate audit trails to provide accountability for all reimbursement of expenditures using grant funds. Audit trails maintained by the Grantee will, at a minimum, identify the supporting documentation prepared by the Grantee to permit an audit of its accounting systems and payment verification with respect to the reimbursement of any expenditures under this Grant Agreement.

The Grantee must maintain fiscal records and supporting documentation for all expenditures reimbursed under this Grant Agreement pursuant to 2 C.F.R. § 200.333 and state law, except that the period for retention of records shall be as set forth herein. The Grantee must retain these records and any supporting documentation for a minimum of seven (7) years from the later of the completion of conclusion of the Grant Project; submission of the final expenditure report; or any litigation, dispute or audit. Records related to expenses being reimbursed under this Grant must be retained for seven (7) years after final disposition. OPB may direct the Grantee to retain documents for longer periods of time or to transfer certain records to OPB or federal custody when it is determined that the records possess long term retention value in accordance with retention schedules approved by the State Records Committee or the federal government.

6. Prohibited and Regulated Activities and Expenditures

6.1 Prohibited Costs

The following are nonexclusive examples of ineligible expenditures. These requirements are required by federal rule. Therefore, any question about their meaning or to what extent certain activities or action are allowed should be resolved by referencing the guidance provided by the United States Treasury Department²:

1. Funds may not be used or reimbursed to Grantee to fill shortfalls in revenue to cover expenditures that would not otherwise qualify under the statute. Revenue replacement is not a permissible use of these grant funds. All records and expenditures are subject to review;
2. Damages covered by insurance;
3. Duplication of benefits including expenses that have been or will be reimbursed under any other federal program;
4. Reimbursement to donors for donated items or services;
5. Severance pay; and
6. Legal settlements.

The above are in addition to the non-reimbursable expenses set forth below in Section 6.2 of this Agreement.

6.2 Political Activities

Grant funds may not be used in connection with or to reimburse the following acts:

1. Unless specifically authorized to do so by federal law, grant recipients or their Grantee or contractors are prohibited from using grant funds directly or indirectly for political purposes, including lobbying or advocating for legislative programs or changes; campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties; and voter registration or get-out-the-vote campaigns. Generally, organizations or entities which receive federal funds by way of grants, contracts or cooperative agreements do not lose their rights as organizations to use their own, private, non-federal resources for “political” activities because of or as a consequence of receiving such federal funds. These recipient organizations must thus use private or other non-federal money, receipts, contributions or dues for their political activities, and may not charge off to or be reimbursed from federal contracts or grants for the costs of such activities.
2. Grant officials or grant funded employees may not use official authority or influence or permit the use of a program administered by the Grantee of which the person is an officer or employee

² [SLFRF-Final-Rule.pdf \(treasury.gov\)](#)

to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.

3. Grant-funded employees may not coerce, attempt to coerce, command, restrict, attempt to restrict or prevent the payment, loan or contribution of anything of value to a person or political organization for a political purpose.
4. As applicable, the Grantee and each contracting tier will comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an award may be expended by the Grantee to pay or reimburse any person to influence, or attempt to influence, an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with any federal action concerning the award or renewal. Each contracting tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures must be forwarded from tier to tier up to the recipient. The Grantee certifies its compliance with the provisions of this section through the execution of Exhibit B of this Grant Agreement.

7. Financial Requirements

7.1 Payments and Required Documentation

Funding for this Grant Agreement is appropriated under the American Rescue Plan Act of 2021. All expenditures under this Grant Agreement must be made in accordance with this Grant Agreement and any other applicable laws, rules or regulations. Further, the Grantee acknowledges that all funds are subject to recapture and repayment for non-compliance pursuant to Section 7.6.

The Grantee will be authorized to submit requests for reimbursement during the performance period set forth in Section 2.4 of this Agreement, which will be paid to the Grantee specified in GeorgiaGrants pursuant to the funding announcement. All documentation of expenditures reimbursed must be submitted in GeorgiaGrants prior to reimbursement.

The State may provide additional funds available to Grantee for reimbursable expenses within the scope of this Agreement beyond the total amount initially available to all Grantees. Such provision of additional funding will be at the State's discretion and will be disbursed in accordance with a subsequent funding announcement. All terms and conditions of this Grant Agreement shall apply to any payments made pursuant to such funding announcement, unless otherwise provided therein.

To receive payments, a Grantee must be an eligible vendor in the State Accounting Office's vendor management system. Payments will be made via electronic funds transfer to the bank account associated with the vendor in the vendor management system. If the Grantee fails to meet reporting obligations, the State may implement sanctions as necessary up to and including grant termination and recoupment of all payments made to the Grantee.

7.2 [Reserved]

7.3 Reporting

The Grantee must provide adequate support for expenditures to receive reimbursement using grant Funds in GeorgiaGrants. The State, in its sole discretion, will determine whether supporting documentation is adequate. Financial documentation to support reimbursement must be submitted in GeorgiaGrants by no later than December 31, 2026, for expenses incurred between the date of execution of this Agreement, and October 31, 2026, or the date of exhaustion of funding as solely determined by OPB, whichever is earlier.

Grantee is required to comply with the requirements set forth in the government-wide Award Term on Reporting Subawards and Executive Compensation located at 2 C.F.R. § 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

If the total value of the Grantee's currently active grants, cooperative agreements and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, the Grantee must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. § 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

The Grantee shall complete any other reports as requested by OPB or any other relevant State or state agency in regard to this award and shall cooperate and assist the State in complying with any and all federal tracking and reporting requirements.

7.4 Reimbursements

The State will reimburse the Grantee for the expenditure of actual and allowable allocable costs incurred and paid by the Grantee pursuant to this Grant Agreement and rules promulgated by the State for the purpose of determining reimbursable expenses. The State is not obligated to pay unauthorized costs or to reimburse expenses that were incurred by the Grantee prior to or after the performance period or after the termination of this Grant Agreement. No claims for reimbursement from any vendor, supplier, contractor, agent or other party will be accepted from any party asserting it is acting on behalf of the Grantee. Reimbursement for eligible expenses will be made directly to the Grantee only.

7.5 Refunds and Deductions

If the State determines that the Grantee has been overpaid any grant funds under this Grant Agreement, including payments made inadvertently or payments made but later determined to not be actual and allowable allocable costs, the Grantee shall return to OPB the amount identified by the State as an overpayment. The Grantee shall refund any overpayment to OPB within thirty (30) calendar days of the receipt of the notice of the overpayment from the State unless an alternate payment plan is specified by OPB. Refunds may be remitted to: Governor's Office of Planning and Budget, 2 Capitol Square SW, Atlanta, Georgia 30334, Attention: State Fiscal Recovery Fund Payments.

7.6 Recapture of Funds

The discretionary right of the State to terminate under Section 2.12 notwithstanding, the State shall have the right to terminate this Grant Agreement and to recapture and be reimbursed for any payments made by the State: (i) that are not allowed under applicable laws, rules and regulations; or (ii) that are otherwise inconsistent with this Grant Agreement, including any unapproved expenditures.

7.7 Liquidation Period

Unless the Grant Agreement is terminated prior to October 31, 2026, the grant liquidation period shall be between October 31, 2026, and December 31, 2026, or the date of exhaustion of funding for the purpose of this Grant as solely determined by OPB, whichever is earlier.

7.8 Project Close Out

The State will close-out the Grant award following the performance period.

The Grantee must submit all financial, performance and other reports as required by the terms and conditions of this Grant Agreement.

To the extent applicable to this Agreement, the Grantee must promptly refund to OPB any balances of cash that the State paid in advance and that are not authorized to be retained by the Grantee for use in other projects.

8. Allocated Amount

Grantee shall be limited to a maximum total reimbursement of \$2,199,477.50 for expenses deemed eligible under the terms of this Grant.

9. Authorized User

The following list identifies the user(s) authorized to perform tasks in GeorgiaGrants on behalf of Grantee (Authorized User(s)). Any action carried out by an Authorized User in GeorgiaGrants is an action of the Grantee.

1. Authorized User One – Authorized Representative of Grantee (Required)

First Name: Jackson Last Name: Sheppard
 Title: Project Manager, Public Works
 Email: jsheppard@daltonga.gov
 Phone:

2. Authorized User Two (Optional)

First Name: _____ Last Name: _____
 Title: _____
 Email: _____
 Phone: _____

[EXHIBITS AND SIGNATURE PAGES FOLLOW]

EXHIBIT A

Grantee Assurances

As the duly authorized representative of the Grantee, I certify that the Grantee:

1. Has the legal authority to request grant payments for reimbursable expenses from the federal funds allocated to the State of Georgia's State Fiscal Recovery Fund ("SFRF") created by the American Rescue Plan Act of 2021, and the institutional, managerial and financial capability to ensure proper planning, management and completion of the Grant Project contemplated by this application.
2. Shall give any and all federal or State officials and auditors, or their duly authorized representative or designee, access to and the right to examine all records, books, papers or documents related to reimbursements; and will establish a proper accounting system in accordance with generally accepted accounting standards or awarding agency directives.
3. Shall carry out all activities and endeavors with strict adherence to the Code of Ethics for Government Service as established within Title 45, Chapter 10 and Section 1 of the Official Code of Georgia Annotated and Executive Order 04.01.21.57 and shall establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
4. Shall submit allowable expenditures in GeorgiaGrants in accordance with the documentation requirements established by OPB.
5. Shall comply with all federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990 including Titles I, II and III of the Americans with Disability Act which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, and places of public accommodation, 44 U.S.C. § 12101-12213; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101, *et seq.*), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) § 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. § 290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601, *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this grant.
6. Shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. § 276a

to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327-333), regarding labor standards for federally assisted construction sub agreements.

7. Shall comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646), which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for Project purposes regardless of federal participation in purchases.
8. Shall comply with the provisions of the Hatch Political Activity Act (5 U.S.C. § 1501-1508 and 7321-29), which limit the political activity of employees whose principal employment activities are funded in whole or in part with federal funds.
9. Shall comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.
10. Shall comply with all applicable federal, State and local environmental and historic preservation (EHP) requirements and shall provide any information requested by the appropriate authority to ensure compliance with applicable laws and regulations, including: federal EHP regulations, laws, and executive orders; the National Environmental Policy Act; the National Historic Preservation Act; the Endangered Species Act; and the executive orders on floodplains (Exec. Order 11988, 3 C.F.R. § 117 (1977), wetlands (Exec. Order 11990, 3 C.F.R. § 121 (1977) and environmental justice (Exec. Order 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994)). Failure of the Grantee to meet federal, state and local EHP requirements and obtain applicable permits may jeopardize federal funding.
11. Shall ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the Project is under consideration for listing by the EPA, Exec. Order 11,738, 3 C.F.R. § 799 (1971-1975).
12. Shall comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. § 4712 and 10 U.S.C. § 2324, and 41 U.S.C. §§ 4304 & 4310.
13. Shall comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. § 175-175c and comply with Exec. Order 13224, 60 Fed. Reg. 49079 (2001) and U.S. law prohibiting transactions with, and the provision of resources and support to, individuals and organizations associated with terrorism.
14. Shall comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban

Development as an area having special flood hazards.

15. Shall comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Exec. Order 11514, 3 C.F.R. § 902 (1966-1970); (b) notification of violating facilities pursuant to Exec. Order 11738, 3 C.F.R. § 799 (1971-1975); (c) protection of wetlands pursuant to Exec. Order 11990, 3 C.F.R. § 121 (1977); (d) evaluation of flood hazards in floodplains in accordance with Exec. Order 11988, 3 C.F.R. § 117 (1977); (e) assurance of Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § 1451, *et seq.*); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401, *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271, *et seq.*) related to protecting components or potential components of the national wild and scenic rivers system.
17. Shall assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Exec. Order 11593 3 C.F.R. § 559 (1971-1975), (identification and protection of historic properties) and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1, *et seq.*).
18. Shall comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. § 2131, *et seq.*) which requires the minimum standards of care and treatment for vertebrate animals bred for commercial sale, used in research, transported commercially or exhibited to the public according to the Guide for Care and Use of Laboratory Animals and Public Health Service Policy and Government Principals Regarding the Care and Use of Animals.
19. Shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801, *et seq.*) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.
20. Will comply with the requirements of Section 106(9) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) engaging in trafficking in persons during the period of time that the award is in effect (2) procuring a commercial sex act during the period of time that the award is in effect or (3) using forced labor in the performance of the award or subawards under the award.
21. Shall comply with the Pro-Children Act of 1994 (Public Law 103-277), which prohibits smoking within any portion of any indoor facility used for the provision of services for children.
22. Shall cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States,

Local Governments, and Non-Profit Organizations."

23. Shall comply with P.L. 93-348 regarding the protection of human subjects involved in research, development and related activities supported by this award of assistance.
24. Shall comply with all federal tax laws and is solely responsible for filing all required State and federal tax forms.
25. And its principals are eligible to participate and have not been subjected to suspension, debarment or similar ineligibility determined by any federal, State or local governmental entity and it is not listed on a State or federal government's terrorism watch list as described in EO 13224. Entities ineligible for federal procurement have Exclusions listed at <https://www.sam.gov/portal/public/SAM/>.
26. Shall comply with all applicable federal and State Drug-Free Workplace laws and rules.
27. Shall comply with all applicable requirements of all other federal and State laws, executive orders, regulations and policies governing this program.

By signing below on behalf of the Grantee, I hereby acknowledge and agree that I am an authorized representative of the Grantee with power to bind the Grantee to the terms of this Exhibit A, and agree to abide by the requirements stated herein, including any amendments thereto.

By:

Signature:

(Authorized Representative of Grantee)

Name: Jackson Sheppard

Title: Project Manager, Public Works

Date:

EXHIBIT B
Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility
Matters; and Drug-Free Workplace Requirements

As the duly authorized representative of the Grantee, I certify the following on behalf of the Grantee:

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 C.F.R. § 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 C.F.R. § 82, § 82.105 and 82.110, the applicant certifies that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement;
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Exec. Order 12549, 3 C.F.R. § 189 (1986), Debarment and Suspension, and implemented at 34 C.F.R. § 85, for prospective participants in primary covered transactions, as defined at 34 C.F.R. § 85, § 85.105 and 85.110--

A. The Grantee certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or

commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false Statements, or receiving stolen property;

- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default; and
- B. Where the applicant is unable to certify to any of the Statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEE OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 C.F.R. § 85(f), for Grantee, as defined at 34 C.F.R. § 85, § 85.605 and 85.610-

- A. The Grantee certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a Statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an on-going drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the Statement required by paragraph (a);
 - (d) Notifying the employee in the Statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the Statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
 - (e) Notifying OPB, in writing, within 10 calendar days after receiving notice under subparagraph

(d)(2) from an employee or otherwise receiving actual notice of such conviction. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The Grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance

ADDRESS 1

ADDRESS 2

CITY

STATE

ZIP

ZIP+4

4. DRUG-FREE WORKPLACE (GRANTEE WHO IS AN INDIVIDUAL)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 C.F.R. § 85(f), for Grantee, as defined at 34 C.F.R. § 85, 85.605, and 85.610.

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to OPB. Notice shall include the identification number(s) of each affected grant.

By signing below on behalf of the Grantee, I hereby acknowledge and agree that I am an authorized representative of the Grantee with power to bind the Grantee to the terms of this Exhibit B, and agree to abide by the requirements stated herein, including any amendments thereto.

By:

Signature:

(Authorized Representative of Grantee)

Name: Jackson Sheppard

Title: Project Manager, Public Works

Date:

EXHIBIT C

American Rescue Plan State Fiscal Recovery Fund Eligibility Certification

I, Jackson Sheppard
am the Project Manager, Public Works
of City of Dalton Georgia
Unique Entity Identifier

(Print Name),
(Title)
("Grantee")
and I certify that:

1. I have the authority on behalf of the Grantee to submit, or designate persons to submit on my behalf, requests for reimbursement for eligible expenses incurred to prevent or mitigate the spread of COVID-19 from the federal funds allocated to the State of Georgia's State Fiscal Recovery Fund ("SFRF") created by the American Rescue Plan Act of 2021.
2. I understand that the State will rely on this certification as a material representation in making reimbursement payments to the Grantee.
3. I acknowledge that pursuant to this Agreement, Grantee must keep records sufficient to demonstrate that the expenditure of reimbursement it has received is in accordance with the terms of this Grant.
4. I acknowledge that all records and expenditures are subject to audit by the United States Department of the Treasury's Inspector General, the Governor's Office of Planning and Budget, the Georgia Department of Audits and Accounts, the State of Georgia Office of Inspector General, and the Department of Community Affairs, or representative or designee.
5. I acknowledge that Grantee has an affirmative obligation to identify and report any duplication of benefits. I understand that the State has an obligation and the authority to de-obligate or offset any duplicated benefits.
6. I acknowledge and agree that the Grantee shall be liable for any costs disallowed pursuant to financial or compliance audits of reimbursement received.
7. I acknowledge and agree that all submissions for reimbursement, supporting documentation, reports, and any other record upon which the State relied to reimburse expenses pursuant to this Grant Agreement are true and accurate to the best of my knowledge and belief, and that federal and State authorities may exercise any and all legal and equitable remedies against the Grantee involving any false records created or submitted, or in relation to findings concerning fraud, waste, or misuse of funds received.
8. I acknowledge that the Grantee's requests submitted for reimbursement from the federal funds allocated to the State of Georgia's State Fiscal Recovery Fund ("SFRF") as created by the American Rescue Plan Act of 2021 will be used only to cover those costs that:

- a. Are expenditures made in accordance with the terms of this Agreement
- b. Were expenditures incurred during the period beginning the date of execution of this Agreement, and ending October 31, 2026, (or before the date funds are exhausted for the purpose of this Grant as solely determined by OPB), whichever is earlier.

By signing below on behalf of the Grantee, I hereby acknowledge and agree that I am an authorized representative of the Grantee with power to bind the Grantee to the terms of this Exhibit C, and agree to abide by the requirements stated herein, including any amendments thereto.

By:

Signature:

(Authorized Representative of Grantee)
Name: Jackson Sheppard

Title: Project Manager, Public Works

Date:

Please initial by each exhibit, acknowledging you have received them, understand them, and agree to abide by them.

Exhibit A – Grantee Assurances

Exhibit B – Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; And Drug-Free Workplace Requirements

Exhibit C – American Rescue Plan State Fiscal Recovery Fund Eligibility Certification

By signing below the Grantee acknowledges acceptance of the Grant, all terms and conditions of this Grant Agreement, and all exhibits to this Grant Agreement, and agrees to abide by all such terms and conditions.

By:

Signature:

(Authorized Representative of Grantee)

Name: Jackson Sheppard

Title: Project Manager, Public Works

Date:

SIGNATURE PAGE



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 6/19/2023

Agenda Item: 615 Birchfield Avenue Stormwater Improvement Corrective Action Plan, Temporary Construction, and Permanent Drainage Easements

Department: Public Works

Requested By: Chad Townsend

Reviewed/Approved by City Attorney? Yes

Cost: N/A

Funding Source if Not in Budget -----

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

This request is to approve the Corrective Action Plan for stormwater improvements at the property of 615 Burchfield Avenue. Scope of services include erosion protection along a drainage swale running alongside of the driveway, and improving the drainage connection for the box culvert spanning underneath the driveway where runoff from the road, and the drainage swale meet. Should this Corrective Action Plan be approved, Public Works Department will complete the scope of work.

See attached Corrective Action Plan for additional information about the scope of services.

PUBLIC WORKS DEPARTMENT

CHAD TOWNSEND, DIRECTOR

ctownsend@daltonga.gov

535 N. Elm Street
P.O. Box 1205
Dalton, GA 30722-1205
Office: (706) 278-7077
FAX: (706) 278-1847



DAVID PENNINGTON, MAYOR

CITY COUNCIL MEMBERS:

DENNIS MOCK
ANNALEE SAMS
TYREE GOODLETT
STEVE FARROW

M E M O R A N D U M

TO: Mayor and City Councilmembers

FROM: Chad Townsend, Public Works Director

**RE: Corrective Action Plan & Permanent Easement – 615
Burchfield Avenue Permanent Drainage Easement**

DATE: May 5th, 2023

The Public Works Department (the Department) has been working on stormwater issues throughout the City, and one area of concern is located on the property at 615 Burchfield Avenue. Historical flooding has occurred at the Northeast of the property during large storm events to the point of overtopping a box culvert and the road. A defined swale conveys significant stormwater runoff from the right-of-way from approximately 41 acres to the Northwest of the property. The swale enters the property from the North and heads East-Southeast for approximately fifty feet before entering a reinforced concrete box culvert. The culvert heads South for approximately 36 feet to a junction box, to which a drop inlet drains the surrounding area. Then, a 42-inch RCP conveys the runoff South, exiting the property at the Southeast corner.

The Department has received calls to mitigate the flooding on the property and the street; therefore, the Department has developed the following Corrective Action Plan to address the historical flooding issue.

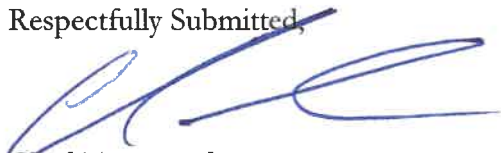
The Department is proposing constructing a structure to reduce minor loss impacts on the stormwater conveyance network at the inflow point of the existing box culvert located outside of City right-of-way. Furthermore, the Public Works Department is proposing installing riprap on the southern part of the streambank to reduce erosion. Therefore, a temporary construction easement, and permanent drainage easement will be required for 615 Burchfield Avenue for maintenance of the conveyance network.

Sec. 96-1 of City Code provides for the acceptance of temporary or permanent easements for public dedication of certain drainage systems including those connected directly to the City's existing system and conveys runoff from City right of way. The Public Works Department has developed the enclosed Corrective Action Plan drawings for the subject location and is recommending that City Council adopt this plan to allow city intervention. This plan would

provide a long-term solution for a key drainage network within the Mill Creek drainage basin. The Corrective Action Plan requires a temporary construction and permanent drainage easement be provided by the property owner and accepted by the City Council. The property owner must provide written commitment to provide the easement areas described. The Corrective Action Plan is subject to minor revisions related to the exact alignment of the pipe to accommodate unforeseen field conditions.

Should you have any questions or need additional information regarding this matter, please do not hesitate to contact me.

Respectfully Submitted,



Chad Townsend
Public Works Director

Cc: City Administrator, Andrew Parker, P.E.
City Attorney, Terry Miller

Enclosures:

Corrective Action Plan – 615 Burchfield Avenue Permanent Drainage Easement
Storm Drainage Easement Agreement

615 Burchfield Avenue Corrective Action Plan



TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This **Temporary Construction Easement** (sometimes the “Agreement”) is made this 1st day of June, 2023 (the “Effective Date”), by and between **Horacio Pacheco Martinez**, party of the first part (hereinafter “Grantor”), and the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, party of the second part (hereinafter “Grantee”), their respective heirs, administrators, successors and assigns:

WHEREAS, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as described in **Exhibit “A”** attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, Grantee is a municipal corporation owning or controlling certain real property adjacent to the Property being used as a city street or right-of-way and more particularly described as **Burchfield Avenue** (the “City Property”); and

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the Property to perform certain construction activities for the public good and welfare and Grantor is willing to grant the requested access and use and subject to the terms hereof; and

WHEREAS, upon completion of the construction identified therein said construction easement shall cease; and

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) from each to the other in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Temporary Construction Easement.** Grantor, for and on behalf of his heirs, administrators, executors, legal representatives, and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across, and through that Property shown on Exhibit “A” (the “Construction Easement”). The rights, benefits, privileges, and easement granted herein are for the purpose of that construction identified in Exhibit B and as provided in Section 3 herein below (the “Construction Project”). Said Easement is temporary and shall expire upon completion of the construction therein.

2. **Term of Temporary Construction Easement.** The parties contemplate that the construction project can be completed in thirty (30) days or less once on site. However, the parties acknowledge that said construction start date may be delayed and the time frame for completion may be delayed due to weather conditions. Except as may be amended by Grantee upon written notice to Grantor, said Temporary Construction Easement shall be for a period of thirty (30) days beginning on the date of commencement. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather related delays as soon

as reasonably possible. The parties shall reasonably cooperate to complete the project in a timely manner.

3. **Construction and Additional Rights.** The Temporary Construction Easement granted herein shall include:

- (a) the right of entry into and upon the Property for the purpose of access and ingress to and egress from the Property in order to effect the rights, privileges and easements set forth herein;
- (b) the right to cut away, remove and dispose of all trees, undergrowth or other obstructions which exist on the Temporary Construction Easement, which removal is necessary for stormwater and erosion control within the easement area;
- (c) the right to install stone rip rap, fabric or other materials for stormwater and erosion control within the easement area; and
- (d) the right, when required by law, governmental regulation or necessity to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Property.

4. **Reservation of Rights.** Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Property.

5. **Conditions and Obligations of Construction Easement Use.**

- (a) The use of the Property by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Property. Any such use of this Temporary Construction Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the Property to the greatest extent practicable.
- (b) Any construction or activities performed under this Temporary Construction Easement by Grantee shall be done in a good workmanlike manner and the Property shall be left in a clean and orderly condition, with all debris removed therefrom, and any areas which may have been disturbed by such work shall be restored to their former condition as nearly as practicable.

6 **Covenants of Grantor.**

- (a) Grantor waives all right to any compensation for the use and enjoyment of the rights and privileges granted herein and further acknowledges that the use granted herein does not constitute an action of eminent domain or condemnation by the Grantee. Grantor does not waive any claim for damages that may result from the negligent acts or omissions of the Grantee or its contractors in its use of the Temporary Construction Easement.

- (b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Property above described, that Grantor has a good and lawful right to convey said easement, rights and privileges granted herein.
7. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift of dedication to the general public or for any general public use.
8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and understanding between Grantor and Grantee relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.
9. **Severability.** The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.
10. **Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and upon execution by the Grantor and Grantee.
11. **Time of Essence.** Time is of the essence with respect to this Agreement.
12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

[Signatures on next page]

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Signed, sealed and delivered
in the presence of:

Grantor:


Unofficial Witness


Horacio Pacheco Martinez

Notary Public

My Commission Expires: 04-03-2026 Acceptance of Grantee:

CITY OF DALTON



Authorized Officer

EXHIBIT "A"

Deed Doc: WD
Recorded 11/04/2021 10:29AM
Georgia Transfer Tax Paid \$195.00
SABS BAILLY
Clerk Superior Court, WHITFIELD County, Ga
Sk 06893 Pg 0275

✓
Please return to:
W. Lane Haley, PC
217 W. Crawford St.
Dalton, GA 30720
File #: 0921RE410
STATE OF GEORGIA
COUNTY OF WHITFIELD

PW1003445

LIMITED WARRANTY DEED

THIS INDENTURE made this 29th day of October, 2021 between
Stephanie Brooke Perry
as party or parties of the first part, hereinafter called Grantor, and
Horacio Pacheco Martinez
as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and
"Grantee" to include their respective heirs, successors and assigns where the context requires or
permits).

WITNESSETH that: Grantor, for and in consideration of the sum of TEN DOLLARS and
other good and valuable consideration (\$10.00) in hand paid at and before the sealing and
delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained,
sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien,
convey and confirm unto the said Grantee, the following described property:

All that tract or parcel of land lying and being in Land Lot 202 of the 12th District and 3rd
Section, Whitfield County, Georgia and being Lots 155, 156, 157, and 158 of Burchfield
Subdivision as shown by plat of record in Plat Book 3 Page 24 Whitfield County, Georgia
records which plat is incorporated herein and made a part hereof by reference.

Parcel ID: 12 202 05 005

Address: 615 and 617 Burchfield Avenue, Dalton, Georgia

Subject to easements, agreements, covenants, restrictions, right of way deeds, matters of
plat, governmental ordinances, and other lawful matters affecting said property.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights,
members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to
the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above-
described property unto the said Grantee against the claims of all persons owning, holding or
claiming by, through or under the said Grantor.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal this first day and
year first above written.

Signed, sealed and delivered in the presence of:

Witness

Notary Public

(Seal)

My commission expires

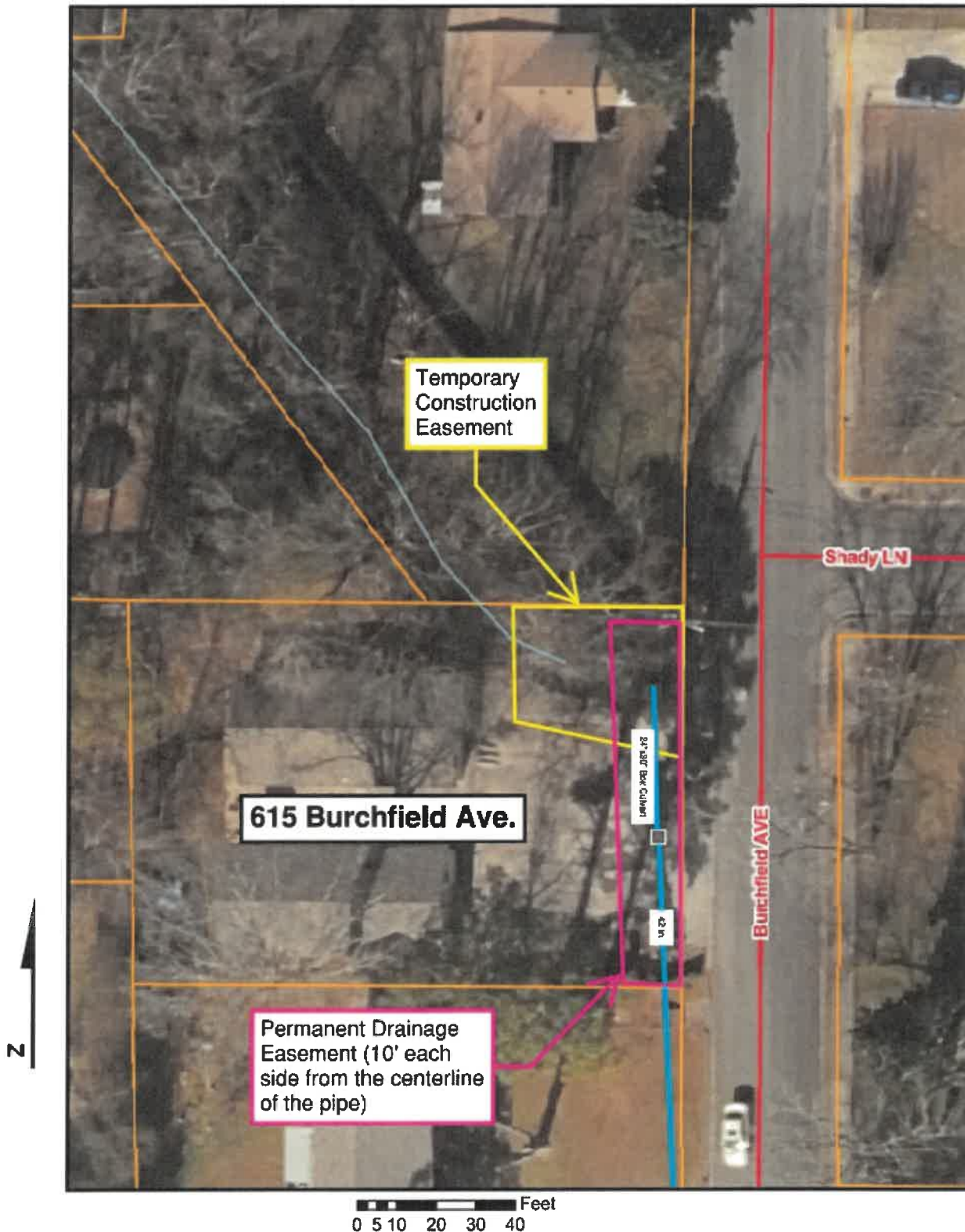


Stephanie Brooke Perry

(Seal)

EXHIBIT "B"

615 Burchfield Ave Temporary Construction Easement



[Space above this line for recording data.]

Please Record and Return To:

Terry L. Miller
Mitchell & Mitchell, P.C.
108 S. Thornton Ave.
P.O. Box 668
Dalton, GA 30722-668

STORM DRAINAGE EASEMENT AGREEMENT

Georgia, Whitfield County

This Storm Drainage Easement Agreement (this "Agreement") is made this 1st day of June, 2023 (the "Effective Date"), by and between **Horacio Pacheco Martinez**, of the first part (hereinafter called "Grantor"), and the City of Dalton, Georgia, a municipal corporation of the State of Georgia, party of the second part (hereinafter called "Grantee"), their respective heirs, administrators, successors and assigns:

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as described in Exhibit "A" attached hereto and incorporated herein by reference (the "Pacheco Property"); and

WHEREAS, Grantee is the owner of certain real property adjacent to the Pacheco Property and more particularly described as Burchfield Avenue (the "City Property"); and

WHEREAS, Grantee has constructed, or will construct, a storm sewer pipe and storm water structures on the Pacheco Property (collectively the "Pacheco Municipal Storm Sewer"); and

WHEREAS, Grantor acknowledges that the work to be performed in this Agreement may not fully mitigate all flooding of the Pacheco Property; and

WHEREAS, Grantee desires non-exclusive access to and use of a portion of the Pacheco Property to discharge storm water originating from the City Property into the Pacheco Municipal

Storm Sewer; and Grantor is willing to grant the requested access and use on and subject to the terms hereof; and

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the Pacheco Property to construct and/or maintain the Pacheco Municipal Storm Sewer and Grantor is willing to grant the requested access and use on and subject to the terms hereof; and

WHEREAS, upon completion of the installation and construction of the Pacheco Municipal Storm Sewer, Grantee intends to be responsible for all costs associated with the use, maintenance, repair, replacement, inspection, and reconstruction of the Pacheco Municipal Storm Sewer, as it relates to maintaining reasonable drainage flow from the right of way to the discharge point; and

WHEREAS, in order to evidence the understanding between Grantor and Grantee with respect to the Pacheco Municipal Storm Sewer, Grantor intends to declare, establish, create, grant, and/or convey certain easement rights to Grantee for and with respect to the installation, utilization, maintenance, repair and re-construction of the installations and utilization of the Storm Drainage Easement (as defined herein below), all as more particularly set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Storm Drainage Easement.** Grantor, and for and on behalf of his heirs, administrators, successors and assigns, and for and on behalf of anyone claiming by, through or under Grantor, does hereby grant, bargain, sell and convey unto Grantee and its successors and assigns, a perpetual, non-exclusive easement in, on, over, under, across and through that certain portion of the Pacheco Property shown as the "Perm. Drainage Esmt" on the aerial drawing attached hereto as Exhibit "B" and incorporated herein by this reference (also the "Storm Drainage Easement"). The rights, benefits, privileges, and easement granted herein is for the purpose of the non-exclusive use and enjoyment of the Storm Drainage Easement flowing to channel, distribute or transport storm water originating from or onto and across the City's Property through the Pacheco Municipal Storm Sewer. Notwithstanding the foregoing, Grantor hereby agrees to accept such storm water discharge through the Pacheco Municipal Storm Sewer in its current intensity, rate, volume and location.

2. **Additional Rights.** The Storm Drainage Easement granted herein shall include:

(a) all rights, benefits, privileges, and easements necessary or convenient for the full enjoyment and use of the Storm Drainage Easement for the purposes described herein;

(b) the right of entry into and upon the Pacheco Property for the purpose of access and ingress to and egress from the Storm Drainage Easement in order to effect the rights, privileges and easements set forth herein;

(c) the right to cut away and keep clear, remove and dispose of all trees, undergrowth or other obstructions now or as may exist on the Storm Drainage Easement, which removal is necessary for Grantee's use and enjoyment of easements, rights and privileges granted herein; and

(d) the right, when required by law, governmental regulation or necessity to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Storm Drainage Easement.

3. **Reservation of Rights.** Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Storm Drainage Easement appurtenant to his fee simple estate and for any and all purposes not inconsistent with Grantee's easement as expressly permitted herein.

4. **Conditions and Obligations of Easement Use.**

(a) The use of the Storm Drainage Easement by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Storm Drainage Easement. Any such use of the Storm Drainage Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the Pacheco Property to the greatest extent practicable.

(b) Grantee shall operate, repair, replace and maintain continuously the Pacheco Municipal Storm Sewer on or within the Storm Drainage Easement.

(c) Grantee shall be solely responsible to maintain reasonable drainage flow from the right of way to the discharge point, which shall be at Grantee's absolute discretion. The Pacheco Municipal Storm Sewer and Storm Drainage Easement shall remain free and clear of all liens and other encumbrances arising out of the exercise by the Grantee of its rights hereunder.

(d) Any construction, maintenance, repair or other work or activities performed on the Pacheco Municipal Storm Sewer or within the Storm Drainage Easement by Grantee shall be done in a good, workmanlike manner and the Storm Drainage Easement shall be left in a clean and good condition, with all debris removed therefrom and with trenches and cuts properly filled so that all grades, paved areas, and permitted landscaped and grassed areas and other permitted improvements which may have been disturbed by such work are restored to their former condition as nearly as practicable; provided that if the affected area within the Storm Drainage Easement is natural and has not been improved, such areas shall be smoothed to commercial lawn grade and seeded with grass following such activity.

(e) Except in the event of an emergency, Grantee shall use commercially reasonable efforts to provide Grantor with at least ten (10) days prior written notice of any construction, maintenance, repair or other work or activities to be performed on the Pacheco Municipal Storm Sewer or within the Storm Drainage Easement by Grantee.

(f) In the event that the Grantee, its employees, agents, or assigns, shall damage the Pacheco Municipal Storm Sewer, the area within the Storm Drainage Easement or the Pacheco Property, then, at its sole cost and expense and within thirty (30) days after receipt of written notice from Grantor that Grantee has caused such damage, Grantee shall repair, or cause to be repaired, such damage in a good, clean, and workmanlike manner, and to their former condition as nearly as practicable.

5. **Covenants of Grantor.**

(a) Grantor waives all right to any further compensation for the use and enjoyment of the rights and privileges granted herein.

(b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Pacheco Property above described, that it has a good and lawful right to convey said easement, rights and privileges granted herein.

(c) Grantor irrevocably binds itself to refrain from making any claim or demand, or to commence, cause, or permit to be prosecuted any action in law or equity against Grantee, or any other person, firm or entity claiming by or through Grantee on account of any damage that may occur or resulting from the installation or the operation of the Storm Drainage Easement.

6. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift of dedication to the general public or for any general public use.

7. **Successors and Assigns.** The Storm Drainage Easement shall run with title to and burden the Pacheco Property and shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors and assigns of Grantor and Grantee. All obligations of Grantor and Grantee hereunder shall be binding upon their respective heirs, administrators, successors-in-title and assigns.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

9. **Severability.** The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions

thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.

10. **Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and upon execution by the Grantor and Grantee, this Agreement shall be promptly recorded in the Deed Records of Whitfield County, Georgia.

11. **Time of Essence.** Time is of the essence with respect to this Agreement.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

[Signatures on next page]

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Signed, sealed and delivered
In the presence of:

Grantor:

Jorge Campos
Unofficial Witness

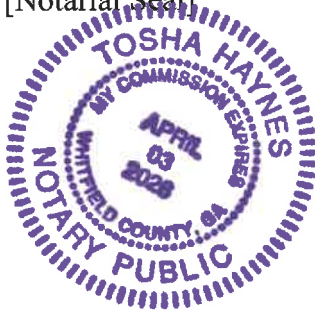
Tosha Haynes

By: Horacio Pacheco Martinez (Seal)
Horacio Pacheco Martinez

Notary Public

My commission expires: 04-03-2026

[Notarial Seal]



Grantee:

City of Dalton

By: _____

Its: _____

Attest: _____
City Clerk

Unofficial Witness

Notary Public
My Commission Expires:

EXHIBIT "A"

✓ Please return to:
W. Lane Haley, PC
217 W. Crawford St.
Dalton, GA 30720
File #: 0921RE410
STATE OF GEORGIA
COUNTY OF WHITFIELD

Deed Doc: WD
Recorded 11/04/2021 10:29AM
Georgia Transfer Tax Paid \$193.00
KABS BAILLY
Clerk Superior Court, WHITFIELD County, GA
Bk 06893 Pg 0275

Plat 1003445

LIMITED WARRANTY DEED

THIS INDENTURE made this 29th day of October, 2021 between
Stephanie Brooke Perry
as party or parties of the first part, hereinafter called Grantor, and
Horacio Pacheco Martinez
as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and
"Grantee" to include their respective heirs, successors and assigns where the context requires or
permits).

WITNESSETH that: Grantor, for and in consideration of the sum of TEN DOLLARS and
other good and valuable consideration (\$10.00) in hand paid at and before the sealing and
delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained,
sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien,
convey and confirm unto the said Grantee, the following described property:

All that tract or parcel of land lying and being in Land Lot 202 of the 12th District and 3rd
Section, Whitfield County, Georgia and being Lots 155, 156, 157, and 158 of Burchfield
Subdivision as shown by plat of record in Plat Book 3 Page 24 Whitfield County, Georgia
records which plat is incorporated herein and made a part hereof by reference.

Parcel ID: 12 202 05 005

Address: 615 and 617 Burchfield Avenue, Dalton, Georgia

Subject to easements, agreements, covenants, restrictions, right of way deeds, matters of
plat, governmental ordinances, and other lawful matters affecting said property.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights,
members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to
the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above-
described property unto the said Grantee against the claims of all persons owning, holding or
claiming by, through or under the said Grantor.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal this first day and
year first above written.

Signed, sealed and delivered in the presence of:

Witness

Notary Public

(Seal)

Stephanie Brooke Perry

(Seal)

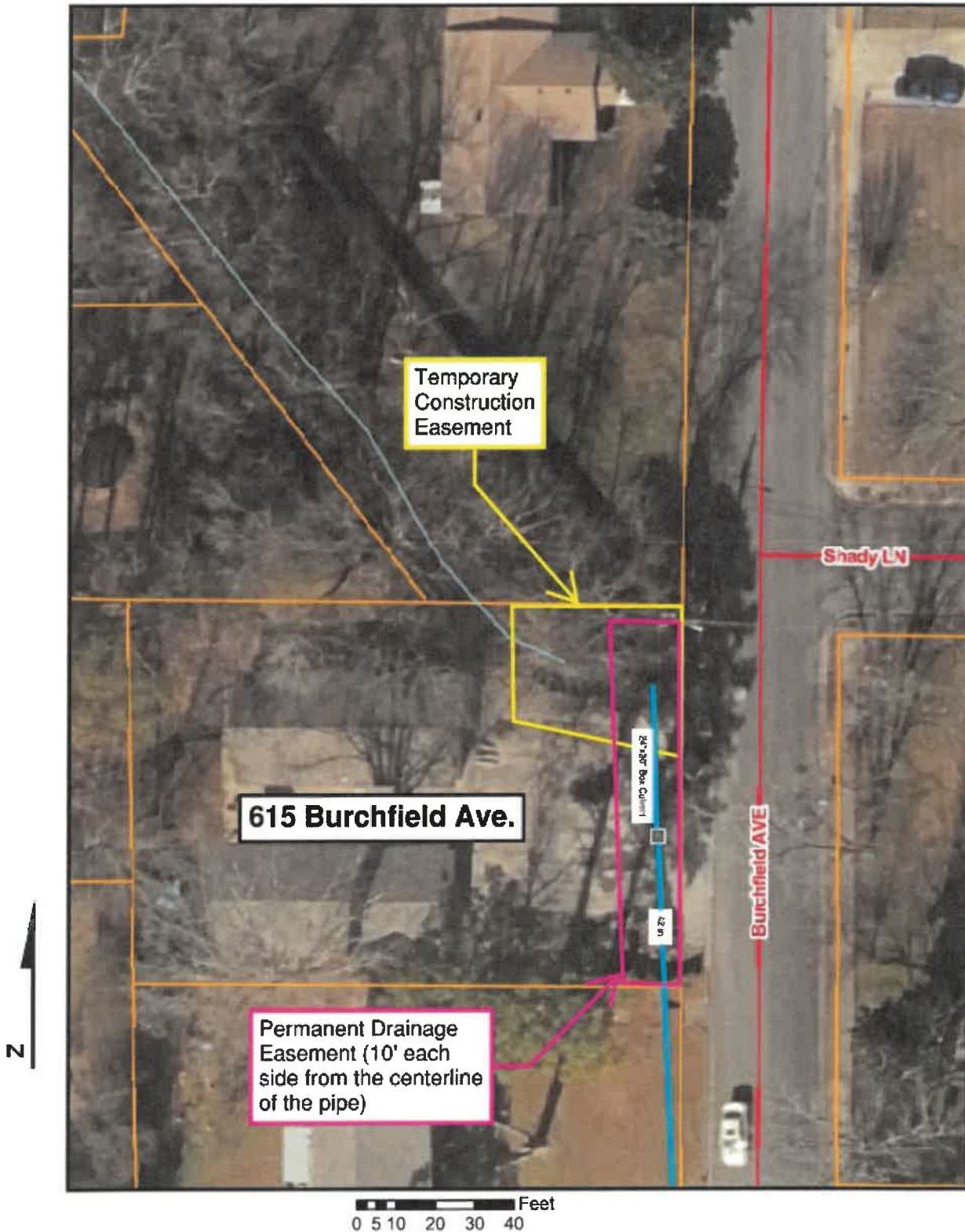
(Seal)

My commission expires



EXHIBIT "B"

615 Burchfield Ave Permanent Drainage Easement





CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 06/19/23

Agenda Item: Resolution 23-08 Cooper Street/Street Closing Request

Department: Administration

Requested By: Andrew Parker

Reviewed/Approved by City Attorney? Yes

Cost:

Funding Source if Not in Budget

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

RESOLUTION 23-08 To Make Findings of Fact Concerning the Public Use and Necessity of a Section of Unopened Cooper Street; To Consider the Vacating and Abandonment of Public Interest in And to The Said Portion of Cooper Street for Public Transportation Use; To Declare the Closing of Such Section of Cooper Street, To Authorize Delivery of a Quitclaim Deed of Any Interest of The City of Dalton Except Utility Easement to Adjacent Property Owners; To Establish an Effective Date; And for Other Purposes.

**CITY OF DALTON
RESOLUTION**

NO. 23-08

To Make Findings of Fact Concerning The Public Use And Necessity Of A Section Of Unopened Cooper Street; To Consider The Vacating And Abandonment Of The Public Interest In And To The Said Portion Of Cooper Street For Public Transportation Use; To Declare The Closing Of Such Section Of Cooper Street, To Authorize Delivery Of A Quitclaim Deed Of Any Interest Of The City Of Dalton Except Utility Easement To Adjacent Property Owners; To Establish An Effective Date; And For Other Purposes

WHEREAS, the Mayor and Council upon inquiry and investigation find the below described section of Cooper Street in the City of Dalton, Whitfield County, Georgia, in Land Lot No. 240 of the 12th District and 3rd Section of Whitfield County, Georgia, as shown on Exhibit “A” attached hereto and made a part hereof by reference, is no longer needed by the public for street or transportation purposes and to that extent no substantial purpose is served thereby;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Dalton and by authority of same IT IS HEREBY RESOLVED as follows:

-1-

The section of Cooper Street described in Exhibit “B” shall be hereafter closed for public use for street or transportation purposes and said section as shown on Exhibit “A” shall be closed and no longer part of the Municipal Street System, except that the City of Dalton reserves any portion thereof where it maintains an easement for natural gas, water, electrical, or sewer lines through the operations of Dalton Utilities.

-2-

Notification to all property owners abutting the section of Cooper Street to be closed has been given and there is consent to closure. The intent to close has also been published by way of public notice in the legal organ of Whitfield County, Georgia.

-3-

The Mayor and City Clerk are authorized to execute in the name of and on behalf of the City of Dalton a Quitclaim Deed to the Section of street to be closed to Larry M. Cope who owns the property adjacent to both sides of the section to be closed, reserving only utility easements, if any.

-4-

This Resolution shall be effective upon adoption thereof.

SO RESOLVED this _____ day of _____, 2023.

The foregoing Resolution was read on _____. A motion for passage of the Resolution was made by Council member _____, second by Council member _____ and upon the question the vote is _____ ayes, _____ nays and the Resolution is adopted.

Attest:

CITY OF DALTON, GEORGIA

City Clerk

Mayor

MAY STREET

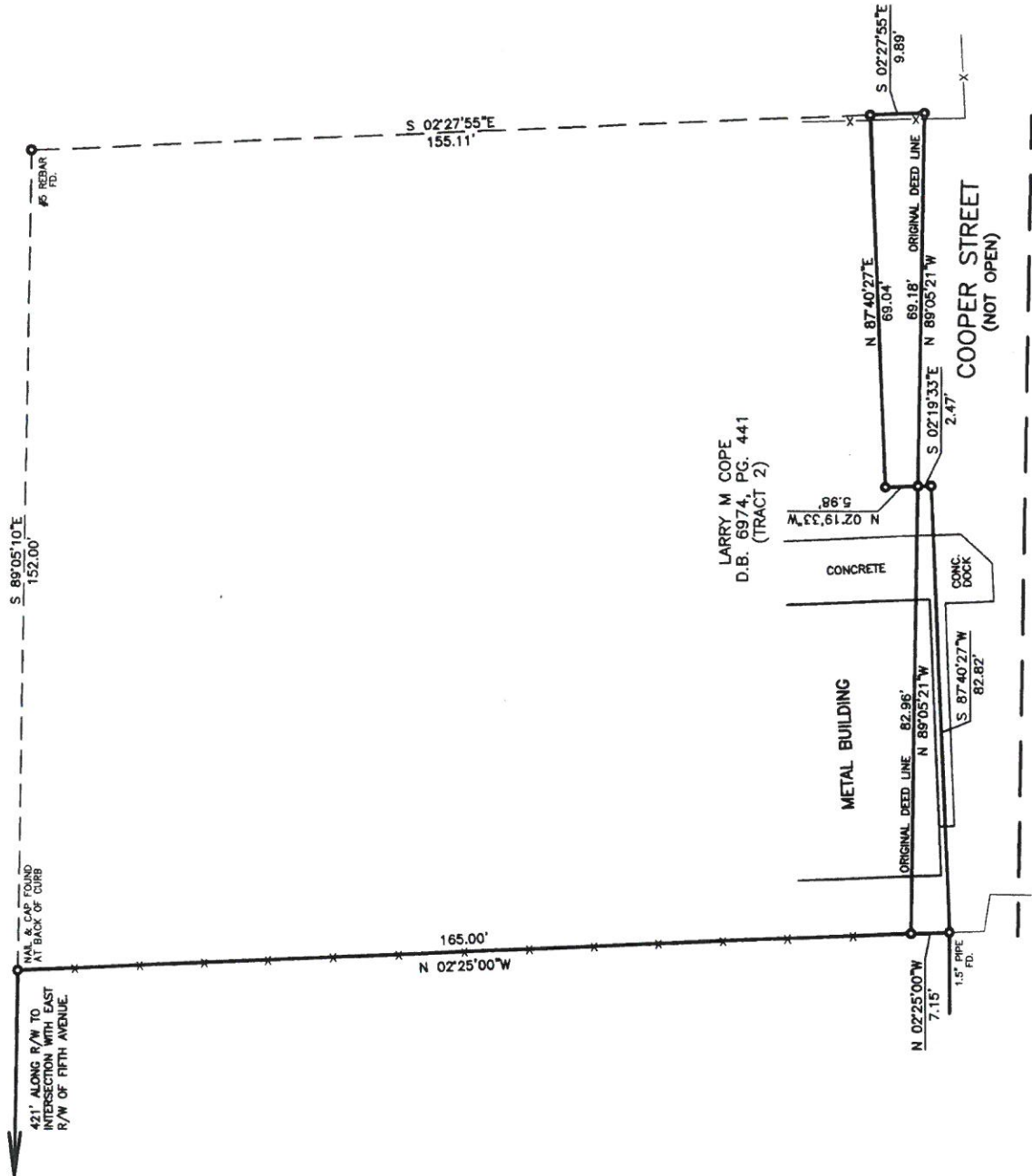


EXHIBIT "A"

EXHIBIT "B"

TO FIND THE TRUE POINT OF BEGINNING, BEGIN at the intersection of the east right of way of Fifth Avenue and the south right of way of May Street; thence along the south right of way of May Street a distance of 421 feet to a nail and cap found at the back of the curb; said point also being the northwest corner of Tract II as conveyed to Larry M. Cope by Warranty Deed recorded in Deed Book 6974, page 441, Whitfield County, Georgia Land Records; thence south 02 degrees 25 minutes 00 seconds east, along a fence, a distance of 165 feet to the north side of unopened Cooper Street, which is the TRUE POINT OF BEGINNING of the tract of land herein described. FROM THE TRUE POINT OF BEGINNING thus established, continue south 02 degrees 25 minutes 00 seconds east to the south side of unopened Cooper Street; thence east along the south side of unopened Cooper Street, 193. 70 feet, more or less, to the northeast corner of Tract I as conveyed to Larry M. Cope by Warranty Deed recorded in Deed Book 6974, page 441; thence north 02 degrees 27 minutes 55 seconds west to the north side of unopened Cooper Street, which point is also the southeast corner of Tract II as conveyed to Larry M. Cope by the aforesaid Warranty Deed recorded in Deed Book 6974, page 441; thence along the north side of unopened Cooper Street, north 88 degrees 58 minutes west, a distance of 152.14 feet to a point, which is the TRUE POINT OF BEGINNING.

Daily Citizen – News

Dalton's Award-Winning Daily Newspaper
Dalton, Georgia 30720

308 South Thornton Avenue 706-217-6397

LEGAL AFFIDAVIT

I, Jeff Mutter, Advertising Director of the Daily Citizen, a newspaper published in the City of Dalton, Georgia, do solemnly swear the ad number 708890 shown below and to the right placed by MITCHELL & MITCHELL ATTORNEYS was scheduled 3 time(s) in the newspaper.

Run dates are as follows:

Daily Citizen-News: 05/19/23, 05/26/23, 06/02/23.



Jeff Mutter
Advertising Director

Sworn of this day:
06/02/2023

Notary Public



NOTICE OF INTENTION TO CONVEY EASEMENT INTEREST IN MUNICIPAL UTILITY REAL PROPERTY Pursuant to O.C.G.A. 36-37-8, the City of Dalton, acting by and through the Board of Water, Light and Sinking Fund Commissioners d/b/a Dalton Utilities, hereby provides notice of its intent to convey easement interest in certain municipal utility real property to Georgia Power Company. The terms and general conditions of the Easements are as follows:

The City of Dalton, Georgia, an incorporated municipality of the State of Georgia (the "City"), acting by and through the Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia, d/b/a Dalton utilities ("Dalton Utilities") proposes to convey Easements to Georgia Power Company ("Georgia Power") granting Georgia Power the right to construct, operate, maintain, repair, renew and rebuild continuously upon and under the Easement Area its lines for transmitting electric current with poles, wires, transformers, service pedestals, anchors, guy wires and other necessary apparatus, fixtures, and appliances; the right to attach communication facilities and related apparatus, fixtures and appliances to said poles; the right to stretch communication or other lines within the Easement Area; the right to permit the attachment of the cables, lines, wires, apparatus, fixtures, and appliances of any other company or person to said poles for electrical, communication or other purposes; the right to assign the Easement in whole or in part; the right at all times to enter upon the Easement Area for the purpose of inspecting said lines and/or making repairs, renewals, alterations and extensions thereon, thereunder, thereto or therefrom; the right to cut, trim, remove, clear and keep clear of said overhead or underground lines, transformers, fixtures, and appliances all trees and other obstructions that may in the opinion of Georgia Power now or hereafter in any way interfere or be likely to interfere with the proper maintenance and operation of said overhead or underground lines, transformers, fixtures, and appliances; the right of ingress and egress over the property to and from the Easement Area; and the right to install and maintain electrical and communication lines and facilities to existing and future structure(s) within the Easement Area under the easement terms. For purposes of the Easements, the "Easement Area" shall be any portion of the property located within fifteen (15) feet of the centerline of the overhead distribution lines installed on certain real property located South Riverbend Road, Dalton, Georgia 30721 (Tax Parcel Numbers 12-330-03-000, 12-356-03-000, and 12-355-03-000) and Looper Bridge Road, Dalton, Georgia 30721 (Tax Parcel Number 13-013-08-000)

(collectively the "Dalton Utilities Property").

In exchange, Georgia Power agrees to maintain the power poles, transmission lines, and related utility equipment on said Dalton Utilities Property. Copies of the complete Easements are available for inspection at the offices of Dalton Utilities, 1200 V.D. Parrott Parkway, Dalton, Georgia. 05/19 05/26 06/02

STATE OF GEORGIA

COUNTY OF WHITFIELD

§
§
§

QUITCLAIM DEED

THIS INDENTURE, made this ____ day of _____ in the year Two Thousand Twenty Three, between CITY OF DALTON, an incorporated municipality of the State of Georgia, as Party of the First Part, and LARRY M. COPE, as Party of the Second Part:

WITNESSETH: That the said Party of the First Part, for and in consideration of TEN DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, has bargained, sold, and by these presents does remise, release and forever quit claim to the said Party of the Second Part, his successors and/or assigns, all the right, title, interest, claim or demand the said Party of the First Part, has or may have had in and to the following described land:

SEE EXHIBIT "A" ATTACHED HERETO

The purpose of this Quitclaim Deed is to relinquish any interest Grantor may have in the unopened portion of Cooper Street.

With all the rights, members and appurtenances to the said Party of the Second Part, in any wise appertaining or belonging.

To have and to hold the said above-described property to the said Party of the Second Part so that neither the said Party of the First Part, nor its heirs, executors and/or assigns, nor

any other person or persons claiming under it, shall at any time, by any means, have, claim or demand any right or title to the aforesaid.

IN WITNESS WHEREOF, the said Party of the First Part has hereunto set its hand and affixed its seal, on the day and year first above-written.

Signed, sealed and delivered
this ____ day of _____,
2023, in the presence of:

CITY OF DALTON, GEORGIA

BY: _____ (SEAL)
TITLE: Mayor

WITNESS

ATTEST: _____ (SEAL)
TIE: City Clerk

NOTARY PUBLIC EXP. DATE: [SEAL]



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 06/19/23

Agenda Item: Resolution 23-11 Utility Easements

Department: Administration

Requested By: Andrew Parker

Reviewed/Approved by City Attorney? Yes

Cost:

Funding Source if Not in Budget

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

RESOLUTION 23-11 AUTHORIZING MUNICIPAL UTILITY PROPERTY EASEMENTS BETWEEN DALTON UTILITIES AND GEORGIA POWER

RESOLUTION 23-11

RESOLUTION AUTHORIZING MUNICIPAL UTILITY PROPERTY EASEMENT

WHEREAS, the City of Dalton, Georgia, an incorporated municipality of the State of Georgia (the “City”), acting by and through the Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia, d/b/a Dalton Utilities (“Dalton Utilities”) owns certain real property located on South Riverbend Road, Dalton, Georgia 30721 (Tax Parcel Numbers 12-330-03-000, 12-356-03-000, and 12-355-03-000) and Looper Bridge Road, Dalton, Georgia 30721 (Tax Parcel Number 13-013-08-000) (collectively the “Dalton Utilities Property”); and

WHEREAS, Georgia Power Company, a Georgia corporation (“Georgia Power”) owns certain power poles, transmission lines, and other utility related equipment on said property; and

WHEREAS, Georgia Power has agreed to maintain certain of Dalton Utilities’s power lines and utility related equipment in exchange for receiving certain easement rights from the City to construct, operate, maintain, repair, renew and rebuild the power poles, transmission lines, and related equipment as more particularly described on Exhibit “A,” items 1-4, attached hereto and incorporated herein by reference (the “Easements”); and

WHEREAS, Dalton Utilities has determined that it is consistent with the best interests of Dalton Utilities that Dalton Utilities enter into the above described Easements and accordingly, under the authority of O.C.G.A. § 36-37-8, has approved such Easements and recommended approval of such Easements to the Mayor and Council of the City of Dalton, a copy of such resolution of Dalton Utilities is attached hereto as Exhibit “B” and incorporated herein by reference;

NOW, THEREFORE, BE IT RESOLVED, that Dalton Utilities or the City, as the case may be, is hereby authorized to convey the easement rights in the Dalton Utilities Property as set forth in the Easements 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 he hereby is, authorized and empowered to take such action and to execute for and on behalf of the City the Easements 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, 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 _____, 2023.

The City of Dalton, Georgia

By: _____
David Pennington, Mayor

Attest: _____
City Clerk

(seal)

EXHIBIT “A”

Easements

See attached.

After recording, return to:
Georgia Power Company
Attn: Land Acquisition (Recording)
241 Ralph McGill Blvd NE
Rm 10151
Atlanta, GA 30308-3374

PROJECT 2022110252 LETTER FILE DEED FILE MAP FILE
ACCOUNT NUMBER 11046897-GPC4013-KPT-12.01
NAME OF LINE/PROJECT: GPC GRID ANTIOCH ROAD N0442 CWP 3 (WHITFIELD COUNTY)
DISTRIBUTION LINE

PARCEL NUMBER 002

STATE OF GEORGIA
WHITFIELD COUNTY

E A S E M E N T

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid by GEORGIA POWER COMPANY, a Georgia corporation (the "Company"), the receipt and sufficiency of which are hereby acknowledged, THE CITY OF DALTON (the "Undersigned", which term shall include heirs, successors and/or assigns), whose mailing Address is 114 N. Pentz Street, Dalton, GA 30720, does hereby grant and convey to the Company, its successors and assigns, the right, privilege and easement to go in, upon, along, across, under and through the Property (as defined below) for the purposes described herein.

The "Property" is defined as that certain tract of land owned by the Undersigned at SOUTH RIVERBEND ROAD, DALTON, GA 30721 (Tax Parcel ID No. 12-330-03-000) in Land Lot 330 of the 12 District of Whitfield County, Georgia.

The "Easement Area" is defined as any portion of the Property located within fifteen (15) feet of the centerline of the overhead distribution line(s) as installed in the approximate location shown on "Exhibit A" attached hereto and made a part hereof.

The rights granted herein include and embrace the right of the Company to construct, operate, maintain, repair, renew and rebuild continuously upon and under the Easement Area its lines for transmitting electric current with poles, wires, transformers, service pedestals, anchors, guy wires and other necessary apparatus, fixtures, and appliances; the right to attach communication facilities and related apparatus, fixtures, and appliances to said poles; the right to stretch communication or other lines within the Easement Area; the right to permit the attachment of the cables, lines, wires, apparatus, fixtures, and appliances of any other company or person to said poles for electrical, communication or other purposes; the right to assign this Easement in whole or

PARCEL 002 NAME OF GPC GRID ANTIOCH ROAD N0442 CWP 3 (WHITFIELD
 LINE/PROJECT: COUNTY) DISTRIBUTION LINE

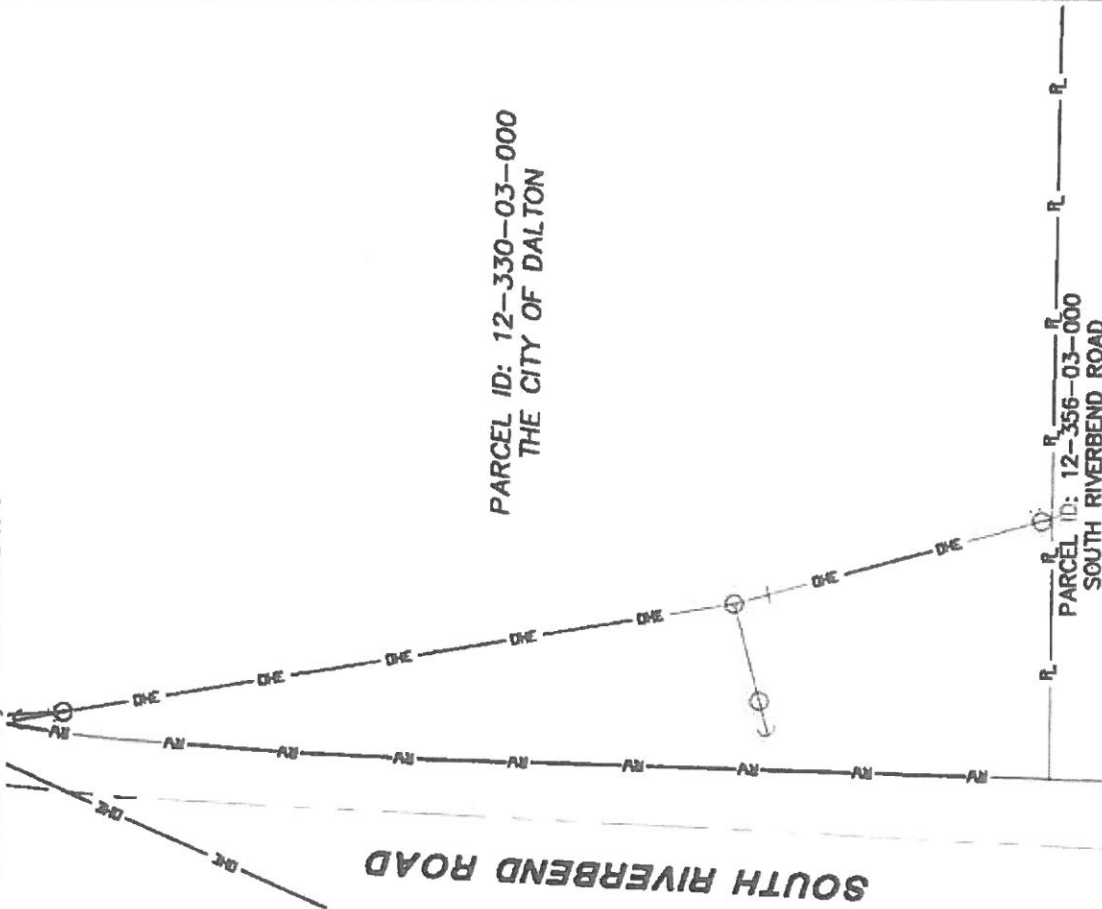
in part; the right at all times to enter upon the Easement Area for the purpose of inspecting said lines and/or making repairs, renewals, alterations and extensions thereon, thereunder, thereto or therefrom; the right to cut, trim, remove, clear and keep clear of said overhead or underground lines, transformers, fixtures, and appliances all trees and other obstructions that may in the opinion of the Company now or hereafter in any way interfere or be likely to interfere with the proper maintenance and operation of said overhead or underground lines, transformers, fixtures, and appliances; the right of ingress and egress over the Property to and from the Easement Area; and the right to install and maintain electrical and communication lines and facilities to existing and future structure(s) within the Easement Area under the easement terms provided herein. Any timber cut on the Easement Area by or for the Company shall remain the property of the owner of said timber.

The Undersigned does not convey any land, but merely grants the rights, privileges and easements hereinbefore set out.

The Company shall not be liable for or bound by any statement, agreement or understanding not herein expressed.

[Signature(s) on Following Page(s)]

SOUTH RIVERBEND ROAD DALTON, WHITFIELD COUNTY, GEORGIA



LEGEND

- ↑ EXISTING DOWN GUY
- ↑ PROPOSED DOWN GUY
- EXISTING POLE
- PROPOSED POLE
- PROPERTY LINE
- RIGHT OF WAY LINE
- EDGE OF PAVEMENT
- EXISTING OVERHEAD POWER LINE
- PROPOSED OVERHEAD WIRE
- PROPOSED UNDERGROUND WIRE
- EASEMENT AREA

THE PURPOSE OF THIS EXHIBIT IS TO SHOW INFORMATION PERTAINING TO THE GEORGIA POWER EASEMENT AREA DEPICTED HEREON. OTHER FEATURES AND IMPROVEMENTS MAY EXIST WHICH ARE NOT SHOWN. THIS EXHIBIT IS NOT INTENDED TO BE A BOUNDARY SURVEY.

THE TRACT SHOWN HEREON IS BASED UPON A COMBINATION OF RECORD DEED BOOK AND PAGE AND/OR GIS DATA PER THE WHITFIELD COUNTY, GEORGIA TAX ASSESSOR.

S&B
375 NORTHRIDGE ROAD
SUITE 100
ATLANTA, GA 30350
OFF: 678.342.2775
GEORGIA LSF 001114

JOB NUMBER: 1022090500P
DATE: 02/17/2023
SCALE: N/A
CHECKED BY: J. DAVIES
DRAWN BY: D. WALTER
DRAWING: 12-330-03-000 EXHIBIT - REV1
PARCEL ID: 12-330-03-000
REVISION: 1

ANTIOCH ROAD N0442
LIMS PROJECT 2022110252
LIMS PARCEL 002
DRAWING NOT TO SCALE

GEORGIA POWER COMPANY
PERMANENT EASEMENT EXHIBIT A ON THE PROPERTY OF
THE CITY OF DALTON
WHITFIELD COUNTY
GEORGIA

After recording, return to:
Georgia Power Company
Attn: Land Acquisition (Recording)
241 Ralph McGill Blvd NE
Bin 10151
Atlanta, GA 30308-3374

PROJECT 2022110252 LETTER FILE DEED FILE MAP FILE
ACCOUNT NUMBER 11046897-GPC4013-KPT-12.01
NAME OF LINE/PROJECT: GPC GRID ANTIOCH ROAD N0442 CWP 3 (WHITFIELD COUNTY)
DISTRIBUTION LINE

PARCEL NUMBER 003

STATE OF GEORGIA
WHITFIELD COUNTY

E A S E M E N T

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid by GEORGIA POWER COMPANY, a Georgia corporation (the "Company"), the receipt and sufficiency of which are hereby acknowledged, CITY OF DALTON (the "Undersigned", which term shall include heirs, successors and/or assigns), whose mailing Address is 300 West Waugh Street, Dalton, GA 30720, does hereby grant and convey to the Company, its successors and assigns, the right, privilege and easement to go in, upon, along, across, under and through the Property (as defined below) for the purposes described herein.

The "Property" is defined as that certain tract of land owned by the Undersigned at RIVERBEND ROAD, DALTON, GA 30721 (Tax Parcel ID No. 12-356-03-000) in Land Lot 356, 357 of the 12 District of Whitfield County, Georgia.

The "Easement Area" is defined as any portion of the Property located within fifteen (15) feet of the centerline of the overhead distribution line(s) as installed in the approximate location shown on "Exhibit A" attached hereto and made a part hereof.

The rights granted herein include and embrace the right of the Company to construct, operate, maintain, repair, renew and rebuild continuously upon and under the Easement Area its lines for transmitting electric current with poles, wires, transformers, service pedestals, anchors, guy wires and other necessary apparatus, fixtures, and appliances; the right to attach communication facilities and related apparatus, fixtures, and appliances to said poles; the right to stretch communication or other lines within the Easement Area; the right to permit the attachment of the cables, lines, wires, apparatus, fixtures, and appliances of any other company or person to said poles for electrical, communication or other purposes; the right to assign this Easement in whole or

PARCEL 003 NAME OF GPC GRID ANTIOCH ROAD N0442 CWP 3 (WHITFIELD
 LINE/PROJECT: COUNTY) DISTRIBUTION LINE

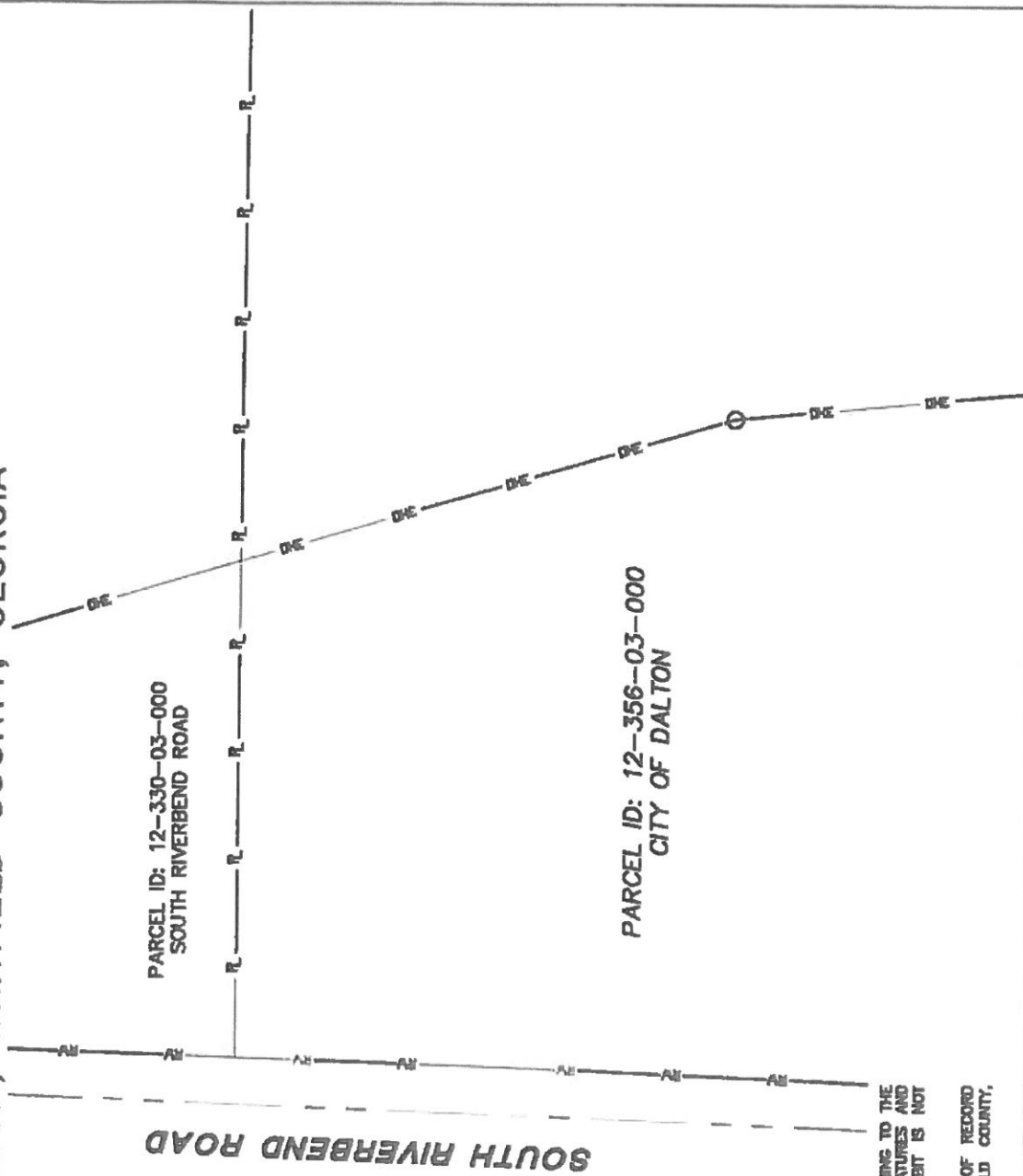
IN WITNESS WHEREOF, the Undersigned has/have hereunto set his/her/their
hand(s) and seal(s), this _____ day of _____,

Signed, sealed and delivered in the CITY OF DALTON
presence of:

_____	By: _____ (SEAL)
Witness	Name: _____
	Title: _____
_____	Attest: _____ (SEAL)
Notary Public	Name: _____
	Title: _____

[CORPORATE SEAL]

SOUTH RIVERBEND ROAD DALTON, WHITFIELD COUNTY, GEORGIA



LEGEND

- ↑ EXISTING DOWN GUY
- PROPOSED DOWN GUY
- ⊙ EXISTING POLE
- ⊙ PROPOSED POLE
- R — PROPERTY LINE
- RV — RIGHT OF WAY LINE
- — — EDGE OF PAVEMENT
- D/E — EXISTING OVERHEAD POWER LINE
- OH — PROPOSED OVERHEAD WIRE
- UG — PROPOSED UNDERGROUND WIRE
- EASEMENT AREA

THE PURPOSE OF THIS EXHIBIT IS TO SHOW INFORMATION PERTAINING TO THE GEORGIA POWER EASEMENT AREA DEPICTED HEREON. OTHER FEATURES AND IMPROVEMENTS MAY EXIST WHICH ARE NOT SHOWN. THIS EXHIBIT IS NOT INTENDED TO BE A BOUNDARY SURVEY.

THE TRACT SHOWN HEREON IS BASED UPON A COMBINATION OF RECORD DEED BOOK AND PAGE AND/OR GIS DATA PER THE WHITFIELD COUNTY, GEORGIA TAX ASSESSOR.



375 NORTHRIDGE ROAD
SUITE 100
ATLANTA, GA 30350
CFC: 678.342.2775
GEORGIA LSF 001114

JOB NUMBER: 1022065006
DATE: 02/01/2023
SCALE: N/A
CHECKED BY: J. DAVIES
DRAWN BY: D. WALTER
DRAWING: 12-356-03-000 EXHIBIT
PARCEL ID: 12-356-03-000
REVISION:

ANTIOCH ROAD N0442

LMS PROJECT 2022110252
LMS PARCEL 003

DRAWING NOT TO SCALE

GEORGIA POWER COMPANY
PERMANENT EASEMENT EXHIBIT A ON THE PROPERTY OF
CITY OF DALTON

WHITFIELD COUNTY

GEORGIA

SHEET 1
OF 1

After recording, return to:
Georgia Power Company
Attn: Land Acquisition (Recording)
241 Ralph McGill Blvd NE
Bin 10151
Atlanta, GA 30308-3374

PROJECT 2022110252 LETTER FILE DEED FILE MAP FILE
ACCOUNT NUMBER 11046897-GPC4013-KPT-12.01
NAME OF LINE/PROJECT: GPC GRID ANTIOCH ROAD N0442 CWP 3 (WHITFIELD COUNTY)
DISTRIBUTION LINE

PARCEL NUMBER 005

STATE OF GEORGIA
WHITFIELD COUNTY

E A S E M E N T

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid by GEORGIA POWER COMPANY, a Georgia corporation (the "Company"), the receipt and sufficiency of which are hereby acknowledged, THE CITY OF DALTON (the "Undersigned", which term shall include heirs, successors and/or assigns), whose mailing Address is 300 West Waugh Street, Dalton, GA 30720, does hereby grant and convey to the Company, its successors and assigns, the right, privilege and easement to go in, upon, along, across, under and through the Property (as defined below) for the purposes described herein.

The "Property" is defined as that certain tract of land owned by the Undersigned at SOUTH RIVERBEND ROAD, DALTON, GA 30721 (Tax Parcel ID No. 12-355-03-000) in Land Lot 355, 366 of the 12 District of Whitfield County, Georgia.

The "Easement Area" is defined as any portion of the Property located within fifteen (15) feet of the centerline of the overhead distribution line(s) as installed in the approximate location shown on "Exhibit A" attached hereto and made a part hereof.

The rights granted herein include and embrace the right of the Company to construct, operate, maintain, repair, renew and rebuild continuously upon and under the Easement Area its lines for transmitting electric current with poles, wires, transformers, service pedestals, anchors, guy wires and other necessary apparatus, fixtures, and appliances; the right to attach communication facilities and related apparatus, fixtures, and appliances to said poles; the right to stretch communication or other lines within the Easement Area; the right to permit the attachment of the cables, lines, wires, apparatus, fixtures, and appliances of any other company or person to said poles for electrical, communication or other purposes; the right to assign this Easement in whole or

PARCEL 005	NAME OF	GPC GRID ANTIOCH ROAD W0442 CWP 3 (WHITFIELD
	LINE/PROJECT:	COUNTY) DISTRIBUTION LINE

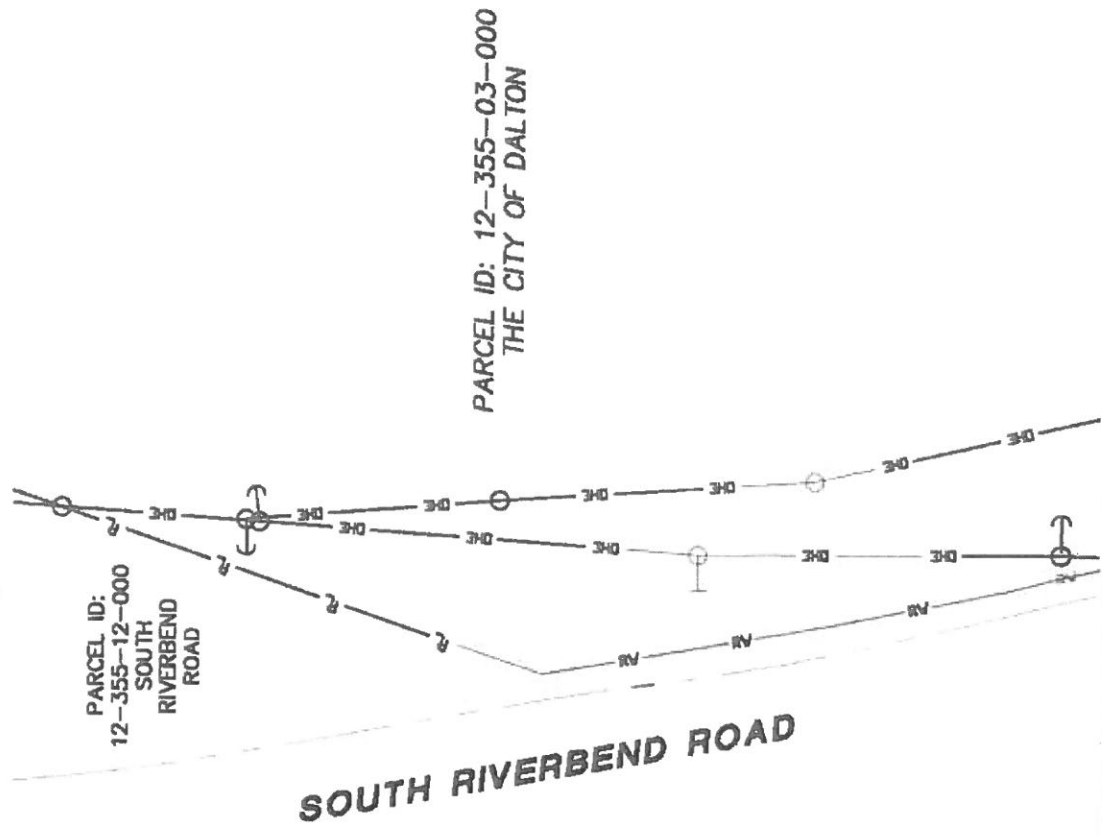
in part; the right at all times to enter upon the Easement Area for the purpose of inspecting said lines and/or making repairs, renewals, alterations and extensions thereon, thereunder, thereto or therefrom; the right to cut, trim, remove, clear and keep clear of said overhead or underground lines, transformers, fixtures, and appliances all trees and other obstructions that may in the opinion of the Company now or hereafter in any way interfere or be likely to interfere with the proper maintenance and operation of said overhead or underground lines, transformers, fixtures, and appliances; the right of ingress and egress over the Property to and from the Easement Area; and the right to install and maintain electrical and communication lines and facilities to existing and future structure(s) within the Easement Area under the easement terms provided herein. Any timber cut on the Easement Area by or for the Company shall remain the property of the owner of said timber.

The Undersigned does not convey any land, but merely grants the rights, privileges and easements hereinbefore set out.

The Company shall not be liable for or bound by any statement, agreement or understanding not herein expressed.

[Signature(s) on Following Page(s)]

SOUTH RIVERBEND ROAD
DALTON, WHITFIELD COUNTY, GEORGIA



LEGEND

- EXISTING DOWN GUY
- PROPOSED DOWN GUY
- EXISTING POLE
- PROPOSED POLE
- PROPERTY LINE
- RIGHT OF WAY LINE
- EDGE OF PAVEMENT
- EXISTING OVERHEAD POWER LINE
- PROPOSED OVERHEAD WIRE
- PROPOSED UNDERGROUND WIRE
- EASEMENT AREA

THE PURPOSE OF THIS EXHIBIT IS TO SHOW INFORMATION PERTAINING TO THE GEORGIA POWER EASEMENT AREA DEPICTED HEREON. OTHER FEATURES AND IMPROVEMENTS MAY EXIST WHICH ARE NOT SHOWN. THIS EXHIBIT IS NOT INTENDED TO BE A BOUNDARY SURVEY.

THE TRACT SHOWN HEREON IS BASED UPON A COMBINATION OF RECORDED DEED BOOK AND PAGE AND/OR CS DATA PER THE WHITFIELD COUNTY, GEORGIA TAX ASSESSOR.

SAM

375 NORTHBRIDGE ROAD
SUITE 100
ATLANTA, GA 30350
OFF: 678.342.2775
GEORGIA LSF 001114

ANTIOCH ROAD N0442
LIMS PROJECT 2022110252
LIMS PARCEL 005
DRAWING NOT TO SCALE

JOB NUMBER: 102206950NF
DATE: 02/17/2023
SCALE: N/A
CHECKED BY: Z DAVIES
DRAWN BY: E SLOMET
DRAWING: 12-355-03-000 EXHIBIT REV2
PARCEL ID: 12-355-03-000
REVISION: 2

GEORGIA POWER COMPANY
PERMANENT EASEMENT EXHIBIT A ON THE PROPERTY OF
THE CITY OF DALTON

WHITFIELD COUNTY
GEORGIA

After recording, return to:
Georgia Power Company
Attn: Land Acquisition (Recording)
241 Ralph McGill Blvd NE
Rm 10151
Atlanta, GA 30308-3374

PROJECT 2022110252 LETTER FILE DEED FILE MAP FILE
ACCOUNT NUMBER 11046897-GPC4013-KPT-12.01
NAME OF LINE/PROJECT: GPC GRID ANTIOCH ROAD N0442 CNF 3 (WHITFIELD COUNTY)
DISTRIBUTION LINE

PARCEL NUMBER 008

STATE OF GEORGIA
WHITFIELD COUNTY

E A S E M E N T

For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid by GEORGIA POWER COMPANY, a Georgia corporation (the "Company"), the receipt and sufficiency of which are hereby acknowledged, THE CITY OF DALTON (the "Undersigned", which term shall include heirs, successors and/or assigns), whose mailing Address is 300 West Waugh Street, Dalton, GA 30720, does hereby grant and convey to the Company, its successors and assigns, the right, privilege and easement to go in, upon, along, across, under and through the Property (as defined below) for the purposes described herein.

The "Property" is defined as that certain tract of land owned by the Undersigned at LOOPER BRIDGE ROAD, DALTON, GA 30721 (Tax Parcel ID No. 13-013-08-000) in Land Lot 13, 14 of the 13 District of Whitfield County, Georgia.

The "Easement Area" is defined as any portion of the Property located within fifteen (15) feet of the centerline of the overhead distribution line(s) as installed in the approximate location shown on "Exhibit A" attached hereto and made a part hereof.

The rights granted herein include and embrace the right of the Company to construct, operate, maintain, repair, renew and rebuild continuously upon and under the Easement Area its lines for transmitting electric current with poles, wires, transformers, service pedestals, anchors, guy wires and other necessary apparatus, fixtures, and appliances; the right to attach communication facilities and related apparatus, fixtures, and appliances to said poles; the right to stretch communication or other lines within the Easement Area; the right to permit the attachment of the cables, lines, wires, apparatus, fixtures, and appliances of any other company or person to said poles for electrical, communication or other purposes; the right to assign this Easement in whole or

PARCEL 008	NAME OF	GPC GRID ANTIOCH ROAD N0442 CWP 3 (WHITFIELD
	LINE/PROJECT:	COUNTY) DISTRIBUTION LINE

in part; the right at all times to enter upon the Easement Area for the purpose of inspecting said lines and/or making repairs, renewals, alterations and extensions thereon, thereunder, thereto or therefrom; the right to cut, trim, remove, clear and keep clear of said overhead or underground lines, transformers, fixtures, and appliances all trees and other obstructions that may in the opinion of the Company now or hereafter in any way interfere or be likely to interfere with the proper maintenance and operation of said overhead or underground lines, transformers, fixtures, and appliances; the right of ingress and egress over the Property to and from the Easement Area; and the right to install and maintain electrical and communication lines and facilities to existing and future structure(s) within the Easement Area under the easement terms provided herein. Any timber cut on the Easement Area by or for the Company shall remain the property of the owner of said timber.

The Undersigned does not convey any land, but merely grants the rights, privileges and easements hereinbefore set out.

The Company shall not be liable for or bound by any statement, agreement or understanding not herein expressed.

[Signature(s) on Following Page(s)]

[1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#) [11](#) [12](#) [13](#) [14](#) [15](#) [16](#) [17](#) [18](#) [19](#) [20](#) [21](#) [22](#) [23](#) [24](#) [25](#) [26](#) [27](#) [28](#) [29](#) [30](#) [31](#)

Signed, sealed and delivered in the presence of: THE CITY OF DALTON

Witness

Notary Public

[CORPORATE SEAL]

LOOPER BRIDGE ROAD
DALTON, WHITFIELD COUNTY, GEORGIA

PARCEL ID: 12-355-03-000
SOUTH RIVERBEND ROAD

PARCEL ID: 13-013-08-000
THE CITY OF DALTON

PARCEL ID: 13-014-05-000
LOOPER BRIDGE ROAD

LOOPER BRIDGE ROAD SOUTHEAST

LEGEND

- EXISTING DOWN GUY
- PROPOSED DOWN GUY
- EXISTING POLE
- PROPOSED POLE
- PROPERTY LINE
- RIGHT OF WAY LINE
- EDGE OF PAVEMENT
- EXISTING OVERHEAD POWER LINE
- PROPOSED OVERHEAD WIRE
- PROPOSED UNDERGROUND WIRE
- EASEMENT AREA

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THE TRACT SHOWN HEREON IS BASED UPON A COMBINATION OF RECORD DEED BOOK AND PAGE AND/OR GIS DATA PER THE WHITFIELD COUNTY, GEORGIA TAX ASSESSOR.



375 NORTHBRIDGE ROAD
SUITE 100
ATLANTA, GA 30350
OFF: 878.340.2775
GEORGIA LSF 001114

FOR NUMBER 102208950NF
DATE: 01/31/2023
SCALE: N/A

CHECKED BY: Z DAVIES
DRAWN BY: E SCORRI

DRAWING: 13-013-08-000 EXHIBIT REV1
PARCEL ID: 13-013-08-000
REVISION: 1

ANTIOCH ROAD N0442

LIMS PROJECT 2022110252
LIMS PARCEL 008

DRAWING NOT TO SCALE

GEORGIA POWER COMPANY
PERMANENT EASEMENT EXHIBIT A ON THE PROPERTY OF
THE CITY OF DALTON

WHITFIELD COUNTY

GEORGIA

SHEET 1
OF 1

EXHIBIT “B”

RESOLUTIONS OF THE BOARD OF WATER, LIGHT AND SINKING FUND COMMISSIONERS OF THE CITY OF DALTON, GEORGIA D/B/A DALTON UTILITES AUTHORIZING MUNICIPAL UTILITY EASEMENT

WHEREAS, the City of Dalton, Georgia, an incorporated municipality of the State of Georgia (the “City”), acting by and through the Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia, d/b/a Dalton Utilities (“Dalton Utilities”) owns certain real property located on South Riverbend Road, Dalton, Georgia 30721 (Tax Parcel Numbers 12-330-03-000, 12-356-03-000, and 12-355-03-000) and Looper Bridge Road, Dalton, Georgia 30721 (Tax Parcel Number 13-013-08-000) (collectively the “Dalton Utilities Property”); and

WHEREAS, Georgia Power Company, a Georgia corporation (“Georgia Power”) owns certain power poles, transmission lines, and other utility related equipment on said property; and

WHEREAS, Georgia Power has agreed to maintain certain of Dalton Utilities’s power lines and utility related equipment in exchange for receiving certain easement rights from the City to construct, operate, maintain, repair, renew and rebuild the power poles, transmission lines, and related equipment as more particularly described on Exhibit “1,” items A-D, attached hereto and incorporated herein by reference (the “Easements”); and

WHEREAS, Dalton Utilities has determined with the concurrence of the City of Dalton that it is consistent with the best interests of Dalton Utilities that Dalton Utilities for City of Dalton to convey the easement rights to the Dalton Utilities Property as set forth in the Easements under the authority of O.C.G.A. § 36-37-8, subject to the parties’ satisfaction of statutory formalities governing the effectuation of conveyance of said Easements;

NOW, THEREFORE, BE IT RESOLVED, that the proposed transfer and disposition of the easement rights set forth in the Easements is hereby approved and Dalton Utilities is hereby authorized to enter into and execute the Easements, subject to satisfaction of certain statutory formalities for effectuation of such transaction.

BE IT FURTHER RESOLVED, that Dalton Utilities recommends to the Mayor and Council of the City of Dalton that they approve the proposed transfer and disposition of the easement rights as set forth in the Easements and authorize the appropriate officials of the City of Dalton to execute the Easements, subject to fulfillment of all legal conditions precedent.

BE IT FURTHER RESOLVED, that that subject to fulfillment of all legal conditions precedent, the Chairman, Vice Chairman, and/or President of Dalton Utilities (the “Authorized Officers”) be, and each hereby is, authorized and empowered to take such action and to execute for and on behalf of Dalton Utilities the Easements and such other documents, instruments, and papers which, in the judgment of any of the Authorized Officers, 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 any of the Authorized Officers on behalf of Dalton Utilities, and the execution of such agreements, instruments, papers, and documents by any of the Authorized Officers on behalf of Dalton Utilities is herein authorized and shall be conclusive evidence of any such approval.

BE IT FURTHER RESOLVED, that all acts and doings of the Authorized Officers 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 any Authorized Officer to any of the consents, agreements, instruments, papers, and documents executed and delivered in connection therewith shall be conclusive evidence of the authority of such Authorized Officer to execute and deliver such consents, agreements, instruments, papers, and other documents on behalf of Dalton Utilities.

BE IT FURTHER RESOLVED, that any and all actions heretofore taken by any of the Authorized Officers of Dalton Utilities relating to or in connection with the proposed transaction be, and the same hereby are, approved, ratified, and confirmed as the duly authorized actions of Dalton Utilities.

BE IT FURTHER RESOLVED, that the Secretary or any Assistant Secretary of Dalton Utilities be, and each hereby is, authorized to attest the signature of any officer of Dalton Utilities and impress or attest Dalton Utilities' seal appearing on 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 Secretary or any Assistant Secretary of Dalton Utilities or Dalton Utilities' seal on any such agreement, instrument, paper or other documents shall not affect its validity or the obligation of Dalton Utilities thereunder.

BE IT FURTHER RESOLVED, that all Resolutions or parts thereof of Dalton Utilities 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 ADOPTED, this ____ day of _____, 2023.

BOARD OF WATER, LIGHT AND SINKING
FUND COMMISSIONERS OF THE CITY OF
DALTON, GEORGIA D/B/A DALTON
UTILITIES

By: _____

Chairman

Attest: _____
Secretary

(SEAL)

EXHIBIT “1”

Easements

See attached.



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 06/19/23

Agenda Item: Resolution 23-13 Conservation Easements

Department: Administration

Requested By: Andrew Parker

Reviewed/Approved by City Attorney? Yes

Cost:

Funding Source if Not in Budget

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

RESOLUTION 23-13 AUTHORIZING CONSERVATION EASEMENTS AND DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS FOR SOUTHERN CONSERVATION TRUST, INC., FOR DALTON UTILITIES PROPERTY FOR WHICH THE U.S. ARMY CORPS OF ENGINEERS HAS APPROVED AS A WETLAND MITIGATION BANK.

RESOLUTION 23-13

RESOLUTIONS AUTHORIZING CONSERVATION EASEMENT AND DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS

WHEREAS, the City of Dalton, Georgia, an incorporated municipality of the State of Georgia (the “City”), acting by and through the Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia, d/b/a Dalton Utilities (“Dalton Utilities”) owns certain real property located on Boyles Mill Road, Dalton, Georgia 30721 and being more particularly described on Exhibit “A” attached hereto and incorporated herein by reference (the “Dalton Utilities Property”); and

WHEREAS, Dalton Utilities has entered into a Banking Instrument for the Dalton Utilities Property for which the U.S. Army Corps of Engineers has approved said property as a Wetland Mitigation Bank; and

WHEREAS, as part of the requirements for the Dalton Utilities Property to qualify as a Wetland Mitigation Bank, the City must grant Southern Conservation Trust, Inc., a Georgia non-profit corporation, a conservation easement on the Dalton Utilities Property, said conservation easement being more particularly described on Exhibit “B,” attached hereto and incorporated herein by reference (the “Conservation Easement”); and

WHEREAS, as part of the requirements for the Dalton Utilities Property to qualify as a Wetland Mitigation Bank, Dalton Utilities is also required to encumber the Dalton Utilities Property with certain covenants and restrictions, said covenants and restrictions being more particularly described in that certain Declaration of Conservation Covenants and Restrictions attached hereto as Exhibit “C” and incorporated herein by reference (the “Declaration”); and

WHEREAS, Dalton Utilities has determined that it is consistent with the best interests of Dalton Utilities for the City to convey the easement rights to the Dalton Utilities Property as set forth in the Conservation Easement under the authority of O.C.G.A. § 36-37-6 (j) and the City to enter into the Declaration restricting the permitted uses of the Dalton Utilities Property, has approved the Conservation Easement and Declaration, and has recommended approval of the Conservation Easement and Declaration to the Mayor and Council of the City of Dalton, a copy of such resolution of Dalton Utilities is attached hereto as Exhibit “D” and incorporated herein by reference;

NOW, THEREFORE, BE IT RESOLVED, that Dalton Utilities or the City, as the case may be, is hereby authorized to convey the easement rights set forth in the Conservation Easement and to execute the same.

BE IT FURTHER RESOLVED, that the terms and conditions of the Declaration are hereby approved, and Dalton Utilities or the City, as the case may be, is hereby authorized to restrict the permitted uses of the Dalton Utilities Property as set forth in the Declaration and to execute the same.

BE IT FURTHER RESOLVED, that the Mayor of the City of Dalton be, and he hereby is, authorized and empowered to take such action and to execute for and on behalf of the City the Conservation Easement, the Declaration, 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 Conservation Easement, Declaration, 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 ADOPTED, this ____ day of _____, 2023.

The City of Dalton, Georgia

By: _____
David Pennington, Mayor

Attest: _____
City Clerk

(seal)



EXHIBIT "A"

Tract No. 1:

All that tract or parcel of land lying and being in Land Lot Nos. 319 and 320 in the 10th District and Third Section of Whitfield County, Georgia, and in Land Lots Nos. 5 and 6 of the 9th District and Third Section of Whitfield County, Georgia and being described as follows:

BEGINNING at a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 07 degrees 57 minutes 54 seconds east a distance of 189.90 feet to an iron pin; thence south 73 degrees 15 minutes 19 seconds west a distance of 210.63 feet to an iron pin; thence south 45 degrees 45 minutes 55 seconds west a distance of 225.98 feet to an iron pin; thence south 23 degrees 45 minutes 32 seconds west a distance of 229.45 feet to an iron pin; thence south 05 degrees 51 minutes 58 seconds west a distance of 163.90 feet to an iron pin; thence south 52 degrees 53 minutes 05 seconds west a distance of 169.05 feet to an iron pin; thence south 26 degrees 58 minutes 35 seconds west a distance of 258.59 feet to an iron pin; thence south 16 degrees 47 minutes 16 seconds west a distance of 232.63 feet to an iron pin; thence north 56 degrees 30 minutes 47 seconds west a distance of 634.15 feet to an iron pin located in the southeast right of way line of River Road (80' R/W); thence running in a south westerly direction, along the southeast right of way line of River Road, the following courses and distances, to wit: south 36 degrees 17 minutes 00 seconds west, 15.69 feet; south 36 degrees 34 minutes 54 seconds west, 155.69 feet; south 35 degrees 57 minutes 54 seconds west, 109.83 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 100.62 feet (3,850' Radius), said arc being subtended by a chord with a bearing of south 35 degrees 12 minutes 58 seconds west and a chord distance of 100.62 feet; thence south 34 degrees 28 minutes 03 seconds west, along the southeast right of way line of River Road, a distance of 123.29 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 272.28 feet (1,560.0' Radius), said arc being subtended by a chord with a bearing of south 29 degrees 28 minutes 02 seconds west and a chord distance of 271.93 feet; thence south 24 degrees 28 minutes 02 seconds west, along the southeast right of way line of River Road, a distance of 88.15 feet; thence south 22 degrees 20 minutes 30 seconds west, along the southeast right of way line of River Road, a distance of 100.61 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 51.69 (460.0' Radius), said arc being subtended by a chord with a bearing of south 19 degrees 07 minutes 21 seconds west and a chord distance of 51.66 feet to an iron pin; thence south 85 degrees 39 minutes 53 seconds east a distance of 1,185.13 feet to an iron pin; thence south 14 degrees 57 minutes 57 seconds east a distance of 187.69 feet to an iron pin; thence south 13 degrees 22 minutes 33 seconds east a distance of 49.25 feet to an iron pin; thence south 52 degrees 31 minutes 10 seconds east a distance of 186.10 feet to an iron pin; thence south 03 degrees 35 minutes 42 seconds east a distance of 268.10 feet to an iron pin; thence south 14 degrees 32 minutes 23 seconds west a distance of 199.52 feet to an iron pin located in the northeast right of way line of Lower Kings Bridge Road (80' R/W); thence south 59 degrees 16 minutes 19 seconds east, along the northeast right of way line of Lower Kings Bridge Road, a distance of 276.62 feet; thence running in a southeasterly direction, the northeast right of way line of Lower Kings Bridge Road, along an arc to the right, an arc distance of 61.96 feet (740.0' Radius), said arc being subtended by chord with a bearing of south 56 degrees 52 minutes 24 seconds east and a chord distance of 61.94 feet; thence south 54 degrees 28 minutes 29 seconds east, the northeast right of way line of Lower Kings Bridge Road, a distance of 79.27 feet to an iron pin; thence north 46 degrees 48 minutes 38 seconds east a distance of 113.45 feet to an iron pin; thence south 42 degrees 35 minutes 11 seconds east a distance of 218.06 feet to an iron pin; thence south 29 degrees 23 minutes 14 seconds east a distance of 227.41 feet to a point located in the center of the Conasauga River, which point is located south 04 degrees 10 minutes 55 seconds east a distance of 3,257.75 feet from the threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly, easterly northeasterly, northerly northwesterly, northerly, and northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the north line of said Land Lot No. 319; thence running in a westerly direction, along the north line of said Land Lot No. 319, to the a threaded bolt located at the common corner to Land Lot

Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.

Tract No. 2:

All that tract or parcel of land lying and being in Land Lot Nos. 295 and 318 in the 10th District and Third Section of Whitfield County, Georgia, and being described as follows:

BEGINNING at an iron pin located at the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 74 degrees 51 minutes 14 seconds east a distance of 180.83 feet to an iron pin; thence south 61 degrees 54 minutes 33 seconds east a distance of 252.18 feet to an iron pin; thence south 87 degrees 41 minutes 48 seconds east a distance of 183.46 feet to an iron pin; thence north 74 degrees 44 minutes 37 seconds east a distance of 362.76 feet to an iron pin; thence north 66 degrees 48 minutes 52 seconds east a distance of 270.74 feet to an iron pin; thence north 73 degrees 44 minutes 00 seconds east a distance of 575.54 feet to an iron pin; thence north 68 degrees 31 minutes 59 seconds east a distance of 175.31 feet to an iron pin; thence north 85 degrees 03 minutes 24 seconds east a distance of 108.18 feet to an iron pin; thence south 64 degrees 16 minutes 49 seconds east a distance of 246.02 feet to an iron pin; thence south 33 degrees 07 minutes 23 seconds east a distance of 709.23 feet to a point located in the center of the Conasauga River, which point is located south 80 degrees 29 minutes 37 seconds east a distance of 2,648.17 feet from the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the east line of said Land Lot No. 318; thence running in a northerly direction, along the east line of said Land Lot Nos. 318 and 295, to the common corner to Land Lot Nos. 281, 282, 295 and 296 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a westerly direction, along the north line of said Land Lot No 295, to the common corner to Land Lot Nos. 282, 283, 294 and 295 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a southerly direction, along the west line of said Land Lot said Land Lot No. 295, to the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.

EXHIBIT “B”

Conservation Easement

See attached.

After Recording Return to:
Laura W. Benz
Benz Law Group, LLC
19 W. Broad Street
Newnan, GA 30263

**STATE OF GEORGIA
COUNTY OF WHITFIELD**

GRANT OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (herein referred to as this “Conservation Easement”) is made and entered into this ____ day of _____, 2023, by and between the CITY OF DALTON, a political subdivision of the State of Georgia, hereinafter referred to as “Grantor”, in favor of Southern Conservation Trust, Inc., a Georgia non-profit corporation, its successors and assigns, having an address at 305 Beauregard Boulevard, Fayetteville, Georgia 30214 (“Grantee”).

WHEREAS, Grantor is the legal and equitable owner in fee simple of certain real property located on Boyles Mill Road in Whitfield County, Georgia having tax parcel identification numbers of 10-320-01-000, 10-295-01-000, and 10-318-01-000 and more particularly described in Exhibit “A” attached hereto and made a part hereof by this reference (the “Property”); and

WHEREAS, Grantor has received a Permit from the United States Army Corps of Engineers, Savannah District, Savannah, Georgia, (hereinafter referred to as the “USACE”), pursuant to Section 404 of the Clean Water Act, for the creation and operation of a mitigation bank as set forth in its mitigation banking instrument (“MBI”) on the Property; and

WHEREAS, the banking authorization letter for the MBI was issued to the Board of Water, Light and Sinking Fund Commissioners for the City of Dalton, Georgia d/b/a Dalton Utilities. The Board of Water, Light and Sinking Fund Commissioners is not a separate corporate entity from Grantor rather the Board of Water, Light and Sinking Fund Commissioners has such responsibilities over the department of public utilities of the City as provided in the Charter of the City of Dalton, Georgia and by ordinance; and

WHEREAS, in connection with the MBI, and as determined to be necessary for the MBI to be issued in compliance with said laws and implementing regulations and for the purposes of providing compensatory mitigation for the destruction of existing wetlands and free flowing streams/rivers pursuant to the issuance of Department of the Army Permits, Grantor must place a

Declaration of Restrictions and Covenants (“Declaration”), as required by the USACE, upon the Property; and

WHEREAS, the Declaration required by the USACE is attached as Exhibit “B” and incorporated herein by reference which sets forth the conservation values (“Conservation Values”) to be protected; and

WHEREAS, Grantee is authorized to accept preservation and conservation easements to protect property significant in scenic value under the provisions of O.C.G.A. §44-10-2 of the Official Code of Georgia Annotated (the “Act”);

WHEREAS, Grantor further desires that this constitutes a “Conservation Easement” as defined in O.C.G.A. §44-10-2(1);

WHEREAS, Grantor further intends, as the owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property; and

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, manage and enforce, a preservation and Conservation Easement in gross in perpetuity on the Property;

WHEREAS, Grantee is a qualified holder of this Conservation Easement under the laws of Georgia and has the commitment, resources and expertise to enforce the restrictions in this Conservation Easement;

WHEREAS, Grantor and Grantee desire to protect in perpetuity the Conservation Values by restricting the use of the Property as set forth herein;

WHEREAS, Grantor represents that the Property is free and clear of any liens or encumbrances that could have a material adverse impact on the Conservation Values and that as owner of the Property, Grantor has access thereto, the right to convey this Conservation Easement to Grantee, and the right to preserve and protect the Conservation Values of the Property in perpetuity; and

WHEREAS, Grantee agrees, by accepting this Conservation Easement, to honor the intentions of Grantor stated herein and to preserve and protect, in perpetuity, the Conservation Values of the Property for the benefit of this generation and the generations to come, such being a legitimate purpose;

NOW THEREFORE, in consideration of the above and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Georgia and in particular the Georgia Uniform Conservation Easement Act, O.C.G.A. §44-10-1., et seq., (without intending that the existence of this Conservation Easement be dependent on the continuing existence of such laws), in perpetuity, over the Property, of the nature and character hereinafter set forth, including the right to preserve and protect the Conservation Values of the Property, Grantee, by its execution hereof, accepts the foregoing grant of the Conservation Easement, and the recordation of this

Conservation Easement shall constitute a “recording of the acceptance” Grantee within the meaning of O.C.G.A. §44-10-3(b). Upon the recording hereof, Grantee shall be entitled to enforce the Conservation Easement pursuant to O.C.G.A. §44-10-4. Each covenant, stipulation and agreement contained herein shall be deemed to run as a binding servitude, in perpetuity, with the land and shall survive any termination of Grantor’s or Grantee’s existence. Grantor reserves to itself, its successors and assigns, forever, the fee title to the Premises and the right to exclusive use and occupancy of the Property, all to the extent not inconsistent with the terms and provisions of the easement granted and conveyed hereby.

1. **Purpose.** It is the exclusive purpose of this Conservation Easement (hereinafter “Purpose”) to protect the Conservation Values and ensure that the property will be retained forever predominantly in its open, natural state as set forth in the MBI, and with its Conservation Values intact, and to prevent any uses of the Property that will significantly impair or interfere with the Conservation Values of the Property as defined herein and in the MBI. Grantor intends that this Conservation Easement will confine the use of the Property to such activities as are consistent with the Purpose of this Conservation Easement and the Declaration. The provisions of this Conservation Easement are intended and shall be interpreted to give full force and effect to the Declaration.

2. **Rights of Grantee.**

a. **Generally.** To preserve and protect the Conservation Values of the Property, including, without limitation, the right to enforce the obligations of the Grantor hereunder.

b. **Monitoring.** To enter upon the Property at reasonable times to monitor, document (including through the use of photographs), and defend Grantor’s compliance with and otherwise enforce the terms of this Conservation Easement. Grantee’s entry shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property and shall be upon prior reasonable notice to Grantor, except in emergency cases where Grantee reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Conservation Easement.

c. **Conservation.** To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Conservation Easement and/or the Declaration, to require the restoration of such areas or feature of the Property that may be damaged by any inconsistent activity or use.

d. **Notices.** Notwithstanding any other provision in this Conservation Easement to the contrary, Grantee requires written notice by Grantor of the long-term management reports contemplated under the MBI. Any notice pursuant to this section shall be provided in accordance with Section 18 below or as otherwise stipulated herein.

3. **Use Limitations.** Notwithstanding any other provision in this Conservation Easement to the contrary, any activity on, or use of, the Property which is inconsistent with the Purpose of this Conservation Easement is prohibited. Subject to the foregoing, the Property shall be restricted from any development or any use other than those defined elsewhere herein and as set forth in the MBI. Grantor hereby acknowledges that, pursuant to O.C.G.A. §44-10-4(b),

Grantee is a necessary party in any proceeding of or before any governmental agency which may result in a license, permit or order for any demolition, alteration, or construction on the Property. It is mutually agreed and understood, however, that this Conservation Easement permits Grantor and its successors-in-interest to use the Property for all purposes, present and future, not inconsistent with the Purpose of this Conservation Easement. Without limiting the generality of the foregoing: Except as provided herein or pursuant to the Declaration, any activity on, or use of, the Property inconsistent with the Purpose is prohibited. The Property shall be maintained as contemplated within the MBI and restricted from any development, or any use other than those specified within the MBI, including but not limited to, as natural fields, wetlands and forest lands and as a sanctuary for wildlife and wild plants; however, it is mutually agreed and understood, that the Conservation Easement permits Grantor and Grantor's successors-in-interest to use the Property for all purposes, present and future, not inconsistent with the Purpose and/or Declaration. Without limiting the generality of the foregoing, those activities prohibited by the Declaration of Covenants and Restrictions are specifically prohibited.

4. **Reserved Rights.** Grantor reserves to itself, and to its successors and assigns, all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the Purpose of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved, all to the extent that such rights are consistent with the Purpose of this Conservation Easement and would not significantly impair or interfere with the Conservation Values of the Property.

a. **Compliance with MBI.** Grantor reserves the right to make any modifications necessary or as directed by the USACE to assure compliance with the MBI, including adaptive management measures in furtherance of the Conservation Values such as but not limited to, the right to modify existing drainage patterns, alter the natural contours of the Property, remove fencing, remove roads, remove structures, comply with any requirements of the USACE and to do all other things Grantor deems reasonably necessary to comply with any requirements of the MBI.

b. **Right to Prevent Substantial Erosion or to Protect Public Safety.** Grantor reserves the right to take action necessary to prevent erosion on the Property or to protect the public health and safety.

c. **Grantor's Fee Ownership Rights.** Grantor reserves the right to lease or to give, sell, assign or otherwise transfer the Property or any portion thereof by operation of law or by deed, in each case subject and subordinate to this Indenture. Except as limited in this Conservation Easement, Grantor reserves all rights as fee owner of the Property, including without limitation, the right to use the Property for all purposes not inconsistent with the terms of this Conservation Easement.

d. **Nuisance Animal Control.** Grantor reserves the right to engage in lawful nuisance animal control on the Property in accordance with the MBI, provided that, such control is limited to the extent necessary to protect the integrity of the aquatic system and ecological stability of the natural environment on the Property.

e. Education and Promotion. Grantor reserves the right to conduct workshops, seminars, tours, educational research and related programs and activities on the Property for the purpose of promoting the scientific, ecological, environmental, wildlife, scenic, aesthetic or similar Conservation Values of the Property in accordance with the Purpose of this Conservation Easement.

f. Grantor's Exclusive Access and Use. Except as expressly provided herein, Grantor retains exclusive access to and use of the Property.

g. Roads and Trails. There are no public or private roads within the preservation area on the Property. Nonetheless, Grantor reserves the right to maintain, any roads and trails now existing on the Property and shown in the MBI that are outside of the preservation area. Grantor reserves the right to use said roads and trails for all activities permitted under the MBI and/or this Conservation Easement. Any construction of additional roads or trails outside those specified within the MBI or widening of now-existing roads on the Property, other than those permitted herein is prohibited.

h. Leases. Grantor reserves the right to lease the Property for any use permitted to Grantor under this Conservation Easement, provided that such lease is consistent with and subject to the terms of this Conservation Easement and notice is provided to Grantee pursuant to Section 18 below. All provisions of this Conservation Easement that are applicable to the Grantor shall also apply to the lessee and the lessee shall abide by all terms of this Conservation Easement. All Leases shall expressly provide that the Lessee acknowledges and accepts the restrictions, conditions and limitations on uses of the Property as set forth in this Conservation Easement.

i. Fencing. Grantor reserves the right to maintain, repair, replace and reasonably enlarge the perimeter fencing on the Property in furtherance of the Purpose.

5. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Conservation Easement, to restore the portion of the Property so injured to its condition at the time the Grantor conveyed this Conservation Easement to Grantee or in accordance with the MBI. If Grantor fails to cure the violation within thirty (30) days after the receipt of the notice thereof from Grantee or, under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, then Grantee may pursue its remedies under this Section after its good faith efforts to provide emergency notice to Grantor and without waiting from the period provide to cure to expire. Grantee may seek to enjoin the violation by temporary or permanent injunction and to recover any damages to which it may be entitled upon violation of the terms of this Conservation

Easement or injury to any Conservation Values herein protected, including damages for the loss of scenic, aesthetic or environmental values, and it require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's rights under this Section apply equally in the event of either action or threatened violations of the terms of this Conservation Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement area inadequate and that Grantee shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement.. If the court determines that the Grantor has violated any material terms of the Conservation Easement, the Grantor shall pay all reasonable attorney's fees, court costs, and any other reasonable costs of enforcement of the Conservation Easement, including all costs associated with the court's order. Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6. **Mediation.** Grantor and Grantee agree that mediation is a cost-effective and preferred method of dispute resolution in many circumstances. If a dispute arises between the parties concerning any proposed use or activity on the Property, Grantor agrees not to proceed with the use or activity pending resolution of the dispute, and the parties shall first consider resolution through mediation. If resolution through mediation is agreed upon, Grantor and Grantee shall together agree upon the selection of a mediator. Mediation pursuant to this Section shall be voluntary, and this Section shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies through means other than mediation. In particular, mediation may not be suitable if Grantee determines there has been a breach by Grantor of the terms of this Conservation Easement, or if such a breach is imminent, or if Grantee determines that immediate action is required to prevent or mitigate significant damage to the Conservation Values of the Property. If mediation is unsuccessful in resolving the impasse between Grantor and Grantee, Grantee shall not be precluded from pursuing any of its enforcement remedies authorized herein, including but not limited to litigation.

7. **Cost of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of mediation; all costs of suit and reasonable attorneys' fees; and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement, shall be borne by Grantor, with the proviso that Grantor shall not be responsible for costs of a frivolous action, or action brought in bad faith by the Grantee, as determined by a court of competent jurisdiction.

8. **Grantee's Forbearance.** Any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of any subsequent breach of the same or any other term of this Conservation easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

9. **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel or prescription.

10. **Acts Beyond Grantor's Control.** Grantor is responsible for the acts and omissions of persons acting on their behalf, at their discretion or with their permission, including but not limited to lessees, and Grantee shall have the right to enforce against Grantor for events or circumstances of non-compliance with this Conservation Easement resulting from such acts or omissions. However, as to the acts or omissions of third parties other than the aforesaid persons, Grantee shall not have a right to enforce against Grantor unless Grantor is complicit in said acts or omissions, fails to cooperate with Grantee in all respects to halt or abate the event or circumstances of non-compliance resulting from such acts or omissions, or fails to report such acts or omissions to Grantee promptly upon learning of them. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property caused by wildfire, flood, storm, and earth movement, or other natural disaster, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes. Nothing herein shall be construed to preclude Grantor's and Grantee's rights to recover damages from any third party for trespass, vandalism, or other violation of their respective rights in this Conservation Easement and the Property. To that end, Grantee shall have the right, but not the obligation, to pursue all legal and equitable remedies provided by this Conservation Easement against any third party responsible for an event or circumstances of non-compliance with this Conservation Easement and Grantor shall, at Grantee's option, assign Grantor's right of action against such third party to Grantee, join Grantee in any suit or action against such third party, or appoint Grantee as Grantor's attorney-in-fact for the purpose of pursuing an enforcement suit or action against such third party.

11. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. The USACE, its assigned agents, and its contractors shall at reasonable times and upon prior written notice to Grantor, have the right to access the Property to inspect the Property to monitor and ascertain compliance with the requirements of the Declaration.

12. **Cost and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property.

13. **Grantor's Liability and Hold Harmless.**

a. Grantor retains all responsibilities and shall bear all costs and liability of any kinds related to ownership operation, upkeep and maintenance of the Property. Grantee has no affirmative obligations relating to the use or maintenance of the Property. Grantee shall not be responsible for injuries or damage to persons or property in connection with Grantee's administration and/or enforcement of this Conservation Easement or otherwise with respect to the condition of the Property, except as may be expressly provided herein.

b. Grantor shall hold harmless, indemnify, and defend Grantee, its successors and assigns (collectively "Indemnified Parties") from and against all liabilities, penalties, costs,

losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys' fees, arising from or in any way connected with (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of any of the Indemnified Parties; and (2) the existence or administration of this Conservation Easement, unless due to the negligence or willful misconduct of any of the Indemnified Parties.

c. All Lessees of Grantor and all successors in interest, shall be bound by these requirements. All Leases shall contain an express provision in which Lessee acknowledges and agrees to these requirements.

14. **Assignment.** This Conservation Easement is transferable as more particularly set forth in this Section. Grantee may assign its rights and obligations under this Conservation Easement only to a qualified organization, authorized to acquire and hold conservation easements at the time of such assignment. Prior to such assignment, Grantee must notify Grantor of the proposed assignment and assignee. In the event that Grantee ceases to be a qualified holder of this Conservation Easement, as defined under the Act, this Conservation Easement may be assigned in accordance with this Section. As a condition precedent to any such transfer, Grantee shall require its successors and assigns to enter into a specific written agreement to be bound by this Conservation Easement, which written agreement shall state that the Purpose this Conservation Easement shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to Grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor. Any such assignment shall be promptly recorded and cross-referenced to this Conservation Easement in the official records of Whitfield County, Georgia. Any assignment of this Conservation Easement shall be upon the consent of Grantor, which consent shall not be unreasonably withheld.

15. **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divests itself of any interest in or a portion of the Property, including without limitation a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

16. **Estoppel Certificates.** Upon request by Grantee or Grantor, the other party hereto shall within twenty (20) days execute and deliver any document, including an estoppel certificate, which certifies the status of compliance with any obligation contained in this Conservation Easement and otherwise evidence the status of this Conservation Easement.

17. **Extinguishment or Termination.** It is the unequivocal intention of Grantor and Grantee that the Purpose of this Conservation Easement be carried out in perpetuity. If circumstances arise in the future that render the Purpose of this Conservation Easement impossible or impractical to accomplish, this Conservation Easement can only be terminated or extinguished whether in whole or in part, by judicial proceedings in a court of competent jurisdiction pursuant

to OCGA §44-10-4(c). Any proceeds which Grantee receive shall be used in a manner consistent with the Purpose of this Conservation Easement including but not limited to the costs to monitor, enforce and preserve any portions of the Property that remain subject to this Conservation Easement, or if no remaining portion of the Property is subject to this Conservation Easement, to monitor and enforce other easements held by Grantee that are comparable to this Conservation Easement and to conserve properties subject to such other easements in a manner consistent with the Property's Conservation Values under this Conservation Easement.

18. **Notices.** Any notice, demand, request, consent, approval or communication that either party desires, or is required, to give to the other hereunder shall be in writing and either served personally or sent by nationally-recognized, overnight, courier service or U.S. registered or certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address(es) as may be specified by any such party to the other hereunder by written notice delivered in accordance with this Section.

To Grantor: The Board of Water, Light and Sinking Fund
Commissioners d/b/a Dalton Utilities
1200 VD Parrott Jr. Pkwy
Dalton, GA 30721

To Grantee: Southern Conservation Trust, Inc.
305 Beauregard Boulevard
Fayetteville, GA 30214

Any notice to other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery if personally served or if delivered by nationally recognized, overnight, courier service or on the date indicated on the return receipt if sent by U.S. registered or certified mail as described above.

19. **Development Rights.** Grantor and Grantee agree that all development rights, except those provided herein, that are now or hereafter allocated to, implied, reserved or inherent in the Property are terminated and extinguished.

20. **Merger.** The Grantor and Grantee agree that the terms, conditions, and purposes of this Conservation Easement shall survive any merger of the fee estate with the easement interest in the Conservation Property.

21. **Insurance.** For purposes of indemnification, Grantee shall maintain at all times commercial general public liability and property damage insurance with a broad form coverage endorsement (i) for an aggregate amount of not less than Two Million Dollars (\$2,000,000.00) and an occurrence limit of not less than One Million Dollars (\$1,000,000.00) combined single limit and (ii) with a \$5,000,000.00 limit of liability in excess of the underlying limits of liability.

22. **Miscellaneous Provisions.**

- a. Choice of Law. The interpretation, application, and performance of the terms and conditions of this Conservation Easement shall be governed and construed by and in accordance with the laws of the State of Georgia.
- b. Severability. If any provision or provisions of this Easement shall be held to be invalid, illegal, unenforceable or in conflict with the law of applicable jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- c. Entire Agreement. This Indenture sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings and agreements relating thereto, all of which are merged herein.
- d. Captions. The captions in this Conservation Easement are not to be given any constructive, operative, or interpretive effect, and serve merely as reference.
- e. No Forfeiture. No provision or intent of the parties contained in this Conservation Easement shall be construed as having resulted in a forfeiture or reversion of the Grantor's title.
- f. Amendment. If circumstances arise under which an amendment or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect this qualification of this Easement or the status of Grantee under any applicable laws, including O.C.G.A. §44-10-1, et seq., and any amendment shall be consistent with the purpose of this Easement. Any such amendment or extinguishment shall be recorded in the official records of Whitfield County, Georgia.
- g. Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties, each counterpart shall be deemed an original instrument as against any Party. In the event of any disparity between the counterparts produced, the recorded counterpart shall be control.
- h. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to the purpose of this Easement and the policy and purpose of O.C.G.A. §44-10-1, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

- i. Recordation of Easement. Grantor and Grantee agree that this Indenture shall be promptly recorded in the Office of the Clerk of the Superior Court of Whitfield County, Georgia.
- j. If Grantee, or and successor or assign of Grantee, qualifies as a “holder” as that term is defined by O.C.G.A. §44-10-2, then the provisions of O.C.G.A. § 44-10-1 *et seq.* shall be applicable to this Conservation Easement and/or the Declaration of Covenants and Restrictions.
- k. Grantee warrants that it will commit the personnel and financial resources to enforce this Conservation Easement, whether such resources are employees of Grantee or third-party land management consultants capable of inspection and attorneys for legal enforcement. Grantee further acknowledges and accepts that it will be required to conduct an annual in person inspection for compliance with the Conservation Easement.

TO HAVE AND TO HOLD the Conservation Easement unto Grantee and its successors and assigns, together with all and singular the rights, members, and appurtenances thereof to the same being, belonging or any wise appertaining, to the only proper use, benefit and behoof of Grantee forever. The covenants agreed to and the terms, conditions, and restrictions and purposes imposed as aforesaid shall not only be binding upon Grantor but also Grantor’s personal representatives, heirs, executors, administrators, successors and assigns, and shall continue as an easement and servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, the parties have executed this Contract under seal as to the date first above written.

Signed, sealed and delivered the _____
day of _____, 2023 in the presence of:

GRANTOR:
CITY OF DALTON, GEORGIA

Unofficial Witness

By: _____

Notary Public

Attest: _____



Signatures continue on the following page.

Signed, sealed and delivered the _____
day of _____, 2023 in the presence of:

GRANTEE:

SOUTHERN CONSERVATION TRUST, INC.

Unofficial Witness

By: _____

Notary Public

Attest: _____

Exhibit “A”
(Legal Description)

Tract No. 1:

All that tract or parcel of land lying and being in Land Lot Nos. 319 and 320 in the 10th District and Third Section of Whitfield County, Georgia, and in Land Lots Nos. 5 and 6 of the 9th District and Third Section of Whitfield County, Georgia and being described as follows:

BEGINNING at a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 07 degrees 57 minutes 54 seconds east a distance of 189.90 feet to an iron pin; thence south 73 degrees 15 minutes 19 seconds west a distance of 210.63 feet to an iron pin; thence south 45 degrees 45 minutes 55 seconds west a distance of 225.98 feet to an iron pin; thence south 23 degrees 45 minutes 32 seconds west a distance of 229.45 feet to an iron pin; thence south 05 degrees 51 minutes 58 seconds west a distance of 163.90 feet to an iron pin; thence south 52 degrees 53 minutes 05 seconds west a distance of 169.05 feet to an iron pin; thence south 26 degrees 58 minutes 35 seconds west a distance of 258.59 feet to an iron pin; thence south 16 degrees 47 minutes 16 seconds west a distance of 232.63 feet to an iron pin; thence north 56 degrees 30 minutes 47 seconds west a distance of 634.15 feet to an iron pin located in the southeast right of way line of River Road (80' R/W); thence running in a south westerly direction, along the southeast right of way line of River Road, the following courses and distances, to wit: south 36 degrees 17 minutes 00 seconds west, 15.69 feet; south 36 degrees 34 minutes 54 seconds west, 155.69 feet; south 35 degrees 57 minutes 54 seconds west, 109.83 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 100.62 feet (3,850' Radius), said arc being subtended by a chord with a bearing of south 35 degrees 12 minutes 58 seconds west and a chord distance of 100.62 feet; thence south 34 degrees 28 minutes 03 seconds west, along the southeast right of way line of River Road, a distance of 123.29 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 272.28 feet (1,560.0' Radius), said arc being subtended by a chord with a bearing of south 29 degrees 28 minutes 02 seconds west and a chord distance of 271.93 feet; thence south 24 degrees 28 minutes 02 seconds west, along the southeast right of way line of River Road, a distance of 88.15 feet; thence south 22 degrees 20 minutes 30 seconds west, along the southeast right of way line of River Road, a distance of 100.61 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 51.69 (460.0' Radius), said arc being subtended by a chord with a bearing of south 19 degrees 07 minutes 21 seconds west and a chord distance of 51.66 feet to an iron pin; thence south 85 degrees 39 minutes 53 seconds east a distance of 1,185.13 feet to an iron pin; thence south 14 degrees 57 minutes 57 seconds east a distance of 187.69 feet to an iron pin; thence south 13 degrees 22 minutes 33 seconds east a distance of 49.25 feet to an iron pin; thence south 52 degrees 31 minutes 10 seconds east a distance of 186.10 feet to an iron pin; thence south 03 degrees 35 minutes 42 seconds east a distance of 268.10 feet to an iron pin; thence south 14 degrees 32 minutes 23 seconds west a distance of 199.52 feet to an iron pin located in the northeast right of way line of Lower Kings Bridge Road (80' R/W); thence south 59 degrees 16 minutes 19 seconds east, along the northeast right of way line of Lower Kings Bridge Road, a distance of 276.62 feet; thence running in a southeasterly direction, the northeast right of way line of Lower Kings Bridge Road, along an arc to the right, an arc distance of 61.96 feet (740.0' Radius), said arc being subtended by chord with a bearing of south 56 degrees 52 minutes 24 seconds east and a chord distance of 61.94 feet; thence south 54 degrees 28 minutes 29 seconds east, the northeast right of way line of Lower Kings Bridge Road, a distance of 79.27 feet to an iron pin; thence north 46 degrees 48 minutes 38 seconds east a distance of 113.45 feet to an iron pin; thence south 42 degrees 35 minutes 11 seconds east a distance of 218.06 feet to an iron pin; thence south 29 degrees 23 minutes 14 seconds east a distance of 227.41 feet to a point located in the center

of the Conasauga River, which point is located south 04 degrees 10 minutes 55 seconds east a distance of 3,257.75 feet from the threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly, easterly northeasterly, northerly northwesterly, northerly, and northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the north line of said Land Lot No. 319; thence running in a westerly direction, along the north line of said Land Lot No. 319, to the a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.

Tract No. 2:

All that tract or parcel of land lying and being in Land Lot Nos. 295 and 318 in the 10th District and Third Section of Whitfield County, Georgia, and being described as follows:

BEGINNING at an iron pin located at the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 74 degrees 51 minutes 14 seconds east a distance of 180.83 feet to an iron pin; thence south 61 degrees 54 minutes 33 seconds east a distance of 252.18 feet to an iron pin; thence south 87 degrees 41 minutes 48 seconds east a distance of 183.46 feet to an iron pin; thence north 74 degrees 44 minutes 37 seconds east a distance of 362.76 feet to an iron pin; thence north 66 degrees 48 minutes 52 seconds east a distance of 270.74 feet to an iron pin; thence north 73 degrees 44 minutes 00 seconds east a distance of 575.54 feet to an iron pin; thence north 68 degrees 31 minutes 59 seconds east a distance of 175.31 feet to an iron pin; thence north 85 degrees 03 minutes 24 seconds east a distance of 108.18 feet to an iron pin; thence south 64 degrees 16 minutes 49 seconds east a distance of 246.02 feet to an iron pin; thence south 33 degrees 07 minutes 23 seconds east a distance of 709.23 feet to a to a point located in the center of the Conasauga River, which point is located south 80 degrees 29 minutes 37 seconds east a distance of 2,648.17 feet from the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the east line of said Land Lot No. 318; thence running in a northerly direction, along the east line of said Land Lot Nos. 318 and 295, to the common corner to Land Lot Nos. 281, 282, 295 and 296 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a westerly direction, along the north line of said Land Lot No 295, to the common corner to Land Lot Nos. 282, 283, 294 and 295 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a southerly direction, along the west line of said Land Lot said Land Lot No. 295, to the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.

**Exhibit “B”
(Declaration)**

[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

Please Cross-Reference to Deed
Book 2019 Page 241, Whitfield
County, Georgia Land Records.

STATE OF GEORGIA
COUNTY OF WHITFIELD

DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS

THIS DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS (this "Declaration") is hereby made by **The City of Dalton**, the undersigned "Declarant." Declarant is the owner in fee simple of a certain tract or parcel of real property lying in Whitfield County, Georgia. This tract of land was conveyed on September 30, 1988 from Donald R. Robertson and Patricia A. Robertson to The City of Dalton and recorded in Deed Book 2019 Page 241, in the Office of the Clerk of Superior Court of Whitfield County Georgia. Declarant comes now and, for good and valuable consideration, declares conservation use restrictions on the property hereinafter described. A legal description of the specific parcel or parcels of Property subject to this Declaration is more particularly described in Exhibit "A" hereto attached and made a part hereof. The Declaration hereinafter stated shall apply to Property described in Exhibit "A" and is by reference, incorporated herein for a description and for all other legal purposes.

PREMISES

WHEREAS, Declarant was authorized by that certain letter dated ____ to implement a Banking Instrument by the U.S. Army Corps of Engineers ("USACE") Action Number _____ pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 401) under the administrative regulatory authority of the USACE Savannah District, Regulatory Division, setting forth authorization for certain dredge and/or discharge of fill activities in waters of the United States, including wetlands and streams; and,

WHEREAS, the banking authorization letter was issued to the Board of Water, Light and Sinking Fund Commissioners for the City of Georgia d/b/a Dalton Utilities. The Board of Water, Light and Sinking Fund Commissioners is not a separate corporate entity from the City of Dalton, Georgia, rather the Board of Water, Light and Sinking Fund Commissioners has such responsibilities over the department of public utilities of the city as provided in the Charter of the City of Dalton, Georgia and by ordinance; and

WHEREAS, said banking instrument dated August 2021 is attached hereto as Exhibit “B” and by this reference is made a part hereof; and,

WHEREAS, dredge and/or discharge of fill material in jurisdictional waters of the United States including wetlands and streams pursuant to the Clean Water Act, Section 404, and/or Rivers and Harbors Act of 1899, Section 10, requires compensatory mitigation and perpetual protection of the mitigation property; and,

WHEREAS, a dated platted survey with seal affixed by a Georgia registered surveyor of the bearings and distances and coordinate values of the boundary of the Property referenced as Exhibit “A” has been recorded at Plat Book ____, Page ____ in the Whitfield County, Georgia Land Records (the “Survey”). The survey approximately shows the planned wetland, stream and buffer areas within the Property. The Property contains ____ acres in ____ parcels of land. The property further contains approximately 82.5 acres of proposed wetlands and 700 linear feet of a tributary with buffer; provided however, these figures are estimates of the proposed wetland areas that subject to change based on the conditions of the property after Declarant makes restorations to the Property. The survey is made a part of this Declaration and is incorporated by reference.

WHEREAS, the Conservation Functions and Services are summarized and described in Exhibit “C,” attached hereto and made a part hereof; and,

WHEREAS, the Property is approved as a commercial wetland and/or stream mitigation bank pursuant to the terms and conditions of the Banking Instrument, the document being incorporated by reference. The purpose of the bank is to generate credits to compensate for wetland impacts that have been determined unavoidable after consideration of avoidance and minimization on Section 404, Clean Water Act, or Section 10 Rivers and Harbors Act of 1899, permit actions. The banking instrument sets forth the success criteria required of the ecological project and the credit releases allowable. Declarant agrees to be responsible for certain restoration, enhancement, establishment and preservation of wetlands and/or stream and streamside lands on the Property pursuant to the banking instrument and any subsequent modifications. Credits from the bank are sold by the bank sponsor in return for a fee agreed upon by the bank sponsor and the permit holder where the USACE has approved the use of banking credits as mitigation in whole or in part on permits issued. Each time credits are sold, Declarant shall provide the USACE with an accounting of the total number of credits in the bank, the number of credits released, and the permit action associated with each release of credits. The Property is to remain subject to this Declaration of Conservation Covenants and Restrictions in perpetuity; and

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Declarant and each and every subsequent owner and occupant of the real property, and as required mitigation for dredge and/or discharge of fill material in waters of the United States including wetlands and streams, Declarant has promised to place certain restrictions on the Property exclusively for conservation purposes, in order that it shall remain substantially in its restored, enhanced, preserved, open, natural and/or scenic condition in perpetuity.

1. **Transfers, Amendments & Extinguishment.** Declarant does hereby declare that all of the Property described hereinafter shall be held, transferred, sold, conveyed and occupied subject to the terms and conditions of the covenants, easements and affirmative obligations all of which shall run with the Property and will be binding on all persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title or interest in said Property, or any part thereof, their heirs, executors, administrators, successors and assigns. The terms and conditions of this Declaration of Covenants and Restrictions shall be both implicitly and explicitly included in any subsequent transfer,

conveyance, or encumbrance affecting all or any part of the conservation Property. It shall set forth the terms and conditions of this document either by reference to this document and its recorded location or by attachment and incorporation by reference. The covenant shall not be amended or extinguished except by written approval of the USACE, or its successor in administration of the Clean Water Act or the Rivers and Harbors Act of 1899. Amendments to the restrictive covenant for the purpose of proposing additional impact are not favored and will be considered only in rare circumstances following the USACE policy and procedures. Should an amendment be accepted, mitigation required will be at a substantially higher ratio. Amendments shall be signed by the USACE and shall be recorded in the official records of the county in which the Property is located.

2. **Property as Open and Common Area.** The Property is set aside for conservation use and shall be designated as an undeveloped lot, buffer, open and common area or greenway and will not now, nor in the future, be made part of any single lot or lots in a residential or mixed use subdivision or a subdivided commercial development, but rather the Property shall be held, maintained and managed by the owner, developer, corporation, homeowner or business association as an open, common and undeveloped conservation area. There shall be no legal or de facto division, subdivision or partitioning of the protected Property used as mitigation unless approved by the USACE and addressed in the banking instrument.

3. **Prohibited Uses.** Except as necessary (1) to carry out wetland/stream and/or buffer restoration, enhancement and/or establishment in keeping with the mitigation plan of the banking instrument as approved by the USACE; or (2) to carry out management and maintenance of the Property, as approved in writing by the USACE; the uses incompatible with the conservation values of the Property prohibited by this covenant shall include, but shall not be limited to the following:

A. Clearing, removing, burning, mowing, or cutting of trees or other vegetation (except for the control and removal of non-native vegetation, as set forth in a mitigation plan approved by the USACE, or with prior written consent by the USACE). If such control or removal involves the use of insecticides, herbicides, or other biocides, such application shall be by the narrowest spectrum, least persistent material appropriate for the target species, and shall be consistent with the conservation values of the Property and the purpose of this covenant;

B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;

C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, toxic and hazardous wastes, incinerator residue, garbage, sewage sludge, oil or oil products and wastes, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, vehicle bodies or parts, junk, or agricultural waste on the Property;

D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;

E. Diverting or affecting the natural flow of surface or underground waters within, or out of the Property; manipulating or altering any natural water course, body of water or water circulation and any activities or uses detrimental to water quality;

F. Mining, drilling, hydraulic fracturing, dredging, or removing from the Property soil, loam, peat, gravel, oil, gas or other mineral resources or natural deposit;

G. Burning, systematically removing or cutting timber, or otherwise destroying any vegetation. Upon approval from the USACE, selective pruning of unsafe trees or exotic non-native vegetation may be removed in accordance with current scientific best management practices as set out by the U.S. Forest Service or the Georgia Forestry Commission;

H. Spraying with biocides or use of herbicides or pollutants that violate water quality standards;

I. Introducing non-native species on the Property, altering the natural state of the wetlands or streams or causing erosion or sedimentation;

J. Grazing or use by domesticated animals;

K. Construction of any kind in the wetlands, streams, buffers or upland, whether temporary or permanent;

L. Use of motorized or mechanized vehicles, including, but not limited to, off-road vehicles is prohibited, except on existing roadways for the sole purpose of monitoring or maintaining the Property;

M. As permitted or approved in writing by the USACE the Property may have: (1) a narrow pedestrian walking trail in the uplands or upland buffer using pervious materials (not to exceed two feet in tread width and three feet in total width), and/or (2) minimal structures and boardwalks for the observation of wildlife and wetland/stream ecology; all in a manner in keeping with the conservation values, services, and functions of the Property.

N. Display of billboards, signs, or advertisements on or over the Property, except for the posting of no trespassing signs, temporary signs indicating the Property is for sale, signs identifying the trees, vegetation, wetlands or conservation values of the Property, and/or signs identifying the owner of the property;

O. Conservation and wildlife habitat management plans may be implemented by the Georgia Department of Natural Resources Wildlife Resource Division, U.S. Forest Service, conservation land trusts holding conservation easements, or other conservation management entities where the habitat, wildlife or forest management does not result in any impacts to the wetlands/streams/riparian corridors and its buffers, or to property protected for its historical, cultural and/or archeological value, and where the proposal would enhance the management of the Property for its conservation use.

4. Easements.

A. The Property is free and clear of any and all liens, loans, claims restrictions, easements and encumbrances, except as otherwise identified in this document and its exhibits.

B. Existing utility line easements, roads, right-of ways, access easements and structures on the Property, if any, are shown on the Survey.

C. Environmental impacts, if any, caused by existing easements such as roads, utility lines or pipelines, where such easements are in place as of the date of the recording

of this restrictive covenant, and where the easements are shown on the survey, shall not be considered as causing any prohibited impacts to the Property by their use and maintenance.

D. Should an easement or legal right of use of the Property, not listed in paragraph (4)(A), or not meeting the criteria of Paragraph (4) (A) and prior in time and recording to this restrictive covenant, be exercised in such a manner that it conflicts with the prohibited uses of the Property set out in this restrictive covenant, then the owners of the Property, whether the Declarant of this covenant or any heirs, executors, administrators, successors or assigns, shall be responsible for providing alternative conservation mitigation in such amounts and of such service and function as the USACE or any enforcer of this covenant shall determine in accordance with the terms of the banking instrument and with Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899 and their implementing regulations.

5. **Representations.** Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

B. There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned;

C. The Property is in compliance with all federal, state and local laws, regulations and permits, and there is no pending or threatened litigation in any way affecting, involving or relating to the Property and its use; and

D. The Property is not land-locked and there is access to the Property by road, dedication of pathway or by an access easement.

6. **Affirmative Duties.**

A. Declarant/Owner will take action to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the conservation values of the Property or that are otherwise inconsistent with this Declaration.

B. A management plan shall be developed by Declarant, and coordinated with the USACE, for the Declarant's, and its successors' and assigns', management of the Property and for describing the conservation duties in managing the Property. Adequate financial resources shall be allocated by owner of the mitigation property for protection of the Property. Declarant shall take immediate action to cure violations of this restrictive covenant.

7. **Exclusive Possession.** Declarant, its successors and assigns, reserve all other rights accruing from its ownership of the Property, including, but not limited to, the exclusive possession of the Property, the right to transfer or assign their interest in the same, the right to take action necessary to prevent erosion on the Property, to protect the Property from losing its conservation functions and services, or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purposes of this Declaration.

8. **Benefits to the General Public.** It is expressly understood and agreed that this covenant does not necessarily grant or convey to members of the general public, any rights of ownership, interest in, or use of the protected Property unless so designated by the owner for such purpose, as approved by the USACE. Nonetheless, the Property has significant aesthetic and conservation value in its present or restored state as a predominately natural area which has not been subject to extensive development or exploitation. The protection of jurisdictional and non-jurisdictional waters of the United States, their buffers and uplands, floodplains, vegetation, scenic, open space, aquatic and wildlife habitat are considered of great importance to the well-being of the general public and to all citizens of Georgia and are worthy of preservation and conservation.

9. **Enforcement.** The USACE and/or the U.S. Environmental Protection Agency, or its successors, as third-party beneficiaries hereof, are hereby specifically granted the authority to enforce the provisions of this Declaration pursuant to the Clean Water Act, Section 404, and the Rivers and Harbors Act of 1899, Section 10, and their implementing regulations. Appropriate remedy for violation of this section is contemplated to include, without limitation, injunctive relief to restrain such violation, restoration, administrative, civil or criminal penalties as well as any other remedy available under law or equity. However, no violation of this covenant shall result in a forfeiture or reversion of title. It shall not be a defense, for purposes of this covenant, that the conservation functions and services of the Property were impacted without the owner's knowledge or consent, or that the waters on the Property are deemed to be non-jurisdictional waters of the United States either by their function or by statute. The Property was offered and accepted as mitigation and is therefore subject to the contractual terms of the banking instrument and this Declaration. Loss of conservation functions and services shall not be required to be replaced if damage is due to "acts of God," as it generally is referenced, so long as there has been completion of the mitigation requirements of the banking instrument as to restoration, enhancement, establishment and monitoring.

10. **Right of Ingress and Egress.** The USACE, and/or the U.S. Environmental Protection Agency, their assigned agents and contractors, shall at reasonable times and upon notice to the owner, have an access easement for the right of ingress and egress to inspect the Property in order to monitor and to ascertain whether there has been compliance with this Declaration. Posted signs declaring the Property to be conservation property shall be posted by the owner in order to provide notice of the land use designation.

11. **Covenant Runs with the Land in Perpetuity.** This covenant shall not terminate upon some fixed amount of time but shall run with the land in perpetuity pursuant to O.C.G.A. § 44-5-60(c) both as to benefit and as to burden and shall be enforceable against Declarant and all present and future owners, tenants, and other holders of any interest in the Property. This covenant is established for the purpose of preserving, enhancing and conserving wetlands and streams, non-jurisdictional wetlands and streams accepted as mitigation, buffers, uplands, open areas and the associated conservation values, services and functions. Furthermore, this covenant carries out the statutory requirement of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, and their implementing regulations.

12. **Intent of Clean Water Act.** The intent of the Clean Water Act, Section 404, is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. The intent of this document is that the Property be perpetually protected as conservation lands.

13. **Written Notice of Legal Action Against Property.** Pursuant to the Clean Water Act, the District Engineer, c/o Office of Counsel, United States Department of the Army, Corps of Engineers, Savannah District, Savannah, Georgia, shall be provided with a 60-day advance written notice prior to the filing of any legal action concerning this covenant, or of any action to extinguish, void or modify this covenant, in whole or in part; provided however, if such 60-day notice is not permitted by any federal, state, or local statute, regulation, ordinance, rule, or court order, then the USACE shall be given notice of the taking as soon as reasonably possible under the circumstances. The restrictive covenant is intended to survive

foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation and similar doctrines or judgments affecting the Property. A copy of this recorded document shall accompany the notice.

14. **Eminent Domain.** It is the intent of this conservation covenant that the aquatic resources it protects shall not be altered or impacted by eminent domain. However, if any or part of the protected Property is taken by exercise of the power of eminent domain, so as to terminate this covenant, in whole or in part, the USACE shall be given 60-day notification for the purpose of providing the condemnor and the court authorizing the action, with the value and cost of the consequential damages or the costs of replacement in kind of the ecological units and the conservation functions, services and values of Clean Water Act jurisdictional or non-jurisdictional mitigation on the Property; provided however, if such 60-day notice is not permitted by any federal, state, or local statute, regulation, ordinance, rule, or court order, then the USACE shall be given notice of the taking as soon as reasonably possible under the circumstances. Subject to approval by the USACE, options for replacement of consequential environmental impacts due to eminent domain are governed by the Clean Water Act, Section 404, and/or the Rivers and Harbors Act of 1899, Section 10, and their implementing regulations. Options for payment of consequential damages to waters of the United States impacted by the eminent domain taking may include: (1) re-recording of the USACE model Declaration of Conservation Covenants and Restrictions on the Property signed by the new owner, thereby preserving the existing waters of the U.S and their buffers on the site without impact; (2) payment of funds sufficient for the acquisition and protection of alternative real property in the same hydrologic watershed providing equivalent conservation functions, services and values of wetlands, streams, creeks, shorelines, other waters of the U.S. and their buffers; or (3) if available, the option to fund the purchase of conservation mitigation credits from an authorized wetland/stream mitigation bank sufficient to replace the conservation mitigation functions, services and values of the wetlands, streams, creeks, shorelines, and other waters of the U.S. and their buffers; (4) payment of funds to an in-lieu fee mitigation wetlands/streams trust account approved by the USACE in an amount sufficient to purchase and protect alternative real property in the same hydrologic watershed that would provide the equivalent mitigation conservation functions, services and values, as the property impacted by eminent domain; or (5) any other alternative consequential damages aquatic conservation mitigation as may be approved by the USACE, in compliance with the regulations and requirements. Failure of the proponent to provide consequential damages through alternative mitigation due to impact(s) to aquatic resources protected under the Clean Water Act associated with eminent domain shall be referred to the U.S. Department of Justice for legal action.

15. **Removal to U.S. Federal District Court.** The USACE reserves the right to recommend to the U.S. Department of Justice that the legal action, as it relates to the Clean Water Act, be removed to the United States Federal District Court in the district where the Property lies.

16. **Recordation of Instrument.** Declarant shall execute and record this instrument in timely fashion in the official records of the Office of the Clerk of Superior Court in the county in which this Property lies and shall provide the USACE with a copy of the recorded covenant and exhibits. Declarant may re-record this instrument at any time as may be required to preserve its rights.

Signatures are contained on the following page.

IN WITNESS WHEREOF Declarant has duly executed this Declaration on this the ____ day of _____, 2021.

THE CITY OF DALTON

By: _____

Name: _____

Title: _____

Address: _____



The Declarant personally appeared before me, the undersigned Notary Public, and the undersigned witness and I saw the within named Declarant sign the Declaration of Conservation Covenants and Restrictions, and I, along with the undersigned witness, witnessed the execution thereof.

Unofficial Witness

Name: _____

Notary Public

My commission expires:

[Notarial Seal]

Exhibit "A"

Legal Description

All that tract or parcel of land lying and being in Land Lot Nos. 319 and 320 in the 10th District and Third Section of Whitfield County, Georgia, and in Land Lots Nos. 5 and 6 of the 9th District and Third Section of Whitfield County, Georgia and being described as follows:

BEGINNING at a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 07 degrees 57 minutes 54 seconds east a distance of 189.90 feet to an iron pin; thence south 73 degrees 15 minutes 19 seconds west a distance of 210.63 feet to an iron pin; thence south 45 degrees 45 minutes 55 seconds west a distance of 225.98 feet to an iron pin; thence south 23 degrees 45 minutes 32 seconds west a distance of 229.45 feet to an iron pin; thence south 05 degrees 51 minutes 58 seconds west a distance of 163.90 feet to an iron pin; thence south 52 degrees 53 minutes 05 seconds west a distance of 169.05 feet to an iron pin; thence south 26 degrees 58 minutes 35 seconds west a distance of 258.59 feet to an iron pin; thence south 16 degrees 47 minutes 16 seconds west a distance of 232.63 feet to an iron pin; thence north 56 degrees 30 minutes 47 seconds west a distance of 634.15 feet to an iron pin located in the southeast right of way line of River Road (80' R/W); thence running in a south westerly direction, along the southeast right of way line of River Road, the following courses and distances, to wit: south 36 degrees 17 minutes 00 seconds west, 15.69 feet; south 36 degrees 34 minutes 54 seconds west, 155.69 feet; south 35 degrees 57 minutes 54 seconds west, 109.83 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 100.62 feet (3,850' Radius), said arc being subtended by a chord with a bearing of south 35 degrees 12 minutes 58 seconds west and a chord distance of 100.62 feet; thence south 34 degrees 28 minutes 03 seconds west, along the southeast right of way line of River Road, a distance of 123.29 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 272.28 feet (1,560.0' Radius), said arc being subtended by a chord with a bearing of south 29 degrees 28 minutes 02 seconds west and a chord distance of 271.93 feet; thence south 24 degrees 28 minutes 02 seconds west, along the southeast right of way line of River Road, a distance of 88.15 feet; thence south 22 degrees 20 minutes 30 seconds west, along the southeast right of way line of River Road, a distance of 100.61 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 51.69 (460.0' Radius), said arc being subtended by a chord with a bearing of south 19 degrees 07 minutes 21 seconds west and a chord distance of 51.66 feet to an iron pin; thence south 85 degrees 39 minutes 53 seconds east a distance of 1,185.13 feet to an iron pin; thence south 14 degrees 57 minutes 57 seconds east a distance of 187.69 feet to an iron pin; thence south 13 degrees 22 minutes 33 seconds east a distance of 49.25 feet to an iron pin; thence south 52 degrees 31 minutes 10 seconds east a distance of 186.10 feet to an iron pin; thence south 03 degrees 35 minutes 42 seconds east a distance of 268.10 feet to an iron pin; thence south 14 degrees 32 minutes 23 seconds west a distance of 199.52 feet to an iron pin located in the northeast right of way line of Lower Kings Bridge Road (80' R/W); thence south 59 degrees 16 minutes 19 seconds east, along the northeast right of way line of Lower Kings Bridge Road, a distance of 276.62 feet; thence running in a southeasterly direction, the northeast right of way line of Lower Kings Bridge Road, along an arc to the right, an arc distance of 61.96 feet (740.0' Radius), said arc being subtended by chord with a bearing of south 56 degrees 52 minutes 24 seconds east and a chord distance of 61.94 feet; thence south 54 degrees 28 minutes 29 seconds east, the northeast right of way line of Lower Kings Bridge Road, a distance of 79.27 feet to an iron pin; thence north 46 degrees 48 minutes 38 seconds east a distance of 113.45 feet to an iron pin; thence south 42 degrees 35 minutes 11 seconds east a distance of 218.06 feet to an iron pin; thence south 29 degrees 23 minutes 14 seconds east a distance of 227.41 feet to a point located in the center of the Conasauga River, which point is located south 04 degrees 10 minutes 55 seconds east a distance of

3,257.75 feet from the threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly, easterly northeasterly, northerly northwesterly, northerly, and northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the north line of said Land Lot No. 319; thence running in a westerly direction, along the north line of said Land Lot No. 319, to the a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.

Exhibit “B”
Banking Instrument

Exhibit “C”

Conservation Functions and Services

[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

Please Cross-Reference to Deed
Book 2019 Page 241, Whitfield
County, Georgia Land Records.

STATE OF GEORGIA
COUNTY OF WHITFIELD

DECLARATION OF PRESERVATION COVENANTS AND RESTRICTIONS

THIS DECLARATION OF PRESERVATION COVENANTS AND RESTRICTIONS (this "Declaration") is hereby made by **The City of Dalton**, the undersigned "Declarant." Declarant is the owner in fee simple of a certain tract or parcel of real property lying in Whitfield County, Georgia. This tract of land was conveyed on September 30, 1988 from Donald R. Robertson and Patricia A. Robertson to The City of Dalton and recorded in Deed Book 2019 Page 241, in the Office of the Clerk of Superior Court of Whitfield County Georgia. Declarant comes now and, for good and valuable consideration, declares certain use restrictions on the property hereinafter described. A legal description of the specific parcel or parcels of Property subject to this Declaration is more particularly described in Exhibit "A" hereto attached and made a part hereof. The Declaration hereinafter stated shall apply to Property described in Exhibit "A" and is by reference, incorporated herein for a description and for all other legal purposes.

PREMISES

WHEREAS, Declarant was authorized by that certain letter dated ____ to implement a Banking Instrument by the US Army Corps of Engineers ("USACE") Action Number ____ pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401) under the administrative regulatory authority of the USACE Savannah District, Regulatory Division, setting forth authorization for certain dredge and/or discharge of fill activities in waters of the United States, including wetlands and streams; and,

WHEREAS, the banking authorization letter was issued to the Board of Water, Light and Sinking Fund Commissioners for the City of Georgia d/b/a Dalton Utilities. The Board of Water, Light and Sinking Fund Commissioners is not a separate corporate entity from the City of Dalton, Georgia, rather the Board

of Water, Light and Sinking Fund Commissioners has such responsibilities over the department of public utilities of the city as provided in the Charter of the City of Dalton, Georgia and by ordinance; and

WHEREAS, said banking instrument dated August 2021 is attached hereto as Exhibit “B” and by this reference is made a part hereof; and,

WHEREAS, a dated platted survey with seal affixed by a Georgia registered surveyor of the bearings and distances and coordinate values of the boundary of the Property referenced as Exhibit A has been recorded at Plat Book ____, Page ____ in the Whitfield County, Georgia Land Records (the “Survey”). The survey approximately shows the actual wetland, stream and buffer areas within the Property. The Property contains approximately 8.1 acres of wetlands and 0 linear feet of a tributary with buffer; and,

WHEREAS, dredge and/or discharge of fill material in jurisdictional waters of the United States including wetlands and streams pursuant to the Clean Water Act, Section 404, and/or Rivers and Harbors Act of 1899, Section 10, requires compensatory mitigation and perpetual protection of the mitigation property; and,

WHEREAS, in conjunction with the conservation of a commercial wetland and/or stream mitigation bank authorized pursuant to the banking instrument, Declarant desires to preserve the Property, which is upstream from said mitigation bank; and

WHEREAS, in addition to Declarant’s obligations under the banking instrument, Declarant agrees to be responsible for certain preservation of wetlands and/or stream and streamside lands on the Property. The Property is to remain subject to this Declaration of Preservation Covenants and Restrictions in perpetuity; and

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Declarant and each and every subsequent owner and occupant of the real property, Declarant has promised to place certain restrictions on the Property exclusively for preservation purposes, in order that it shall remain substantially in its preserved, open, natural and/or scenic condition in perpetuity.

1. **Transfers, Amendments & Extinguishment.** Declarant does hereby declare that all of the Property described hereinafter shall be held, transferred, sold, conveyed and occupied subject to the terms and conditions of the covenants, easements and affirmative obligations all of which shall run with the Property and will be binding on all persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title or interest in said Property, or any part thereof, their heirs, executors, administrators, successors and assigns. The terms and conditions of this Declaration of Covenants and Restrictions shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the conservation Property. It shall set forth the terms and conditions of this document either by reference to this document and its recorded location or by attachment and incorporation by reference. The covenant shall not be amended or extinguished except by written approval of the USACE, or its successors in administration of the Clean Water Act or the Rivers and Harbors Act of 1899. Amendments to the restrictive covenant for the purpose of proposing additional impact are not favored and will be considered only in rare circumstances following the USACE policy and procedures. Amendments shall be signed by the USACE and shall be recorded in the official records of Whitfield County, Georgia.

2. **Property as Open and Common Area.** The Property is set aside for preservation and shall be designated as an undeveloped lot, buffer, open and common area or greenway and will not now, nor in the future, be made part of any single lot or lots in a residential or mixed use subdivision or a subdivided commercial development, but rather the Property shall be held and preserved as an open,

common and undeveloped area. There shall be no legal or de facto division, subdivision or partitioning of the protected Property.

3. **Prohibited Uses.** Except as necessary (1) to carry out wetland/stream and/or buffer preservation in keeping with the banking instrument as approved by the USACE or (2) to carry out management and maintenance of the Property, as approved by the USACE; the actions encompassed as prohibited by this covenant shall include, but shall not be limited to the following:

A. Clearing, removing, burning, mowing, or cutting of trees or other vegetation (except for the control and removal of non-native vegetation with prior written consent by the USACE). If such control or removal involves the use of insecticides, herbicides, or other biocides, such application shall be by the narrowest spectrum, least persistent material appropriate for the target species, and shall be consistent with the preservation values of the Property and the purpose of this covenant;

B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;

C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, toxic and hazardous wastes, incinerator residue, garbage, sewage sludge, oil or oil products and wastes, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, vehicle bodies or parts, junk, or agricultural waste on the Property;

D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;

E. Diverting or affecting the natural flow of surface or underground waters within, or out of the Property; manipulating or altering any natural water course, body of water or water circulation and any activities or uses detrimental to water quality;

F. Mining, drilling, hydraulic fracturing, dredging, or removing from the Property soil, loam, peat, gravel, oil, gas or other mineral resources or natural deposit;

G. Burning, systematically removing or cutting timber, or otherwise destroying any vegetation. Upon approval from the USACE, selective pruning of unsafe trees or exotic non-native vegetation may be removed in accordance with current scientific best management practices as set out by the U.S. Forest Service or the Georgia Forestry Commission;

H. Spraying with biocides or use of herbicides or pollutants that violate water quality standards;

I. Introducing non-native species on the Property, altering the natural state of the wetlands or streams or causing erosion or sedimentation;

J. Grazing or use by domesticated animals;

K. Construction of any kind in the wetlands, streams, buffers or upland, whether temporary or permanent;

L. Use of motorized or mechanized vehicles, including, but not limited to, off-road vehicles is prohibited, except on existing roadways for the sole purpose of monitoring or maintaining the Property;

M. As permitted or approved in writing by the USACE the Property may have: (1) a narrow pedestrian walking trail in the uplands or upland buffer using pervious materials (not to exceed two feet in tread width and three feet in total width), and/or (2) minimal structures and boardwalks for the observation of wildlife and wetland/stream ecology; all in a manner in keeping with the preservation values, services, and functions of the Property;

N. Display of billboards, signs, or advertisements on or over the Property, except for the posting of no trespassing signs, temporary signs indicating the Property is for sale, signs identifying the trees, vegetation, wetlands or preservation values of the Property, and/or signs identifying the owner of the property; and

O. Conservation and wildlife habitat management plans may be implemented by the Georgia Department of Natural Resources Wildlife Resource Division, U.S. Forest Service, conservation land trusts holding conservation easements, or other conservation management entities where the habitat, wildlife, or forest management does not result in any impacts to the wetlands/streams/riparian corridors and its buffers, or to property protected for its historical, cultural and/or archeological value, and where the proposal would enhance the preservation of the Property.

4. **Easements.**

A. The property is free and clear of any and all liens, loans, claims restrictions, easements and encumbrances, except as otherwise identified in this document and its exhibits.

B. Existing utility line easements, roads, right-of ways, access easements and structures on the Property, if any, are shown on the Survey.

C. Environmental impacts, if any, caused by existing easements such as roads, utility lines or pipelines, where such easements are in place as of the date of the recording of this restrictive covenant, and where the easements are shown on the survey, shall not be considered as causing any prohibited impacts to the Property by their use and maintenance.

5. **Representations.** Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

B. There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned;

C. The Property is in compliance with all federal, state and local laws, regulations and permits, and there is no pending or threatened litigation in any way affecting, involving or relating to the Property and its use; and

D. The Property is not land-locked and there is access to the Property by road, dedication of pathway or by an access easement.

6. **Affirmative Duties.**

A. Declarant/Owner will take action to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the preservation of the Property or that are otherwise inconsistent with this Declaration.

B. Declarant shall take immediate action to cure violations of this restrictive covenant.

7. **Exclusive Possession.** Declarant, its successors and assigns, reserve all other rights accruing from its ownership of the Property including but not limited to the exclusive possession of the Property, the right to transfer or assign their interest in the same, the right to take action necessary to preserve the Property or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the purposes of this Declaration.

8. **Benefits to the General Public.** It is expressly understood and agreed that this covenant does not necessarily grant or convey to members of the general public, any rights of ownership, interest in, or use of the protected Property. Nonetheless, the Property has significant aesthetic value in its present state as a predominately natural area which has not been subject to extensive development or exploitation. The protection of jurisdictional and non-jurisdictional waters of the United States, their buffers and uplands, floodplains, vegetation, scenic, open space, aquatic and wildlife habitat are considered of great importance to the well-being of the general public and to all citizens of Georgia and are worthy of preservation.

9. **Enforcement.** The USACE and/or the U.S. Environmental Protection Agency, or its successors, as third-party beneficiaries hereof, are hereby specifically granted the authority to enforce the provisions of this Declaration pursuant to the Clean Water Act Section 404 and the Rivers and Harbors Act of 1899, Section 10, and implementing regulations. Appropriate remedy for violation of this section is contemplated to include without limitation, injunctive relief to restrain such violation, administrative, civil or criminal penalties as well as any other remedy available under law or equity. However, no violation of this covenant shall result in a forfeiture or reversion of title. It shall not be a defense, for purposes of this covenant, that the preservation of the Property was impacted without the owner's knowledge or consent, or that the waters on the Property are deemed to be non-jurisdictional waters of the United States either by their function or by statute. The property is subject to the contractual terms of the banking instrument and this Declaration.

10. **Right of Ingress and Egress.** The USACE, and/or the Environmental Protection Agency, their assigned agents and contractors, shall at reasonable times and upon notice to the owner, have an access easement for the right of ingress and egress to inspect the Property in order to monitor and ascertain whether there has been compliance with this Declaration. Posted signs declaring the Property to be preservation property shall be posted by the owner in order to provide notice of the preservation.

11. **Covenant Runs with the Land in Perpetuity.** This covenant shall not terminate upon some fixed amount of time but shall run with the land in perpetuity pursuant to O.C.G.A. § 44-5-60(c) both as to benefit and as to burden and shall be enforceable against Declarant and all present and future owners, tenants and other holders of any interest in the Property. This covenant is established for the purpose of preserving wetlands and streams, non-jurisdictional wetlands and streams.

12. **Intent of Clean Water Act.** The intent of the Clean Water Act, Section 404 is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. The intent of this document is that the Property be perpetually protected as preservation lands.

13. **Written Notice of Legal Action Against Property.** Pursuant to the Clean Water Act, the District Engineer, c/o Office of Counsel, United States Department of the Army, Corps of Engineers, Savannah District, Savannah, Georgia, shall be provided with a 60-day advance written notice of any legal action concerning this covenant, or of any action to extinguish, void or modify this covenant, in whole or in part. The restrictive covenant is intended to survive foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation and similar doctrines or judgments affecting the Property. A copy of this recorded document shall accompany said notice.

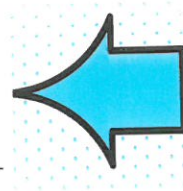
14. **Removal to U.S. Federal District Court.** The USACE reserves the right to recommend to the U.S. Department of Justice that the legal action, as it relates to the Clean Water Act, be removed to the United States Federal District Court in the Northern District of Georgia.

15. **Recordation of Instrument.** Declarant shall execute and record this instrument in timely fashion in the official records of the Office of the Clerk of Superior Court of Whitfield County, Georgia and shall provide the USACE with a copy of the recorded covenant and exhibits. Declarant may re-record this instrument at any time as may be required to preserve its rights.

IN WITNESS WHEREOF Declarant has duly executed this Declaration on this the ____ day of _____, 2021.

THE CITY OF DALTON

By: _____
Name: _____
Title: _____
Address: _____



The Declarant personally appeared before me, the undersigned Notary Public, and the undersigned witness and I saw the within named Declarant sign the Declaration of Preservation Covenants and Restrictions, and I, along with the undersigned witness, witnessed the execution thereof.

Unofficial Witness
Name: _____

Notary Public

My commission expires:

[Notarial Seal]

Exhibit "A"

Legal Description

All that tract or parcel of land lying and being in Land Lot Nos. 295 and 318 in the 10th District and Third Section of Whitfield County, Georgia, and being described as follows:

BEGINNING at an iron pin located at the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 74 degrees 51 minutes 14 seconds east a distance of 180.83 feet to an iron pin; thence south 61 degrees 54 minutes 33 seconds east a distance of 252.18 feet to an iron pin; thence south 87 degrees 41 minutes 48 seconds east a distance of 183.46 feet to an iron pin; thence north 74 degrees 44 minutes 37 seconds east a distance of 362.76 feet to an iron pin; thence north 66 degrees 48 minutes 52 seconds east a distance of 270.74 feet to an iron pin; thence north 73 degrees 44 minutes 00 seconds east a distance of 575.54 feet to an iron pin; thence north 68 degrees 31 minutes 59 seconds east a distance of 175.31 feet to an iron pin; thence north 85 degrees 03 minutes 24 seconds east a distance of 108.18 feet to an iron pin; thence south 64 degrees 16 minutes 49 seconds east a distance of 246.02 feet to an iron pin; thence south 33 degrees 07 minutes 23 seconds east a distance of 709.23 feet to a point located in the center of the Conasauga River, which point is located south 80 degrees 29 minutes 37 seconds east a distance of 2,648.17 feet from the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the east line of said Land Lot No. 318; thence running in a northerly direction, along the east line of said Land Lot Nos. 318 and 295, to the common corner to Land Lot Nos. 281, 282, 295 and 296 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a westerly direction, along the north line of said Land Lot No 295, to the common corner to Land Lot Nos. 282, 283, 294 and 295 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a southerly direction, along the west line of said Land Lot said Land Lot No. 295, to the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING

Exhibit “B”
Banking Instrument

Appendix G
Draft Financial Assurances Language

Proposed Financial Assurances Language

WHEREAS, The Board of Water, Light, and Sinking Fund Commissioners d/b/a Dalton Utilities (“Dalton Utilities”) was authorized by that certain letter dated ____ to implement a Banking Instrument by the US Army Corps of Engineers (“USACE”) Action Number ____ pursuant to Section 404 of the Clean Water Act (“CWA”) or Section 10 of the Rivers and Harbors Act of 1899 (“RHA”) under the administrative regulatory authority of the USACE Savannah District, Regulatory Division; and,

WHEREAS, dredge and/or discharge of fill material in jurisdictional waters of the United States including wetlands and streams pursuant to the CWA and/or RHA requires compensatory mitigation and perpetual protection of the mitigation property; and,

WHEREAS, certain property owned by Dalton Utilities has been approved as a commercial wetland and/or stream mitigation bank pursuant to the terms and conditions of the banking instrument approved by the USACE (“Banking Instrument”). The purpose of the bank is to generate credits to compensate for wetland impacts that have been determined unavoidable after consideration of avoidance and minimization on CWA or RHA permit actions. The banking instrument requires Dalton Utilities to be responsible for certain restoration, enhancement, establishment and preservation of wetlands and/or stream and streamside lands on the property designated by Dalton Utilities; and

WHEREAS, to ensure that Dalton Utilities has adequate funds to carry out its restoration, enhancement, establishment and preservation obligations, USACE, the CWA and the RHA require Dalton Utilities to provide certain financial assurances; and

WHEREAS, Dalton Utilities desires to provide said financial assurances through the following legislative appropriation;

NOW, THEREFORE, IT IS HEREBY RESOLVED by Dalton Utilities that Dalton Utilities shall create a separate account to hold funds appropriated by Dalton Utilities annually to cover any costs, penalties, or other charges required to be paid by Dalton Utilities to perform its restoration, enhancement, establishment and preservation of the wetlands and/or stream and streamside lands pursuant to its Banking Instrument.

IT IS FURTHER RESSOLVED that Dalton Utilities shall initially allocate \$_____ to said fund to ensure there are adequate funds to carry out its obligations under the Banking Instrument, and Dalton Utilities shall continue to appropriate in its annual budget and transfer in accordance therewith sufficient funds to said account to ensure that, over time, the deposits and earnings of said accounts provide the minimum funding amounts required to perform its obligations set forth in the Banking Instrument.

Resolved this ____ day of _____, 2020.

**BOARD OF WATER, LIGHT AND SINKING FUND
OF THE CITY OF DALTON, GEORGIA d/b/a
DALTON UTILITITES**

By: _____
Name: _____

Appendix H
Draft Conservation Easement

[Space above this line for recording data.]

Please Record and Return to:

Christiane C. Bard
The Minor Firm
P.O. Box 2586
Dalton, GA 30722-2586

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of _____, 20____, by and between The **City of Dalton** ("Grantor"), and _____ ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of that certain real property located in Whitfield County, Georgia, and more particularly described in Exhibit "A" attached hereto and by reference made a part hereof (the "Property"); and

WHEREAS, Grantee is a _____, who is authorized by the laws of the State of Georgia to accept, and is willing to accept conservation easements for the purpose of preserving and protecting natural, scenic, educational, recreational, or open-space values of real property, and Grantee has the resources and commitment to preserve those values. Grantee is a qualified conservation easement holder within the meaning of O.C.G.A. § 44-10-1 *et seq.*; and

WHEREAS, the Property in its present state has not been developed and possesses significant natural, ecological, wildlife, and open space features (collectively the "Conservation Values") of great importance to Grantor, Grantee, and the people of the State of Georgia, including but not limited to the following:

[INSERT CONSERVATION VALUES FROM COVENANTS]

WHEREAS, the Conservation Values of the Property are documented in that certain

Baseline Documentation Report dated _____, 20____, which consists of reports, maps, photographs, and other evidence of an accurate representation of the Property at the time of this Agreement, and which is incorporated herein by reference (the "Baseline Report"). The Baseline Report is intended to serve as an objective, informational baseline for monitoring compliance with the terms of this Agreement; and

WHEREAS, the Property has been approved by the U.S. Army Corps of Engineers, Savannah District ("USACE") for use as a mitigation site pursuant to the Upper Coosa Mitigation Bank Banking Instrument, Action Number _____ pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 401) (the "BI"), the terms of which are incorporated herein by reference;

WHEREAS, the banking authorization letter for the BI was issued to the Board of Water, Light and Sinking Fund Commissioners for the City of Georgia d/b/a Dalton Utilities. The Board of Water, Light and Sinking Fund Commissioners is not a separate corporate entity from Grantor rather the Board of Water, Light and Sinking Fund Commissioners has such responsibilities over the department of public utilities of the City as provided in the Charter of the City of Dalton, Georgia and by ordinance; and

WHEREAS, the Property remains subject to the restrictions set out in that certain Declaration of Conservation Covenants and Restrictions dated _____ and recorded in Deed Book ___, Pages _____, Whitfield County, Georgia Land Records, which are incorporated herein by reference and made a part of this Agreement (the "Covenants");

WHEREAS, pursuant to the BI, Grantor is required to protect the Conservation Values of the Property in perpetuity, and Grantor desires to protect said values by conveying to Grantee the right to access the property for the purpose of conserving and protecting the Conservation Values of the Property; and

WHEREAS, Grantee agrees by executing this Agreement to monitor, conserve, and protect the Conservation Values of the Property in perpetuity in accordance with the terms of this Agreement;

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference.
2. Purpose of Agreement. It is the purpose of this Agreement to assure that the Property will retain its natural condition and the Conservation Values of the Property will be monitored and conserved.
3. Duration. The covenants, conditions, and restrictions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, and assigns, and shall continue as an easement and servitude running with the Property in perpetuity and enforceable against

Grantor and all future owners, tenants, and other holders of interest in the Property.

4. Grant of Easements. Subject to the terms and conditions of this Agreement, Grantor does hereby grant to Grantee and Grantee's successors and assigns, and Grantee's employees, agents, and contractors the following rights:

(a) *Access and Entry.* Grantee shall, on an annual basis and upon prior written notice to Grantor, have the right to enter and go upon the Property for purposes of conducting an annual site visit inspection and verifying compliance with this Agreement and the Covenants. Additionally, Grantee shall, at reasonable times and upon prior written notice to Grantor, have the right to enter and go upon the Property if Grantee has reasonable cause to believe that a violation of this Agreement or the Covenants is occurring or may have occurred. In emergency cases where the Grantee reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Agreement or the Covenants, Grantee may enter and go upon the Property, provided that, Grantee shall give Grantor prior telephonic notice of such emergency entry and written notice of the same the next business day after Grantee's entry on the Property. Notwithstanding anything herein to the contrary, nothing in this Agreement conveys any right of access or entry to, on or over the Property to the general public.

(b) *Testing and Observation.* To determine Grantor's compliance with this Agreement and the Covenants, Grantee may, with prior permission from the Grantor, conduct scientific observations and studies and take samples of the Property in such a manner as will not disturb the quiet enjoyment of the Property by Grantor.

(c) *Protection of Site.* Grantee shall have the right to conserve and protect the Conversation Values of the Property and to prevent any activity or use of the Property that is inconsistent with the purposes of this Agreement, the Covenants, or the BI by enforcing this Agreement pursuant to the provisions set forth in Section 8 herein below.

5. USACE Rights. The USACE, its assigned agents, and its contractors shall at reasonable times and upon prior written notice to Grantor, have the right to access the Property to inspect the Property in order to monitor and ascertain compliance with the requirements of the Covenants and the BI.

6. Prohibited Activities. Any activity upon, or use of, the Property inconsistent with the purpose of this Agreement, the Covenants, or the BI are prohibited, except those activities necessary (1) to carry out wetland/stream and/or buffer restoration, enhancement and/or establishment in keeping with the mitigation plan of the BI as approved by the USACE; or (2) to carry out the long-term management and maintenance of the Property, as approved in writing by the USACE. The uses incompatible with the Conservation Values of the Property and prohibited by this Agreement include, but are not limited to, the Prohibited Uses set forth in Paragraph 3 of the Covenants.

7. Grantor's Reserved Rights. Grantor hereby reserves all of its right, title, and interest in and to the Property incident to the fee simple estate thereof, and for any and all purposes that are not inconsistent with the purposes of this Agreement, the Covenants, and the BI, including but not limited to:

- (a) *Management and Maintenance.* Grantor may conduct management and maintenance activities as necessary (1) to carry out wetland/stream and/or buffer restoration, enhancement and/or establishment in keeping with the mitigation plan of the BI as approved by the USACE; or (2) to carry out the long-term management and maintenance of the Property, as approved in writing by the USACE. A management plan has been developed by Grantor and approved by USACE, which describes the Grantor's conservation duties for the long-term management of the Property. The Grantor has allocated adequate financial resources for the protection, management, and maintenance of the Property, which is separate and apart from the long-term monitoring funds held by the Grantee.
- (b) *Fencing and Signage.* Grantor may install and maintain appropriate signage and fencing to limit trespassing on the Property, provided that such fencing and signage is approved in accordance with the long-term management plan for the Property approved by the USACE.
- (c) *Timber Management.* Subject to the terms of the Covenants and the BI, harvesting and management of timber by Grantor is limited to the extent necessary to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects, or infectious organisms or is otherwise required in accordance with the BI and/or sound management practices in order to ensure the health of the environmental systems on the Property. Such timber harvest and management shall be carried out with prior written approval of the USACE in accordance with best management practices approved by the U.S. Forest Service, the Georgia Forestry Commission, or successor agencies. Exotic, non-native vegetation or trees may be removed in accordance with current scientific best management practices as set out by the U.S. Forest Service, the Georgia Forestry Commission, or successor agencies.
- (d) *Invasive Species and Nuisance Animals.* Subject to the terms of the Covenants and the BI, invasive species and nuisance animal control is limited to the extent necessary to protect the integrity of the aquatic system and ecological stability of the natural environment on the Property. Such invasive species and nuisance animal control may include mechanical removal, herbicide treatment and application, prescribed burnings, or other suppressive treatments as to avoid permanent damage to native flora and integrity of the aquatic system and trapping and removal of nuisance animals. All such actions shall be carried out with prior written approval of the USACE.
- (e) *Environmental Programs.* The Property has been approved by USACE for use as a commercial mitigation bank, the purpose of which is to generate credits for sale to compensate for wetlands and stream impacts resulting from permit actions. This will be accomplished by Grantor in its role as Bank Sponsor, through the restoration, enhancement, and preservation of the Property in perpetuity as provided for in the BI. Credits or other entitlements or interest in the Property

associated with the BI may be generated for sale on the Property in order to perfect and carry out the purpose of the Upper Coosa Mitigation Bank. Grantor reserves the right to participate in future conservation, preservation, or mitigation programs involving the generation or sale of credits on the protected property so long as such participation is consistent with the purposes and terms of this Agreement and approved by the appropriate agencies. The number, value, ownership, rights to sell, and entitlement to proceeds of sale from such credits generated by the Property under the BI or any other program shall be determined separate and apart from this Agreement, and Grantee shall have no rights, title, or interest in and to said credits or proceeds from the sale thereof.

- (f) *Watershed Protection Programs.* Grantor may participate in any Watershed Protection or similar program approved by any federal, state, or local government or agency with respect to the Property so long as such participation is consistent with the purposes and terms of this Agreement, the Covenants, and the BI. Grantor may conduct such management and maintenance activities as are necessary or appropriate to comply with any requirements of such protection programs, provided that such maintenance activities shall be carried out with prior approval by the USACE.
- (g) *Notice and Approval of Reserved Rights.* Grantor shall be responsible for seeking any required USACE approval in accordance with the USACE mandated procedures. Upon approval of such reserved right by the USACE, Grantor shall give Grantee notice of the same within thirty (30) days of Grantor's receipt of such approval from the USACE.

8. Enforcement.

- (a) *Baseline Assessment.* The Parties agree that the Baseline Report establishes the present condition of the Property and that the Grantor's historical and current uses of the Property as documented by the Baseline Report are compatible with the provisions of this Agreement, the Covenants, and the BI. Grantee shall refer to the Baseline Report when determining whether Grantor is in compliance with this Agreement. In the event of a controversy with respect to the whether Grantor has complied with this Agreement and/or Grantor's use of the Property is compatible with this Agreement, the Parties shall review the Baseline Report to resolve such controversy; provided however, the Baseline Report shall not alter, amend, or modify this Agreement, and the terms of this Agreement shall prevail over any conflict or inconsistency in the Baseline Report.
- (b) *Notice of Violation; Corrective Action.* If Grantee determines there has been a breach or violation of the terms of this Agreement, the Grantee shall give written notice of said breach to Grantor and prescribe such corrective action as is sufficient to cure the breach and/or restore any injured portion of the Property to its prior condition in accordance with a corrective action plan approved in writing by the USACE.

- (c) *Injunctive Relief.* If the Grantor fails to cure the breach of this Agreement within thirty (30) days after receipt of such notice thereof from Grantee, or if such breach cannot reasonably be cured within thirty (30) days, Grantor fails to begin curing said breach within said thirty (30) day period, Grantee may undertake such actions, including legal proceedings, as are necessary to effect such correction action, including but not limited to seeking a temporary or permanent injunction to enjoin such breach and requiring the restoration of the Property to the condition that existed prior to any injury.
- (d) *Damages.* Grantor shall be liable for any damages that arise out of or result from Grantor's breach of this Agreement, including but not limited to, loss of environmental values.
- (e) *Cost of Enforcement.* Grantor shall be liable for the costs of any breach of this Agreement, correction or restoration of said breach, and Grantee's expenses in enforcing this Agreement, including court costs and reasonable attorneys' fees. Provided however, Grantor shall not be liable for any costs or expenses of any enforcement action if Grantor prevails on said action. In which case, Grantee shall bear the cost of the same, including but not limited to attorneys' fees actually incurred by Grantor.
- (f) *Events Beyond Grantor's Control.* Notwithstanding anything herein to the contrary, Grantee shall not be permitted to institute any proceeding against Grantor, and Grantor shall not be liable for, any changed to the Property caused by acts of God or circumstances beyond Grantor's control, including but not limited to, earthquakes, fire, flood, storm, war, civil disturbance, strike, unauthorized acts of a third party, and similar causes.

9. Funding for Long-Term Monitoring. Grantor has provided funds to Grantee, which Grantee shall deposit in separate fund from Grantee's general operating account, for purposes of fulfilling Grantee's obligations hereunder. Said funds shall be separately accounted for by Grantee. In the event that Grantee ceases to exist, Grantee shall transfer all such funds to Grantee's successor-in-interest.

10. Costs and Liabilities Related to the Property. Grantor shall be liable for all costs, fees, assessments, and charges levied against the Property, and Grantee shall not be responsible for any costs related to the ownership, operation, or maintenance of the Property, except as otherwise set forth herein.

11. Indemnification. Grantee hereby indemnifies, holds harmless and defend Grantor, and Grantor's officers, employees, agents, contractors, and licensees (collectively, "Grantor's Indemnitees") from and against any and all claims, demands, costs, damages, and other liabilities for personal injury, including death, or property damage arising from any act or omission of Grantee or its contractors, agents, and employees in connection with the rights granted to Grantee hereunder.

12. Insurance. For purposes of indemnification pursuant to Section 11 above, Grantee shall maintain at all times commercial general public liability and property damage insurance with a broad form coverage endorsement (i) for an aggregate amount of not less than Five Million Dollars (\$5,000,000.00) and an occurrence limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit and (ii) with a \$25,000,000 limit of liability in excess of the underlying limits of liability.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

14. Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition, or provision which has been deemed invalid.

15. Counterparts. This Agreement may be executed by the parties hereto in multiple counterparts and each executed counterpart shall be considered an original.

16. Modification. This Agreement shall not be modified, amended, or terminated except by a writing signed by each of the parties hereto, or their respective successors or assigns.

17. Notices. All notices, elections, or demands permitted or required to be made under this Agreement shall be made in writing, signed by the party giving such notice, election, or demand, and shall be deemed to have been properly given, unless otherwise specifically provided in this Agreement, (a) when delivered in person; (b) one (1) day after deposit with an overnight delivery service (such as Airborne, Federal Express, UPS, or other similar overnight service) for next day delivery, delivery charges prepaid, addressed to the appropriate party at the address set out below; or (c) when transmitted by facsimile to the facsimile number for each party set forth below (but only if duplicate notice is also given via one of the methods described in clauses (a) or (b) above).

Grantor:

The Board of Water, Light, and Sinking
Fund Commissioners for the City of
Dalton, Georgia d/b/a Dalton Utilities

Grantee:

USACE:

The U.S. Army Corps of Engineers,
Savannah District

By notice in accordance with the above to all parties shown above, either party hereto may designate from time to time a change of address for all such notices by providing to all other applicable parties at least ten (10) days prior notice of the changed address.

18. Extinguishment. If circumstances arise in the future such as to render the purposes of this Agreement impossible to accomplish, the conservation easement granted hereunder can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction pursuant to O.C.G.A. § 44-10-4 (c).

19. No Extinguishment Through Merger. Grantor and Grantee agree that should Grantee, or any successor in interest to Grantee, come to own all or a portion of the fee interest in the Property subject to this Agreement, (i) said owner shall observe and be bound by the obligations and restrictions imposed upon the Property by this Agreement, (ii) this Agreement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement, and (iii) said owner as promptly as possible shall assign the Grantee interest in this Agreement to another holder in conformity with the requirements of a "qualified organization" under Section 170 (h) of the Internal Revenue Code or a federal, state, or local governmental agency or other entity, and in compliance with O.C.G.A. §§ 44-10-2, 44-10-3, and 44-10-4.

20. Assignment. The conservation easement granted under this Agreement is transferable only with written consent of the Grantor, which consent shall not be unreasonably withheld. Grantee may assign its rights and obligations under this Agreement only to an organization that is a "qualified organization" at the time of transfer under Section 170 (h) of the United States Internal Revenue Code or a federal, state, or local government agency or other entity, and the applicable regulations promulgated thereunder, and also authorized to acquire, hold, and enforce conservation easements under O.C.G.A. §§ 44-10-2, 44-10-3, and 44-10-4. As a condition precedent to any such transfer, Grantee, and its successors and assigns shall require a specific written assumption of and agreement to be bound by this Agreement from each transferee hereunder, which assumption shall state the purposes that this Agreement is intended to advance shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to Grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor.

21. Time of Essence. Time is of the essence of this Agreement.

22. Business Day. For purposes of this Agreement, the term "business day" shall mean a day other than a Saturday, Sunday, or a national bank holiday.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My Commission Expires:

Notarial Seal

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My Commission Expires:

Notarial Seal

Grantor:
THE CITY OF DALTON

By: _____
Printed Name:
Printed Title:



Grantee:

By: _____
Printed Name:
Printed Title:

EXHIBIT "A"

Legal Description

All that tract or parcel of land lying and being in Land Lot Nos. 319 and 320 in the 10th District and Third Section of Whitfield County, Georgia, and in Land Lots Nos. 5 and 6 of the 9th District and Third Section of Whitfield County, Georgia and being described as follows:

BEGINNING at a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 07 degrees 57 minutes 54 seconds east a distance of 189.90 feet to an iron pin; thence south 73 degrees 15 minutes 19 seconds west a distance of 210.63 feet to an iron pin; thence south 45 degrees 45 minutes 55 seconds west a distance of 225.98 feet to an iron pin; thence south 23 degrees 45 minutes 32 seconds west a distance of 229.45 feet to an iron pin; thence south 05 degrees 51 minutes 58 seconds west a distance of 163.90 feet to an iron pin; thence south 52 degrees 53 minutes 05 seconds west a distance of 169.05 feet to an iron pin; thence south 26 degrees 58 minutes 35 seconds west a distance of 258.59 feet to an iron pin; thence south 16 degrees 47 minutes 16 seconds west a distance of 232.63 feet to an iron pin; thence north 56 degrees 30 minutes 47 seconds west a distance of 634.15 feet to an iron pin located in the southeast right of way line of River Road (80' R/W); thence running in a south westerly direction, along the southeast right of way line of River Road, the following courses and distances, to wit: south 36 degrees 17 minutes 00 seconds west, 15.69 feet; south 36 degrees 34 minutes 54 seconds west, 155.69 feet; south 35 degrees 57 minutes 54 seconds west, 109.83 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 100.62 feet (3,850' Radius), said arc being subtended by a chord with a bearing of south 35 degrees 12 minutes 58 seconds west and a chord distance of 100.62 feet; thence south 34 degrees 28 minutes 03 seconds west, along the southeast right of way line of River Road, a distance of 123.29 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 272.28 feet (1,560.0' Radius), said arc being subtended by a chord with a bearing of south 29 degrees 28 minutes 02 seconds west and a chord distance of 271.93 feet; thence south 24 degrees 28 minutes 02 seconds west, along the southeast right of way line of River Road, a distance of 88.15 feet; thence south 22 degrees 20 minutes 30 seconds west, along the southeast right of way line of River Road, a distance of 100.61 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 51.69 (460.0' Radius), said arc being subtended by a chord with a bearing of south 19 degrees 07 minutes 21 seconds west and a chord distance of 51.66 feet to an iron pin; thence south 85 degrees 39 minutes 53 seconds east a distance of 1,185.13 feet to an iron pin; thence south 14 degrees 57 minutes 57 seconds east a distance of 187.69 feet to an iron pin; thence south 13 degrees 22 minutes 33 seconds east a distance of 49.25 feet to an iron pin; thence south 52 degrees 31 minutes 10 seconds east a distance of 186.10 feet to an iron pin; thence south 03 degrees 35 minutes 42 seconds east a distance of 268.10 feet to an iron pin; thence south 14 degrees 32 minutes 23 seconds west a distance of 199.52 feet to an iron pin located in the northeast right of way line of Lower Kings Bridge Road (80' R/W); thence south 59 degrees 16 minutes 19 seconds east, along the northeast right of way line of Lower Kings Bridge Road, a distance of 276.62 feet; thence running in a southeasterly direction, the northeast right of way line of Lower Kings Bridge Road, along an arc to the right, an arc distance of 61.96 feet (740.0' Radius); said arc being subtended by chord with a bearing of south 56 degrees 52 minutes 24 seconds east and a chord distance of 61.94 feet; thence south 54 degrees 28 minutes 29 seconds east, the northeast right of way line of Lower Kings Bridge Road, a distance of 79.27 feet to an iron pin; thence north 46 degrees 48 minutes 38 seconds east a distance of 113.45 feet to an iron pin; thence south 42 degrees 35 minutes 11 seconds east a distance of 218.06 feet to an iron pin; thence south 29 degrees 23 minutes 14 seconds east a distance of 227.41 feet to a point located in the center of the Conasauga River, which point is located south 04 degrees 10 minutes 55 seconds east a distance of 3,257.75 feet from the threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320

in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly, easterly northeasterly, northerly northwesterly, northerly, and northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the north line of said Land Lot No. 319; thence running in a westerly direction, along the north line of said Land Lot No. 319, to the a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.