



**MAYOR AND COUNCIL MEETING  
MONDAY, AUGUST 6, 2018  
6:00 P.M.  
DALTON CITY HALL**

**A G E N D A**

**WORK SESSION - 5:15 P.M. - COUNCIL CHAMBER**

1. Executive Session - Real Estate
2. Discussion of Speed Cushions - Public Works Department
3. Code Enforcement Quarterly Update
4. Discussion of Unified Zoning Ordinance - Ethan Calhoun
5. Review of Agenda

**REGULAR MEETING - 6:00 P.M. - COUNCIL CHAMBER**

1. Call to Order
2. Pledge of Allegiance
3. Approval of Agenda
4. Public Commentary (Please state name for the record)
5. Proclamation: "Constitution Week" - September 17-23, 2018  
Ms. Martha Moses and Ms. Dell Bailey, D.A.R.
6. Minutes: Work Session and Regular Meeting Minutes of July 16, 2018 and  
Special Called Meeting Minutes of July 19, 2018
7. New Business:
  - A. Lease Agreement with the Georgia Department of Economic Development  
for office space at the Dalton Freight Depot
  - B. Resolution 18-04  
A Resolution To Establish A Franchise Fee Applicable To Holders Of Cable  
And Video Franchises Issued By The State Of Georgia
  - C. Financial Advisory Services Agreement with First Tryon Securities, LLC,  
d/b/a First Tryon Advisors for Tax Allocation Districts

**-Continued-**

MAYOR AND COUNCIL MEETING  
AUGUST 6, 2018  
PAGE TWO

- D. Dalton-Whitfield County Planning Commission Recommendations:
    - The request of Joshua Stein to obtain a Special Use Permit for a Water Treatment Facility in the Transitional Commercial (C-4) zone district. The tract of land totals 0.36 acres and is located at 927 S. Hamilton Street (Parcel 12-257-02-022)
    - The request of the Whitfield Count Board of Commissioners to update and amend sections of the Dalton-Whitfield-Varnell Unified Zoning Ordinance
  - E. Change Order #5 with Astra Group, Inc., for paving at Haig Mill Lake Park
  - F. Change Order #6 with Astra Group, Inc., for paving at Haig Mill Lake Park
  - G. RFP for Playground Equipment at Haig Mill Lake Park
  - H. General On-Call Engineering, Inspection, and Project Management Services Agreement with Pont Engineering, Inc
  - I. Construction Agreement with CSX Transportation, Inc. for the Gordon Street Bridge Repair Project
  - J. Construction Agreement with Norfolk Southern Railway Company for the Gordon Street Bridge Repair Project
  - K. Contract with Northwest Georgia Paving, Inc. for the 2018 LMIG Milling and Resurfacing Project (PW-2018-LMIG) - Various City Streets
8. Supplemental Business
9. Adjournment



**Mayor and Council Agenda Request**

Council Meeting Date: 08-06-18

Department: PUBLIC WORKS DEPARTMENT

Subject: DISCUSSION OF SPEED CUSHION CRITERIA FOR STREETS AT WORK SESS

Cost: \_\_\_\_\_ Already in Current Year Budget? Yes \_\_\_ No \_\_\_

Provide Funding Source if Not in Budget: \_\_\_\_\_

Reviewed/Approved By City Attorney? \_\_\_\_\_

**Please provide a summary of your request, including background to explain the request**

REQUEST OF PUBLIC WORKS COMMITTEE FOR MAYOR AND COUNCIL TO DISCUSS AND REVIEW THE PROPOSED SPEED CUSHION CRITERIA FOR STREETS SINCE THE PROGRAM WILL INVOLVE FUTURE FUNDING WITHIN THE UPCOMING 2019 BUDGET.

Requested By:

BENNY DUNN, PUBLIC WORKS DIRECTOR

City Administrator Recommendation

City Clerk Notations

Motion/Second

Approved

Date

## **PUBLIC WORKS DEPARTMENT**

### **CRITERIA FOR INSTALLATION OF SPEED CUSHIONS ON STREETS**

- 1.** Street **MUST** be classified as “Residential” (Determined by adjacent properties’ zoning classifications)
- 2.** Have an Annual Average Daily Traffic (AADT) of 1000 vehicles/day or higher (Note: With approval of Public Works Committee streets with less AADT can be considered, if safety issues present)
- 3.** Must be a “pass-thru” or connector street **WITHOUT** sidewalks (Cul-de-sac and “No Outlet” streets Do Not Qualify)
- 4.** Have the 85 Percentile speed exceeding 5 or more miles/hour above the Posted Speed Limit
- 5.** Requesting resident(s) must secure the signatures of seventy-five percent (75%) of homeowners or residents that live on the affected street
- 6.** Police Department must sign off stating that Speed Enforcement on the street is not practical
- 7.** Any street considered must not be within two (2) years of being in need of resurfacing (as determined by Public Works staff)
- 8.** Final approval and funding for each speed cushion location will be approved by the Public Works Committee. Annual funding for this Program will be part of the yearly budgeting process

**Note:** Criteria for installation of speed cushions on streets approved by Public Works Committee at \_\_\_\_\_ meeting.



**Mayor and Council Agenda Request**

Council Meeting Date: 08/06/2018

Department: Police Department

Subject: Code Enforcement Quarterly Update

Cost: \$0 Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: \_\_\_\_\_

Reviewed/Approved By City Attorney? \_\_\_\_\_

**Please provide a summary of your request, including background to explain the request**

We would like to have Officer Chris Cochran provide a summary of the Code Enforcement Unit activity for the second quarter of 2018.

Requested By: Assistant Chief Chris Crossen

City Administrator Recommendation

City Clerk Notations

Motion/Second

Approved

Date

DPD Code Enforcement  
2<sup>nd</sup> Quarter Report 2018



# Report summary for January, 2017 – March,2017

## New cases for the quarter

April - 49

May - 54

June - 41

TOTAL = 144

## Cases Closed by compliance

April - 42

May - 53

June - 46

TOTAL = 141

## Structures Torn Down

114 E. Walnut Ave

# CDBG hours

- April - 46
- May - 69.5
- June – 58

# Operation Gateway

Operation Gate was formed to target the main roads entering Dalton. Code Enforcement Officers selected the following roads to address regularly with the hours spent for this quarter.

1. Hamilton St – 9 hours
2. Thornton Ave – 6.5 hours
3. Walnut Ave – 10.5 hours
4. Morris St – 5 hours
5. Glenwood Ave – 8.5 hours
6. M L King Blvd – 6 hours

# Street Sweeps

1	Chattanooga Ave	3 Reports
2	Waterworks	3 Reports
3	Herbert	3 Reports
4	Periwinkle	3 Reports
5	McAfee	3 Reports
6	Dozier	2 Reports
7	Virginia	2 Reports
8	Stillwood Dr	2 Reports
9	W. Walnut Ave.	3 Reports

## Special Projects

- Created a list of “Top 10 Blights”, of those ten, three have made corrections.
- Continue to work on the old motel located on Tampico Way. We have attended several meetings on this topic. Some progress has been made.
- Complete at least two (2) street sweeps per month
- Maintain hours needed for CDBG agreement
- One structure was torn down, one other scheduled to be demolished

## Top 10 Blights

1. 2007 Tampico Way - Condemned Hotel
2. 114 E. Walnut Ave - Old carpet building – One building demolished
3. 212 N. Spencer St - Odd Fellows Building
4. 812 Jones St - Vacant Home
5. 715 E. Morris St - Austin's Car Wash
6. 334 N. Hamilton St - Old Italian Restaurant
7. 431 S. Hamilton St - ConAgra Building
8. 712 Sheridan Ave - Vacant Home (21 parties on the deed)
9. 1014 E. Walnut Ave - Vacant Car Wash at Riverbend
10. Glenwood & Morris - Manley Jail Works

\* Green indicates corrections were made.

# 112 S. Spencer St.

Before



After



# 715 E. Morris St.

Before



After



# 607 Jones St.

Before



After



# 105 Westerly Dr.

Before



After



# 1210 E. Morris

Before



After



# 103 Wildberry

Before:



After:





**Mayor and Council Agenda Request**

Council Meeting Date: 08-06-18

Department: Zoning

Subject: Discussion of draft revisions to Zoning Ordinance at Work Session

Cost: N/A Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: \_\_\_\_\_

Reviewed/Approved By City Attorney? Yes

**Please provide a summary of your request, including background to explain the request**

Discussion of draft text amendments/revisions to the Unified Zoning Ordinance.

Requested By: Ethan Calhoun

City Administrator Recommendation

**City Clerk Notations**

Motion/Second	Approved	Date

## Defining "Boutique Hotels" in the Unified Zoning Ordinance Text

2018 Proposed Text Amendments - Dalton, Whitfield, Varnell Unified Zoning Ordinance				
Amendment	Purpose	Text Section	Current Text	Revised/Amended Text
1	Create a clear description for Boutique Hotels	Article II Definitions; Page 4	None	Boutique Hotel. A small lodging facility with 30 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.

## Permitting Boutique Hotels in appropriate zone districts

2018 Proposed Text Amendments - Dalton, Whitfield, Varnell Unified Zoning Ordinance				
Amendment	Purpose	Text Section	Current Text	Revised/Amended Text
2	Allow Boutique Hotels in General Commercial and Mixed Use zone districts. Allow Boutique Hotels, via special use permit, in the Downtown and Transitional Commercial zone districts	Permitted Use Table Page 1 of 7	None	Permitted outright in C-2 and MU Permitted Via Special Use Permit in C-3 and C-4

Mixed Use review requires the applicant to submit a preliminary site plan as part of their application. There are instances where this use may be applicable within a Mixed Use district given the proper circumstances.

Special Use Permit review allows each jurisdiction the ability to review each application for a particular use as well as the opportunity to attach special, site specific, enforceable conditions as part of an approval if desired by the governing authority.

# Amending the definition of Urban Dwelling

## 2018 Proposed Text Amendments – Dalton, Whitfield, Varnell Unified Zoning Ordinance

Amendment	Purpose	Text Section	Current Text	Revised/Amended Text
3	Update the definition for Urban Dwelling in order to better implement the development pattern designed for the Downtown character are within the Joint Comprehensive Plan.	Article II Page 9	<p><b>Dwelling, Urban.</b> A dwelling unit with the following characteristics:</p> <p>(1) A dwelling unit(s) located on the ground floor in the rear of a commercial storefront;</p> <p>(2) No more than 40 percent of the gross leasable floor area of the building in which such dwelling unit(s) is located is dedicated to residential purposes;</p> <p>(3) Each dwelling unit(s) shall have a private entry door which exits to the outside or to a common interior hallway;</p> <p>(4) Shall have no doorway or window inter-connection between other urban dwellings;</p> <p>(5) Shall be located only in a single story building;</p> <p>(6) Where applicable, reference is made to Section 54-34 in the City of Dalton Code of Ordinances.</p> <p>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.</p>	<p><b>Dwelling, Urban.</b> A dwelling unit with the following characteristics:</p> <p>(1) A dwelling unit(s) <b>located within a structure that maintains a commercial storefront;</b></p> <p>(2) No more than <b>90</b> percent of the gross leasable floor area of the building in which such dwelling unit(s) is located is dedicated to residential purposes;</p> <p>(3) Each dwelling unit(s) shall have a private entry door which exits to the outside or to a common interior hallway;</p> <p>(4) Shall have no doorway or window inter-connection between other urban dwellings;</p> <p><del>(5) Shall be located only in a single-story building;</del></p> <p>(6) Where applicable, reference is made to Section 54-34 in the City of Dalton Code of Ordinances.</p> <p>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.</p>

# PROCLAMATION



## "CONSTITUTION WEEK" SEPTEMBER 17 - 23, 2018

**WHEREAS**, September 17, 2018 marks the 231<sup>st</sup> anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

**WHEREAS**, every anniversary of the Constitution provides an historic opportunity for all Americans to learn about and to reflect upon the rights and privileges of citizenship and its responsibilities; and

**WHEREAS**, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate it; and

**WHEREAS**, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 - 23 as Constitution Week.

**NOW, THEREFORE, BE IT RESOLVED**, I, Dennis Mock, Mayor of the City of Dalton, Georgia hereby proclaim the week of September 17 - 23, 2018 as

### "CONSTITUTION WEEK"

and urge all citizens to study the Constitution, and reflect on the privilege of being an American with all the rights and responsibilities which that privilege involves.

*In witness whereof I have hereunto set my hand  
and caused the seal of this city to be affixed.*

Mayor

Date

August 6, 2018

THE CITY OF DALTON  
MAYOR AND COUNCIL MINUTES  
WORK SESSION  
JULY 16, 2018

The Mayor and Council held a Work Session this evening at 6:00 p.m. in the Council Chambers of City Hall. Present were Mayor Dennis Mock, Council Members Denise Wood, Annalee Harlan, Tyree Goodlett and Gary Crews, City Administrator Jason Parker and City Attorney James Bisson and several department heads.

AGENDA

The Mayor and Council discussed the agenda items including the following:

OTIS ELEVATOR COMPANY MAINTENANCE CONTRACT - DALTON FIRE DEPARTMENT

Fire Chief Todd Pangle explained the contract renewal for elevator maintenance at the Fire Department. Pangle stated there is an increase and the addition of service calls and parts were included.

AGREEMENT BETWEEN THE CITY OF DALTON AND THE DALTON BOARD OF EDUCATION FOR THE SCHOOL RESOURCE OFFICER PROGRAM

Deputy Chief Crossen explained the annual renewal agreement for SRO that includes an additional SRO Officer. Crossen reported that the School System will pay 75% of the total cost for these officers. Additionally, he stated that when these Officers are not at the City Schools they will be completing training or on the road patrolling.

ANNEXATION REQUEST  
ORDINANCE 18-09

In reviewing the Annexation request of AKC Holdings, LLLP , Ethan Calhoun of the Northwest Georgia Regional Commission reported there were no issues found in the staff report and no one spoke in opposition at the public hearing.

DALTON-WHITFIELD PLANNING COMMISSION RECOMMENDATION

The Mayor and Council reviewed the Dalton-Whitfield Planning Commission Recommendation regarding the rezoning request of AKC Holdings, LLLP to rezone 17.66 acres . Ethan Calhoun of the Northwest Georgia Regional Commission reported that this is a new development and an extension of Ryman Farm, however Calhoun stated that he has not received a preliminary plat.

City Attorney Jim Bisson requested the Mayor and Council table action until he received a legal description of the property and a plat.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was adjourned at 6:00 p.m.

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

\_\_\_\_\_  
Dennis Mock, Mayor

Recorded  
Approved: \_\_\_\_\_  
Posted: \_\_\_\_\_

THE CITY OF DALTON  
MAYOR AND COUNCIL MINUTES  
JULY 16, 2018

The Mayor and Council held a meeting this evening at 6:00 p.m. in the Council Chambers of City Hall. Present were Mayor Dennis Mock, Council Members Denise Wood, Annalee Harlan, Tyree Goodlett and Gary Crews, City Administrator Jason Parker and City Attorney James Bisson and several department heads.

APPROVAL OF THE AGENDA

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

PLEDGE OF ALLEGIANCE

Mr. Luke Phillips led the audience in the Pledge of Allegiance.

PUBLIC COMMENTARY

There were no Public Comments.

MINUTES

The Mayor and Council reviewed Work Session and Regular Meeting Minutes of June 18, 2018. On the motion of Council member Goodlett, second Council member Woods, the minutes were approved. The vote was unanimous in favor.

PUBLIC SAFETY COMMISSION RECOMMENDATIONS

The Mayor and Council reviewed the following (3) New 2018 Alcohol Beverage Applications:

**(3) 2018 ALCOHOL APPLICATIONS**

Business Owner: Narayan Shanti, LLC  
d/b/a: Nizzie's Package Store  
Applicant: Narayan Shanti, LLC  
Business Address: 1902 Chattanooga Rd.  
Type: Package Beer, Package Wine, Package Liquor  
Disposition: New

Business Owner: Land Flow, LLC  
d/b/a: Native  
Applicant: Dustin Coker / Land Flow, LLC  
Business Address: 825 Chattanooga Ave  
Type: Pouring Beer, Pouring Wine, Pouring Liquor  
Disposition: New

Business Owner: Downtown Dalton Development Authority  
d/b/a: Downtown Dalton Development Authority  
Applicant: Kristi Watson / Downtown Dalton Development Authority  
Business Address: 305 S. Depot St.  
Type: Pouring Beer, Wine Pouring  
Disposition: New

On the motion of Council member Wood, second Council member Goodlett, the Mayor and Council accepted the Public Safety Commission's recommendation and approved the applications. The vote was unanimous in favor.

OTIS ELEVATOR COMPANY MAINTENANCE CONTRACT FOR DALTON FIRE DEPARTMENT

The Mayor and Council reviewed the OTIS Elevator Company Maintenance Contract for Dalton Fire Department. The contract includes the cost of most parts and labor for mechanical failures. The contract also covers any and all annual tests that are required by law. On the motion of Council member Wood, second Council member Harlan, the contract was approved and will begin August 1, 2018. The vote was unanimous in favor.

AGREEMENT BETWEEN THE CITY OF DALTON AND THE DALTON BOARD OF EDUCATION FOR THE SCHOOL RESOURCE OFFICER PROGRAM

On the motion of Council member Goodlett, second Council member Harlan, the Mayor and Council approved the Agreement between the City of Dalton and the Dalton Board of Education for the School Resource Officer Program which includes an additional SRO Officer. The total amount of the agreement is \$213,692.72 for the 2018-2019 calendar year. The vote was unanimous in favor.

FY-2018 BUDGET AMENDMENT #3

The Mayor and Council reviewed FY-2018 Budget Amendment #3 as follows:

General Fund

1. To purchase used vacuum truck with proceeds from sale of used equipment
2. To pay cyber security premium added to general insurance policy

Capital Acquisition Fund

1. To purchase used vacuum truck

SPLOST 2015 Pay Go Fund

1. To reflect change order approved by M&C and increase in LMIG funding for pavement markings

T-SPLOST 2007

1. For funding LED lights downtown \$275,310, Valley Dr. speed cushions \$9,000, N. Thornton Ave. sidewalk project \$10,000, pedestrian signals @ Dug Gap Rd. \$18,000, traffic signal @ Abutment and VD Parrot Pkwy \$25,000

Confiscated Asset Fund

1. Increased revenue will be used to purchase equipment items for patrol & criminal investigations divisions

On the motion of Council member Wood, second Council member Goodlett, the budget amendment was approved. The vote was unanimous in favor.

ANNEXATION REQUEST  
ORDINANCE 18-09

On the motion of Council member Harlan, second Council member Wood, Ordinance 18-09 to Annex Property Of AKC Holdings, LLLP Into The City Of Dalton, Georgia, Pursuant To Chapter 36, Title 36 Of The Official Code Of Georgia Annotated; To Provide For An Effective Date; To Provide For The Repeal Of Conflicting Ordinances; To Provide For Severability; And For Other Purposes was approved. The vote was unanimous in favor.

DALTON-WHITFIELD PLANNING COMMISSION RECOMMENDATION

The request of Kinard Development, Inc., AKC Holdings, LLLP, to rezone 17.66 acres from Estate Residential (R-1) to Low Density Single Family Residential (R-2). The parcels lie at the terminus of Martha's Bridge and Ryman Ridge Roads within the existing phases of the Ryman Farm was removed from the agenda.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was adjourned at 6:06 p.m.

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Bernadette Chattam  
City Clerk

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Dennis Mock, Mayor

Recorded  
Approved: \_\_\_\_\_  
Posted: \_\_\_\_\_

THE CITY OF DALTON  
MAYOR AND COUNCIL MINUTES  
SPECIAL CALLED  
JULY 19, 2018

The special called meeting of the Mayor and Council was held this evening at 5:15 p.m. in the Council Chambers of City Hall. Present were, Mayor Dennis Mock, Council members Annalee Harlan, Gary Crews, City Administrator Jason Parker and City Attorney James Bisson. Council members Tyree Goodlett, and Denise Wood were absent.

AGENDA

On the motion of Council member Harlan, second Council member Crews, the Mayor and Council approved the Agenda. The vote was unanimous in favor.

ORDINANCE 18-10

On the motion of Council member Harlan, second Council member Crews, the Mayor and Council approved Ordinance 18-10, To Rezone Property of AKC Holdings, LLLP from R-1 Classification to R-2 Classification. The vote was unanimous in favor.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the special called meeting was adjourned at 5:16 p.m.

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Gesse Cabrera  
Deputy City Clerk

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Dennis Mock, Mayor

Recorded

Approved: \_\_\_\_\_

Posted: \_\_\_\_\_



**Mayor and Council Agenda Request**

Council Meeting Date: 08-06-18

Department: CVB

Subject: Lease Agreement for Georgia Dept. of Economic Development

Cost: N/A Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: \_\_\_\_\_

Reviewed/Approved By City Attorney? Yes

Please provide a summary of your request, including background to explain the request

Request of Dalton-Whitfield Convention and Visitors Bureau (CVB) to lease vacant office space to the Georgia Department of Economic Development for state employee Janet Cochran at the Dalton Freight Depot.

Requested By: Brett Huske

City Administrator Recommendation

City Clerk Notations

Motion/Second	Approved	Date

## LEASE

1. **PARTIES.** This Lease (this 'Lease') is made this \_\_\_ day of \_\_\_\_\_ 2018 between THE CITY OF DALTON, GEORGIA, a Georgia municipal corporation having its mailing address of P.O. Box 1205, Dalton, Georgia 30722-1205 ("Landlord"), and THE GEORGIA DEPARTMENT OF ECONOMIC DEVELOPMENT, an executive agency of the State of Georgia, whose mailing address is 75 5<sup>th</sup> Street, N.W., Suite 1200, Atlanta, Georgia 30308 ("GDEcD" or "Tenant").
2. **LEASED PREMISES.** Landlord hereby lets and leases unto Tenant and Tenant hereby leases from Landlord the highlighted portion of Exhibit A, which represents a floorplan for the Dalton Freight Depot located at 305 S. Depot St., Dalton, Georgia (the "Premises"), which is currently occupied by the Dalton-Whitfield Convention and Visitors Bureau, Inc., (the "CVB") pursuant to a lease between Landlord and the CVB (the "CVB Lease"). The restrooms, gift shop and hallway shall constitute common areas of the Dalton Freight Depot for the joint use of the Tenant, the Landlord, the Board of Regents of the University System of Georgia and the Downtown Dalton Development Authority. Tenant shall be responsible for providing its own furniture, equipment and office supplies. CVB shall provide electricity and access to internet to Tenant at no cost to Tenant.
3. **USE.** Tenant shall use and occupy the Premises for all purposes incidental to the roles of Regional Tourism Project Manager and the Tenant and specifically to promote tourism and business development, and for any other purposes deemed necessary by Tenant.
4. **TERM & TERMINATION.** This Agreement will commence on July 1, 2018 (the "Effective Date") and remain in effect for a period of one year (the "Original Term"). This Agreement will automatically renew for additional consecutive one (1) year terms ("Renewal Term(s)") for up to a total of four renewals, unless a party provides written notice to the other Party within ninety (90) days prior to the expiration date of the current Term. "Term" will mean the Original Term or any Renewal Term. Either Party may terminate this Lease for any reason upon providing sixty (60) days' written notice pursuant to the Notice provision herein.
5. **RENT.** Tenant shall pay to Landlord an annual rental of one dollar (\$1.00) on each anniversary of the Effective Date.
6. **TENANT'S COVENANTS.** Tenant covenants and agrees that Tenant will:
  - a. Use and occupy the Premises in a careful and proper manner;
  - b. Comply with such lawful requirements of federal, state and local authorities as relate to its use and occupancy of the Premises.
  - c. Make no alterations or capital improvements to the Premises without the prior consent of the Landlord which consent shall not be unreasonably withheld.

- d. At the expiration of the lease term, surrender the Premises in as good condition and repair as the same shall be at the time possession thereof is taken by Tenant.
  - e. Upon prior reasonable notice, permit Landlord and its agents to enter the Premises for the purpose of making inspection or to determine that the Premises is in compliance with all applicable federal, state and local laws, rules and regulations, and for any other purpose deemed reasonably necessary by Landlord;
  - f. Accept the Premises and the HVAC, plumbing, and electrical systems used therein "as is".
7. **LANDLORD'S COVENANTS.** Landlord covenants that it will be responsible for the making of the repairs to the structural components of the Premises, except those repairs that result from the negligent or intentional misconduct of Tenant or its invitees which shall be the responsibility of the Tenant. Tenant shall be responsible for and shall make all other repairs to the Premises, except those repairs that result from the negligent or intentional misconduct of the Landlord which shall be the responsibility of the Landlord.
8. **QUIET AND PEACEABLE POSSESSION.** If Tenant performs the requirements hereof to be performed on its part, it shall have quiet and peaceable possession and enjoyment of the Premises during the term aforesaid.
9. **INDEMNITY AND INSURANCE.**
- a. Tenant is an agency of the State of Georgia, and as such, holds coverage and insurance protection established and maintained by the Department of Administrative Services. Such coverages include, but are not limited to, a Tort Claims Liability Policy, and an Employee Liability Policy. Tenant shall be responsible to the extent and coverage of the Georgia Tort Claims Act, O.C.G.A. §50-21-20 *et seq.*, from the time of the signing this Lease or from the effective date, whichever shall be later, for third party liability of any kind resulting from its occupancy. Tenant shall be responsible for obtaining insurance (including self-insurance) through commercial insurance or state cooperative insuring programs for its personal property and trade fixtures on the Premises.
  - b. Landlord shall, through the term of this Lease, or any extension thereof, maintain fire and extended coverage insurance on their respective property located in and about the Premises in such amounts, and with such deductibles as each shall determine. Tenant agrees that all personal property of whatever kind it may be at any time in the Premises shall be at Tenant's sole risk or at the risk of those claiming through Tenant and that Landlord shall not be liable for any damage to or loss of such personal property except if arising from or caused by the fault or negligence of Landlord.

10. **ASSIGNMENT; SUBLETTING.** Tenant may not assign this Lease without the prior written consent of the Landlord. Tenant may not sublet any part of the Premises without the prior written consent of the Landlord. Landlord hereby consents to a subletting to the Dalton Downtown Development Authority subject to the terms of this Lease.

11. **TENANT'S DEFAULT.**

a. The occurrence of any one or more of the following events shall be a default and breach of this Lease by Tenant:

(i) Tenant fails to perform or observe any material term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after written notice thereof from Landlord; provided, however, that if the term, condition, covenant, or obligation to be performed by the Tenant is of such a nature that the same cannot be cured within thirty (30) days and if Tenant commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same, then such failure shall not be a default hereunder if it is cured within sixty (60) days following Landlord's notice.

(ii) Tenant vacates, abandons or fails to occupy the Premises for a period of thirty (30) consecutive days.

(iii) A trustee or receiver is appointed to take possession of substantially all of Tenant's assets in, on or about the Premises or of Tenant's interest in this Lease; Tenant makes an assignment for the benefit of creditors; or substantially all of Tenant's assets in, on or about the Premises or Tenant's interest in this Lease are attached or levied upon under execution (and Tenant does not discharge the same within sixty (60) days thereafter).

(iv) A petition in bankruptcy, insolvency, or other reorganization or arrangement is filed by or against Tenant or any guarantor of Tenant's obligations under this Lease pursuant to any federal or state statute, and, with respect to such petition filed against it, Tenant fails to secure a stay or discharge thereof within sixty (60) days after the filing of the same.

b. Upon the occurrence of any event of default, Landlord shall have the following rights and remedies, in addition to those allowed by law, any one or more of which may be exercised without further notice to or demand upon Tenant:

(i) Landlord may re-enter the Premises and cure any default of Tenant, in which event Tenant shall reimburse Landlord as additional rent for any cost and expenses which Landlord may incur to cure such default; and Landlord shall not be liable to Tenant for any loss or damage which Tenant may sustain by reason of Landlord's action unless such loss or damage was caused by Landlord's negligence or malicious conduct.

- (ii) Landlord may terminate this Lease or Tenant's right to possession under this Lease as of the date of such default, in which event:
    - (1) Neither Tenant nor any person claiming under or through Tenant shall thereafter be entitled to possession of the Premises; and Tenant shall immediately thereafter surrender the Premises to Landlord;
    - (2) Landlord may re-enter the Premises and dispose Tenant or any other occupants of the Premises by force, summary proceedings, ejectment or otherwise, and may remove their effects, without prejudice to any other remedy which Landlord may have for possession or arrearages in rent.
- 12. **SIGNS.** Tenant shall not be permitted to maintain a sign or signs on the exterior of the Premises subject to the prior written consent of the Landlord.
- 13. **DAMAGE TO PREMISES.** If the Premises are damaged or destroyed by storm, fire, lightning, earthquake or other casualty that is not the fault of Tenant or its invitees to the extent the same are not usable to conduct the business of Tenant in the ordinary course, this Lease, and all rights and obligations arising hereunder, may at the option of Landlord or Tenant be terminated as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date. If this Lease is not terminated as set forth in the preceding sentence or if the Premises is damaged by storm, fire, lightning, earthquake or other casualty that is not the fault of Tenant or its invitees, but not to the extent the same are not usable to conduct the business of Tenant in the ordinary course, then either (a) as may be agreed by the parties, the rent shall abate for such time and in such proportion as use of the Premises has been damaged, or (b) either party may terminate the Lease as of the date of damage and rental shall be accounted for as between Landlord and Tenant as of that date., and Landlord shall have no obligation to restore the Premises to substantially the same condition as before such damage.
- 14. **LEASE CONTAINS ALL AGREEMENTS.** It is expressly understood and agreed by and between Landlord and Tenant that this Lease and the Exhibit attached hereto and forming a part hereof, set forth all of the promises, agreements, conditions and understandings between Landlord and Tenant relative to the Premises, and that there are no promises, agreements, conditions or understandings, either oral or written, between them other than as set forth herein. It is further understood and agreed that, except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.
- 15. **TIME.** Time is of the essence of this Lease in each and all of its provisions.
- 16. **CONSTRUCTION.** This is a negotiated agreement. The parties expressly waive all

applicable common law and rules of construction that any provision of the Lease should be construed against the drafter, and agree that this Lease shall be construed as a whole, according to the fair meaning of the language used.

17. **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 Lease shall not be construed to be a waiver thereof, not affect the validity of any part of this Lease 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 Lease shall be held to be a waiver of any other default and breach.
18. **NOTICES.** All notices, demands and requests required or permitted to be given under the provisions of this Lease shall be deemed duly given if sent by registered or certified United States mail, postage prepaid, addressed as follows:

If to Tenant:

Georgia Department of Economic Development  
Attention: Andrew Capezzuto  
75 5th Street N.W. Suite 1200  
Atlanta, GA. 30308  
Telephone: 404-962-4031  
Email: [acapezzuto@georgia.org](mailto:acapezzuto@georgia.org)

If to Landlord:

City of Dalton  
300 W. Waugh Street  
Dalton, GA 30720  
Telephone- 706-278-9500  
Email- [jparker@cityofdalton-ga.gov](mailto:jparker@cityofdalton-ga.gov)

**IN WITNESS WHEREOF,** Landlord and Tenant have executed this Lease the day and year first above written.

**LANDLORD:**

City of Dalton, Georgia

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

Mayor

**TENANT:**

Georgia Department of Economic  
Development

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

Lisa Love, Tourism Division Director

**ATTEST:**

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

# EXHIBIT "A"

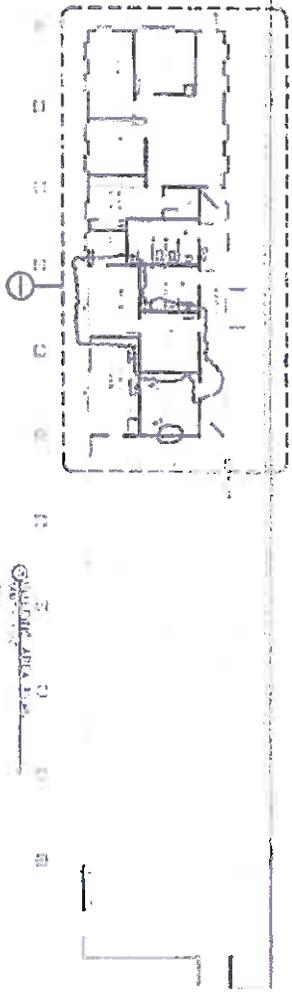
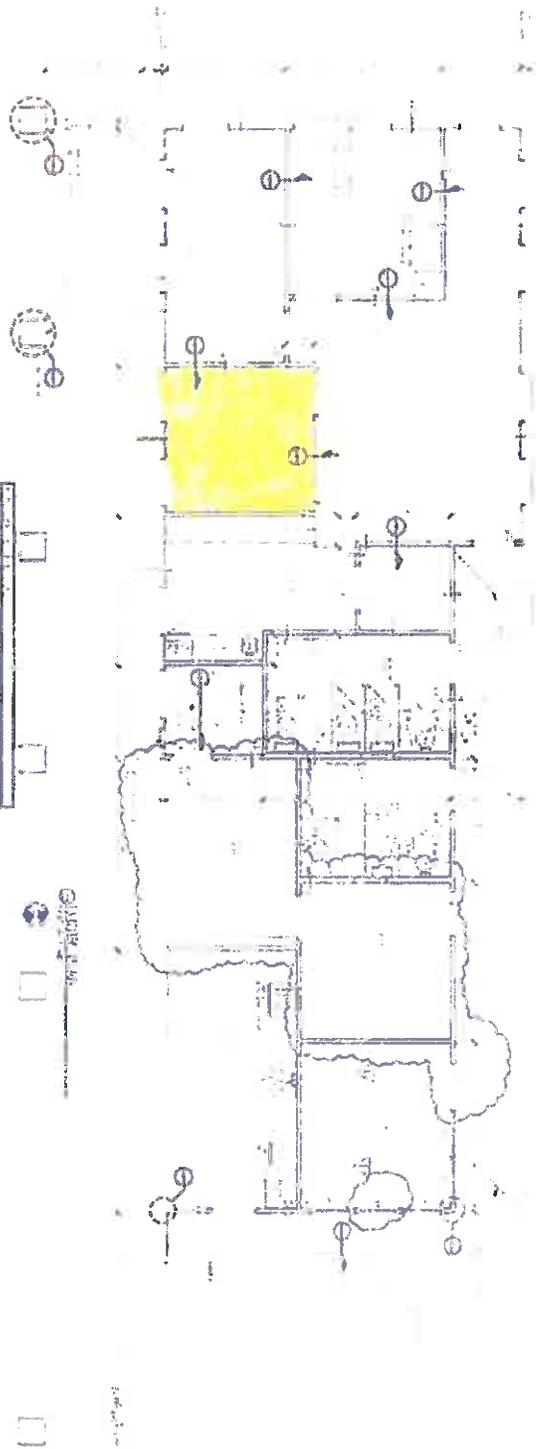
GENERAL NOTES	
1.	SEE ARCHITECTURAL DRAWINGS FOR FINISHES AND MATERIALS.
2.	ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND ALL APPLICABLE REGULATIONS.
3.	THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
4.	PROTECT ALL EXISTING UTILITIES AND STRUCTURES TO REMAIN.
5.	ALL DIMENSIONS ARE UNLESS OTHERWISE SPECIFIED.
6.	REFER TO SHEET A2.1 FOR GENERAL NOTES.

DATA	
PROJECT NO.	100-100000-0000
DATE	10/10/2010
SCALE	AS SHOWN
DRAWN BY	J. JONES
CHECKED BY	M. SMITH
DATE	10/10/2010

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	CONCRETE	100	YD	100.00	10000.00
2	STEEL	500	LB	0.50	25000.00
3	BRICK	1000	SQ YD	10.00	10000.00
4	CEMENT	200	YD	50.00	10000.00
5	AGGREGATE	300	YD	30.00	9000.00
6	PAINT	100	GA	100.00	10000.00
7	LABOR	1000	HOUR	10.00	10000.00
8	ELECTRICAL	100	UNIT	100.00	10000.00
9	MECHANICAL	100	UNIT	100.00	10000.00
10	PLUMBING	100	UNIT	100.00	10000.00
11	FINISHES	100	UNIT	100.00	10000.00
12	INSULATION	100	UNIT	100.00	10000.00
13	GLASS	100	UNIT	100.00	10000.00
14	DOORS	100	UNIT	100.00	10000.00
15	WINDOWS	100	UNIT	100.00	10000.00
16	ROOFING	100	UNIT	100.00	10000.00
17	MECHANICAL	100	UNIT	100.00	10000.00
18	ELECTRICAL	100	UNIT	100.00	10000.00
19	PLUMBING	100	UNIT	100.00	10000.00
20	FINISHES	100	UNIT	100.00	10000.00
21	INSULATION	100	UNIT	100.00	10000.00
22	GLASS	100	UNIT	100.00	10000.00
23	DOORS	100	UNIT	100.00	10000.00
24	WINDOWS	100	UNIT	100.00	10000.00
25	ROOFING	100	UNIT	100.00	10000.00

SYMBOLS - EGP-10	
1	CONCRETE
2	STEEL
3	BRICK
4	CEMENT
5	AGGREGATE
6	PAINT
7	LABOR
8	ELECTRICAL
9	MECHANICAL
10	PLUMBING
11	FINISHES
12	INSULATION
13	GLASS
14	DOORS
15	WINDOWS
16	ROOFING

ELECTRICAL SYMBOLS	
1	CONCRETE
2	STEEL
3	BRICK
4	CEMENT
5	AGGREGATE
6	PAINT
7	LABOR
8	ELECTRICAL
9	MECHANICAL
10	PLUMBING
11	FINISHES
12	INSULATION
13	GLASS
14	DOORS
15	WINDOWS
16	ROOFING



PROJECT NO.	100-100000-0000
DATE	10/10/2010
SCALE	AS SHOWN
DRAWN BY	J. JONES
CHECKED BY	M. SMITH
DATE	10/10/2010

**DALTON FREIGHT DEPOT - PHASE TWO**  
**INTERIOR BUILD-OUT**  
 405 SOUTH DEPOT STREET  
 Dalton, Georgia 30720

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL

**CARLSON-JONES**  
 ARCHITECTS  
 1000 ...  
 DALTON, GEORGIA 30720  
 TEL: ...  
 FAX: ...



**Mayor and Council Agenda Request**

Council Meeting Date: 08-06-18

Department: Finance Department

Subject: Resolution 18-04 Franchise Fees

Cost: N/A Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: \_\_\_\_\_

Reviewed/Approved By City Attorney? Yes

**Please provide a summary of your request, including background to explain the request**

A Resolution to establish a Franchise Fee applicable to holders of cable and video franchises issued by the State of Georgia.

Requested By: Cindy Jackson, Finance Director

**City Administrator Recommendation**

**City Clerk Notations**

Motion/Second	Approved	Date

**RESOLUTION 18-04**

**A RESOLUTION TO ESTABLISH A FRANCHISE FEE APPLICABLE TO HOLDERS OF CABLE AND VIDEO FRANCHISES ISSUED BY THE STATE OF GEORGIA**

**WHEREAS**, the City of Dalton considers collecting a franchise fee from a cable or video provider utilizing the public rights of way as compensation to the public for the use of the rights of way and a means of promoting the public health, safety, welfare and economic development of the City and to protect public works infrastructure; and

**WHEREAS**, the City of Dalton is authorized to collect a franchise fee of 5% of each cable or video providers gross revenues received from the provision of cable or video service generated within the City which is the maximum amount established by federal and state law.

**NOW THEREFORE BE IT RESOLVED**, that the Mayor and Council of the City of Dalton hereby requires a franchise fee of 5% of any cable or video state franchise holder's gross revenues received from the provision of cable or video service generated within the corporate boundaries of the City of Dalton, pursuant to a franchise issued by the State of Georgia pursuant to O.C.G.A. 36-76-1 et seq.

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

**CITY OF DALTON, GEORGIA**

---

Dennis Mock, Mayor



## FINANCIAL ADVISORY SERVICES AGREEMENT

This Agreement (this "**Agreement**") is made by and between City of Dalton, Georgia (the "**Client**") and First Tryon Securities, LLC, d/b/a First Tryon Advisors ("**First Tryon**"), as of the date acknowledged and accepted by the Client below (the "**Effective Date**").

In consideration of the mutual covenants contained in this Agreement, the parties hereby agree with respect to financial advisory services to be provided by First Tryon to the Client as follows:

### **SERVICES**

First Tryon, as an independent contractor and not as an employee, shall provide financial advisory services to the Client as specified from time to time in the work order or work orders in the form attached to this Agreement as Exhibit A (collectively, if more than one, the "**Work Order**"), perform all work and deliver all requisite work product (the "**Deliverables**") in connection therewith (collectively, together with the Deliverables, the "**Services**"). First Tryon agrees to perform the Services in accordance with the highest professional standards applicable to the performance of like services. As part of such Services, Client may periodically request reasonable written reports concerning First Tryon's progress, project status and other matters pertaining to the Services, and First Tryon shall promptly provide such reports to Client at no additional charge. In addition, First Tryon shall be available to meet with Client for review of all aspects of this Agreement pertaining to the performance of Services.

Client may, from time to time, request that First Tryon perform additional Services ("**Additional Services**"). If First Tryon accepts such assignments, the parties shall agree to the parameters of the Additional Services to be undertaken by executing a new or revised Work Order in the form of Exhibit A. The Additional Services shall be considered "**Services**" under this Agreement and shall be performed in accordance with, and subject to the terms and conditions of, this Agreement and the Work Order specifying the Services to be performed.

Nothing contained in this Agreement shall constitute making or appointing First Tryon an agent of the Client. First Tryon shall not (a) hold itself out contrary to the terms of this Agreement; (b) enter into any agreement on behalf of the Client or bind the Client in any way; or (c) make any representation, agreement, act or commission contrary to the terms of this Agreement.

The parties agree that Affiliates (as defined below) of First Tryon and Affiliates of Client may execute Work Orders in accordance with the provisions of this Agreement. In such event, the applicable Affiliate of such party executing any Work Order shall, for purposes of such Work Order, be considered "**First Tryon**" and the "**Client**" as those terms are used in this Agreement, insofar as it relates to any such Work Order, shall be deemed to be a two-party agreement between First Tryon or its applicable Affiliate on the one hand and Client or its applicable Affiliate on the other hand. As used in this Agreement, an "**Affiliate**" of an entity is another person or entity which controls, is controlled by or is under common control with such entity, and the term "**control**" of an entity shall mean the power to unilaterally direct the policies and management of such entity, whether through the ownership of voting securities or otherwise.

### **CLIENT MATTERS**

With respect to any matter described in this Agreement, nothing in this Agreement shall limit the Client's unqualified right, in the Client's discretion, (a) to reject in whole or in part any advice, suggestion, counsel or proposal made by First Tryon; or (b) to make any decision the Client deems to be in the best interests of the Client.

The Client represents that (a) has taken all necessary action to authorize the Client's execution, delivery and performance of this Agreement and (b) has obtained all consents, approvals and authorizations of any governmental or regulatory authority necessary for the Client's execution and delivery of this Agreement and the performance of its obligations under this Agreement.

### **TERM**

This Agreement shall commence on the Effective Date and thereafter shall remain in effect unless terminated in accordance with the provisions under the "**TERMINATION**" heading below. First Tryon shall render Services to Client for the period (the "**Term**") set forth in the applicable Work Order.

### **PERSONNEL**

First Tryon's Services under this Agreement shall be rendered solely by (a) its individual employees or (b) individuals or entities that are not employees of First Tryon that have been engaged by First Tryon to perform Services under this Agreement on First Tryon's behalf (collectively, the "**Third Parties**"), in each case as specified in the Work Order (collectively, the "**Personnel**"). First Tryon represents all such Personnel are qualified to perform the Services and have been assigned by First Tryon to work with the Client pursuant to this Agreement. First Tryon certifies that after hiring an employee to work in the United States, First Tryon shall verify the work authorization of the employee through E-Verify (or any replacement procedure).

### **FEES**

Upon the performance by First Tryon of all of its obligations under this Agreement and in an applicable Work Order, and as full compensation for Services performed by First Tryon to Client, Client agrees to pay to First Tryon, and First Tryon agrees to accept, a fee for Services as rendered on the basis set forth in the Work Order. In no event shall Client be obligated to pay any fees accrued in excess of the estimated cost set forth in the Work Order, or accrued in respect of services not described in the Work Order, without the written consent of Client.

In establishing fees, First Tryon takes into account multiple factors, including the efficiency with which the work was done, the result achieved, the complexity of the matter and any special experience or expertise applied to it, any extraordinary scheduling or preemptive attention devoted to the project, and the degree of professional responsibility or liability undertaken by the firm.

Unless specifically provided otherwise in the applicable Work Order, First Tryon shall invoice Client upon completion of the Services performed under the applicable Work Order. Invoices will be paid within 30 days of Client's receipt and acceptance of a proper invoice in accordance with the applicable Work Order.

If First Tryon is requested by the Client or required by subpoena or similar legal process to produce First Tryon's materials or Personnel with respect to Services for the Client, provided that First Tryon is not a party to the proceeding, then the Client will reimburse First Tryon for its professional time and reasonable out-of-pocket expenses, including the reasonable fees and out-of-pocket expenses of First Tryon's outside counsel incurred as a result of such request.

### **TERMINATION**

Client shall have the right to terminate any or all of the Services, any or all Work Orders or this Agreement without cause and in its sole discretion upon 30 days' prior written notice to First Tryon.

In the event of any termination of any Services, Work Order or this Agreement as set forth above, the Client shall pay First Tryon only for those Services performed, and reimbursable expenses incurred, before the effective date of termination; provided, however, that the Client shall have no liability for any further charges in respect of Services performed or expenses incurred after such termination date. Upon termination of this Agreement, First Tryon and the Client shall be relieved of any further obligations under this Agreement.

### **MISCELLANEOUS**

The provisions of this Agreement constitute the entire agreement of the parties as to the matters addressed in this Agreement and supersede any prior understanding not specifically incorporated in this Agreement. No changes to this Agreement or waiver of any of the terms of this Agreement shall be made except in writing signed by the Client and First Tryon. In addition, no Work Order applicable to this Agreement shall be binding on the Client unless executed by the Client and First Tryon. In the event of any inconsistency between a Work Order and the terms set forth in this Agreement, the terms of the applicable Work Order shall prevail.

### **GOVERNING LAW**

This agreement shall be governed by and construed in accordance with the laws of the State of Georgia applicable to agreements made and to be fully performed therein.

### **NOTICES**

All notices, requests, demands or other communications in connection with this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person, by a nationally recognized overnight courier service or by United States mail, postage prepaid, certified or registered, with return receipt requested, or otherwise actually delivered:

If to First Tryon, at:

First Tryon Securities, LLC dba First Tryon Advisors  
1355 Greenwood Cliff, Suite 400  
Charlotte, NC 28204

If to the Client at:

City of Dalton  
300 West Waugh Street  
Dalton, GA 30720

### **LIMITATION ON LIABILITY**

NEITHER PARTY, ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS SHALL BE LIABLE FOR ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, NEGLIGENCE OR TORT, IN EXCESS OF THE TOTAL FEES AND CHARGES PAID BY THE CLIENT FOR SERVICES RENDERED DURING THE TERM.

### **HEADINGS**

The paragraph headings in this Agreement are solely for convenience of reference and shall not affect the interpretation of this Agreement.

### **ASSIGNMENT**

Each provision of this Agreement and all Work Orders shall inure to, and shall be legally binding on, the successors and assigns of the parties to this Agreement.

### **COMPLIANCE WITH LAW**

First Tryon will comply with all statutes, ordinances, and regulations of all federal, state, county and municipal or local governments, and of any and all the departments and bureaus thereof, applicable to the carrying on of its business and performance of the Services and its obligations under this Agreement.

### **SEVERABILITY**

If any term of this Agreement shall be held invalid, illegal or unenforceable in whole or in part, then neither the validity of the remaining part of such term nor the validity of any other term of this Agreement shall be in any way affected.

### **MUNICIPAL ADVISORY CLIENT EDUCATION AND PROTECTION**

First Tryon is registered with the U.S. Securities and Exchange Commission ("SEC") and the Municipal Securities Rulemaking Board ("MSRB"). The MSRB provides certain protections for municipal entities and obligated persons that are clients of a municipal advisor. For complete regulatory and educational information, visit the MSRB's website at [www.msrb.org](http://www.msrb.org). A municipal advisory client brochure is available on the MSRB website's (currently available at <http://www.msrb.org/~media/Files/Resources/MSRB-MA-Clients-Brochure.ashx>). The client brochure describes client protections that may be provided under MSRB rules, including how to file a complaint with an appropriate regulatory authority.

### **MUNICIPAL ADVISOR REGULATORY DUTIES**

MSRB Rule G-42 requires that municipal advisors provide disclosures of material conflicts of interest and of information regarding certain legal events and disciplinary history. Such disclosures are provided in First Tryon's Municipal Advisor's Disclosure Statement, which First Tryon has delivered to the Client in connection with the execution and delivery of this Agreement.

**IN WITNESS WHEREOF**, the Client and First Tryon have duly executed this Agreement, and the Client has acknowledged and accepted the terms of this Agreement, as of the 30 day of July, 2018.

**CITY OF DALTON, GEORGIA**

By:   
Name: Cindy Jackson  
Title: CFO

**FIRST TRYON SECURITIES, LLC,  
D/B/A FIRST TRYON ADVISORS**

By:   
Name: Tom Woodward  
Title: Director

By:   
Name: J. Walter Goldsmith  
Title: Managing Director

**EXHIBIT A**  
**WORK ORDER NUMBER \_\_\_**

**WORK ORDER** to the Agreement dated \_\_\_\_\_, by and between Dalton, Georgia (the "Client") and First Tryon Securities, LLC, d/b/a First Tryon Advisors ("First Tryon"). *[Add reference to any Affiliate, if applicable.]*

**SERVICES**

First Tryon will provide the following Services under this Work Order:

*[Describe in detail, including all applicable roles and responsibilities]*

**TERM**

From \_\_\_\_\_ until \_\_\_\_\_, unless terminated earlier in accordance with the Agreement.

**COMPENSATION**

In establishing fees, First Tryon takes into account multiple factors, including the efficiency with which the work was done, the result achieved, the complexity of the matter and any special experience or expertise applied to it, any extraordinary scheduling or preemptive attention devoted to the project, and the degree of professional responsibility or liability undertaken by the firm.

For services to be performed in connection with this Work Order, First Tryon's estimated fees are \$\_\_\_\_\_. Such fees may vary if (1) the contemplated financing structure or assignment changes materially during the course of the Term or (2) unusual or unforeseen circumstances arise which require a significant increase in the type or scope of First Tryon's responsibilities. First Tryon will consult with the Client if at any time First Tryon believes that circumstances require an adjustment to its fees beyond the estimate set forth above.

In addition to the compensation outlined above, the Client will reimburse First Tryon for out-of-pocket expenses incurred in connection with the Services. Customary out-of-pocket expenses include, without limitation, costs of travel, meals, lodging, printing/copying, etc. First Tryon will bill the Client for such expenses at cost, with no mark-up.

*[Revise compensation section as agreed upon for each Work Order.]*

AGREED AND ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_:

**FIRST TRYON SECURITIES, LLC,  
D/B/A FIRST TRYON ADVISORS**

By: No signature required on exhibit  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DALTON, GEORGIA**

By: No signature required on exhibit  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WORK ORDER NUMBER 1**

**WORK ORDER** to the Agreement dated July 26, 2018 by and between City of Dalton, Georgia (the "**Client**") and First Tryon Securities, LLC, d/b/a First Tryon Advisors ("**First Tryon**").

**SERVICES**

In connection with the Client's tax allocation districts, First Tryon will provide the following services:

- Review upcoming development requests for the Client's existing tax allocation districts; and
- Review existing tax allocation policies and procedures to ensure the proposed development fits within the scope of the Client's policies and procedures.

**TERM**

Until the closing of the debt issuance related to recreation center and gymnasium, unless terminated earlier in accordance with the Agreement.

**COMPENSATION**

In establishing fees, First Tryon takes into account multiple factors, including the efficiency with which the work was done, the result achieved, the complexity of the matter and any special experience or expertise applied to it, any extraordinary scheduling or preemptive attention devoted to the project, and the degree of professional responsibility or liability undertaken by the firm.

For services to be performed in connection with this Work Order, First Tryon proposes a fee of \$1,000.

Such fees may vary if (1) the contemplated financing structure or assignment changes materially during the course of the Term or (2) unusual or unforeseen circumstances arise which require a significant increase in the type or scope of First Tryon's responsibilities. First Tryon will consult with the Client if at any time First Tryon believes that circumstances require an adjustment to its fees beyond the estimate set forth above.

In addition to the compensation outlined above, the Client will reimburse First Tryon for out-of-pocket expenses incurred in connection with the Services. Customary out-of-pocket expenses include, without limitation, costs of travel, meals, lodging, printing/copying, etc. First Tryon will bill the Client for such expenses at cost, with no mark-up.

**[Signatures begin on following page]**

AGREED AND ACCEPTED this 30 day of July, 2018.

**CITY OF DALTON, GEORGIA**

By:   
Name: Cindy Jackson  
Title: CFO

**FIRST TRYON SECURITIES, LLC,  
D/B/A FIRST TRYON ADVISORS**

By:   
Name: Tom Woodward  
Title: Director

By:   
Name: J. Walter Goldsmith  
Title: Managing Director



**Mayor and Council Agenda Request**

Council Meeting Date: 08/06/2018

Department: Zoning

Subject: Stein Special Use Permit for Water Treatment Facility in C-4 zone district

Cost: N/A Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: N/A

Reviewed/Approved By City Attorney? \_\_\_\_\_

Please provide a summary of your request, including background to explain the request

Refer to the attached staff analysis and Planning Commission Recommendation

Requested By: Ethan Calhoun

City Administrator Recommendation

**City Clerk Notations**

Motion/Second	Approved	Date

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

**MEMORANDUM**

**TO:** City of Dalton Mayor and Council  
Kim Witherow  
Jason Parker  
Jim Bisson  
Jean Price-Garland

**FROM:** Jim Lidderdale  
Chairman

**DATE:** July 26, 2018

**SUBJECT: The request of Joshua Stein to obtain a special use permit for a Water Treatment Facility in the Transitional Commercial (C-4) zone district. The tract of land totals 0.36 acres and is located at 927 S. Hamilton Street (Parcel 12-257-02-022) (City)**

The most recent meeting of the Dalton-Whitfield County Planning Commission was held on July 23, 2018 at 6:00 p.m. at the Whitfield County Administrative Building #2, 214 West King Street. A portion of the agenda included a public hearing concerning the above matter. A quorum of six members of the Planning Commission was present. All legal requirements for advertising and posting the public hearing were met.

The petition was represented by Joshua Stein, the property owner and petitioner.

**Public Hearing Summary:**

Mr. Calhoun oriented the audience to the subject property and summarized the staff analysis which was in favor of granting the requested special use permit for a Water Treatment Facility on the subject property.

Joshua Stein stated that the proposed use of the property would be the treatment of water in order to can and sell as an alternative more easily recyclable option to bottled water. Chairman Lidderdale asked if they would be filling large jugs of water for office coolers to which Mr. Stein stated they would only be canning water for distribution. Ms. Mathis asked Mr. Stein if they had any existing business in Chattanooga and Mr. Stein stated that the subject property in Dalton would be their first location for the proposed use.

With no other comments heard for or against this public hearing closed 6:30p.m.

**Recommendation:**

Chairman Lidderdale sought a motion on the requested special use permit for the water treatment facility. Ms. Mathis made a motion to recommend the special use permit for the water treatment facility based on her agreement with the content of the staff analysis. Mr. Minor seconded the motion and a unanimous recommendation followed, 5-0.

## **SPECIAL USE ANALYSIS**

**SPECIAL USE CASE:** *Joshua Stein is seeking a special use permit to operate a Water Treatment Facility inside an existing warehouse structure within the C-4 Transitional Commercial zone district. The city of Dalton has jurisdiction in this matter.*

*The site contains .36 acres and is located at 927 S. Hamilton Street. The site has a mixed history of various uses. The existing commercial structure totals approximately 4,000 square feet and was constructed in 1992 according to the Whitfield County Tax assessor's data.*

*The uses and zoning of adjacent properties surrounding the subject tract follow: 1) to the north is a tract approximately half the size of the subject property that contains a single family dwelling zoned C-4; 2) to the east, is a tract of approximately equal size to the subject property containing a light industrial structure zoned C-4; 3) to the south, across Elk St. is a 13 acre tract that contains a manufacturing structure zoned M-2; and 4) to the west, across S. Hamilton Street are two adjacent tracts both containing large commercial structures zoned M-2 and C-4 ; The surrounding zoning and land use near the subject property is predominantly commercial, and industrial. (See the attached maps.)*

*The applicant proposes to utilize the open area within the sites structure to create a water treatment facility where water will be treated via distillation or reverse osmosis. The water, once treated, will be canned and packaged for local distribution. The remainder of the structure is planned to be utilized as office space for the business.*

## **CONSIDERING FACTORS FOR A SPECIAL USE ANALYSIS**

**(A) Whether the proposed use would impact upon anticipated traffic volume and/or traffic flow and/or pedestrian safety within the vicinity.**

*The application clearly shows that access will only be to Elk Street. Pedestrian amenities, like sidewalks, do not exist along this portion of S. Hamilton Street in proximity to the subject property. Given the limited size of the subject property and the existing structure along with the limited staff and low to moderate-production expectation for the proposed use, there is no expectation that this use would create congestion or other traffic issues in this vicinity given the existing commercial and manufacturing character of this area.*

**(B) Whether the hours and manner of operation of the proposed use would impact upon nearby properties and uses within the vicinity.**

*The application say that the hours of operation are intended for Monday through Saturday 9:00 a.m. to 5:00 p.m. All surrounding properties with the exception of the adjacent residence would be expected to have similar hours of operation.*

**(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.**

*The applicant indicates that parking will be on the south side of the subject property and loading/unloading will occur on the east side of the building using a roll-up elevated dock door. The proposed use of the property along with the limited physical size of the property would not be expected to produce any more refuse than surrounding businesses. Noise is expected to be minimal due to the low intensity of the proposed use. Smoke and odors are not typically a byproduct of this type of operation given that their purification process will likely be performed via distillation or specialized filtration.*

**(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.**

*The existing building has been on-site since the early 1990's, and is typical of many buildings in this area. Changes are currently limited to indoor construction.*

**(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.**

The application does not deem the site large enough to accommodate future growth, citing that roughly half of the subject property is undeveloped. The structure, itself, appears to have existing open storage space that previously served for office space and storage. The proposed use would require minimal staff and would not be expected to generate much client ingress or egress other than shipping and receiving. The subject property is served by sewer.

**(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.**

When considering the surrounding land uses as well as the present use of the subject property it is the staff's opinion that the proposed use would not result in depreciating economic values of surrounding properties. This use would simply allow a low-intensity use of a primarily vacant structure in an area dominated by commercial and manufacturing character.

**CONCLUSION: *The staff recommendation is that the requested special use permit can likely be approved for the "Water Treatment Facility" request based on the following:***

*(1) The structure is appropriate to the area and is could be expanded if needed*

*(2) This area was planned to be developed industrially in the comprehensive plan's*

*development map.*

*(3) The intensity of this use will be lesser than that of most existing uses in the vicinity.*

**Stein Special Use Request  
for Water Treatment Facility  
Zoning: C-4, Transitional Commercial  
City of Dalton Jurisdiction**



ZONING	
	General Commercial (C-2)
	Transitional Commercial (C-4)
	Heavy Manufacturing (M-2)

Feet  
200  




**Stein Special Use Request  
for Water Treatment Facility  
Zoning: C-4, Transitional Commercial  
City of Dalton Jurisdiction**



Feet  
200  




**Stein Special Use Request  
for Water Treatment Facility  
Zoning: C-4, Transitional Commercial  
City of Dalton Jurisdiction**



**Feet  
100**



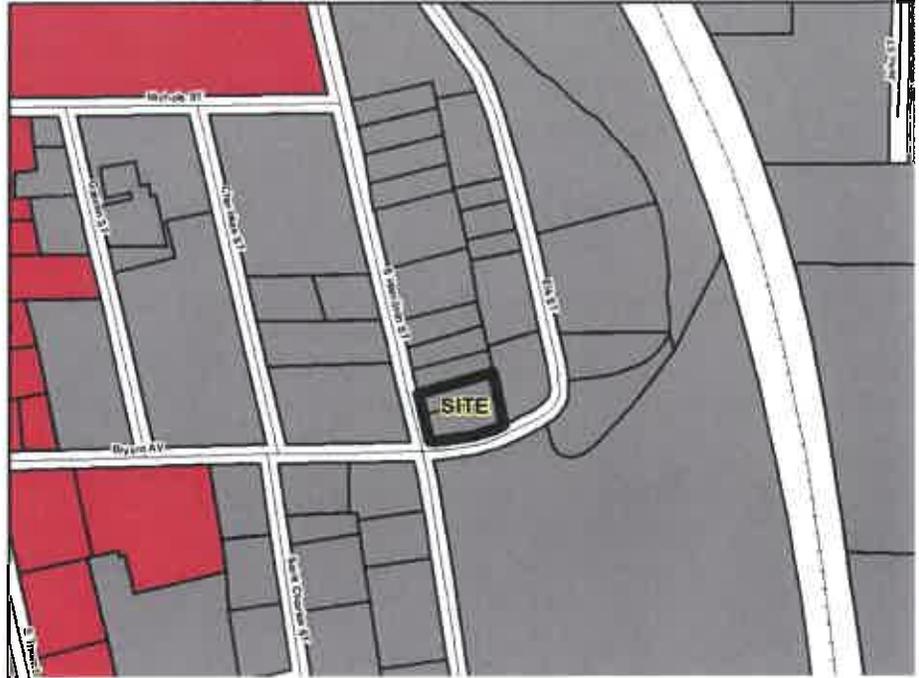
# Stein Special Use Request for Water Treatment Facility Zoning: C-4, Transitional Commercial City of Dalton Jurisdiction



## FUTURE DEVELOPMENT MAP

-  Commercial
-  Industrial

Feet  
200



12-257-02-022

FOR OFFICE USE ONLY:  
DATE RECEIVED: 6/19/2018

ACTION BY THE GOVERNING AUTHORITY:  
APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_

APPLICATION FOR SPECIAL USE

Dalton: \*  
Varnell: \_\_\_\_\_  
Whitfield Co: \_\_\_\_\_

Fee: \$200  
Make check payable to: DALTON-WHITFIELD ZONING

Application is hereby made for a Special Use, and if granted, the applicant agrees to conform to all laws, ordinances and resolutions regulating same.

Name of Applicant: Joshua Stair Telephone: 615 974 1026  
Mailing Address: 4428 Seneca Ave, Chattanooga TN 37409  
Email: josh@accu-cut.com

Address of Property for which Special Use is requested:  
927 S Hamilton Street, Dalton GA 30720

Size of Property: 0.36 acres; \_\_\_\_\_ square feet

Existing Zone Classification: C-4

Proposed Zone Classification: C-4 cond

Present Use of Property: Warehouse

Proposed Use of Property: Water treatment.

A Preliminary Site plan is required for all Special Use Requests.

Include on separate sheets a legal description of the property and a map of the property showing:

- a) Actual dimensions of property
- b) Location and type of existing structures
- c) Zone and land use of surrounding property

(Note: If the Special Use request is for a communication tower, additional information is required. See Article VI of the Unified Zoning Ordinance.)

I hereby certify that the information submitted with this application is true and correct.

Signed: 

Date: 19/06/2018

**VERIFICATION**

The undersigned is the/an owner of an interest in the lands described in the attached Application for Special Use and concurs in the application. The undersigned's interest in the lands described in the application is as follows:

(describe parcel or parcels of interest and percentage of interest)

Brookie Holdings LLC

I appoint Joshua Stein  
my attorney in fact with full authority, my name, place, and stead, to apply for the Special Use request set forth in the attached application.

Owner

V.P.  
JB

Trevor Brookie  
Trevor Brookie

Sworn to and subscribed  
before me, this 19<sup>th</sup> day  
of June, 2018

Sonya M. Bridges  
Notary Public

(SEAL)



SONYA M. BRIDGES  
MY COMMISSION # FF 126178  
EXPIRES: September 20, 2018  
Bonded Third Edge Notary Services

1  
**DISCLOSURE REPORT OF PROPERTY/FINANCIAL INTEREST**  
2  
**BY APPLICANT**

(Required by Title 36, Chapter 67A, O.C.G.A.)

Date of Rezoning/Special Use Application: 19/06/2018

Does any member of the Planning Commission or applicable governing authority have a property interest (direct or indirect ownership, including any percentage of ownership less than total) in the subject property?

(yes or no) NO

If so, describe the nature and extent of such interest:

Does any member of the Planning Commission or applicable governing authority have a financial interest (direct ownership interests of the total assets or capital stock where such ownership interest is ten (10) percent or more) in a corporation, partnership, limited partnership, firm, enterprise, franchise, association, or trust, which has a property interest (direct or indirect ownership, including any percentage of ownership less than total) upon the subject property?

(yes or no) NO

If so, describe the nature and extent of such interest:

1

If the answer to any of the above is "Yes," then the member of the Planning Commission or applicable governing authority must immediately disclose the nature and extent of such interest, in writing, to the applicable governing authority Board or Council. A copy should be filed with this application. Such disclosures shall be a public record and available for public inspection at any time during normal working hours.

2

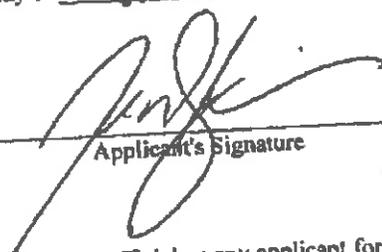
Applicant means any person who applies for a rezoning action and any attorney or other person representing or acting on behalf of the applicant for a rezoning action.

Does any member of the Planning Commission or applicable governing authority have a spouse, mother, father, brother, sister, son, or daughter who has any interest as described above?

(yes or no) NO

If so, describe the relationship and the nature and extent of such interest:

I certify that the foregoing information is true and correct to the best of my knowledge and belief, this 19th day of JUNE, 2018.

  
\_\_\_\_\_  
Applicant's Signature

*Neer Bhatia*  
*JUNE 19, 2018*

[Note: Any local government official or any applicant for rezoning action knowingly failing to make any disclosure as required by O.C.G.A. Chapter 36 - 67A shall be guilty of a misdemeanor.]

**DISCLOSURE REPORT OF CAMPAIGN CONTRIBUTIONS AND GIFTS  
BY APPLICANT\***  
(Required by Title 36, Chapter 67A, O.C.G.A.)

Date of Rezoning/Special Use Application: 19/06/2018

Has the applicant\* made, within two (2) years immediately preceding the filing date of this application, campaign contributions aggregating two hundred fifty dollars (\$250) or more or made gifts having in the aggregate a value of two hundred fifty dollars (\$250) or more to a member or members of the Planning Commission or applicable governing authority who will consider this application?

(Yes or No) NO

If so, the applicant and the attorney or other person representing the applicant must file a disclosure report with the appropriate governing authority Board or Council within ten (10) days after this application is first filed. The following information will be considered as the required disclosure:

- 1) List the name and official position of the governing authority member or Planning Commission member; 2) the dollar amount and date of each applicable campaign contribution; and 3) an enumeration and description of each gift having a value of \$250 or more.

I certify that the foregoing information is true and correct to the best of my knowledge and belief, this 19<sup>th</sup> day of June, 2018.

Applicant's Signature

*Neer Borchie*

[Note: Any local government official or any applicant for rezoning action knowingly failing to make any disclosure as required by O.C.G.A. Chapter 36 - 76A shall be guilty of a misdemeanor.] June 19, 2018

\* Applicant means any person who applies for a rezoning action and any attorney or other person representing or acting on behalf of the applicant for a rezoning action.

On a separate piece of paper, please submit answers to the following questions for the proposed Special Use at the proposed location:

- 1) Describe the anticipated impact on traffic volume or traffic patterns in the vicinity. Will there be any impacts on pedestrian safety? *No impact, everything is done onsite.*
- 2) Describe the activity that is anticipated to take place on-site and indicate the anticipated hours of operation. What will be the impact, if any, on surrounding properties and uses? *water treatment & packaging. No impact for surrounding area.*
- 3) Considering noise, light, glare, smoke, and/or odor, justify the location of the parking, loading, and/or refuse area on-site taking into consideration the impact on surrounding properties. *No impact*
- 4) Is the height, size, and/or location of any proposed structure on-site comparable to other structures and uses on nearby properties? *Yes.*
- 5) Is the proposed site large enough that the proposed use has room to grow, especially considering the requirements for sewage disposal on-site? *Yes*
- 6) If the proposed use locates here, are there more benefits to this location, compared to potential detrimental effects on nearby properties?  
*Yes there more benefit creating a more sustainable water to consume water.*



**EXHIBIT "A"**

All that tract or parcel of land lying and being in Land Lot No. 257 in the 12th District and 3rd Section of Whitfield County, Georgia, and being Lots 28 and 29, Group 1, of the lands of Crown Cotton Mills Property, and being more particularly described in a plat of survey for C. K. White by N.B. DeLoach, Georgia Registered Land Surveyor No. 1347, dated February 23, 2000, and being more particularly described according to said survey as follows:

Beginning at the northeast intersection of South Hamilton Street (60' R/W) and Elk Street (50' R/W); running thence north 14 degrees 01 minutes 00 seconds west, along the east right of way line of South Hamilton Street, a distance of 99.57 feet to an iron pin; thence running north 75 degrees 59 minutes 00 seconds east a distance of 147.69 feet to an iron pin; thence running south 13 degrees 35 minutes 00 seconds east, along the centerline of a ten foot alley, a distance of 118.09 feet; thence running south 62 degrees 06 minutes 00 seconds west, along the north right of way line of Elk Street, a distance of 30.53 feet; thence running south 88 degrees 22 minutes 30 seconds west, along the north right of way line of Elk Street, a distance of 120.00 feet to the point of beginning.

For prior title, see Deed Book 6240 Page 209, Whitfield County, Georgia Land Records.



**Mayor and Council Agenda Request**

Council Meeting Date: 08/06/2018

Department: Zoning

Subject: UZO Text Amendment

Cost: N/A Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: N/A

Reviewed/Approved By City Attorney? \_\_\_\_\_

Please provide a summary of your request, including background to explain the request

Refer to the attached staff analysis and Planning Commission Recommendation

Requested By:

City Administrator Recommendation

City Clerk Notations

Motion/Second	Approved	Date
<input type="text"/>	<input type="text"/>	<input type="text"/>

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

**MEMORANDUM**

**TO:** Whitfield County Board of Commissioners  
Mark Gibson  
Robert Smalley  
Jean Price-Garland

City of Dalton Mayor and Council  
Jason Parker  
Kim Witherow  
Jim Bisson

City of Varnell Mayor and Council  
Mike Brown

**FROM:** Jim Lidderdale  
Chairman

**DATE:** July 26, 2018

**SUBJECT: The request of the Whitfield County Board of Commissioners to update and amend sections of the Dalton-Whitfield-Varnell Unified Zoning Ordinance.**

The most recent meeting of the Dalton-Whitfield County Planning Commission was held on July 23, 2018 at 6:00 p.m. at the Whitfield County Administrative Building #2, 214 West King Street. A portion of the agenda included a public hearing concerning the above matter. A quorum of six 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, the staff planner and secretary of the Planning Commission.

**Public Hearing Summary:**

Mr. Calhoun explained the reasoning behind the proposed zoning text amendments. He pointed out that no language to distinguish between boutique hotels and hotels in general exists in the current zoning ordinance text. He stated that including the proposed definition and combined permitted zones would create reasonable opportunity for such developments to occur within or near the city's downtown area via special use permit. Chairman Laughter asked if the special use permit approach would also be required for the city of Varnell to which Mr. Calhoun affirmed.

Mr. Calhoun stated that the current text for Urban Dwelling within the zoning ordinance text was not conducive to multi-story residential developments in the downtown nor was it conducive to developments where the primary use is intended for residential use. He stated that the staff recommendation would allow for multi-story residential development in the downtown as well as give the developer more flexibility for developments aimed at primarily residential use. Mr. Calhoun then stated that this change would create more flexibility for residential development within the downtown area in order to promote such development as recommended in the comprehensive plan. Mr. Minor

asked for the reasoning behind the single story limitation to which Mr. Calhoun stated he was unsure. Some discussion occurred where Mr. Calhoun explained that the 90% residential limitation meant that there must be at least 10% of gross floor area on the ground floor devoted to commercial use. He went on to clarify that a developer could develop the entire ground level commercial if desired and still have the opportunity for loft dwellings.

**Recommendation:**

Chairman Lidderdale sought a motion on the requested zoning ordinance text amendments. Ms. Mathis then made a motion to recommend the text amendments as written based on her agreement with the content of the staff analysis and presentation. Mr. McCoy seconded the motion and a unanimous recommendation to approve followed, 5-0.

## Defining "Boutique Hotels" in the Unified Zoning Ordinance Text

2018 Proposed Text Amendments - Dalton, Whitfield, Varnell Unified Zoning Ordinance				
Amendment	Purpose	Text Section	Current Text	Revised/Amended Text
1	Create a clear description for Boutique Hotels	Article II Definitions; Page 4	None	Boutique Hotel. A small lodging facility with 30 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.

## Permitting Boutique Hotels in appropriate zone districts

2018 Proposed Text Amendments - Dalton, Whitfield, Varnell Unified Zoning Ordinance				
Amendment	Purpose	Text Section	Current Text	Revised/Amended Text
2	Allow Boutique Hotels in General Commercial and Mixed Use zone districts. Allow Boutique Hotels, via special use permit, in the Downtown and Transitional Commercial zone districts	Permitted Use Table Page 1 of 7	None	Permitted outright in C-2 and MU Permitted Via Special Use Permit in C-3 and C-4

Mixed Use review requires the applicant to submit a preliminary site plan as part of their application. There are instances where this use may be applicable within a Mixed Use district given the proper circumstances.

Special Use Permit review allows each jurisdiction the ability to review each application for a particular use as well as the opportunity to attach special, site specific, enforceable conditions as part of an approval if desired by the governing authority.

2018 Proposed Text Amendments – Dalton, Whitfield, Varnell Unified Zoning Ordinance

Amendment	Purpose	Text Section	Current Text	Revised/Amended Text
3	Update the definition for Urban Dwelling in order to better implement the development pattern designed for the Downtown character are within the Joint Comprehensive Plan.	Article II Page 9	<p><b>Dwelling, Urban.</b> A dwelling unit with the following characteristics:</p> <p>(1) A dwelling unit(s) located on the ground floor in the rear of a commercial storefront;</p> <p>(2) No more than 40 percent of the gross leasable floor area of the building in which such dwelling unit(s) is located is dedicated to residential purposes;</p> <p>(3) Each dwelling unit(s) shall have a private entry door which exits to the outside or to a common interior hallway;</p> <p>(4) Shall have no doorway or window inter-connection between other urban dwellings;</p> <p>(5) Shall be located only in a single story building;</p> <p>(6) Where applicable, reference is made to Section 54-34 in the City of Dalton Code of Ordinances.</p> <p>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.</p>	<p><b>Dwelling, Urban.</b> A dwelling unit with the following characteristics:</p> <p>(1) A dwelling unit(s) <b>located within a structure that maintains a commercial storefront;</b></p> <p>(2) No more than <b>90</b> percent of the gross leasable floor area of the building in which such dwelling unit(s) is located is dedicated to residential purposes;</p> <p>(3) Each dwelling unit(s) shall have a private entry door which exits to the outside or to a common interior hallway;</p> <p>(4) Shall have no doorway or window inter-connection between other urban dwellings;</p> <p><del>(5) Shall be located only in a single story building;</del></p> <p>(6) Where applicable, reference is made to Section 54-34 in the City of Dalton Code of Ordinances.</p> <p>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.</p>

**Amending the definition of Urban Dwelling**

**STAFF ANALYSIS**  
**TEXT AMENDMENTS FOR**  
**UNIFIED ZONING ORDINANCE**

**July 2018**

**(Referencing the attached spreadsheets for details)**

*The Unified Zoning Ordinance was adopted by Dalton, Varnell, and Whitfield County in July and August of 2015. Since that time the staff, who works to administer the Ordinance on a daily basis, identified needed corrections or clarifications, and identified oversights, all for the purpose of improving the context and readability of the zoning text.*

*The resulting text changes, as proposed, are listed in a spreadsheet (attached) that identifies the current text or current zoning, then proposes the corrected text or new zoning. The legal advertisement ran on Saturday, July 7, 2017; copies of the proposed amendments were made available to the public in the Office of the Whitfield County Board of Commissioners, and in the Clerk's Office at both the Dalton and Varnell City Halls.*

**Proposed Text Amendments:** The proposed text amendments are numbered in sequence with the affected Section or passage identified in the third column. The spreadsheet also shows you the current language of the ordinance (column 4), then provides the proposed language in the last column to the right. For the staff, the proposed amendments are considered clean-up and clarification of past ordinances in the new format of the Unified Zoning Ordinance. It remains possible that more amendments may be found and a new list will be started by the staff as we move forward with administration. Maintaining an effective ordinance is part of the process.

Just as a note, the advertisement and the availability of the proposed amendments for public review is part of the process. Simultaneously, consideration of additions all the way through the public hearing is possible. If a citizen presents a proposed change at the public hearing, then consideration of that proposal, yea or nay, is part of the process. Any such additions will be highlighted and the paperwork following the public hearing will be thorough in identifying the proposed amendments in their final form in readiness for final action by each government participating in the Unified Zoning Ordinance.

*Staff Recommendation: The proposed text amendments are recommended for adoption to modify the presentation of some regulations for making the administration of the ordinance easier, and making the document more user friendly for anyone trying to interpret the rules. The proposed amendments listed in the attached table are aimed at strategic implementation of the Downtown character area within the Whitfield County Joint Comprehensive Plan 2008-2018.*



**Mayor and Council Agenda Request**

Council Meeting Date: 08/06/2018

Department: Parks and Recreation

Subject: Paving at Haig Mill Lake Park Change Order #5

Cost: \$89,430 Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: 2015 SPLOST

Reviewed/Approved By City Attorney? \_\_\_\_\_

Please provide a summary of your request, including background to explain the request

This change order was approved at the July Finance meeting. This is a change order to complete the paving removed as Valued Engineering.

Requested By: Recreation Commission and Mike Miller, Director

City Administrator Recommendation

City Clerk Notations

Motion/Second	Approved	Date

**Autra Group Inc.**  
**High Mile Lodge Park**  
 Dalton, Georgia  
 ME - Target Program Summer Closure

**Project Title:**  
 Extended/Added By:  
 Checked By:  
 Priced By:

**PCO 85 - Paving for Remodeling Parking Lot**  
 Date: **July 1, 2010**

Item	Description			Dim		QTY	UOM	Lab. Unit Price	Equip. Unit Price	Matl. Unit Price	Sub (LS)	Labor Est	Equip. Est	Matl. Est	Sub Est	Total	
	H	L	D	UOM	UOM												
<b>ITEMS TO BE IMPROVED</b>																	
Northwest Georgia Paving Assaid Right duty asphalt on remaining portion of parking lot																	
	1	1	1	LS	1.00	ZS					\$1,031.77	50	30	50	\$0,000	\$0,000	
Blacktop Removal/Striping Resurfacing																	
	1	1	1	LS	1.00	LS					1,650.30	50	30	50	\$1,650	\$1,650	
S&J Road Graveling for playground area																	
	1	1	1	ZL	1.00	LS					2,047.00	50	30	50	\$2,047	\$2,047	
<b>TOTAL</b>													50	50	50	\$0,000	\$0,000
																<b>\$9,750</b>	



**Mayor and Council Agenda Request**

Council Meeting Date: 08/06/2018

Department: Parks and Recreation

Subject: Paving at Haig Mill Change Order #6

Cost: \$9634 Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: 2015 SPLOST

Reviewed/Approved By City Attorney? \_\_\_\_\_

Please provide a summary of your request, including background to explain the request

This change order is for the removal of unsuitable soil in the corners of the unpaved parking lot. As time went by and the rain collected in the corners of unpaved parking lot, that water undermined the the compaction and failed the test.

Requested By: Mike Miller, Director

City Administrator Recommendation

**City Clerk Notations**

Motion/Second	Approved	Date

Proj- **High Rise Lake Park**  
 Loc- **Tallah, Georgia**  
 AE- **Large Inspector Summer Classes**  
 Date: **July 15, 2011**  
 Project Title: **PCD 16 - Budget at Pricing List for Examination**  
 Estimated/Added By: **CSW**  
 Checked By: **CSW**  
 Prepared By: **CSW**

Item #	Description	Dimensions		Qty	UOM	Lab. Unit Price	Equip. Unit Price	Mark Unit Price	Sub (L.S)	Labor Est	Equip. Est	Material Est	Sub Est	Total
		H	L											
<b>Division 33 - SITE IMPROVEMENTS</b>														
	Northwest Georgia Park													
	Business Building Suite 301 Accepted During Proof Building for Additional Pricing	1	1	28	1	28	1.00	1.5	9,633.55	28	28	28	28,024	28,024
<b>TOTAL</b>										28	28	28	28,024	28,024



**Mayor and Council Agenda Request**

Council Meeting Date: 08/06/2018

Department: Parks and Recreation

Subject: Haig Mill Play Ground

Cost: \$187,952.13 Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: \_\_\_\_\_

Reviewed/Approved By City Attorney? \_\_\_\_\_

Please provide a summary of your request, including background to explain the request

This bid was part of the owner supplied items for the construction of Haig Mill Lake Park. Additional summary information is attached.

Requested By: Dalton Recreation Commission and Mike Miller, Di

City Administrator Recommendation

**City Clerk Notations**

Motion/Second	Approved	Date



## DALTON PARKS AND RECREATION DEPARTMENT



706-278-5404  
904 Civic Drive  
Dalton, GA 30720  
[www.mydprd.com](http://www.mydprd.com)

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The playground for Haig Mill Lake Park is an owner supplied item. DPRD took the playground and other park amenities out of the contract with Astra/Barge Designs so there would not be the percentage markup (\$) in the project. DPRD could then purchase other owner supplied park amenities.

To begin this process we publicized a Playground RFP for four weeks in various media outlets. DPRD called and sent bid information to past bidders and new bidders who have become corporate members of GRPA. This network helps us in purchasing the best products for a reasonable cost. Also these members are accustomed to government purchasing policies.

DPRD had 8 staff and 4 members of the public to score the playgrounds individually. The score sheet has the definition of each scoreable section at the top of the page. DPRD staff were asked not to write their name on the score sheet only the number for calculations. The sheets were tallied and an average for each playground was established. Scores were very close so the top 4 companies were asked to come in for the interview process.

In the past few years of playground purchases, DPRD has had a set limit on the amount for the purchase. Playgrounds, in most cases, have a limited budget. That is the reason DPRD gives the playground developers a total cost. This one was \$200,000. Unlike purchasing a car/truck with many different trim lines, playground companies build their own and sell their own. A Ford truck from Dalton can also be requested the same Ford truck from Calhoun and other Ford dealerships. DPRD knows within a few \$100 of what the price should be.

If DPRD ask a playground manufacture to fill up 7500 sqft area for a playground the price could be so high DPRD couldn't afford playgrounds. The markups in playgrounds are 30%-45%.

DPRD uses an RFP (Request for Proposal) in the bid process. This tool allows us to pick the best product for quality of workmanship, past experiences, playability and other aspects. DPRD can tweak the original proposal to get more bang for our buck.

During the planning period DPRD held on site visits for most of the companies interested. Also our staff went to different parks in Georgia and Tennessee to see the quality and workmanship of units already installed.

Below is a sample sent out to the top 4 bidders:

Thank you for your interest to provide a playground unit for Haig Mill Lake Park. Your company was 1 of the top 4 out of 9 companies that made it through the selection/grading process to be interviewed next week. We will have approximately 3 staff members that you will be presenting to for the interview. Then, the gathered information will go before the Recreation Commission. After recommendation from the commission, the City finance committee will have the opportunity to look over the recommended playground(s) for their approval. A few things we would like to see that may not have been in your packet:

- Actual example of a fastening hardware that is used (if possible).
- We may ask what can be added or deleted to stay in the budget listed.
- Surface material costs (if not listed in proposal) based on play area required.

You will have the opportunity to present your project/company before the questions begin. Each company will be given approximately 2 weeks, based on possible changes requested, to submit final proposal and cost for the project. Once they are received final grading and selection will be made.

Keep in mind that partial funding for this project is from a 2015 SPLOST. There will be a larger contingent looking into this project than in the past.

Thank you again and we look forward to meeting with you next week.

DPRD is at the point now to award the playground to the best manufacture for the Haig Mill Lake Park. Each of the final 4 companies make excellent products. I would like to have 4 areas to build playgrounds, one area for each company. But the choice must come down to one.

The Recreation Commission made the choice a little easier by narrowing it down to 2. Main reason was playability. Original cost was about \$200 difference. After further questioning of the "grant/discount" from Gametime the difference is \$11,617.90 we recommend Gametime to be awarded the Haig Mill bid.

**CITY OF DALTON**  
**COMPETITIVE REQUEST FOR PROPOSAL**  
 (Goods or Services with Aggregate Cost of \$20,000 and Above)

Department: Parks & Rec.  
 Date of Bid Opening : 3-May  
 Place of Bid Opening: CITY HALL  
 Time of Bid Opening: 2:05PM  
 Dates Advertised: \_\_\_\_\_

**A copy of the RFP scoring sheet or determination criteria must be attached.**

**HAIG MILL LAKE PARK PLAYGROUND**

Vendor	Bid Amount	Comments
✓ PRO-PLAYGROUNDS	\$200,000.00	
✓ MIRACLE	\$200,000.00	
✓ GAMETIME	\$200,000.00	
✓ KOMPAN	\$200,000.00	
YOUNGCREEK RECREATIONAL	\$200,000.00	
BLISS PRODUCTS AND SERVICES	\$200,000.00	
PLAYWORX	\$200,000.00	

Witnessed By: \_\_\_\_\_  
 Finance Department: *Rob Spain*  
 Department: *McNelly*  
 Date: *5/8/18*  
 Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Awarded To: *Gametime*  
 In The Amount Of: *5182,962.13*  
 Date: *8-18*



GameTime  
 c/o Dominica Recreation Products, Inc.  
 P.O. Box 520700  
 Longwood, FL 32752-0700  
 800-432-0162 \* 407-331-0101  
 Fax: 407-331-4720  
[www.playdrp.com](http://www.playdrp.com)

QUOTE  
 #83106

07/17/2018

**Haig Mill Lake Playground - Revised Option - 7-17-18**

Dalton Parks & Recreation  
 Attn: Mike Miller  
 904 Civic Drive  
 P.O. Box 661  
 Dalton, GA 30721  
 Phone: 706-463-2091  
[mmiller@cityofdalton-ga.gov](mailto:mmiller@cityofdalton-ga.gov)

Ship To Zip: 30720

Qty	Part #	Description	List \$	% Disc.	Selling \$	Ext. Selling \$
210	INSTALL	GT-Impax - Concrete Curb (In. ft.) - 4" Wide - Not Reinforced			\$28.64	\$6,014.40
1	RDU	Game Time - Ramped System with Tower (1) 564 -- Curved Balance Beam (1) 3912 -- Orange Window 20" 1S (1) 3921 -- Lave Texture Window 12" 1S (5) 6232 -- Pod (1'-0") (2) 6233 -- Pod (2'-0") (1) 16465 -- Slide Transfer (Ada) (1) 32000 -- Vessel (1-Way) (1) 32003 -- Splitter W/ Crag Climber (13) 32009 -- Hex Topper (1) 32018 -- Stego Rail (1) 32021 -- Jungle Vine Link (4) 32022 -- Hex Pod Step (1') (1) 32028 -- Rock Climber (Right Side) (1) 32029 -- Rock Climber (Right 45 Degrees) (1) 32031 -- Vessel (3-Way) (1) 32049 -- The Hive (1-Way) (1) 32102 -- Spinner (10) 80001 -- 49"Tri Punched Steel Deck (1) 80078 -- 6"Stepped Platform (1) 80194 -- Sunblox Hex Canopy (2) 80687 -- Handhold/Kick Plate Pkg (1) 80688 -- 2' Tri Transfer Platform (1) 80690 -- 6" Accessible Step (1) 81665 -- Seat And Table For Two (1) 81666 -- Fun Seat			\$173,439.00	\$173,439.00



Halg Mill Lake Playground - Revised Option - 7-17-18

QUOTE  
#83106

07/17/2018

Qty	Stock ID	Description	Last \$	% Disc.	Selling \$	Est. Selling \$
		(2) 90005 -- Two Piece Hex Deck, Ada Ramp Access				
		(1) 90023 -- 3'-0" Transfer System W/ Barrier				
		(1) 90157 -- Triple Slide				
		(1) 90163 -- 4'/5' Criss Cross Web				
		(2) 90264 -- 6' Upright, Alum				
		(4) 90265 -- 7' Upright, Alum				
		(1) 90266 -- 8' Upright, Alum				
		(2) 90269 -- 11' Upright, Alum				
		(1) 90270 -- 12' Upright, Alum				
		(1) 90271 -- 13' Upright, Alum				
		(1) 90369 -- River Rock Climber				
		(1) 90401 -- Std Funnel Bridge, 2 Dk Span Barrier				
		(1) 90425 -- Letters Maze Above Deck				
		(1) 90507 -- 2'-6"/3' Rumble & Roll Zip Slide				
		(1) 90573 -- Scramble Up (3'-6" To 5'-0")				
		(1) 90578 -- Swerve Slide				
		(1) 90633 -- Stego Climber (5'-0" & 5'-6")				
		(1) 90673 -- Ramp (Guardrail)				
		(1) 90674 -- Std Access Ramp Link 3 Dk Gr				
		(1) 91024 -- Drivers Panel Above Deck				
		(2) 91139 -- Entryway - Barrier				
		(1) 91146 -- Entryway - Guardrail				
		(1) 91208 -- Climber Entryway - Guardrail				
		(5) 91209 -- Climber Entryway - Barrier				
		(2) 91210 -- Climber Entryway - 3D				
		(1) 91291 -- 4'6" - 5'0" Whirlwind				
		(1) 91322 -- Erratic Climber 5'6"-6'6"				
		(1) 91364 -- Sensory Wave Panel w/ chimes				
		(1) 91365 -- Sensory Wave Panel w/ stained glass				
		(1) 3963RP -- 12' Spiral Slide (W/ Slide Panel)				
		(2) 3964RP -- Panel Enclosure (For 12' Tower)				



**Haig Mill Lake Playground - Revised Option - 7-17-18**

QUOTE  
#83106

07/17/2018

Qty	Stock ID	Description	List \$	% Disc.	Selling \$	Est. Selling \$
		(1) 3965RP -- 12' Curved Slide Reverse (Slide Pnl)				
		(1) 3966RP -- 4' Spiral Stairs (Reverse) (W/ Filler)				
		(1) 3967RP -- Citadel Tower W/ 3D Panels				
		(6) 4044RP -- Tower Extensions W/O Cap				
		(1) 4045RP -- Tower Extensions W/ Cap				
		(2) G90262 -- 4' Upright, Galv				
		(2) G90265 -- 7' Upright, Galv				
		(6) G90267 -- 9' Upright, Galv				
		(6) G90269 -- 11' Upright, Galv				
		(7) G90272 -- 14' Upright, Galv				
		(1) 90227 -- Lang Panel World Greeting, Above Dk				
1	GRANT	Game Time - Georgia Grant Initiative Funding - <i>Credit Terms - 90% Match on System (If payment for equipment at time of order, 100% Match)</i>			(\$78,047.55)	(\$78,047.55)
i	RDU	Game Time - Freestanding GFRC Rock Climbing Garden (1) 38225 -- Hopper Rock (1) 38226 -- Dome Boulder (1) 38228 -- Plateau Boulder (1) 38233 -- Forked Balance Beam	\$9,712.00	12.00	\$8,546.56	\$8,546.56
1	3205	Game Time - Spinning Sensory Wave Seat	\$1,062.00	24.00	\$807.12	\$807.12
1	6201	Game Time - Tilted Sky Runner (F/S)	\$3,987.00	24.00	\$3,030.12	\$3,030.12
1	38000	Game Time - The Dragonfly	\$4,766.00	24.00	\$3,622.16	\$3,622.16
1	RDU	Game Time - 8-Place Swing (2) 5128 -- Expression Swing 3 1/2" X 8' (1) 12583 -- Ada Primetime Swing Frame, 3 1/2" Od (3) 12584 -- Ada Primetime Swing Aab, 3 1/2" Od (1) SS8558 -- 3 1/2" Zero-G Chair (5-12)-Stainless (1) SS8561 -- 3 1/2" Zero-G Chair (2-5)-Stainless (4) SS8910 -- Belt Seat 3 1/2" /8' W/ Clevis	\$8,147.00	6.00	\$7,658.18	\$7,658.18



**Haig Mill Lake Playground - Revised Option - 7-17-18**

**QUOTE  
#83106**

07/17/2018

Qty	Part #	Description	List \$	% Disc.	Selling \$	Est. Selling \$
1	178749	Game Time - Owner's Kit			\$53.00	\$53.00
1	14908	Game Time - Nds 7 Principles Sign Package				
1	INSTALL	5-Star Plus - Five Star Plus Playground Installation Services - <i>Performed by a Certified Installer, includes meeting and unloading delivery truck, signed completion forms, site walkthrough, 90 day site revisit by installation foreman, and 3-Year Labor Warranty!</i>			\$42,500.00	\$42,500.00
9200	EWF-12	GT-Impax - Engineered Wood Fiber - 12" Compacted Depth - <i>per sq. ft. - ADA Compliant - IPEMA Certified - ASTM F1292 &amp; F1951 Compliant</i>	\$1.90	52.63	\$0.90	\$8,280.00
1	INSTALL	5-Star Plus - Spreading of Wood Fiber - <i>Wood Fiber will be delivered by large truck and dumped in staging area. Installer will use bob-cat or similar to move wood fiber into site, one load at time. Installer not responsible for sod or sidewalks from staging area to job site.</i>			\$3,200.00	\$3,200.00

Digout, Sitework, Site prep, Grading all by Others  
Site needs to be accessible by Large Machinery.

SubTotal: \$179,102.99  
Freight: \$8,849.14  
Total Amount: \$187,952.13

This quote was prepared by Rob Dominica, President.  
For questions or to order please call - 800-432-0162 ext. 113 [robdom@gametime.com](mailto:robdom@gametime.com)

**Payment Terms: Governmental Purchase Order.**  
Purchases in excess of \$1,000.00 to be supported by your written purchase order made out to GameTime.  
Net 30 days subject to approval by GameTime Credit Manager. A completed Credit Application and Bank Reference Authorization, must be received with the order. The decision on credit is the sole discretion of GameTime/PlayCore. A 1.5% per month finance charge will be imposed on all past due accounts.  
**Multiple Invoices:** Invoices will be generated upon services rendered. When equipment ships it will be invoiced separately from installation and/or other services. Terms are Net 30 for each individual invoice.  
This Quotation is subject to policies in the current GameTime Park and Playground Catalog and the following terms and conditions. Our quotation is based on shipment of all items at one time to a single destination, unless noted, and changes are subject to price adjustment.  
**Pricing:** Firm for 60 days from date of quotation.  
**Shipment:** F.O.B. factory, order shall ship within 45 days after GameTime's receipt and acceptance of your purchase order, color selections, approved submittals, and receipt of payment.  
**Taxes:** State and local taxes will be added at time of invoicing, if not already included, unless a tax exempt certificate is provided at the time of order entry.  
**Exclusions:** Unless specifically discussed, this quotation excludes all sitework and landscaping; removal of existing equipment; acceptance of equipment and off-loading; storage of goods prior to installation; security of equipment (on site and at night); equipment assembly and installation; safety surfacing; borders; drainage; signed/sealed drawings; or permits.



**Haig Mill Lake Playground - Revised Option - 7-17-18**

**QUOTE  
#83106**

**07/17/2018**

**Installation Terms:** Shall be by a Certified Installer. The installer is an independent installer and not part of PlayCore, GameTime, nor Dominica Recreation Products. If playground equipment, installer will be NPSI and Factory Trained and Certified. Unless otherwise noted, installation is based on a standard installation consistent with GameTime installation sheets and in suitable soil. Customer shall be responsible for scheduling and coordination with the installer. Site should be level and allow for unrestricted access of trucks and machinery. Customer shall also provide a staging and construction area. Installer not responsible for sod replacement or damage to access path and staging area. Customer shall be responsible for unknown conditions such as buried utilities, tree stumps, rock, or any concealed materials or conditions that may result in additional labor or material costs. Customer will be billed hourly or per job directly by the installer for any additional costs that were not previously included.

**Acceptance of quotation:**

Accepted By (printed): \_\_\_\_\_

P.O. No: \_\_\_\_\_

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

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

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

Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**Purchase Amount: \$187,952.13**



**Request for Proposal  
Haig Mill Lake Playground  
Dalton Parks and Recreation Department**

**SCOPE OF WORK**

Design, deliver, and install new commercial playground equipment for ages 5-12 with an outdoor theme, ADA handicap accessibility at Haig Mill Lake Park, Haig Mill Lake Road, Dalton GA 30720. The playground will overlook a 125 acre lake as the backdrop.

**PROPOSED BUDGET**

The total budget for the project is up to \$200,000. Prices MUST be line itemized out separately with: Unit cost and delivery cost, installation, and surface/bordering costs.

**METHODOLOGY FOR SELECTION**

An evaluation team consisting of Dalton Parks and Recreation Representatives will evaluate all submitted proposals and rank them. The evaluation criteria will be based on overall design, play value of playground (50 points), proposed cost (20 points), warranty (20 points), and durability (10).

**City of Dalton requirements BEFORE sending RFP**

- Copy of \$1,000,000 liability insurance certification form from your insurance company.
- All parties submitting RFP's must be on the City of Dalton Vendor list. Questions relating to this contact Mechelle Champion 706-278-9500; [mchampion@cityofdaltonga.gov](mailto:mchampion@cityofdaltonga.gov)
- EVERIFY paperwork MUST accompany RFP by due date or be turned into the City of Dalton Finance Department prior to RFP submittal. EVERIFY form available on city website: [cityofdaltonga.gov](http://cityofdaltonga.gov), Departments tab, then Finance tab, then Policies and Forms tab, then Vendor Full.

**SUBMITTAL**

Envelopes containing RFP's must be sealed, addressed to City of Dalton-Finance Department, 300 W Waugh Street, Dalton, GA 30720 and marked as follows: "Dalton Parks- Haig Mill Playground". RFP's must be received in the Finance Dept. by Thursday, May 3, 2018 at 2:00 PM. Proposals will be opened publicly in the Finance Department, 300 W Waugh Street, Dalton, GA on Thursday, May 3, 2018 at 2:05 PM. The right to reject any or all proposals or request additional information or clarification deemed necessary for evaluations reserved to the owner, City of Dalton, Dalton, Georgia

**INFORMATION**

<b>Manufacturer's Minimum Qualifications and Certification Requirements that accompany RFP</b>	<b>Yes</b>	<b>No*</b>
List all lifetime/limited warranty on all play system components, shade structures, support legs, decks, deck posts, fastening system, and fastening hardware against structural failure due to weather corrosion or defects in materials or workmanship to include all steel, aluminum plastic, and fabric.	<input type="checkbox"/>	<input type="checkbox"/>
List all post sizes and deck specs. List all coatings that will be applied to all aspects of the structure.	<input type="checkbox"/>	<input type="checkbox"/>
List border size and material border is made from.	<input type="checkbox"/>	<input type="checkbox"/>
List out options of border fill material to include hardwood mulch, poured and turf (if applicable) that meet fall height requirements for unit(s) and have accessible routes to play areas.	<input type="checkbox"/>	<input type="checkbox"/>
All playground equipment meets or exceeds all current standards and guidelines of the Consumer Product Safety Commission (CPSC), American Society for Testing and Materials (ASTM), Americans with Disabilities Acts (ADA), equipment must be certified by the Internal Playground Equipment Manufacturers Association (IPEMA) and products comply with Consumer Product Safety Improvement ACT (SPSIA- 2008)	<input type="checkbox"/>	<input type="checkbox"/>

- If NO is checked please provide reasoning

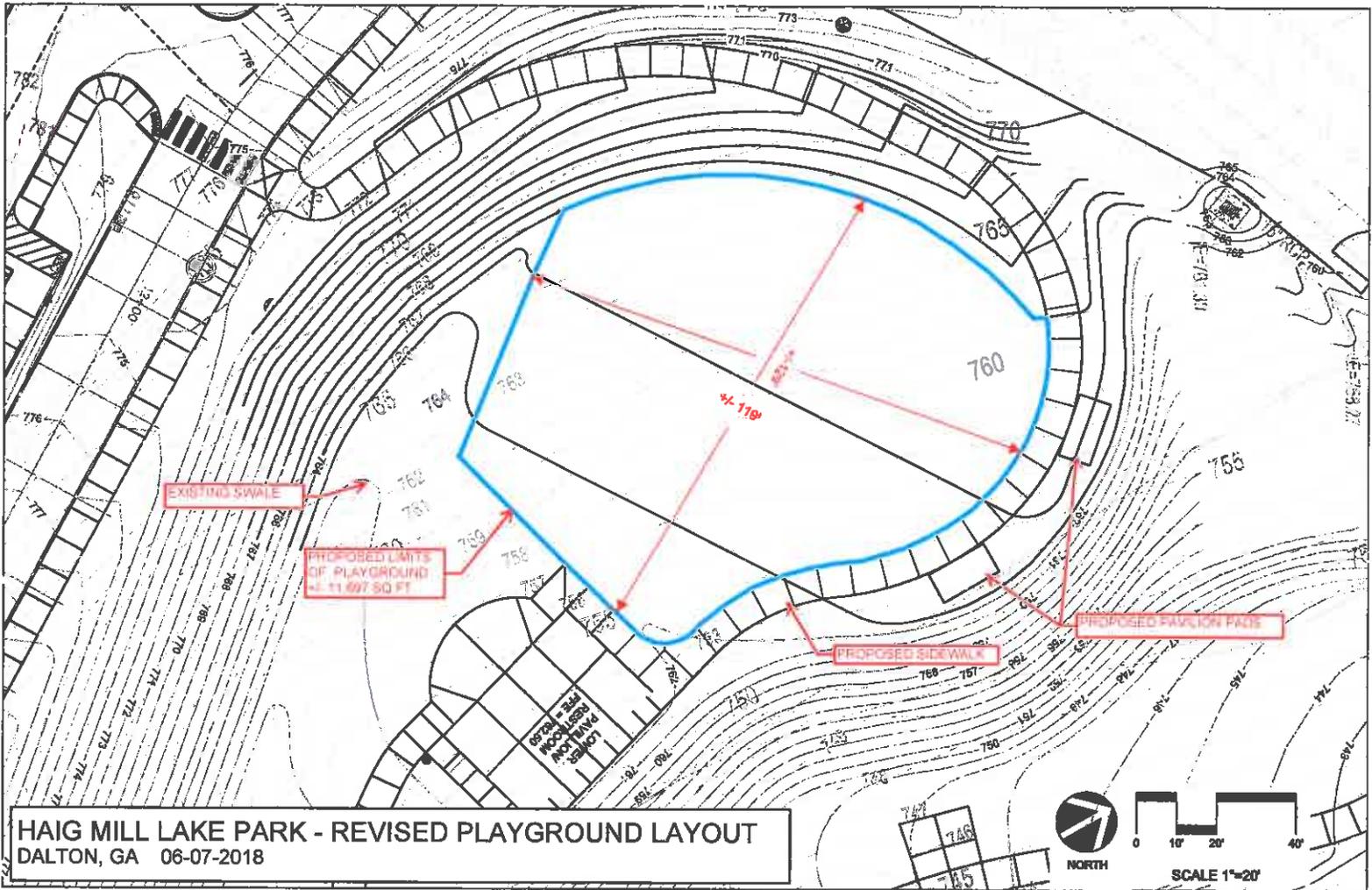
**Additional Information:**

- Project will award in June
- 2-Play areas: Upper is 2731 SF and the lower is 6950 SF
- Areas can be utilized for swing bays:
- 6 seat swing bay with at least 2 wheel chair accessible swings; 2-4 "tot" accessible swings
- 6 seat swing bay for traditional swings
- Sidewalks have been poured.
- Borders and surface need to be included as line items.
- We are looking for handicap accessibility for this project (we will host numerous special needs camps at this location). Be sure to list boarder fill materials (poured in place, turf, mulch/poured combo)
- Owner has removed existing trees.
- This area is a clean slate.
- 2-3 Concepts of the playground, within the budget, are welcomed.
- See attached map of property

### 2018 Haig Mill Lake Playground score sheet

- 20 pt. max; Warranty- are all aspects of unit warranted? Posts, decks, play features? Score accordingly.
- 10 pt. max; Durability- look at post size, deck sizes, etc. Score accordingly.
- 20 pt. max; Proposed Cost- limit is \$200,000 that they had to design the unit. Possible discounts for having it with GRPA conference. Score accordingly.
- 50 pt. max; Overall Design/Play Value- overall unit and how you think kids will enjoy it. Different types of components (slides, climbers, etc.). Unique items not seen in this area. Score Accordingly.

Company	Warranty 20 pts.	Durability 10 pts.	Proposed Cost 20 pts.	Design/Play Value- 50 pts.	Total Score Average from 9 viewers
Hasley Recreation (Miracle)	20	10	20	48	98
Playworx	20	10	20	47	97
Kompan Option 1	20	10	17	40	87
Kompan Option 2	20	10	17	40	87
Kompan Option 3	20	10	17	40	87
Dominica (Gametime)	20	10	20	46	96
YoungCreek Recreational Opt 1	20	10	20	42	92
YoungCreek Recreational Opt 2	20	10	20	41	91
PRO-PLAYGROUNDS Option 1	20	10	18	40	88
PRO-PLAYGROUNDS Option 2	20	10	18	42	90
PRO-PLAYGROUNDS Option3	20	10	18	39	87
Bliss Products Option 1	20	10	20	45	95
Bliss Products Option 2	20	10	18	40	88





**Mayor and Council Agenda Request**

Council Meeting Date: 08/06/2018

Department: Public Works

Subject: General On-Call Engineering Services Agreement with Pont Engineering, Inc.

Cost: See Exhibit B Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: 2015 SPLOST

Reviewed/Approved By City Attorney? Yes

Please provide a summary of your request, including background to explain the request

The purpose of this agreement is to have an on-call engineering consultant to assist with various infrastructure and SPLOST projects since the Public Works Department has limited engineering administrative staff. Projects types could include: bridge repair, guardrail design, sidewalk projects, roadway design, culvert analysis, ES&PC plans, structural inspections, etc.

As projects are identified, the Public Works Department would identify the scope of services for the engineering consultant, and the consultant will provide either a lump sum fee to complete such work or provide a not to exceed estimate using the hourly rates identified in Exhibit B. The Public Works Department would then be authorized to issue a Work Request Authorization (WRA) to the consultant to complete the work identified in the scope.

Pont Engineering, Inc. is small DBE firm that performed the inspection and design of the Gordon Street Bridge repair plans for the City. They are pre-qualified by GDOT in seven (7) categories where the City could use assistance on several SPLOST projects currently in queue.

Requested By: Andrew Parker, P.E. (Assistant Public Works Dir.)

City Administrator Recommendation

City Clerk Notations

Motion/Second	Approved	Date

## CONTRACT FOR PROFESSIONAL SERVICES

This CONTRACT for General On-Call Engineering, Inspection, and Project Management Services entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Dalton, Georgia, hereinafter called the OWNER, and Pont Engineering, Inc. hereinafter called the CONSULTANT;

WITNESSETH THAT:

WHEREAS, the OWNER desires to engage the CONSULTANT to provide professional services; and,

WHEREAS, the OWNER finds that the proposed Scope of Services and terms of this Contract are acceptable; and,

WHEREAS, the CONSULTANT desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth,

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Employment of CONSULTANT. The OWNER hereby engages the CONSULTANT and the CONSULTANT hereby agrees to perform the professional services hereinafter set forth.
2. Scope of Services. The CONSULTANT shall perform, in a professional manner, the services set forth in Exhibit A, Scope of Services, which attachment is incorporated herein.
3. Extra Services. The CONSULTANT shall provide extra services, not specifically called for in Exhibit A, Scope of Services, upon request or authorization of the OWNER.
4. Meetings. The CONSULTANT will be available to attend meetings to make presentations or to otherwise review the progress of the work as set out in the scope of services for individual task orders or projects, or, at the request of the OWNER, whereby compensation will be made according to the attached standard hourly rate schedule.
5. Reports. The CONSULTANT shall prepare and submit to the OWNER reports called for in the scope of services for individual Work Request Authorization (WRA's) or projects.
6. Compensation. The CONSULTANT agrees to perform the services provided for in the Scope of Services, and the OWNER agrees to compensate the CONSULTANT for such services as set forth in Exhibit B, Basis of Compensation, which attachment is incorporated herein. Compensation for extra services, special consultants, and reimbursable expenses shall also be as set forth in Exhibit B, Basis of Compensation.
7. Personnel. The CONSULTANT represents that he has, or will secure at his own expense, all personnel required to perform the services under this Contract and that such personnel will be fully qualified to perform such services.

Should the Scope of Services require the CONSULTANT to retain additional outside subcontracting services, the CONSULTANT may do so upon written authorization by the OWNER, and the OWNER shall compensate the CONSULTANT for such subconsulting services as set forth in Exhibit B, Basis of Compensation.

10 Responsibilities of the OWNER. It is agreed that the OWNER will have the following responsibilities under this Contract:

- a) The provision of all available information, data, reports, records, and maps to which the OWNER has access and which are needed by the CONSULTANT for the performance of the services provided for herein.
- b) Providing assistance and cooperation for the CONSULTANT in obtaining any other needed material which the OWNER does not have in its possession.
- c) Making available the services of the OWNER as may be necessary to obtain information as needed to perform the work program set forth in the Scope of Services.
- d) The designation of a single representative who will be authorized to make necessary decisions required on behalf of the OWNER and will serve to provide the necessary direction and coordination for the project.
- e) Bear all costs for permitting and advertising for the project(s).
- f) Provide access to all affected public and private property for CONSULTANT to perform all necessary surveying, engineering and inspections.
- g) Secure the approvals, permits, licenses and consents necessary for performance of the services. If included in the WRA's, OWNER shall assist CONSULTANT in applying for those permits and approvals normally required by law for similar projects. Assistance shall consist of completing and submitting forms to the appropriate regulatory agencies.
- h) Provide all criteria and full information as to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications.

All such OWNER responsibilities shall be conducted in a timely manner and without undue delay so as not to delay the CONSULTANT in the performance of his services.

11. Opinion of Probable Construction Costs. CONSULTANT'S opinion of probable construction costs, if rendered as a service under this Agreement, is based on assumed labor costs and approximate

quantities of material and equipment, and therefore is of a conditional character. CONSULTANT cannot guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the scope or quality of the project may affect estimates.

12. Delays Beyond the Control of the CONSULTANT. It is agreed that events which are beyond the control of the CONSULTANT may occur which may delay the performance of the Scope of Services. In the event that the performance of the Scope of Services by the CONSULTANT is delayed beyond his control, the CONSULTANT shall notify the OWNER of such delay and the reasons therefore, and the OWNER shall extend the time of performance appropriately.
13. Assignability. This Contract shall not be assigned or transferred by either the CONSULTANT or the OWNER without the prior written consent of the other. Notwithstanding the foregoing, however, the CONSULTANT shall not be prohibited from assigning to a bank, trust company, or other financial institution any claims for compensation due, or to become due, without such prior written consent.
14. Standard of Care. CONSULTANT shall perform services for client in professional manner, using that degree of care and skill ordinarily exercised by consultants practicing in the same or similar locality as the project.
15. 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.
  - Please complete the City's 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:
      - i. Bodily Injury by Accident - \$100,000 each accident
      - ii. Bodily Injury by Disease - \$500,000 policy limit
      - iii. 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:
    - Minimum \$1,000,000 per claim

16. Vendor Requirements. Prior to issuance of WRA, Consultant shall have successfully completed the City's service vendor packet located here: [https://www.cityofdaltonga.gov/vertical/sites/%7BF9696428-603E-47FF-A264-7C8BED683943%7D/uploads/VENDOR\\_PACKET - SERVICES EXHIBIT A.pdf](https://www.cityofdaltonga.gov/vertical/sites/%7BF9696428-603E-47FF-A264-7C8BED683943%7D/uploads/VENDOR_PACKET_-_SERVICES_EXHIBIT_A.pdf) and added to the City's approved vendor list.

## GENERAL CONDITIONS

1. Commencement. This AGREEMENT will take effect upon delivery of executed AGREEMENT to both parties.
2. Term of Agreement. The initial term of this AGREEMENT shall be for a period of twelve (12) months from the date of execution by all parties. Thereafter, unless either party provides at least 30 days prior written notice to the contrary, the AGREEMENT shall automatically renew for increments of one year. Either party, upon giving 30 days written notice, may terminate this AGREEMENT at any time without cause. Termination of this AGREEMENT by either party shall not impair or affect whatever rights, including payment for services performed prior to termination either party may have under this AGREEMENT.
3. Termination of Contract. The OWNER may terminate this Agreement at any time by giving notice via certified mail specifying the effective date of such termination. The CONSULTANT shall cease work immediately upon receipt of the request to terminate the Agreement and shall send an invoice for said work along with written documentation of the work completed to date. Likewise, the CONSULTANT may terminate the Agreement in like manner and shall be entitled to payment for that portion of work completion prior to the cancellation date.
4. Schedule (Timeliness of Performance). CONSULTANT agrees to complete service delivery in a timely manner consistent with the exercise of due care. CONSULTANT will exercise diligence to complete its services to the schedule established for the PROJECT, as may be consistent with the standard of care required for the services. It is understood that CONSULTANT does not have control over reviews by permitting authorities or review time taken by OWNER and therefore, CONSULTANT shall not be held accountable for delays due to OWNER or jurisdictional agency delays. It is also understood that CONSULTANT does not have control over contractor means and methods and shall not be held accountable for contractor delays. CONSULTANT is responsible for delays that may be due to CONSULTANT's negligence.
5. Site Safety: The general CONTRACTOR is responsible for overall site safety, including the safety of its own employees. CONSULTANT is not responsible for the safety program and procedures of the CONTRACTOR or of the PROJECT site. To the extent that the CONSULTANT observes and reviews CONTRACTORS work it is solely for the purpose of confirming the CONTRACTOR's conformance with the contract documents and not for the purpose of reviewing its safety procedures.
6. Adverse Conditions. Adverse field conditions which include, but are not limited to, items such as limited access, extremely dense vegetation, subsurface conditions, storm damaged property, swampy conditions, existing utilities, irate property owners, restricted hours of operation or other field conditions beyond CONSULTANT'S control may require an increase in the project schedule and fees. CONSULTANT will immediately inform the OWNER in writing when CONSULTANT encounter such conditions. OWNER and CONSULTANT will agree in writing to any changes in scope and fee before proceeding with the PROJECT.

7. Authorized Representative. CONSULTANT shall designate a person (or persons) to act as CONSULTANT's representative(s) with respect to the services to be rendered under this AGREEMENT. Such person(s) shall have authority to transmit instructions, receive information, interpret and define CONSULTANT's policies and decisions with respect to materials, equipment, elements and systems pertinent to this AGREEMENT.
8. Successors and Assigns.
- a. OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators, assigns and legal representatives of each are bound, to the other party to this AGREEMENT and to the partners, successors, executors administrators, assigns and legal representatives of such other party, in respect to all covenants, AGREEMENT's and obligations of this AGREEMENT.
  - b. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other.
  - c. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than OWNER and CONSULTANT.
9. Changed Conditions. OWNER recognizes the uncertainties related to surveying and engineering services, which often require a phased approach, with the need for additional services becoming apparent during the initial services. OWNER also recognizes that actual conditions encountered may vary significantly from those anticipated, that laws and regulations are subject to change, and that the requirements of regulatory authorities are often unpredictable. If changed or unanticipated conditions or delays make additional services necessary or result in additional costs or time for performance, CONSULTANT will notify OWNER and the parties will negotiate appropriate changes to the scope of services, compensation and schedule. If the parties are unable to reach agreement, either party has the absolute right to terminate this AGREEMENT, in accordance with the Termination provision hereof. In the event of emergency, CONSULTANT may take immediate steps to protect public health, safety and the environment, and will be equitably compensated therefore. Any opinions by CONSULTANT of probable costs of labor, materials, equipment or services to be furnished by others are strictly estimates and are not a guaranty that actual costs will be consistent with the estimates. OWNER agrees that CONSULTANT is not responsible for damages arising directly or indirectly from any delays for causes beyond CONSULTANT's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by OWNER or OWNER's contractors or consultants; or discovery of any hazardous substances or differing site conditions.
10. Confidentiality; Subpoenas. Information about this AGREEMENT and CONSULTANT's services, and information OWNER provides to CONSULTANT regarding OWNER's business and the site, will be maintained in confidence and will not be disclosed to others without your consent,

except as CONSULTANT reasonably believes is necessary (a) to perform its services, (b) to comply with professional standards to protect public health, safety and the environment, and (c) to comply with laws and court orders. CONSULTANT will make reasonable efforts to give OWNER prior notice of any disclosure under (b) or (c) above. Information available to the public and information acquired from third parties without a breach of duty will not be considered confidential. OWNER will reimburse CONSULTANT for responding to any subpoena or governmental inquiry or audit related to the services, at CONSULTANT's standard rates then in effect. OWNER agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by CONSULTANT pertaining to this AGREEMENT shall be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of CONSULTANT.

11. Indemnification. To the extent permitted by law, the OWNER shall indemnify and hold harmless CONSULTANT and all of its personnel from and against any claims, damages, loss and expenses (including attorney's fees) arising out of or resulting from the performance of the services under this AGREEMENT, provided that any such claim, damage, loss or expense is solely caused by the negligent act or omission of the OWNER, its employees or agents (except CONSULTANT).

CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER its officers, employees, and agents from and against claim, injury, liability, loss, cost and/or expense or damage, including costs and reasonable attorney's fees in providing a defense to any claim to the extent caused by CONSULTANT's negligent acts, errors or omissions with respect to the performance of the professional services by CONSULTANT its agents, subcontractors and/or assigns under this Agreement.

12. CAD and Electronic Media. CONSULTANT shall not be responsible for any alterations, modifications or additions made in the electronic data by OWNER or any reuse of the electronic data by the OWNER or any other party, for this or any other without the consent of the CONSULTANT. OWNER shall defend, indemnify, and hold harmless CONSULTANT against any claims, damages, or losses arising out of the reuse of the electronic data without consent of the CONSULTANT and arising out of alterations, modifications, or additions to the electronic data made by anyone other than CONSULTANT.

Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the CONSULTANT. Files in electronic format of text, data, graphics, or of other types that are furnished by CONSULTANT to OWNER are only for convenience. Any conclusions or information obtained or derived from such electronic files will be at the user's sole risk.

13. Certifications. The CONSULTANT shall not be required to execute certifications that would require knowledge, services or responsibilities beyond the scope of this AGREEMENT.

14. Dispute Resolutions: Any claim, dispute or other matter in question arising out of or related to this AGREEMENT shall be subject to mediation as a condition precedent to arbitration of the

institution of legal or equitable proceedings by either party. If mediation fails to resolve the dispute, the parties to this AGREEMENT then are free to pursue arbitration.

15. Controlling Law. This AGREEMENT is to be governed by the laws of the State of Georgia. The parties hereby agree and stipulate this AGREEMENT was made and entered into in Whitfield County, Georgia, which shall be appropriate venue for any action brought relating thereto.

16. Compliance with Law. CONSULTANT shall exercise the ordinary standard of care in complying with the laws, codes, and regulations applicable to the CONSULTANT's services. CONSULTANT's design, documents, and services shall apply the ordinary standard of care in complying with the federal, state, and local statutes and regulations governing the Work.

17. Severability and Reformation. Any provision or part thereof of this AGREEMENT held to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties. The parties agree that this AGREEMENT shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, the CONSULTANT and the OWNER have executed this Contract as of the date first above written and under the laws of the State of \_\_\_\_\_.

OWNER:

City of Dalton, Georgia

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

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

Witness: \_\_\_\_\_

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

CONSULTANT:

Pont Engineering, Inc.

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

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

Witness: \_\_\_\_\_

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

## EXHIBIT "A" – Scope of Services

The Scope of Services to be provided by the CONSULTANT shall be defined as being individual tasks or groups of tasks falling under one of the following general categories, herein after referred to as Work Request Authorization (WRA's). Examples of WRA's contemplated under this agreement include the following:

### General Engineering Services and On-Call Design

This task shall include, but not be limited to, on-call engineering consulting services, design of transportation/roadway infrastructure, assistance in the preparation and review of requests for bids or proposals, and other incidental consulting services as requested by the City.

### Structural Inspection and Design

This task shall include, but not be limited to, on-call engineering consulting service for the inspection, design, and analysis of bridges and other City owned structures including but not limited to: parking decks and culverts.

### Survey Services

This task will include, but is not limited to, survey services request by the City.

### Construction Project Management

This task shall include, but not be limited to activities associated with the procurement of bids, contractor selection, construction oversight, materials testing, schedule monitoring, review of applications for payment, change order processing, conflict resolution, and other work deemed necessary for the facilitation of public infrastructure projects.

Each WRA, to include a not to exceed authorized budget amount and schedule, will be issued separately under the general terms and conditions of this agreement.

EXHIBIT "B" - Basis for Compensation

Compensation for work performed under the various WRA's will be according to either (1) an agreement to a negotiated lump sum fee, prepared in advance of Notice to Proceed by the City, or (2) the rate schedule listed below. The rates below are valid for a period of one year from the execution of this agreement, and shall be open for an adjustment, mutually agreed to by the OWNER and the CONSULTANT after one year.

SCHEDULE OF RATES

Hourly Rates:

<b>Billing Category</b>	<b>Hourly Rates</b>
Principal-in-Charge / PM / Senior Engineer	\$148.50
Engineer / Inspector	\$118.50
CADD Technician	\$88.00
Clerical	\$60.50

Reimbursable and direct expenses shall be invoiced at 100% of cost (no markup).



885 Franklin Gateway Suite 305  
Marietta, Georgia 30067  
Phone: (770) 499-1161  
Fax: (770) 872-7389

**WORK REQUEST AUTHORIZATION**

**PROJECT:  
LOCATION:**

**PROJECT NUMBER:**

**TASK:  
INITIATION DATE:**

Owner hereby authorizes and directs Pont Engineering, Inc. to perform the following services:


Work Requested By: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
\_\_\_\_\_

The Fee for this Work Authorization will be: \_\_\_\_\_

Not valid until signed by the Owner and Pont Engineering, Inc. Such signatures indicate agreement herewith, including any adjustments in the Contract Sum or the Contract Time. The above fee does not include reimbursable expenses such as courier, shipping charges, blueprinting and applicable fees. You will be billed at our standard hourly rates for the actual number of hours required to complete this task or lump sum fee identified. No work shall proceed until authorized by the City.

**AUTHORIZED:**

**AGREED TO:**

**City of Dalton, GA**  
\_\_\_\_\_  
Owner/Authorized Agent

**Pont Engineering, Inc.**  
\_\_\_\_\_

By (Print): \_\_\_\_\_ Date \_\_\_\_\_

By (Print): \_\_\_\_\_ Date \_\_\_\_\_



**Mayor and Council Agenda Request**

Council Meeting Date: 08/06/2018

Department: Public Works

Subject: Construction Agreement w/ CSX Transportation, Inc. for Gordon St. Bridge Repair

Cost: \$80,300 Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: 2015 SPLOST (Bridge Maintenance SP155)

Reviewed/Approved By City Attorney? N/A

Please provide a summary of your request, including background to explain the request

To complete the repair of the Gordon Street Bridge (2015 SPLOST Project) in accordance with the plans developed by Pont Engineering, the railroads require construction agreements to be executed before work can proceed. This agreement outlines the conditions for operating the project in the right of way of CSX Transportation.

This agreement facilitates the use of railroad flaggers which are required to be utilized when work is being performed on the bridge. Additionally, should any shop drawings or engineering services be required from CSX Transportation, this agreement allows for those activities to occur.

CSX Transportation has provided a force account estimate for completion of all these tasks in the amount of \$80,300 which is due advance pay. CSX will only bill (draw down) actual charges and if there is surplus remaining at the close out of the project, CSX will issue a reimbursement.

Upon approval of this agreement, Public Works will secure a contractor to complete the work.

Requested By: Andrew Parker, P.E. (Assistant Public Works Dir.)

City Administrator Recommendation

City Clerk Notations

Motion/Second	Approved	Date

## **CONSTRUCTION AGREEMENT**

This Construction Agreement ("Agreement") is made as of \_\_\_\_\_, 20\_\_\_\_, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida ("CSXT"), and The City of Dalton, a body corporate and political subdivision of the State of Georgia ("Agency").

### **EXPLANATORY STATEMENT**

1. Agency has proposed to construct, or to cause to be constructed, Project: **Dalton, Whitfield County, GA, Gordon Street Bridge repairs, painting and polymer application of the over CSXT and NS, DOT No. 340546Y, RRMP 0WA-99.04, Atlanta Division, W&A Subdivision, (the "Project")**.
2. Agency has obtained, or will obtain, all authorizations, permits and approvals from all local, state and federal agencies (including Agency), and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project.
3. Agency acknowledges that: (i) by entering into this Agreement, CSXT will provide services and accommodations to promote public interest in this Project, without profit or other economic inducement typical of other Agency contractors; (ii) neither CSXT nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to CSXT, by or on behalf of Agency or its contractors, pursuant to this Agreement; and (iii) CSXT retains the paramount right to regulate all activities affecting its property and operations.
4. It is the purpose of this Agreement to provide for the terms and conditions upon which the Project may proceed.

NOW, THEREFORE, in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

#### **1. Project Plans and Specifications**

- 1.1 **Preparation and Approval.** Pursuant to Exhibit A of this Agreement, all plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project shall be prepared, at Agency's sole cost and expense, by Agency or CSXT or their respective contractors. Project plans, specifications and drawings prepared by or on behalf of Agency shall be subject, at CSXT's election, to the review and approval of CSXT. Such plans, specifications and drawings, as prepared or approved by CSXT, are referred to as the "Plans", and shall be incorporated and deemed a part of this Agreement. Plans prepared or submitted to and approved by CSXT as of the date of this Agreement are set forth in Exhibit B to this Agreement.
- 1.2 **Effect of CSXT Approval or Preparation of Plans.** By its review, approval or preparation of Plans pursuant to this Agreement, CSXT signifies only that such Plans and improvements

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constructed in accordance with such Plans satisfy CSXT's requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of the Plans or improvements constructed in accordance with the Plans.

1.3 Compliance with Plans. The Project shall be constructed in accordance with the Plans.

2. Allocation and Conduct of Work

Work in connection with the Project shall be allocated and conducted as follows:

2.1 CSXT Work. Subject to timely payment of Reimbursable Expenses as provided by Section 4, CSXT shall provide, or cause to be provided, the services as set forth by Exhibit A to this Agreement. Agency agrees that CSXT shall provide all services that CSXT deems necessary or appropriate (whether or not specified by Exhibit A) to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all applicable federal, state and local regulations and CSXT's contractual obligations, including, but not limited to, CSXT's existing or proposed third party agreements and collective bargaining agreements.

2.2 Agency Work. Agency shall perform, or cause to be performed, all work as set forth by Exhibit A, at Agency's sole cost and expense.

2.3 Conduct of Work. CSXT shall commence its work under this Agreement following: (i) delivery to CSXT of a notice to proceed from Agency; (ii) payment of Reimbursable Expenses (as provided by Section 4.1) as required by CSXT prior to the commencement of work by CSXT; (iii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iv) delivery of proof of insurance acceptable to CSXT, as required by Section 9. The initiation of any services by CSXT pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section. The parties intend that all work by CSXT or on CSXT property shall conclude no later than **12 months from the date of fully executed Construction Agreement**, unless the parties mutually agree to extend such date.

3. Special Provisions Agency shall observe and abide by, and shall require its contractors ("Contractors") to observe and abide by the terms, conditions and provisions set forth in Exhibit C to this Agreement (the "Special Provisions"). To the extent that Agency performs Project work itself, Agency shall be deemed a Contractor for purposes of this Agreement. Agency further agrees that, prior to the commencement of Project work by any third party Contractor, such Contractor shall execute and deliver to CSXT Schedule I to this Agreement to acknowledge Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

4. Cost of Project and Reimbursement Procedures

4.1 Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Project, including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4)

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costs for equipment, tools, materials and supplies, (5) sums paid to CSXT's consultants and subcontractors, and (6) CSXT labor in connection with the Project, together with CSXT labor overhead percentages established by CSXT pursuant to applicable law (collectively, "Reimbursable Expenses"). Reimbursable Expenses shall also include expenses incurred by CSXT prior to the date of this Agreement to the extent identified by the Estimate provided pursuant to Section 4.2.

- 4.2 Estimate. CSXT has estimated the total Reimbursable Expenses for the Project as shown on Exhibit D (the "Estimate", as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses for the Project may exceed such Estimate, it shall provide Agency with the revised Estimate of the total Reimbursable Expenses, together with a revised Payment Schedule (as defined by Section 4.3.1), for Agency's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of such revised Estimate. CSXT may elect, by delivery of notice to Agency, to immediately cease all further work on the Project, unless and until Agency provides such approval and confirmation.
- 4.3 Payment Terms.
- 4.3.1 Agency shall pay CSXT for Reimbursable Expenses in the amounts and on the dates set forth in the Payment Schedule as shown on Exhibit E (the "Payment Schedule", as revised pursuant to Section 4.2). CSXT agrees to submit invoices to Agency for such amounts and Agency shall remit payment to CSXT at the later of thirty (30) days following delivery of each such invoice to Agency or, the payment date (if any) set forth in the Payment Schedule
- 4.3.2 Following completion of the Project, CSXT shall submit to Agency a final invoice that reconciles the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency. Agency shall pay to CSXT the amount by which Reimbursable Expenses exceed total payments as shown by the final invoice, within thirty (30) days following delivery of such invoice to Agency. In the event that the payments received by CSXT from Agency exceed the Reimbursable Expenses, CSXT shall remit such excess to Agency.
- 4.3.3 In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement:  
(i) Agency shall pay CSXT interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full; and  
(ii) CSXT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.
- 4.3.4 All invoices from CSXT shall be delivered to Agency in accordance with Section 16 of this Agreement. All payments by Agency to CSXT shall be made by certified check and mailed to the following address or such other address as designated by CSXT's notice to Agency:

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CSX Transportation, Inc.  
P.O. Box 530192  
Atlanta, GA 30353-0192

- 4.4 Effect of Termination. Agency's obligation to pay to CSXT Reimbursable Expenses in accordance with Section 4 shall survive termination of this Agreement for any reason.
5. Appropriations Agency represents to CSXT that: (i) Agency has appropriated funds sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the Estimate attached as Exhibit D; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify CSXT in the event that Agency is unable to obtain such appropriations.
6. Easements and Licenses
- 6.1 Agency Obligation. Agency shall acquire all necessary licenses, permits and easements required for the Project.
- 6.2 Temporary Construction Licenses. Insofar as it has the right to do so, CSXT hereby grants Agency a nonexclusive license to access and cross CSXT's property, to the extent necessary for the construction of the Project (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by CSXT and such temporary construction easements as may be designated on the Plans approved by CSXT.
- 6.3 Permanent Easements. Insofar as it has the right to do so, CSXT shall grant, without warranty to Agency, easements for the use and maintenance of the Project wholly or partly on CSXT property as shown on the Plans approved by CSXT, if any, on terms and conditions and at a price acceptable to the parties. Upon request by CSXT, Agency shall furnish to CSXT descriptions and plat plans for the easements.
7. Permits At its sole cost and expense, Agency shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction, maintenance and use of the Project, copies of which shall be provided to CSXT.
8. Termination
- 8.1 By Agency. For any reason, Agency may, as its sole remedy, terminate this Agreement by delivery of notice to CSXT. Agency shall not be entitled to otherwise pursue claims for consequential, direct, indirect or incidental damages or lost profits as a consequence of CSXT's default or termination of this Agreement or Work on the Project by either party.
- 8.2 By CSXT. In addition to the other rights and remedies available to CSXT under this Agreement, CSXT may terminate this Agreement by delivery of notice to Agency in the event Agency or its Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by CSXT to Agency.

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- 8.3 **Consequences of Termination.** If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the Work. Accordingly, they agree that, in such instance a party may continue to perform Work until it has reached a point where it may reasonably and safely suspend the Work. Agency shall reimburse CSXT pursuant to this Agreement for the Work performed, plus all costs reasonably incurred by CSXT to discontinue the Work and protect the Work upon full suspension of the same, the cost of returning CSXT's property to its former condition, and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Work. Termination of this Agreement or Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Work for any reason, CSXT's only remaining obligation to Agency shall be to refund to Agency payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 4.
9. **Insurance** In addition to the insurance that Agency requires of its Contractor, Agency shall acquire or require its Contractor to purchase and maintain insurance in compliance with CSXT's insurance requirements attached to this Agreement as Exhibit F. Neither Agency nor Contractor shall commence work on the Project until such policy or policies have been submitted to and approved by CSXT's Risk Management Department.
10. **Ownership and Maintenance**
- 10.1 **By Agency.** Agency shall own, maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans. In the event Agency fails to do so after reasonable notice from CSXT (no more than thirty (30) days, unless an emergency condition exists or is imminent in the opinion of CSXT, that requires immediate action), CSXT may perform such maintenance and repair, at Agency's sole cost and expense. Upon the cessation of use of the Project by Agency, Agency shall remove the structure and restore CSXT's property to its original condition, at Agency's sole cost and expense, to CSXT's satisfaction.
- 10.2 **Alterations.** Agency shall not undertake any alteration, modification or expansion of the Project, without the prior approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require.
11. **Indemnification**
- 11.1 **Generally.** To the maximum extent permitted by applicable law, Agency and its Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of CSXT, its affiliates, Agency or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of CSXT, its affiliates, Agency or its Contractors, and environmental damages and any related remediation brought or recovered against CSXT and its affiliates), arising directly or indirectly

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from the negligence, recklessness or intentional wrongful misconduct of the Contractors, Agency, and their respective agents, employees, invitees, contractors, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about CSXT's property. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.

- 11.2 Compliance with Laws. Agency shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Agency's Contractors shall indemnify, defend, and hold CSXT and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.
- 11.3 "CSXT Affiliates". For the purpose of this Section 11, CSXT's affiliates include CSX Corporation and all entities, directly or indirectly, owned or controlled by or under common control of CSXT or CSX Corporation and their respective officers, directors, employees and agents.
- 11.4 Notice of Incidents. Agency and its Contractor shall notify CSXT promptly of any loss, damage, injury or death arising out of or in connection with the Project work.
- 11.5 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.
12. Independent Contractor The parties agree that neither Agency nor its Contractors shall be deemed either agents or independent contractors of CSXT. Except as otherwise provided by this Agreement, CSXT shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by Agency or Agency's Contractors, or the construction practices, procedures, and professional judgment employed by Agency or its Contractor to complete the Project. Notwithstanding the foregoing, this Section 12 shall in no way affect the absolute authority of CSXT to prohibit Agency or its Contractors or anyone from entering CSXT's property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.
13. "Entire Agreement" This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
14. Waiver If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
15. Assignment CSXT may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by CSXT

CSXT OP# \_\_\_\_\_

and the assumption of CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligation under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior consent, which consent may be withheld for any reason.

16. Notices All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to CSXT: CSX Transportation, Inc.  
500 Water Street J-301  
Jacksonville, FL 32202  
Attention: Director Project Management – Public Projects

If to Agency: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

17. Severability The parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.
18. Applicable Law This Agreement shall be governed by the laws of the State of Georgia, exclusive of its choice of law rules. The parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Duval County, Florida, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Duval County, Florida.

Repairs and painting of Gordon St. Bridge over CSXT  
Dalton, Whitfield Co., GA  
RRMP 0WA-99.04  
DOT No.: 340546Y  
Atlanta Division, W and A Subdivision

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

**Dalton, State of Georgia**

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

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

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

**CSX TRANSPORTATION, INC.**

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

Name: Tony C. Bellamy

Title: Director Project Management – Public Projects

**EXHIBIT A**  
**ALLOCATION OF WORK**

Subject to Section 2.1, work to be performed in connection with the Project is allocated as follows:

**A. Agency shall let by contract to its Contractors:**

1. Bridge repairs, painting and polymer application within CSXT right-of-way according to the approved final plans: City of Dalton Department of Public Works Plan of Proposed Repairs to Gordon Street Bridge Repair and Painting over NS & CSX Railroad, Whitfield County (7 sheets) – made available electronically on March 21, 2018

**B. CSXT shall perform or cause to be performed:**

1. Changes in communication and signal lines.
2. Flagging services and other protective services and devices as may be necessary.
3. Construction engineering and inspection to protect the interests of CSXT.
4. Excess Soil Support Services as described in the Soil and Water Management Policy found in CSXT's Public Project Manual dated July 2017.
5. Accounting and Administrative Services related to the foregoing.



**Mayor and Council Agenda Request**

Council Meeting Date: 08/06/2018

Department: Public Works

Subject: Construction Agreement w/ Norfolk Southern Railway for Gordon St. Bridge Repair

Cost: \$155,582 Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: 2015 SPLOST (Bridge Maintenance SP155)

Reviewed/Approved By City Attorney? N/A

Please provide a summary of your request, including background to explain the request

To complete the repair of the Gordon Street Bridge (2015 SPLOST Project) in accordance with the plans developed by Pont Engineering, the railroads require construction agreements to be executed before work can proceed. This agreement outlines the conditions for operating the project in the right of way of Norfolk Southern Railway Company.

This agreement facilitates the use of railroad flaggers which are required to be utilized when work is being performed on the bridge. Additionally, should any shop drawings or engineering services be required from Norfolk Southern, this agreement allows for those activities to occur.

Norfolk Southern has provided a force account estimate for completion of all these tasks in the amount of \$155,582. Norfolk Southern will only bill actual charges incurred on a monthly basis as the project commences, so the actual amount paid might be less than the estimate.

Upon approval of this agreement, Public Works will secure a contractor to complete the work.

Requested By: Andrew Parker, P.E. (Assistant Public Works Dir.)

City Administrator Recommendation

City Clerk Notations

Motion/Second	Approved	Date

THIS AGREEMENT, dated as of the \_\_\_\_ day of \_\_\_\_\_, 201\_ is made and entered into by and between

**NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, whose mailing address is Three Commercial Place, Norfolk, Virginia 23510 (hereinafter called "RAILWAY"); and

**CITY OF DALTON**, a Georgia Municipality, whose mailing address is \_\_\_\_\_ (hereinafter called "LICENSEE").

#### RECITALS

WHEREAS, LICENSEE, at its own cost and expense, has found it necessary to make bridge repairs to the existing Gordon Street overhead bridge (the "Facilities"), in the vicinity of RAILWAY Milepost 40.10-H, at or near Dalton, Whitfield County, Georgia (the "Premises"), located substantially as shown upon print of Drawing marked Exhibit A; and

WHEREAS, RAILWAY is willing to permit LICENSEE to enter upon RAILWAY's right of way for installation, construction, maintenance, operation and removal of the Facilities upon the terms and conditions of this Agreement; and in accordance with the plans and specifications marked Exhibit B; and

WHEREAS, RAILWAY is willing, at LICENSEE's sole expense, to make modifications to RAILWAY's right of way and/or appurtenances rendered necessary by LICENSEE's installation, construction, maintenance, operation and removal of its Facilities in accordance with the force account estimate marked Exhibit D.

NOW THEREFORE, for and in consideration of the premises and mutual covenants contained in this Agreement, the parties agree as follows:

#### I. LICENSEE'S FACILITIES

1. **Right-of-Entry.** RAILWAY, insofar as its rights and title enables it to do so and subject to its rights to operate and maintain its RAILWAY and RAILWAY appurtenances along, in, and over its right-of-way, grants LICENSEE, its agents and/or contractors, without compensation, the right to enter upon the Premises, for the purpose of installation, construction, maintenance, operation and removal of the Facilities, provided that, prior to entry upon lands of RAILWAY, any agent and/or contractor of LICENSEE must execute and deliver to RAILWAY a standard contractor right-of-entry agreement in a form approved by RAILWAY in its sole discretion, together with any certificate(s) of insurance required therein. Furthermore, any crossing of RAILWAY tracks by LICENSEE or any of its agents and/or contractors must be addressed by a standard temporary crossing agreement in a form approved by RAILWAY in its sole discretion.

2. **Use and Condition of the Premises.** The Premises shall be used by LICENSEE only for the installation, construction, maintenance, operation and removal of the Facilities and for no other purpose without the prior written consent of RAILWAY, which consent may be withheld by RAILWAY in its sole discretion. LICENSEE accepts the Premises in their current "as is" condition, as suited for the installation and operation of the Facilities, and without the benefit of any improvements to be constructed by RAILWAY except insofar as contemplated by Section II of this Agreement.

3. **Construction and Maintenance of the Facilities.** LICENSEE shall construct and maintain the Facilities, at its expense, in such a manner as will not interfere with the operations of RAILWAY or endanger persons or property of RAILWAY, and in accordance with (a) plans and specifications (if any) shown on said print(s) marked as Exhibit B and any other specifications prescribed by RAILWAY, (b) applicable governmental regulations or laws, and (c) applicable specifications adopted by the American RAILWAY Engineering and Maintenance of Way Association when not in conflict with plans, specifications or regulations mentioned in (a) and

(b) above. LICENSEE and any and all of LICENSEE contractors entering the Premises shall fully comply with applicable roadway worker protection regulations.

4. Indemnification. LICENSEE hereby agrees to indemnify and save harmless RAILWAY, its officers, agents and employees, from and against any and all liability, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever occurring which arises or in any manner grows out of (a) the presence of LICENSEE, its employees, agents and/or contractors on or about the Premises, regardless of whether negligence on the part of RAILWAY, its officers, agents or employees caused or contributed to said loss of life, personal injury or property loss or damage in whole or in part; (b) any allegation that RAILWAY is an employer or joint employer of a LICENSEE or is liable for related employment benefits or tax withholdings; or (c) any decision by RAILWAY to bar or exclude LICENSEE from the Premises pursuant to the terms of this Agreement.

5. Environmental Matters. LICENSEE assumes all responsibility for any environmental obligations imposed under applicable laws, regulations or ordinances relating to the installation of the Facilities and/or to any contamination of any property, water, air or groundwater arising or resulting from LICENSEE's permitted operations or uses of RAILWAY's property pursuant to this Agreement. In addition, LICENSEE shall obtain any necessary permits to install the Facilities. LICENSEE agrees to indemnify and hold harmless RAILWAY from and against any and all liability, fines, penalties, claims, demands, costs (including attorneys' fees), losses or lawsuits brought by any person, company or governmental entity relating to contamination of any property, water, air or groundwater due to the use or presence of the Facilities. It is agreed that this indemnity provision extends to any cleanup costs related to LICENSEE's activities upon RAILWAY's property and to any costs related to cleanup of the Facilities or to other property caused by the use of the Facilities.

6. Insurance.

(a) Without limiting in any manner the liabilities and obligations assumed by LICENSEE under any other provision of this Agreement, and as additional protection to RAILWAY, LICENSEE shall, at its expense, procure and maintain with insurance companies satisfactory to RAILWAY, the following insurance policies:

(i) A Commercial General Liability Insurance Policy having a combined single limit of not less than \$2,000,000 per occurrence for all loss, damage, cost and expense, including attorneys' fees, arising out of bodily injury liability and property damage liability during the policy period. Said policy shall include explosion, collapse, and underground hazard (XCU) coverage, shall be endorsed to name RAILWAY as the certificate holder and as an additional insured, and shall include a severability of interests provision; and,

(ii) An original Railroad Protective Liability Insurance Policy naming RAILWAY as a named insured and having a combined single limit of not less than \$2,000,000 each occurrence and \$6,000,000 in the aggregate applying separately to each annual period. If the project involves track over which passenger trains operate, the insurance limits required are not less than a combined single limit of \$5,000,000 each occurrence and \$10,000,000 in the aggregate applying separately to each annual period.

(b) All insurance required under the preceding subsection (a) shall be underwritten by insurers and be of such form and content, as may be acceptable to RAILWAY. Prior to the commencement of installation or maintenance of the Facilities or any entry on RAILWAY's property, LICENSEE shall furnish to RAILWAY's Director Risk Management, Three Commercial Place, Norfolk, Virginia 23510-2191 (or such other representative and/or address as subsequently given by RAILWAY to LICENSEE in writing), for approval, the original policy described in subsection (a)(ii) and a certificate of insurance evidencing the existence of a policy with the coverage described in subsection (a)(i).

7. Railway Support. RAILWAY shall, at RAILWAY's option, furnish, at the sole expense of LICENSEE, labor and materials necessary, in RAILWAY's sole judgment, to support its tracks and to protect its traffic (including, without limitation, flagging) during the installation, maintenance, repair, renewal or removal of the Facilities.

8. Special Provisions for Protection of Railway Interests. In connection with the operation and maintenance of the Facilities, it is agreed that the safety of people and the safety and continuity of RAILWAY's rail operations shall be of first importance. LICENSEE shall require its employees, agents, contractors, and invitees to utilize and comply with RAILWAY's directives in this regard and shall require its contractor(s), if any, to comply with all NSR Special Provisions, attached hereto, and herein incorporated by reference, including any future amendments, as Exhibit C. As used in the NSR Special Provisions, LICENSEE is the "contractor" should LICENSEE enter onto the Premises to perform any work contemplated by this Agreement. To ensure such compliance, LICENSEE shall assign a project manager to function as a single point-of-contact for LICENSEE. Said project manager is referred to as the "Sponsor's Engineer" in Exhibit C.

9. Safety of Railway Operations. If RAILWAY becomes aware of any safety violations committed by LICENSEE, its employees, agents and/or contractors, RAILWAY shall so notify LICENSEE, and LICENSEE shall promptly correct such violation. In the event of an emergency threatening immediate danger to persons or property, RAILWAY may take corrective actions and shall notify LICENSEE promptly thereafter. LICENSEE shall reimburse RAILWAY for actual costs incurred in taking such emergency measures. RAILWAY assumes no additional responsibility for safety on the Premises for LICENSEE, its agents/or contractors by taking these corrective actions, and LICENSEE, its agents/contractors shall retain full responsibility for such safety violations.

10. Corrective Measures. If LICENSEE fails to take any corrective measures requested by RAILWAY in a timely manner, or if an emergency situation is presented which, in RAILWAY's judgment, requires immediate repairs to the Facilities, RAILWAY, at LICENSEE's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

11. Railway Changes. If RAILWAY shall make any changes, alterations or additions to the line, grade, tracks, structures, roadbed, installations, right-of-way or works of RAILWAY, or to the character, height or alignment of the Electronic Systems, at or near the Facilities, LICENSEE shall, upon thirty (30) days prior written notice from RAILWAY and at its sole expense, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of RAILWAY, shall be necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of RAILWAY.

12. Assumption of Risk. Unless caused solely by the negligence of RAILWAY or caused solely by the willful misconduct of RAILWAY, LICENSEE hereby assumes all risk of damage to the Facilities and LICENSEE's other property relating to its use and occupation of the Premises or business carried on the Premises and any defects to the Premises; and LICENSEE hereby declares and states that RAILWAY, its officers, directors, agents and employees shall not be responsible for any liability for such damage.

13. Liens; Taxes. LICENSEE will not permit any mechanic's liens or other liens to be placed upon the Premises, and nothing in this Agreement shall be construed as constituting the consent or request of RAILWAY, express or implied, to any person for the performance of any labor or the furnishing of any materials to the Premises, nor as giving LICENSEE any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that could give rise to any mechanic's liens or other liens against the Premises. In addition, LICENSEE shall be liable for all taxes levied or assessed against the Facilities and any other equipment or other property placed by LICENSEE within the Premises. In the event that any such lien shall attach to the Premises or LICENSEE shall fail to pay such taxes, then, in addition to any other right or remedy available to RAILWAY, RAILWAY may, but shall not be obligated to, discharge the same. Any amount paid by RAILWAY for any of the aforesaid purposes, together with related court costs, attorneys' fees, fines and penalties, shall be paid by LICENSEE to RAILWAY within ten (10) days after RAILWAY's demand therefor.

14. Default; Remedies.

(a) The following events shall be deemed to be events of default by LICENSEE under this Agreement:

(i) LICENSEE shall fail to pay any sum of money due hereunder and such failure shall continue for a period of ten (10) days after the due date thereof;

(ii) LICENSEE shall fail to comply with any provision of this Agreement not requiring the payment of money, all of which terms, provisions and covenants shall be deemed material, and such failure shall continue for a period of thirty (30) days after written notice of such default is delivered to LICENSEE;

(iii) LICENSEE shall become insolvent or unable to pay its debts as they become due, or LICENSEE notifies RAILWAY that it anticipates either condition;

(iv) LICENSEE takes any action to, or notifies RAILWAY that LICENSEE intends to file a petition under any section or chapter of the United States Bankruptcy Code, as amended from time to time, or under any similar law or statute of the United States or any State thereof; or a petition shall be filed against LICENSEE under any such statute; or

(v) a receiver or trustee shall be appointed for LICENSEE's license interest hereunder or for all or a substantial part of the assets of LICENSEE, and such receiver or trustee is not dismissed within sixty (60) days of the appointment.

(b) Upon the occurrence of any event or events of default by LICENSEE, whether enumerated in this paragraph 15 or not, RAILWAY shall have the option to pursue any remedies available to it at law or in equity without any additional notices to LICENSEE. RAILWAY's remedies shall include, but not be limited to, the following: (i) termination of this Agreement, in which event LICENSEE shall immediately surrender the Premises to RAILWAY; (ii) entry into or upon the Premises to do whatever LICENSEE is obligated to do under the terms of this License, in which event LICENSEE shall reimburse RAILWAY on demand for any expenses which RAILWAY may incur in effecting compliance with LICENSEE's obligations under this License, but without rendering RAILWAY liable for any damages resulting to LICENSEE or the Facilities from such action; and (iii) pursuit of all other remedies available to RAILWAY at law or in equity, including, without limitation, injunctive relief of all varieties.

15. Railway Termination Right. Notwithstanding anything to the contrary in this Agreement, RAILWAY shall have the right to terminate this Agreement and the rights granted hereunder, after delivering to LICENSEE written notice of such termination no less than sixty (60) days prior to the effective date thereof, upon the occurrence of any one or more of the following events:

(a) If LICENSEE shall discontinue the use or operations of the Facilities; or

(b) If RAILWAY shall be required by any governmental authority having jurisdiction over the Premises to remove, relocate, reconstruct or discontinue operation of its railroad on or about the Premises; or

(c) If RAILWAY, in the good faith judgment of its Superintendent, shall require a change in the location or elevation of its railroad on or about the location of the Facilities or the Premises that might effectively prohibit the use or operation of the Facilities; or

(d) If RAILWAY, in the good faith judgment of its Superintendent, determines that the maintenance or use of the Facilities unduly interferes with the operation and maintenance of the facilities of RAILWAY, or with the present or future use of such property by RAILWAY, its lessees, affiliates, successors or assigns, for their respective purposes.

16. Condemnation. If the Premises or any portion thereof shall be taken or condemned in whole or in part for public purposes, or sold in lieu of condemnation, then this Agreement and the rights granted to LICENSEE hereunder shall, at the sole option of RAILWAY, forthwith cease and terminate. All compensation awarded for any taking (or sale proceeds in lieu thereof) shall be the property of RAILWAY, and LICENSEE shall have no claim thereto, the same being hereby expressly waived by LICENSEE.

17. Removal of Facilities; Survival. The Facilities are and shall remain the personal property of LICENSEE. Upon the termination of this Agreement, LICENSEE shall remove the Facilities from the Premises within thirty (30) days after the effective date thereof. In performing such removal, unless otherwise directed by RAILWAY, LICENSEE shall restore the Premises to the same condition as existed prior to the installation or placement of Facilities, reasonable wear and tear excepted. In the event LICENSEE shall fail to so remove the Facilities or restore the Premises, the Facilities shall be deemed to have been abandoned by LICENSEE, and the same shall become the property of RAILWAY for RAILWAY to use, remove, destroy or otherwise dispose of at its discretion and without responsibility for accounting to LICENSEE therefor; provided, however, in the event RAILWAY elects to remove the Facilities, RAILWAY, in addition to any other legal remedy it may have, shall have the right to recover from LICENSEE all costs incurred in connection with such removal and the restoration of the Premises. Notwithstanding anything to the contrary contained in this Agreement, the termination of this Agreement shall not relieve LICENSEE from LICENSEE's obligations accruing prior to the termination date, and such obligations shall survive any such termination of this Agreement.

18. Interests in Real Property

LICENSEE shall acquire or settle all property, property rights and all damages to property affected by the installation, construction, maintenance, and operation of the Facilities. The cost of said property, property rights and damages to property shall be borne by LICENSEE.

RAILWAY, insofar as it has the legal right so to do, shall permit LICENSEE to enter upon lands owned or operated by RAILWAY to construct and occupy its property with sufficient width to permit construction and maintenance of the Facilities. LICENSEE and RAILWAY shall enter into good faith negotiations for a price to be consistent with the property interest determined by LICENSEE to be needed for the proposed improvement.

However, the price to be paid by LICENSEE to RAILWAY for said conveyances (representing the fair market value thereof plus damages, if any, to the residue) shall be as mutually agreed upon within nine (9) months from the date of occupancy by LICENSEE, and if agreement as to price is reached, an additional period of ninety (90) days shall be allowed for settlement, it being agreed however, that if no agreement as to price is reached within the aforesaid nine (9) month period, LICENSEE will within ninety (90) days thereafter institute an eminent domain proceeding authorized by law for the determination of the value of same. The provisions of this Agreement shall survive the institution of such eminent domain proceeding.

LICENSEE shall furnish the plans and descriptions for any such conveyance. It is understood, however, that the foregoing right of entry is a permissive use only, and this Section is not intended to convey or obligate RAILWAY to convey any interest in its land.

II. SCOPE OF RAILROAD PROJECT, AND MAINTENANCE AND OWNERSHIP OF PROJECT IMPROVEMENTS

1. Scope of Work. The scope of the work by RAILWAY shall include any necessary acquisition of right-of-way, permitting, design, construction, and construction-related activities including, but not limited to,

inspection, flagging, and superintendence, within and along RAILWAY property necessary to facilitate LICENSEE's installation, construction, maintenance, operation and removal of the Facilities ("Railroad Project").

2. Construction of the Railroad Project. The RAILWAY shall construct the Railroad Project in accordance with the force account estimate, attached as Exhibit D and herein incorporated by reference, including any future amendments thereto, and all applicable state and federal laws.

(a) All work performed by the RAILWAY related to the Railroad Project and consistent with the force account estimate will be deemed reimbursable project expenses, and shall be at no cost to the RAILWAY.

(b) RAILWAY shall accomplish work on the Railroad Project by the following: (i) railroad force account; (ii) existing continuing contracts at reasonable costs; (iii) contracting with the lowest responsible bidder based on appropriate solicitation; or (iv) contract without competitive bidding for minor work at reasonable costs.

3. Maintenance and Ownership of the Railroad Project. Upon completion of the Railroad Project, the RAILWAY shall own and, at its own cost and expense, maintain the Railroad Project improvements until such time as RAILWAY deems such maintenance to no longer be necessary.

4. Construction of the Railroad Project. Execution of this Agreement constitutes LICENSEE's issuance of a notice to proceed to RAILWAY with the Railroad Project ("Notice to Proceed"). RAILWAY shall make commercially reasonable efforts to commence construction on the Railroad Project as soon as possible, in RAILWAY's sole discretion, after the date of availability for RAILWAY to commence its construction activities on the Railroad Project.

5. Reimbursement by LICENSEE.

(a) RAILWAY shall furnish, or cause to be furnished, at the expense of the LICENSEE all the labor costs, overhead and indirect construction costs, materials and supplies, contracted services, transportation, equipment, and other related costs and items required to perform and complete the Railroad Project. In addition, RAILWAY shall furnish, at the expense of LICENSEE, the protection of rail traffic occasioned by or made necessary by entry by LICENSEE and/or its contractors or any subcontractor(s) pursuant to this Agreement.

(b) Except as otherwise provided in this Agreement, LICENSEE shall reimburse the RAILWAY for the actual cost of the work performed by it, which is estimated to be **One Hundred Fifty Five Thousand, Five Hundred Eighty Two Dollars and Zero Cents (\$155,582.00)**. It is agreed that progress payments will be made by LICENSEE to the RAILWAY for the total amount of work done as shown on monthly statements. LICENSEE shall pay each RAILWAY statement within forty-five (45) days of receipt. Upon receipt of the final bill, RAILWAY shall be reimbursed in such amounts as are proper and eligible for final payment, and the RAILWAY Project shall be submitted to LICENSEE for final audit.

(c) Incurred Costs. The reimbursement amounts for all costs billed under this Agreement shall be subject to the applicable Federal principles and based on the full actual costs plus Approved Labor Additives. Design costs incurred by RAILWAY prior to issuance of the Notice to Proceed shall be reimbursed by LICENSEE.

### III. GENERAL PROVISIONS

1. **Assignment and Successors.** This Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective permitted successors and assigns.

2. **Limitations Upon Damages.** Notwithstanding any other provision of this Agreement, RAILWAY shall not be liable for breach of this Agreement or under this Agreement for any consequential, incidental, exemplary, punitive, special, business damages or lost profits, as well as any claims for death, personal injury, and property loss and damage which occurs by reason of, or arises out of, or is incidental to the interruption in or usage of the Facilities placed upon or about the Premises by LICENSEE, including without limitation any damages under such claims that might be considered consequential, incidental, exemplary, punitive, special, business damages or lost profits.

3. **Miscellaneous.** All exhibits, attachments, riders and addenda referred to in this Agreement are incorporated into this Agreement and made a part hereof for all intents and purposes. Time is of the essence with regard to each provision of this Agreement. This Agreement shall be construed and interpreted in accordance with and governed by the laws of the State in which the Premises are located. Each covenant of RAILWAY and LICENSEE under this Agreement is independent of each other covenant under this Agreement. No default in performance of any covenant by a party shall excuse the other party from the performance of any other covenant.

4. **Notice to Parties.** Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the contact below except as otherwise provided in this Agreement or unless otherwise specifically advised.

As to LICENSEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

As to RAILWAY:

c/o Norfolk Southern Corporation  
1200 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3504  
Attention: Public Projects Engineer

Either party may, by notice in writing, direct that future notices or demands be sent to a different address. All notices hereunder shall be deemed given upon receipt (or, if rejected, upon rejection).

5. **Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this contract.

6. **No Third Party Beneficiary.** This Agreement shall be for the benefit of the parties only, and no person, firm or corporation shall acquire any rights whatsoever by virtue of this Agreement, except LICENSEE and the RAILWAY and their successors and assigns.

7. **Force Majeure.** The parties agree to pursue the completion of the Railroad Project in accordance with the requirements of this Agreement. No party shall be held responsible to the other for delays caused by Force Majeure events, and such delays shall not be deemed a breach or default under this Agreement. In no event shall Force Majeure events excuse LICENSEE from its obligation to make payment to RAILWAY in accordance with this Agreement. Further the parties agree that the resolution or settlement of strikes or other labor disputes shall not be deemed to be within the control or reasonable control of the affected party. If any party is unable to complete work assigned to it due to a condition of Force Majeure or other conditions beyond the reasonable control of said party, then said party will diligently pursue completion of the item that is delayed once said condition or conditions are no longer in effect. For purposes of this Agreement, Force Majeure events are defined as circumstances beyond

a party's reasonable control that delay performance and may include, but are not limited to, acts of God, actions or decrees of governmental bodies (beyond control of the parties), acts of the public enemy, labor disputes, fires, insurrections, and floods.

8. Amendment; Entire Agreement. This Agreement may be amended only in writing executed by authorized representatives of the parties hereto. No verbal change, modification, or amendment shall be effective unless in writing and signed by authorized representatives of the parties. The provisions hereof constitute the entire Agreement between the parties and supersede any verbal statement, representations, or warranties, stated or implied.

9. Waiver of Workers Compensation Immunity. In the event that all or a portion of the Premises is location in the State of Ohio, LICENSEE, with respect to the indemnification provisions contained in this Agreement, hereby expressly waives any defense or immunity granted or afforded LICENSEE pursuant to Section 35, Article II of the Ohio Constitution and Section 4123.74 of the Ohio Revised Code. In the event that all or a portion of the Premises is located in the Commonwealth of Pennsylvania, LICENSEE, with respect to the indemnification provisions contained in this Agreement, hereby expressly waives any defense or immunity granted or afforded LICENSEE pursuant to Pennsylvania Workers' Compensation Act, 77 P.S. 481.

10. Independent Contractors. The parties agree that LICENSEE and its agents and/or contractors, shall not be deemed either agents or independent contractors of RAILWAY. Except as otherwise provided by this Agreement, RAILWAY shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by LICENSEE or its contractors. Notwithstanding the foregoing, this paragraph shall in no way affect the absolute authority of RAILWAY to temporarily prohibit LICENSEE, its agents and/or contractors, or persons not associated with LICENSEE from entering RAILWAY property, or to require the removal of any person from RAILWAY property, if RAILWAY determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on, or about the Railroad Project Work exist.

11. Meaning of "Railway". The word "RAILWAY" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by RAILWAY. Said term also shall include RAILWAY's officers, directors, agents and employees, and any parent company, subsidiary or affiliate of RAILWAY and their respective officers, directors, agents and employees.

12. Approval of Plans. By its review and approval, if any, of the plans marked as Exhibit B, RAILWAY signifies only that the plans and improvements to be constructed in accordance with the plans satisfy the RAILWAY's requirements. RAILWAY expressly disclaims all other representations and warranties in connection with said plans, including, but not limited to, the integrity, suitability or fitness for the purposes of the LICENSEE or any other person(s) of the plans or improvements constructed in accordance with the plans.

IN WITNESS WHEREOF, the parties have, through duly authorized representatives, entered into this Agreement effective the day and year first written above.

**CITY OF DALTON,** a Georgia Municipality

**NORFOLK SOUTHERN RAILWAY COMPANY,** a Virginia corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

NS File: BR0000634

EXHIBIT A

**CITY OF DALTON**  
**DEPARTMENT OF PUBLIC WORKS**  
*PLAN OF PROPOSED REPAIRS TO*  
**GORDON STREET BRIDGE**  
**OVER NS & CSX RAILROAD**  
**WHITFIELD COUNTY**

BRIDGE NO. 4 313-0063-0  
WHITFIELD COUNTY  
GORDON STREET BRIDGE AT  
NS & CSX RAILROAD  
LATITUDE: 34.770728  
LONGITUDE: -84.966553  
MILEPOST: 40.10 (NS)  
07A-99.04 (CSX)  
ID # 313-0503M-000.22E



THE DATA PRESENTED ON THIS MAP WAS OBTAINED FROM THE STATE OF GEORGIA AND IS NOT GUARANTEED BY THE STATE OF GEORGIA. THE USER OF THIS MAP ASSUMES ALL LIABILITY FOR ANY ERRORS OR OMISSIONS. THE STATE OF GEORGIA DOES NOT WARRANT THE ACCURACY OF ANY DATA OR THE RESULTS OF ANY ANALYSIS THEREOF.

LOCATION MAP



PREPARED BY: **PONI**  
400 Augusta Drive, Marietta, GA 30067  
800.877.6677



**Mayor and Council Agenda Request**

Council Meeting Date: 08/06/2018

Department: Public Works

Subject: Contract with Northwest Georgia Paving, Inc. for 2018 Milling and Resurfacing

Cost: \$1,491,476.05 Already in Current Year Budget? Yes  No

Provide Funding Source if Not in Budget: LMIG and 2015 SPLOST (Street Resurf. SP156)

Reviewed/Approved By City Attorney? N/A

Please provide a summary of your request, including background to explain the request

The enclosed contract represents the City's 2018 Milling and Resurfacing Program featuring 27 various streets.

Northwest Georgia Paving, Inc. was the low bidder on the project at \$1,461,476.05. Dalton Utilities requested that the City include work items for milling around utilities in conflict, and the contractor has proposed to do that work at unit prices for an additional \$30,000 bringing the total award up to \$1,491,476.05. Dalton Utilities will reimburse the City 100% for the utility adjustment work.

The Public Works Committee has reviewed and approved this paving list for 2018, and all funding will be coming from the City's annual GDOT LMIG funding (\$381,400.35) with the remainder being paid for by 2015 SPLOST street resurfacing funds (SP156).

Requested By: Andrew Parker, P.E. (Assistant Public Works Dir.)

City Administrator Recommendation

--

City Clerk Notations

Motion/Second	Approved	Date

**CITY OF DALTON, GEORGIA**



**CONTRACT DOCUMENTS**

For

**PROJECT:**

**2018 LMIG MILLING AND RESURFACING**

**VARIOUS CITY STREETS**

**DALTON PROJECT NO. PW-2018-LMIG**

**CITY OF DALTON PUBLIC WORKS DEPARTMENT**

**PO BOX 1205**

**DALTON, GEORGIA 30722**

CONTRACT

THIS AGREEMENT made this the 6th day of August, 2018, by and between the CITY OF DALTON, GEORGIA, hereinafter called "Owner", and Northwest Georgia Paving, Inc.

a contractor doing business as an individual, a partnership, or a corporation\* of the City of Calhoun, County of Gordon, and State of Georgia hereinafter called "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner, the Contractor hereby agrees to commence and complete the construction of the project entitled:

**2018 MILLING AND RESURFACING  
VARIOUS CITY STREETS – DALTON PROJECT NO. PW-2018-LMIG**

hereinafter called the "Project", for the sum of \$1,491,476.05 Dollars (One million four hundred ninety one thousand four hundred seventy six dollars and five cents) and all extra work in connection therewith, under the terms as stated in the Contract Documents, and at his (*its or their*) own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the proposal, the General Conditions of the Contract, the specifications and contract documents therefore as prepared by the Owner and as enumerated in Paragraph 2 of the General Conditions, all of which are made a part hereof and collectively constitute the Contract.

The Contractor hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" of the Owner with a signification portion of the work to be completed in 2018 and to fully complete the project by May 31, 2019 as stipulated in the specifications. The Contractor further agrees to pay as liquidated damages the sum of \$300.00 for each consecutive calendar day thereafter as hereinafter provided in the General Conditions under "Time of Completion and Liquidated Damages."

\*Strike out inapplicable terms.



CONTRACT  
(Continued)

The Owner agrees to pay the Contractor in current funds for the performance of the contract, subject to additions and deductions as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in "Payments to Contractor," of the General Conditions.

IN WITNESS WHEREOF, the parties to those presents have executed this contract in five (5) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

ATTEST:

CITY OF DALTON, GEORGIA

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

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

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Title

ATTEST:

Northwest Georgia Paving, Inc.

\_\_\_\_\_  
Secretary

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

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Title

Secretary of Owner should attest. If Contractor is corporation, secretary should attest.

Give proper title of each person executing contract.



CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with City of Dalton has registered with and is participating in a federal work authorization program\* [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], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with City of Dalton, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Dalton at the time the subcontractor(s) is retained to perform such service.

The undersigned Contractor is using and will continue to use the federal work authorization program throughout the contract period.

110560

EEV/Basic Pilot Program\* User Identification Number

*[Signature]*

7/10/2018

By: Authorized Officer or Agent

Date

(Contractor Name) Northwest Georgia Paving, Inc.

President

Title of Authorized Officer or Agent of Contractor

Russell Smith

Printed Name of Authorized Officer or Agent

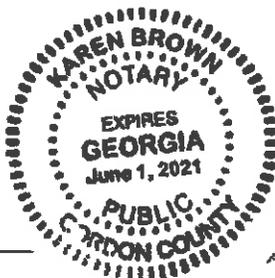
SUBSCRIBED AND SWORN  
BEFORE ME ON THIS THE

10th DAY OF July, 2018

*[Signature]*

Notary Public

My Commission Expires:  
6/1/2021



\* 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 (SSA).



2018 Milling and Resurfacing - Project Summary Sheet - Dalton Public Works Department  
 Various City Streets - Dalton Project No PW-2018-LMIG

No.	Road Name	Beginning	Ending	Total Length (Miles)	Street Width (+/-)	Milling Required?	Required Asphalt Topping Mix Design Code	Approx Tonnage	Required Asphalt Topping Spread Rate	Thermoplastic Striping?	RPMS?
1	Burleyson Drive	Broadrick Drive	Walston Ave	0.31439	29'	Yes; 1.5" full width mill	402-3102	445	165 lbs/square yard	Stop Bar, Centerline, and Words	Yes
2	Colony Court	Heritage Circle	Cul-de-sac	0.038	26.5'	Yes; 1.5" full width mill	402-3100	80	165 lbs/square yard	Stop Bar Only	No
3	Cumberland Drive	E. Woodland Drive	Northview Drive	0.128	29.5'	Yes; 1.75" full width mill	402-3101	185	165 lbs/square yard	Stop Bar Only	No
4	Emma Street	Nelson Street	Stacey Drive	0.107	20'	No	402-3100	105	165 lbs/square yard	Stop Bar Only	No
5	Foster Street	Grimes Street	Fields Ave	0.205	26.5'	Yes; 1.5" full width mill	402-3101	265	165 lbs/square yard	Stop Bar Only	No
6	Industrial South Road	Callahan Road	1000' North	0.189	26'	No	402-3130	240	165 lbs/square yard	Stop Bar Only	No
7	Juniper Ave	Cumberland Drive	Stillwood Drive	0.246	29'	Yes; 1.75" full width mill	402-3101	350	165 lbs/square yard	Stop Bar and Centerline	No
8	Moice Drive	Walston Ave	Thornebrooke Circle	0.219	26'	Yes; 0.5" full width mill	402-3101	275	165 lbs/square yard	Stop Bar, Centerline, and Words	Yes
9	Nelson Street	Grade Drive	Grimes Street	0.232	22.5'	Yes; 1.5" at gutterline taper to 0" at centerline	402-3101	255	165 lbs/square yard	Stop Bar Only	No
10	Nelson Street	Grimes Street	Fields Ave	0.234	28.5'	Yes; 1.75" full width mill	402-3101	325	165 lbs/square yard	Stop Bar, Centerline, and Words	Yes
11	Northview Drive	Underwood Street	Stillwood Drive	0.296	29.5'	Yes; 1.75" full width mill	402-3101	425	165 lbs/square yard	Stop Bar and Centerline	No

**2018 Milling and Resurfacing - Project Summary Sheet - Dalton Public Works Department**  
**Various City Streets - Dalton Project No PW-2018-LMIG**

No.	Road Name	Beginning	Ending	Total Length (Miles)	Street Width (+/-)	Milling Required?	Required Asphalt Topping Mix Design Code	Approx Tonnage	Required Asphalt Topping Spread Rate	Thermoplastic Striping?	RPMS?
12	Olivia Drive	James Street	Dead End	0.164	26'	Yes; 1" full width mill	402-3100	205	165 lbs/square yard	Stop Bar Only	No
13	Parkway Drive	Northview Drive	Juniper Ave	0.089	29'	Yes; 1.75" full width mill	402-3101	125	165 lbs/square yard	Stop Bar Only	No
14	Stillwood Drive	Virginia Ave	Northview Drive	0.439	29'	Yes; 1.75" full width mill	402-3101	620	165 lbs/square yard	Stop Bar and Centerline	No
15	Virginia Ave	Woodland Drive	Stillwood Drive	0.230	29'	Yes; 1.75" full width mill	402-3101	325	165 lbs/square yard	Stop Bar and Centerline	No
16	Woodland Drive	Underwood Street	Underwood Street	0.369	29.5'	Yes; 1.75" full width mill	402-3101	525	165 lbs/square yard	Stop Bar and Centerline	No
17	Coronet Drive	Chattanooga Ave	Poly Pac Drive	0.807	26'	No	402-3130	1015	165 lbs/square yard	Stop Bar, Centerline, and Edgelines	Yes
18	Industrial Blvd.	Abutment Road	S. Dixie Hwy	0.771	26'	No	402-3130	970	165 lbs/square yard	Stop Bar, RR Markings, Centerline, Edgelines, Arrows, and Island	Yes
19	Trammell Street	Tyler Street	Richardson Street	0.165	24'	Yes; 1.5" at gutterline taper to 0" at centerline	402-3101	195	165 lbs/square yard	Arrows, Skip White, Crosswalk	No
20	Valley Lane	N. Tibbs Road	Dead End	0.134	22'	No	402-3100	145	165 lbs/square yard	Stop Bar Only	No
21	Botany Woods Drive	College Drive	Mount Sinai Road	0.956	24'	Yes; 1.5" at gutterline taper to 0" at centerline	402-3101	1110	165 lbs/square yard	Stop Bar and Centerline	Yes
22	Ravine Way	Botany Woods Drive	Cul-de-sac	0.218	28'	Yes; 1.5" at gutterline taper to 0" at centerline	402-3101	295	165 lbs/square yard	Stop Bar and Centerline	Yes

**2018 Milling and Resurfacing - Project Summary Sheet - Dalton Public Works Department**  
**Various City Streets - Dalton Project No PW-2018-LMIG**

No.	Road Name	Beginning	Ending	Total Length (Miles)	Street Width (+/-)	Milling Required?	Required Asphalt Topping Mix Design Code	Approx Tonnage	Required Asphalt Topping Spread Rate	Thermoplastic Striping?	RPMS?
23	N. Ravine Way	Ravine Way	Cul-de-sac	0.135	26'	Yes; 1.5" at gutterline taper to 0" at centerline	402-3101	170	165 lbs/square yard	Stop Bar and Centerline	Yes
24	N. Mount Sinai Road	Botany Woods Drive	Cul-de-sac	0.103	24'	Yes; 1.5" at gutterline taper to 0" at centerline	402-3101	120	165 lbs/square yard	Centerline Only	Yes
25	S. Mount Sinai Road	Botany Woods Drive	Cul-de-sac	0.519	24'	Yes; 1.5" at gutterline taper to 0" at centerline	402-3101	605	165 lbs/square yard	Centerline Only	Yes
26	Grandview Drive	S. Mount Sinai Road	Cul-de-sac	0.089	24'	Yes; 1.5" at gutterline taper to 0" at centerline	402-3101	105	165 lbs/square yard	Stop Bar and Centerline	Yes
27	Vista Drive	Dead End	Cul-de-sac	0.819	24'	No	402-3130	955	165 lbs/square yard	Centerline and Edgelines	Yes
				<b>Total = 8.215</b>							

Blue Shading Represents Streets included in GDOT LMIG 2017 Project Report