



Nancy Harris, Mayor
Jamin Harkness, Post 1
Marline Thomas, Post 2

Lamar Doss, Post 3
Manfred Graeder, Post 4
Greg Whitlock, Post 5

**AGENDA
MAYOR AND COUNCIL
CITY OF DULUTH, GA
3167 Main Street
Duluth, GA 30096**

January 9, 2023

CITY HALL COUNCIL CHAMBERS

6:00 pm

***The leaders and staff of the City of Duluth are dedicated to ensuring that Duluth is:
an Attractive Destination, a Quality Community, a World Class Government,
and promotes a Sustainable Economic Environment.***

5:30 P.M. – AGENDA REVIEW Main St. Conference Room

6:00 P.M. - CALL TO ORDER Mayor Harris

INVOCATION OR MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

I. ANNOUNCEMENTS

1. AGENDA CHANGES (IF NECESSARY)

II. MATTERS FROM CITIZENS

Maximum of five (5) minutes per person. Sign-up sheet available.

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III. CONSENT AGENDA

1. APPROVAL OF DECEMBER 3 & 12 MINUTES

2. RESOLUTION – 2023 MEETING DATES & TIMES

Approval of this item approves resolution R2023-01 to set and publicize regularly scheduled Mayor and Council meetings for 2023 in accordance with Georgia law.

3. ORDINANCE SETTING 2023 MILEAGE REIMBURSEMENT RATES

The IRS announced that the business standard mileage rate for transportation expenses paid or incurred beginning January 1, 2023 will be 65.5 cents per mile. Approval of this item adopts ordinance O2023-01 setting the reimbursement rates, effective January 1, 2023.

4. ORDINANCE TO APPOINT ASSISTANT CITY SOLICITOR

Pursuant to the Duluth City Code, Section 2-208, the Mayor and Council are authorized to appoint an Assistant Solicitor of the Municipal court of the city. Ms. Ashley Trinh, appointed as the Assistant Solicitor by the Mayor and Council in 2022 has resigned and therefore requires an appointee to fulfill the vacancy. Chief Carruth recommends the appointment of Ms. Kelsey Wiley as the Assistant Solicitor of the Duluth Municipal Court. The compensation of the Assistant Solicitor shall be on an hourly basis and the rate shall be fixed by the Mayor and Council on an annual basis during the regular budget process. Before entering on the duties of office, the Assistant Solicitor shall take an oath before an officer duly authorized to administer oaths that he or she will truly, honestly, and faithfully discharge the duties of his or her office. Approval of ordinance O2023-02 appoints Ms. Kelsey Wiley as the Assistant Solicitor of the Duluth Municipal Court.

5. RESOLUTION TO APPOINT LEGAL ORGAN

Approval of this item approves resolution R2023-02 naming the “Gwinnett Daily Post” as the City’s Legal Organ for 2023. This resolution shall not be construed to prevent the City from utilizing a newspaper of general circulation within the City of Duluth or Gwinnett County when authorized to do so by state or local law.

6. RESOLUTION – DEPOSITORIES & CHECK SIGNING

Approval of this item approves resolution R2023-03 regarding check signing authority and depositories as per the Financial Policy.

7. APPOINTMENT - EMPLOYEE BENEFIT AUDIT REVIEW

Approval of this item approves ordinance O2023-03 appoints Susan Porteous to the Employee Benefit and Audit Review Committee (EBARC) filling the unexpired term of John Howard ending 2026.

8. ORDINANCE-2023 MUNICIPAL ELECTION APPTS & QUALIFYING

The State of Georgia requires that municipalities fix and publish qualifying fees pursuant to O.C.G.A. § 21-2-131 by February 1 of the year in which the relevant election is to be held. The 2023 election will be held on Tuesday, November 7, 2023. Qualifying fees are 3% of the total gross salary of the preceding year (Georgia Election Code 21-2-131 (a) (1) (A)). Qualifying fees for the Office of Mayor is \$288.00 and for the office of Council member Post 4 and 5, the qualifying fee is \$180.00.

9. ORDINANCE TO AMEND BUDGET - PUBLIC SAFETY HVAC

Staff is working with Midatech, Inc. to upgrade the control systems for the HVAC system at the Public Safety building. The control systems need to be upgraded due the current configuration being outdated and no longer serviceable. The upgrade will replace the three control systems which regulate the temperature throughout the building at a cost of \$32,990.73. Staff is requesting approval of a budget amendment to add \$13,058.73 in 2014 SPLOST funds to the Police Capital Projects budget. Additional funds to complete the upgrade will come from budgeted General Funds. Approval of this item approves ordinance BA-FY23-17 to add \$13,058.73 in 2014 SPLOST Administrative Facility funds to Police Capital Projects - Police - Buildings line item, including associated transfers.

10. APPROVAL OF INTERGOVERNMENTAL AGREEMENT- SIGNS

To install and maintain decorative city limit signs and median maintenance signs on Gwinnett County roads, an intergovernmental agreement (IGA) is required for permission that also specifies no cost to the County. Staff has coordinated the locations of these signs and had the required engineering study completed to ensure no new signage would compromise sight distance for drivers. The County will approve the signage and location at their next Commission meeting. Approval of this item approves the IGA as presented and authorizes city staff to order the new signs, remove the old signs, and relocate any necessary co-located signs that need to remain in the field.

11. DESIGNATION OF OPEN RECORDS OFFICERS

Approval of this item approves resolution R2023-04 designating the Assistant City Manager/City Clerk or his/her designee as the Open Records Officer(s) for the City of Duluth.

IV. NEW BUSINESS

1. APPOINTMENT OF MAYOR PRO TEMPORE

The Charter of the City of Duluth states the Mayor Pro tempore will be selected by a majority vote of the Mayor and Council in each year at the first regular meeting. The Council shall elect a council member to serve as the Mayor Pro tempore, who shall assume the duties and powers of the Mayor during the Mayor's absence. Mayor Harris will provide her recommendation for the appointment of the 2023 Mayor Pro tempore.

2. AUTHORIZATION FOR CONTRACT –NORFOLK SOUTHERN

As part of the Davenport Road extension project, the City would like to install a fiber optic under the railroad to facilitate the use of cameras and eventually tie the Public Safety Building to City Hall. The best time to install the conduit and the cable is during construction of the new crossing.

Staff has coordinated with Norfolk Southern (NS), applied for a permit, and successfully completed the plan review stage. The City is at a point where we need to enter a contract with NS allowing us to install and maintain our utility line within their right of way. The cost of the installation is covered by the current Davenport Project budget, previously approved by Council.

Staff is requesting Council approve a contract with NS allowing the City to install and maintain a single conduit with fiber for current and future needs. The cost of doing so is a one-time license fee of \$19,635. This cost can be covered by the project's original contingency budget. The contract duration is 20 years.

3. AWARD OF BID – PINE NEEDLE DRIVE

The Pine Needle intersection improvements at SR 120/Abbott's Bridge Road were included in the City's slate of 2017 SPLOST projects that are split via intergovernmental agreement (IGA) with Gwinnett County 81% (County) and 19% (City).

The project advertised for construction on November 4, 2022 and bids were opened on December 9, 2022. Six bids were received and reviewed as follows:

Zaveri Enterprises, Inc	\$558,349.00
Ohmshiv Construction, LLC	\$567,962.75
CMC Inc	\$573,745.00
Backbone Infrastructure	\$574,316.00
Summit Construction & Dev	\$664,378.83
IP Construction, LLC	\$1,284,432.54

Staff recommends award of the construction contract to the low bid, Zaveri Enterprises, Inc. in the amount of \$558,349.00 and requests Council authorize the City Manager to enter such contract upon award.

It is anticipated the contractor will break ground on or around March 1 and be substantially complete in mid to late summer of 2023.

4. ORDINANCE TO AMEND FY23 BUDGET – PINE NEEDLE DR

Should council approve the awarding of the contract to Zaveri Enterprises, Inc for the construction of a cul-de-sac on Pine Needle Drive at the intersection with SR 120 in the amount of \$558,349, staff is requesting approval of a budget amendment for the overall construction cost including the construction contract,

construction engineering, materials testing, and construction administration as detailed below.

Contractor	\$558,349.00
Contingency (15%)	\$83,750.00
CE&I, CA, Materials Testing (5%)	\$27,920.00
City Engineer	\$15,000.00

TOTAL BUDGET: \$685,019.00

This is a joint fund Gwinnett County (81%) and City of Duluth (19%) project. Approval of this item approves ordinance (BA-FY23-18) to add the following to the Pine Needle Drive capital improvement project. Add revenue of \$554,865 to the Gwinnett County Grant line item, \$130,154 in unallocated 2017 SPLOST Transportation funds to the SPLOST 2017 line item, \$42,920 Pine Needle Improvements - Paved Streets - Professional Services and \$642,099 Pine Needle Improvements - Paved Streets - Infrastructure line item including associated transfer.

5. BID AWARD - HALL CIRCLE SEWER EXTENSION

The Hall Circle Sewer Extension project will include a new line of sanitary sewer along a portion of the northern leg of Hall Circle and along Fox Street between the two legs of Hall Circle. It will tie to the existing sanitary sewer installed on the southern leg of Hall Circle by D.R. Horton during their construction of Gardendale.

The project advertised for construction on November 4, 2022 and bids were opened on December 9, 2022. Two bids were received and reviewed as follows:

The Dickerson Group \$692,053.50
Site Engineering, Inc. \$770,125.00

As staff was checking the bids, it was evident there was a \$100,000.00 error in the Dickerson Group bid, causing the contractor to withdraw his bid. Staff recommends moving forward with and awarding the contract to the second bidder, Site Engineering, Inc., in the amount of \$770,125.00 and requests Council authorize the City Manager to enter such contract upon award. Work can begin in April providing the materials have been procured by that time. Project duration is 3 months.

6. ORDINANCE TO AMEND FY23 BUDGET – HALL CIRCLE

Should council approve the awarding of the contract to Site Engineering, Inc for the construction of the Hall Circle Sewer Extension in the amount of \$770,125.00, staff is requesting approval of a budget amendment for the overall construction cost including the construction contract, construction engineering, materials testing, and construction administration as detailed below.

Contractor	\$770,125.00
Contingency (15%)	\$115,520.00
CE&I, CA, Materials Testing (5%)	\$38,505.00
City Engineer	\$5,000.00
 TOTAL BUDGET:	 \$929,150.00

Approval of this item approves ordinance (BA-FY23-19) to add \$929,150 in American Rescue Plan Act 2021 revenue to American Rescue Plan Act 2021 - ARP Act of 2021 Local Fiscal Recovery Funds line item, expenditures of \$43,505 to American Rescue Plan Act 2021 - Hall Circle Sewer Services - Professional Services line item and \$885,645 to American Rescue Plan Act 2021 - Hall Circle Sewer Services - Infrastructure line item.

V. MATTERS FROM DEPT HEADS/CITY ATTORNEY

VI. MATTERS FROM COUNCIL

VII. MATTERS FROM CITY MANAGER

VIII. EXECUTIVE SESSION

It may be necessary to hold an executive session on Real Estate, Pending/Potential Litigation, or Personnel, which is properly excluded from the Georgia Open and Public Meeting Law (O.C.G.A. 50-14).

IX. ADJOURNMENT

The next scheduled meeting of the Mayor and Council is a work session for January 23, 2023 at 5:30 p.m.



**MINUTES OF THE
MAYOR AND COUNCIL
CITY OF DULUTH, GA
DECEMBER 3, 2022**

PRESENT: Mayor Harris, Council members Harkness, Thomas, Doss and Graeder

ABSENT: Councilmember Whitlock

Mayor Harris called the meeting to order at 4:00pm.

I. COMMUNITY CHAT

The Mayor and Council took part in a community chat with the public to address new and upcoming projects such as Rogers Bridge Project, plans for new restaurants as well as housing and business development.

II. ADJOURNMENT

The community chat adjourned at 5:00pm.

Approved this _____ day of _____, 2023.

Mayor Nancy Harris

ATTEST:

Asst. City Mgr./City Clerk, Teresa Lynn



**MINUTES OF THE
MAYOR AND COUNCIL
CITY OF DULUTH, GA
DECEMBER 12, 2022**

PRESENT: Mayor Harris, Council members Harkness, Thomas, Graeder, and Whitlock, City Manager, Department Directors, City Attorney

ABSENT: Councilmember Doss

A work session was held prior to the regular scheduled meeting to allow the elected officials to discuss this evening's agenda items.

Mayor Harris called the meeting to order at 5:50pm and called for a motion to adjourn into an Executive Session for Real Estate, Pending/Potential Litigation, or Personnel, which is properly excluded from the Georgia Open and Public Meeting Law (O.C.G.A. 50-14).

I. EXECUTIVE SESSION

A motion was made by Councilmember Whitlock, seconded by Councilmember Harkness, to adjourn to executive session at 5:50pm.

**Voting for: Council members Harkness, Thomas, Graeder, and Whitlock
Motion carried.**

After the discussion, a motion was made by Councilmember Graeder, seconded by Councilmember Thomas, to return to regular session at 5:58pm.

**Voting for: Council members Harkness, Thomas, Graeder, and Whitlock
Motion carried.**

Mayor Harris passed out the City's Aspirational Agenda and explained the City processes in setting goals that fall within the four Vision Statements; Attractive Destination, Quality Community, Sustainable Economic Environment and World Class Government.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

I. ANNOUNCEMENTS

1. AGENDA CHANGES (IF NECESSARY)
2. RIBBON CUTTING – GLANCY REHAB CENTER RENOVATION

Re-opening of the Northside Joan Glancy Rehab Center in Duluth, Tuesday December 13 at 5:00 p.m.

3. UPCOMING EVENTS – www.duluthga.net/events

Cookies & Cocoa with Santa, December 17, 2022. 10am-12pm. Duluth Festival Center.

II. CEREMONIAL MATTERS

1. PROCLAMATION – RICK CASE “BIKES FOR KIDS” {A}

Mayor and Council presented a proclamation for "Bike for Kids" Day, December 12, 2022 to Rick Case representative Tammy Baker.

III. MATTERS FROM CITIZENS

None.

IV. CONSENT AGENDA

1. APPROVAL OF NOVEMBER 14 & 28 MINUTES
2. APPROVAL OF AGREEMENT – PROBATION SERVICES {B}

Approval of this item Council approves a contract for provision of probation services by Southeast Correction, LLC, to the court, and to authorize the Mayor and Chief Judge to sign the contract.

3. ORDINANCE TO AMEND DULUTH CODE – PARKING {C}

Approval of this item approves ordinance O2022-35 amending the Duluth Code Sections 8-68, and Section 8-70 to prohibit overnight parking within the City of Duluth between the hours of 10 pm and 6 am.

4. APPROVAL OF 2023 EMPLOYMENT AGREEMENT {D}

Approval of this item authorizes Mayor Harris to execute an amendment to the City Manager's Employment Agreement by amending Section 6 of the City Manager's contract regarding an increase in annual base salary to \$215,323.79 and to extend the term of the contract until December 31, 2023.

5. ACCEPT GRANT/ORD TO AMEND BUDGET – 2022 LMIG

{E}

The City received \$242,289.02 from the Georgia Department of Transportation (GDOT) representing the City's share of the FY 2022 LMIG (Local Maintenance & Improvement Grant). LMIG funds are generated from the state motor fuel tax that is set each year by the Georgia General Assembly. The grant is for road improvement projects such as street resurfacing and requires 30% matching funds of \$72,686.71, which will come from 2017 SPLOST Transportation funds. A project list was submitted and approved by GDOT. Approval of this item approves an ordinance to amend the budget (BA-FY23-13) to added \$242,289.02 to the Transportation/Infrastructure Improvement - Paved Streets - Repairs & Maintenance - Streets and Sidewalks line item.

A motion was made by Councilmember Thomas, seconded by Councilmember Graeder, to approve the Consent Agenda as presented.

Voted For: Council members Harkness, Thomas and Graeder

Abstaining: Councilmember Whitlock (due to business association with Southeast Correction for Probation Services)

Motion carried.

V. PUBLIC HEARINGS

1. ORDINANCE OF SPECIAL USE – SU2022-005 – CHARTER SCHOOL - *removed*

Mayor Harris announced the City received a request earlier today to withdraw the application and therefore will be removed from the agenda.

2. ORDINANCE READOPTING OFFICIAL ZONING MAP

{F}

Mayor Harris opened the public hearing.

Planning Director Forrest Huffman came forward to present. The Mayor and Council considered ordinance O2022-37 to re-adopt the official Zoning Map of City of Duluth which is necessary periodically to adequately reflect the zoning classification of land within city limits. The Planning Commission recommended approval on November 7, 2022.

Being no further discussion from the Council nor public, Mayor Harris closed the public hearing and called for a motion.

A motion was made by Councilmember Harkness, seconded by Councilmember Whitlock, to approve ordinance O2022-37 as presented.

Voted For: Council members Harkness, Thomas, Graeder, and Whitlock

Motion carried.

3. ORDINANCE TO AMEND UDC– CASE TA2022-002- SHORT TERM RENTALS

{G}

Mayor Harris opened the public hearing.

Planning Director Forrest Huffman came forward to present. The City of Duluth finds it necessary to offer regulatory framework for the use of Short-Term Rentals (STR). The proposed text amendment for ordinance O2022-38 is to regulate the operation of short-term property rentals for companies such as Airbnb, Vacation Rentals by Owner (VRBO), etc.

The Unified Development Code has previously not addressed this scenario. Staff has had inquiries for some time now, and complaints as well that lead to code enforcement calls for items such as property maintenance, noise concerns, etc. There are currently about 10 open cases regarding STR's. There is another element to consider. Staff receives inquiries regarding STR as "Businesses" – companies that would like to buy one or more properties in the City and turn them in to rental properties exclusively, and therefore staff recommends a level of regulation.

Mr. Huffman explained that Article 2 Section 203, "Definitions" would read:

Short Term Rental (STR). A residential unit or portion of a residential dwelling unit that is rented on a nightly basis for no more than twenty-eight (28) days to individual guests as a form of tourism or transient accommodations. Short Term Rentals are not permitted in structures not intended for residential occupancy, tiny homes, or mobile or manufactured units.

Further to amend Article 2:

Table 2-C. Principal Uses Allowed By Zoning District

- Add NAICS Code 72119: Other Transient Lodging to allowed uses in the RM district and special use approval for R-100, R-75, HRD, and CBD.

Table 2-D. Accessory and Temporary Uses Allowed By Zoning District

- Add NAICS Code 72119: Other Transient Lodging to allowed uses in the RM district and special use approval for R-100, R-75, HRD, and CBD.

The only district that would allow STR by right is RM. This activity would not be allowed in a PUD as they have their own set of use regulations and standards.

Amend Article 3: Restrictions on Particular Uses

Section 344. Short Term Rental

- Unit Type and Location Restrictions
- Parking Requirements
- Maximum Occupancy
- Quiet Hours
- PUD Limitations
- Additional Permit Requirements

Mr. Huffman noted a typo error in Exhibit B Other Transit Lodging CBD, supposed to match the ordinance to designate as Special Use. Restrictions would apply.

For Multifamily structures, such as Duplex, Triplex, Quadplex and above, there are a ratio of allowed units deemed long term vs. STR model: one per every two units in Duplex, one for three in a Triplex, one per every four units in a Quadplex in excess.

He mentioned situations such as trash pickup, off-street parking,

Mayor Harris called for questions/comments from the public.

Rob Ponder of 3146 Lakeview Drive came forward to speak in favor of the amendment and requested that staff to revisit the ordinance within a year to determine if additional conditions will be needed to strengthen the ordinance.

Being no further comments, Mayor Harris closed the public hearing and called for a motion.

A motion was made by Councilmember Whitlock, seconded by Councilmember Thomas, to approve O2022-38 for Case TA2022-002 with the amendment to Exhibit B as presented.

Voted For: Council members Harkness, Thomas, Graeder, and Whitlock
Motion carried.

VI. NEW BUSINESS

1. ORDINANCE TO AMEND DULUTH CODE – STREET RACING {H}

Chief Carruth presented. The City of Duluth Police Department is charged with the protection of the health, safety and welfare of the residents and visitors. Approval of ordinance O2022-36 will enable the Duluth Police to combat the occurrence of street racing and reckless driving more effectively by setting fines, allowing impoundment of vehicles, and/or permitting imprisonment for violators. Approval of this item amends Chapter 10 of the Duluth Code of Ordinances by adding Sections Section 10-16.

A motion was made by Councilmember Harkness, seconded by Councilmember Thomas to approve ordinance O2022-36 as presented.

Voted For: Council members Harkness, Thomas, Graeder, and Whitlock
Motion carried.

2. AUTHORIZATION FOR PURCHASE/SALE AGREEMENT

{I}

The Mayor and Council considered a purchase/sale agreement for 3542 North Street. Staff has negotiated a purchase and sale agreement (PSA) in the amount of \$449,000 from the owners, Marilyn Allen, Timothy Logan Higgins (AKA Timothy Logan Allen) and Harriet Higgins. The PSA includes a 90-day lease-back period by the owners following closing. The funding is joint County/City SPLOST for project CD-71, Main St Phase II.

Being no further discussion, Mayor Harris called for a motion.

A motion was made by Councilmember Grader, seconded by Councilmember Whitlock to approve the purchase and sale agreement with Marilyn Allen, Timothy Logan Higgins (AKA Timothy Logan Allen) and Harriet Higgins for acquisition of 3542 North Street, Duluth Georgia, 30096 also known as tax parcel number 7202-042 for an amount of \$449,000, as presented.

**Voted For: Council members Harkness, Thomas, Graeder, and Whitlock
Motion carried.**

3. BID AWARD – LARGE SCALE PLAYABLE ART RFQ

{J}

City Manager James Riker presented. In August staff issued a Request for Qualifications (RFQ) relating to construction of a playable art piece to be in Taylor Park. Three companies provided proposals. An evaluation was conducted based on the criteria as follows:

1. Approach to building playable art and warranty of final product
2. Experience – years in business, number, and quality of similar completed projects
3. Budget – cost to complete and deliver this project (NTE \$350,000)
4. Schedule – time from Notice to Proceed to delivery
5. References

The team of ID Sculpture and Bliss Products ranked the highest of the three proposals. Accordingly, staff recommends the team of ID Sculpture and Bliss Products be selected as the contractor to construct the playable art. This item is budgeted in FY2023 with accounts 770-6220-521200 (professional services) and 770-6220-541200 (site improvements).

Due to safety concerns as well as the age and condition of the trees, it will be necessary to remove and replant trees that are more conducive to a playground area.

Being no further discussion, Mayor Harris called for a motion.

A motion was made by Councilmember Whitlock, seconded by Councilmember Thomas, to award the playable art proposal to ID Sculpture and Bliss Products as the selected contractors for the playable art piece and authorize the City Manager

to enter into appropriate contracts approved by the City Attorney for design, construction, and installation in accordance with the proposal.

Voted For: Council members Harkness, Thomas, Graeder, and Whitlock
Motion carried.

VII. MATTERS FROM DEPT HEADS/CITY ATTORNEY

1. ORDINANCE TO AMEND FY23 BUDGET 0 \$44,000 – RETAINING WALLS {K}

Assistant City Manager/Finance Director Ken Sakmar presented. Significant erosion is occurring at the tennis court and caboose areas in W P Jones Park. If not addressed, staff believes it could undermine the asphalt surface of the tennis court and damage the caboose. For this reason, staff is requesting \$44,000 in unallocated Parks and Recreation 2017 SPLOST funds to hire an engineering firm to design the necessary retaining walls and grading to stop the erosion. The Mayor and Council to consider approval of ordinance BA-FY23-14 to add \$44,000 in unallocated 2017 SPLOST Parks and Recreation funds to WP Jones Park - Park Areas - Professional Services line item and like amounts to the necessary transfer accounts.

Being no further discussion, Mayor Harris called for a motion.

A motion was made by Councilmember Harkness, seconded by Councilmember Graeder to approve ordinance BA-FY23-14 as presented.

Voted For: Council members Harkness, Thomas, Graeder, and Whitlock
Motion carried.

2. ORDINANCE TO AMEND FY23 BUDGET – \$22,000 – PICKLEBALL DESIGN {L}

Assistant City Manager/Finance Director Ken Sakmar presented. Park staff would like to offer pickleball as an activity at Bunten Road Park. To do so, part of the current baseball fields would need to be converted to pickleball courts. Staff would like to hire a firm to design a concept to match the overall layout of the park. Once the concept is approved, staff will move forward with developing plans and permitting. Staff is requesting \$22,000 in unallocated 2017 SPLOST Parks and Recreation funds to hire a firm to develop the design. The Mayor and Council to consider approval of ordinance BA-FY23-15 to add \$22,000 in unallocated 2017 SPLOST Parks and Recreation funds to Bunten Road Park - Sport Facilities - Professional Services line item and like amounts to the necessary transfer accounts.

A motion was made by Councilmember Grader, seconded by Councilmember Whitlock to approve ordinance BA-FY23-15 as presented.

Voted For: Council members Harkness, Thomas, Graeder, and Whitlock
Motion carried.

3. ORDINANCE TO AMEND BUDGET – \$90,000 – ROGERS BR PK PHASE II {M}

Assistant City Manager/Finance Director Ken Sakmar presented. With Phase I of Rogers Bridge Park nearing completion, staff would like to begin the preconstruction design for Phase II, which include parking lots, sidewalks/trail, pavilion, and additional landscaping. Once the design is completed and approved, staff will prepare to receive bids for construction. Staff is requesting \$90,000 in unallocated 2017 SPLOST funds to hire an engineering firm to develop the preconstruction design documents. The Mayor and Council to consider approval of ordinance BA-FY23-16 to add \$90,000 in unallocated 2017 SPLOST Parks and Recreation funds to Rogers Bridge Park - Park Areas - Parking Lot - Professional Services line item and like amounts to the necessary transfer accounts.

Being no further discussion, Mayor Harris called for a motion.

A motion was made by Councilmember Thomas, seconded by Councilmember Harkness to approve ordinance BA-FY23-16 as presented.

Voted For: Council members Harkness, Thomas, Graeder, and Whitlock
Motion carried.

VIII. MATTERS FROM CITY MANAGER

1. Street Sweeping underway
2. Crew cleaning curb lines throughout the City

IX. ADJOURNMENT

Being no further business, Mayor Harris adjourned the meeting at 6:50pm.

**RESOLUTION
SETTING TIME AND PLACE OF
REGULARLY SCHEDULED MEETINGS FOR YEAR 2023**

WHEREAS, The Mayor and Council of the City of Duluth desires to establish the time and place of its regular meetings for the 2023 calendar year in accordance with the requirements of Georgia Law.

NOW THEREFORE, the Mayor and Council of the City of Duluth hereby resolves that its regularly scheduled Council meetings for the 2023 year will be held on the 2nd Monday of every month at 6:00 p.m. in the Duluth City Hall Council Chambers located at 3167 Main Street, Duluth, Georgia; and

WHEREAS, Informal work sessions will be held prior to each scheduled Council Meeting at 5:30 p.m. in the Duluth City Hall Council Chambers or Main Street Conference Room located at 3167 Main Street, Duluth, Georgia, as well as additional work sessions after each regularly scheduled Council meeting when deemed necessary; and

NOW THEREFORE, Council Work Sessions will be held on the 4th Monday of every month at 5:30 p.m. in the Duluth City Hall Community Room, with exception of June 26th (Annual GMA Training) and December 25th (Christmas Day).

Fifth Monday Work Sessions are scheduled for January 30, July 31, and October 30, with the exception of Monday, May 29, as the Memorial Day holiday.

IT IS FURTHER RESOLVED THAT, other work sessions may be duly called as needed and properly noticed. All meetings are open to the public, and the Mayor and Council welcome and encourage attendance at these meetings.

IT IS SO RESOLVED, this 9th day of January, 2023.

Nancy Harris, Mayor

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

ATTEST: _____
Teresa S. Lynn, Asst. City Manager/City Clerk

**ORDINANCE
TO AMEND THE PER DIEM, LODGING, TRAVEL,
CREDIT CARD, AND OTHER EXPENSE MANAGEMENT**

WHEREAS, Section 2-47(2) of the City of Duluth Code of Ordinances authorizes travel reimbursement for employees or officers of the City to coincide with the Internal Revenue Service Guidelines for expenses incurred while attending training, meetings or events for approved city business;

NOW THEREFORE, the City Council of the City of Duluth hereby ordains as follows:

That beginning July 1, 2023, the reimbursement rates shall be 65.5 cents per mile for business use of personal vehicles.

IT IS SO ORDAINED THIS 9th DAY OF JANUARY, 2023.

Those councilmembers voting in favor:

Nancy Harris, Mayor

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

ATTEST: _____
Teresa S. Lynn, Asst. City Manager/City Clerk

**ORDINANCE
CITY OF DULUTH
MUNICIPAL COURT ASSISTANT SOLICITOR**

The Council of the City of Duluth hereby ordains:

That the following individual be appointed as Municipal Court Assistant Solicitor of the Municipal Court of the City of Duluth and is authorized to serve in said position unless a majority vote of Council removes such member or until a successor is appointed.

Ms. Kelsey Wiley

DULY ADOPTED this 9th day of January, 2023.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, Asst. City Manager/City Clerk

**RESOLUTION
NAMING OF THE OFFICIAL NEWSPAPER**

The Council of the City of Duluth hereby resolves:

That the **Gwinnett Daily Post** be named the Official Newspaper for 2023 in the City of Duluth for the publishing of all legal documents that are required by law to be published. This resolution shall not be construed to prevent the City from utilizing a newspaper of general circulation within the City of Duluth or Gwinnett County when authorized to do so by state or local law.

IT IS SO RESOLVED this 9th day of January, 2023.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, Asst. City Manager/City Clerk

**RESOLUTION
REGARDING CHECK SIGNING/INVESTMENT AUTHORITY**

BE IT RESOLVED that First Citizens Bank, Wells Fargo Bank, The Piedmont Bank, The Renasant Bank, Peoples Bank and Trust, State Bank and Trust, Quantum National Bank, Flagstar Bank, Fifth Third, Chase, US Bank, East West Bank, GA Commerce Bank, Touchmark Nat'l Bank, Truist Bank, Iberia Bank, Bank of Ozarks, and Bank of America are hereby designated as depositories of the City of Duluth, a municipal corporation existing under the laws of the State of Georgia; and

BE IT RESOLVED that on all checking accounts, saving accounts, deposit or collection of accounts, reserve accounts, and certificates of deposit, money markets and that all drafts, checks, etc., drawn against any such accounts shall be signed by the following:

EITHER the Mayor or the Mayor Pro tem AND either the Assistant City Manager/City Clerk or City Manager. It being the intent hereof to require the signature of both one elected and one appointed City official.

BE IT FURTHER RESOLVED that the renewal of any certificates of deposit or other deposit instruments must be accomplished by the same persons as identified herein above.

No person, either elected or appointed, shall have any authority to borrow in the name of the City of Duluth without an express written resolution authorizing each such loan transaction and granting specific authority to specific named elected and appointed officials to sign such notes on behalf of the City of Duluth.

DULY ADOPTED this 9th day of January, 2023.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

ATTEST: _____
Teresa S. Lynn, Asst. City Manager/City Clerk

**ORDINANCE
CITY OF DULUTH
EMPLOYEES BENEFITS AND AUDIT COMMITTEE**

WHEREAS, Pursuant to Section 2-96 of the Duluth Code of Ordinances establish that the Employees Benefits and Audit Committee be comprised of up to eight (8) members, and shall consist of two (2) members of the governing body, one (1) to four (4) city residents with investment experience, may consists of up to two (2) business owners with a current city occupational tax certificate and two (2) city residents, one designated as an alternate.

WHEREAS, Section 2-49 Term Limits for Boards and Commisions (established 2012) service on each and every board, authority, commission or committee of the City of Duluth shall be limited to three consecutive full four-year terms. Four-year terms to begin at the time of term expiration after 2012. In no event shall a member serve over fourteen (14) consecutive years.

NOW THEREFORE, the City Council of the City of Duluth hereby ordains that the following members to be appointed to the Employees Benefitis and Audit Committee and are authorized to serve in said position unless a majority vote of Council removes such member.

New Appointment:

Susan Porteous	3/31/26	Term begin date: 2023
(filling unexpired term of John Howard)		

Current Members:

Brandon Odum	3/31/25	Term begin date: 2017
Sharee Smith	3/31/25	Term begin date: 2022
Michael Park	3/31/26	Term begin date: 2022
Carla Montgomery	3/31/26	Term begin date: 2022
Helen Boyce	3/31/26	Term begin date: 2022

Governing Body:

Marline Thomas	3/31/26	Term begin date: 2021
Jamin Harkness	3/31/26	Term begin date: 2022

Permanent Positions:

Ken Sakmar (Asst. City Manager/Finance)
Jocelyn McGiboney (HR Manager)

IT IS SO ORDAINED this 9th day of January 2023.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____
Teresa S. Lynn, Asst. City Manager/City Clerk

ORDINANCE
2023 ELECTION – APPOINTMENTS/QUALIFYING DATES & FEES

WHEREAS the regularly scheduled municipal election for the City of Duluth is scheduled for November 7, 2023; and

WHEREAS the terms of offices for Mayor, currently held by Nancy Harris, Post 4, currently held by Councilmember Manfred Graeder, and Post 5, currently held by Councilmember Greg Whitlock, expire on the second Monday in January of 2023 and their successors are required to be elected in the municipal election scheduled for November 7, 2023; and

WHEREAS it is necessary for the City Council to fix and publish the qualifying fees for these offices and to make other provisions for the municipal election; and

WHEREAS the Georgia Municipal Election Code requires that the Mayor and Council appoint certain officials prior to the election, including a Superintendent and Chief Registrar; and

WHEREAS the Election Superintendent shall take such action as is necessary to properly call the municipal election scheduled for November 7, 2023, including, but not limited to, properly publishing a public notice to notify the public of said election. The City Clerk and/or the Election Superintendent shall take such other actions as necessary and appropriate to make certain that the election is conducted in accordance with, and in conformity with, the laws of the State of Georgia, the Duluth City Charter, and Duluth Ordinances.

NOW THEREFORE, the City Council of the City of Duluth hereby ordains that City Clerk Teresa S. Lynn is hereby appointed to the position of Municipal Superintendent, Kristin McGregor is hereby appointed as Assistant Superintendent, and the Gwinnett Board of Registration and Elections is hereby appointed as Chief Registrar. The Poll Manager, Absentee Ballot Clerks, and Poll Workers to be appointed by the Superintendent of Elections at a later date.

THE CITY COUNCIL OF THE CITY OF DULUTH FURTHER ORDAINS that all persons desiring to run for the offices of the Mayor and City Council members shall qualify in the office of the City Clerk of the City of Duluth located at 3167 Main Street, Duluth, Georgia 30096, beginning at 8:30 a.m. on Monday, August 21, 2023, and ending at 4:30 p.m. on Wednesday, August 23, 2023. Those who desire to run for the position of Mayor shall pay a qualifying fee of \$288.00 and those who desire to run for the position of Councilmember shall pay a qualifying fee of \$180.00. When qualifying, the candidate shall designate whether they seek the position of Mayor presently held by the incumbent Nancy Harris or whether they seek the position of Council member presently held by the incumbents; Manfred Graeder, (Post 4), or Greg Whitlock (Post 5). All qualifying fees shall be paid at the time of qualifying.

IT IS SO ORDAINED this 9th day of January 2023.

Mayor Nancy Harris

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

ATTEST: _____
Asst. City Manager / City Clerk

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2023 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2023 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2023 fiscal year as follows:

Total Revenues:	<u>71,600,624</u>
Operations Expenditures:	<u>35,275,963</u>
Capital Improvement Expenditures:	<u>36,324,661</u>
Total Expenditures:	<u>71,600,624</u>

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth City is working with Midatech, Inc. to upgrade the control systems for the HVAC system at the Public Safety building because the control systems need to be upgraded due to the current configuration being outdated and no longer serviceable at of cost of \$32,990.37; and

WHEREAS it is requested \$13,058.73 in unallocated 2014 SPLOST Administrative Facility Funds be added to the Police Capital Projects – Police – Building line item, including associated transfers; and (Additional funds to complete the upgrade will come from budgeted General Funds)

NOW THEREFORE, the City of Duluth 2023 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves	<u>71,613,683</u>
Operations Expenditures:	<u>35,275,963</u>
Capital Improvement Expenditures:	<u>36,337,720</u>
Total Expenditures:	<u>71,613,683</u>

IT IS SO ORDAINED this _____ day of _____, 2023.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____

Teresa S. Lynn, City Clerk

INTERGOVERNMENTAL AGREEMENT BETWEEN GWINNETT COUNTY AND THE CITY
OF DULUTH REGARDING INSTALLATION AND MAINTENANCE
OF DULUTH SIGNS

This Agreement (hereinafter referred to as "Agreement") made by and between the City of Duluth, a municipal corporation chartered by the State of Georgia and headquartered at 3167 Main Street, Duluth, Georgia 30096 (hereinafter referred to as "CITY") and Gwinnett County, Georgia, a political subdivision of the State of Georgia headquartered at 75 Langley Drive, Lawrenceville, Georgia 30046, (hereinafter referred to as "COUNTY") each of whom has been duly authorized to enter into this Agreement.

WITNESSETH

WHEREAS, the parties to this Agreement are governmental units located within the State of Georgia and authorized by law to enter into intergovernmental agreements; and

WHEREAS, both parties believe that it would be in the interest of the health, safety, and welfare of the citizens of Gwinnett County to allocate resources and efforts to undertake a transportation project; and

WHEREAS, the CITY has an interest in installing and maintaining signs in the COUNTY maintained right of way;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and undertakings set forth herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do consent and agree as follows:

1. The CITY has requested improvements which consist of the installation of CITY signs in the COUNTY maintained right of way (hereinafter referred to as "Signs") on Pleasant Hill Road, North Berkley Lake Road, Peachtree Industrial Boulevard, Sugarloaf Parkway, Old Peachtree Road, North Berkley Lake Road, Bunten Road, Albion Farms Road, and Pittard Road.
2. The CITY shall be responsible for the costs of engineering, labor, and materials to install the Signs. These costs will be funded solely by the CITY and the COUNTY will bear no financial responsibility for the installation and maintenance of the Signs.
3. The CITY shall perform and carry out in a satisfactory manner, as determined by the COUNTY, installation and maintenance of the Signs in the COUNTY maintained right of way. The COUNTY and the CITY shall work together to reach an agreeable installation plan. The COUNTY may review and inspect the activities covered by this Agreement

including all reports, drawings, studies, specifications, estimates, maps, and computations prepared for or by the CITY. The CITY will work with the COUNTY, and any other agencies as needed to obtain necessary approvals.

4. The CITY will be responsible for the cost of the maintenance and replacement of the Signs. The COUNTY will bear no financial responsibility for the maintenance and replacement of the Signs in the COUNTY maintained right of way. Notwithstanding the foregoing, should the CITY determine that it will no longer maintain the Signs within the COUNTY maintained right of way then the CITY shall notify the COUNTY. Should the COUNTY in its sole discretion determine that the Signs installed by the CITY would cause a hardship to the COUNTY, then the CITY shall remove the Signs that were installed by or for the CITY and restore the median or shoulder to the standard for all COUNTY roadway medians and shoulders.

The COUNTY and the CITY shall each bear its own costs, expenses and claims to attorneys' fees incurred or arising out of the Agreement or the Signs. Neither the COUNTY nor the CITY shall indemnify or hold harmless the other party or its agents, inspectors, servants, and employees, past and present, for any costs, expenses and claims to attorneys' fees incurred or arising out of the Agreement or the Signs.

All notices pursuant to this Agreement shall be served as follows: As to the COUNTY, Chairwoman, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, Georgia 30046. As to the CITY, Mayor, City of Duluth, 3167 Main Street, Duluth, Georgia 30096.

This Agreement constitutes the entire written agreement between the parties hereto as to all matters contained herein. All subsequent changes to this Agreement must be in writing and signed by both parties. This Agreement is for the benefit of the parties hereto only and is not intended to benefit any third party or to give rise to any duty or causes of action for any third party, and no provisions contained within this Agreement are intended to nor shall they in any way be construed to relieve any contractor performing services in connection with the project of any liability or to complete the work in a good, substantial and workmanlike manner. No provision in this Agreement is intended to nor shall it be construed to in any way waive immunities or protections provided to either the COUNTY or to the CITY by the Constitution and laws of the State of Georgia.

IN WITNESS WHEREOF, the parties hereto acting through their duly authorized agents have caused this Agreement to be signed and delivered on the date set forth below.

This _____ day of _____, 202__.

WINNETT COUNTY, GEORGIA

CITY OF DULUTH, GEORGIA

By: _____
NICOLE L. HENDRICKSON

By: _____

Title: CHAIRWOMAN

Title: MAYOR

ATTEST:

ATTEST:

By: _____

By: _____

Title: County Clerk/Deputy County Clerk (SEAL) Title: City Clerk (SEAL)

APPROVED AS TO FORM:

Senior Assistant County Attorney

RESOLUTION
DESIGNATE OPEN RECORDS OFFICERS FOR THE CITY OF DULUTH, GEORGIA

WHEREAS, the City of Duluth is a Municipal Corporation of the State of Georgia; and

WHEREAS, the City of Duluth is an agency subject to the Open Records Act of the State of Georgia; and

WHEREAS, the City of Duluth is comprised of various departments, boards, authorities and commissions; and

WHEREAS, the Open Records Act of the State of Georgia permits an agency to designate Open Records Officers to receive requests for inspection or copying of records; and

WHEREAS, the Mayor and Council of the City of Duluth wish to update and clarify duties of the Assistant City Manager/City Clerk regarding records retention; and to designated Open Records Officers; and

WHEREAS, no record may be destroyed except those records as provided in the approved retention schedule provided by the Local Government Records Retention schedule governed by the Georgia Achieves University System of Georgia, provided, however a written record may be destroyed if it is otherwise preserved by means of scanning or other reliable photographic or digital means.

IT IS HEREBY RESOLVED that the Mayor and Council of the City Duluth, in accordance with the provisions of the Open Records Act found in O.C.G.A. 50-18-71(b) designate the Assistant City Manager/City Clerk or his/her designee as the Open Records Officer to receive written requests on behalf of the City.

1. Assistant City Manager/City Clerk – or his/her designee(s)

IT IS FURTHER RESOLVED that the City requires that all written requests under the Open Records Act shall be made upon the Open Records Officers.

IT IS FURTHER RESOLVED that the Assistant City Manager/City Clerk shall notify the Gwinnett Daily Post, as the legal organ of the City and Gwinnett County that the City has so designated the Open Records Officers contained herein.

IT IS FURTHER RESOLVED that the Assistant City Manager/City Clerk shall ensure that the designated Open Records Officers and their contact information are prominently displayed on the City's website.

Duly Adopted this 9th day of January, 2023.

Nancy Harris, Mayor

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

ATTEST: _____
Teresa S. Lynn, Asst. City Manager/City Clerk



December 29, 2022

Margie Pozin
CITY OF DULUTH
3167 Main Street
Duluth, Georgia, 30096

RE: Proposed installation of one (1) underground transverse 4" HDPE conduit with one (1) 144-count fiber optic wireline

**COASTAL Division, at Mile Post 612.91
Duluth, Gwinnett County, Georgia
Latitude 33.99804709, Longitude -84.14874993
NS Activity No. 1309178**

Dear Margie Pozin:

RailPros, as consultant for Norfolk Southern Railway Company ("Railway"), has reviewed the above-referenced request. Based on the information and documentation presented, Railway has no objections to the proposed work.

Attached you will find the requested offer of agreement for execution, by an official authorized to execute contract agreements on behalf of the Licensee. Please have the agreement executed via DocuSign. Note, however, that the attached offer of agreement does not constitute a binding contract, unless or until it is executed by both the Licensee and Railway.

In order for Railway to countersign the document, the following items are needed for review:

1. **Payment of the License Fee** in the amount of **\$19,635.00** within the Application System;
2. **A Certificate of Insurance** as required in the agreement, is to be submitted within the Application System.
3. **A separate Railroad Protective Liability Insurance policy**, as required in the agreement, with Railway as the named insured, and the Activity ID referenced in the description, submitted within the Application System; OR
4. The submission of the Risk Management Fee adds the specific project/activity to the Norfolk Southern Master Railroad Protective insurance policy, and as such no further railroad protective liability insurance coverage is necessary or requested.

NOTE: No work shall be permitted on or about the Railway's property until the agreement becomes binding, and the Division Engineer or their authorized representative has reviewed and approved field services for the project, such as *flagging protection, construction monitoring, and post-construction inspection services*. Once the above items are received, the fully executed agreement will be sent, along with the name and contact information for field service coordination.

If we have not received the executed agreement and corresponding payments and/or documents within sixty (60) days from the date of this letter, we reserve the right to cancel this request.

If you have any questions, please contact me within the messages tab of the application portal or by calling the number listed below.

Sincerely,

A handwritten signature in black ink that reads 'Laura Wilburn'.

Laura Wilburn
Real Estate Specialist

11890 Miracle Hills Dr. Ste, 103
PO Box 642270
Omaha, NE 68164

P: (402) 965-0539 **F:** (866) 762 - 7619

www.railpros.com

CONDUIT DATA SHEET

(For Telecom and Power Conduits only, 6" in diameter or less)

	CONDUIT
NOMINAL SIZE OF PIPE	4"
MATERIAL*	HDPE
OUTSIDE DIAMETER	4.500"
INSIDE DIAMETER	3.633"
WALL THICKNESS - must be at least 0.188"	0.409"
TYPE OF COATING	HDPE

*** STEEL conduits required at least 10' depth below base of rail**
HDPE conduits will be considered at least 15' depth below base of rail

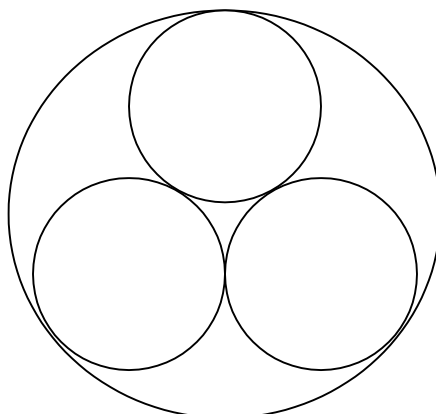
Proposed method of installation (refer to NSCE-4 Specification):

- ☐ Jack & Bore
- ☐ Directional Boring Method "A" – *must have at least 10' depth below base of rail*
- ☒ Directional Boring Method "B" – *only for casings 6 inches or less in diameter*
- ☐ Open Cut – *All installations directly under any track must be designed as a bored installation. Open cut installations will be considered on a case-by-case basis by Norfolk Southern's Division Superintendent at the time of installation.*
- ☐ Other – Please Specify: _____

MULTIPLE INNERDUCTS

NUMBER OF INNERDUCTS WITHIN CASING PIPE: 1

- Provide a detail or cross section of the casing pipe with innerducts (see below).
- Clearly mark the type of facility that will be installed within each innerduct. If innerduct will be left spare or empty, please identify as such.



LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement"), dated as of December 29, 2022, (the "Effective Date") is made and entered into by and between

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, whose mailing address is 650 West Peachtree St. Box 22, Atlanta, Georgia 30308 (hereinafter called "Railway"), and **CITY OF DULUTH**, a(n) GA Government Entity, whose mailing address is 3167 Main Street, Duluth, Georgia 30096 (hereinafter called "Licensee").

WITNESSETH

WHEREAS, Licensee has submitted to Railway an Application (as defined herein) related to the **proposed installation of one (1) underground transverse 4" HDPE conduit with one (1) 144-count fiber optic wireline (hereinafter called the "Facilities")** located in, over or under, and across the right-of-way or property and any tracks of Railway at or near:

- Milepost 612.91, COASTAL Division
- Latitude 33.99804709, Longitude -84.14874993
- Duluth, Gwinnett County, Georgia

the same to be located in accordance with and limited to the installation shown on the diagram set forth in **EXHIBIT A** attached hereto and made a part hereof (such right-of-way or property of Railway, collectively, the "Premises"); and

WHEREAS, Railway has approved the Application for the initial installation and construction of the Facilities; and

WHEREAS, Licensee desires a license to use such right-of-way or property of Railway for the installation and construction, as well as the subsequent maintenance, operation and removal, of the Facilities.

NOW, THEREFORE, Railway and Licensee agree as follows:

1. Grant; Consideration; Term. Subject to Section 2(b) below, Railway hereby grants to Licensee, insofar as Railway has the right to do so, without warranty and subject to all encumbrances, covenants and easements to which the Railway's title may be subject, the right to use and occupy so much of the Premises as may be necessary for the installation, construction, maintenance, operation and removal of the Facilities (collectively, "Operate" or "Operations"). Upon execution of this Agreement, Licensee shall pay to Railway (i) a non-refundable, non-assignable, one-time license fee in the amount of **NINETEEN THOUSAND SIX HUNDRED AND THIRTY-FIVE AND 00/100 DOLLARS (\$19,635.00)**, and (ii) if applicable as determined by Railway pursuant to Section 12 below, the Risk Financing Fee (as defined in Section 12). The term of this Agreement shall commence on the Effective Date and shall continue for a period of twenty (20) years, subject to prior termination as hereinafter described (the "Term").

2. Use and Condition of the Premises.

(a) The Premises shall be used by Licensee only for Operations and for no other purpose. Licensee accepts the Premises in their current "as is" condition, as suited for Operations, and without the benefit of any improvements to be constructed by Railway.

(b) With respect to each Operations project that requires access to the Premises after the initial installation and construction of the Facilities, Licensee shall submit to Railway an application conforming to Railway's then-current standards and procedures (an "Application") for review and approval.

3. Installation of the Facilities; Railway Support. Licensee shall, at its expense, Operate the Facilities (i) on a lien-free basis and in such a manner as will not interfere with the operations of Railway, or endanger persons or property of Railway and (ii) in accordance with (a) the plans and specifications (if any) shown on the prints attached hereto and any other specifications prescribed by Railway, (b) applicable laws, regulations, ordinances and other requirements of federal, state and local governmental authorities, and (c) applicable specifications adopted by the American Railway Engineering and Maintenance-of-Way Association, when not in conflict with the applicable plans, specifications, laws, regulations, ordinances or requirements mentioned in clauses (a) and (b) above. All underground pipes must have secondary pipe containment if the material flowing through the pipeline poses a safety or environmental hazard. Any change to the character, capacity or use of the Facilities shall require execution of a new agreement. In the event it becomes necessary for Licensee to deviate from the approved plans and specifications, Licensee shall seek prior approval from Railway's Division Engineer or his or her authorized representative and, when applicable, an authorized representative of the Division Engineer in the field during Construction Monitoring. Licensee shall provide Railway with complete as-built drawings of the Facilities in an electronic format within thirty (30) days of (i) completion of the initial installation and construction of the Facilities and (ii) completion of any material change to the Facilities.

4. Railway Support. With respect to each Operations project that requires access to the Premises, Railway shall, at Railway's option, furnish, at the sole expense of Licensee, Support Services. The term "Support Services" means such materials and services as necessary, in Railway's sole judgment, to support Railway's tracks and to protect Railway's traffic, including without limitation flagging services and Construction Monitoring during Operations that require access to the Premises. Support Services shall be provided unless Railway's Division Engineer or his or her authorized representative provides to Licensee a written waiver of Support Services, whether in whole or in any part, in a given instance. The term "Construction Monitoring" means services comprised of one or more Railway representatives being assigned and present to monitor construction activities of Licensee, which may include a preconstruction site assessment and a post-construction site assessment.

5. Electronic Interference. If the Facilities cause degradation of Railway's signal, communications and other electronic systems (hereinafter collectively called the "Electronic Systems") or endanger Railway's personnel or other individuals entitled to be on or about the Premises, through inductive or electrostatic interference or otherwise, Licensee, at its expense, will modify the Facilities to the satisfaction of Railway so as to eliminate such degradation or danger.

Such modifications may include, without limiting the generality of the foregoing, transposing circuits or providing additional shielding, reactance or other corrective measures deemed necessary by Railway. The provisions of this Section 5 shall apply to the Electronic Systems existing as of the date of this Agreement and to any Electronic Systems that Railway may install in the future.

6. 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.

7. 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 not less than thirty (30) days prior written notice from Railway and at Licensee's 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.

8. 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 indemnifies Railway, its officers, directors, agents and employees from and against any liability for such damage.

9. Entry Upon Premises. Licensee shall enter the Premises in any given instance only pursuant to an approved Application. Prior to commencement of any work to be performed on or about the Premises, Licensee shall notify the appropriate Division Engineer or their authorized representative for the scheduling of Support Services as determined pursuant to Section 4 above. Within seventy-two (72) hours after the Division Engineer's actual receipt of such notification, the Division Engineer shall review the necessity and availability of flagmen for the proposed work and advise Licensee of such matters and the estimated cost of Support Services. No work shall be permitted on or about the Premises without the presence of Railway's flagman or the Division Engineer's waiver of the requirement for flag protection. Entry on or about the Premises or any other Railway right-of-way without the Division Engineer's prior approval shall be deemed trespassing. Licensee agrees to pay Railway, within thirty (30) days after delivery of an invoice therefor, for the cost of Support Services provided by or on behalf of Railway.

10. 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.

11. Indemnification. Licensee hereby agrees to indemnify and save harmless Railway, its officers, directors, agents and employees, from and against any and all liabilities, claims, losses, damages, expenses (including attorneys' fees) or costs for personal injuries (including death) and property damage to whomsoever or whatsoever occurring (hereinafter collectively, "Losses") that arise in any manner from (a) the presence of the Facilities on or about the Premises, (b) any Operations or any failure to conduct Operations properly, or (c) any act, omission or neglect of Licensee, its agents, servants, employees or contractors in connection therewith, unless caused solely by the negligence of Railway or caused solely by the willful misconduct of Railway.

12. Insurance.

(a) Insurance Requirements. Without limiting in any manner the liability and obligations assumed by Licensee under any other provision of this Agreement, and as additional protection to Railway, Licensee shall comply with the following provisions:

(i) Subject to subsection (ii) below, upon execution of this Agreement, Licensee shall pay Railway a risk financing fee of \$1,900 (the "Risk Financing Fee") to provide Railroad Protective Liability Insurance or such supplemental insurance (which may be self-insurance) as Railway, in its sole discretion, deems to be necessary or appropriate with respect to the initial construction and installation of the Facilities.

(ii) Prior to commencement of each Operations project that requires access to the Premises, unless Railway elects to make available and Licensee pays the then-current Risk Financing Fee for a given Operations project, Licensee shall furnish Railway with an original Railroad Protective Liability ("RPL") Insurance Policy naming Railway as the named insured and having a limit of (1) not less than a combined single limit of \$2,000,000 each occurrence and \$6,000,000 aggregate, or (2) if the value of a given operations project exceeds \$350,000, not less than a combined single limit of \$5,000,000 per occurrence and \$10,000,000 in the aggregate. Each RPL policy shall conform to CG 00 35 04 13 or equivalent and include coverage for Terrorism and the Physical Damage to Property Endorsement and shall name Norfolk Southern Corporation and its affiliates and subsidiaries as the insured. Licensee shall ensure that the project location, Licensee identification and work description appear on the declaration pages of a given RPL policy. Licensee shall provide an electronic copy of each RPL policy (and not merely the binder) to Railway at ns.permitting@railpros.com for review and approval prior to commencing any work on the associated Operations project. Licensee may submit inquiries about RPL issues at ns.permitting@railpros.com.

(iii) Licensee shall maintain a Commercial General Liability ("CGL") policy containing products and completed operations and contractual liability coverage,

with a combined single limit of not less than \$2,000,000 for each occurrence. Any portion of this requirement may be satisfied by a combination of General Liability and/or Excess/Umbrella Liability Coverage. The policy shall not deny any obligation of any insured under the Federal Employer's Liability Act, as amended. The CGL policy shall provide additional insured coverage equivalent to ISO CG 20 10 11/85.

(iv) Licensee shall maintain Automobile Liability Insurance with a current ISO occurrence form policy (or equivalent) and apply on an "any auto" (Symbol 1) basis, including coverage for all vehicles used in connection with the Work or Services on the leased property, providing annual limits of at least \$1,000,000 per occurrence for bodily injury and property damage combined including uninsured and underinsured motorist coverage, medical payment protection, and loading and unloading.

(v) Licensee shall maintain Workers' Compensation Insurance to meet fully the requirement of any compensation act, plan or legislative enactment applicable in connection with the death, disability or injury of Licensee's officers, agents, servants or employees arising directly or indirectly out of the performance of this Agreement;

(vi) Licensee shall maintain Employers' Liability Insurance with limits of not less than \$1,000,000 each accident \$1,000,000 policy limit for disease, and \$1,000,000 each employee for disease;

(b) General Insurance Requirements. Each insurance policy referred to in subsection (a) above shall also comply with the following requirements:

(i) Additional Insureds. Each insurance policy (excluding any RPL policy and Workers' Compensation policy) shall name Railway and its parent, subsidiary and affiliated companies as additional insureds with an appropriate endorsement to each policy.

(ii) Licensee's Coverage Primary and Without Right to Contribution. All policies secured by Licensee, whether primary, excess, umbrella or otherwise, and providing coverage to the Railway as an additional insured (1) are intended to take priority in responding and to pay before any insurance policies Railway may have secured for itself must respond or pay and (2) may not seek contribution from any policies the Railway may have secured for itself.

(iii) Severability of Interests (Cross Liability). No cross-liability exclusions are permitted that would apply to the additional insureds, and there may not be any restrictions in any policy that limits coverage for a claim brought by an additional insured against a named insured.

(iv) Waiver of Subrogation. To the fullest extent permitted by law, all insurance furnished by Licensee pursuant to this Agreement shall include a waiver of subrogation in favor of Railway with an appropriate endorsement to each policy.

(v) Notice of Cancellation, Modification or Termination. Each insurance policy shall not be subject to cancellation, termination, modification, changed, or non-renewed except upon thirty (30) days' prior written notice to the additional insureds.

(vi) No Limitation. Each insurance policy shall not limit any of Licensee's indemnity obligations or other liabilities under this Agreement. The insurance available to Railway and its parent, subsidiary and affiliated companies as additional insureds shall not be limited by these requirements should Licensee maintain higher coverage limits.

(vii) Any deductibles or self-insured retentions of Licensee over \$50,000 must be declared and approved by Railway. Approval of such requests shall not be unreasonably withheld.

(viii) Licensee shall require all subcontractors who are not covered by the insurance carried by Licensee to maintain the insurance coverages set forth in subsection (a) above, except for the RPL insurance, including but not limited to additional insured status for Railway and its parent, subsidiary and affiliated companies.

(ix) Licensee shall furnish their memorandum of insurance and the RPL Insurance Policy to Railway's Managing Agent prior to execution of this Agreement at ns.permitting@railpros.com. The insurance coverage required herein shall in no way limit Licensee's liability under this Agreement.

13. Environmental Matters. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations, ordinances or other requirements of federal, state and local governmental authorities relating to (a) any Operations, including notification and reporting of any releases, and (b) any contamination of any property, water, air or groundwater arising or resulting, in whole or in part, from Licensee's operation or use of the Premises pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to conduct Operations. Licensee agrees to indemnify and hold harmless Railway from and against any and all fines, penalties, demands or other Losses (including attorneys' fees) incurred by Railway or claimed by any person, company or governmental entity relating to (a) any contamination of any property, water, air or groundwater due to the use or presence of the Facilities on the Premises, (b) Licensee's violation of any laws, regulations or other requirements of federal, state or local governmental authorities in connection with the use or presence of the Facilities on the Premises or (c) any violation of Licensee's obligations imposed under this Section. Without limitation, this indemnity provision shall extend to any cleanup and investigative costs relating to any contamination of the Premises arising or resulting from, in whole or in part, Licensee's use of the Facilities or any other activities by or on behalf of Licensee occurring on or about the Premises. Licensee further agrees not to dispose of any trash, debris or wastes, including hazardous waste, on the Premises and will not conduct any activities on the Premises which would require a hazardous waste treatment, storage or disposal permit.

14. Assignments and Other Transfers.

(a) Licensee shall not assign, transfer, sell, mortgage, encumber, sublease or otherwise convey (whether voluntarily, involuntarily or by operation of law) this Agreement or any interest therein, nor license, mortgage, encumber or otherwise grant to any other person or entity (whether voluntarily, involuntarily or by operation of law) any right or privilege in or to the Premises (or any interest therein), in whole or in part, without the prior written consent of Railway, which consent may be withheld by Railway in its sole discretion. Any such assignment or other transfer made without Railway's prior written consent shall be null and void and, at Railway's option, shall constitute an immediate default of this Agreement. Notwithstanding the foregoing, upon prior written notice to Railway, Licensee may assign this Agreement to a parent, a wholly-owned subsidiary of Licensee or a wholly-owned subsidiary of Licensee's parent without Railway's consent; provided, however, that no such assignment shall relieve Licensee of its obligations under this Agreement.

(b) Railway shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in or to the Premises. From and after the effective date of any such assignment or transfer, Railway shall be released from any further obligations hereunder; and Licensee shall look solely to such successor-in-interest of Railway for the performance of the obligations of "Railway" hereunder.

15. 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.

16. 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 the Fee or any other 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 Section 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.

17. 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 fail to install the Facilities within one (1) year from the date of the Agreement, or if Licensee shall discontinue the use or operations of the Facilities for one (1) year; 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 one or more aspects of Operations unduly interfere 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.

18. 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.

19. Removal of Facilities; Survival. The Facilities are and shall remain the personal property of Licensee. Upon the expiration or 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 expiration or termination of this Agreement, whether by lapse of time or otherwise, shall not relieve Licensee from Licensee's obligations accruing prior to the expiration or termination date, and such obligations shall survive any such expiration or other termination of this Agreement.

20. Entire Agreement. This Agreement contains the entire agreement of Railway and Licensee and supersedes any prior understanding or agreement between Railway and Licensee respecting the subject matter hereof, and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the parties not embodied in this Agreement shall be of any force or effect.

21. Attorneys' Fees. If Railway should bring any action under this Agreement or consult or place the Agreement or any amount payable by Licensee hereunder, with an attorney concerning or for the enforcement of any of Railway's rights hereunder, then Licensee agrees in each and any such case to pay to Railway all costs, including but not limited to court costs and attorneys' fees, incurred in connection therewith.

22. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby; and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

23. Modifications; Waiver; Successors and Assigns. This Agreement may not be altered, changed or amended, except by instrument in writing signed by both parties hereto. No provision of this Agreement shall be deemed to have been waived by Railway unless such waiver shall be in a writing signed by Railway and addressed to Licensee, nor shall any custom or practice that may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of Railway to insist upon the performance by Licensee in strict accordance with the terms hereof. The terms and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. If there shall be

more than one Licensee, the obligations hereunder imposed upon Licensee shall be joint and several.

24. Notice. Any and all other notices, demands or requests by or from Railway to Licensee, or Licensee to Railway, shall be in writing and shall be sent by (a) postage paid, certified mail, return receipt requested, or (b) a reputable national overnight courier service with receipt therefor, or (c) personal delivery, and addressed in each case as follows:

If to Railway:

c/o Norfolk Southern Corporation
650 West Peachtree Street, Box 22
Atlanta, Georgia 30308
Attention: Director Real Estate

If to Licensee:

CITY OF DULUTH
3167 Main Street
Duluth, Georgia 30096
Attention: Margie Pozin

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).

25. Miscellaneous. 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. The provisions of this Agreement that, by their nature, are intended to survive the expiration or earlier termination of this Agreement, including Sections 8, 10, 11, 13 and 19, shall so survive.

26. Limitations of Grant. Licensee acknowledges that the license granted hereunder is a quitclaim grant, made without covenants, representations or warranties with respect to Railway's (a) right to make the grant, (b) title in the Premises, or (c) right to use or make available to others the Premises for the purposes contemplated herein. Railway is the owner and/or holder of the Premises subject to the terms and limitations under which it is owned or held, including without limitation conditions, covenants, restrictions, easements (including any pre-existing fiber optic easements or licenses), encroachments, leases, licenses, permits, mortgages, indentures, reversionary interests, fee interests, zoning restrictions and other burdens and limitations, of record and not of record, and to rights of tenants and licensees in possession, and Licensee agrees that the rights licensed hereunder are subject and subordinate to each and all of the foregoing. Licensee accepts this grant knowing that others may claim that Railway has no right to make it, and Licensee agrees to release, hold harmless and indemnify (and, at Railway's election, defend, at Licensee's sole expense, with counsel approved by Railway) Railway, its affiliated companies, and its and

their respective officers, directors, agents and employees, from and against any detriments to, or liabilities of, any type or nature arising from such claims, including punitive damages and any forfeitures declared or occurring as a result of this grant.

27. 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 loss profits. It is understood and agreed by Licensee that Railway cannot and will not make any warranties, representations or guarantees that Licensee's communication system (if any), as located on Railway's property, will not be interrupted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the date first above written.

Witness:

**NORFOLK SOUTHERN RAILWAY
COMPANY**

As to Railway

By: _____
Real Estate Manager

Witness:

CITY OF DULUTH

As to Licensee

By: _____

Title: _____

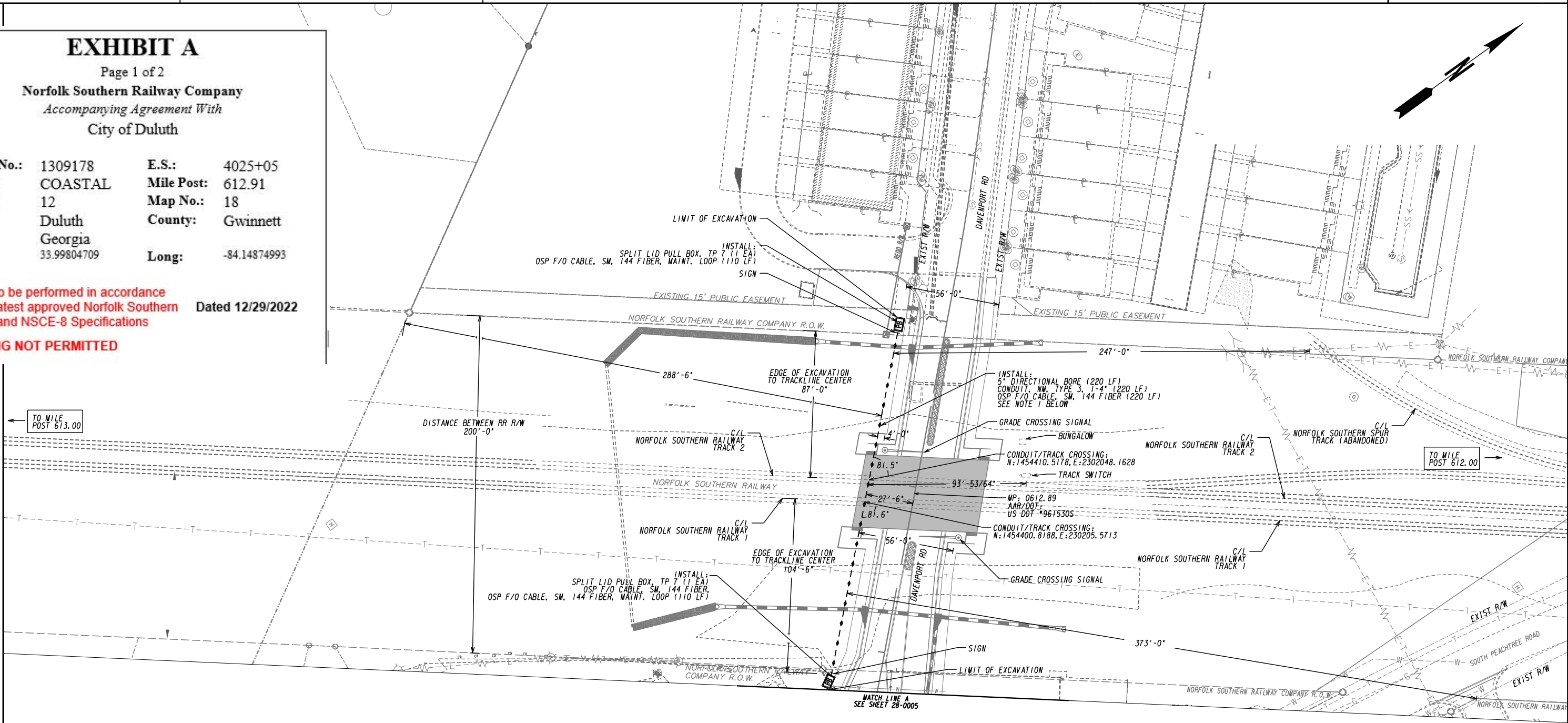
Activity Number: 1309178
LW: 12/29/2022

EXHIBIT A

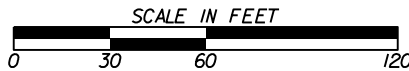
Page 1 of 2
Norfolk Southern Railway Company
Accompanying Agreement With
City of Duluth

Activity No.: 1309178 E.S.: 4025+05
Division: COASTAL Mile Post: 612.91
Val Sec: 12 Map No.: 18
City: Duluth County: Gwinnett
State: Georgia
Lat: 33.99804709 Long: -84.14874993

All work to be performed in accordance
with the latest approved Norfolk Southern
NSCE-4 and NSCE-8 Specifications
Dated 12/29/2022
BLASTING NOT PERMITTED



NOTES:
1. CITY OF DULUTH RESPONSIBLE FOR INSTALLING 144 COUNT FIBER OPTIC CABLE AS PART OF FUTURE EXPANSION PROJECT.
2. CONTRACTOR RESPONSIBLE FOR FURNISHING AND INSTALLATION OF CONDUIT MARKER SIGN TO BE INSTALLED DIRECTLY ABOVE CONDUIT ON EITHER SIDE OF NS RAILROAD RIGHT OF WAY TO INCLUDE AND VISIBLY DISPLAY THE FOLLOWING INFORMATION:
A. NAME AND ADDRESS OF APPLICANT
B. CONTENTS OF CONDUIT
C. EMERGENCY TELEPHONE NUMBER
PAYMENT FOR SIGN SHALL BE INCLUDED IN OVERALL BID PRICE.



REVISION DATES

REV. 5-12/15/22

ITS PLANS

CITY OF DULUTH POLICE DEPT EQUIPMENT
DAVENPORT ROAD EXTENSION AT SR 13

CHECKED:	DATE:	DRAWING No.
BACKCHECKED:	DATE:	
CORRECTED:	DATE:	
VERIFIED:	DATE:	28-0006

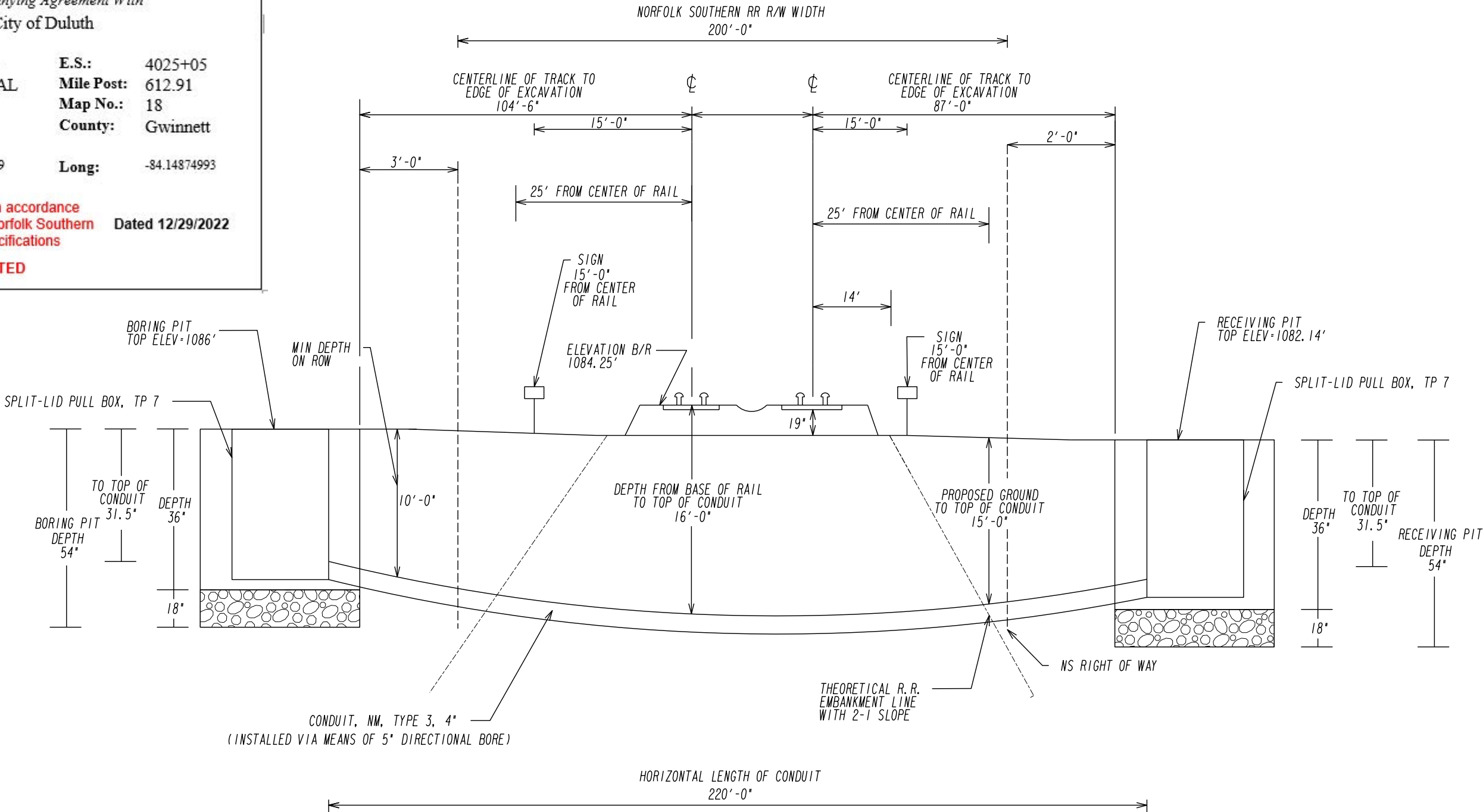
EXHIBIT A

Page 2 of 2

Norfolk Southern Railway Company
Accompanying Agreement With
City of Duluth

Activity No.: 1309178 E.S.: 4025+05
Division: COASTAL Mile Post: 612.91
Val Sec: 12 Map No.: 18
City: Duluth County: Gwinnett
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Lat: 33.99804709 Long: -84.14874993

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with the latest approved Norfolk Southern
NSCE-4 and NSCE-8 Specifications
Dated 12/29/2022
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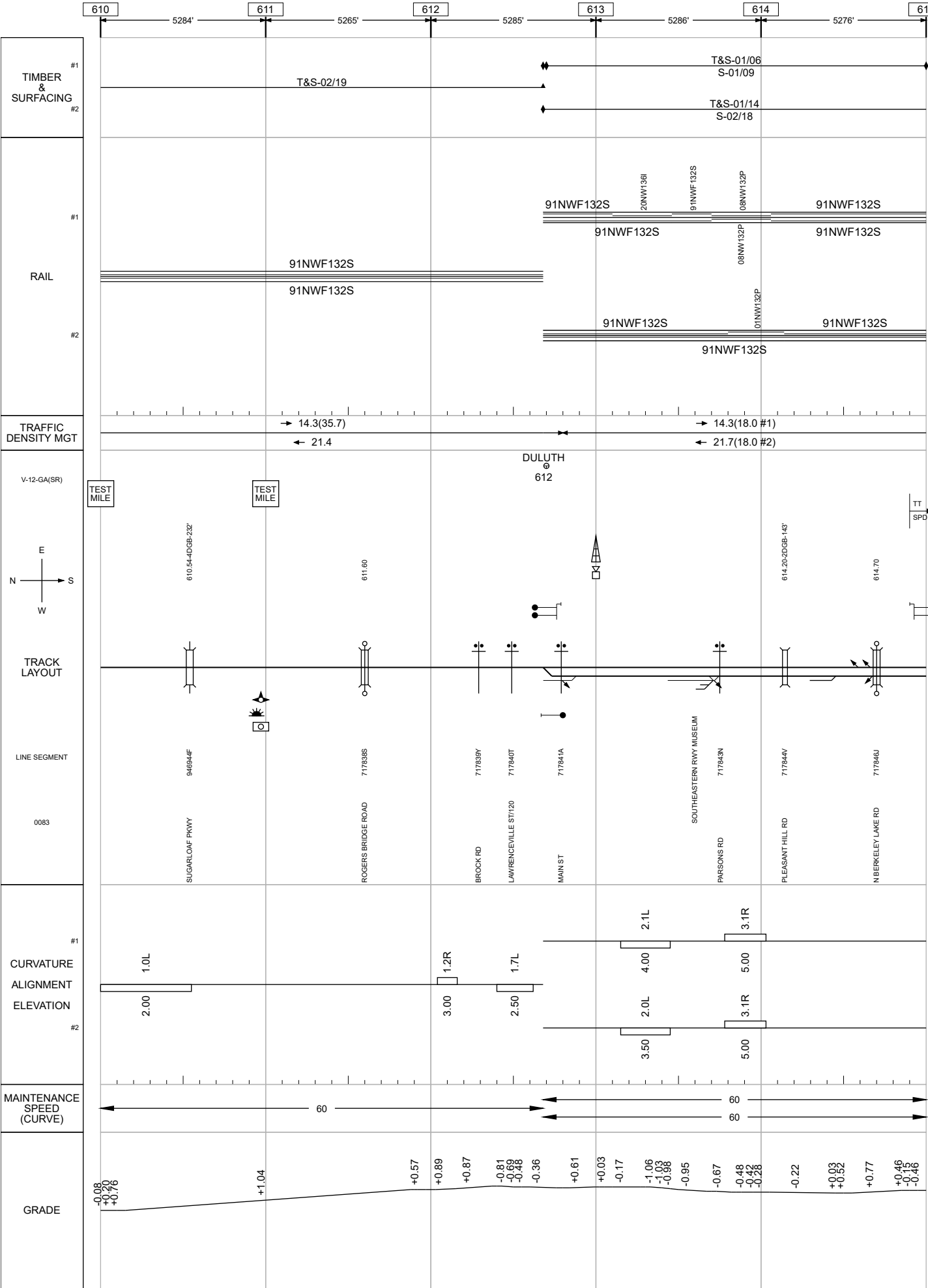
REVISION DATES

REV.	5-12-15-22		

ITS PLANS

CONDUIT PROFILE VIEWS
DAVENPORT ROAD EXTENSION AT SR 13

CHECKED:	DATE:	DRAWING No.
BACKCHECKED:	DATE:	
CORRECTED:	DATE:	
VERIFIED:	DATE:	28-0009



CONTRACT

STATE OF GEORGIA

CITY OF DULUTH

CONSTRUCTION CONTRACT - Pine Needle Drive at State Road 120 / Abbotts Bridge Road

THIS AGREEMENT is made this ____ day of _____, 2023 between Zaveri Enterprises, Inc. (hereinafter called the "Contractor") and the City of Duluth; 3167 Main Street, Duluth, GA 30096 (hereinafter called the "City"). Both parties do mutually agree as follows:

1. **Scope and Cost:** The Contractor agrees to furnish contract documents, labor, supervision, materials, equipment, tools, supplies, disposal, and services necessary to timely and fully perform and complete in a neat, first-class and workmanlike manner and in strict compliance with the Contract Documents, drawings, specifications provided as applicable to the contractor, all of the specific work and services described in the project documents. Costs to provide the above scope of work shall be inclusive of taxes, labor, supervision, disposal, materials, equipment, tools, transportation, and any associated written reports.

The Contractor shall commence the Work with adequate force and equipment within (10) ten days from receipt of the Notice to Proceed. The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any and all persons, including the Contractor's agents, servants, and employees, and in addition thereto, for any and all damages to property caused by or resulting from or arising out of any act or omission in connection with this Contract or the prosecution of Work hereunder, whether caused by the Contractor or the Contractor's agents, servants, or employees, or by any of the Contractor's subcontractors or suppliers. This Contract, executed in duplicate, constitutes the full agreement between the parties, and the Contractor shall not sublet, assign, transfer, pledge, convey, sell or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm or corporation without the previous consent of the City in writing.

2. **City Representative:** The Project has been initiated by the City and the Representative for this project is the City Engineer, hereinafter referred to as the "City Representative". The City Representative shall act as the City's representative, assume all duties and responsibilities and have the rights and authority assigned to the City in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

3. **Contract Documents**

3.1 The term "Contract Documents" above includes all portions of the specifications published and/ or advertised by the City for purposes of soliciting bids for this project. This includes, but is not limited to: Instructions to Bidders, Bid Documents, Addenda, Plans, Drawings, Specifications, General and Special Conditions, Guarantees, Contracts, Unit Pricing, Schedules, and all documents and bid forms sent in by Contractor in response thereof such bids. These documents are attached hereto as Exhibits A, B, and C. The scope of work, therefore, may not extend beyond these descriptions as set forth above without

proper adjustments and/or opportunity made available to properly compensate the contractor for any such scope of work extensions.

3.2 Contractor agrees to perform the contract work to the satisfaction of the City. Contractor agrees to provide and pay for all labor, regardless of craft or jurisdiction, materials, tools, supplies and equipment, except as otherwise provided herein, to perform the work in strict conformity with the contract documents.

4. **Project Duration:** The duration of the project shall be for a period of not more than one hundred and twenty (120) calendar days from the Contractor's receipt of the written notice to proceed and a properly executed agreement by both parties. Both documents are part of the official documentation of the said project. Any extension of this time, including those for weather delay days, must be agreed upon by both parties and executed by a written change order.

5. **Contract sum and payments**

5.1 The total contracted amount is **\$558,349.00**.

5.2 Payments shall be made for work satisfactorily completed after contractor has submitted a pay request to the City unless contractor is in default. The contractor shall submit monthly pay applications to the City for payment, less any retainage, until project completion at which time Contractor submit a final pay application and mark it as final. Upon the City's satisfaction that the work is completed in accordance with the Contract Documents, payment for each amount requested will be processed. Once the final pay application is approved and processed, no further pay applications will be accepted.

5.3 Prior to the release of this final payment, Contractor will provide an affidavit showing that its labor, materials, and other bills have been paid, along with full release and/or unconditional lien waivers, in a form satisfactory to Contractor and City. If it appears that any labor, material, or other bills incurred in the performance of the contract work are not being paid, the City may take such steps as it (in its sole discretion) deems necessary to ensure that the payments will be utilized to pay such bills.

5.4 Final Payment including all retainages shall be made to Contractor not later than thirty (30) days after receipt and approval by the City of the Contractor's final written requisition for payment and acceptance of the final completed project.

5.5 The parties agree that if the Contractor fails to perform within the specified contract period the Contractor shall pay the City liquidated damages and/or default of contract in accordance with the bid form included with the attached solicitation for this project.

5.6 A retainage of 10% will be withheld from each pay application. Retainage will be released once the contractor's final punch list is complete and accepted by the City, signaling the beginning of the warranty period.

6. **Execution of Work**

6.1 The contractor agrees, within ten (10) calendar days after written notification to proceed by City, to commence the contract work in the field, at such points as the City may designate, and to continue

diligently in its performance in accordance with the Project Schedule. Time is of the essence of this contract. If contractor is given reasonable time to perform and fails to do so, any work performed by the City on behalf of the Contractor will be charged back as necessary to cover costs for such work.

6.2 Contractor shall promptly provide the City with any scheduling information requested. City may revise any schedule, if necessary, as the work progresses.

6.3 Contractor shall cooperate with City and other subcontractors/contractors whose work may interfere with or affect the Contractor's work.

6.4 Contractor shall give adequate notices pertaining to its work to the proper authorities and shall secure all necessary licenses and permits to carry on its work; a copy to be provided to City by Contractor prior to the start of contract work.

7. Compliance with Immigration Laws & Regulations

7.1 The Contractor shall be responsible for complying with the GA Security and Immigration Compliance Act of 2006 (O.C.G.A. §13-10-90 & §13-10-91) and the Rules of the GA Department of Labor implementing the GA Security and Immigration Compliance Act of 2006 (Rules 300-10-1-.01 through 300-10-1-.09). In accordance with these provisions, the Contractor shall complete attached E-Verify form.

7.2 The Contractor affirms and agrees that it is currently registered and participates in the federal work authorization program to verify information of all new employees pursuant to O.C.G.A. §13-10-91(b).

7.3 The Contractor affirms and agrees that all subcontractors that it will use on the above-described project are registered and participate in the federal work authorization program to verify information of all new employees.

7.4 Pursuant to O.C.G.A. §50-36-1, Proposer shall provide information regarding citizenship status and shall complete and file with the City the Citizenship Status Affidavit, which is included in the attached project solicitation.

7.5 The failure to abide by the provisions and agreements set forth in this Subsection 7 shall constitute a breach and default of this contract.

8. Insurance

Prior to the execution of the Contract and at all times that the Contract is in force, the contractor must obtain, maintain and furnish the City of Duluth, Certificates of Insurance from licensed companies doing business in the State of Georgia and acceptable to the City.

Statutory Workers' Compensation Insurance

1. Employers Liability:

Bodily Injury by Accident - \$100,000 each accident

Bodily Injury by Disease - \$500,000 policy limit

Bodily Injury by Disease - \$100,000 each employee

2. Commercial General Liability Insurance

\$1,000,000 limit of liability per occurrence for bodily injury and property damage

The following additional coverage must apply:

1986 (or later) ISO Commercial General Liability Form

Dedicated Limits per Project Site or Location (CG 25 03 or CG 25 04)

Additional Insured Endorsement (Form B CG 20 10 with a modification for completed operations or a separate endorsement covering Completed Operations)

Blanket Contractual Liability

Broad Form Property Damage

Severability of Interest

Underground, explosion, and collapse coverage

Personal Injury (deleting both contractual and employee exclusions)

Incidental Medical Malpractice

Hostile Fire Pollution Wording

3. Auto Liability Insurance
\$500,000 limit of liability per occurrence for bodily injury and property damage
Comprehensive form covering all owned, non-owned, leased, hired, and borrowed vehicles
Additional Insured Endorsement
Contractual Liability
4. Umbrella Liability Insurance - \$1,000,000 limit of liability
The following additional coverage must apply
Additional Insured Endorsement
Concurrency of Effective Dates with Primary
Blanket Contractual Liability
Drop Down Feature
Care, Custody, and Control - Follow Form Primary
Aggregates: Apply Where Applicable in Primary
Umbrella Policy must be as broad as the primary policy
5. Builder's Risk Insurance or Installation Floater Insurance required on all new structures, bridges, overpasses, culverts, and railroad crossings - limit at least as broad as contract amount
6. City of Duluth, Gwinnett County, and the Georgia Department of Transportation shall be shown as additional insureds on General Liability, Auto Liability and Umbrella Liability policies.
7. The cancellation should provide 10 days' notice for nonpayment and 30 days' notice of cancellation.
8. Certificate Holder should read:
City of Duluth
3167 Main Street
Duluth, GA 30096
9. Insurance Company, except Worker' Compensation carrier, must have an A.M. Best Rating of A-5 or higher. Certain Workers' Comp funds may be acceptable by the approval of the Insurance Unit. European markets including those based in London and domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker/agent can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A-5 or better.

10. Insurance Company shall be licensed to do business by the Georgia Department of Insurance.
11. Certificates of Insurance, and any subsequent renewals, must reference specific bid/contract by project name and project/bid number.
12. The Contractor shall agree to provide complete certified copies of current insurance policy (ies) or a certified letter from the insurance company (ies) if requested by the City to verify the compliance with these insurance requirements.
13. All insurance coverage required to be provided by the Contractor will be primary over any insurance program carried by the City.
14. Contractor shall incorporate a copy of the insurance requirements as herein provided in each and every subcontract with each and every Subcontractor in any tier and shall require each and every Subcontractor of any tier to comply with all such requirements. Contractor agrees that if for any reason Subcontractor fails to procure and maintain insurance as required, all such required Insurance shall be procured and maintained by Contractor at Contractor's expense.
15. No Contractor or Subcontractor shall commence any work of any kind under this Contract until all insurance requirements contained in this Contract have been complied with and until evidence of such compliance satisfactory to the City of Duluth as to form and content has been filed with the City. The Acord Certificate of Insurance or a preapproved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute. Failure by the Contractor to carry sufficient insurance at any time during the project will not release him of his liability in the event of a claim.
16. The Contractor shall agree to waive all rights of subrogation against the City, the City Council, its officers, officials, employees, and volunteers from losses arising from work performed by the contractor for the City.
17. Special Form Contractors' Equipment and Contents Insurance covering owned, used, and leased equipment, tools, supplies, and contents required to perform the services called for in the Contract. The coverage must be on a replacement cost basis. The City will be included as a Loss Payee in this coverage for City owned equipment, tools, supplies, and contents.
18. The Contractor shall make available to the City, through its records or records of their insurer, information regarding a specific claim related to any City project. Any loss run information available from the contractor or their insurer relating to a City project will be made available to the city upon their request.
19. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liability provisions of the Contract.
20. The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, and any other laws that may apply to this Contract.
21. The Contractor shall at a minimum apply risk management practices accepted by the contractors' industry.

Surety Bonds (If Required)

All the surety requirements will stay the same except the Surety Company must have the same rating as item 9 above.

9. **Performance and Payment Bond**

9.1 The Contractor agrees to provide Performance and Payment Bonds as specified and set forth in the attached project solicitation. The parties further mutually agree that if at any time after the execution of this contract and the surety bonds attached hereto for its faithful performance, the City shall deem the surety or sureties upon such bond to be unsatisfactory, or if, for any reason, such bond ceases to be adequate to cover the performance of the work, the Contractor shall, at no additional expense to the City, within five days after the receipt of notice from the City to do so, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event, no further payment to the Contractor shall be deemed to be due under this contract until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the City.

9.2 The Contractor shall submit the Bonds to the City at the time bids are received. The failure to provide the Bond documents shall result in a default of this contract.

10. **Inspection and Approvals**

10.1 Contractor shall notify City and or its representatives when portions of its work are ready for inspection. City shall make reasonable efforts after receiving notice from Contractor, to inspect said scope of work completed. Limitations and/or sizes of such portions of work shall be agreed upon by City and Contractor prior to starting each phase thereof.

10.2 Contractor agrees to “make right” at no additional cost to City any such portion that is determined by City’s representatives and inspectors to be incomplete within the bounds of the contract. Contractor shall promptly perform all punch list work submitted to it by City.

11. **Termination**

11.1 The City may terminate the contract for failure by the Contractor to comply with the terms and conditions of its contract or failure by the Contractor to correct problems brought to its attention by the City, each of which failures shall constitute a default. In the event of such termination, that Contractor will be paid only those sums due and owing under the contract for performance satisfactorily rendered, subject to offset for damages and other amounts which are, or which may become, due and owing to the City.

11.2 The City, for its convenience and without cause, may terminate this contract whenever the City determines that such termination is in its best interest after giving ten (10) days written notice of such termination to the Contractor. In the event of a termination for convenience, the City shall pay all amounts due and owing to the Contractor for performance satisfactorily rendered. However, in no event shall the total amounts paid to the Contractor exceed the contract price. The Contractor shall not

be reimbursed for any profits which may have been anticipated, but which have not been earned up to the date of termination.

12. Disputes/Resolutions

12.1 Any claims or disputes that may arise, including adjustments to compensation or to time of completion, shall be initiated by written notice within five (5) days after either party becomes aware of the claim or issue in dispute. The parties shall have ten (10) days following such written notice to cure or resolve any dispute. Notwithstanding the foregoing, the failure to provide written notice shall not serve as a bar to an action in law or equity for either party.

12.2 The City and Contractor shall make all reasonable efforts to resolve all matters of dispute without the involvement of any third party. However, if such efforts are not successful after a thirty (30) day period, then both parties agree to resolve their claims by filing a Complaint in the Superior Court of Gwinnett County, Georgia. The terms of this Agreement shall be integrated and enforced under the Laws of Georgia.

13. Indemnity

13.1 Contractor assumes full liability for any and all damages, death, or injury of any kind to all person(s), whether employees or otherwise, and property arising out of or in any way connected with its work, and shall to the fullest extent permitted by law defend, indemnify and hold harmless City, and their respective officers, agents, and employees, (herein referred to as Indemnities), from and against any and all claims, losses, suits, damages, legal costs and expenses and otherwise, arising out of or in any way connected with Contractor's work. If any claim or demand is made against City for any matter enumerated herein, any payment due, or thereafter to become due, the Contractor shall be held by City to cover such losses and expenses.

14. Compliance with Laws and Safety Regulations

14.1 All work, labor, safety rules, services, and materials to be furnished by Contractor must strictly comply with all applicable federal, state and local laws, rules, regulations, statutes, ordinances and directives (hereinafter "Laws") now in force or hereafter in effect. All work, labor, services, or materials necessary to comply with said laws will be furnished by Contractor as part of this Contract without any additional compensation.

14.2 Equal Opportunity Agreement:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or handicapping condition. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or handicapping condition. Such action shall include but not be limited to, the following: Employment, upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provision of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or handicapping condition.
- c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246, as amended (3 CFR 169 (1979), and shall post copies of notices in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order 11246, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Executive Order 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the provisions of paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

14.3 Contractor agrees to comply with the Drug Free Workplace Act.

15. **Interpretation**

15.1 This Contract shall be interpreted under the laws of the State of Georgia.

16. **Amendments**

16.1 Any amendments to this contract shall be made in advance in writing and shall not be binding until such amendment is agreed upon and executed by both parties.

16.2 No change orders shall be binding unless reduced to writing and agreed upon by both parties in writing.

17. **Public Convenience and Safety:**

Contractor may not commence work prior to proper construction signage being posted.

18. **Pre-construction Conference:** The Contractor shall attend a pre-construction conference with the City Staff prior to commencing any work.

19. **Drug Free Workplace:** The Contractor is required to certify a drug-free workplace for all employees including subcontractors.

20. **Work Stoppage:** In the event of the discovery of significant archaeological remains, construction shall be stopped, and the City shall notify the Georgia Department of Natural Resources of the discovery. In this context, to be “significant”, such remains would have to be able to provide important and non-redundant information that could not be obtained from other sources. The City shall notify the Georgia Department of Natural Resources of the discovery of intact cultural features such as, but not limited to, foundations and wells. The construction shall remain stopped until the Georgia Department of Natural Resources has completed their evaluation of the remains.

21. **Work Hours:** Work hours are 8:00am to 5:00pm on weekdays and 10:00am to 5:00pm on Saturdays. Exceptions will be made only for emergencies.

IN WITNESS WHEREOF, THE City and Contractor have executed this contract consisting of 10 pages and the Attachments/Exhibits/Statements/Affidavits (if any) on the day and year first above written, by their proper officers or agents, duly authorized in the premises.

CONTRACTOR:

CITY:

By: 

CITY OF DULUTH

By: _____

SHIRISH M. GANDHI: PRES
Printed Name and Title

Printed Name and Title

Federal I.D. Number: 58-1410584

(Seal)

Notary Public

Notary Public

In the presence of: 

In the presence of: _____

Subscribed and sworn to before me

Subscribed and sworn to before me

This 15 day of Dec., 2022

This ____ day of _____, 20__

My Commission expires: Feb. 14, 2025

My Commission expires: _____

In the County of Gwinnett

In the County of _____

PREKSHABEN PATEL
NOTARY PUBLIC
Gwinnett County
State of Georgia
My Comm. Expires Feb. 14, 2025

BOND # NGA 2125

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CITY OF DULUTH, GEORGIA

ATTEST:

P. S. Gaudhi

(Principal Secretary)

(SEAL)

Neeru Sothi

(Witness as to Principal)

2184 Sugar Springs Drive, Lawrenceville, GA 30043
(Address)

ATTEST:

Valan Jila

Resident or Nonresident Agent

(SEAL)

Kerry W. Phorley

(Witness as to Surety)

1825 Barrett Lakes Blvd. NW, Suite 320
(Address)
Kennesaw, GA 30144

Zaveri Enterprises, Inc.

(Principal)

By: [Signature]

2184 Sugar Springs Drive, Lawrenceville, GA 30043
(Address)

Merchants National Bonding, Inc.

(Surety)

By: [Signature]
(Attorney-in-Fact)

6700 Westown Parkway, West Des Moines, IA 50266
(Address)

BONDING AGENT CONTACT INFO

Print Name Chancey Shepherd

Company Name McGriff Insurance Services

E-Mail CShepherd@McGriff.com

Phone (678) 566.8007

NOTE: If Contractor is Partnership, all partners should execute Bond. Surety Companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

CITY OF DULUTH, GEORGIA

BOND # NGA 2125

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENT: that

Zaveri Enterprises, Inc.

(Name of Contractor)

2184 Sugar Springs Drive, Lawrenceville, GA 30043

(Address of Contractor)

a Corporation

(Corporation, Partnership or Individual)

hereinafter called Principal, and

Merchants National Bonding, Inc.

(Name of Surety)

6700 Westown Parkway, West Des Moines, IA 50266

(Address of Surety)

a Corporation of the State of Iowa, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto

City of Duluth

(Name of Oblige)

3167 Main Street, Duluth, GA 30096

(Address of Oblige)

hereinafter called Oblige;

for the use and protection of all subcontractors and all persons supplying labor, services, skill, tools, machinery, materials and/or equipment in the prosecution of the work provided for in the contract hereinafter referred to in the full and just sum of _____

Five Hundred Fifty Eight Thousand Three Hundred Forty Nine

Dollars

(\$ 558,349) in lawful money of the United States, for the payment of which sum, will and truly to be made, the Principal and Surety bind themselves, their, and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, as whereas the Principal entered into a certain contract, hereto attached, with the Oblige.

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well, truly, and faithfully perform said Contract according to its terms, covenants, and conditions, and shall promptly pay all persons furnishing labor, materials services, skill, tools, machinery and/or equipment for use in the performance of said Contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

CITY OF DULUTH, GEORGIA

ALL persons who have furnished labor, materials, services, skill, tools, machinery and/or equipment for use in the performance of said Contract shall have a direct right of action on this Bond, provided payment has not been made in full within ninety (90) days after the last day on which labor was performed, materials, services, skill, tools, machinery, and equipment furnished or the subcontract completed.

PROVIDED FURTHER, that said Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations, or additions to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations, or additions to the terms of the Contract or to the work to be performed thereunder.

PROVIDED, HOWEVER, that no suit or action shall be commenced hereunder by any person furnishing labor, materials, services, skill, tools, machinery, and/or equipment having a direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the Principal:

Unless such person shall have given notice to the Principal within ninety (90) days after such person did, or performed the last of the work or labor, or furnished the last of the materials, services, skill, tools, machinery and/or equipment for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials, services, skill, tools, machinery and/or equipment were furnished, or for whom the work or labor was done or performed. Such a notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Principal, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer, and a copy of such notice shall be delivered to the Obligee, to the person and at the address provided for in the Contract, within five (5) days of the mailing of the notice to the Principal.

PROVIDED, FURTHER, that any suit under this bond must be instituted before the expiration of one (1) year after the acceptance of the public works covered by the Contract by the proper authorities.

PROVIDED, FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. § 36-91-1 et seq., and is intended to be and shall be construed as a bond in compliance with the requirements thereof.

[Signatures Next Page]

CITY OF DULUTH, GEORGIA

ATTEST:

P. S. Gaudin

(Principal Secretary)

(SEAL)

Heera Sethi

(Witness as to Principal)

2184 Sugar Springs Drive, Lawrenceville, GA 30043
(Address)

ATTEST:

Karlan Yila

Resident or Nonresident Agent

(SEAL)

Kenny W. Phornley

(Witness as to Surety)

1825 Barrett Lakes Blvd. NW, Suite 320

(Address)

Kennesaw, GA 30144

Zaveri Enterprises, Inc.

(Principal)

By: [Signature]

2184 Sugar Springs Drive, Lawrenceville, GA 30043
(Address)

Merchants National Bonding, Inc.

(Surety)

By: [Signature]

(Attorney-in-Fact)

6700 Westown Parkway, West Des Moines, IA 50266
(Address)

BONDING AGENT CONTACT INFO

Print Name Chancey Shepherd

Company Name McGriff Insurance Service

E-Mail CShepherd@McGriff.com

Phone (678) 566.8007

NOTE: If Contractor is Partnership, all partners should execute Bond. Surety Companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

MERCHANTS
BONDING COMPANYTM
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually, Brian C Webb; Camille Smith; Chancey J Shepherd; Jesse Couch; Josh Bridges; Kaylan Fila; Kerry W Plumley; Rachel Fell; Shannon McCloskey

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 21st day of February, 2022.



MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By

Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 21st day of February, 2022, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



POLLY MASON
Commission Number 750576
My Commission Expires
January 07, 2023

(Expiration of notary's commission does not invalidate this instrument)

Polly Mason
Notary Public

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this _____ day of _____, 2022.



William Warner Jr.
Secretary

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2023 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2023 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2023 fiscal year as follows:

Total Revenues: 71,613,683

Operations Expenditures: 35,275,963

Capital Improvement Expenditures: 36,337,720

Total Expenditures: 71,613,683

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth City awarded a contract to Zavari Enterprises for the construction of a cul-de-sac on Pine Needle Drive at the intersection with SR120 with additional funding for construction engineering, materials testing and construction administration for a total construction cost of \$685,019; and

WHEREAS this is a joint funded Gwinnett County (81%) and City of Duluth (19%) project; and

WHEREAS it is requested the following be added to the Pine Needle Drive project, revenue \$554,865 to the Gwinnett County Grant line item, \$130,154 in 2017 SPLOST to the SPLOST 2017 line item, expenditures \$42,920 Pine Needle Improvements = Paved Streets – Professional Services line item and \$642,099 Pine Needle Improvements – Paved Streets – Infrastructure line item, including associated transfers; and

NOW THEREFORE, the City of Duluth 2023 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves 72,298,702

Operations Expenditures: 35,275,963

Capital Improvement Expenditures: 37,022,739

Total Expenditures: 72,298,702

IT IS SO ORDAINED this _____ day of _____, 2023.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____

Teresa S. Lynn, City Clerk

**ORDINANCE
TO AMEND THE CITY OF DULUTH
2023 FISCAL YEAR BUDGET**

AN ORDINANCE TO AMEND THE 2023 ANNUAL BUDGET FOR THE CITY OF DULUTH, GEORGIA, IN COMPLIANCE WITH THE LAWS OF THE STATE OF GEORGIA.

THE CITY COUNCIL OF THE CITY OF DULUTH HEREBY ORDAINS, the City of Duluth, Georgia, has previously adopted a budget for the 2023 fiscal year as follows:

Total Revenues:	<u>72,298,702</u>
Operations Expenditures:	<u>35,275,963</u>
Capital Improvement Expenditures:	<u>37,022,739</u>
Total Expenditures:	<u>71,298,702</u>

For a balanced budget in compliance with the laws of the State of Georgia.

WHEREAS the City of Duluth City awarded a contract to Site Engineering for the construction of the Hall Circle sewer extension with additional funding for construction engineering, materials testing and construction administration for a total construction cost of \$929,150; and

WHEREAS it is requested American Rescue Plan Act 2021 revenue of \$929,150 be added to American Rescue Plan Act 2021 – ARP Act of 2021 Local Fiscal Recovery Funds line item, expenditures of \$43,505 be add to American Rescue Plan Act 2021 - Hall Circle Sewer Services – Professional Services line item and \$885,645 be add to American Rescue Plan Act 2021 – Hall Circle Sewer Services – Infrastructure line item; and

NOW THEREFORE, the City of Duluth 2023 Fiscal Year Budget is amended as follows:

Total Revenues & Prior Yr Reserves	<u>73,227,852</u>
Operations Expenditures:	<u>35,275,963</u>
Capital Improvement Expenditures:	<u>37,951,889</u>
Total Expenditures:	<u>73,227,852</u>

IT IS SO ORDAINED this _____ day of _____, **2023**.

Mayor Nancy Harris

Those councilmembers voting in favor:

Charles Jamin Harkness, Post 1

Marline Thomas, Post 2

Kenneth Lamar Doss, Post 3

Manfred Graeder, Post 4

Greg Whitlock, Post 5

Those councilmembers voting in opposition:

ATTEST: _____

Teresa S. Lynn, City Clerk