

RESOLUTION 23-13

RESOLUTIONS AUTHORIZING CONSERVATION EASEMENT AND DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS

WHEREAS, the City of Dalton, Georgia, an incorporated municipality of the State of Georgia (the "City"), acting by and through the Board of Water, Light and Sinking Fund Commissioners of the City of Dalton, Georgia, d/b/a Dalton Utilities ("Dalton Utilities") owns certain real property located on Boyles Mill Road, Dalton, Georgia 30721 and being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Dalton Utilities Property"); and

WHEREAS, Dalton Utilities has entered into a Banking Instrument for the Dalton Utilities Property for which the U.S. Army Corps of Engineers has approved said property as a Wetland Mitigation Bank; and

WHEREAS, as part of the requirements for the Dalton Utilities Property to qualify as a Wetland Mitigation Bank, the City must grant Southern Conservation Trust, Inc., a Georgia non-profit corporation, a conservation easement on the Dalton Utilities Property, said conservation easement being more particularly described on Exhibit "B," attached hereto and incorporated herein by reference (the "Conservation Easement"); and

WHEREAS, as part of the requirements for the Dalton Utilities Property to qualify as a Wetland Mitigation Bank, Dalton Utilities is also required to encumber the Dalton Utilities Property with certain covenants and restrictions, said covenants and restrictions being more particularly described in that certain Declaration of Conservation Covenants and Restrictions attached hereto as Exhibit "C" and incorporated herein by reference (the "Declaration"); and

WHEREAS, Dalton Utilities has determined that it is consistent with the best interests of Dalton Utilities for the City to convey the easement rights to the Dalton Utilities Property as set forth in the Conservation Easement under the authority of O.C.G.A. § 36-37-6 (j) and the City to enter into the Declaration restricting the permitted uses of the Dalton Utilities Property, has approved the Conservation Easement and Declaration, and has recommended approval of the Conservation Easement and Declaration to the Mayor and Council of the City of Dalton, a copy of such resolution of Dalton Utilities is attached hereto as Exhibit "D" and incorporated herein by reference;

NOW, THEREFORE, BE IT RESOLVED, that Dalton Utilities or the City, as the case may be, is hereby authorized to convey the easement rights set forth in the Conservation Easement and to execute the same.

BE IT FURTHER RESOLVED, that the terms and conditions of the Declaration are hereby approved, and Dalton Utilities or the City, as the case may be, is hereby authorized to restrict the permitted uses of the Dalton Utilities Property as set forth in the Declaration and to execute the same.

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

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

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

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

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

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

SO ADOPTED, this ____ day of _____, 2023.

The City of Dalton, Georgia

By: _____
David Pennington, Mayor

Attest: _____
City Clerk

(seal)



EXHIBIT "A"

Tract No. 1:

All that tract or parcel of land lying and being in Land Lot Nos. 319 and 320 in the 10th District and Third Section of Whitfield County, Georgia, and in Land Lots Nos. 5 and 6 of the 9th District and Third Section of Whitfield County, Georgia and being described as follows:

BEGINNING at a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 07 degrees 57 minutes 54 seconds east a distance of 189.90 feet to an iron pin; thence south 73 degrees 15 minutes 19 seconds west a distance of 210.63 feet to an iron pin; thence south 45 degrees 45 minutes 55 seconds west a distance of 225.98 feet to an iron pin; thence south 23 degrees 45 minutes 32 seconds west a distance of 229.45 feet to an iron pin; thence south 05 degrees 51 minutes 58 seconds west a distance of 163.90 feet to an iron pin; thence south 52 degrees 53 minutes 05 seconds west a distance of 169.05 feet to an iron pin; thence south 26 degrees 58 minutes 35 seconds west a distance of 258.59 feet to an iron pin; thence south 16 degrees 47 minutes 16 seconds west a distance of 232.63 feet to an iron pin; thence north 56 degrees 30 minutes 47 seconds west a distance of 634.15 feet to an iron pin located in the southeast right of way line of River Road (80' R/W); thence running in a south westerly direction, along the southeast right of way line of River Road, the following courses and distances, to wit: south 36 degrees 17 minutes 00 seconds west, 15.69 feet; south 36 degrees 34 minutes 54 seconds west, 155.69 feet; south 35 degrees 57 minutes 54 seconds west, 109.83 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 100.62 feet (3,850' Radius), said arc being subtended by a chord with a bearing of south 35 degrees 12 minutes 58 seconds west and a chord distance of 100.62 feet; thence south 34 degrees 28 minutes 03 seconds west, along the southeast right of way line of River Road, a distance of 123.29 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 272.28 feet (1,560.0' Radius), said arc being subtended by a chord with a bearing of south 29 degrees 28 minutes 02 seconds west and a chord distance of 271.93 feet; thence south 24 degrees 28 minutes 02 seconds west, along the southeast right of way line of River Road, a distance of 88.15 feet; thence south 22 degrees 20 minutes 30 seconds west, along the southeast right of way line of River Road, a distance of 100.61 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 51.69 (460.0' Radius), said arc being subtended by a chord with a bearing of south 19 degrees 07 minutes 21 seconds west and a chord distance of 51.66 feet to an iron pin; thence south 85 degrees 39 minutes 53 seconds east a distance of 1,185.13 feet to an iron pin; thence south 14 degrees 57 minutes 57 seconds east a distance of 187.69 feet to an iron pin; thence south 13 degrees 22 minutes 33 seconds east a distance of 49.25 feet to an iron pin; thence south 52 degrees 31 minutes 10 seconds east a distance of 186.10 feet to an iron pin; thence south 03 degrees 35 minutes 42 seconds east a distance of 268.10 feet to an iron pin; thence south 14 degrees 32 minutes 23 seconds west a distance of 199.52 feet to an iron pin located in the northeast right of way line of Lower Kings Bridge Road (80' R/W); thence south 59 degrees 16 minutes 19 seconds east, along the northeast right of way line of Lower Kings Bridge Road, a distance of 276.62 feet; thence running in a southeasterly direction, the northeast right of way line of Lower Kings Bridge Road, along an arc to the right, an arc distance of 61.96 feet (740.0' Radius), said arc being subtended by chord with a bearing of south 56 degrees 52 minutes 24 seconds east and a chord distance of 61.94 feet; thence south 54 degrees 28 minutes 29 seconds east, the northeast right of way line of Lower Kings Bridge Road, a distance of 79.27 feet to an iron pin; thence north 46 degrees 48 minutes 38 seconds east a distance of 113.45 feet to an iron pin; thence south 42 degrees 35 minutes 11 seconds east a distance of 218.06 feet to an iron pin; thence south 29 degrees 23 minutes 14 seconds east a distance of 227.41 feet to a point located in the center of the Conasauga River, which point is located south 04 degrees 10 minutes 55 seconds east a distance of 3,257.75 feet from the threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly, easterly northeasterly, northerly northwesterly, northerly, and northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the north line of said Land Lot No. 319; thence running in a westerly direction, along the north line of said Land Lot No. 319, to the a threaded bolt located at the common corner to Land Lot

Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.

Tract No. 2:

All that tract or parcel of land lying and being in Land Lot Nos. 295 and 318 in the 10th District and Third Section of Whitfield County, Georgia, and being described as follows:

BEGINNING at an iron pin located at the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 74 degrees 51 minutes 14 seconds east a distance of 180.83 feet to an iron pin; thence south 61 degrees 54 minutes 33 seconds east a distance of 252.18 feet to an iron pin; thence south 87 degrees 41 minutes 48 seconds east a distance of 183.46 feet to an iron pin; thence north 74 degrees 44 minutes 37 seconds east a distance of 362.76 feet to an iron pin; thence north 66 degrees 48 minutes 52 seconds east a distance of 270.74 feet to an iron pin; thence north 73 degrees 44 minutes 00 seconds east a distance of 575.54 feet to an iron pin; thence north 68 degrees 31 minutes 59 seconds east a distance of 175.31 feet to an iron pin; thence north 85 degrees 03 minutes 24 seconds east a distance of 108.18 feet to an iron pin; thence south 64 degrees 16 minutes 49 seconds east a distance of 246.02 feet to an iron pin; thence south 33 degrees 07 minutes 23 seconds east a distance of 709.23 feet to a point located in the center of the Conasauga River, which point is located south 80 degrees 29 minutes 37 seconds east a distance of 2,648.17 feet from the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the east line of said Land Lot No. 318; thence running in a northerly direction, along the east line of said Land Lot Nos. 318 and 295, to the common corner to Land Lot Nos. 281, 282, 295 and 296 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a westerly direction, along the north line of said Land Lot No 295, to the common corner to Land Lot Nos. 282, 283, 294 and 295 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a southerly direction, along the west line of said Land Lot said Land Lot No. 295, to the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.

EXHIBIT “B”

Conservation Easement

See attached.

After Recording Return to:
Laura W. Benz
Benz Law Group, LLC
19 W. Broad Street
Newnan, GA 30263

**STATE OF GEORGIA
COUNTY OF WHITFIELD**

GRANT OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (herein referred to as this “Conservation Easement”) is made and entered into this ____ day of _____, 2023, by and between the CITY OF DALTON , a political subdivision of the State of Georgia, hereinafter referred to as “Grantor”, in favor of Southern Conservation Trust, Inc., a Georgia non-profit corporation, its successors and assigns, having an address at 305 Beauregard Boulevard, Fayetteville, Georgia 30214 (“Grantee”).

WHEREAS, Grantor is the legal and equitable owner in fee simple of certain real property located on Boyles Mill Road in Whitfield County, Georgia having tax parcel identification numbers of 10-320-01-000, 10-295-01-000, and 10-318-01-000 and more particularly described in Exhibit “A” attached hereto and made a part hereof by this reference (the “Property”); and

WHEREAS, Grantor has received a Permit from the United States Army Corps of Engineers, Savannah District, Savannah, Georgia, (hereinafter referred to as the “USACE”), pursuant to Section 404 of the Clean Water Act, for the creation and operation of a mitigation bank as set forth in its mitigation banking instrument (“MBI”) on the Property; and

WHEREAS, the banking authorization letter for the MBI was issued to the Board of Water, Light and Sinking Fund Commissioners for the City of Dalton, Georgia d/b/a Dalton Utilities. The Board of Water, Light and Sinking Fund Commissioners is not a separate corporate entity from Grantor rather the Board of Water, Light and Sinking Fund Commissioners has such responsibilities over the department of public utilities of the City as provided in the Charter of the City of Dalton, Georgia and by ordinance; and

WHEREAS, in connection with the MBI, and as determined to be necessary for the MBI to be issued in compliance with said laws and implementing regulations and for the purposes of providing compensatory mitigation for the destruction of existing wetlands and free flowing streams/rivers pursuant to the issuance of Department of the Army Permits, Grantor must place a

Declaration of Restrictions and Covenants (“Declaration”), as required by the USACE, upon the Property; and

WHEREAS, the Declaration required by the USACE is attached as Exhibit “B” and incorporated herein by reference which sets forth the conservation values (“Conservation Values”) to be protected; and

WHEREAS, Grantee is authorized to accept preservation and conservation easements to protect property significant in scenic value under the provisions of O.C.G.A. §44-10-2 of the Official Code of Georgia Annotated (the “Act”);

WHEREAS, Grantor further desires that this constitutes a “Conservation Easement” as defined in O.C.G.A. §44-10-2(1);

WHEREAS, Grantor further intends, as the owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property; and

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, manage and enforce, a preservation and Conservation Easement in gross in perpetuity on the Property;

WHEREAS, Grantee is a qualified holder of this Conservation Easement under the laws of Georgia and has the commitment, resources and expertise to enforce the restrictions in this Conservation Easement;

WHEREAS, Grantor and Grantee desire to protect in perpetuity the Conservation Values by restricting the use of the Property as set forth herein;

WHEREAS, Grantor represents that the Property is free and clear of any liens or encumbrances that could have a material adverse impact on the Conservation Values and that as owner of the Property, Grantor has access thereto, the right to convey this Conservation Easement to Grantee, and the right to preserve and protect the Conservation Values of the Property in perpetuity; and

WHEREAS, Grantee agrees, by accepting this Conservation Easement, to honor the intentions of Grantor stated herein and to preserve and protect, in perpetuity, the Conservation Values of the Property for the benefit of this generation and the generations to come, such being a legitimate purpose;

NOW THEREFORE, in consideration of the above and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Georgia and in particular the Georgia Uniform Conservation Easement Act, O.C.G.A. §44-10-1., et seq., (without intending that the existence of this Conservation Easement be dependent on the continuing existence of such laws), in perpetuity, over the Property, of the nature and character hereinafter set forth, including the right to preserve and protect the Conservation Values of the Property, Grantee, by its execution hereof, accepts the foregoing grant of the Conservation Easement, and the recordation of this

Conservation Easement shall constitute a “recordation of the acceptance” Grantee within the meaning of O.C.G.A. §44-10-3(b). Upon the recordation hereof, Grantee shall be entitled to enforce the Conservation Easement pursuant to O.C.G.A. §44-10-4. Each covenant, stipulation and agreement contained herein shall be deemed to run as a binding servitude, in perpetuity, with the land and shall survive any termination of Grantor’s or Grantee’s existence. Grantor reserves to itself, its successors and assigns, forever, the fee title to the Premises and the right to exclusive use and occupancy of the Property, all to the extent not inconsistent with the terms and provisions of the easement granted and conveyed hereby.

1. **Purpose.** It is the exclusive purpose of this Conservation Easement (hereinafter “Purpose”) to protect the Conservation Values and ensure that the property will be retained forever predominantly in its open, natural state as set forth in the MBI, and with its Conservation Values intact, and to prevent any uses of the Property that will significantly impair or interfere with the Conservation Values of the Property as defined herein and in the MBI. Grantor intends that this Conservation Easement will confine the use of the Property to such activities as are consistent with the Purpose of this Conservation Easement and the Declaration. The provisions of this Conservation Easement are intended and shall be interpreted to give full force and effect to the Declaration.

2. **Rights of Grantee.**

a. **Generally.** To preserve and protect the Conservation Values of the Property, including, without limitation, the right to enforce the obligations of the Grantor hereunder.

b. **Monitoring.** To enter upon the Property at reasonable times to monitor, document (including through the use of photographs), and defend Grantor’s compliance with and otherwise enforce the terms of this Conservation Easement. Grantee’s entry shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property and shall be upon prior reasonable notice to Grantor, except in emergency cases where Grantee reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Conservation Easement.

c. **Conservation.** To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Conservation Easement and/or the Declaration, to require the restoration of such areas or feature of the Property that may be damaged by any inconsistent activity or use.

d. **Notices.** Notwithstanding any other provision in this Conservation Easement to the contrary, Grantee requires written notice by Grantor of the long-term management reports contemplated under the MBI. Any notice pursuant to this section shall be provided in accordance with Section 18 below or as otherwise stipulated herein.

3. **Use Limitations.** Notwithstanding any other provision in this Conservation Easement to the contrary, any activity on, or use of, the Property which is inconsistent with the Purpose of this Conservation Easement is prohibited. Subject to the foregoing, the Property shall be restricted from any development or any use other than those defined elsewhere herein and as set forth in the MBI. Grantor hereby acknowledges that, pursuant to O.C.G.A. §44-10-4(b),

Grantee is a necessary party in any proceeding of or before any governmental agency which may result in a license, permit or order for any demolition, alteration, or construction on the Property. It is mutually agreed and understood, however, that this Conservation Easement permits Grantor and its successors-in-interest to use the Property for all purposes, present and future, not inconsistent with the Purpose of this Conservation Easement. Without limiting the generality of the foregoing: Except as provided herein or pursuant to the Declaration, any activity on, or use of, the Property inconsistent with the Purpose is prohibited. The Property shall be maintained as contemplated within the MBI and restricted from any development, or any use other than those specified within the MBI, including but not limited to, as natural fields, wetlands and forest lands and as a sanctuary for wildlife and wild plants; however, it is mutually agreed and understood, that the Conservation Easement permits Grantor and Grantor's successors-in-interest to use the Property for all purposes, present and future, not inconsistent with the Purpose and/or Declaration. Without limiting the generality of the foregoing, those activities prohibited by the Declaration of Covenants and Restrictions are specifically prohibited.

4. **Reserved Rights.** Grantor reserves to itself, and to its successors and assigns, all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the Purpose of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved, all to the extent that such rights are consistent with the Purpose of this Conservation Easement and would not significantly impair or interfere with the Conservation Values of the Property.

a. **Compliance with MBI.** Grantor reserves the right to make any modifications necessary or as directed by the USACE to assure compliance with the MBI, including adaptive management measures in furtherance of the Conservation Values such as but not limited to, the right to modify existing drainage patterns, alter the natural contours of the Property, remove fencing, remove roads, remove structures, comply with any requirements of the USACE and to do all other things Grantor deems reasonably necessary to comply with any requirements of the MBI.

b. **Right to Prevent Substantial Erosion or to Protect Public Safety.** Grantor reserves the right to take action necessary to prevent erosion on the Property or to protect the public health and safety.

c. **Grantor's Fee Ownership Rights.** Grantor reserves the right to lease or to give, sell, assign or otherwise transfer the Property or any portion thereof by operation of law or by deed, in each case subject and subordinate to this Indenture. Except as limited in this Conservation Easement, Grantor reserves all rights as fee owner of the Property, including without limitation, the right to use the Property for all purposes not inconsistent with the terms of this Conservation Easement.

d. **Nuisance Animal Control.** Grantor reserves the right to engage in lawful nuisance animal control on the Property in accordance with the MBI, provided that, such control is limited to the extent necessary to protect the integrity of the aquatic system and ecological stability of the natural environment on the Property.

e. Education and Promotion. Grantor reserves the right to conduct workshops, seminars, tours, educational research and related programs and activities on the Property for the purpose of promoting the scientific, ecological, environmental, wildlife, scenic, aesthetic or similar Conservation Values of the Property in accordance with the Purpose of this Conservation Easement.

f. Grantor's Exclusive Access and Use. Except as expressly provided herein, Grantor retains exclusive access to and use of the Property.

g. Roads and Trails. There are no public or private roads within the preservation area on the Property. Nonetheless, Grantor reserves the right to maintain, any roads and trails now existing on the Property and shown in the MBI that are outside of the preservation area. Grantor reserves the right to use said roads and trails for all activities permitted under the MBI and/or this Conservation Easement. Any construction of additional roads or trails outside those specified within the MBI or widening of now-existing roads on the Property, other than those permitted herein is prohibited.

h. Leases. Grantor reserves the right to lease the Property for any use permitted to Grantor under this Conservation Easement, provided that such lease is consistent with and subject to the terms of this Conservation Easement and notice is provided to Grantee pursuant to Section 18 below. All provisions of this Conservation Easement that are applicable to the Grantor shall also apply to the lessee and the lessee shall abide by all terms of this Conservation Easement. All Leases shall expressly provide that the Lessee acknowledges and accepts the restrictions, conditions and limitations on uses of the Property as set forth in this Conservation Easement.

i. Fencing. Grantor reserves the right to maintain, repair, replace and reasonably enlarge the perimeter fencing on the Property in furtherance of the Purpose.

5. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Conservation Easement, to restore the portion of the Property so injured to its condition at the time the Grantor conveyed this Conservation Easement to Grantee or in accordance with the MBI. If Grantor fails to cure the violation within thirty (30) days after the receipt of the notice thereof from Grantee or, under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, then Grantee may pursue its remedies under this Section after its good faith efforts to provide emergency notice to Grantor and without waiting from the period provide to cure to expire. Grantee may seek to enjoin the violation by temporary or permanent injunction and to recover any damages to which it may be entitled upon violation of the terms of this Conservation

Easement or injury to any Conservation Values herein protected, including damages for the loss of scenic, aesthetic or environmental values, and it require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. Grantee's rights under this Section apply equally in the event of either action or threatened violations of the terms of this Conservation Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement area inadequate and that Grantee shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement.. If the court determines that the Grantor has violated any material terms of the Conservation Easement, the Grantor shall pay all reasonable attorney's fees, court costs, and any other reasonable costs of enforcement of the Conservation Easement, including all costs associated with the court's order. Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6. **Mediation.** Grantor and Grantee agree that mediation is a cost-effective and preferred method of dispute resolution in many circumstances. If a dispute arises between the parties concerning any proposed use or activity on the Property, Grantor agrees not to proceed with the use or activity pending resolution of the dispute, and the parties shall first consider resolution through mediation. If resolution through mediation is agreed upon, Grantor and Grantee shall together agree upon the selection of a mediator. Mediation pursuant to this Section shall be voluntary, and this Section shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies through means other than mediation. In particular, mediation may not be suitable if Grantee determines there has been a breach by Grantor of the terms of this Conservation Easement, or if such a breach is imminent, or if Grantee determines that immediate action is required to prevent or mitigate significant damage to the Conservation Values of the Property. If mediation is unsuccessful in resolving the impasse between Grantor and Grantee, Grantee shall not be precluded from pursuing any of its enforcement remedies authorized herein, including but not limited to litigation.

7. **Cost of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of mediation; all costs of suit and reasonable attorneys' fees; and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement, shall be borne by Grantor, with the proviso that Grantor shall not be responsible for costs of a frivolous action, or action brought in bad faith by the Grantee, as determined by a court of competent jurisdiction.

8. **Grantee's Forbearance.** Any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of any subsequent breach of the same or any other term of this Conservation easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

9. **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel or prescription.

10. **Acts Beyond Grantor's Control.** Grantor is responsible for the acts and omissions of persons acting on their behalf, at their discretion or with their permission, including but not limited to lessees, and Grantee shall have the right to enforce against Grantor for events or circumstances of non-compliance with this Conservation Easement resulting from such acts or omissions. However, as to the acts or omissions of third parties other than the aforesaid persons, Grantee shall not have a right to enforce against Grantor unless Grantor is complicit in said acts or omissions, fails to cooperate with Grantee in all respects to halt or abate the event or circumstances of non-compliance resulting from such acts or omissions, or fails to report such acts or omissions to Grantee promptly upon learning of them. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property caused by wildfire, flood, storm, and earth movement, or other natural disaster, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes. Nothing herein shall be construed to preclude Grantor's and Grantee's rights to recover damages from any third party for trespass, vandalism, or other violation of their respective rights in this Conservation Easement and the Property. To that end, Grantee shall have the right, but not the obligation, to pursue all legal and equitable remedies provided by this Conservation Easement against any third party responsible for an event or circumstances of non-compliance with this Conservation Easement and Grantor shall, at Grantee's option, assign Grantor's right of action against such third party to Grantee, join Grantee in any suit or action against such third party, or appoint Grantee as Grantor's attorney-in-fact for the purpose of pursuing an enforcement suit or action against such third party.

11. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. The USACE, its assigned agents, and its contractors shall at reasonable times and upon prior written notice to Grantor, have the right to access the Property to inspect the Property to monitor and ascertain compliance with the requirements of the Declaration.

12. **Cost and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property.

13. **Grantor's Liability and Hold Harmless.**

a. Grantor retains all responsibilities and shall bear all costs and liability of any kinds related to ownership operation, upkeep and maintenance of the Property. Grantee has no affirmative obligations relating to the use or maintenance of the Property. Grantee shall not be responsible for injuries or damage to persons or property in connection with Grantee's administration and/or enforcement of this Conservation Easement or otherwise with respect to the condition of the Property, except as may be expressly provided herein.

b. Grantor shall hold harmless, indemnify, and defend Grantee, its successors and assigns (collectively "Indemnified Parties") from and against all liabilities, penalties, costs,

losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys' fees, arising from or in any way connected with (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of any of the Indemnified Parties; and (2) the existence or administration of this Conservation Easement, unless due to the negligence or willful misconduct of any of the Indemnified Parties.

c. All Lessees of Grantor and all successors in interest, shall be bound by these requirements. All Leases shall contain an express provision in which Lessee acknowledges and agrees to these requirements.

14. **Assignment.** This Conservation Easement is transferable as more particularly set forth in this Section. Grantee may assign its rights and obligations under this Conservation Easement only to a qualified organization, authorized to acquire and hold conservation easements at the time of such assignment. Prior to such assignment, Grantee must notify Grantor of the proposed assignment and assignee. In the event that Grantee ceases to be a qualified holder of this Conservation Easement, as defined under the Act, this Conservation Easement may be assigned in accordance with this Section. As a condition precedent to any such transfer, Grantee shall require its successors and assigns to enter into a specific written agreement to be bound by this Conservation Easement, which written agreement shall state that the Purpose this Conservation Easement shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to Grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor. Any such assignment shall be promptly recorded and cross-referenced to this Conservation Easement in the official records of Whitfield County, Georgia. Any assignment of this Conservation Easement shall be upon the consent of Grantor, which consent shall not be unreasonably withheld.

15. **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divests itself of any interest in or a portion of the Property, including without limitation a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

16. **Estoppel Certificates.** Upon request by Grantee or Grantor, the other party hereto shall within twenty (20) days execute and deliver any document, including an estoppel certificate, which certifies the status of compliance with any obligation contained in this Conservation Easement and otherwise evidence the status of this Conservation Easement.

17. **Extinguishment or Termination.** It is the unequivocal intention of Grantor and Grantee that the Purpose of this Conservation Easement be carried out in perpetuity. If circumstances arise in the future that render the Purpose of this Conservation Easement impossible or impractical to accomplish, this Conservation Easement can only be terminated or extinguished whether in whole or in part, by judicial proceedings in a court of competent jurisdiction pursuant

to OCGA §44-10-4(c). Any proceeds which Grantee receive shall be used in a manner consistent with the Purpose of this Conservation Easement including but not limited to the costs to monitor, enforce and preserve any portions of the Property that remain subject to this Conservation Easement, or if no remaining portion of the Property is subject to this Conservation Easement, to monitor and enforce other easements held by Grantee that are comparable to this Conservation Easement and to conserve properties subject to such other easements in a manner consistent with the Property's Conservation Values under this Conservation Easement.

18. **Notices.** Any notice, demand, request, consent, approval or communication that either party desires, or is required, to give to the other hereunder shall be in writing and either served personally or sent by nationally-recognized, overnight, courier service or U.S. registered or certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address(es) as may be specified by any such party to the other hereunder by written notice delivered in accordance with this Section.

To Grantor: The Board of Water, Light and Sinking Fund
Commissioners d/b/a Dalton Utilities
1200 VD Parrott Jr. Pkwy
Dalton, GA 30721

To Grantee: Southern Conservation Trust, Inc.
305 Beauregard Boulevard
Fayetteville, GA 30214

Any notice to other communication mailed as hereinabove provided shall be deemed effectively given or received on the date of delivery if personally served or if delivered by nationally recognized, overnight, courier service or on the date indicated on the return receipt if sent by U.S. registered or certified mail as described above.

19. **Development Rights.** Grantor and Grantee agree that all development rights, except those provided herein, that are now or hereafter allocated to, implied, reserved or inherent in the Property are terminated and extinguished.

20. **Merger.** The Grantor and Grantee agree that the terms, conditions, and purposes of this Conservation Easement shall survive any merger of the fee estate with the easement interest in the Conservation Property.

21. **Insurance.** For purposes of indemnification, Grantee shall maintain at all times commercial general public liability and property damage insurance with a broad form coverage endorsement (i) for an aggregate amount of not less than Two Million Dollars (\$2,000,000.00) and an occurrence limit of not less than One Million Dollars (\$1,000,000.00) combined single limit and (ii) with a \$5,000,000.00 limit of liability in excess of the underlying limits of liability.

22. **Miscellaneous Provisions.**

- a. Choice of Law. The interpretation, application, and performance of the terms and conditions of this Conservation Easement shall be governed and construed by and in accordance with the laws of the State of Georgia.
- b. Severability. If any provision or provisions of this Easement shall be held to be invalid, illegal, unenforceable or in conflict with the law of applicable jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- c. Entire Agreement. This Indenture sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, understandings and agreements relating thereto, all of which are merged herein.
- d. Captions. The captions in this Conservation Easement are not to be given any constructive, operative, or interpretive effect, and serve merely as reference.
- e. No Forfeiture. No provision or intent of the parties contained in this Conservation Easement shall be construed as having resulted in a forfeiture or reversion of the Grantor's title.
- f. Amendment. If circumstances arise under which an amendment or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect this qualification of this Easement or the status of Grantee under any applicable laws, including O.C.G.A. §44-10-1, et seq., and any amendment shall be consistent with the purpose of this Easement. Any such amendment or extinguishment shall be recorded in the official records of Whitfield County, Georgia.
- g. Counterparts. The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties, each counterpart shall be deemed an original instrument as against any Party. In the event of any disparity between the counterparts produced, the recorded counterpart shall be control.
- h. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to the purpose of this Easement and the policy and purpose of O.C.G.A. §44-10-1, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

- i. Recordation of Easement. Grantor and Grantee agree that this Indenture shall be promptly recorded in the Office of the Clerk of the Superior Court of Whitfield County, Georgia.
- j. If Grantee, or and successor or assign of Grantee, qualifies as a “holder” as that term is defined by O.C.G.A. §44-10-2, then the provisions of O.C.G.A. § 44-10-1 *et seq.* shall be applicable to this Conservation Easement and/or the Declaration of Covenants and Restrictions.
- k. Grantee warrants that it will commit the personnel and financial resources to enforce this Conservation Easement, whether such resources are employees of Grantee or third-party land management consultants capable of inspection and attorneys for legal enforcement. Grantee further acknowledges and accepts that it will be required to conduct an annual in person inspection for compliance with the Conservation Easement.

TO HAVE AND TO HOLD the Conservation Easement unto Grantee and its successors and assigns, together with all and singular the rights, members, and appurtenances thereof to the same being, belonging or any wise appertaining, to the only proper use, benefit and behoof of Grantee forever. The covenants agreed to and the terms, conditions, and restrictions and purposes imposed as aforesaid shall not only be binding upon Grantor but also Grantor’s personal representatives, heirs, executors, administrators, successors and assigns, and shall continue as an easement and servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, the parties have executed this Contract under seal as to the date first above written.

Signed, sealed and delivered the _____
day of _____, 2023 in the presence of:

GRANTOR:
CITY OF DALTON, GEORGIA

Unofficial Witness

By: _____

Notary Public

Attest: _____



Signatures continue on the following page.

Signed, sealed and delivered the _____
day of _____, 2023 in the presence of:

GRANTEE:

SOUTHERN CONSERVATION TRUST, INC.

Unofficial Witness

By: _____

Notary Public

Attest: _____

Exhibit “A”
(Legal Description)

Tract No. 1:

All that tract or parcel of land lying and being in Land Lot Nos. 319 and 320 in the 10th District and Third Section of Whitfield County, Georgia, and in Land Lots Nos. 5 and 6 of the 9th District and Third Section of Whitfield County, Georgia and being described as follows:

BEGINNING at a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 07 degrees 57 minutes 54 seconds east a distance of 189.90 feet to an iron pin; thence south 73 degrees 15 minutes 19 seconds west a distance of 210.63 feet to an iron pin; thence south 45 degrees 45 minutes 55 seconds west a distance of 225.98 feet to an iron pin; thence south 23 degrees 45 minutes 32 seconds west a distance of 229.45 feet to an iron pin; thence south 05 degrees 51 minutes 58 seconds west a distance of 163.90 feet to an iron pin; thence south 52 degrees 53 minutes 05 seconds west a distance of 169.05 feet to an iron pin; thence south 26 degrees 58 minutes 35 seconds west a distance of 258.59 feet to an iron pin; thence south 16 degrees 47 minutes 16 seconds west a distance of 232.63 feet to an iron pin; thence north 56 degrees 30 minutes 47 seconds west a distance of 634.15 feet to an iron pin located in the southeast right of way line of River Road (80' R/W); thence running in a south westerly direction, along the southeast right of way line of River Road, the following courses and distances, to wit: south 36 degrees 17 minutes 00 seconds west, 15.69 feet; south 36 degrees 34 minutes 54 seconds west, 155.69 feet; south 35 degrees 57 minutes 54 seconds west, 109.83 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 100.62 feet (3,850' Radius), said arc being subtended by a chord with a bearing of south 35 degrees 12 minutes 58 seconds west and a chord distance of 100.62 feet; thence south 34 degrees 28 minutes 03 seconds west, along the southeast right of way line of River Road, a distance of 123.29 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 272.28 feet (1,560.0' Radius), said arc being subtended by a chord with a bearing of south 29 degrees 28 minutes 02 seconds west and a chord distance of 271.93 feet; thence south 24 degrees 28 minutes 02 seconds west, along the southeast right of way line of River Road, a distance of 88.15 feet; thence south 22 degrees 20 minutes 30 seconds west, along the southeast right of way line of River Road, a distance of 100.61 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 51.69 (460.0' Radius), said arc being subtended by a chord with a bearing of south 19 degrees 07 minutes 21 seconds west and a chord distance of 51.66 feet to an iron pin; thence south 85 degrees 39 minutes 53 seconds east a distance of 1,185.13 feet to an iron pin; thence south 14 degrees 57 minutes 57 seconds east a distance of 187.69 feet to an iron pin; thence south 13 degrees 22 minutes 33 seconds east a distance of 49.25 feet to an iron pin; thence south 52 degrees 31 minutes 10 seconds east a distance of 186.10 feet to an iron pin; thence south 03 degrees 35 minutes 42 seconds east a distance of 268.10 feet to an iron pin; thence south 14 degrees 32 minutes 23 seconds west a distance of 199.52 feet to an iron pin located in the northeast right of way line of Lower Kings Bridge Road (80' R/W); thence south 59 degrees 16 minutes 19 seconds east, along the northeast right of way line of Lower Kings Bridge Road, a distance of 276.62 feet; thence running in a southeasterly direction, the northeast right of way line of Lower Kings Bridge Road, along an arc to the right, an arc distance of 61.96 feet (740.0' Radius), said arc being subtended by chord with a bearing of south 56 degrees 52 minutes 24 seconds east and a chord distance of 61.94 feet; thence south 54 degrees 28 minutes 29 seconds east, the northeast right of way line of Lower Kings Bridge Road, a distance of 79.27 feet to an iron pin; thence north 46 degrees 48 minutes 38 seconds east a distance of 113.45 feet to an iron pin; thence south 42 degrees 35 minutes 11 seconds east a distance of 218.06 feet to an iron pin; thence south 29 degrees 23 minutes 14 seconds east a distance of 227.41 feet to a point located in the center

of the Conasauga River, which point is located south 04 degrees 10 minutes 55 seconds east a distance of 3,257.75 feet from the threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly, easterly northeasterly, northerly northwesterly, northerly, and northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the north line of said Land Lot No. 319; thence running in a westerly direction, along the north line of said Land Lot No. 319, to the a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.

Tract No. 2:

All that tract or parcel of land lying and being in Land Lot Nos. 295 and 318 in the 10th District and Third Section of Whitfield County, Georgia, and being described as follows:

BEGINNING at an iron pin located at the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 74 degrees 51 minutes 14 seconds east a distance of 180.83 feet to an iron pin; thence south 61 degrees 54 minutes 33 seconds east a distance of 252.18 feet to an iron pin; thence south 87 degrees 41 minutes 48 seconds east a distance of 183.46 feet to an iron pin; thence north 74 degrees 44 minutes 37 seconds east a distance of 362.76 feet to an iron pin; thence north 66 degrees 48 minutes 52 seconds east a distance of 270.74 feet to an iron pin; thence north 73 degrees 44 minutes 00 seconds east a distance of 575.54 feet to an iron pin; thence north 68 degrees 31 minutes 59 seconds east a distance of 175.31 feet to an iron pin; thence north 85 degrees 03 minutes 24 seconds east a distance of 108.18 feet to an iron pin; thence south 64 degrees 16 minutes 49 seconds east a distance of 246.02 feet to an iron pin; thence south 33 degrees 07 minutes 23 seconds east a distance of 709.23 feet to a to a point located in the center of the Conasauga River, which point is located south 80 degrees 29 minutes 37 seconds east a distance of 2,648.17 feet from the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the east line of said Land Lot No. 318; thence running in a northerly direction, along the east line of said Land Lot Nos. 318 and 295, to the common corner to Land Lot Nos. 281, 282, 295 and 296 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a westerly direction, along the north line of said Land Lot No 295, to the common corner to Land Lot Nos. 282, 283, 294 and 295 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a southerly direction, along the west line of said Land Lot said Land Lot No. 295, to the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.

**Exhibit “B”
(Declaration)**

[Space above this line for recording data.]

Please Record and Return To:

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

Please Cross-Reference to Deed
Book 2019 Page 241, Whitfield
County, Georgia Land Records.

STATE OF GEORGIA
COUNTY OF WHITFIELD

DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS

THIS DECLARATION OF CONSERVATION COVENANTS AND RESTRICTIONS (this "Declaration") is hereby made by **The City of Dalton**, the undersigned "Declarant." Declarant is the owner in fee simple of a certain tract or parcel of real property lying in Whitfield County, Georgia. This tract of land was conveyed on September 30, 1988 from Donald R. Robertson and Patricia A. Robertson to The City of Dalton and recorded in Deed Book 2019 Page 241, in the Office of the Clerk of Superior Court of Whitfield County Georgia. Declarant comes now and, for good and valuable consideration, declares conservation use restrictions on the property hereinafter described. A legal description of the specific parcel or parcels of Property subject to this Declaration is more particularly described in Exhibit "A" hereto attached and made a part hereof. The Declaration hereinafter stated shall apply to Property described in Exhibit "A" and is by reference, incorporated herein for a description and for all other legal purposes.

PREMISES

WHEREAS, Declarant was authorized by that certain letter dated ____ to implement a Banking Instrument by the U.S. Army Corps of Engineers ("USACE") Action Number ____ pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 401) under the administrative regulatory authority of the USACE Savannah District, Regulatory Division, setting forth authorization for certain dredge and/or discharge of fill activities in waters of the United States, including wetlands and streams; and,

WHEREAS, the banking authorization letter was issued to the Board of Water, Light and Sinking Fund Commissioners for the City of Georgia d/b/a Dalton Utilities. The Board of Water, Light and Sinking Fund Commissioners is not a separate corporate entity from the City of Dalton, Georgia, rather the Board of Water, Light and Sinking Fund Commissioners has such responsibilities over the department of public utilities of the city as provided in the Charter of the City of Dalton, Georgia and by ordinance; and

WHEREAS, said banking instrument dated August 2021 is attached hereto as Exhibit “B” and by this reference is made a part hereof; and,

WHEREAS, dredge and/or discharge of fill material in jurisdictional waters of the United States including wetlands and streams pursuant to the Clean Water Act, Section 404, and/or Rivers and Harbors Act of 1899, Section 10, requires compensatory mitigation and perpetual protection of the mitigation property; and,

WHEREAS, a dated platted survey with seal affixed by a Georgia registered surveyor of the bearings and distances and coordinate values of the boundary of the Property referenced as Exhibit “A” has been recorded at Plat Book ____, Page ____ in the Whitfield County, Georgia Land Records (the “Survey”). The survey approximately shows the planned wetland, stream and buffer areas within the Property. The Property contains ____ acres in ____ parcels of land. The property further contains approximately 82.5 acres of proposed wetlands and 700 linear feet of a tributary with buffer; provided however, these figures are estimates of the proposed wetland areas that subject to change based on the conditions of the property after Declarant makes restorations to the Property. The survey is made a part of this Declaration and is incorporated by reference.

WHEREAS, the Conservation Functions and Services are summarized and described in Exhibit “C,” attached hereto and made a part hereof; and,

WHEREAS, the Property is approved as a commercial wetland and/or stream mitigation bank pursuant to the terms and conditions of the Banking Instrument, the document being incorporated by reference. The purpose of the bank is to generate credits to compensate for wetland impacts that have been determined unavoidable after consideration of avoidance and minimization on Section 404, Clean Water Act, or Section 10 Rivers and Harbors Act of 1899, permit actions. The banking instrument sets forth the success criteria required of the ecological project and the credit releases allowable. Declarant agrees to be responsible for certain restoration, enhancement, establishment and preservation of wetlands and/or stream and streamside lands on the Property pursuant to the banking instrument and any subsequent modifications. Credits from the bank are sold by the bank sponsor in return for a fee agreed upon by the bank sponsor and the permit holder where the USACE has approved the use of banking credits as mitigation in whole or in part on permits issued. Each time credits are sold, Declarant shall provide the USACE with an accounting of the total number of credits in the bank, the number of credits released, and the permit action associated with each release of credits. The Property is to remain subject to this Declaration of Conservation Covenants and Restrictions in perpetuity; and

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Declarant and each and every subsequent owner and occupant of the real property, and as required mitigation for dredge and/or discharge of fill material in waters of the United States including wetlands and streams, Declarant has promised to place certain restrictions on the Property exclusively for conservation purposes, in order that it shall remain substantially in its restored, enhanced, preserved, open, natural and/or scenic condition in perpetuity.

1. **Transfers, Amendments & Extinguishment.** Declarant does hereby declare that all of the Property described hereinafter shall be held, transferred, sold, conveyed and occupied subject to the terms and conditions of the covenants, easements and affirmative obligations all of which shall run with the Property and will be binding on all persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title or interest in said Property, or any part thereof, their heirs, executors, administrators, successors and assigns. The terms and conditions of this Declaration of Covenants and Restrictions shall be both implicitly and explicitly included in any subsequent transfer,

conveyance, or encumbrance affecting all or any part of the conservation Property. It shall set forth the terms and conditions of this document either by reference to this document and its recorded location or by attachment and incorporation by reference. The covenant shall not be amended or extinguished except by written approval of the USACE, or its successor in administration of the Clean Water Act or the Rivers and Harbors Act of 1899. Amendments to the restrictive covenant for the purpose of proposing additional impact are not favored and will be considered only in rare circumstances following the USACE policy and procedures. Should an amendment be accepted, mitigation required will be at a substantially higher ratio. Amendments shall be signed by the USACE and shall be recorded in the official records of the county in which the Property is located.

2. **Property as Open and Common Area.** The Property is set aside for conservation use and shall be designated as an undeveloped lot, buffer, open and common area or greenway and will not now, nor in the future, be made part of any single lot or lots in a residential or mixed use subdivision or a subdivided commercial development, but rather the Property shall be held, maintained and managed by the owner, developer, corporation, homeowner or business association as an open, common and undeveloped conservation area. There shall be no legal or de facto division, subdivision or partitioning of the protected Property used as mitigation unless approved by the USACE and addressed in the banking instrument.

3. **Prohibited Uses.** Except as necessary (1) to carry out wetland/stream and/or buffer restoration, enhancement and/or establishment in keeping with the mitigation plan of the banking instrument as approved by the USACE; or (2) to carry out management and maintenance of the Property, as approved in writing by the USACE; the uses incompatible with the conservation values of the Property prohibited by this covenant shall include, but shall not be limited to the following:

A. Clearing, removing, burning, mowing, or cutting of trees or other vegetation (except for the control and removal of non-native vegetation, as set forth in a mitigation plan approved by the USACE, or with prior written consent by the USACE). If such control or removal involves the use of insecticides, herbicides, or other biocides, such application shall be by the narrowest spectrum, least persistent material appropriate for the target species, and shall be consistent with the conservation values of the Property and the purpose of this covenant;

B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;

C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, toxic and hazardous wastes, incinerator residue, garbage, sewage sludge, oil or oil products and wastes, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, vehicle bodies or parts, junk, or agricultural waste on the Property;

D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;

E. Diverting or affecting the natural flow of surface or underground waters within, or out of the Property; manipulating or altering any natural water course, body of water or water circulation and any activities or uses detrimental to water quality;

F. Mining, drilling, hydraulic fracturing, dredging, or removing from the Property soil, loam, peat, gravel, oil, gas or other mineral resources or natural deposit;

G. Burning, systematically removing or cutting timber, or otherwise destroying any vegetation. Upon approval from the USACE, selective pruning of unsafe trees or exotic non-native vegetation may be removed in accordance with current scientific best management practices as set out by the U.S. Forest Service or the Georgia Forestry Commission;

H. Spraying with biocides or use of herbicides or pollutants that violate water quality standards;

I. Introducing non-native species on the Property, altering the natural state of the wetlands or streams or causing erosion or sedimentation;

J. Grazing or use by domesticated animals;

K. Construction of any kind in the wetlands, streams, buffers or upland, whether temporary or permanent;

L. Use of motorized or mechanized vehicles, including, but not limited to, off-road vehicles is prohibited, except on existing roadways for the sole purpose of monitoring or maintaining the Property;

M. As permitted or approved in writing by the USACE the Property may have: (1) a narrow pedestrian walking trail in the uplands or upland buffer using pervious materials (not to exceed two feet in tread width and three feet in total width), and/or (2) minimal structures and boardwalks for the observation of wildlife and wetland/stream ecology; all in a manner in keeping with the conservation values, services, and functions of the Property.

N. Display of billboards, signs, or advertisements on or over the Property, except for the posting of no trespassing signs, temporary signs indicating the Property is for sale, signs identifying the trees, vegetation, wetlands or conservation values of the Property, and/or signs identifying the owner of the property;

O. Conservation and wildlife habitat management plans may be implemented by the Georgia Department of Natural Resources Wildlife Resource Division, U.S. Forest Service, conservation land trusts holding conservation easements, or other conservation management entities where the habitat, wildlife or forest management does not result in any impacts to the wetlands/streams/riparian corridors and its buffers, or to property protected for its historical, cultural and/or archeological value, and where the proposal would enhance the management of the Property for its conservation use.

4. Easements.

A. The Property is free and clear of any and all liens, loans, claims restrictions, easements and encumbrances, except as otherwise identified in this document and its exhibits.

B. Existing utility line easements, roads, right-of ways, access easements and structures on the Property, if any, are shown on the Survey.

C. Environmental impacts, if any, caused by existing easements such as roads, utility lines or pipelines, where such easements are in place as of the date of the recording

of this restrictive covenant, and where the easements are shown on the survey, shall not be considered as causing any prohibited impacts to the Property by their use and maintenance.

D. Should an easement or legal right of use of the Property, not listed in paragraph (4)(A), or not meeting the criteria of Paragraph (4) (A) and prior in time and recording to this restrictive covenant, be exercised in such a manner that it conflicts with the prohibited uses of the Property set out in this restrictive covenant, then the owners of the Property, whether the Declarant of this covenant or any heirs, executors, administrators, successors or assigns, shall be responsible for providing alternative conservation mitigation in such amounts and of such service and function as the USACE or any enforcer of this covenant shall determine in accordance with the terms of the banking instrument and with Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899 and their implementing regulations.

5. **Representations.** Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

B. There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned;

C. The Property is in compliance with all federal, state and local laws, regulations and permits, and there is no pending or threatened litigation in any way affecting, involving or relating to the Property and its use; and

D. The Property is not land-locked and there is access to the Property by road, dedication of pathway or by an access easement.

6. **Affirmative Duties.**

A. Declarant/Owner will take action to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the conservation values of the Property or that are otherwise inconsistent with this Declaration.

B. A management plan shall be developed by Declarant, and coordinated with the USACE, for the Declarant's, and its successors' and assigns', management of the Property and for describing the conservation duties in managing the Property. Adequate financial resources shall be allocated by owner of the mitigation property for protection of the Property. Declarant shall take immediate action to cure violations of this restrictive covenant.

7. **Exclusive Possession.** Declarant, its successors and assigns, reserve all other rights accruing from its ownership of the Property, including, but not limited to, the exclusive possession of the Property, the right to transfer or assign their interest in the same, the right to take action necessary to prevent erosion on the Property, to protect the Property from losing its conservation functions and services, or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the conservation purposes of this Declaration.

8. **Benefits to the General Public.** It is expressly understood and agreed that this covenant does not necessarily grant or convey to members of the general public, any rights of ownership, interest in, or use of the protected Property unless so designated by the owner for such purpose, as approved by the USACE. Nonetheless, the Property has significant aesthetic and conservation value in its present or restored state as a predominately natural area which has not been subject to extensive development or exploitation. The protection of jurisdictional and non-jurisdictional waters of the United States, their buffers and uplands, floodplains, vegetation, scenic, open space, aquatic and wildlife habitat are considered of great importance to the well-being of the general public and to all citizens of Georgia and are worthy of preservation and conservation.

9. **Enforcement.** The USACE and/or the U.S. Environmental Protection Agency, or its successors, as third-party beneficiaries hereof, are hereby specifically granted the authority to enforce the provisions of this Declaration pursuant to the Clean Water Act, Section 404, and the Rivers and Harbors Act of 1899, Section 10, and their implementing regulations. Appropriate remedy for violation of this section is contemplated to include, without limitation, injunctive relief to restrain such violation, restoration, administrative, civil or criminal penalties as well as any other remedy available under law or equity. However, no violation of this covenant shall result in a forfeiture or reversion of title. It shall not be a defense, for purposes of this covenant, that the conservation functions and services of the Property were impacted without the owner's knowledge or consent, or that the waters on the Property are deemed to be non-jurisdictional waters of the United States either by their function or by statute. The Property was offered and accepted as mitigation and is therefore subject to the contractual terms of the banking instrument and this Declaration. Loss of conservation functions and services shall not be required to be replaced if damage is due to "acts of God," as it generally is referenced, so long as there has been completion of the mitigation requirements of the banking instrument as to restoration, enhancement, establishment and monitoring.

10. **Right of Ingress and Egress.** The USACE, and/or the U.S. Environmental Protection Agency, their assigned agents and contractors, shall at reasonable times and upon notice to the owner, have an access easement for the right of ingress and egress to inspect the Property in order to monitor and to ascertain whether there has been compliance with this Declaration. Posted signs declaring the Property to be conservation property shall be posted by the owner in order to provide notice of the land use designation.

11. **Covenant Runs with the Land in Perpetuity.** This covenant shall not terminate upon some fixed amount of time but shall run with the land in perpetuity pursuant to O.C.G.A. § 44-5-60(c) both as to benefit and as to burden and shall be enforceable against Declarant and all present and future owners, tenants, and other holders of any interest in the Property. This covenant is established for the purpose of preserving, enhancing and conserving wetlands and streams, non-jurisdictional wetlands and streams accepted as mitigation, buffers, uplands, open areas and the associated conservation values, services and functions. Furthermore, this covenant carries out the statutory requirement of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, and their implementing regulations.

12. **Intent of Clean Water Act.** The intent of the Clean Water Act, Section 404, is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. The intent of this document is that the Property be perpetually protected as conservation lands.

13. **Written Notice of Legal Action Against Property.** Pursuant to the Clean Water Act, the District Engineer, c/o Office of Counsel, United States Department of the Army, Corps of Engineers, Savannah District, Savannah, Georgia, shall be provided with a 60-day advance written notice prior to the filing of any legal action concerning this covenant, or of any action to extinguish, void or modify this covenant, in whole or in part; provided however, if such 60-day notice is not permitted by any federal, state, or local statute, regulation, ordinance, rule, or court order, then the USACE shall be given notice of the taking as soon as reasonably possible under the circumstances. The restrictive covenant is intended to survive

foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation and similar doctrines or judgments affecting the Property. A copy of this recorded document shall accompany the notice.

14. **Eminent Domain.** It is the intent of this conservation covenant that the aquatic resources it protects shall not be altered or impacted by eminent domain. However, if any or part of the protected Property is taken by exercise of the power of eminent domain, so as to terminate this covenant, in whole or in part, the USACE shall be given 60-day notification for the purpose of providing the condemnor and the court authorizing the action, with the value and cost of the consequential damages or the costs of replacement in kind of the ecological units and the conservation functions, services and values of Clean Water Act jurisdictional or non-jurisdictional mitigation on the Property; provided however, if such 60-day notice is not permitted by any federal, state, or local statute, regulation, ordinance, rule, or court order, then the USACE shall be given notice of the taking as soon as reasonably possible under the circumstances. Subject to approval by the USACE, options for replacement of consequential environmental impacts due to eminent domain are governed by the Clean Water Act, Section 404, and/or the Rivers and Harbors Act of 1899, Section 10, and their implementing regulations. Options for payment of consequential damages to waters of the United States impacted by the eminent domain taking may include: (1) re-recording of the USACE model Declaration of Conservation Covenants and Restrictions on the Property signed by the new owner, thereby preserving the existing waters of the U.S. and their buffers on the site without impact; (2) payment of funds sufficient for the acquisition and protection of alternative real property in the same hydrologic watershed providing equivalent conservation functions, services and values of wetlands, streams, creeks, shorelines, other waters of the U.S. and their buffers; or (3) if available, the option to fund the purchase of conservation mitigation credits from an authorized wetland/stream mitigation bank sufficient to replace the conservation mitigation functions, services and values of the wetlands, streams, creeks, shorelines, and other waters of the U.S. and their buffers; (4) payment of funds to an in-lieu fee mitigation wetlands/streams trust account approved by the USACE in an amount sufficient to purchase and protect alternative real property in the same hydrologic watershed that would provide the equivalent mitigation conservation functions, services and values, as the property impacted by eminent domain; or (5) any other alternative consequential damages aquatic conservation mitigation as may be approved by the USACE, in compliance with the regulations and requirements. Failure of the proponent to provide consequential damages through alternative mitigation due to impact(s) to aquatic resources protected under the Clean Water Act associated with eminent domain shall be referred to the U.S. Department of Justice for legal action.

15. **Removal to U.S. Federal District Court.** The USACE reserves the right to recommend to the U.S. Department of Justice that the legal action, as it relates to the Clean Water Act, be removed to the United States Federal District Court in the district where the Property lies.

16. **Recordation of Instrument.** Declarant shall execute and record this instrument in timely fashion in the official records of the Office of the Clerk of Superior Court in the county in which this Property lies and shall provide the USACE with a copy of the recorded covenant and exhibits. Declarant may re-record this instrument at any time as may be required to preserve its rights.

Signatures are contained on the following page.

IN WITNESS WHEREOF Declarant has duly executed this Declaration on this the ____ day of _____, 2021.

THE CITY OF DALTON

By: _____

Name: _____

Title: _____

Address: _____



The Declarant personally appeared before me, the undersigned Notary Public, and the undersigned witness and I saw the within named Declarant sign the Declaration of Conservation Covenants and Restrictions, and I, along with the undersigned witness, witnessed the execution thereof.

Unofficial Witness

Name: _____

Notary Public

My commission expires:

[Notarial Seal]

Exhibit "A"

Legal Description

All that tract or parcel of land lying and being in Land Lot Nos. 319 and 320 in the 10th District and Third Section of Whitfield County, Georgia, and in Land Lots Nos. 5 and 6 of the 9th District and Third Section of Whitfield County, Georgia and being described as follows:

BEGINNING at a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 07 degrees 57 minutes 54 seconds east a distance of 189.90 feet to an iron pin; thence south 73 degrees 15 minutes 19 seconds west a distance of 210.63 feet to an iron pin; thence south 45 degrees 45 minutes 55 seconds west a distance of 225.98 feet to an iron pin; thence south 23 degrees 45 minutes 32 seconds west a distance of 229.45 feet to an iron pin; thence south 05 degrees 51 minutes 58 seconds west a distance of 163.90 feet to an iron pin; thence south 52 degrees 53 minutes 05 seconds west a distance of 169.05 feet to an iron pin; thence south 26 degrees 58 minutes 35 seconds west a distance of 258.59 feet to an iron pin; thence south 16 degrees 47 minutes 16 seconds west a distance of 232.63 feet to an iron pin; thence north 56 degrees 30 minutes 47 seconds west a distance of 634.15 feet to an iron pin located in the southeast right of way line of River Road (80' R/W); thence running in a south westerly direction, along the southeast right of way line of River Road, the following courses and distances, to wit: south 36 degrees 17 minutes 00 seconds west, 15.69 feet; south 36 degrees 34 minutes 54 seconds west, 155.69 feet; south 35 degrees 57 minutes 54 seconds west, 109.83 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 100.62 feet (3,850' Radius), said arc being subtended by a chord with a bearing of south 35 degrees 12 minutes 58 seconds west and a chord distance of 100.62 feet; thence south 34 degrees 28 minutes 03 seconds west, along the southeast right of way line of River Road, a distance of 123.29 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 272.28 feet (1,560.0' Radius), said arc being subtended by a chord with a bearing of south 29 degrees 28 minutes 02 seconds west and a chord distance of 271.93 feet; thence south 24 degrees 28 minutes 02 seconds west, along the southeast right of way line of River Road, a distance of 88.15 feet; thence south 22 degrees 20 minutes 30 seconds west, along the southeast right of way line of River Road, a distance of 100.61 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 51.69 (460.0' Radius), said arc being subtended by a chord with a bearing of south 19 degrees 07 minutes 21 seconds west and a chord distance of 51.66 feet to an iron pin; thence south 85 degrees 39 minutes 53 seconds east a distance of 1,185.13 feet to an iron pin; thence south 14 degrees 57 minutes 57 seconds east a distance of 187.69 feet to an iron pin; thence south 13 degrees 22 minutes 33 seconds east a distance of 49.25 feet to an iron pin; thence south 52 degrees 31 minutes 10 seconds east a distance of 186.10 feet to an iron pin; thence south 03 degrees 35 minutes 42 seconds east a distance of 268.10 feet to an iron pin; thence south 14 degrees 32 minutes 23 seconds west a distance of 199.52 feet to an iron pin located in the northeast right of way line of Lower Kings Bridge Road (80' R/W); thence south 59 degrees 16 minutes 19 seconds east, along the northeast right of way line of Lower Kings Bridge Road, a distance of 276.62 feet; thence running in a southeasterly direction, the northeast right of way line of Lower Kings Bridge Road, along an arc to the right, an arc distance of 61.96 feet (740.0' Radius), said arc being subtended by chord with a bearing of south 56 degrees 52 minutes 24 seconds east and a chord distance of 61.94 feet; thence south 54 degrees 28 minutes 29 seconds east, the northeast right of way line of Lower Kings Bridge Road, a distance of 79.27 feet to an iron pin; thence north 46 degrees 48 minutes 38 seconds east a distance of 113.45 feet to an iron pin; thence south 42 degrees 35 minutes 11 seconds east a distance of 218.06 feet to an iron pin; thence south 29 degrees 23 minutes 14 seconds east a distance of 227.41 feet to a point located in the center of the Conasauga River, which point is located south 04 degrees 10 minutes 55 seconds east a distance of

3,257.75 feet from the threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly, easterly northeasterly, northerly northwesterly, northerly, and northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the north line of said Land Lot No. 319; thence running in a westerly direction, along the north line of said Land Lot No. 319, to the a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.

Exhibit “B”
Banking Instrument

Exhibit “C”

Conservation Functions and Services

[Space above this line for recording data.]

Please Record and Return To:

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

Please Cross-Reference to Deed
Book 2019 Page 241, Whitfield
County, Georgia Land Records.

STATE OF GEORGIA
COUNTY OF WHITFIELD

DECLARATION OF PRESERVATION COVENANTS AND RESTRICTIONS

THIS DECLARATION OF PRESERVATION COVENANTS AND RESTRICTIONS (this "Declaration") is hereby made by **The City of Dalton**, the undersigned "Declarant." Declarant is the owner in fee simple of a certain tract or parcel of real property lying in Whitfield County, Georgia. This tract of land was conveyed on September 30, 1988 from Donald R. Robertson and Patricia A. Robertson to The City of Dalton and recorded in Deed Book 2019 Page 241, in the Office of the Clerk of Superior Court of Whitfield County Georgia. Declarant comes now and, for good and valuable consideration, declares certain use restrictions on the property hereinafter described. A legal description of the specific parcel or parcels of Property subject to this Declaration is more particularly described in Exhibit "A" hereto attached and made a part hereof. The Declaration hereinafter stated shall apply to Property described in Exhibit "A" and is by reference, incorporated herein for a description and for all other legal purposes.

PREMISES

WHEREAS, Declarant was authorized by that certain letter dated ____ to implement a Banking Instrument by the US Army Corps of Engineers ("USACE") Action Number ____ pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401) under the administrative regulatory authority of the USACE Savannah District, Regulatory Division, setting forth authorization for certain dredge and/or discharge of fill activities in waters of the United States, including wetlands and streams; and,

WHEREAS, the banking authorization letter was issued to the Board of Water, Light and Sinking Fund Commissioners for the City of Georgia d/b/a Dalton Utilities. The Board of Water, Light and Sinking Fund Commissioners is not a separate corporate entity from the City of Dalton, Georgia, rather the Board

of Water, Light and Sinking Fund Commissioners has such responsibilities over the department of public utilities of the city as provided in the Charter of the City of Dalton, Georgia and by ordinance; and

WHEREAS, said banking instrument dated August 2021 is attached hereto as Exhibit "B" and by this reference is made a part hereof; and,

WHEREAS, a dated platted survey with seal affixed by a Georgia registered surveyor of the bearings and distances and coordinate values of the boundary of the Property referenced as Exhibit A has been recorded at Plat Book ____, Page ____ in the Whitfield County, Georgia Land Records (the "Survey"). The survey approximately shows the actual wetland, stream and buffer areas within the Property. The Property contains approximately 8.1 acres of wetlands and 0 linear feet of a tributary with buffer; and,

WHEREAS, dredge and/or discharge of fill material in jurisdictional waters of the United States including wetlands and streams pursuant to the Clean Water Act, Section 404, and/or Rivers and Harbors Act of 1899, Section 10, requires compensatory mitigation and perpetual protection of the mitigation property; and,

WHEREAS, in conjunction with the conservation of a commercial wetland and/or stream mitigation bank authorized pursuant to the banking instrument, Declarant desires to preserve the Property, which is upstream from said mitigation bank; and

WHEREAS, in addition to Declarant's obligations under the banking instrument, Declarant agrees to be responsible for certain preservation of wetlands and/or stream and streamside lands on the Property. The Property is to remain subject to this Declaration of Preservation Covenants and Restrictions in perpetuity; and

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Declarant and each and every subsequent owner and occupant of the real property, Declarant has promised to place certain restrictions on the Property exclusively for preservation purposes, in order that it shall remain substantially in its preserved, open, natural and/or scenic condition in perpetuity.

1. **Transfers, Amendments & Extinguishment.** Declarant does hereby declare that all of the Property described hereinafter shall be held, transferred, sold, conveyed and occupied subject to the terms and conditions of the covenants, easements and affirmative obligations all of which shall run with the Property and will be binding on all persons, firms, associations, corporations or governmental entities having or hereafter acquiring any right, title or interest in said Property, or any part thereof, their heirs, executors, administrators, successors and assigns. The terms and conditions of this Declaration of Covenants and Restrictions shall be both implicitly and explicitly included in any subsequent transfer, conveyance, or encumbrance affecting all or any part of the conservation Property. It shall set forth the terms and conditions of this document either by reference to this document and its recorded location or by attachment and incorporation by reference. The covenant shall not be amended or extinguished except by written approval of the USACE, or its successors in administration of the Clean Water Act or the Rivers and Harbors Act of 1899. Amendments to the restrictive covenant for the purpose of proposing additional impact are not favored and will be considered only in rare circumstances following the USACE policy and procedures. Amendments shall be signed by the USACE and shall be recorded in the official records of Whitfield County, Georgia.

2. **Property as Open and Common Area.** The Property is set aside for preservation and shall be designated as an undeveloped lot, buffer, open and common area or greenway and will not now, nor in the future, be made part of any single lot or lots in a residential or mixed use subdivision or a subdivided commercial development, but rather the Property shall be held and preserved as an open,

common and undeveloped area. There shall be no legal or de facto division, subdivision or partitioning of the protected Property.

3. **Prohibited Uses.** Except as necessary (1) to carry out wetland/stream and/or buffer preservation in keeping with the banking instrument as approved by the USACE or (2) to carry out management and maintenance of the Property, as approved by the USACE; the actions encompassed as prohibited by this covenant shall include, but shall not be limited to the following:

A. Clearing, removing, burning, mowing, or cutting of trees or other vegetation (except for the control and removal of non-native vegetation with prior written consent by the USACE). If such control or removal involves the use of insecticides, herbicides, or other biocides, such application shall be by the narrowest spectrum, least persistent material appropriate for the target species, and shall be consistent with the preservation values of the Property and the purpose of this covenant;

B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or changes in the topography of the land in any manner;

C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, toxic and hazardous wastes, incinerator residue, garbage, sewage sludge, oil or oil products and wastes, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, vehicle bodies or parts, junk, or agricultural waste on the Property;

D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;

E. Diverting or affecting the natural flow of surface or underground waters within, or out of the Property; manipulating or altering any natural water course, body of water or water circulation and any activities or uses detrimental to water quality;

F. Mining, drilling, hydraulic fracturing, dredging, or removing from the Property soil, loam, peat, gravel, oil, gas or other mineral resources or natural deposit;

G. Burning, systematically removing or cutting timber, or otherwise destroying any vegetation. Upon approval from the USACE, selective pruning of unsafe trees or exotic non-native vegetation may be removed in accordance with current scientific best management practices as set out by the U.S. Forest Service or the Georgia Forestry Commission;

H. Spraying with biocides or use of herbicides or pollutants that violate water quality standards;

I. Introducing non-native species on the Property, altering the natural state of the wetlands or streams or causing erosion or sedimentation;

J. Grazing or use by domesticated animals;

K. Construction of any kind in the wetlands, streams, buffers or upland, whether temporary or permanent;

L. Use of motorized or mechanized vehicles, including, but not limited to, off-road vehicles is prohibited, except on existing roadways for the sole purpose of monitoring or maintaining the Property;

M. As permitted or approved in writing by the USACE the Property may have: (1) a narrow pedestrian walking trail in the uplands or upland buffer using pervious materials (not to exceed two feet in tread width and three feet in total width), and/or (2) minimal structures and boardwalks for the observation of wildlife and wetland/stream ecology; all in a manner in keeping with the preservation values, services, and functions of the Property;

N. Display of billboards, signs, or advertisements on or over the Property, except for the posting of no trespassing signs, temporary signs indicating the Property is for sale, signs identifying the trees, vegetation, wetlands or preservation values of the Property, and/or signs identifying the owner of the property; and

O. Conservation and wildlife habitat management plans may be implemented by the Georgia Department of Natural Resources Wildlife Resource Division, U.S. Forest Service, conservation land trusts holding conservation easements, or other conservation management entities where the habitat, wildlife, or forest management does not result in any impacts to the wetlands/streams/riparian corridors and its buffers, or to property protected for its historical, cultural and/or archeological value, and where the proposal would enhance the preservation of the Property.

4. Easements.

A. The property is free and clear of any and all liens, loans, claims restrictions, easements and encumbrances, except as otherwise identified in this document and its exhibits.

B. Existing utility line easements, roads, right-of ways, access easements and structures on the Property, if any, are shown on the Survey.

C. Environmental impacts, if any, caused by existing easements such as roads, utility lines or pipelines, where such easements are in place as of the date of the recording of this restrictive covenant, and where the easements are shown on the survey, shall not be considered as causing any prohibited impacts to the Property by their use and maintenance.

5. Representations. Declarant represents and warrants that after reasonable investigation, and to the best of its knowledge:

A. No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, or regulation, as hazardous, toxic, polluting, or otherwise contaminating to the water or soil, has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

B. There are no underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned;

C. The Property is in compliance with all federal, state and local laws, regulations and permits, and there is no pending or threatened litigation in any way affecting, involving or relating to the Property and its use; and

D. The Property is not land-locked and there is access to the Property by road, dedication of pathway or by an access easement.

6. **Affirmative Duties.**

A. Declarant/Owner will take action to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the preservation of the Property or that are otherwise inconsistent with this Declaration.

B. Declarant shall take immediate action to cure violations of this restrictive covenant.

7. **Exclusive Possession.** Declarant, its successors and assigns, reserve all other rights accruing from its ownership of the Property including but not limited to the exclusive possession of the Property, the right to transfer or assign their interest in the same, the right to take action necessary to preserve the Property or to protect public health or safety; and the right to use the Property in any manner not prohibited by this Declaration and which would not defeat or diminish the purposes of this Declaration.

8. **Benefits to the General Public.** It is expressly understood and agreed that this covenant does not necessarily grant or convey to members of the general public, any rights of ownership, interest in, or use of the protected Property. Nonetheless, the Property has significant aesthetic value in its present state as a predominately natural area which has not been subject to extensive development or exploitation. The protection of jurisdictional and non-jurisdictional waters of the United States, their buffers and uplands, floodplains, vegetation, scenic, open space, aquatic and wildlife habitat are considered of great importance to the well-being of the general public and to all citizens of Georgia and are worthy of preservation.

9. **Enforcement.** The USACE and/or the U.S. Environmental Protection Agency, or its successors, as third-party beneficiaries hereof, are hereby specifically granted the authority to enforce the provisions of this Declaration pursuant to the Clean Water Act Section 404 and the Rivers and Harbors Act of 1899, Section 10, and implementing regulations. Appropriate remedy for violation of this section is contemplated to include without limitation, injunctive relief to restrain such violation, administrative, civil or criminal penalties as well as any other remedy available under law or equity. However, no violation of this covenant shall result in a forfeiture or reversion of title. It shall not be a defense, for purposes of this covenant, that the preservation of the Property was impacted without the owner's knowledge or consent, or that the waters on the Property are deemed to be non-jurisdictional waters of the United States either by their function or by statute. The property is subject to the contractual terms of the banking instrument and this Declaration.

10. **Right of Ingress and Egress.** The USACE, and/or the Environmental Protection Agency, their assigned agents and contractors, shall at reasonable times and upon notice to the owner, have an access easement for the right of ingress and egress to inspect the Property in order to monitor and ascertain whether there has been compliance with this Declaration. Posted signs declaring the Property to be preservation property shall be posted by the owner in order to provide notice of the preservation.

11. **Covenant Runs with the Land in Perpetuity.** This covenant shall not terminate upon some fixed amount of time but shall run with the land in perpetuity pursuant to O.C.G.A. § 44-5-60(c) both as to benefit and as to burden and shall be enforceable against Declarant and all present and future owners, tenants and other holders of any interest in the Property. This covenant is established for the purpose of preserving wetlands and streams, non-jurisdictional wetlands and streams.

12. **Intent of Clean Water Act.** The intent of the Clean Water Act, Section 404 is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. The intent of this document is that the Property be perpetually protected as preservation lands.

13. **Written Notice of Legal Action Against Property.** Pursuant to the Clean Water Act, the District Engineer, c/o Office of Counsel, United States Department of the Army, Corps of Engineers, Savannah District, Savannah, Georgia, shall be provided with a 60-day advance written notice of any legal action concerning this covenant, or of any action to extinguish, void or modify this covenant, in whole or in part. The restrictive covenant is intended to survive foreclosure, tax sales, bankruptcy proceedings, zoning changes, adverse possession, abandonment, condemnation and similar doctrines or judgments affecting the Property. A copy of this recorded document shall accompany said notice.

14. **Removal to U.S. Federal District Court.** The USACE reserves the right to recommend to the U.S. Department of Justice that the legal action, as it relates to the Clean Water Act, be removed to the United States Federal District Court in the Northern District of Georgia.

15. **Recordation of Instrument.** Declarant shall execute and record this instrument in timely fashion in the official records of the Office of the Clerk of Superior Court of Whitfield County, Georgia and shall provide the USACE with a copy of the recorded covenant and exhibits. Declarant may re-record this instrument at any time as may be required to preserve its rights.

IN WITNESS WHEREOF Declarant has duly executed this Declaration on this the ____ day of _____, 2021.

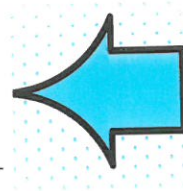
THE CITY OF DALTON

By: _____

Name: _____

Title: _____

Address: _____



The Declarant personally appeared before me, the undersigned Notary Public, and the undersigned witness and I saw the within named Declarant sign the Declaration of Preservation Covenants and Restrictions, and I, along with the undersigned witness, witnessed the execution thereof.

Unofficial Witness
Name: _____

Notary Public

My commission expires:

[Notarial Seal]

Exhibit "A"

Legal Description

All that tract or parcel of land lying and being in Land Lot Nos. 295 and 318 in the 10th District and Third Section of Whitfield County, Georgia, and being described as follows:

BEGINNING at an iron pin located at the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 74 degrees 51 minutes 14 seconds east a distance of 180.83 feet to an iron pin; thence south 61 degrees 54 minutes 33 seconds east a distance of 252.18 feet to an iron pin; thence south 87 degrees 41 minutes 48 seconds east a distance of 183.46 feet to an iron pin; thence north 74 degrees 44 minutes 37 seconds east a distance of 362.76 feet to an iron pin; thence north 66 degrees 48 minutes 52 seconds east a distance of 270.74 feet to an iron pin; thence north 73 degrees 44 minutes 00 seconds east a distance of 575.54 feet to an iron pin; thence north 68 degrees 31 minutes 59 seconds east a distance of 175.31 feet to an iron pin; thence north 85 degrees 03 minutes 24 seconds east a distance of 108.18 feet to an iron pin; thence south 64 degrees 16 minutes 49 seconds east a distance of 246.02 feet to an iron pin; thence south 33 degrees 07 minutes 23 seconds east a distance of 709.23 feet to a point located in the center of the Conasauga River, which point is located south 80 degrees 29 minutes 37 seconds east a distance of 2,648.17 feet from the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the east line of said Land Lot No. 318; thence running in a northerly direction, along the east line of said Land Lot Nos. 318 and 295, to the common corner to Land Lot Nos. 281, 282, 295 and 296 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a westerly direction, along the north line of said Land Lot No 295, to the common corner to Land Lot Nos. 282, 283, 294 and 295 in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a southerly direction, along the west line of said Land Lot said Land Lot No. 295, to the common corner to Land Lot Nos. 294, 295, 318 and 319 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING

Exhibit "B"
Banking Instrument

Appendix G
Draft Financial Assurances Language

Proposed Financial Assurances Language

WHEREAS, The Board of Water, Light, and Sinking Fund Commissioners d/b/a Dalton Utilities (“Dalton Utilities”) was authorized by that certain letter dated ____ to implement a Banking Instrument by the US Army Corps of Engineers (“USACE”) Action Number ____ pursuant to Section 404 of the Clean Water Act (“CWA”) or Section 10 of the Rivers and Harbors Act of 1899 (“RHA”) under the administrative regulatory authority of the USACE Savannah District, Regulatory Division; and,

WHEREAS, dredge and/or discharge of fill material in jurisdictional waters of the United States including wetlands and streams pursuant to the CWA and/or RHA requires compensatory mitigation and perpetual protection of the mitigation property; and,

WHEREAS, certain property owned by Dalton Utilities has been approved as a commercial wetland and/or stream mitigation bank pursuant to the terms and conditions of the banking instrument approved by the USACE (“Banking Instrument”). The purpose of the bank is to generate credits to compensate for wetland impacts that have been determined unavoidable after consideration of avoidance and minimization on CWA or RHA permit actions. The banking instrument requires Dalton Utilities to be responsible for certain restoration, enhancement, establishment and preservation of wetlands and/or stream and streamside lands on the property designated by Dalton Utilities; and

WHEREAS, to ensure that Dalton Utilities has adequate funds to carry out its restoration, enhancement, establishment and preservation obligations, USACE, the CWA and the RHA require Dalton Utilities to provide certain financial assurances; and

WHEREAS, Dalton Utilities desires to provide said financial assurances through the following legislative appropriation;

NOW, THEREFORE, IT IS HEREBY RESOLVED by Dalton Utilities that Dalton Utilities shall create a separate account to hold funds appropriated by Dalton Utilities annually to cover any costs, penalties, or other charges required to be paid by Dalton Utilities to perform its restoration, enhancement, establishment and preservation of the wetlands and/or stream and streamside lands pursuant to its Banking Instrument.

IT IS FURTHER RESSOLVED that Dalton Utilities shall initially allocate \$_____ to said fund to ensure there are adequate funds to carry out its obligations under the Banking Instrument, and Dalton Utilities shall continue to appropriate in its annual budget and transfer in accordance therewith sufficient funds to said account to ensure that, over time, the deposits and earnings of said accounts provide the minimum funding amounts required to perform its obligations set forth in the Banking Instrument.

Resolved this ____ day of _____, 2020.

**BOARD OF WATER, LIGHT AND SINKING FUND
OF THE CITY OF DALTON, GEORGIA d/b/a
DALTON UTILITITES**

By: _____
Name: _____

Appendix H
Draft Conservation Easement

[Space above this line for recording data.]

Please Record and Return to:

Christiane C. Bard
The Minor Firm
P.O. Box 2586
Dalton, GA 30722-2586

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT (this "Agreement"), is made and entered into as of the ____ day of _____, 20____, by and between The **City of Dalton** ("Grantor"), and _____ ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of that certain real property located in Whitfield County, Georgia, and more particularly described in Exhibit "A" attached hereto and by reference made a part hereof (the "Property"); and

WHEREAS, Grantee is a _____, who is authorized by the laws of the State of Georgia to accept, and is willing to accept conservation easements for the purpose of preserving and protecting natural, scenic, educational, recreational, or open-space values of real property, and Grantee has the resources and commitment to preserve those values. Grantee is a qualified conservation easement holder within the meaning of O.C.G.A. § 44-10-1 *et seq.*; and

WHEREAS, the Property in its present state has not been developed and possesses significant natural, ecological, wildlife, and open space features (collectively the "Conservation Values") of great importance to Grantor, Grantee, and the people of the State of Georgia, including but not limited to the following:

[INSERT CONSERVATION VALUES FROM COVENANTS]

WHEREAS, the Conservation Values of the Property are documented in that certain

Baseline Documentation Report dated _____, 20____, which consists of reports, maps, photographs, and other evidence of an accurate representation of the Property at the time of this Agreement, and which is incorporated herein by reference (the "Baseline Report"). The Baseline Report is intended to serve as an objective, informational baseline for monitoring compliance with the terms of this Agreement; and

WHEREAS, the Property has been approved by the U.S. Army Corps of Engineers, Savannah District ("USACE") for use as a mitigation site pursuant to the Upper Coosa Mitigation Bank Banking Instrument, Action Number _____ pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 401) (the "BI"), the terms of which are incorporated herein by reference;

WHEREAS, the banking authorization letter for the BI was issued to the Board of Water, Light and Sinking Fund Commissioners for the City of Georgia d/b/a Dalton Utilities. The Board of Water, Light and Sinking Fund Commissioners is not a separate corporate entity from Grantor rather the Board of Water, Light and Sinking Fund Commissioners has such responsibilities over the department of public utilities of the City as provided in the Charter of the City of Dalton, Georgia and by ordinance; and

WHEREAS, the Property remains subject to the restrictions set out in that certain Declaration of Conservation Covenants and Restrictions dated _____ and recorded in Deed Book ___, Pages _____, Whitfield County, Georgia Land Records, which are incorporated herein by reference and made a part of this Agreement (the "Covenants");

WHEREAS, pursuant to the BI, Grantor is required to protect the Conservation Values of the Property in perpetuity, and Grantor desires to protect said values by conveying to Grantee the right to access the property for the purpose of conserving and protecting the Conservation Values of the Property; and

WHEREAS, Grantee agrees by executing this Agreement to monitor, conserve, and protect the Conservation Values of the Property in perpetuity in accordance with the terms of this Agreement;

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference.
2. Purpose of Agreement. It is the purpose of this Agreement to assure that the Property will retain its natural condition and the Conservation Values of the Property will be monitored and conserved.
3. Duration. The covenants, conditions, and restrictions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, and assigns, and shall continue as an easement and servitude running with the Property in perpetuity and enforceable against

Grantor and all future owners, tenants, and other holders of interest in the Property.

4. Grant of Easements. Subject to the terms and conditions of this Agreement, Grantor does hereby grant to Grantee and Grantee's successors and assigns, and Grantee's employees, agents, and contractors the following rights:

(a) *Access and Entry.* Grantee shall, on an annual basis and upon prior written notice to Grantor, have the right to enter and go upon the Property for purposes of conducting an annual site visit inspection and verifying compliance with this Agreement and the Covenants. Additionally, Grantee shall, at reasonable times and upon prior written notice to Grantor, have the right to enter and go upon the Property if Grantee has reasonable cause to believe that a violation of this Agreement or the Covenants is occurring or may have occurred. In emergency cases where the Grantee reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Agreement or the Covenants, Grantee may enter and go upon the Property, provided that, Grantee shall give Grantor prior telephonic notice of such emergency entry and written notice of the same the next business day after Grantee's entry on the Property. Notwithstanding anything herein to the contrary, nothing in this Agreement conveys any right of access or entry to, on or over the Property to the general public.

(b) *Testing and Observation.* To determine Grantor's compliance with this Agreement and the Covenants, Grantee may, with prior permission from the Grantor, conduct scientific observations and studies and take samples of the Property in such a manner as will not disturb the quiet enjoyment of the Property by Grantor.

(c) *Protection of Site.* Grantee shall have the right to conserve and protect the Conversation Values of the Property and to prevent any activity or use of the Property that is inconsistent with the purposes of this Agreement, the Covenants, or the BI by enforcing this Agreement pursuant to the provisions set forth in Section 8 herein below.

5. USACE Rights. The USACE, its assigned agents, and its contractors shall at reasonable times and upon prior written notice to Grantor, have the right to access the Property to inspect the Property in order to monitor and ascertain compliance with the requirements of the Covenants and the BI.

6. Prohibited Activities. Any activity upon, or use of, the Property inconsistent with the purpose of this Agreement, the Covenants, or the BI are prohibited, except those activities necessary (1) to carry out wetland/stream and/or buffer restoration, enhancement and/or establishment in keeping with the mitigation plan of the BI as approved by the USACE; or (2) to carry out the long-term management and maintenance of the Property, as approved in writing by the USACE. The uses incompatible with the Conservation Values of the Property and prohibited by this Agreement include, but are not limited to, the Prohibited Uses set forth in Paragraph 3 of the Covenants.

7. Grantor's Reserved Rights. Grantor hereby reserves all of its right, title, and interest in and to the Property incident to the fee simple estate thereof, and for any and all purposes that are not inconsistent with the purposes of this Agreement, the Covenants, and the BI, including but not limited to:

- (a) *Management and Maintenance.* Grantor may conduct management and maintenance activities as necessary (1) to carry out wetland/stream and/or buffer restoration, enhancement and/or establishment in keeping with the mitigation plan of the BI as approved by the USACE; or (2) to carry out the long-term management and maintenance of the Property, as approved in writing by the USACE. A management plan has been developed by Grantor and approved by USACE, which describes the Grantor's conservation duties for the long-term management of the Property. The Grantor has allocated adequate financial resources for the protection, management, and maintenance of the Property, which is separate and apart from the long-term monitoring funds held by the Grantee.
- (b) *Fencing and Signage.* Grantor may install and maintain appropriate signage and fencing to limit trespassing on the Property, provided that such fencing and signage is approved in accordance with the long-term management plan for the Property approved by the USACE.
- (c) *Timber Management.* Subject to the terms of the Covenants and the BI, harvesting and management of timber by Grantor is limited to the extent necessary to protect the natural environment in areas where the forest is damaged by natural forces such as fire, flood, storm, insects, or infectious organisms or is otherwise required in accordance with the BI and/or sound management practices in order to ensure the health of the environmental systems on the Property. Such timber harvest and management shall be carried out with prior written approval of the USACE in accordance with best management practices approved by the U.S. Forest Service, the Georgia Forestry Commission, or successor agencies. Exotic, non-native vegetation or trees may be removed in accordance with current scientific best management practices as set out by the U.S. Forest Service, the Georgia Forestry Commission, or successor agencies.
- (d) *Invasive Species and Nuisance Animals.* Subject to the terms of the Covenants and the BI, invasive species and nuisance animal control is limited to the extent necessary to protect the integrity of the aquatic system and ecological stability of the natural environment on the Property. Such invasive species and nuisance animal control may include mechanical removal, herbicide treatment and application, prescribed burnings, or other suppressive treatments as to avoid permanent damage to native flora and integrity of the aquatic system and trapping and removal of nuisance animals. All such actions shall be carried out with prior written approval of the USACE.
- (e) *Environmental Programs.* The Property has been approved by USACE for use as a commercial mitigation bank, the purpose of which is to generate credits for sale to compensate for wetlands and stream impacts resulting from permit actions. This will be accomplished by Grantor in its role as Bank Sponsor, through the restoration, enhancement, and preservation of the Property in perpetuity as provided for in the BI. Credits or other entitlements or interest in the Property

associated with the BI may be generated for sale on the Property in order to perfect and carry out the purpose of the Upper Coosa Mitigation Bank. Grantor reserves the right to participate in future conservation, preservation, or mitigation programs involving the generation or sale of credits on the protected property so long as such participation is consistent with the purposes and terms of this Agreement and approved by the appropriate agencies. The number, value, ownership, rights to sell, and entitlement to proceeds of sale from such credits generated by the Property under the BI or any other program shall be determined separate and apart from this Agreement, and Grantee shall have no rights, title, or interest in and to said credits or proceeds from the sale thereof.

- (f) *Watershed Protection Programs.* Grantor may participate in any Watershed Protection or similar program approved by any federal, state, or local government or agency with respect to the Property so long as such participation is consistent with the purposes and terms of this Agreement, the Covenants, and the BI. Grantor may conduct such management and maintenance activities as are necessary or appropriate to comply with any requirements of such protection programs, provided that such maintenance activities shall be carried out with prior approval by the USACE.
- (g) *Notice and Approval of Reserved Rights.* Grantor shall be responsible for seeking any required USACE approval in accordance with the USACE mandated procedures. Upon approval of such reserved right by the USACE, Grantor shall give Grantee notice of the same within thirty (30) days of Grantor's receipt of such approval from the USACE.

8. Enforcement.

- (a) *Baseline Assessment.* The Parties agree that the Baseline Report establishes the present condition of the Property and that the Grantor's historical and current uses of the Property as documented by the Baseline Report are compatible with the provisions of this Agreement, the Covenants, and the BI. Grantee shall refer to the Baseline Report when determining whether Grantor is in compliance with this Agreement. In the event of a controversy with respect to the whether Grantor has complied with this Agreement and/or Grantor's use of the Property is compatible with this Agreement, the Parties shall review the Baseline Report to resolve such controversy; provided however, the Baseline Report shall not alter, amend, or modify this Agreement, and the terms of this Agreement shall prevail over any conflict or inconsistency in the Baseline Report.
- (b) *Notice of Violation; Corrective Action.* If Grantee determines there has been a breach or violation of the terms of this Agreement, the Grantee shall give written notice of said breach to Grantor and prescribe such corrective action as is sufficient to cure the breach and/or restore any injured portion of the Property to its prior condition in accordance with a corrective action plan approved in writing by the USACE.

- (c) *Injunctive Relief.* If the Grantor fails to cure the breach of this Agreement within thirty (30) days after receipt of such notice thereof from Grantee, or if such breach cannot reasonably be cured within thirty (30) days, Grantor fails to begin curing said breach within said thirty (30) day period, Grantee may undertake such actions, including legal proceedings, as are necessary to effect such correction action, including but not limited to seeking a temporary or permanent injunction to enjoin such breach and requiring the restoration of the Property to the condition that existed prior to any injury.
- (d) *Damages.* Grantor shall be liable for any damages that arise out of or result from Grantor's breach of this Agreement, including but not limited to, loss of environmental values.
- (e) *Cost of Enforcement.* Grantor shall be liable for the costs of any breach of this Agreement, correction or restoration of said breach, and Grantee's expenses in enforcing this Agreement, including court costs and reasonable attorneys' fees. Provided however, Grantor shall not be liable for any costs or expenses of any enforcement action if Grantor prevails on said action. In which case, Grantee shall bear the cost of the same, including but not limited to attorneys' fees actually incurred by Grantor.
- (f) *Events Beyond Grantor's Control.* Notwithstanding anything herein to the contrary, Grantee shall not be permitted to institute any proceeding against Grantor, and Grantor shall not be liable for, any changed to the Property caused by acts of God or circumstances beyond Grantor's control, including but not limited to, earthquakes, fire, flood, storm, war, civil disturbance, strike, unauthorized acts of a third party, and similar causes.

9. Funding for Long-Term Monitoring. Grantor has provided funds to Grantee, which Grantee shall deposit in separate fund from Grantee's general operating account, for purposes of fulfilling Grantee's obligations hereunder. Said funds shall be separately accounted for by Grantee. In the event that Grantee ceases to exist, Grantee shall transfer all such funds to Grantee's successor-in-interest.

10. Costs and Liabilities Related to the Property. Grantor shall be liable for all costs, fees, assessments, and charges levied against the Property, and Grantee shall not be responsible for any costs related to the ownership, operation, or maintenance of the Property, except as otherwise set forth herein.

11. Indemnification. Grantee hereby indemnifies, holds harmless and defend Grantor, and Grantor's officers, employees, agents, contractors, and licensees (collectively, "Grantor's Indemnitees") from and against any and all claims, demands, costs, damages, and other liabilities for personal injury, including death, or property damage arising from any act or omission of Grantee or its contractors, agents, and employees in connection with the rights granted to Grantee hereunder.

12. Insurance. For purposes of indemnification pursuant to Section 11 above, Grantee shall maintain at all times commercial general public liability and property damage insurance with a broad form coverage endorsement (i) for an aggregate amount of not less than Five Million Dollars (\$5,000,000.00) and an occurrence limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit and (ii) with a \$25,000,000 limit of liability in excess of the underlying limits of liability.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

14. Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition, or provision which has been deemed invalid.

15. Counterparts. This Agreement may be executed by the parties hereto in multiple counterparts and each executed counterpart shall be considered an original.

16. Modification. This Agreement shall not be modified, amended, or terminated except by a writing signed by each of the parties hereto, or their respective successors or assigns.

17. Notices. All notices, elections, or demands permitted or required to be made under this Agreement shall be made in writing, signed by the party giving such notice, election, or demand, and shall be deemed to have been properly given, unless otherwise specifically provided in this Agreement, (a) when delivered in person; (b) one (1) day after deposit with an overnight delivery service (such as Airborne, Federal Express, UPS, or other similar overnight service) for next day delivery, delivery charges prepaid, addressed to the appropriate party at the address set out below; or (c) when transmitted by facsimile to the facsimile number for each party set forth below (but only if duplicate notice is also given via one of the methods described in clauses (a) or (b) above).

Grantor:

The Board of Water, Light, and Sinking
Fund Commissioners for the City of
Dalton, Georgia d/b/a Dalton Utilities

Grantee:

USACE:

The U.S. Army Corps of Engineers,
Savannah District

By notice in accordance with the above to all parties shown above, either party hereto may designate from time to time a change of address for all such notices by providing to all other applicable parties at least ten (10) days prior notice of the changed address.

18. Extinguishment. If circumstances arise in the future such as to render the purposes of this Agreement impossible to accomplish, the conservation easement granted hereunder can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction pursuant to O.C.G.A. § 44-10-4 (c).

19. No Extinguishment Through Merger. Grantor and Grantee agree that should Grantee, or any successor in interest to Grantee, come to own all or a portion of the fee interest in the Property subject to this Agreement, (i) said owner shall observe and be bound by the obligations and restrictions imposed upon the Property by this Agreement, (ii) this Agreement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement, and (iii) said owner as promptly as possible shall assign the Grantee interest in this Agreement to another holder in conformity with the requirements of a "qualified organization" under Section 170 (h) of the Internal Revenue Code or a federal, state, or local governmental agency or other entity, and in compliance with O.C.G.A. §§ 44-10-2, 44-10-3, and 44-10-4.

20. Assignment. The conservation easement granted under this Agreement is transferable only with written consent of the Grantor, which consent shall not be unreasonably withheld. Grantee may assign its rights and obligations under this Agreement only to an organization that is a "qualified organization" at the time of transfer under Section 170 (h) of the United States Internal Revenue Code or a federal, state, or local government agency or other entity, and the applicable regulations promulgated thereunder, and also authorized to acquire, hold, and enforce conservation easements under O.C.G.A. §§ 44-10-2, 44-10-3, and 44-10-4. As a condition precedent to any such transfer, Grantee, and its successors and assigns shall require a specific written assumption of and agreement to be bound by this Agreement from each transferee hereunder, which assumption shall state the purposes that this Agreement is intended to advance shall continue to be carried out by such transferee. A copy of each such assumption shall be sent to Grantor or the heirs, executors, administrators, personal representatives, successors or assigns of Grantor.

21. Time of Essence. Time is of the essence of this Agreement.

22. Business Day. For purposes of this Agreement, the term "business day" shall mean a day other than a Saturday, Sunday, or a national bank holiday.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

Signed, sealed and delivered
in the presence of:

Grantor:
THE CITY OF DALTON

Witness

By: _____
Printed Name:
Printed Title:



Notary Public

My Commission Expires:

Notarial Seal

Signed, sealed and delivered
in the presence of:

Grantee:

Witness

By: _____
Printed Name:
Printed Title:

Notary Public

My Commission Expires:

Notarial Seal

EXHIBIT "A"

Legal Description

All that tract or parcel of land lying and being in Land Lot Nos. 319 and 320 in the 10th District and Third Section of Whitfield County, Georgia, and in Land Lots Nos. 5 and 6 of the 9th District and Third Section of Whitfield County, Georgia and being described as follows:

BEGINNING at a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia; thence south 07 degrees 57 minutes 54 seconds east a distance of 189.90 feet to an iron pin; thence south 73 degrees 15 minutes 19 seconds west a distance of 210.63 feet to an iron pin; thence south 45 degrees 45 minutes 55 seconds west a distance of 225.98 feet to an iron pin; thence south 23 degrees 45 minutes 32 seconds west a distance of 229.45 feet to an iron pin; thence south 05 degrees 51 minutes 58 seconds west a distance of 163.90 feet to an iron pin; thence south 52 degrees 53 minutes 05 seconds west a distance of 169.05 feet to an iron pin; thence south 26 degrees 58 minutes 35 seconds west a distance of 258.59 feet to an iron pin; thence south 16 degrees 47 minutes 16 seconds west a distance of 232.63 feet to an iron pin; thence north 56 degrees 30 minutes 47 seconds west a distance of 634.15 feet to an iron pin located in the southeast right of way line of River Road (80' R/W); thence running in a south westerly direction, along the southeast right of way line of River Road, the following courses and distances, to wit: south 36 degrees 17 minutes 00 seconds west, 15.69 feet; south 36 degrees 34 minutes 54 seconds west, 155.69 feet; south 35 degrees 57 minutes 54 seconds west, 109.83 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 100.62 feet (3,850' Radius), said arc being subtended by a chord with a bearing of south 35 degrees 12 minutes 58 seconds west and a chord distance of 100.62 feet; thence south 34 degrees 28 minutes 03 seconds west, along the southeast right of way line of River Road, a distance of 123.29 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 272.28 feet (1,560.0' Radius), said arc being subtended by a chord with a bearing of south 29 degrees 28 minutes 02 seconds west and a chord distance of 271.93 feet; thence south 24 degrees 28 minutes 02 seconds west, along the southeast right of way line of River Road, a distance of 88.15 feet; thence south 22 degrees 20 minutes 30 seconds west, along the southeast right of way line of River Road, a distance of 100.61 feet; thence running in a southwesterly direction, along the southeast right of way line of River Road, along a curve to the left, an arc distance of 51.69 (460.0' Radius), said arc being subtended by a chord with a bearing of south 19 degrees 07 minutes 21 seconds west and a chord distance of 51.66 feet to an iron pin; thence south 85 degrees 39 minutes 53 seconds east a distance of 1,185.13 feet to an iron pin; thence south 14 degrees 57 minutes 57 seconds east a distance of 187.69 feet to an iron pin; thence south 13 degrees 22 minutes 33 seconds east a distance of 49.25 feet to an iron pin; thence south 52 degrees 31 minutes 10 seconds east a distance of 186.10 feet to an iron pin; thence south 03 degrees 35 minutes 42 seconds east a distance of 268.10 feet to an iron pin; thence south 14 degrees 32 minutes 23 seconds west a distance of 199.52 feet to an iron pin located in the northeast right of way line of Lower Kings Bridge Road (80' R/W); thence south 59 degrees 16 minutes 19 seconds east, along the northeast right of way line of Lower Kings Bridge Road, a distance of 276.62 feet; thence running in a southeasterly direction, the northeast right of way line of Lower Kings Bridge Road, along an arc to the right, an arc distance of 61.96 feet (740.0' Radius); said arc being subtended by chord with a bearing of south 56 degrees 52 minutes 24 seconds east and a chord distance of 61.94 feet; thence south 54 degrees 28 minutes 29 seconds east, the northeast right of way line of Lower Kings Bridge Road, a distance of 79.27 feet to an iron pin; thence north 46 degrees 48 minutes 38 seconds east a distance of 113.45 feet to an iron pin; thence south 42 degrees 35 minutes 11 seconds east a distance of 218.06 feet to an iron pin; thence south 29 degrees 23 minutes 14 seconds east a distance of 227.41 feet to a point located in the center of the Conasauga River, which point is located south 04 degrees 10 minutes 55 seconds east a distance of 3,257.75 feet from the threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320

in the 10th District and 3rd Section of Whitfield County, Georgia; thence running in a northeasterly, easterly northeasterly, northerly northwesterly, northerly, and northeasterly direction, along the center thread of the Conasauga River, and following the meanderings thereof to the point of intersection of the center of the Conasauga River and the north line of said Land Lot No. 319; thence running in a westerly direction, along the north line of said Land Lot No. 319, to the a threaded bolt located at the common corner to Land Lot Nos. 293, 294, 319 and 320 in the 10th District and 3rd Section of Whitfield County, Georgia, which is the POINT OF BEGINNING.