Est 1834
CANTON
GEORGIA

Action Requested/Required:

- ☐ Vote/Action Requested
- ☑ Discussion or Presentation Only
- ☐ Public Hearing
  - Report Date: ___________
  - Hearing Date: ___________
  - Voting Date: ___________

Department: Community Development **Presenter(s) & Title:** Bethany Watson, City Engineer

Agenda Item Title:

Discussion on the Distribution Relocation/Conversion Project Binding Agreement between Georgia Power Company and City of Canton in the amount of $748,683.17.

Summary:

In regards to the West Main Street Pedestrian Corridor, a portion of the project involves converting overhead utilities to underground. This binding agreement is for Georgia Powers conversion of over to underground power. City Council approved a non-binding agreement in the amount of $895,000 for this project previously, the binding agreement is coming in around $150,000 less than originally estimated.

Budget Implications:

Budgeted? ☐ Yes ☐ No ☐ **N/A**

Total Cost of Project: $ 748,683.17 Check if Estimated ☐

Fund Source: General Fund ☐ Water & Sewer ☐ Sales Tax ☑ Other: TAD

Staff Recommendations:

Staff recommends review of the Distribution Relocation/Conversion Project Binding Agreement between Georgia Power Company and City of Canton, along with the plans for this project for GPC on the conversion along W Main St from Railroad St to W Main St as part of the agreement, in the amount of $748,683.17.

Reviews:

Has this been reviewed by Management and Legal Counsel, if required? ☐ Yes ☐ No

Attachments:

Distribution Relocation/Conversion Project Binding Agreement
Plans

Distribution Relocation/Conversion Project Agreement
between
Georgia Power Company and The City of Canton

GPC DWE No. GP892H01425

Georgia Power Company (**"GPC"**) and **The City of Canton** (**"Customer"**) (the **"Parties"**) enter into this **Distribution Relocation/Conversion Project Agreement** (**"Agreement"**) as of the Effective Date shown on the signature page. In consideration of the mutual promises described here, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which each Party acknowledges, and intending to be legally bound, the Parties acknowledge and agree:

PART 1 THE PROJECT

1.1 The Site; Existing Facility. Customer owns, leases, or is developing real property located at W Main St (from Railroad St to W Main St), Canton, Georgia (the **"Site"**). Also located at the Site are poles, structures, wires, guys, attachments, or other electrical equipment owned by GPC and used in distribution of electric power (the **"Existing Facility"**). Customer asked GPC to develop a plan and cost estimate for relocating or modifying all or part of the Existing Facility, as described in the Distribution Relocation/Conversion Binding Estimate Preparation Agreement between the Parties.

1.2 The Project. GPC evaluated the request, performed engineering analysis, developed a conceptual design, and prepared a cost estimate for the work necessary to complete the desired relocation or modification of the Existing Facility, as outlined in **Exhibit A** (the **"Project"**). Customer requests GPC to complete the Project as described in Exhibit A, per the terms and conditions of this Agreement. The Project includes all engineering and construction work necessary to: (i) plan and relocate or modify the designated portion of the Existing Facility or install new lines, structures, or equipment so as to create the **"New Facility"**; and (ii) remove any designated portion of the Existing Facility. Exhibit A depicts the approximate, mutually agreed location of the New Facility. In this Agreement, **"GPC Facilities"** include the Existing Facility, the New Facility, and all related property rights.

PART 2 CUSTOMER OBLIGATIONS

2.1 Project Fee. The total **"Project Fee"** for the Project is **$748,683.17**, subject to any adjustment under Section 3.2 (*Project Changes*). The previously-paid Engineering Fee of **$0** is a credit against the Project Fee. Upon invoice from GPC after execution of this Agreement, Customer will pay the Project Fee balance of **$748,683.17**. The Project Fee includes payment for all GPC costs for the Project as described in Exhibit A and for taxable capital expenditures and all appropriate costs for time value of money. Customer acknowledges that: (i) GPC will not commence physical work on the Project until GPC receives full payment of the Project Fee; and (ii) unless there is a Change Event per Section 3.2.B, the stated Project Fee will remain valid for no more than 90 days after submission as shown in Exhibit A. For GPC accounting purposes, Customer attaches to this Agreement, or will provide to GPC along with payment, Customer's Form W-9.

2.2 Site Property Rights. The New Facility will be located on real property belonging to Customer or others and not included within the scope of any pre-existing GPC easement. Customer must timely coordinate with GPC to grant or obtain, or to obtain on GPC's behalf and provide to GPC, in accordance with GPC's typical property acquisition process, an easement on the Site as required to complete the Project, in the approximate location shown on Exhibit A (the **"New Easement"**), including acceptable GPC access rights to the New Facility. The New Easement must be: (i) substantially in GPC's standard form (provided to Customer and incorporated by this reference); (ii) in conformance with GPC's standard requirements and acceptable to GPC; and (iii) agreed upon in a timely manner. Customer must provide the New Easement to GPC at no cost to GPC, other than, if applicable, necessary consideration of no more than $10. If any Customer Site preparation is necessary, Customer must: (a) coordinate with GPC regarding Site preparation design; (b) obtain GPC approval of Site preparation plans; and (c) timely prepare the Site in accordance with the GPC-approved plans. If Exhibit A so provides, Customer must satisfactorily prepare the Site property and turn over to GPC, and ensure proper execution and delivery of the New Easement by the date specified.

2.3 Disclosure and Environmental Matters. Customer, at its expense, must cooperate with GPC regarding each environmental/cultural resource assessment, survey, or study that GPC requires regarding the Site to satisfy applicable GPC requirements. Customer also must submit to GPC, upon conclusion and prior to GPC's commencement of Project Work (defined in Section 3.1), results of each environmental/cultural resource assessment, survey, or study regarding the Site conducted by or on behalf of Customer. If necessary, Customer also must perform, before Project Work commencement, any remediation required to make the Site acceptable to GPC. Customer represents, warrants, or covenants that it has disclosed to GPC all known, or will disclose promptly upon discovery all, environmental site assessments, geotechnical reports, or other material information regarding condition of the Site that impacts or could impact Project planning or construction or New Facility operation or maintenance. With respect to any impacted media identified by GPC during the Project Work, including any impacted soil, groundwater, surface water, or solid waste, but excluding any waste created by GPC (collectively, **"Waste"**), Customer is, and will be, the generator of the Waste, and Customer, at its sole expense, will be responsible and liable for proper characterization, transport, disposal, and management. If the Waste is "hazardous waste" under applicable law or regulation, Customer will be responsible, at its sole expense, for proper identification, management, and disposal. Customer also must reimburse GPC for any cost incurred by GPC due to Customer's failure to comply with this Section 2.3.

2.4 Authority; Access; Cooperation. Customer represents, as of the Effective Date, that Customer has express authority from all Site fee owners, as well as any other person or entity with Site rights whose consent is necessary, to enter into this Agreement, to perform Customer's Agreement obligations, and to authorize GPC to perform its Agreement obligations. If Customer is not the Site's sole owner, each reference to "Customer" means "Customer, on its own behalf, and on behalf of all fee owners of the Site and all other persons or entities with rights in the Site." Customer grants to GPC and to GPC's representatives, agents, or contractors, a non-exclusive license to enter the Site for all activity incidental to the Project (including surveying, testing, or creating and using reasonable storage or work areas) or to owning, operating, or maintaining the GPC Facilities Customer will cooperate regarding all Project activities and will take no action adverse to the Project, GPC Facilities, or other GPC property.

2.5 Permits. Unless expressly stated otherwise in Exhibit A or the Parties agree otherwise in writing, Customer must obtain and pay for each federal, state, or local permit or other regulatory approval necessary for the Project (e.g., tree and vegetation removal, dredge and fill of wetlands, soil and erosion control, stormwater discharge, etc.). Both Parties will cooperate as reasonably necessary to obtain these permits or approvals.

2.6 Other Utility Modifications. If another utility's facilities are co-located at the site of the New Facility or New Easement, or on a portion of the Existing Facility slated for removal, or if the Project requires modification of another utility's facility, GPC cannot complete the Project unless and until after the other utility modifies or removes its facility, which is not within GPC's control. GPC has no responsibility regarding coordination with other utilities. Customer, at its expense, must coordinate removal or modification with the other utility and must advise GPC upon completion. GPC is not responsible for any delay caused by or attributable to, or any action or inaction of, another utility.

2.7 Conditions Precedent to Project Work. GPC will proceed with Project Work only after Customer fulfills each of the following **"Conditions Precedent"**: (i) payment of Project Fee per Section 2.1 (*Project Fee*); (ii) performance of all Customer obligations per Section 2.2 (*Site Property Rights*) and Section 2.3 (*Disclosure and Environmental Matters*); (iii) delivery to GPC of all permits and approvals per Section 2.5; (iv) if applicable, completion of any other utility modification per Section 2.6; and (v) Customer is not in default under any Agreement provision.

2.8 Confidentiality and Non-Disclosure. Customer must keep this Agreement, and all written or oral communications regarding the Project, confidential. All information disclosed to Customer by GPC, including cost information, is confidential, proprietary, and **"Protected Information"** (unless independently developed, publicly available other than through Customer's fault, or already in Customer's possession or obtained from a third party with no confidentiality obligation) and remains the exclusive property of GPC. Customer must: (i) enforce procedures to prevent unauthorized access, use, or copying; and (ii) not disclose to another electric utility provider or contractor, GPC competitor or customer, or anyone other than those persons who have a need to know to evaluate, approve, perform, or administer this Agreement on behalf of: (a) Customer or a Customer affiliate; (b) any financial or regulatory entity involved with the Project or any related Site development; (c) any person with property rights or information needed to fulfill Section 2.2 (*Site Property Rights*) or Section 2.3 (*Disclosure and Environmental Matters*); or (d) any engineering or design entity involved in any related Site design or activity. Customer must provide prompt written notice upon learning of unauthorized use, access, or disclosure of Protected Information. If a third party seeks disclosure through a regulatory or legal proceeding, Customer must provide prompt written notice to GPC and must cooperate, at GPC's expense, with GPC's response. Customer's duty to keep Protected Information confidential continues for three years after Agreement conclusion, or, for trade secret Protected Information, the maximum period allowed by law. On written request, Customer will destroy, delete, or return Protected Information.

2.9 Publicity. Customer may not use, for any purpose (public or private), a GPC logo, trademark, or other protected branding name or symbol. Additionally, absent written request to GPC per *Notices and Contacts* (Section 5.1) and GPC's prior written consent in response, Customer may not publish or release a public statement, press release, Internet/website/social media posting, or other publication that includes GPC's name, refers to GPC, or references GPC's involvement in the Project, except that Customer in the normal course of business may state the existence of this Agreement.

PART 3 PROJECT PERFORMANCE

3.1 Project Work; Schedule. After Customer fulfills all Conditions Precedent, GPC will perform all work necessary to complete the Project as described in Exhibit A, as amended if applicable (**"Project Work"**). The Project Work will depend on a range of seasonal, technical, and public considerations, including line outage restrictions, equipment or material availability or delivery, labor availability, or emergencies; any estimated Project schedule is subject to this section. GPC, in its sole discretion, will determine the time, date, and method of the GPC Project Work, as well as any safety, security, technical, or operational issue.

3.2 Project Changes. The Project Fee stated in Section 2.1 (*Project Fee*) is for the Project scope described in Exhibit A and includes no allowance for a Change Event. A change in scope, whether by addition, modification, or deletion, is not effective unless documented in advance in a written change order signed by both Parties that details the change in the scope and, if applicable, Project Fee or schedule. If a change order increases the Project Fee, Customer must pay the additional amount upon invoice.

A. Unforeseen Conditions. An **"Unforeseen Condition"** is: (i) a concealed or unknown condition at the Site that: (a) materially impacts the Project; (b) differs materially from conditions ordinarily found to exist (e.g., subsurface rock, wetland, underground stream, buried waste, unsuitable or unstable soil, unmarked underground facility, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance); and (c) did not result from GPC's action; (ii) inability to obtain a necessary permit, approval or property right; (iii) inability to timely obtain necessary materials or equipment; (iv) an economic or market condition change materially affecting Project cost; (v) a hazardous or unsafe Site condition; (vi) a conflict with another utility's facility; (vii) a material change in Project schedule or duration (e.g., acceleration, delay, change in working hours/season, or outage restriction); (viii) a Force Majeure Event (per Section 4.4); or (ix) a change in applicable law or regulation.

B. Change Events. A **"Change Event"** occurs if: (i) an Unforeseen Condition arises; (ii) Customer fails to fulfill all Conditions Precedent by the date stated in Exhibit A; (iii) Customer fails to timely pay any amount due per this Agreement; (iv) Customer makes, or plans to make, a material change at the Site that affects or reasonably could affect the Project; (v) GPC determines the necessity of property rights additional to those described in this Agreement or the necessity of modification of another utility's facility not previously identified; (vi) the Project is suspended, delayed, or accelerated by Customer; (vii) Customer interferes with operation of GPC Facilities or with GPC's Project Work; (viii) Project cost is materially affected, due to any reason for which GPC is not responsible; or (ix) Customer fails to comply with any other material Agreement requirement.

C. Change Event Resolution. When a Party learns of a Change Event and seeks to proceed under this *Change Event Resolution* clause, that Party must notify the other of the event/change and, if applicable, provide relevant information. If a Change Event occurs, GPC, at its discretion, may stop Project Work, pending resolution under this *Change Event Resolution* clause, or may continue performance, reserving all rights under this Agreement, at law, or in equity. If the Change Event is one that Customer can cure or resolve, Customer, at its option and expense, may address the Change Event to GPC's satisfaction and GPC will then resume performance. Otherwise, if Customer wishes to proceed following the Change Event, and GPC agrees, GPC will conduct any necessary investigation or analysis and the Parties will amend this Agreement to reflect any change (e.g., in scope or Project Fee) resulting from the Change Event. At GPC's option, the Project Work may remain suspended until the Parties sign an appropriate amendment and Customer fulfills any amendment obligation, including payment, if applicable. If the Parties cannot address the Change Event to their mutual satisfaction within a reasonable period of time, either Party may give notice of Agreement termination per Section 3.5 (*Term and Termination*).

3.3 Quitclaim. Upon completion of the Project to GPC's satisfaction, including removal of the Existing Facility, GPC will quitclaim to the Site owner those portions of the original GPC easement not located within the New Easement area. GPC also will cooperate with Customer to modify record documents to reflect the revised easement, if applicable.

3.4 Ownership; Relationship of Parties. GPC will remain the sole owner and operator of all GPC Facilities, including all materials, equipment, and easements purchased for or used in the Project. GPC will operate the GPC Facilities for its sole benefit, as authorized by regulatory authorities. All documents or drawings regarding GPC Facilities furnished to Customer in connection with the Project and all work product also remain GPC property. GPC, an authorized electric utility provider, enters into this Agreement in its capacity as owner of the Existing Facility and as a regulated electric utility. GPC is not a services contractor, agent, partner, joint venturer, or representative of Customer. GPC may perform its Agreement obligations through its (or an affiliate's) employees or through contractors. This Agreement creates no contractual relationship with, or cause of action for, any third party and no GPC affiliate is liable under this Agreement.

3.5 Term and Termination. Unless terminated earlier under this section, this Agreement will terminate 30 days after the later of the date that: (i) GPC completes all Project Work and provides any documentation required by Section 3.3

(*Quitclaim*); or (ii) Customer pays all amounts owing under the terms of this Agreement. The Parties will cooperate in Project and Agreement termination before completion, and will proceed under Section 3.6 (*Obligations on Termination),* if: (a) there is a Change Event for which the Parties cannot reach a mutually satisfactory resolution within a reasonable period of time; (b) after reasonable effort, a Party cannot secure a required Project permit, approval, or property right; or (c) the Parties otherwise agree to Project termination. Either Party also may terminate this Agreement immediately upon written notice if the other breaches a material obligation and does not cure within 30 days after notice.

3.6 Obligations on Termination. If this Agreement terminates before Project completion, GPC will calculate the total Project cost, including: (i) actual Project cost to date of termination; (ii) value of any materials or components purchased by GPC solely for the Project that GPC cannot use for another purpose; (iii) expense, if any, to terminate the Project and return to use of the Existing Facility, or to complete and operate the GPC Facilities; and (iv) demobilization costs. If the Project Fee previously paid exceeds the total Project cost, GPC will issue a refund.

3.7 Survival. Agreement provisions that by their nature or context logically should apply beyond Agreement expiration, cancellation, completion, or termination, or after Project completion or termination of electric service to the Site, will survive per applicable law, including *Disclosure and Environmental Matters* (Section 2.3)*; Authority; Access; Cooperation* (Section 2.4)*; Confidentiality and Non-Disclosure* (Section 2.7)*; Ownership: Relationship of Parties* (Section 3.4); *Obligations on Termination* (Section 3.6); I*ndemnity* (Section 4.2); and *Governing Law and Interpretation* (Section 5.2.A).

PART 4 RISK AND CLAIMS

4.1 Insurance. Unless Customer is a governmental entity, Customer must maintain throughout this Agreement's term, at its expense, commercial general liability (**"CGL"**) insurance providing coverage of at least $2 million for any occurrence, on an occurrence (not claims made) basis. This coverage must include broad form contractual liability coverage, products/completed operations coverage for two years after COD, broad form bodily injury and property damage coverage, and severability of interest for each insured. Customer may comply with this requirement through a combination of CGL and excess/umbrella liability insurance that equals or exceeds the stated minimum. If required by applicable law, Customer also must maintain statutory workers' compensation insurance. If Customer is a governmental entity, it must require each of its contractors or subcontractors involved with any design, construction, operation, or maintenance of the Site adjacent to the Project (**"Contractor"**) to maintain all insurance as required under this Section 4.1, substituting "Contractor" for each reference to "Customer." To the fullest extent allowed by applicable law: (i) Customer's CGL insurance, and if applicable, excess/umbrella liability insurance, must name as an additional insured GPC, Southern Company, and their affiliates, and the officers, directors, employees, representatives, and agents of each of them (each a **"GPC-Related Party"**), for any Claim (defined in Section 4.2 (*Indemnity*)) arising out of or caused by Customer action or inaction, or any activity at the Site or under this Agreement, but additional insured status will not extend to a Claim resulting from sole negligence of a GPC-Related Party; and (ii) Customer waives, and agrees to require its insurers to waive, any subrogation right otherwise possessed against a GPC-Related Party under any Customer insurance (including CGL, excess/umbrella, and Site property insurance) or under state or federal workers' compensation or employer's liability law, except that the waiver will not extend to a Claim resulting from sole negligence of a GPC-Related Party unless allowed by applicable law. Customer's insurance is primary with respect to any activity arising out of this Agreement; any insurance maintained by a GPC-Related Party is excess of Customer's insurance and will not contribute with it. Neither this Section 4.1 (*Insurance*), nor the existence, or amount, of insurance, will waive or limit Customer's liability under this Agreement or at law.

4.2 Indemnity. To the fullest extent allowed by applicable law, Customer must indemnify, release, hold harmless, and, at GPC's request, defend GPC and any GPC-Related Party from or against a **"Claim"** (any loss, damage, cost, expense, or liability for any damage, claim, demand, suit, settlement, judgment, penalty, fine, proceeding, or action of any kind for: (i) personal or bodily injury (including death); (ii) property damage; (iii) infringement; (iv) monetary expense; or (v) equitable relief, including all Claim expenses (e.g., actual attorneys' fees reasonably incurred; investigation, defense, litigation, court, arbitration, or mediation costs; and expert, consultant, arbitrator, or mediator fees or expenses)) caused by, arising out of, or related to an act or omission associated with the Project, the Site, or this Agreement by Customer or a Customer affiliate, contractor, supplier, contractual party, or customer, or an officer, director, employee, representative, or agent of one of them, whether caused by or arising out of the joint, concurrent, or contributory negligence of a GPC-Related Party, except that Customer is not liable if a Claim was caused by the sole negligence of a GPC-Related Party. Customer's indemnity obligations expressly include a Claim involving: (a) misrepresentation, fraud, willful misconduct, reckless or negligent act or omission, or criminal act; (b) damage to GPC Facilities or property; (c) a defect, condition, event, or omission on or at the Site; (d) presence or suspected presence of an Unforeseen Condition; or (e) noncompliance with applicable law. Customer's indemnity obligations are independent of its insurance obligations.

4.3 Limitation of Liability. Remedies available in this Agreement do not limit other rights or remedies available by law, equity, or contract. Despite any other Agreement provision or availability under applicable law, except as provided in the last sentence of this *Limitation of Liability* section, **neither Party, nor anyone claiming through either Party, is liable to the other Party for consequential, special, indirect, treble, exemplary, incidental, or punitive damages (including loss of use, revenue, profit, income, tax benefit, data, business opportunity, or anticipated savings; damage to business reputation; business interruption or idled equipment costs; or increased overhead, financing, or operating costs) arising out of this Agreement, any damage, hindrance, or delay in connection with the Project, the Site, or this Agreement, or a Party's act or failure to act, or performance or non-performance, under this Agreement, whether or not reasonable, foreseeable, contemplated, or avoidable.** This *Limitation of Liability* section applies regardless of fault and will survive Agreement termination, cancellation, suspension, completion, or expiration. This *Limitation of Liability* section will not apply in the case of amounts owed to a third party for which this Agreement requires indemnification.

4.4 Force Majeure. A **"Force Majeure Event"** is an occurrence, non-occurrence, circumstance, or set of circumstances that is beyond a Party's reasonable control, not reasonably foreseeable, and not caused by the Party's negligence, inaction, lack of due diligence, breach of this Agreement, or failure to follow prudent industry practices. Except for an obligation to make payments due, neither Party is in Default under this Agreement if there is, nor liable for a failure to perform that results from, a Force Majeure Event, if the affected Party (who bears the burden of proof): (i) promptly provided written notice of the event and probable consequences; (ii) exercised reasonable effort to minimize disruption; and (iii) timely resumed performance. Neither Party is liable to the other for loss, damage, or delay resulting from a Force Majeure Event.

PART 5 MISCELLANEOUS

5.1 Notices and Contacts. Each Party's point-of-contact for Agreement notices and correspondence is indicated below the Party's signature. Each Party will provide notice to the other as provided in Exhibit D. Notice under this Section 5.1 must be by: (i) personal delivery (effective that date); (ii) if the Party has provided an email address for official notice purposes, email delivery (effective that date if sent by 5:00 p.m. (recipient's time); otherwise, the next business day); (iii) prepaid nationally- or internationally-recognized commercial overnight courier (effective the next business day); or (iv) registered or certified U.S. mail, with proper postage (effective the following fourth business day). Unless this Agreement expressly requires notice in accordance with this Section 5.1, a Party may provide notice as reasonable in the circumstance. A Party will inform the other of any update in its Exhibit D contact information or regarding any other administrative matter by prompt written notice in accordance with this Section 5.1.

5.2 Agreement Interpretation. Defined terms may be singular or plural, as the context requires and, absent express statement otherwise, have the same meaning in all Agreement documents. In this Agreement and in all attached or incorporated Agreement documents: (a) **"including"** means "including, but not limited to" or "including, without limitation"; (b) **"or"** means "either or both" ("A or B" means "A or B or both A and B"); (c) **"e.g."** means "for example, including, without limitation"; and (d) if the Party has provided email contact information, **"written"** or **"in writing"** includes email communication, absent express statement otherwise. Reference to: (1) a Party or entity includes any allowed successor or assign; (2) a regulatory authority includes an authority succeeding to the same function; and (3) an applicable law, document, or provision is to the law, document, or provision as modified or amended, and then-effective or current. Captions are for convenience only and do not affect Agreement interpretation. Reference to an Agreement part by caption (e.g., *Project Performance*) or number (e.g., Part 3) includes all separate sections (e.g., 3.2 Project Changes) and clauses (e.g., A. Unforeseen Conditions) within that part and reference to a section by caption or number includes all separate clauses within that section.

A. Governing Law and Interpretation. Georgia law governs all matters, including torts, arising under, or relating to execution, interpretation, performance, or enforcement of, this Agreement, without regard to choice of law principles. The Parties will resolve any Claim or dispute in a state or federal court sitting in Georgia. Customer consents to exclusive jurisdiction and venue in these courts and, to the fullest extent allowed by applicable law, waives any objection to this jurisdiction or venue. This Agreement does not create a contractual relationship with any third party or give rise to liability to, or a cause of action by, any third party. No GPC affiliate is liable for GPC's performance or nonperformance under this Agreement. Both Parties were actively involved in negotiating this Agreement; no rule allowing construction in favor of, or against, a Party according to authorship will apply.

B. Agreement Scope. This Agreement constitutes the entire understanding between the Parties and replaces any previous or contemporaneous oral or written discussion, representation, promise, arrangement, understanding, or agreement relating to the subject matter, expressly including any GPC estimate of project cost or schedule. The Parties do not intend that this Agreement affect any other agreement between them; if there is a conflict between this Agreement and any retail electric service tariff/contract, the tariff/contract controls. Each exhibit, attachment, appendix, schedule, or other document attached to or referenced in this Agreement is incorporated into, and is integral to, this Agreement as if included in the main body.

C. Georgia Security, Immigration, and Compliance Act. Customer is a "public employer" as defined by O.C.G.A. § 13-10-91. To the extent that this is a contract for physical performance of services within the state of Georgia, compliance with requirements of O.C.G.A. § 13-10-91 is a condition of this Agreement and is mandatory. GPC will provide to Customer a contractor's affidavit as required by O.C.G.A. § 13-10-91. GPC also agrees that, if it employs or contracts with any subcontractor(s) in connection with this Agreement, GPC will secure from each subcontractor an affidavit attesting to the subcontractor's compliance with O.C.G.A. § 13-10-91.

5.3 Agreement Modification. Except as provided in Section 5.1 (*Notices and Contacts*), only an amendment signed by an authorized agent of each Party can modify this Agreement. GPC's waiver, by act or failure to act, of a Customer default, waiver of a GPC right, or failure to enforce a Customer obligation in one instance does not waive in another instance: (i) a similar or any other default; or (ii) the right to enforce that or any other right or obligation. If a court rules that an Agreement provision is unenforceable, all other provisions remain effective. Customer may not assign or transfer any Agreement right or obligation without GPC's prior written consent.

5.4 Representations and Warranties. Each Party represents and warrants to the other that: (i) it is qualified to do business in, and in good standing with officials of, Georgia and all other regulatory authorities with jurisdiction (and, if not a Georgia entity, it is in good standing in the jurisdiction of its organization); (ii) it makes each representation or warranty expressed in this Agreement, each of which includes all material facts necessary to prevent the statement from being misleading; (iii) this Agreement is signed by an authorized agent and it can legally enter into, and perform all obligations under, this Agreement, with no third-party consent required; (iv) no legal action is in progress or, to the best of its knowledge, threatened that could have a material adverse effect on its ability to perform its Agreement obligations or on its business or financial condition; (v) it has studied, and understands its rights and obligations under, this Agreement; and (vi) it entered into this Agreement voluntarily and in good faith, as a result of arm's length negotiations. **EXCEPT AS STATED IN THIS SECTION, GPC MAKES NO REPRESENTATION, COVENANT, OR WARRANTY OF ANY KIND (INCLUDING WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT) REGARDING THE PROJECT, THE SITE, SITE ELECTRIC SERVICE, GPC FACILITIES, GPC'S ELECTRICAL SYSTEM, OR ANY GPC ACTIVITY UNDER THIS AGREEMENT.**

Each Party agrees to all terms and conditions of this Agreement. The Parties may e□change counterparts of this Agreement □y facsimile transmission or as a scanned image □e.g., .pdf or .tiff file e□tension□as an attachment to email□a facsimile or scanned signature is an original signature for all purposes. The **"Effective Date"** is the date on □hich the last Party signs, as sho□n □elo□.

Georgia Power Company	**The City of Canton**
By: Eric Pickett	By:
Name Printed: Eric Pickett	Name Printed:
Title: Centralized Engineering Services Supervisor	Title:
Date: 11/20/2024	Date:
Contact Information:	**Contact Information:**
Bin No. 39066	
Address: 829 Jefferson St NW	Address:
Address: Atlanta, GA 30318	Address:
Phone: 470-409-4181	Phone:
Fax:	Fax:
Email: epickett@southernco.com	Email:

<u>**EXHIBIT A – RELOCATION/CONVERSION PROJECT BINDING ESTIMATE**</u>

Distribution Relocation/Conversion Project Agreement between

Georgia Power Company ("GPC") and The City of Canton("Customer")

GPC DWE No. GP892H01425

Binding Estimate for The City of Canton

GPC provides this **Relocation/Conversion Project Binding Estimate** (**"Binding Estimate"**) to **Customer** pursuant to the **Distribution Relocation/Conversion Binding Estimate Preparation Agreement** (**"Preparation Agreement"**) previously entered between the Parties and as part of the proposed **Distribution Relocation/Conversion Project Agreement** (the **"Project Agreement"**) to which this Binding Estimate is attached. The proposed Project Agreement identifies the Site and this Binding Estimate uses terms as defined in the Preparation Agreement and in the proposed Project Agreement.

Factual Basis for Binding Estimate:

Customer provided to GPC the following documents and information regarding the Project:

Based upon plans provided by the customer for the W Main St improvement project.

Project Binding Estimate:

Based on Customer's request and the information provided, GPC provides this Binding Estimate for the proposed Project, as follows:

Converting 1, 460' of 3 phase overhead primary to underground primary, installing 1, 460' of 1000 MCM and 575' of 1 phase 1/0 primary. Installing (1) Trident Switching Cubicle, and (2) single phase transformers. Will require obtaining easements for new underground facilities that extend past the new City of Canton ROW for customer services. The Customer will be responsible for converting all Meter locations that are currently served with Overhead service to Underground prior to the completion of the project.

The Project location will be generally as depicted in Project Agreement Appendix 1.

The Project Fee, based on the listed information and according to all Agreement terms and conditions, is $748,683.17. This Project Fee is based on: (i) the above Factual Basis; (ii) performing all Project Work during normal GPC work hours (40-hour week, Mon.-Fri., non-holiday, and during daylight hours), unless expressly noted otherwise in this Binding Estimate; and (iii) all proposed Project Agreement terms and conditions. The Project Fee is subject to change if there is a Change Event or if otherwise mutually agreed in a Project Agreement amendment or Project change order.

This Binding Estimate remains valid for 90 days from the date submitted and will be void if GPC and Customer have not executed a binding Distribution Relocation/Conversion Project Agreement within 90 days. Additionally, the Project Fee is subject to change if any Condition Precedent (per Agreement Section 2.5) remains unfulfilled as of November 20, 2024, if there is any other Change Event, or if mutually agreed in writing.

Submitted by
Georgia Power Company

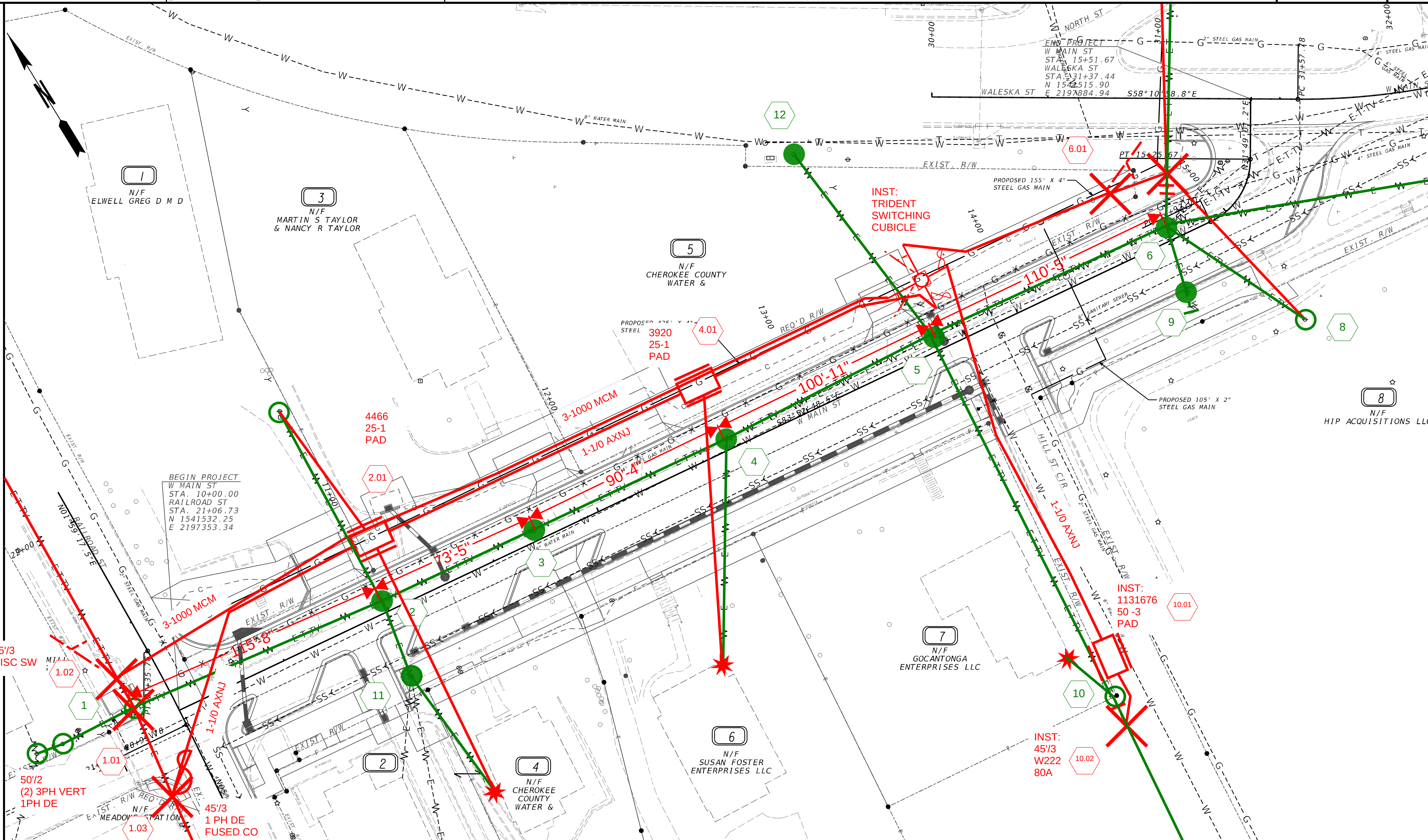
By: Christopher J Boggs

Christopher Boggs
Engineer, Sr.

Date: 11/20/24

Appendix 1 **Drawing or Sketch Showing Site and Proposed Relocation/Conversion Project**

Appendix 2 **W-9 of Entity Paying Project Fee**



PROPERTY AND EXISTING R/W LINE	
REQUIRED R/W LINE	
CONSTRUCTION LIMITS	—C—F—
EASEMENT FOR CONSTR & MAINTENANCE OF SLOPES	
EASEMENT FOR CONSTR OF SLOPES	
EASEMENT FOR CONSTR OF DRIVES	

PDP
PRACTICAL DESIGN PARTNERS

CANTON

REVISION DATES

SCALE IN FEET
0 20 40 80

UTILITY PLANS

CHECKED:		DATE:	
BACKCHECKED:		DATE:	
CORRECTED:		DATE:	
VERIFIED:		DATE:	

DRAWING No.
24-0001