

**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 Georgia Power Relocation Agreement in the amount of \$40,523

Summary:

In relation to the Canton Creek Pedestrian Bridge Project, Georgia Power will need to relocate a series of power lines. Per the City of Canton/Georgia Power Franchise Agreement, the City is to pay 62.25% of the estimated cost of relocation, which is \$40,523. These funds are budgeted into the \$2.2 million dollar grant received from the Office of Planning and Budget.

Budget Implications:Budgeted? ☒ Yes ☐ No ☐ N/A

Total Cost of Project: \$ 40,523.00

Check if Estimated ☐Fund Source: General Fund ☐ Water & Sewer ☐ Sales Tax ☐ Other: OPB Grant**Staff Recommendations:****Reviews:**Has this been reviewed by Management and Legal Counsel, if required? ☐ Yes ☐ No**Attachments:**



April 24, 2025

City of Canton
Attn: Brad Robinson
110 Academy Street
Canton, GA 30114

Re: PI# L13120 – Canton Creek Pedestrian Bridge

Dear Mr. Robinson:

Please find enclosed a Relocation Agreement with respect to the referenced project. As you will note in the Relocation Agreement, the total estimated cost for the relocation of the distribution facilities associated with this project is \$65,099. In accordance with the Franchise Agreement between Georgia Power Company and the City of Canton, the City must bear Sixty-Two and Twenty-Five Hundredths percent (62.25%) of the estimated cost of relocation, which is \$40,523 (the "Payment Amount").

Both the total estimated cost for relocation and the Payment Amount are valid only for a period of one (1) year following the date set forth on the enclosed estimate. Further, Georgia Power will not commence any work unless, the City executes and returns the enclosed Relocation Agreement and authorizes commencement of the work. Work must commence within 6 months of the executed relocation agreement.

If you have any questions, please contact Kris Stephens at (706) 340-6457.

Sincerely,

Eric Pickett

UTILITY RELOCATION AGREEMENT

PROJECT NAME: **Canton Creek Pedestrian Bridge**

PROJECT NUMBER: **L13120**

GDOT PROJECT NUMBER: _____

THIS AGREEMENT is made and entered into as of the ____ day of _____, 20____, by and between **CITY of Canton**, State of Georgia (hereinafter referred to as the "City"), and **GEORGIA POWER COMPANY** (hereinafter referred to as the "Company"). This Agreement may refer to either City or Company, or both, as a "Party" or "Parties."

WITNESSETH:

WHEREAS, the City proposes under the above written Project to construct **Canton Creek Pedestrian Bridge** (hereinafter referred to as the "Project");

WHEREAS, due to the construction of the Project, it will become necessary for the Company to remove, relocate or make certain adjustments to the Company's existing facilities (such facilities, including but not limited to overhead and underground electric transmission, distribution and communication lines, towers, frames, poles, facilities, wires, transformers, service pedestals, apparatus, manholes, conduits, fixtures, appliances, cables, protective wires and devices all being hereinafter referred to collectively as the "Facilities" or individually as the "Facility");

WHEREAS, the Company, as hereinafter provided, may assert that it has certain property interests and rights and utilized such property interests and rights for the placement of its Facilities prior in time to City's acquisition of the road right(s)-of-way, all as involved in said Project; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants of the Parties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

Section 1. THE WORK.

1.1 Company Facilities.

Company, with its regular construction or maintenance crews and personnel, at its standard schedule of wages and working hours (as may be applicable from time to time during the term of this Agreement), and working in accordance with the terms of its agreements with such employees, will remove, relocate or make adjustments to its Facilities in accordance with the scope of work and Estimate (defined below) attached hereto as Exhibit "A" and incorporated herein by reference (the "Work"). Company shall make all technical decisions concerning the Work and may elect to contract any portion of the Work.

1.2 Road Right-of-Way.

Prior to Company commencing the Work, City will provide written assurances to Company that it has acquired the necessary new road right-of-way (including information on the property rights acquired).

1.3 Traffic Control.

Company shall make a reasonable effort to provide signing and other traffic control measures during the Work, in accordance with PART VI of the U. S. Department of Transportation Manual on Uniform Traffic Control Devices, current edition, all at the expense of the City.

Section 2. COSTS AND PAYMENT.

2.1 Compensable Property Interests.

Company shall perform the Work in accordance with the estimate attached hereto as Exhibit "A" and incorporated herein by reference (the "Estimate"). The amount of the Estimate that corresponds to Company's claim that it has compensable property interests with respect to the Project (the "Prior Rights Claim") is SIXTY-FIVE THOUSAND AND NINTEY-NINE Dollars (\$65,099), which amount includes and is limited to: (a) the costs of removing, relocating or adjusting those Facilities which are physically in place and in conflict with the proposed construction and/or maintenance; (b) where replacement is necessary, the costs of replacement in kind, and any improvements or betterments made necessary by the proposed construction and/or maintenance; and (c) the costs incurred in acquiring additional easements or private rights-of-way, including without limitation easements for lines, access, tree trimming, guy wires, anchors and other devices, appliances and other equipment, and any and all other such easements and property rights as may be reasonably necessary for the Company's installation, operation and maintenance of its Facilities (collectively, the "Relocation Costs").

The cost of any improvements or betterments that are not made necessary by the proposed construction or maintenance shall not be subject to the percentage split contemplated above. Such costs shall be paid as follows: (a) the costs of any improvements or betterments of a Facility being made solely at Company's option (and not being made necessary by the proposed construction and/or maintenance) shall be fully paid by Company; and (b) the costs of any improvements or betterments of a Facility being made solely at City's request (and not being made necessary by the proposed construction and/or maintenance) shall be fully paid by City.

Upon completion by Company of the Work and subject to determination of Company's Prior Rights Claim in accordance with Sections 3 and 4 below, City will pay Company a sum equal to the lesser of (a) FORTY THOUSAND AND FIVE HUNDRED AND TWENTY-THREE Dollars (\$40,523), otherwise reflected as SIXTY-TWO AND TWENTY -FIVE HUNDREDTHS percent (62.25%) of the Total Estimate and representing the aforementioned Reimbursement Claim, or (b) the corresponding percentage of actual Relocation Costs representing Company's compensable property interests with respect to the Project. City will also pay Company for the costs of any improvements or betterments of a Facility being made solely at City's request and not being made necessary by the proposed construction and/or maintenance.

2.2 Improvements and Betterments.

The remaining amount of the Estimate, if any, is comprised of improvements and/or betterments and shall not be subject to the percentage split contemplated in Section 2.1 above. Such costs shall be paid as follows: (a) the costs of any improvements or betterments of a Facility being made solely at Company's option (and not being made necessary by the proposed construction and/or maintenance) shall be fully paid by Company; and (b) the costs of any improvements or betterments of a Facility being made solely at City's request (and not being made necessary by the proposed construction and/or maintenance) shall be fully paid by City.

2.3 Progress Payments.

If Company chooses to submit invoices for progress payments, City will pay same within thirty (30) days from receipt of the invoice, subject to Verification (as defined below) thereof by the City. Upon completion of the Work, Company shall submit a final bill to City and City shall make a final payment within thirty (30) days from receipt of the final bill, subject to Verification thereof by the City.

2.4 Change in Scope.

In the event there is a change in the Project, including without limitation a change in scope, design, plans, service, property interests to be acquired, engineering or costs, due to either (a) events or circumstances beyond Company's reasonable control, or (b) City's request, the Parties will negotiate in good faith a mutually acceptable agreement or amendment to this Agreement, in writing, to address such change and any increase in costs above those set forth in the Estimate.

Section 3. PRIOR RIGHTS DETERMINATION.

3.1 If Company determines it has a compensable property interest with respect to the Project, Company will submit a Prior Rights Claim. The Parties agree that they will in good faith share non-privileged information with each other related to the issue of prior rights for the Project. If City determines that Company's evidence is insufficient to make a determination as to Company's compensable property interests and the percentage of the Relocation Costs to be paid by Company based upon such compensable property interests, City will provide Company with a written basis for such insufficiency and request that Company provide additional information. City will make a determination as to any asserted Prior Rights Claim before the earlier of: (a) the date that is thirty (30) days after receipt of the Prior Rights Claim; and (b) the date on which Company needs to commence the Work in order to prevent a Project delay (the "Commencement Date").

3.2 In the event that a determination cannot reasonably be made prior to the Commencement Date, provided that City certifies in writing to Company that the Project is time-sensitive due to construction scheduling with the possibility of damages for delay, safety concerns, or critical funding deadlines, Company will commence the Work without a written determination having been made. In such case, the Party's rights, claims and defenses with regard to the issue of compensable property interests and prior rights will not be waived or affected in any manner. If City does not thereafter make a determination regarding the Prior Rights Claim within six (6)

months from the date of City's receipt of same, the Prior Rights Claim will be deemed approved by City.

Section 4. DISPUTE RESOLUTION.

4.1 Disagreement.

If Company disagrees with City's determination with regard to the Prior Rights Claim and the Parties are unable to settle the issue through informal negotiations, then, at the request of either Party, the Parties agree to escalate the matter pursuant to Section 4.2 below.

4.2 Dispute Notice.

Except as otherwise set forth in this Agreement, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled: (a) first, by good faith efforts to reach mutual agreement of the Parties; and (b) second, if mutual agreement is not reached within thirty (30) calendar days of a written request by a Party to resolve the controversy or claim (the "Dispute Notice"), each of the Parties will appoint a designated representative who has authority to settle the dispute (or who has authority to recommend to the governing body of such Party a settlement of the dispute) and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives will meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives, provided, however, that all reasonable requests for relevant information made by one Party to the other Party will be honored if such information is reasonably available. If within sixty (60) days after issuance of a Dispute Notice (a) the Parties are unable to resolve issues related to the dispute, or (b) City fails to approve any tentative agreement reached, the Parties agree to participate in confidential, non-binding mediation pursuant to Section 4.3 below, it being understood, however, that nothing herein will diminish or relieve either Party of its rights or obligations under this Section 4.

4.3 Mediation.

If the Parties are unable to resolve a dispute through informal negotiations or pursuant to Section 4.2, the Parties agree to participate in confidential, non-binding mediation by an impartial, third party mediator mutually agreed upon by the Parties, at a mutually convenient location. The Parties agree that a potential mediator's experience in prior rights and real estate law will be relevant factors in selecting a mediator. In the event the Parties are unable to agree on a third party mediator within ninety (90) days of issuance of the Dispute Notice, each Party shall designate a mediation representative, and the two mediator representatives shall in good faith select a third party mediator. Each Party shall be responsible for its own attorneys' fees and expenses and for providing its own information and documentation applicable to the dispute to the mediator. All other agreed upon costs of the mediation will be apportioned equally to each Party. Any dispute not resolved by negotiation, escalation or mediation may then be submitted to a court of competent jurisdiction, and either Party may invoke any remedies at law or in equity. Nothing contained herein, however, will preclude the Parties from first seeking temporary injunctive or other

equitable relief. The Parties agree that any statute of limitations, equity or other time-based periods shall be tolled as of and from the date of the Dispute Notice until a complaint, if any, is filed.

Section 5. VERIFICATION.

5.1 Material Discrepancy.

For purposes of this Section 5, “Verification” means that City has reasonably determined that there is a material discrepancy between Company’s invoiced charges and City’s calculation of charges owed, which invoiced charges are subject to a bona fide dispute; provided, however, City agrees to provide the Company with written notice, including supporting documentation, illustrating the basis for such bona fide dispute, within sixty (60) days of receipt of the invoice in dispute. Should City fail to provide such documentation within the specified time period, City must pay the disputed amount. City must pay any undisputed portion of the invoice total within thirty (30) days after its receipt of the invoice. City must pay any disputed portion of the invoice total within thirty (30) days of the date the dispute is resolved, to the extent the dispute is resolved in favor of Company.

5.2 Audit.

At any time within thirty-six (36) months after the date of final payment, City, at its sole expense, may audit the non-privileged cost records, support documentation and accounts of Company pertaining to this Project to solely assess the accuracy of the invoices submitted by Company and notify Company of any amount of any unallowable expenditure made in the final payment under this Agreement, or, if no unallowable expenditure is found, notify Company of that fact in writing. Any such audit will be conducted by representatives of City or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, after reasonable advance written notice to Company and during regular business hours at the offices of Company in a manner that does not unreasonably interfere with Company’s business activities and subject to Company’s reasonable security requirements. As a prerequisite to conducting such audit, City or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, will sign Company’s Nondisclosure Agreement. Company may redact from its records provided to City information that is confidential and irrelevant to the purposes of the audit. Company will reasonably cooperate in any such audit, providing access to Company records that are reasonably necessary to enable City to test the accuracy of the invoices to which the audit pertains, provided that City or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, may only review, but not copy, such records. If Company agrees with the audit results and does not pay any such bill within ninety (90) days of receipt of the bill from City (based on the mutually agreed upon audit results), City may set off the amount of such bill against the amounts owed Company on any then-current contract between Company and City. If, following the audit, the Parties are unable to resolve any dispute concerning the results of the audit through informal negotiation, the provisions of Sections 4.2 and 4.3 will govern the resolution of the dispute. City may not perform an audit pursuant to this Agreement more frequently than once per calendar year and may not conduct audits twice within any six (6) months.

Section 6 **CITY AS PARTY**

City acknowledges that this Agreement is “proprietary” in nature under applicable Georgia law, as permitted by O.C.G.A. § 36-60-13(j), and not “governmental” or “legislative,” as prohibited by O.C.G.A. § 36-30-3(a). City further represents and warrants that this Agreement will comply with all applicable laws concerning City actions and approvals and execution of binding agreements. City covenants to undertake all actions necessary to bind City.

Section 7 **COMMENCEMENT AND TERMINATION CONDITIONS**

Company is not obligated to commence the Work until Parties agree on the removal, relocation and/or adjustment to Company’s facilities required by the Project. If City fails to authorize commencement of the Work by April 8, 2026, Company will have no obligation to begin the Work and may terminate this Agreement without penalty by providing City with notice in writing. If City fails to sign and return this Agreement to Company by April 8, 2026, any offer made by Company pursuant to the Agreement is automatically revoked and the agreement is void and of no effect.

Section 8 **MISCELLANEOUS PROVISIONS**

Duplicate originals of this Agreement will be executed, each of which will be deemed an original but both of which together will constitute one and the same instrument. This Agreement may be modified only by an amendment executed in writing by a duly authorized representative for each Party. This Agreement contains the entire agreement of the Parties, and all prior oral agreements are superseded and integrated into this Agreement. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia. This Agreement shall accrue to the benefit of and be binding upon the successors and assigns of the Parties. The Parties agree that this Agreement shall be deemed to have been executed in Georgia.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Contract in four (4) counterparts, each of which shall be deemed an original in the year and day first above mentioned.

ATTEST:

City of CANTON, GEORGIA

By: _____

By: _____
Mayor

Title: _____

(SEAL)

Witness: _____

Notary: _____
_____ (SEAL)

Approved as to Form by:

City of Canton Department of Transportation

ATTEST:

GEORGIA POWER COMPANY

By: _____

By: _____

Title: _____

Title: Centralized Engineering Svcs Manager

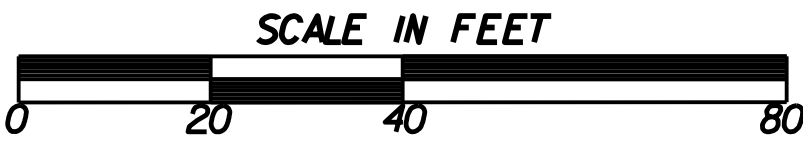
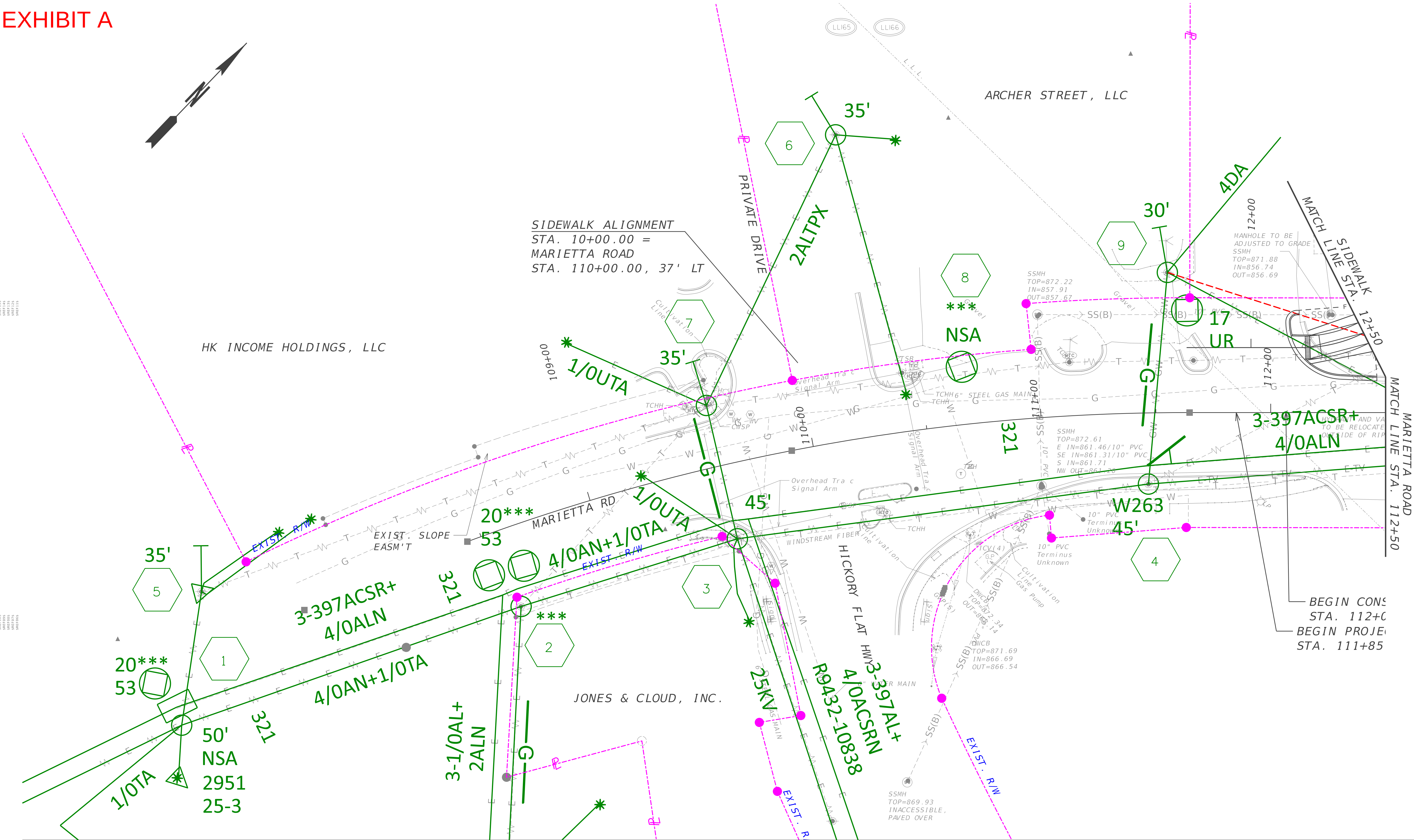
Witness: _____

Date: _____

Notary: _____
(SEAL)

[Give proper title of each person executing Agreement. Attach seal as required.]

EXHIBIT A

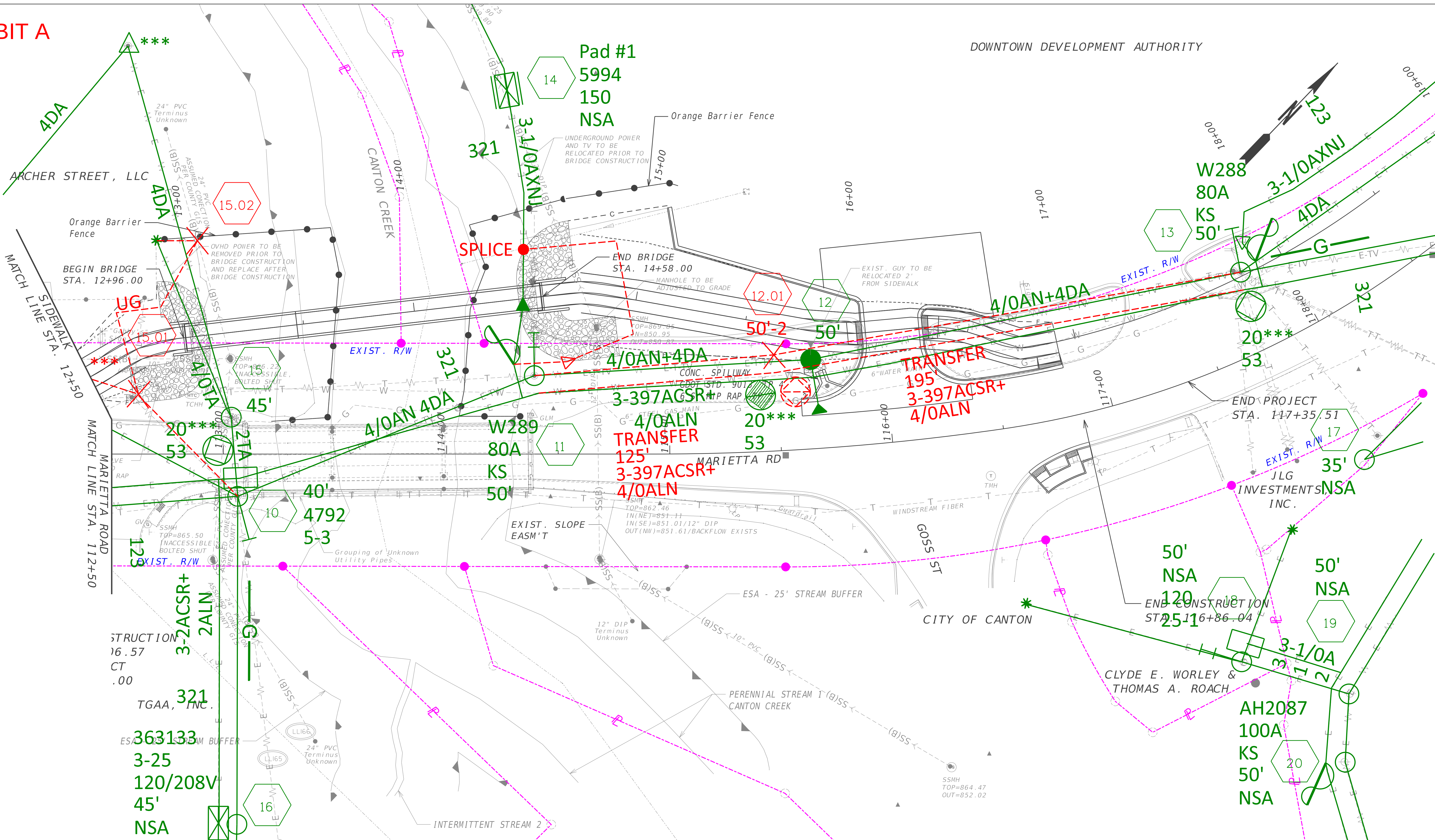


ELECTRONIC FILE DATE	CONSTRUCTION REVISION DATE
PLANS DATE: 03/09/2025	REVISION DATE:
PLANS DATE:	REVISION DATE:
PLANS DATE:	REVISION DATE:
PLANS DATE:	REVISION DATE:
PLANS DATE:	REVISION DATE:

ENGINEERED BY: Paul Strapp	DATE: APR 2025
PROJECT TITLE: Canton Creek Pedestrian Bridge	
PROJECT #:	PI: L13120
WORK ORDER #:	HQ: Canton
REGION: Smyrna Area	
COUNTY: Cherokee	
MAP REFERENCE: 0354-1448	DWG #: 24-0001



EXHIBIT A



ELECTRONIC FILE DATE	CONSTRUCTION REVISION DATE
PLANS DATE: 03/09/2025	REVISION DATE: 04/24/2025
PLANS DATE:	REVISION DATE: 04/29/2025
PLANS DATE:	REVISION DATE:
PLANS DATE:	REVISION DATE:
PLANS DATE:	REVISION DATE:

ENGINEERED BY: Paul Strapp	DATE: APR 2025
PROJECT TITLE: Canton Creek Pedestrian Bridge	
PROJECT #:	PI: L13120
WORK ORDER #:	HQ: Canton
REGION: Smyrna Area	
COUNTY: Cherokee	
MAP REFERENCE: 0354-1448	DWG #: 24-0002

