

STATE OF GEORGIA

COUNTY OF FULTON

RIGHT OF ACCESS LICENSE AGREEMENT

This Right of Access License Agreement ("License Agreement"), made and entered into this ____ day of September, 2023 (the "Effective Date"), by and between the the CITY OF ATLANTA, a Georgia municipal corporation (the "City" or "Licensee") and FULTON COUNTY, GEORGIA, a political subdivision of the State of Georgia (the "County" or "Licensor").

WHEREAS, the County currently owns four (4) properties located at (1) 135 Peachtree Street SW, Atlanta, Tax Parcel ID: 14-0077-00-060-151; (2) 162 Pryor Street, Atlanta, Tax Parcel ID. 14-0077-00-060-581; (3) 141 Pryor Street, SW, Atlanta, Tax Parcel ID 14-0077-00-061-068, "Fulton County Government Center"); and (4) 136 Pryor Street, Atlanta, Tax Parcel ID 014-0077-00-070-010 (collectively, the "Property"); and

WHEREAS, the City is actively working to install new ADA-compliant detectable warning surface tactiles for the benefit of visually impaired pedestrians (the "Project"); and

WHEREAS, the City has requested permission to enter upon Fulton County the Property to complete the proposed improvements within the designated area at the following sites as shown on Exhibits A through C, attached hereto and incorporated by reference; and

WHEREAS, Fulton County is agreeable to granting the City access to the Property for the purpose of completing the improvements to the City's sidewalks; and

WHEREAS, Article 9, § 2, Par. 1(a) of the Georgia Constitution states in part, "[t]he governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto"; and

WHEREAS, pursuant to Fulton County Code § 1-117, the Board of Commissioners has exclusive jurisdiction and control in directing and controlling all the property of the county as they may deem expedient, according to law; and

WHEREAS, the County desires to grant the City a license (hereinafter, the "License") as is detailed below in this License Agreement for such purposes.

NOW THEREFORE, for and in consideration of good and valuable consideration, paid in hand, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants and agreements contained in this License Agreement, the parties do hereby agree as follows:

1.

GRANT OF LICENSE

Licensor hereby grants to Licensee and its employees, agents, contractors, and subcontractors, and Licensee hereby accepts from Licensor the License to access the Property for the purposes hereinafter outlined in Paragraph 2. Licensor makes no representations or warranties concerning the condition, suitability, or any other matters relating to the Property, and Licensees hereby acknowledge that Licensee's' access to the Property is on an "as is" basis.

2.

USE OF LICENSE

At its sole cost, expense, risk, and responsibility, Licensee shall be permitted access onto the Property to make aesthetic and utility improvements, install ADA-compliant detectable warning surface tactile and other sidewalk improvements (collectively, the "Improvements") in the right of way adjacent and onto Licensor's Property. The purpose of this License can only be modified by mutual written consent of both parties.

3.

DURATION

This License shall remain in effect from the Effective Date and remain in effect for the duration of the Project or for one year from the Effective Date, whichever occurs first. Upon completion of the Project, the License Agreement will cease to be in effect automatically.

4.

INTEREST

Licensee hereby acknowledges that by making, executing, and delivering this License Agreement, Licensor does not confer upon Licensee any right, title, interest, or estate in the Property, nor confer upon Licensee a license coupled with an interest or an easement, and Licensee is estopped from claiming any such right, title, interest, estate, license coupled with an interest, or easement in the Property.

5.

SUSPENSION

The County may, by written notice to Licensees, suspend the access provided by this License Agreement as needed. Upon receipt of a suspension notice, Licensees must immediately vacate the Property and remove any of its property which may be in the Property. Only upon receipt of a notice that the suspension has been lifted may Licensees re-enter the Property in accordance with this License Agreement.

6.

MAINTENANCE AND RESTORATION OF DAMAGE TO THE PROPERTIES

During the permitted usage period, Licensee shall be solely responsible for cleaning and removing any hazards within the work area of the Property. In the event that the Licensee's use results in any damage to the Property, the Licensees hereby agree that within a reasonable time (not to exceed sixty (60) days, unless such task is not capable of being completed within such period of said damage), Licensee will, at its sole cost and expense, take reasonable steps to restore the Property to substantially the same condition in which it existed before the damage. Licensee shall require that any contractor retained by Licensee perform any installations required to complete the proposed Improvements and shall have applicable bonds (i.e., payment and performance bonds) to prevent liens from being placed against the Property.

7.

ASSIGNMENT OR TRANSFER

This License Agreement and the License granted herein may not be assigned or transferred by Licensees unless approved in writing by Licensor.

8.

LIABILITY

Licensee, as the requestor of said license, further agree that, as per this License Agreement, Licensee shall be responsible for all costs and damages stemming from all claims, actions, damages, liability, and expense, and to the extent permitted by law shall hold Fulton County harmless, from all claims, actions, damages, liability, and expense, including without limitation reasonable attorneys' fees and costs, in connection with personal injury or property damage arising out of the acts or omissions of Licensee, their employees, agents, contractors or volunteers upon the Property or any property surrounding the Property in conducting the permitted activities. Notwithstanding the foregoing, nothing herein shall be construed as a waiver of the County's sovereign immunity and the immunities available to County officials, officers, employees, and

agents. Licensee shall have the right to self-fund for its workers' compensation, automobile liability, and general and excess liability coverages for its activities on the Property or any property surrounding the Property in conducting the activities authorized by this License Agreement. Notwithstanding the foregoing, Licensee shall ensure that any contractor performing work on the Property provides insurance sufficient to cover any losses and includes Fulton County as an additional insured.

9.

NOTICES

All notices required herein shall be in writing and delivered to either party at the address contained herein by (a) hand delivery; (b) United States Certified Mail - Return Receipt Requested, postage prepaid; or (c) overnight delivery. The day upon which such notice is hand-delivered, or mailed, shall be deemed the date of service of such notice.

To the Licensor: **Fulton County, Georgia**
Department of Real Estate and Asset Management
141 Pryor Street, Suite G1119
Atlanta, Georgia 30303
Attention: Director

With a copy to: **Office of the County Attorney**
141 Pryor Road SW, Suite 4038
Atlanta, Georgia 30303
Attention: County Attorney

To the Licensee: **City of Atlanta**

Attn: _____

10.

GENERAL PROVISIONS OF THIS AGREEMENT

10.1 The brief capitalized and underlined headings or titles preceding each paragraph are for the purposes of identification, convenience, and ease of reference and shall be disregarded in the construction of this License Agreement.

10.2 No failure of either party hereto to exercise any right or power granted under this License Agreement, or to insist upon strict compliance by the other party with this License Agreement and terms and conditions of this License Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this License Agreement.

10.3 This License Agreement shall be governed by, construed under, performed, and enforced in accordance with the laws of the State of Georgia.

10.4 Should any provision of this License Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.

10.5 This License Agreement may be executed in two (2) counterparts, each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other. Electronic, facsimile or .pdf signatures shall have the same force and effect as original signatures. The parties hereto intend to be bound by the signatures on the electronic, facsimile, or .pdf document and hereby waive any defenses to the enforcement of the terms of this Agreement based on the use of an electronic, facsimile, or .pdf signature.

10.6 The termination of this License Agreement shall not operate to cut off any claims or causes of action in favor of the Licensors or Licensees which occurred or arose prior to the effective date of such termination.

10.7 Licensees hereby acknowledge that neither has been induced by any representation, statements, or warranties by Licensors, including, but not limited to, representations or warranties with respect to title to the Property or the condition or suitability thereof for Licensee's purpose.

10.8 Licensees shall not place or store, nor permit to be placed or stored, any Hazardous Substances (as defined in 42 U.S.C. Sections 9601, et seq.), petroleum products or other pollutants, toxic substances, or environmental hazards on or under the Properties.

10.9 This License Agreement supersedes all prior negotiations, discussions, statements, and agreements between Licensors and Licensees and constitutes the full, complete, and entire agreement between the parties with respect to the Property and Licensee's use thereof. No member, officer, employee, representative or agent of Licensors or Licensees has authority to make, or has made, any statement, agreement, representation, or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this License Agreement. No modification of or amendment to this License Agreement shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both Licensors and Licensees, and incorporated in and by reference made a part hereof.

[Continued on Following Page]

IN WITNESS WHEREOF, Licensors, and Licensees, acting by and through their duly authorized representatives, have caused these presents to be executed all as of the date hereinabove set forth.

LICENSOR:

FULTON COUNTY, GEORGIA

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST:

Tonya R. Grier, Clerk to the Commission

APPROVED AS TO FORM:

Y. Soo Jo, County Attorney

[Signatures Continued on Following Page]

LICENSEE:

The **CITY OF ATLANTA**

By: _____

Name: _____

Its: _____

EXHIBIT A

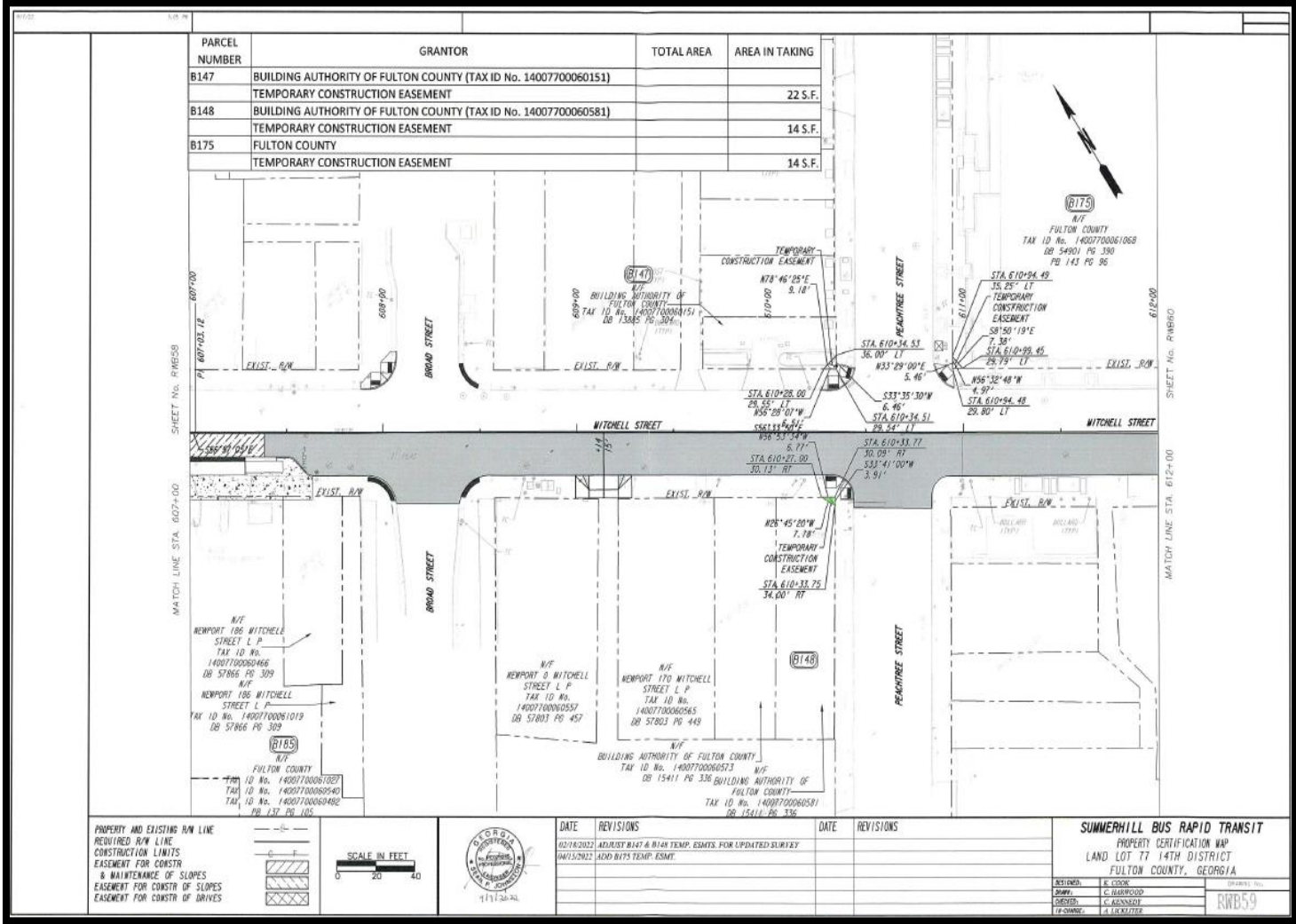


EXHIBIT B

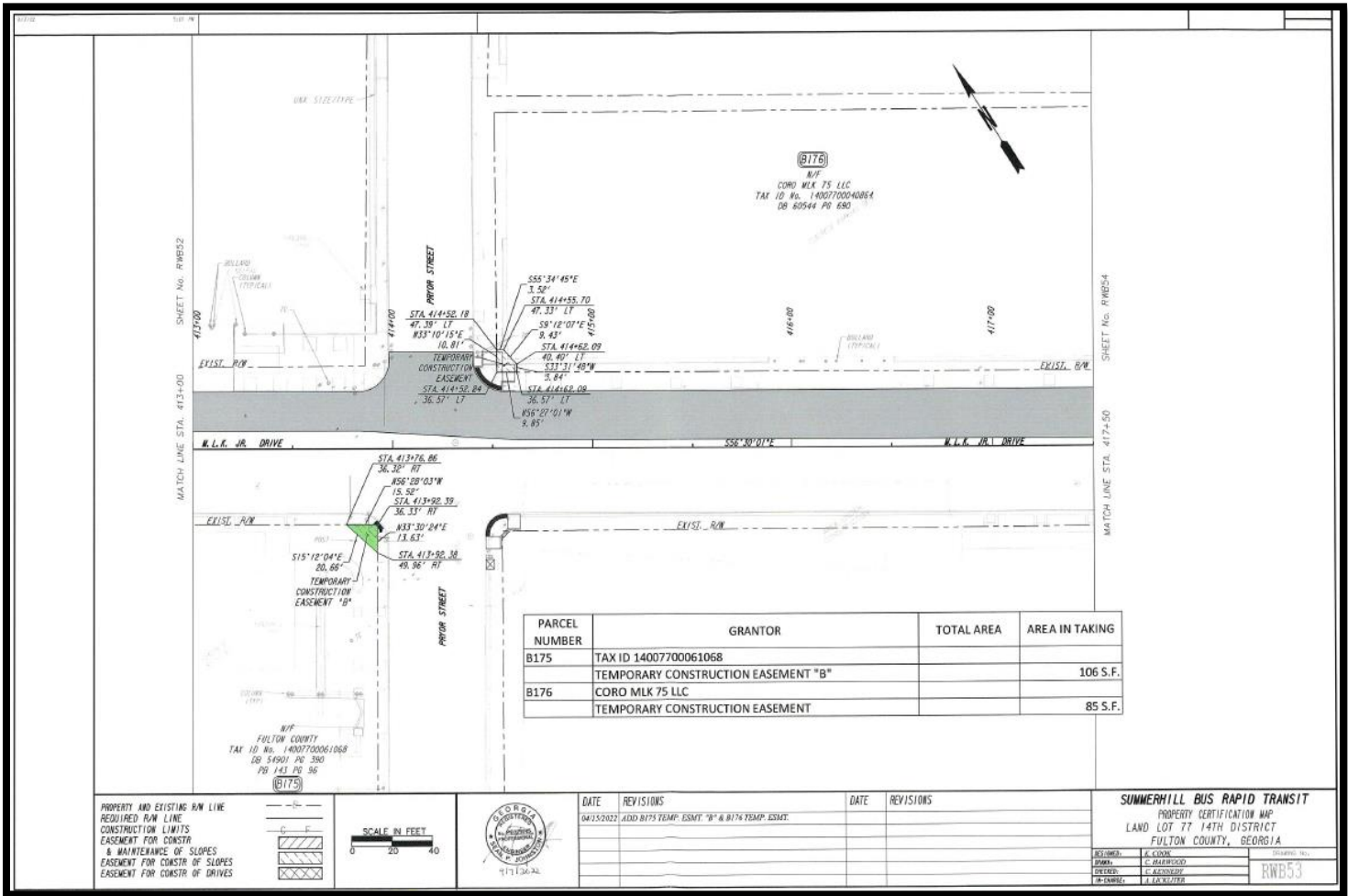


EXHIBIT C

