



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 11/14/2022

Agenda Item: Corrective Action Plan & Permanent Drainage Easement -
1023 Roan Street & 407 Dantzler Avenue Drainage Swale
Improvements

Department: Public Works

Requested By: Jackson Sheppard

**Reviewed/Approved
by City Attorney?** yes

Cost: N/A

**Funding Source if Not
in Budget** Stormwater Operating Budget

**Please Provide A Summary of Your Request, Including Background Information to
Explain the Request:**

See attached Corrective Action Plan for details.
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PUBLIC WORKS DEPARTMENT

CHAD TOWNSEND, DIRECTOR

ctownsend@daltonga.gov

535 N. Elm Street
P.O. Box 1205
Dalton, GA 30722-1205
Office: (706) 278-7077
FAX: (706) 278-1847



DAVID PENNINGTON, MAYOR

CITY COUNCIL MEMBERS:

DENNIS MOCK
ANNALEE SAMS
TYREE GOODLETT
STEVE FARROW

M E M O R A N D U M

TO: Mayor and City Councilmembers

FROM: Chad Townsend, Public Works Director

RE: Corrective Action Plan & Permanent Easement –
1023 Roan Street & 407 Dantzler Avenue Drainage
Swale Improvements

DATE: August 5th, 2022

The Public Works Department has been working on stormwater issues throughout the City. One area of concern is located in 407 Dantzler Avenue and 1023 Roan Street, from where a property owner has voiced concerns because of flooding. A significant portion of the stormwater comes from the public right of way to the west of the properties on Anderson Avenue, where stormwater inlets are located.

A 15" pipe conveys runoff from Anderson Avenue eastward through 410 Anderson Avenue toward a drainage swale on the northwest corner of 407 Dantzler Avenue. The swale goes south 65 feet, then runs east 100 feet towards the southeast corner of the property. A 24" pipe then moves the stormwater across Dantzler Street.


The swale on 407 Dantzler Avenue needs maintenance to increase its stormwater conveyance capacity. Among the required improvements are root removal and cleaning out other obstructions. Furthermore, a reprofile of the drainage swale would mitigate the flooding issues. Because the swale is on the southern part of 407 Dantzler Avenue, the property to the south, 1023 Roan Street, will be affected by construction and maintenance of the swale. Therefore, a temporary construction easement and permanent maintenance easement will be required for 407 Dantzler Avenue and 1023 Roan Street to improve the flooding issue.

Sec. 96-1 of City Code provides for the acceptance of temporary or permanent easements for public dedication of certain drainage systems including those connected directly to the City's existing system and conveys runoff from City right of way. The Public Works Department has developed the enclosed Corrective Action Plan drawings for the subject location and is recommending that City Council adopt this plan to allow city intervention. This plan would provide a long-term solution for a key drainage network for the watershed. The Corrective Action

property owner and accepted by the City Council. The property owner must provide written commitment to provide the easement areas described. The City Attorney will prepare the temporary work easement, and approval of this Corrective Action Plan will authorize the city to accept a permanent drainage easement along the proposed storm drain system. The Corrective Action Plan is subject to minor revisions related to the exact alignment of the pipe to accommodate unforeseen field conditions.

Should you have any questions or need additional information regarding this matter, please do not hesitate to contact me.

Respectfully Submitted,



Chad Townsend
Public Works Director

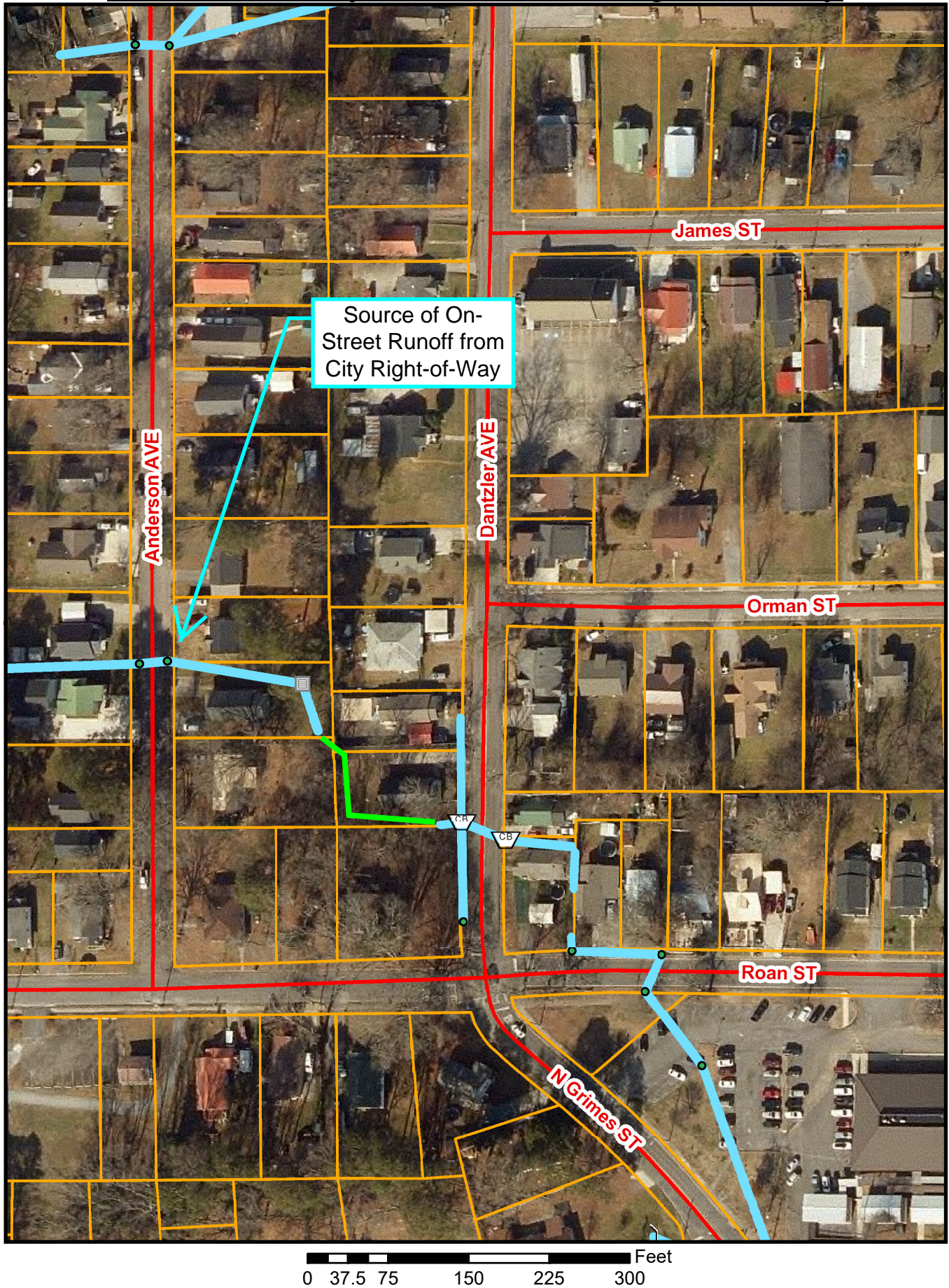
Cc: City Administrator, Andrew Parker, P.E.
City Attorney, Terry Miller

Enclosures:

Corrective Action Plan – 407 Dantzler Avenue and 1023 Roan Street
Temporary Construction Easement

Corrective Action Plan

Source of City Runoff from Right of Way



1023 Roan Street Temporary Construction Easement and Permanent Drainage Easement



15 in

15 in

N 411
O 411

N 412
O 412

N 409
O 409

N 407
O 407

N 406
O 406

N 404
O 404

N 1023
O 1023

N 1018
O 1018

N 1024
O 1024

N 1022
O 1022

Dantzler AVE

Roan ST

N Grimes ST

24 in

15 in

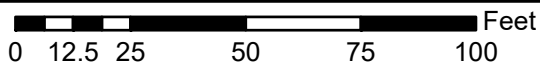
24 in

24 in

15 in

Temporary Construction Easement & Permanent Drainage Easement

0 12.5 25 50 75 100 Feet



TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This Temporary Construction Easement (sometimes the "Agreement") is made this 7th day of NOVEMBER, 2022 (the "Effective Date"), by and between **Harles Bonds**, party of the first part (hereinafter "Grantor"), and the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, party of the second part (hereinafter "Grantee"), their respective heirs, administrators, successors and assigns:

WHEREAS, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Grantee is a municipal corporation owning or controlling certain real property adjacent to the Property being used as a city street or right-of-way and more particularly described as **Roan Street and Dantzler Avenue** (the "City Property"); and

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the Property to perform certain construction activities for the public good and welfare and Grantor is willing to grant the requested access and use and subject to the terms hereof; and

WHEREAS, upon completion of the construction identified therein said construction easement shall cease; and

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) from each to the other in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Temporary Construction Easement.** Grantor, for and on behalf of her heirs, administrators, executors, legal representatives, and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across, and through that Property shown on Exhibit "A" (the "Construction Easement"). The rights, benefits, privileges, and easement granted herein are for the purpose of that construction identified in Exhibit B and as provided in Section 3 herein below (the "Construction Project"). Said Easement is temporary and shall expire upon completion of the construction therein.

2. **Term of Temporary Construction Easement.** The parties contemplate that the construction project can be completed in thirty (30) days or less once on site. However, the parties acknowledge that said construction start date may be delayed and the time frame for completion may be delayed due to weather conditions. Except as may be amended by Grantee upon written notice to Grantor, said Temporary Construction Easement shall be for a period of thirty (30) days beginning on the date of commencement. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather related delays as soon

as reasonably possible. The parties shall reasonably cooperate to complete the project in a timely manner.

3. **Construction and Additional Rights.** The Temporary Construction Easement granted herein shall include:

- (a) the right of entry into and upon the Property for the purpose of access and ingress to and egress from the Property in order to effect the rights, privileges and easements set forth herein;
- (b) the right to cut away, remove and dispose of all trees, undergrowth or other obstructions which exist on the Temporary Construction Easement, which removal is necessary for stormwater and erosion control within the easement area;
- (c) the right to install stone rip rap, fabric or other materials for stormwater and erosion control within the easement area; and
- (d) the right, when required by law, governmental regulation or necessity to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Property.

4. **Reservation of Rights.** Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Property.

5. **Conditions and Obligations of Construction Easement Use.**

- (a) The use of the Property by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Property. Any such use of this Temporary Construction Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the Property to the greatest extent practicable.
- (b) Any construction or activities performed under this Temporary Construction Easement by Grantee shall be done in a good workmanlike manner and the Property shall be left in a clean and orderly condition, with all debris removed therefrom, and any areas which may have been disturbed by such work shall be restored to their former condition as nearly as practicable.

6 **Covenants of Grantor.**

- (a) Grantor waives all right to any compensation for the use and enjoyment of the rights and privileges granted herein and further acknowledges that the use granted herein does not constitute an action of eminent domain or condemnation by the Grantee. Grantor does not waive any claim for damages that may result from the negligent acts or omissions of the Grantee or its contractors in its use of the Temporary Construction Easement.

- (b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Property above described, that Grantor has a good and lawful right to convey said easement, rights and privileges granted herein.
7. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift of dedication to the general public or for any general public use.
8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and understanding between Grantor and Grantee relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.
9. **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.
10. **Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and upon execution by the Grantor and Grantee.
11. **Time of Essence.** Time is of the essence with respect to this Agreement.
12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

[Signatures on next page]

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Signed, sealed and delivered
in the presence of:

Brittany Minn
Unofficial Witness

TOSHA HAYNES
Notary Public

My Commission Expires: 4-3-2026

Grantor:

Harles Bonds
Harles Bonds

Acceptance of Grantee:

CITY OF DALTON

Authorized Officer



EXHIBIT "A"

✓ After recording, Return to:
James E. Toland, Jr., P.C.
510 S. Thornton Ave.
Dalton, GA 30720
STATE OF GEORGIA
WHITFIELD COUNTY

Deed Doc: QCD
Recorded 02/10/2022 09:14AM
Georgia Transfer Tax Paid : \$0.00
BABS BAILEY
Clerk Superior Court, WHITFIELD County, Ga.
BK 06914 Pg 0003 0004

Title Not Checked

QUITCLAIM DEED

PLW000389

THIS INDENTURE, made the 28th day of January, 2022, between Greg Maurice Bonds (hereinafter "Grantor") and Harles Bonds (hereinafter "Grantee").

WITNESSETH, that the Grantor, for and in consideration of the sum of one dollar (\$1.00) and other good and valuable considerations in hand paid at and before the sealing and delivery of these presents, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby remise, convey and forever QUITCLAIM unto the said Grantee, the following described property, to-wit:

All that tract or parcel of land situate, lying and being in Land Lot 202 in the 12th District and 3rd section of Whitfield County, Georgia, and being Lots Nos. 38-41 inclusive of the Dantzler Subdivision, as shown by plat of record in Plat Book 1, Page 161, in the Office of the Clerk of Superior Court, Whitfield County, Georgia, and Lot Nos. 49 and 50 of the new Anderson Subdivision, as shown by Plat of record in Plat Book 1, Page 207, in the Office of the Clerk of Superior Court, Whitfield County, Georgia, said lots being contiguous and forming one tract described as follows: BEGINNING at a fence on the North side of Roan Street at the end of the curvature formed by the rounding of the intersection of the North side of Roan Street with the West side of Dantzler Avenue; thence South 88° 51 minutes 13 seconds West along the North side of Roan Street 160.06 feet to a fence corner; thence North 1° 13 minutes 1 second West 133.36 feet to a fence corner and an iron pin; thence North 87° 58 minutes 45 seconds East 133.36 feet to a fence corner on the West side of Dantzler Avenue; thence South 0° 2 minutes 8 seconds East along the West side of Dantzler 108.59 feet to a fence corner at the beginning of the curvature formed by the rounding of the intersection of the West side of Dantzler Avenue with the North side of Roan Street; thence along and with said curvature 30.65 feet to the point of beginning.

TO HAVE AND TO HOLD the said described premises, together with all rights and appurtenances to the same belonging, unto the Grantee, and to the heirs and assigns of the Grantee forever, so that neither Grantor nor any person or persons claiming under Grantor shall

Ex 06914 P: 0004

at any time, by any ways or means, have, claim or demand any right or title to said premises or appurtenances, or any rights thereof.

IN WITNESS WHEREOF, Grantor has signed, sealed and delivered this deed, all being done as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

[Signature]
GIVEN FOR

[Signature]
Witness

Kelli Burnette
Notary



EXHIBIT "B"

1023 Roan Street Temporary Construction Easement
and Permanent Drainage Easement



TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This **Temporary Construction Easement** (sometimes the "Agreement") is made this 20 day of September, 2022 (the "Effective Date"), by and between **Juan Prieto**, party of the first part (hereinafter "Grantor"), and the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, party of the second part (hereinafter "Grantee"), their respective heirs, administrators, successors and assigns:

WHEREAS, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Grantee is a municipal corporation owning or controlling certain real property adjacent to the Property being used as a city street or right-of-way and more particularly described as **Dantzler Avenue** (the "City Property"); and

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the Property to perform certain construction activities for the public good and welfare and Grantor is willing to grant the requested access and use and subject to the terms hereof; and

WHEREAS, upon completion of the construction identified therein said construction easement shall cease; and

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) from each to the other in hand paid, the covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Temporary Construction Easement.** Grantor, for and on behalf of her heirs, administrators, executors, legal representatives, and assigns, does hereby grant unto Grantee, a temporary, non-exclusive easement in, on, over, under, across, and through that Property shown on Exhibit "A" (the "Construction Easement"). The rights, benefits, privileges, and easement granted herein are for the purpose of that construction identified in Exhibit B and as provided in Section 3 herein below (the "Construction Project"). Said Easement is temporary and shall expire upon completion of the construction therein.

2. **Term of Temporary Construction Easement.** The parties contemplate that the construction project can be completed in thirty (30) days or less once on site. However, the parties acknowledge that said construction start date may be delayed and the time frame for completion may be delayed due to weather conditions. Except as may be amended by Grantee upon written notice to Grantor, said Temporary Construction Easement shall be for a period of thirty (30) days beginning on the date of commencement. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather related delays as soon

as reasonably possible. The parties shall reasonably cooperate to complete the project in a timely manner.

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- (b) the right to cut away, remove and dispose of all trees, undergrowth or other obstructions which exist on the Temporary Construction Easement, which removal is necessary for stormwater and erosion control within the easement area;
- (c) the right to install stone rip rap, fabric or other materials for stormwater and erosion control within the easement area; and
- (d) the right, when required by law, governmental regulation or necessity to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Property.

4. **Reservation of Rights.** Except for the rights, privileges, benefits and easements granted herein, Grantor hereby reserves all its right, title and interest in and to the Property.

5. **Conditions and Obligations of Construction Easement Use.**

- (a) The use of the Property by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Property. Any such use of this Temporary Construction Easement by the Grantee shall be undertaken in such a manner as to minimize the disturbance to and interruption of Grantor's use of the Property to the greatest extent practicable.
- (b) Any construction or activities performed under this Temporary Construction Easement by Grantee shall be done in a good workmanlike manner and the Property shall be left in a clean and orderly condition, with all debris removed therefrom, and any areas which may have been disturbed by such work shall be restored to their former condition as nearly as practicable.

6 **Covenants of Grantor.**

- (a) Grantor waives all right to any compensation for the use and enjoyment of the rights and privileges granted herein and further acknowledges that the use granted herein does not constitute an action of eminent domain or condemnation by the Grantee. Grantor does not waive any claim for damages that may result from the negligent acts or omissions of the Grantee or its contractors in its use of the Temporary Construction Easement.

- (b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Property above described, that Grantor has a good and lawful right to convey said easement, rights and privileges granted herein.
7. **No Public Dedication.** Nothing contained in this Agreement shall be deemed to be a gift of dedication to the general public or for any general public use.
8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and understanding between Grantor and Grantee relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.
9. **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.
10. **Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and upon execution by the Grantor and Grantee.
11. **Time of Essence.** Time is of the essence with respect to this Agreement.
12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

[Signatures on next page]

IN WITNESS WHEREOF, the Grantor has signed, sealed and delivered this Agreement as of the day and year first set forth above.

Signed, sealed and delivered
in the presence of:

Grantor:

L. Gordon Sheppard
Unofficial Witness

Juan Prieto
Juan Prieto

Tosha Haynes
Notary Public
My Commission Expires: 4-3-26

Acceptance of Grantee:

CITY OF DALTON



Authorized Officer

EXHIBIT "A"

✓
FEARLEY & PRICE, LLC - HOME LOCATION
2288 PARKLAKE DRIVE, SUITE 200
ATLANTA, GEORGIA 30345
FILE NO. 145-371284-NW
To: [] From: []
Time: []

Deed Doc: WD
Recorded: 07/24/2012 09:48AM
Georgia Transfer Tax Paid: \$0.00
MELJCA KENDRICK
Clerk Superior Court, WHITFIELD County, Ga.
R# 05761 P# 0034-0035

PT 2245

STATE OF TENNESSEE
COUNTY OF DAVISON

SPECIAL WARRANTY DEED

THIS INSTRUMENT, made this 18th day of July, 2012 between SHAUN DONOVAN, the SECRETARY OF HOUSING and URBAN DEVELOPMENT of Washington, D.C., party of the first part and

JUAN PRIETO, SOLE PROPRIETOR

of Whitfield County, Georgia, party(ies) of the second part.

WITNESSETH, that the said party of the first part, for and in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm, unto the said party(ies) of the second part, and the heirs and assigns of the said party(ies) of the second part, the following described real property situated and being in the County of Whitfield, State of Georgia, to wit:

A CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING IN THE CITY OF DALTON, LAND LOT NO 202 OF THE 12TH DISTRICT AND 3RD SECTION OF WHITFIELD COUNTY, GEORGIA, AND KNOWN AS LOTS NO. 35, 36, AND 37 OF THE DANTZLER SUBDIVISION, AS PER PLAT RECORDED IN PLAT BOOK 1 PAGE 181, OFFICE OF THE CLERK OF THE SUPERIOR COURT OF WHITFIELD COUNTY, GEORGIA, SAID PLAT BEING INCORPORATED HEREIN AND MADE A PART HEREOF BY REFERENCE.

TOGETHER WITH AND SUBJECT TO THAT CERTAIN BOUNDARY LINE AGREEMENT DATED MAY 28, 1974, AND RECORDED IN DEED BOOK 368 PAGE 81, WHITFIELD COUNTY, GEORGIA LAND RECORDS.

Parcel i. D. #: 12-202-02-013
Property Address: 407 Dantzler Ave, Dalton, GA 30721

BEING the same property acquired by the party of the first part pursuant to the provisions of the National Housing Act, as amended (12 USC 1701 et seq) and the Department of Housing and Urban Development Act (42 USC 3531 et seq).

TO HAVE AND TO HOLD the said property heretofore described, with all and singular the rights, members and appurtenances therunto appertaining, to the only proper use, benefit and behoof of the said party(ies) of the second part, forever, in fee simple, and the said party of the first part specially warrants the title to the said above-described bargained property against the lawful claims of all persons claiming by through or under the party of the first part.

SUBJECT TO ALL covenants, restrictions, reservations, easements, conditions and rights appearing of record and subject to any state of facts as accurate survey would show.

THIS DEED NOT TO BE IN EFFECT UNTIL: July 18, 2012

FILE NO. 100-371281-MW
PAGE 2

IN WITNESS WHEREOF, the undersigned has set his/her hand and seal as a principal and/or officer of HOMETELCO, LP, the Asset Manager for the United States Department of Housing and Urban Development for and on behalf of the Secretary of Housing and Urban Development, under the re-delegation of authority published at 78 F.R. 43171 (8/12/05), as amended.

Signed, sealed and delivered, in the presence of:

WITNESS

NOTARY PUBLIC



Secretary of Housing and Urban Development of Washington, D.C., its successors and/or assigns

By: Its Authorized Signatory whose name and signature appears below.

HOMETELCO, LP as Asset Manager
Contractor for O-OPC-23637

For HUD by: 
Derice Green, Assistant Project Manager

EXHIBIT "B"

407 Dantzler Avenue Temporary Construction Easement
and Permanent Drainage Easement

