



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 12/19/2023

**Agenda Item:** 701 Greenwood Drive Temporary Construction Easement & Quit Claim Deed

**Department:** Public Works

**Requested By:** Chad Townsend

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

**Cost:** N/A

**Funding Source if Not in Budget** N/A

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

This request is to execute the Temporary Construction Easement, and Quit Claim Deed located on the property of 701 Greenwood Drive. The Temporary Construction Easement is to complete elements of the Ridge Street Stormwater Bypass Project that encroach into the property, and the Quit Claim Deed is for half of the unopened Ridge Street right-of-way. The records obtained from the Clerk's office indicate the unopened right-of-way in question was previously closed by the City at a previous Mayor and Council Meeting in 1986.

The Temporary Construction Easement is valid through the completion of construction of the Ridge Street Stormwater Bypass Project.

See attached proposal for additional information about the scope of services.

## TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

YH This Temporary Construction Easement (sometimes the "Agreement") is made this day of December, 2023 (the "Effective Date"), by and between **Ann H. Davies**, 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 **Ridge Street** (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 agreements by and between the parties as described, together with 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 his 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 one-hundred-and-sixty-eight (168) calendar 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 one-hundred-and-sixty-eight (168) calendar 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, including without limitation the right to construct and maintain a private driveway for ingress and egress to the Grantor's tract or parcel from Ridge Street in accordance with the City's private drive access standards.

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.
- (c) Grantee covenants and agrees to convey its interest in and to the west one half of the abandoned portion of Ridge Street, as it abuts Lots Nos. 78, 79, 80, 81, 82, 83, 84, 85, 86, 120, 121, 122, 123, 124, 125, 126, 127, 128 and 129 of the Greenwood Subdivision, by a quit claim deed (the "Quit Claim Deed"), to Grantee, subject to any existing utility easements and subject to the easements granted in this Agreement by Grantor to Grantee.
- (d) Grantee agrees to construct a driveway apron from the existing City of Dalton Right of Way at the southerly terminus of Ridge Street (the "Existing Right of Way") to

the north line of property described in the Quit Claim Deed referenced in paragraph 5(c) above, that will allow access from the Existing Right of Way to the Property (the "Access Right of Way").

- (e) Grantee covenants and agrees that the Access Right of Way will suffice for the purposes of any present or a future driveway permit or building permit used for access to or used in connection with the construction of a building on the Property as the connection to the Existing Right of Way and the Property.

**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:

  
\_\_\_\_\_  
Unofficial Witness

Grantor:

  
\_\_\_\_\_  
Ann H. Davies

Notary Public  
My Commission Expires:



Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Unofficial Witness

Grantee:

CITY OF DALTON

\_\_\_\_\_  
Notary Public  
My Commission Expires:

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Clerk

## **EXHIBIT "A"**

All that tract or parcel of land lying and being in Land Lot No. 237 in the 12th District and 3rd Section of Whitfield County, Georgia, and being Lot No.129 and a portion of Lots Nos. 78, 79, 80, 81, 82, 83, 84, 85, 86, 120, 121, 122, 123, 124, 125, 126, 127, 128 and 129 recorded in Plat Book 1 Page 68-29 (Plat Cabinet A Slides 16-17), Whitfield County, Georgia Land Records, reference to which is hereby made and incorporated herein by reference.

701 GREENWOOD DR. TEMPORARY CONSTRUCTION EASEMENT

EXHIBIT "B"



[Space above this line for recording data.]

Please Record and Return To:

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

## QUIT CLAIM DEED

**Georgia, Whitfield County**

**THIS INDENTURE** made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between the City of Dalton, Georgia, a municipal corporation of the State of Georgia, Grantor, and Ann H. Davies, Grantee.

The words "Grantor" and "Grantee" whenever used herein shall include all individuals, corporations and any other persons or entities, and all the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and all those holding under either of them, and the pronouns used herein shall include, when appropriate, either gender and both singular and plural, and the grammatical construction of sentences shall conform thereto. If more than one party shall execute this deed each Grantor shall always be jointly and severally liable for the performance of every promise and agreement made herein.

**THE GRANTOR**, for and in consideration of the sum of one dollar and other valuable considerations, in hand paid at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does grant, bargain, sell, convey, remise, release and forever quit claim unto the said Grantee, all the right, title, interest, claim or demand which the Grantor may have in and to the following land:

The west half of Ridge Street adjoining Lot Nos. 120, 121, 122, 123, 124, 125, 126, 127, 128 and 129 of the Greenwood Subdivision, as shown on a plat of survey of said subdivision recorded in Plat Book 1 Page 68-29 (Plat Cabinet A Slides 16-17), Whitfield County, Georgia Land Records, reference to which is hereby made and incorporated herein by reference.



**THE GRANTOR**, hereby reserves for itself, its successors and assigns, the right to construct, maintain, operate, repair and remove electric, natural gas, water, drainage, and/or sanitary sewer lines through over or under said property.

**TO HAVE AND TO HOLD** the said tract of land, with all and singular the rights, members, and appurtenances thereof, to the same being, belonging, or in any wise appertaining, to the only proper use, benefit and behoof of the said Grantee so that neither Grantor nor any other person claiming under him shall at any time, claim or demand any right, title or interest to the said tract of land, or its appurtenances.

**IN WITNESS WHEREOF**, this deed has been duly executed and sealed by Grantor the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**City of Dalton, Georgia**

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
Notary Public

Attest: \_\_\_\_\_  
Clerk

My commission expires:

[Notarial Seal]

[Seal]