



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 9/16/2024

Agenda Item: 620 McFarland Avenue Temporary Construction Easement

Department: Public Works

Requested By: Chad Townsend

Reviewed/Approved by City Attorney? Yes

Cost: N/A

Funding Source if Not in Budget -----

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

This request is to authorize the Temporary Construction Easement for constructing elements of the Franklin and Valley Drive Stormwater Bypass Project located within the property of 620 McFarland Avenue.

The work is to be completed within 24 months from the date of easement authorization.

See attached temporary construction easement for additional information about the scope of work being performed.

[Space above this line for recording data.]

Please Record and Return To:

Jonathan Bledsoe
The Minor Firm
P.O. Box 2586
Dalton, GA 30722-2586

TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This Temporary Construction Easement (this "Agreement") made this 5 day of September, 2024, between **Billy Ray Mooney and Caroline D. Mooney**, Grantor, and the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, Grantee.

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property and improvements in the City of Dalton, Whitfield County, Georgia, as being more particularly described in Exhibit "A," attached hereto and made a part hereof by reference (the "Servient Property"); and

WHEREAS, Grantee is the owner of certain real property adjacent to the Servient Property and being more particularly described that certain public roadway known as **McFarland Avenue** (the "City Property"); and

WHEREAS, Grantee has constructed, or will construct, a storm sewer pipe and/or storm water structures located on the Servient Property (collectively the "Municipal Storm Sewer") and being located on that certain portion of the Servient Property more particularly described as the "Construction Easement" on the depiction attached hereto as Exhibit "B," attached hereto and made a part hereof by reference (the "Storm Drainage Easement"); and

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the Servient Property for a period set forth herein 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;

NOW THEREFORE, for and in consideration of the sum of Ten Dollars and other good and valuable considerations, in hand paid at and before the sealing and delivering of these presents, the receipt of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. *Recitals.* The parties hereto acknowledge that the above recitals to this Agreement are true and correct, and agree that the same are incorporated by reference into the body of this Agreement.
2. *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 "Temporary Construction Easement"). The rights, benefits, privileges, and easement granted herein are for the purpose of the construction of the Municipal Storm Sewer (the "Construction Project"). Said Easement is temporary and shall begin upon execution of this Agreement and expire upon the earlier of twenty-four (24) months from the date of this Agreement or completion of the Construction Project ("Term").
3. *Extension of Term of Construction Easement.* The parties contemplate that the Construction Project can be completed during the Term. However, the parties acknowledge that the time for completion may be delayed due to weather or other conditions. Grantee shall have the right upon written notice to Grantor to extend the Temporary Construction Easement up to one additional Term in the event of delays in the Construction Project. Grantee shall notify Grantor of any reasonable delay in commencement or delay in completion due to weather or other delays as soon as reasonably possible. The parties shall reasonably cooperate to complete the project in a timely manner.
4. *Rights to Maintain.* Grantee shall have all rights, benefits, privileges, and easements necessary or convenient for the full enjoyment and use of the Temporary Construction Easement for the purposes described herein, including the right of entry into and upon the Servient Property for the purpose of access and ingress to and egress from the Storm Drainage Easement in order to effect the rights, privileges and easements set forth herein. Grantee shall have the right to cut away and keep clear, remove and dispose of all trees, undergrowth or other obstructions now or as may exist on the Temporary Construction Easement or Storm Drainage Easement, which removal is necessary for Grantee's use and enjoyment of easements, rights and privileges granted herein, and Grantee shall also have the right to conduct scientific, geotechnical, archaeological or other studies, investigation or other testing on or below the ground surface of the Temporary Construction Easement or Storm Drainage Easement. However, nothing in this Agreement shall obligate Grantee to take any such action, and Grantor hereby releases, indemnifies, and holds harmless Grantee from any and all claims which in any way pertain to construction or maintenance of the Municipal Storm Sewer, Temporary Construction Easement, or Storm Drainage Easement.
5. *Covenants of Grantor.* Grantor waives all right to any further compensation for the use and enjoyment of the rights and privileges granted herein. Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Servient Property, that it has a good and lawful right to convey said easement, rights and privileges granted herein. Grantor irrevocably binds itself to refrain from making any claim or demand, or to commence, cause, or permit to be prosecuted any action in law or equity against Grantee, or any other person, firm or entity claiming by or through Grantee on account of any damage that may occur or resulting from the installation or the operation of the Temporary Construction Easement.
6. *Running with the Land.* It is intended that each of the Easements, covenants, conditions, rights, and obligations set forth herein shall run with the land and create equitable servitudes in favor of the City Property benefited thereby, shall bind every person having any fee, leasehold, or other interest therein and

shall inure to the benefit of the respective Parties and their successors, assigns, heirs, and personal representatives.

7. *Jurisdiction and Venue* The laws of the State of Georgia shall govern the interpretation, validity, performance, and enforcement of this Agreement. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County, Georgia, and the parties hereby waive any and all objections or defenses to said jurisdiction and venue.

8. *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.

9. *Time of Essence.* Except as otherwise specifically provided herein, time is of the essence of this Agreement.

10. *Entire Agreement.* This Agreement and any permanent Storm Drainage Easement executed in connection herewith contain the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby. In the event of any conflict between this Agreement and the permanent Storm Drainage Easement, the terms of the permanent Storm Drainage Easement shall control.

11. *Successors and Assigns.* This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns.

12. *Counterparts.* This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

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

Signed, sealed and delivered
In the presence of:

L. Jackson Sheppard

Unofficial Witness

Tosha Haynes

Notary Public
My commission expires: **04-03-2026**



GRANTOR:

Billy Ray Mooney

Billy Ray Mooney (Seal)

Caroline D. Mooney

Caroline D. Mooney (Seal)

RECEIPT ACKNOWLEDGED BY:

Signed, sealed and delivered
In the presence of:

Unofficial Witness

Notary Public
My commission expires:
[Notarial Seal]

GRANTEE:

City of Dalton, Georgia

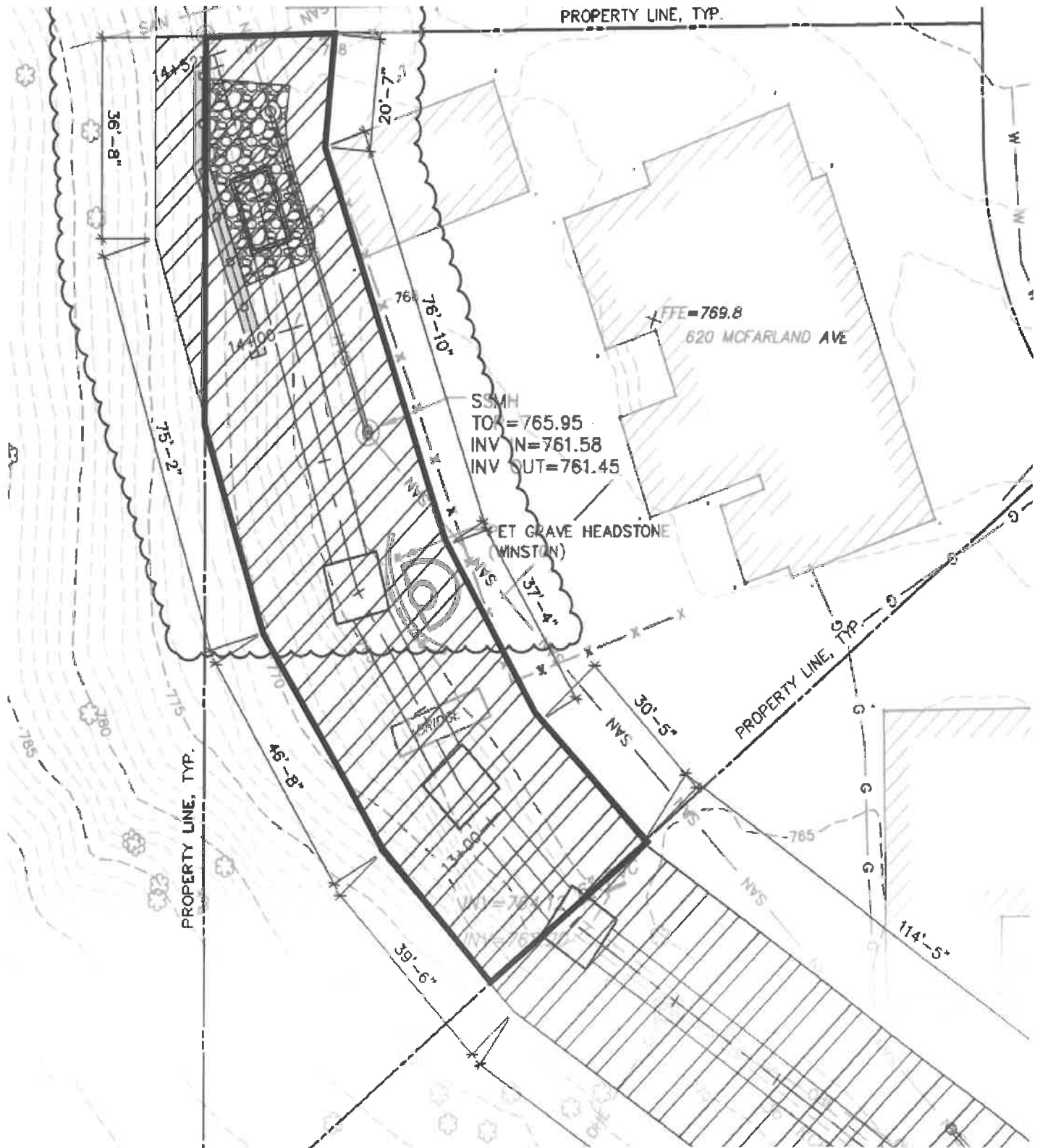
By _____
Title:

EXHIBIT "A"

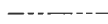
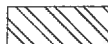

All that tract or parcel of land lying and being in Land Lot 237 of the 12th District and 3rd Section of Whitfield County, Georgia, being LOT NO. 47 OF HAMILTON HEIGHTS SUBDIVISION as shown on the plat of said subdivision of record in Plat Book 1, Page 171, in the Office of the Clerk of the Superior Court of Whitfield County, Georgia, reference to which plat is hereby made and incorporated herein by reference for a more particular description of said property. See deeds in chains of title recorded in Deed Book 79, Page 347 and Deed Book 5563, Page 148, Whitfield County, Georgia.

EXHIBIT "B"

620 McFarland Avenue Temporary Construction Easement



LEGEND

-  PROPERTY BOUNDARY
-  TEMPORARY CONSTRUCTION AND PERMANENT DRAINAGE EASEMENT
-  620 MCFARLAND AVENUE TEMPORARY CONSTRUCTION EASEMENT