



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 6/19/2023

Agenda Item: 615 Birchfield Avenue Stormwater Improvement Corrective Action Plan, Temporary Construction, and Permanent Drainage Easements

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 approve the Corrective Action Plan for stormwater improvements at the property of 615 Burchfield Avenue. Scope of services include erosion protection along a drainage swale running alongside of the driveway, and improving the drainage connection for the box culvert spanning underneath the driveway where runoff from the road, and the drainage swale meet. Should this Corrective Action Plan be approved, Public Works Department will complete the scope of work.

See attached Corrective Action Plan for additional information about the scope of services.

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 – 615
Burchfield Avenue Permanent Drainage Easement**

DATE: May 5th, 2023

The Public Works Department (the Department) has been working on stormwater issues throughout the City, and one area of concern is located on the property at 615 Burchfield Avenue. Historical flooding has occurred at the Northeast of the property during large storm events to the point of overtopping a box culvert and the road. A defined swale conveys significant stormwater runoff from the right-of-way from approximately 41 acres to the Northwest of the property. The swale enters the property from the North and heads East-Southeast for approximately fifty feet before entering a reinforced concrete box culvert. The culvert heads South for approximately 36 feet to a junction box, to which a drop inlet drains the surrounding area. Then, a 42-inch RCP conveys the runoff South, exiting the property at the Southeast corner.

The Department has received calls to mitigate the flooding on the property and the street; therefore, the Department has developed the following Corrective Action Plan to address the historical flooding issue.

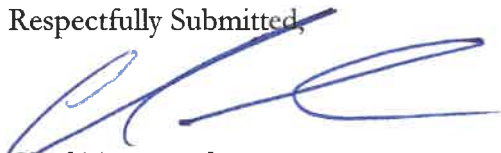
The Department is proposing constructing a structure to reduce minor loss impacts on the stormwater conveyance network at the inflow point of the existing box culvert located outside of City right-of-way. Furthermore, the Public Works Department is proposing installing riprap on the southern part of the streambank to reduce erosion. Therefore, a temporary construction easement, and permanent drainage easement will be required for 615 Burchfield Avenue for maintenance of the conveyance network.

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 within the Mill Creek drainage basin. The Corrective Action Plan requires a temporary construction and permanent drainage easement be provided by the property owner and accepted by the City Council. The property owner must provide written commitment to provide the easement areas described. 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 – 615 Burchfield Avenue Permanent Drainage Easement
Storm Drainage Easement Agreement

615 Burchfield Avenue Corrective Action Plan



TEMPORARY CONSTRUCTION EASEMENT

Georgia, Whitfield County

This **Temporary Construction Easement** (sometimes the "Agreement") is made this 1st day of June, 2023 (the "Effective Date"), by and between **Horacio Pacheco Martinez**, 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 **Burchfield 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 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 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:

Grantor:


Unofficial Witness


Horacio Pacheco Martinez

Notary Public

My Commission Expires: 04-03-2026

Acceptance of Grantee:

CITY OF DALTON



Authorized Officer

EXHIBIT "A"

Deed Doc: WD
Recorded 11/04/2021 10:29AM
Georgia Transfer Tax Paid \$195.00
SABS BAILLY
Clerk Superior Court, WHITFIELD County, Ga
Sk 06893 Pg 0275

✓
Please return to:
W. Lane Haley, PC
217 W. Crawford St.
Dalton, GA 30720
File #: 0921RE410
STATE OF GEORGIA
COUNTY OF WHITFIELD

PR1003445

LIMITED WARRANTY DEED

THIS INDENTURE made this 29th day of October, 2021 between
Stephanie Brooke Perry
as party or parties of the first part, hereinafter called Grantor, and
Horacio Pacheco Martinez
as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and
"Grantee" to include their respective heirs, successors and assigns where the context requires or
permits).

WITNESSETH that: Grantor, for and in consideration of the sum of TEN DOLLARS and
other good and valuable consideration (\$10.00) 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 Grantee, the following described property:

All that tract or parcel of land lying and being in Land Lot 202 of the 12th District and 3rd
Section, Whitfield County, Georgia and being Lots 155, 156, 157, and 158 of Burchfield
Subdivision as shown by plat of record in Plat Book 3 Page 24 Whitfield County, Georgia
records which plat is incorporated herein and made a part hereof by reference.

Parcel ID: 12 202 05 005

Address: 615 and 617 Burchfield Avenue, Dalton, Georgia

Subject to easements, agreements, covenants, restrictions, right of way deeds, matters of
plat, governmental ordinances, and other lawful matters affecting said property.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights,
members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to
the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above-
described property unto the said Grantee against the claims of all persons owning, holding or
claiming by, through or under the said Grantor.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal this first day and
year first above written.

Signed, sealed and delivered in the presence of:

Witness

Notary Public

(Seal)

My commission expires



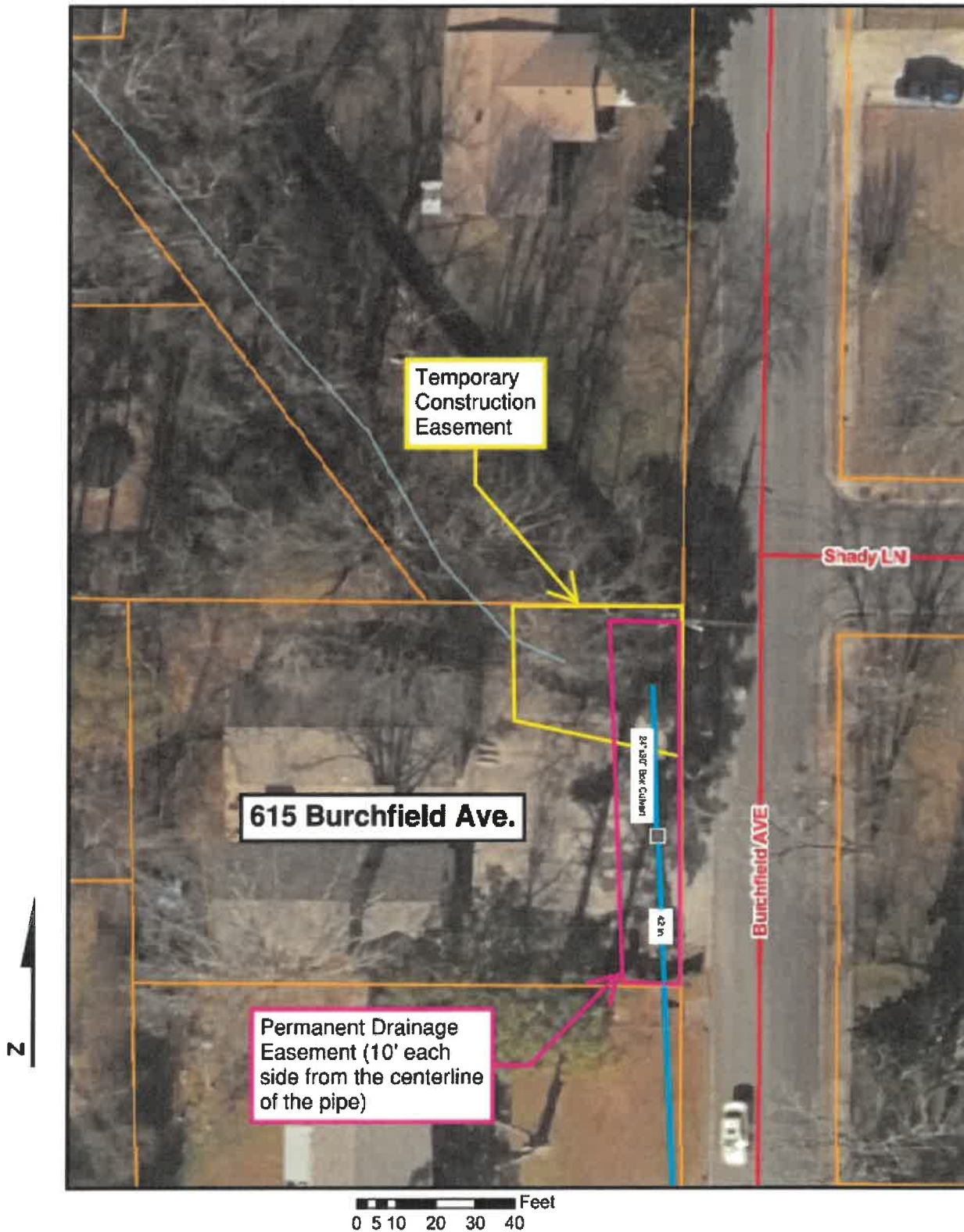
Stephanie Brooke Perry

(Seal)

(Seal)

EXHIBIT "B"

615 Burchfield Ave Temporary Construction Easement



[Space above this line for recording data.]

Please Record and Return To:

Terry L. Miller
Mitchell & Mitchell, P.C.
108 S. Thornton Ave.
P.O. Box 668
Dalton, GA 30722-668

STORM DRAINAGE EASEMENT AGREEMENT

Georgia, Whitfield County

This Storm Drainage Easement Agreement (this "Agreement") is made this 1st day of June, 2023 (the "Effective Date"), by and between **Horacio Pacheco Martinez**, of the first part (hereinafter called "Grantor"), and the City of Dalton, Georgia, a municipal corporation of the State of Georgia, party of the second part (hereinafter called "Grantee"), their respective heirs, administrators, successors and assigns:

WITNESSETH:

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 "Pacheco Property"); and

WHEREAS, Grantee is the owner of certain real property adjacent to the Pacheco Property and more particularly described as Burchfield Avenue (the "City Property"); and

WHEREAS, Grantee has constructed, or will construct, a storm sewer pipe and storm water structures on the Pacheco Property (collectively the "Pacheco Municipal Storm Sewer"); and

WHEREAS, Grantor acknowledges that the work to be performed in this Agreement may not fully mitigate all flooding of the Pacheco Property; and

WHEREAS, Grantee desires non-exclusive access to and use of a portion of the Pacheco Property to discharge storm water originating from the City Property into the Pacheco Municipal

Storm Sewer; and Grantor is willing to grant the requested access and use on and subject to the terms hereof; and

WHEREAS, Grantee desires non-exclusive temporary access and use of a portion of the Pacheco Property to construct and/or maintain the Pacheco Municipal Storm Sewer and Grantor is willing to grant the requested access and use on and subject to the terms hereof; and

WHEREAS, upon completion of the installation and construction of the Pacheco Municipal Storm Sewer, Grantee intends to be responsible for all costs associated with the use, maintenance, repair, replacement, inspection, and reconstruction of the Pacheco Municipal Storm Sewer, as it relates to maintaining reasonable drainage flow from the right of way to the discharge point; and

WHEREAS, in order to evidence the understanding between Grantor and Grantee with respect to the Pacheco Municipal Storm Sewer, Grantor intends to declare, establish, create, grant, and/or convey certain easement rights to Grantee for and with respect to the installation, utilization, maintenance, repair and re-construction of the installations and utilization of the Storm Drainage Easement (as defined herein below), all as more particularly set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) 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. **Storm Drainage Easement.** Grantor, and for and on behalf of his heirs, administrators, successors and assigns, and for and on behalf of anyone claiming by, through or under Grantor, does hereby grant, bargain, sell and convey unto Grantee and its successors and assigns, a perpetual, non-exclusive easement in, on, over, under, across and through that certain portion of the Pacheco Property shown as the "Perm. Drainage Esmt" on the aerial drawing attached hereto as Exhibit "B" and incorporated herein by this reference (also the "Storm Drainage Easement"). The rights, benefits, privileges, and easement granted herein is for the purpose of the non-exclusive use and enjoyment of the Storm Drainage Easement flowing to channel, distribute or transport storm water originating from or onto and across the City's Property through the Pacheco Municipal Storm Sewer. Notwithstanding the foregoing, Grantor hereby agrees to accept such storm water discharge through the Pacheco Municipal Storm Sewer in its current intensity, rate, volume and location.

2. **Additional Rights.** The Storm Drainage Easement granted herein shall include:

(a) all rights, benefits, privileges, and easements necessary or convenient for the full enjoyment and use of the Storm Drainage Easement for the purposes described herein;

(b) the right of entry into and upon the Pacheco 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;

(c) 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 Storm Drainage Easement, which removal is necessary for Grantee's use and enjoyment of easements, rights and privileges granted herein; 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 Storm Drainage Easement.

3. **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 Storm Drainage Easement appurtenant to his fee simple estate and for any and all purposes not inconsistent with Grantee's easement as expressly permitted herein.

4. **Conditions and Obligations of Easement Use.**

(a) The use of the Storm Drainage Easement by the Grantee shall be in accordance with all laws, ordinances, codes, and regulations of all governmental authorities having jurisdiction over the Storm Drainage Easement. Any such use of the Storm Drainage 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 Pacheco Property to the greatest extent practicable.

(b) Grantee shall operate, repair, replace and maintain continuously the Pacheco Municipal Storm Sewer on or within the Storm Drainage Easement.

(c) Grantee shall be solely responsible to maintain reasonable drainage flow from the right of way to the discharge point, which shall be at Grantee's absolute discretion. The Pacheco Municipal Storm Sewer and Storm Drainage Easement shall remain free and clear of all liens and other encumbrances arising out of the exercise by the Grantee of its rights hereunder.

(d) Any construction, maintenance, repair or other work or activities performed on the Pacheco Municipal Storm Sewer or within the Storm Drainage Easement by Grantee shall be done in a good, workmanlike manner and the Storm Drainage Easement shall be left in a clean and good condition, with all debris removed therefrom and with trenches and cuts properly filled so that all grades, paved areas, and permitted landscaped and grassed areas and other permitted improvements which may have been disturbed by such work are restored to their former condition as nearly as practicable; provided that if the affected area within the Storm Drainage Easement is natural and has not been improved, such areas shall be smoothed to commercial lawn grade and seeded with grass following such activity.

(e) Except in the event of an emergency, Grantee shall use commercially reasonable efforts to provide Grantor with at least ten (10) days prior written notice of any construction, maintenance, repair or other work or activities to be performed on the Pacheco Municipal Storm Sewer or within the Storm Drainage Easement by Grantee.

(f) In the event that the Grantee, its employees, agents, or assigns, shall damage the Pacheco Municipal Storm Sewer, the area within the Storm Drainage Easement or the Pacheco Property, then, at its sole cost and expense and within thirty (30) days after receipt of written notice from Grantor that Grantee has caused such damage, Grantee shall repair, or cause to be repaired, such damage in a good, clean, and workmanlike manner, and to their former condition as nearly as practicable.

5. **Covenants of Grantor.**

(a) Grantor waives all right to any further compensation for the use and enjoyment of the rights and privileges granted herein.

(b) Grantor does hereby covenant with the Grantee that Grantor is lawfully seized and possessed of the Pacheco Property above described, that it has a good and lawful right to convey said easement, rights and privileges granted herein.

(c) 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 Storm Drainage Easement.

6. **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.

7. **Successors and Assigns.** The Storm Drainage Easement shall run with title to and burden the Pacheco Property and shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors and assigns of Grantor and Grantee. All obligations of Grantor and Grantee hereunder shall be binding upon their respective heirs, administrators, successors-in-title and assigns.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties 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, this Agreement shall be promptly recorded in the Deed Records of Whitfield County, Georgia.

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:

Jorge Campos
Unofficial Witness

Tosha Haynes

By: Horacio Pacheco Martinez (Seal)
Horacio Pacheco Martinez

Notary Public

My commission expires: 04-03-2026

[Notarial Seal]



Grantee:

City of Dalton

By: _____

Its: _____

Attest: _____
City Clerk

Unofficial Witness

Notary Public
My Commission Expires:

EXHIBIT "A"

✓ Please return to:
W. Lane Haley, PC
217 W. Crawford St.
Dalton, GA 30720
File #: 0921RE410
STATE OF GEORGIA
COUNTY OF WHITFIELD

Deed Doc: WD
Recorded 11/04/2021 10:29AM
Georgia Transfer Tax Paid \$193.00
KABS BAILLY
Clerk Superior Court, WHITFIELD County, GA
Bk 06893 Pg 0275

Plat 1003445

LIMITED WARRANTY DEED

THIS INDENTURE made this 29th day of October, 2021 between

Stephanie Brooke Perry

as party or parties of the first part, hereinafter called Grantor, and

Horacio Pacheco Martinez

as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of TEN DOLLARS and other good and valuable consideration (\$10.00) 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 Grantee, the following described property:

All that tract or parcel of land lying and being in Land Lot 202 of the 12th District and 3rd Section, Whitfield County, Georgia and being Lots 155, 156, 157, and 158 of Burchfield Subdivision as shown by plat of record in Plat Book 3 Page 24 Whitfield County, Georgia records which plat is incorporated herein and made a part hereof by reference.

Parcel ID: 12 202 05 005

Address: 615 and 617 Burchfield Avenue, Dalton, Georgia

Subject to easements, agreements, covenants, restrictions, right of way deeds, matters of plat, governmental ordinances, and other lawful matters affecting said property.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above-described property unto the said Grantee against the claims of all persons owning, holding or claiming by, through or under the said Grantor.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal this first day and year first above written.

Signed, sealed and delivered in the presence of:

Witness

Notary Public

(Seal)

Stephanie Brooke Perry

(Seal)

(Seal)

My commission expires

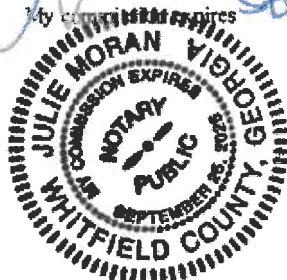


EXHIBIT "B"

615 Burchfield Ave Permanent Drainage Easement

