



## CITY COUNCIL AGENDA REQUEST

**Meeting Type:** Mayor & Council Meeting

**Meeting Date:** 6/17/2024

**Agenda Item:** 2251 Rocky Face Circle Corrective Action Plan

**Department:** Public Works

**Requested By:** Jackson Sheppard

**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 approve the Corrective Action Plan and corresponding Temporary Construction Easement, and Permanent Drainage Easement for stormwater improvements located within the property of 2251 Rocky Face Circle. Improvements include extending the closed conveyance system of runoff from city owned right of way approximately 115' utilizing 30" reinforced concrete pipes to mitigate existing surface flooding and scouring of the drainage channel occurring on the property.

If this Corrective Action Plan is approved, Public Works shall complete the improvements utilizing in-house resources.

See attached documentation for additional information about the scope of work.

**PUBLIC WORKS DEPARTMENT**

**CHAD TOWNSEND, DIRECTOR**

[ctownsend@daltonga.gov](mailto:ctownsend@daltonga.gov)

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



**ANNALEE HARLAN SAMS, MAYOR**

**CITY COUNCIL MEMBERS:**

DENNIS MOCK  
NICKY LAMA  
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 –  
2251 Rocky Face Circle

**DATE:** February 12<sup>th</sup>, 2024

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The Public Works Department (the Department) has been working on stormwater issues throughout the City, and an area of concern is located on the property at 2251 Rocky Face Circle (the Property). In the past, the Department installed riprap to mitigate erosion from stormwater conveyed through Rocky Face Circle. The stormwater travels East down the City right of way toward two catch basins Southwest of the Property. A 30" reinforced concrete pipe (RCP) under the road conveys the runoff from the catch basin on the South side of the road towards the catch basin on the North, and the runoff from the two catch basins outfall at the Southwest corner of the Property through a 30" RCP. A drainage swale then conveys the runoff North for approximately 115' before turning North-Northeast for approximately 190', at which point the runoff exits the Property.

The Department has received a request to mitigate the erosion at the outfall of the 30" pipe on the Southwest of the Property. Therefore, the Department is proposing to install a 30" pipe for approximately 88' to prevent further erosion issues to the West of the Property's driveway. Therefore, a temporary construction easement and permanent maintenance easement will be required for 2251 Rocky Face Circle.

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 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 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, Jonathan Bledsoe

Enclosures:

Corrective Action Plan – 2251 Rocky Face Circle  
Temporary Construction Easement

[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 17 day of June 2024, between **Jimmy Wilbanks and Jane G. Wilbanks**, Grantor, 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 **Rocky Face Circle** (the "City Property"); and

**WHEREAS**, Grantee has constructed, or will construct, a storm sewer pipe and/or storm water structures on the 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 aerial drawing 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:

  
Unofficial Witness

  
Notary Public

My commission expires

04-03-2026

**RECEIPT ACKNOWLEDG BY:**

Signed, sealed and delivered  
In the presence of:

**GRANTOR:**

 (Seal)  
Jimmy Wilbanks

 (Seal)  
Jane G. Wilbanks

**GRANTEE:**

**City of Dalton, Georgia**

Unofficial Witness

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

My commission expires:  
[Notarial Seal]

By \_\_\_\_\_  
Title:

## **EXHIBIT "A"**

All that tract or parcel of land lying and being in Land Lot No. 185 in the 12th District and 3rd Section of Whitfield County, Georgia, and being Lot No. 26 of Rocky Face Estates Subdivision, as shown by plat of record in Plat Book 8 Page 14 (Plat Cabinet A, Slide 245), 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 the land.



## EXHIBIT "B"

### 2251 Rocky Face Circle Temporary Construction Easement



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Please Record and Return To:

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

## STORM DRAINAGE EASEMENT

Georgia, Whitfield County

This Storm Drainage Easement (this "Agreement") made this 17 day of June, 2024, between **Jimmy Wilbanks and Jane G. Wilbanks**, Grantor, the **City of Dalton, Georgia**, a municipal corporation of the State of Georgia, Grantee.

### W I T N E S S E T H:

**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 **Rocky Face Circle** (the "City Property"); and

**WHEREAS**, Grantee has constructed, or will construct, a storm sewer pipe and/or storm water structures on the 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 "Perm. Drainage Esmt" on the aerial drawing attached hereto as Exhibit "B," attached hereto and made a part hereof by reference (the "Storm Drainage Easement"); and

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

**WHEREAS**, Grantor desires to grant to Grantee a non-exclusive access to and use of the Storm

Drainage Easement to collect storm water originating from the City Property into the Municipal Storm Sewer;

**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. *Creation of Easements.* Grantor, and for and on behalf of the heirs, administrators, successors and assigns, of Grantor, 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 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 Grantee's Property in part through the Municipal Storm Sewer. Notwithstanding the foregoing, Grantor hereby agrees to accept such storm water discharge through the Municipal Storm Sewer in its current intensity, rate, volume and location.
3. *Rights to Maintain.* Grantee shall have 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, 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 Storm Drainage Easement, which removal may be 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 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 or Storm Drainage Easement.
4. *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 Storm Drainage Easement.
5. *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.
6. *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.

7. *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.

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

9. *Entire Agreement.* This Agreement and any Temporary Construction 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 Temporary Construction Easement, the terms of this Agreement shall control.

10. *Notices.* All notices, demands, consents, approvals, and other requests which may be given or which are required to be given by either party to the other (each a "Notice") shall be in writing and may be: (A) hand delivered, (B) delivered by way of overnight delivery service (such as Federal Express Corporation or United Parcel Service, or other nationally recognized overnight courier service with confirmation of delivery), (C) transmitted via certified U.S. Mail return receipt requested, or (D) transmitted via electronic mail provided that the sender must obtain a written confirmation of receipt by way of electronic confirmation showing the date and time of the transmission. In the event Notice is provided by electronic mail a copy of the Notice must also be delivered the next day by method (A), (B), or (C) above. Notices shall not be given by any other means. All Notices shall be deemed effective either: (A) upon delivery if hand delivered, as evidenced by written receipt therefor, whether or not actually received by the person to whom addressed; (B) on the day deposited into the custody of a nationally recognized overnight delivery service for overnight next day delivery, addressed to such party at the address indicated herein; (C) on the date signed for if transmitted via certified U.S. Mail; or (D) the date of the receipt of a confirmation of electronic mail is received by the sender if a confirmation of receipt is received by the sender. Refusal to accept, or inability to deliver because of changed address of which no notice was given, shall be deemed receipt on the date of such refusal of delivery or inability to deliver. Either party may, from time to time, change the address to which Notices shall be sent by like Notice given to the other party hereto. The addresses for Notices given pursuant to this Agreement shall be as follows:

If to Grantor, to the then current street address of the parcel identified in Exhibit A as provided by the United States Post Office.

If to Grantee, to City of Dalton c/o City Administrator, 300 West Waugh Street #317, P.O. Box 1205, Dalton, GA 30722.

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:

J. Jackson Sheppard  
Unofficial Witness

Tosha Haynes  
Notary Public

My commission expires: 04-03-2026

GRANTOR:

Jimmy Wilbanks (Seal)  
Jimmy Wilbanks

Jane G. Wilbanks (Seal)  
Jane G. Wilbanks



**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 No. 185 in the 12th District and 3rd Section of Whitfield County, Georgia, and being Lot No. 26 of Rocky Face Estates Subdivision, as shown by plat of record in Plat Book 8 Page 14 (Plat Cabinet A, Slide 245), 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 the land.

## EXHIBIT "B"

### 2251 Rocky Face Circle Permanent Drainage Easement

