

## TEMPORARY RIGHT OF ACCESS AGREEMENT

### STATE OF GEORGIA

### COUNTY OF FULTON

THIS TEMPORARY RIGHT OF ACCESS AGREEMENT, addendums, and Exhibits attached hereto (the "Agreement") is made and entered into this \_\_\_ day of May, 2023 (the "Effective Date") by and between **Fulton County, Georgia**, a political subdivision of the State of Georgia ("Grantee"), and **Thuy Thu Doan and Joseph Ford Hoke** (collectively the "Owner" or "Grantor"), who owns the land and the improvements thereon (together, the "Property") having an address of **2900 West Road, South Fulton, Georgia**, bearing Tax ID number 13 0190 LL0236 and being more particularly described in Exhibit A, attached hereto (the "Property");

1. **Grant.** Owner hereby grants to Grantee, and its assigns, nominees, agents, and successors, a non-exclusive license for temporary right of access and entry to the Property for the purpose of observing and measuring (surveying), geotechnical investigations, and wetlands verification for the replacement of the existing wastewater system located along Morning Creek (the "Work"). Owner shall provide Grantee access to the Property at all times, twenty-four (24) hours per day, seven (7) days per week, for one year from the Effective Date for the foregoing purposes (the "Work Period"). The Work Period may be extended by mutual written agreement by the parties. By executing this Agreement, Owner does not convey any property interest and does not intend for this Agreement to be or become an easement. Owner further does not waive any rights to the payment of just and adequate compensation for any and all property taken or damaged by Grantee as a result of any entry upon the Property or execution of this Agreement. By entering the Property, Grantee agrees to restore the impacted area as near as possible to its original condition following the completion of the Work. For the purposes of this document, "original condition" shall mean the condition of the Property and/or surrounding areas immediately prior to the commencement of the Work Period.

2. **Grantee Obligations.** Grantee shall comply with all applicable law and perform the Work at its own cost and expense. Grantee shall keep the Property in its current condition to the extent reasonably possible and keep the Property clean and free of debris and trash during the Work Period. Grantee shall also exercise due care and caution and promptly and diligently repair all damage to the Property caused by Grantee. The Work shall be at the sole risk of Grantee, and Owner shall not be liable for damage thereto or loss thereof, except in the event of Owner's gross negligence or willful misconduct. Nothing herein shall be construed as a waiver of Grantee's or its employee's waiver of available governmental immunities.

3. **Term.** This Agreement shall commence on the date of this Agreement set forth above and end at the expiration of the Work Period but shall end no later than one year from the Effective Date, unless extended by the parties in writing.

4. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

5. **Additional Terms.** See Addendum to Temporary Right of Entry attached hereto.

[Continued on Following Page]

IN WITNESS WHEREOF, we have set our hand and seal this the \_\_\_ day of May, 2023.

GRANTORS:

\_\_\_\_\_  
Thuy Thu Doan, Owner/Grantor

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

\_\_\_\_\_  
Joseph Ford Hoke, Owner/Grantor

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

GRANTEE:

Fulton County, Georgia

\_\_\_\_\_  
Robert L. Pitts, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Tonya R. Grier, Clerk to the Commission

APPROVED AS TO FORM:

\_\_\_\_\_  
Y. Soo Jo, County Attorney

## **ADDENDUM TO TEMPORARY RIGHT OF ENTRY**

Notwithstanding anything to the contrary contained in the Agreement, Grantor and Grantee, in consideration of the covenants stated in the Agreement and this Addendum, further agree as follows:

1) **Terms Binding on other Parties**: Grantee, its agents, assigns, nominees, or any other party than Grantee (included in any reference to Grantee in the Agreement or this Addendum), conducting Work pursuant to the Agreement must abide by the terms contained in the Agreement and this Addendum.

2) **Scope of Work**: The scope of Work outlined in the Agreement rises to the level of a Phase 2 Environmental Site Assessment. Grantee shall not otherwise have the right to conduct any other invasive testing without first obtaining Grantor's written consent, which consent may be withheld in Grantor's sole discretion. The placement of any permanent improvements is not within the scope of this Agreement.

3) **Areas of Access**: The scope of Grantee's access on the Property is limited to the portion of Grantor's property shown as "Area to be Condemned" on that Condemnation Exhibit Prepared for Morning Creek Sanitary Sewer Improvements, dated December 17, 2022, and prepared by Lowe Engineers attached as Exhibit A.

4) **Replacement Condition**: Fifteen business days after the expiration of the Work Period, Grantee shall mail notice at the Property address referenced above or personally deliver to Grantor a list of items that were damaged, removed, and replaced on the Property during the Work Period and the location of those items. If any trees are removed during Grantee's entry of the Property, Grantee must replace the removed trees with Chestnut and Water Oak Trees.