

Date: November 1, 2021

To: City of Pflugerville
Attn: Patricia A. Davis, City Engineer
P.O. Box 589
Pflugerville, TX 78691
Sent via e-mail to: patriciad@pflugervilletx.gov
cc: abbym@pflugervilletx.gov

From: LJA Engineering, Inc.
David Baylor

Project: Pecan Street/Weiss Lane Waterline

Reference: Parcel No.: 5
Joe Weiss

Transmittal of Easement Purchase Agreement for Approval

Attached is the landowner-signed Easement Purchase Agreement for the above referenced project and parcel in the amount of the **appraised value (\$185,806.00)**.

Please review and route accordingly for approvals, signatures, and dates where indicated.

The Easement Purchase Agreement will only need to be signed at this time. Exhibits "B" and "C" are the Water Pipeline Easement Agreement and Temporary Access and Construction Easement conveyance documents, and will be signed at closing.

Please contact me at 512-439-4709 (office), 512-567-3472 (cell), or via email at dbaylor@lja.com, and I shall arrange a pickup of the Agreement and disseminate copies to the Closing Agent and Landowner(s).

Sincerely,



David Baylor
Director of Right of Way Services

**EASEMENT PURCHASE AGREEMENT
JOE WEISS (SELLER)**

This Purchase Agreement (this "Agreement") is made and entered into by and between the **CITY OF PFLUGERVILLE, TEXAS**, a Texas home rule municipality ("Buyer"), and **JOE WEISS and MARY E. WEISS** ("Seller"), hereafter collectively referred to as the "Parties," upon the premises and for the purposes set out herein and is effective as stated in this Agreement.

INTRODUCTION

A. Seller is the current owner thereof of 32.290-acre tract recorded in Document No. 2001065238, Official Public Records of Travis County, Texas.

B. Buyer requires acquisition of portions of this tract for a water pipeline easement (described and depicted on **Exhibit "A"**) and temporary access and construction easement (depicted on **Exhibit "A"**) for the Pecan Street/Weiss Lane CIP Project hereafter collectively referred to as the "Easement."

C. Seller is willing to convey and Buyer to purchase the water pipeline easement and the temporary access and construction easement for the appraised value/negotiated settlement of **\$185,806.00**.

NOW, THEREFORE, in exchange for the mutual promises provided herein, the Parties agree as follows:

I.

Purchase and Sale Agreement. For the Purchase Price, Seller agrees to sell and convey an easement to Buyer, and Buyer agrees to buy and pay Seller for the water pipeline easement as described and depicted on **Exhibit "A"** for public water utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of public water pipelines and related appurtenances, or making connections thereto and the temporary access and construction easement as depicted on **Exhibit "A"**, for access, construction staging and storage, and other construction activities for that certain City of Pflugerville Weiss Lane/Pecan Street Water Line Project. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract. The obligation of the Buyer contained in this agreement are conditional on City Council of Pflugerville's approval and acceptance of the Easement. In the event the City Council does not approve the acceptance of the Easement, Buyer shall pay Seller \$100.00, as consideration for Seller's agreement to the condition on closing and shall return to Seller all original documents, unfiled with the County, at Buyer's expense.

II.

The Purchase Price. **ONE HUNDRED EIGHTY-FIVE THOUSAND EIGHT HUNDRED SIX AND NO/100 DOLLARS (\$185,806.00)** to be paid at closing.

III.

The Property. A 15 foot wide water pipeline easement and a variable width temporary access and construction easement over, across, under and through a 32.290-acre tract recorded in Document No. 2001065238, Official Public Records of Travis County, Texas as more particularly described and depicted on **Exhibit “A”**, attached hereto and incorporated by reference for all purposes.

IV.

Easement Instrument. The Instrument of Conveyance shall be in substantial conformance with the form and substance as stated in the Water Pipeline Easement Agreement (**Exhibit “B”**), and Temporary Access and Construction Easement Agreement (**Exhibit “C”**) attached hereto and incorporated by reference for all purposes.

V.

Soils. So long as the surface use of the easement remains agricultural, Grantee shall follow the “double ditch” construction method, removing top soil prior to construction, segregating top soil removed, and replacing top soil above sub-soils upon completion of construction.

VI.

Miscellaneous.

- A. *Closing Date.* The parties shall close on this transaction within 30 days of City Council’s approval and acceptance of the Easement.
- B. *Notice.* Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; (ii) by depositing it with Federal Express or another service guaranteeing “next day delivery”, addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement; or (iv) by facsimile with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or three (3) days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

Buyer: City of Pflugerville
Attn: Sereniah Breland, City Manager
100 East Main Street
Pflugerville, Texas 78660

Seller: Joe Weiss
2804 Richfield Landing
Pflugerville, TX 78660

- C. *Severability; Waiver.* If any provision of this agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that

the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is similar in terms to the illegal, invalid, or enforceable provision as is possible. Each of the rights and obligations of the parties hereto are separate covenants. Any failure by a party to insist upon strict performance by the other party of any provision of this Agreement will not be deemed a waiver of such provision or any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

- D. Applicable Law and Venue.* The interpretation, performance, enforcement, and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.
- E. Entire Agreement.* With the exception of the permits and approvals to be issued in connection with this Agreement, this Agreement contains the entire agreement of the Parties and there are no other agreements or promises, oral or written between the Parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the Parties. This Agreement supersedes all other agreements between the Parties concerning the subject matter hereof.
- F. Exhibits and Counterparts.* All exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The section headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the sections. The Parties acknowledge that each of them has been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits hereto. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable City ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts bear the signatures of all the parties.
- G. Representations and Warranties by Seller.* Seller warrants, represents, covenants, and agrees that Seller has fee simple absolute title to the Property described and depicted on **Exhibit "A"**, that said Property is free of any liens or other encumbrances that would prevent this sale, and that Seller meets all requirements to contract with the City of Pflugerville as provided by Chapter 38 of the City's Code of Ordinances.
- H. Eligibility Certification.* Seller certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments

under the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this certification is inaccurate.

- I. *Payment of Debt or Delinquency* to the State or Political Subdivision of the State. Pursuant to Chapter 38, City of Pflugerville Code of Ordinances, Seller agrees that any payments owing to Seller under the Agreement may be applied directly toward any debt or delinquency that Seller owes the City of Pflugerville, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- J. *Texas Family Code Child Support Certification*. Seller certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.

EXECUTED this the _____ day of _____, 2021.

SELLER:



Joe Weiss



Mary E. Weiss

PURCHASER:

CITY OF PFLUGERVILLE,
a Texas home rule municipality

By: _____
Sereniah Breland, City Manager

ATTEST:

Trista Evans, City Secretary



Partners for a Better Quality of Life

Weiss Lane Permanent Water Lines Easement
Parcel No. 5
Owner: Joe Weiss
Page 1 of 3

PARCEL 5 – PERMANENT WATER LINES EASEMENT

FOR A 0.312 ACRE TRACT OF LAND SITUATED IN THE E. KIRKLAND SURVEY NO. 7, ABSTRACT NO. 458, TRAVIS COUNTY, TEXAS, BEING A PORTION OF A CALLED 32.290 ACRE TRACT OF LAND DESCRIBED IN A DEED TO JOE WEISS AND RECORDED IN DOCUMENT NO. 2001065238 OF THE OFFICIAL PUBLIC RECORDS OF SAID COUNTY, SAID 0.312 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING FOR REFERENCE at a calculated point on the intersection of the south line of said 32.290 acre tract and the west right-of-way line of Weiss Lane (right-of-way width varies), having a Central Texas Central State Plane NAD '83 (HARN '93) Grid Coordinate of: Northing = 10,129,868.5 feet and Easting = 3,165,930.6 feet;

THENCE with the common south line of said 32.290 acre tract and the north line of a called 281.80 acre tract of land described in a deed to Cactus Commercial South LP and recorded in Document No. 2014095553, (L9) North 62° 36' 47" West, a distance of 10.00 feet to a calculated point on the west line of a 10-foot wide public utility easement recorded in Document No. 20170240688 of the Official Public Records of said County, for the south corner and **POINT OF BEGINNING** hereof;

THENCE continuing with the common south line of said 32.290 acre tract and the north line of said 281.80 acre tract, (L1) **North 62° 36' 47" West**, a distance of **15.00 feet** to a calculated point for the west corner hereof, from which a 1/2-inch iron rod with yellow cap stamped "Pape Dawson" found for the southwest corner of said 32.290 acre tract, bears North 62° 36' 47" West, a distance of 1,464.32 feet;

THENCE departing said common line, through the interior of said 32.290 acre tract, (L2) **North 27° 33' 37" East**, a distance of **904.97 feet** to a calculated point on the north line of said 32.290 acre tract and the south line of a called 32.290 acre tract of land described in a deed to Don Lee Weiss and Gladys O. Weiss and recorded in Document No. 2008172152 of the Official Public Records of said County, for the north corner hereof;



THENCE with the common north line of said Joe Weiss 32.290 acre tract and the south line of said Don Lee Weiss 32.290 acre tract, (L3) **South 62° 36' 18" East**, a distance of **15.00 feet** to a calculated point on the west line of said 10-foot wide public utility easement, for the east corner hereof;

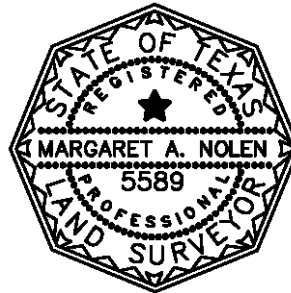
THENCE with the west line of said 10-foot wide public utility easement, (L4) **South 27° 33' 37" West**, a distance of **904.96 feet** to the **POINT OF BEGINNING** of and containing 0.312 acre of land, based on the survey performed by CP&Y, Inc., Round Rock, Texas.

Bearings are based on the Texas Central Zone State Plane Coordinate System, NAD '83 (HARN '93), which is based on the Trimble RTKNet, AllTerra VRS Network.

Surveyed in the field August, 2020.



Margaret A. Nolen, R.P.L.S. No. 5589
CP&Y, Inc.
One Chisholm Trail, Suite 130
Round Rock, Texas 78681
Ph. (512) 248-0065
TBPELS Firm No. 10194125
Project No. 1800978



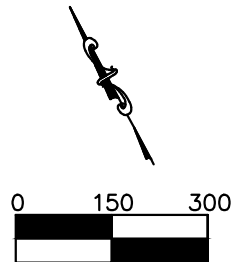
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EXHIBIT "A"

**DRAWING TO ACCOMPANY METES AND BOUNDS DESCRIPTION OF A
PERMANENT WATER LINES EASEMENT (0.312 ACRE)
LOCATED IN THE E. KIRKLAND SURVEY, ABSTRACT NO. 458, TRAVIS COUNTY, TEXAS
AND BEING PART OF A CALLED 32.290 ACRE TRACT OF LAND DESCRIBED IN A DEED TO
JOE WEISS AND RECORDED IN DOCUMENT NO. 2001065238 OF THE
OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS**

*E. KIRKLAND SURVEY NO. 7,
ABSTRACT NO. 458
TRAVIS COUNTY, TEXAS*

DON LEE WEISS
GLADYS O. WEISS
CALLED 32.290 ACRES
DOC. NO. 2008172152
O.P.R.T.C.T.



LINE TABLE		
LINE	BEARING	DIST.
L1	N 62°36'47" W	15.00'
L2	N 27°33'37" E	904.97'
L3	S 62°36'18" E	15.00'
L4	S 27°33'37" W	904.96'
L5	N 27°11'17" E	12.02'
L6	S 62°29'14" E	945.58'
L7	S 27°33'37" W	9.94'
L8	N 62°29'14" W	50.00'
L9	N 27°33'37" E	843.75'
L10	S 62°36'18" E	50.00'
L11	N 27°33'37" E	51.17'

PARCEL 5
PERMANENT WATER
LINES EASEMENT
0.312 ACRE

JOE WEISS
CALLED 32.290 ACRES
DOC. NO. 2001065238
O.P.R.T.C.T.

10' P.U.E.
DOC. NO.
2017024068
O.P.R.T.C.T.

PARCEL 5
T.C.E.
0.969 ACRE

PARCEL 5
T.C.E.
0.238 ACRE

WEISS LANE
(R.O.W. WIDTH VARIES)

POINT OF
BEGINNING

BEGINNING FOR
REFERENCE
N=10,129,868.5'
E=3,165,930.6'
GRID

YELLOW CAP
"PAPE DAWSON"

N 62°36'47" W
518.81'

CACTUS COMMERCIAL SOUTH, LP
CALLED 281.80 ACRES
DOC. NO. 2014095553
O.P.R.T.C.T.

N 62°36'47" W - 945.51'
N 62°36'47" W - 1464.32'

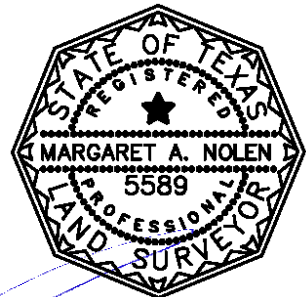
HELEN NONEMAN
CALLED 5.10 ACRES
DOC. NO. 2012194992
O.P.R.T.C.T.

LEGEND

- △ = CALCULATED POINT
- = 1/2" IRON ROD WITH CAP "AS NOTED" FOUND
- = 1/2" IRON ROD FOUND UNLESS NOTED OTHERWISE
- D.R.T.C.T. = DEED RECORDS OF TRAVIS COUNTY, TEXAS
- R.P.R.T.C.T. = REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS
- O.P.R.T.C.T. = OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS
- T.C.E. = TEMPORARY CONSTRUCTION EASEMENT
- P.O.C. = POINT OF COMMENCEMENT

GENERAL NOTES:

- 1) SUBJECT TO ANY AND ALL COVENANTS, RESTRICTIONS, EASEMENTS AND CONDITIONS THAT MAY BE APPLICABLE.
- 2) THE SURVEYOR DID NOT ABSTRACT THE SUBJECT TRACT.
- 3) BEARINGS ARE BASED ON THE TEXAS CENTRAL ZONE STATE COORDINATE SYSTEM NAD'83 (HARN'93) WHICH IS BASED ON THE TRIMBLE RTKNET.
- 4) ALL DISTANCES ARE SURFACE DISTANCES



1 Chisholm Trail, Suite 130
Round Rock, Texas 78681 512.248.0065
TEXAS REGISTERED ENGINEERING FIRM F-1741
TBPELS 10194125

MARGARET A. NOLEN, RPLS NO. 5589

SURVEYED: AUGUST 2020 PAGE 3 OF 3

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Exhibit "B"

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

WATER PIPELINE EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

_____ (“Grantor”), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto **THE CITY OF PFLUGERVILLE, TEXAS**, a home-rule city located in Travis County, Texas (“Grantee”), an exclusive easement and right-of-way (“Easement”) upon and across the property of Grantor which is more particularly described on Exhibit “A”, attached hereto and incorporated herein by reference (“Easement Property”). Grantor and Grantee may jointly be referred to by “the parties.”

TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, together with the rights and privileges and on the terms and conditions set forth below. Grantor does hereby covenant and agree to WARRANT AND FOREVER DEFEND title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof to the extent that such claim arises by, through, or under Grantor.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Definitions.* For the purposes of this grant of Easement certain terms shall have the meanings that follow:
 - (a) “Holder” shall mean Grantee and Grantee's heirs, successors and assigns who at any time own any interest in the conveyance is subject to the terms of this agreement.
 - (b) “Permitted Improvements” shall mean landscaping or planting of vegetation, driveways and sidewalks; but shall not mean the construction of a building or structure unless such installation or

construction is approved in writing by the City Manager or the City Manager's designee.

(c) "Public water pipeline" shall mean a pipeline designed and operated to transport water.

2. *Character of Easement.* The Easement granted herein is "in gross," in that there is no "Benefitted Property." Nevertheless, the Easement rights herein granted shall pass to Grantee's successors and assigns, subject to all of the Terms hereof. The Easement rights of use granted herein is irrevocable. The Easement is for the benefit of Holder.
3. *Purpose of Easement.* The Easement shall be used for public water utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of public water pipelines and related appurtenances, or making connections thereto (hereinafter collectively "Facilities"). The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the Facilities.
4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
5. *Reservation of Rights.* Save and except: Grantor retains the right to surface use. Grantor and Grantor's heirs, successors, and assigns shall retain the right to use the surface of all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns neither interferes nor conflicts with the use of the Easement Property by Holder for the Easement Purpose. *Grantor shall not construct any building, structure or obstruction on the Easement Property. Any improvement made by Grantor (Permitted Improvement) must comply with applicable ordinances, development codes, and engineering guidelines of the City of Pflugerville. Grantor shall obtain Holder's permission prior to the start of constructing Permitted Improvements. Grantor shall not construct any fencing or gating on the Easement Property without Holder's permission.*
6. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 7, immediately below, improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property. Holder has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's

obligations under this agreement. Holder has the right to remove or relocate any fences or other encroachments within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. *Holder shall not be required to repair or replace to their original condition any landscaping, driveways, parking areas, or Permitted Improvement on the Easement Property that are damaged in connection with the placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of the Facilities.*

7. *Maintenance of Surface Easement Property/Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall retain the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Property free of litter, debris, or trash.
8. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.
9. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.
10. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
11. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.
12. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.
13. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

14. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.
15. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.
16. *Legal Construction.* Any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.
17. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.
18. *Recitals/Exhibits.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement. All exhibits referenced herein are attached hereto and incorporated by reference herein for all purposes.
19. *Entire Agreement.* This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

20. *Assignability.* The Easement may be assigned by Grantee, its successors or assigns, without the prior written consent of Grantor.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____ 2021.

GRANTOR:

By: _____

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is authorized to execute such instrument; and that said instrument is executed as the free and voluntary act and deed for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____ 2021.

Notary Public Signature

(seal)

GRANTEE:

AGREED AND ACCEPTED:

**CITY OF PFLUGERVILLE,
TEXAS,** a Texas home-rule
municipality

By: _____
Sereniah Breland, City Manager

ATTEST:

Trista Evans, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____,
2021, by Sereniah Breland, City Manager of the City of Pflugerville, Texas, a Texas
home-rule municipality, on behalf of said municipality.

Notary Public Signature

(seal)

AFTER RECORDING, RETURN TO:

City of Pflugerville
Attn.: Emily Barron, Planning Director
Development Services Center
P.O. Box 589
Pflugerville, Texas 78691

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

TEMPORARY ACCESS AND CONSTRUCTION EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

_____ (“Grantor”), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto **THE CITY OF PFLUGERVILLE, TEXAS**, a home-rule city located in Travis County, Texas (“Grantee”), a temporary access and construction easement (“TACE” or “Easement”) across a variable width area upon and across the property of Grantor, which is depicted on Exhibit “A” and described as being adjacent to a permanent waterline easement also depicted on Exhibit “A” and more particularly described on Exhibit “B”, attached hereto and incorporated herein by reference (“Easement Property”). Grantor and Grantee may jointly be referred to by “the parties.”

TO HAVE AND TO HOLD the same onto Grantee and its successors and assigns, together with the rights and privileges and on the terms and conditions set forth below. Grantor does hereby covenant and agree to WARRANT AND DEFEND title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof to the extent that such claim arises by, through, or under Grantor.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Definitions.* For the purposes of this grant of Easement certain terms shall have the meanings that follow:
 - (a) “Holder” shall mean Grantee and Grantee's heirs, successors and assigns who at any time own any interest in the conveyance is subject to the terms of this agreement.

- (b) "Public infrastructure" shall mean the Weiss Lane / Pecan Street 42 inch and 36 inch water lines and associated appurtenances to be constructed by the Holder or its agents, contractors and assigns.
2. *Character of Easement.* The Easement granted herein is "in gross," in that there is no "Benefitted Property." Nevertheless, the Easement rights herein granted shall pass to Grantee's successors and assigns, subject to all of the Terms hereof. The Easement rights of use granted herein are irrevocable until the termination of the TACE in accordance with the terms herein.
 3. *Purpose of Easement.* The Easement shall be used to facilitate the construction of Public infrastructure, which shall include use of the Easement Property for access, including ingress and egress, construction staging and storage, and other construction activities.
 4. *Term.* The variable width TACE granted herein shall terminate automatically upon completion of the construction of the Public infrastructure included in Grantee's Public infrastructure project, but no later than 30 months from the date of execution of this document, whichever occurs first.
 5. *Reservation of Rights.* Save and except: Grantor retains the right to surface use. Grantor and Grantor's heirs, successors, and assigns shall retain the right to use the surface of all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns neither interferes nor conflicts with the use of the Easement Property by Holder for the Easement Purpose.
 6. *Use and Maintenance of Easement Property.* Holder has the right to remove or relocate any encroachments into the Easement Property as necessary to utilize the same for the purpose of this Easement. Upon completion of the construction of the Public infrastructure, *Holder shall restore the Easement Property to the condition of the Easement Property immediately before the Grantee's use of the same.*
 7. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

8. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.
9. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
10. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.
11. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.
12. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.
13. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.
14. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.
15. *Legal Construction.* Any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

16. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.
17. *Recitals/Exhibits.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement. All exhibits referenced herein are attached hereto and incorporated by reference herein for all purposes.
18. *Entire Agreement.* This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.
19. *Assignability.* The Easement may be assigned by Grantee, its successors or assigns, without the prior written consent of Grantor.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____ 20__.

GRANTOR:

<Name>

<Name>

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is authorized to execute such instrument; and that said instrument is executed as the free and voluntary act and deed for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____ 20__.

Notary Public Signature

(seal)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he is authorized to execute such instrument; and that said instrument is executed as the free and voluntary act and deed for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the _____ day of _____ 20__.

Notary Public Signature

(seal)

GRANTEE:

AGREED AND ACCEPTED:

**CITY OF PFLUGERVILLE,
TEXAS,** a Texas home-rule
municipality

By: _____
Sereniah Breland, City Manager

ATTEST:

Trista Evans, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____,
2021, by Sereniah Breland, City Manager of the City of Pflugerville, Texas, a Texas
home-rule municipality, on behalf of said municipality.

Notary Public Signature

(seal)

AFTER RECORDING, RETURN TO:

City of Pflugerville
Attn.: Patricia A. Davis, City Engineer
Public Works Complex
[Address]
Pflugerville, Texas 78691