

TEMPORARY CONSTRUCTION EASEMENT PURCHASE AGREEMENT

This Purchase Agreement (this “Agreement”) is made and entered into by and between the **CITY OF PFLUGERVILLE, TEXAS**, a Texas home rule municipality (“Grantee”), and **CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY** (“Grantor”), 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. Grantor is the current owner thereof of a 25.00 ACRE TRACT, BEING THAT TRACT DESCRIBED AS 25.00 ACRES CONVEYED TO CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY (CMTA) BY SPECIAL WARRANTY DEED DATED MAY 24, 2022, AS RECORDED IN DOCUMENT NO. 2022093624, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS.

B. Grantee requires the use of portions of this tract for a Temporary Construction Easement for the Secondary Colorado Raw Water Line Project hereafter collectively referred to as the “Temporary Construction Easement.”

C. Grantor is willing to convey and Grantee to purchase the Temporary Construction Easement rights for the appraised value of **\$67,521.00**.

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

I.

Purchase and Sale Agreement. For the Purchase Price (hereinafter defined), Grantor agrees to grant a Temporary Construction Easement to Grantee, and Grantee agrees to pay Grantor for a Temporary Construction Easement granted in a form substantially similar to the Temporary Construction Easement Agreement attached hereto as **Exhibit “A”** and in a location as depicted in **Exhibit “A-1”** to facilitate the construction of public infrastructure, which shall include use of the Easement Property for access, construction staging and storage, and other construction activities for that certain City of Pflugerville Secondary Colorado Raw Water Line Project (the “Project”). The promises by Grantee and Grantor stated in this contract are the consideration for the formation of this contract. The obligation of the Grantee contained in this Agreement is 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, Grantee shall pay Grantor \$100.00, as consideration for Grantor’s agreement to the condition on closing and shall return to Grantor all original documents, unfiled with the County, at Grantee’s expense.

II.

The Purchase Price. **Sixty-Seven Thousand Five Hundred Twenty-One and No/Dollars (\$67,521.00)** to be paid at closing (the “Purchase Price”).

III.

The Property. A Temporary Construction Easement over and across, under and through a portion of the 25.00-acre tract of land having been conveyed to CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY (CMTA) BY SPECIAL WARRANTY DEED DATED MAY 24, 2022, AS RECORDED IN DOCUMENT NO. 2022093624, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS, said portion being particularly depicted in **Exhibit “A-1”**, attached hereto and incorporated by reference for all purposes (the “Easement Property”). For purposes of clarification, the Easement Property is generally described as a 60-foot-wide strip of land parallel and adjacent to Grantee’s existing water line easement along the right-of-way of Cameron Road, save and except an area in which Grantor intends to construct a new building, plus five (5) feet on all three sides of the proposed building footprint (“Excepted Area”). Grantor has provided Grantee with plans showing the Excepted Area, and Grantee will obtain an updated metes and bounds description of the Easement Property in conformance with this Section, which, upon Grantor’s review and approval, not to be unreasonably withheld, will be attached to the Temporary Construction Easement Agreement at Closing.

IV.

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

V.

Term. The variable width Temporary Construction Easement granted herein shall terminate automatically upon the earlier of (i) completion of the construction of the public infrastructure included in Grantee’s Project, or (ii) October 31, 2025.

VI.

Holdover. In the event Grantee fails to surrender and vacate the Easement Property as of the expiration or termination of the Temporary Construction Easement, Grantee shall pay to Grantor an additional sum of **Six Thousand One Hundred Thirty-Eight and No/Dollars (\$6,138.00)** on the first day of each additional month that Grantee continues to occupy the Easement Property, which in no event shall continue for more than 180 days. This section shall survive the termination or expiration of this Agreement.

VII.

Default by Grantee; Damages. In the event Grantee fails to surrender and vacate the Easement Property as of the expiration or termination of the Temporary Construction

Easement Agreement or in any other way breaches the terms of this Agreement, in addition to the additional sums due from Grantee under Section VI of this Agreement, Grantor shall be entitled to all of the rights and remedies available to Grantor pursuant to the Temporary Construction Easement Agreement on account of a default thereunder and to a landlord generally against a tenant holding over after the expiration of the term. This section shall survive the expiration or termination of this Agreement.

VIII.

Miscellaneous.

- A. *Closing Date.* The parties shall close on this transaction within 60 days of both Parties approval and acceptance of the Temporary Construction Easement Agreement.
- 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:

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

Grantor: Capital Metropolitan Transportation Authority
Attn: Vincent Sandoval, Director of Real Estate and
Right-of-Way
2910 E. 5th Street
Austin, TX 78702

- 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 Grantor.* Grantor warrants, represents, covenants, and agrees that Grantor has fee simple absolute title to the Easement Property depicted in **Exhibit “A-1”** that said Easement Property is free of any liens or other encumbrances that would prevent this grant.
- 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. Texas Family Code Child Support Certification.* Grantor 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.

J. Cooperation of the Parties. Grantor and Grantee acknowledge that both Parties intend to perform construction activities within the Easement Property, and the adjacent public right-of-way during the Term of the Temporary Construction Easement and for some time afterwards that may impact the plans or delivery of the other’s project, and both Parties hereby agree to work in good faith to coordinate its construction activities with the other to the greatest extent practicable and to undertake commercially-reasonable efforts to avoid any activities that may obstruct, delay, or disrupt the other Party’s project, or, if such activities are unavoidable, to mitigate any impacts therefrom. If a Party’s project requires the review or approval of the other Party, the reviewing or approving party hereby agrees to perform its review or provide its approval as expeditiously as possible, so as to avoid any delays to the other Party. This paragraph will survive the expiration or termination of this Agreement.

EXECUTED this the _____ day of _____, 2024.

GRANTOR:

**CAPITAL METROPOLITAN
TRANSPORTATION AUTHORITY**

By: _____

Printed: Kenneth M. Cartwright

Title: Vice President, Facility Management
and Capital Construction

GRANTEE:

CITY OF PFLUGERVILLE,
a Texas home rule municipality

By: _____
Sereniah Breland, City Manager

ATTEST:

Trista Evans, City Secretary