

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 CONSTRUCTION EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY ("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 ("TCE" or "Easement") across a variable width area upon and across the property of Grantor, which is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference ("Easement Property"), together with rights of ingress and egress across the property of the Grantor if necessary to access the TCE. 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) "Grantee" shall include Grantee's heirs, successors and assigns who at any time own any interest in the conveyance and are subject to the terms of this agreement.

- (b) "Public infrastructure" shall mean water, reclaimed water and/or wastewater pipelines and associated appurtenances to be constructed by the Grantee 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 TCE 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, construction staging and storage, and other construction activities.
 4. *Term.* The variable width TCE granted herein shall terminate automatically upon the earlier of (i) completion of the construction of the Public infrastructure included in Grantee's Public infrastructure project, or (ii) October 31, 2025.
 5. *Reservation of Rights.* Save and except: Grantor and Grantor's heirs, successors, and assigns shall retain the right to use all or part of the Easement Property in conjunction with Grantee 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 Grantee for the Easement Purpose.
 6. *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.
 7. *Use and Maintenance of Easement Property.* Subject to the section entitled "Restoration" below, Grantee 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.

8. *Trenching.* If Grantee's use of the Easement Property entails the excavation of a trench, Grantee shall comply with the City of Pflugerville's excavation standards as codified in the City of Pflugerville's Code of Ordinances or in any other applicable policy manual or other regulatory guidance.
9. *Restoration.* Upon completion of the construction of the Public infrastructure included in Grantee's Public infrastructure project, or upon earlier termination or expiration of this agreement, Grantee will fill all trenches, repair and restore, as nearly as possible, the Easement Property to the same condition or character prior to commencement of construction, unless otherwise instructed or waived by Grantor in writing. This Restoration obligation shall survive the termination or expiration of this agreement.
10. *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.
11. *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.
12. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
13. *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.
14. *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.
15. *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.

16. *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.
17. *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.
18. *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.
19. *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.
20. *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.
21. *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.

- 22. *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 _____ 2024.

GRANTOR:

**CAPITAL METROPOLITAN
TRANSPORTATION
AUTHORITY**

By: _____

Printed: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, a Notary Public, on this day personally appeared _____, _____ of **CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**, 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 _____ 2024.

Notary Public Signature

(seal)

GRANTEE:

AGREED AND ACCEPTED:

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

By: _____
Sereniah Breland, City Manager

ATTEST:

_____, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____,
20__, 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: Jeff Dunsworth, City Engineer
Public Works Complex
P.O. Box 589
Pflugerville, Texas 78691