

**PURCHASE AGREEMENT
KEVIN B. FINLEY (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 **KEVIN B. FINLEY** ("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 a 5.290-acre tract, being Lot 23, Pflugerville Acres II Phase I, according to the map or plat thereof, recorded in Volume 76, Page 274, Plat Records, Travis County, Texas.

B. Buyer requires acquisition of two (2) tracts as described in **Exhibit "A"** (+/- 0.0826-acre Permanent Utility Easement) and a (+/- 0.1010-acre Temporary Construction Easement) hereafter collectively referred to as the "Property".

C. Seller is willing to convey and Buyer to purchase the Property for the settlement amount of \$80,000.00.

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 Property to Buyer, and Buyer agrees to buy and pay Seller for the Property as described in **Exhibit "A"** as part of the Wilbarger Creek Wastewater Interceptor 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 Purchase Agreement. In the event the City Council does not approve the acceptance of the Purchase Agreement, 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. EIGHTY THOUSAND AND 00/100 (\$80,000.00) to be paid at closing.

III.

The Property. More or less two (2) tracts as described in **Exhibit "A"** (+/-0.0826-acre Permanent Utility Easement) and a (+/- 0.1010-acre Temporary Construction Easement) of a 5.290-acre tract, being Lot 23, Pflugerville Acres II Phase I, according to the map or plat thereof, recorded in Volume 76, Page 274, Plat Records, Travis County, Texas.

IV.

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

V.

Miscellaneous.

- A. *Closing Date.* The parties shall close on this transaction within 30 days of City Council's approval and acceptance of the Purchase 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:

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

Seller: Kevin B. Finley
19809 Panther Drive
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 have 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 in **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 1st day of November 2024.

SELLER:

Kevin B. Finley

By: Kevin B. Finley
Kevin B. Finley (Nov 1, 2024 13:25 CDT)
Kevin B. Finley

PURCHASER:

CITY OF PFLUGERVILLE,
a Texas home rule municipality

By: _____
Sereniah Breland, City Manager

ATTEST:

By: _____
Trista Evans, City Secretary

DESCRIPTION OF EASEMENT

DESCRIPTION OF A 0.0826 ACRE (3,600 SQUARE FOOT) TRACT OF LAND, BEING A PORTION OF LOT 23, PFLUGERVILLE ACRES II, PHASE 1, A SUBDIVISION LOCATED IN THE J.C. LEE SURVEY, ABSTRACT 488, TRAVIS COUNTY, TEXAS, A MAP OF SAID PFLUGERVILLE ACRES II, PHASE 1, IS RECORDED IN BOOK 76, PAGE 274, OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS (PR), SAID LOT 23 BEING DESCRIBED IN A GENERAL WARRANTY DEED WITH VENDOR'S LIEN IN FAVOR OF THIRD PARTY TO KEVIN B. FINLEY, OF RECORD IN VOLUME 12693, PAGE 2394, OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, SAID 0.0826 ACRE (3,600 SQUARE FOOT) TRACT OF LAND BEING SURVEYED ON THE GROUND IN SEPTEMBER, 2022, UNDER THE DIRECT SUPERVISION OF MIGUEL A. ESCOBAR, LSLs, RPLS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2-inch iron rod found in the west right-of-way line of Panther Loop, a 50 foot right-of-way, dedicated in Book 76, Page 274, PR, for the southeast corner of Lot 26, said PFLUGERVILLE ACRES II, PHASE 1, same point being the northeast corner of said Lot 23; from which point, a 1/2-inch iron rod with cap stamped "MATKIN HOOVER" found in said west right-of-way line of Panther Loop bears North 26°47'28" East, a distance of 327.00 feet;

THENCE, South 26°47'28" West, with the west right-of-way line of Panther Loop, same line being the east boundary line of said Lot 23, a distance of 114.94 feet to a calculated point for the northeast corner and the **POINT OF BEGINNING** of the herein described easement;

(1) THENCE, South 26°47'28" West, with said common line of Panther Loop and Lot 23, a distance of **60.00 feet**, to a calculated point for the southeast corner of the herein described tract;

THENCE, over and across the interior of Lot 23, the following three (3) courses and distances:

- (2) North 63°12'32" West**, a distance of **60.00 feet**, to a calculated point for the southwest corner of the herein described tract;
- (3) North 26°47'28" East**, a distance of **60.00 feet**, to a calculated point for the northwest corner of the herein described tract;

LOT 26
 PFLUGERVILLE ACRES II,
 PHASE 1
 BOOK 76, PAGE 274, PR

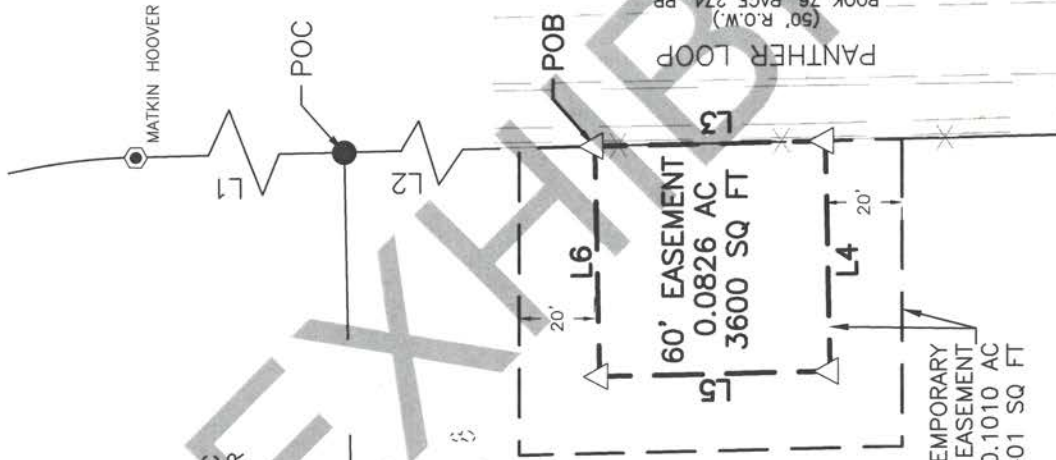
SBS TX TRIANGLE 2021 LLC
 DOC. NO. 2021236451, OPR

LOT 23
 PFLUGERVILLE ACRES II,
 PHASE 1
 BOOK 76, PAGE 274, PR

KEVIN B. FINLEY
 VOL. 12693, PAGE 2394, RPR

20' TEMPORARY
 CONSTRUCTION EASEMENT
 0.1010 AC
 4401 SQ FT

60' EASEMENT
 0.0826 AC
 3600 SQ FT



STATE HIGHWAY NO. 130
 (VARIABLE WIDTH R.O.W.)
 DOC. NO. 2003167258, OPR

SH 130
 PANTHER LOOP

PANTHER LOOP
 (50' R.O.W.)
 BOOK 76, PAGE 274, PR

SKETCH TO ACCOMPANY
 DESCRIPTION OF

A 0.0826 AC (3600 SQ FT) EASEMENT
 OUT OF LOT 23,
 PFLUGERVILLE ACRES II, PHASE 1
 BOOK 76, PAGE 274, PR,
 TRAVIS COUNTY, TEXAS,
 A SUBDIVISION LOCATED IN THE
 J.C. LEE SURVEY, ABSTRACT NO. 488,
 TRAVIS COUNTY, TEXAS

LINE	BEARING	DISTANCE
L1	N 26°47'28" E	327.00'
L2	S 26°47'28" W	114.94'
L3	S 26°47'28" W	60.00'
L4	N 63°12'32" W	60.00'
L5	N 26°47'28" E	60.00'
L6	S 63°12'32" E	60.00'



1504 CHISHOLM TRAIL RD.
 SUITE 103
 ROUND ROCK, TX 78681
 512-238-1200



LOCATION MAP
 NOT TO SCALE



LEGEND

- IRON ROD FOUND 1/2" IN DIAMETER OR OTHERWISE NOTED
- ⊙ IRON ROD FOUND W/CAP 1/2" IN DIAMETER - STAMP NOTED
- △ CALCULATED POINT
- X— WIRE FENCE
- POC POINT OF COMMENCING
- POB POINT OF BEGINNING
- R.O.W. RIGHT OF WAY
- RPR REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS
- OPR OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS

NOTES:

1. BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (NAD_83 (2011)). ALL DISTANCES SHOWN HEREON ARE SURFACE VALUES REPRESENTED IN U.S. SURVEY FEET BASED ON A SURFACE-TO-GRID COMBINED ADJUSTMENT FACTOR OF 0.99989257.
2. REFERENCE IS HEREON MADE TO THE METES AND BOUNDS DESCRIPTION OF THIS TRACT ACCOMPANYING THIS SKETCH.
3. THIS SURVEY WAS MADE WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE NOR A TITLE COMMITMENT OR TITLE POLICY. THERE MAY BE ADDITIONAL EASEMENTS OR RESTRICTIONS, NOT SHOWN HEREON, WHICH MAY AFFECT THE PROPERTY.
4. THE SUBJECT TRACT SHOWN HEREON IS AN EASEMENT. MONUMENTS WERE NOT SET FOR CORNERS.

THIS IS TO CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND IN SEPTEMBER, 2022, BY ME OR UNDER MY SUPERVISION, THAT THIS SURVEY PLAT REPRESENTS THE FACTS FOUND AT THE TIME OF THE SURVEY.

INLAND GEODETICS



MIGUEL A. ESCOBAR, L.S.L.S., R.P.L.S.
TEXAS REG. NO. 5630

08-11-2023



SKETCH TO ACCOMPANY
DESCRIPTION OF
A 0.0826 AC (3600 SQ FT) EASEMENT
OUT OF LOT 23,
PFLUGERVILLE ACRES II, PHASE 1
BOOK 76, PAGE 274, PR,
TRAVIS COUNTY, TEXAS,
A SUBDIVISION LOCATED IN THE
J.C. LEE SURVEY, ABSTRACT NO. 488,
TRAVIS COUNTY, TEXAS



1504 CHISHOLM TRAIL RD.
SUITE 103
ROUND ROCK, TX 78681
512-238-1200
FIRM REG. NO. 100591-00

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

UTILITY EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

KEVIN B. FINLEY, of the County of Travis, Texas, whose address is 19809 Panther Dr., Austin, Texas 78660 ("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 Texas home-rule city 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 Tract"). 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; and Grantor, subject to the Exceptions, to Warranty, 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.

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 and 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 similar structure unless such installation or construction is approved in writing by the City Manager or the City Manager's designee.

- (c) "Public Utility" shall mean water, wastewater, reclaimed water, and any necessary facilities or appurtenances needed to support the operation of these utility services, so long as it is owned or installed by Grantee or its successors or 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. The Easement is for the benefit of Holder.
 3. *Purpose of Easement.* The Easement shall be used for Public Utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of public utility facilities 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 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 replace to their original condition any landscaping, driveways or parking areas that were in existence prior

to the granting of the Easement Property and are damaged in connection with the work.

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. *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.

Signature page to follow.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2024.

GRANTOR:

Kevin B. Finley

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, a Notary Public, on this day personally appeared **Kevin B. Finley** known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his/her oath stated that he/she 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)

EXHIBIT "B"

GRANTEE:

AGREED AND ACCEPTED:

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

By: _____
Sereniah Breland, City Manager

ATTEST:

By: _____
Trista Evans, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2024,
by Sereniah Breland, City Manager of the City of Pflugerville, Texas, a Texas home-
rule municipality, on behalf of said municipality.

(seal)

Notary Public Signature

AFTER RECORDING, RETURN TO:

Mrs. Norma Martinez, MBA
Real Estate Manager
City of Pflugerville
15500 Sun Light Near Way
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 CONSTRUCTION EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

KEVIN B. FINLEY ("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 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 completion of the construction of the Public infrastructure included in Grantee's Public infrastructure project.
 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 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. *Use and Maintenance of Easement Property.* 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.
 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 benefitted 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.

EXHIBIT "A"

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____ 2024.

GRANTOR:

Kevin B. Finley

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, a Notary Public, on this day personally appeared **Kevin B. Finley** known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his/her oath stated that he/she 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.

(seal)

Notary Public Signature

GRANTEE:

AGREED AND ACCEPTED:

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

By: _____
Sereniah Breland, City Manager

ATTEST:

By: _____
Trista Evans, City Secretary

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on _____,
2024, 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:

Mrs. Norma Martinez, MBA
Real Estate Manager
City of Pflugerville
15500 Sun Light Near Way
Pflugerville, Texas 78691