

ACCESS EASEMENT AGREEMENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This Access Easement Agreement (“Agreement”) is made by and between First National Bank, 1110 Ranch Road 620 South, Lakeway, Texas 78734 (“Owner”) and the **CITY OF PFLUGERVILLE, TEXAS**, a Texas home-rule municipality (“City”), and is as follows:

RECITALS

A. Owner are the Owner of certain real property located in Travis County, Texas, which is more particularly described on Exhibit “A”, attached hereto and incorporated herein by reference (the “Easement Tract”);

B. Owner have agreed to grant City a non-exclusive easement and right-of-way upon, over, through and across the Easement Tract (“Easement”), subject to the terms, conditions and other matters set forth in this Agreement.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the receipt and sufficiency of which are hereby acknowledged and confessed, Owner hereby GRANTS, SELLS and CONVEYS, to City an access easement on, over, through and across the Easement Tract, subject to the reservations, terms and conditions of this Agreement and subject to any and all encumbrances and easements of record, to the extent the same are valid and enforceable. The Easement shall be subject to the following terms and provisions:

1. **Character of Easement.** The Easement is an easement in gross.
2. **Duration of Easement.** The Easement is perpetual.
3. **Exclusiveness of Easement.** The Easement is non-exclusive and City’s use shall be in common with Owner and their successors and assigns. To the extent that such entry or use does not interfere with City’s use of the easement as a roadway to access the City’s utility facilities are located, Owner hereby reserve, for themselves and their successors and assigns, the right to enter upon and use the surface of the Easement Tract, subsurface of the Easement Tract and the air space over the Easement Tract for the purposes of installing, constructing, repairing, maintaining, operating, replacing, upgrading and using (i) landscaping, irrigation sleeves and other irrigation facilities; (ii) any other improvements that are permitted under the City of Pflugerville Code of Ordinances to encroach into any setbacks or private easements; and (iii) for any other purposes that do not unreasonably interfere with the rights granted to City hereunder. Notwithstanding anything contained herein to the contrary, Owner shall not use the Easement Tract in any other manner or grant any easement on or across the Easement Tract that interferes in any material way, or is inconsistent with, the easements, rights, and privileges granted hereunder or the terms and conditions hereof.
4. **Purpose of Easement.** The Easement shall be used only for the purpose of vehicular and pedestrian ingress and egress over and across the Easement Tract by Grantee and Grantee’s licensees, employees, agents, invitees, members, and guests to access utility facilities

owned, operated and maintained by the City. The easement shall be kept as a roadway that ensures that the City can access the property at all times. This Access Easement Agreement is not intend to grant and shall constitute any sort or type of dedication of any rights to the public to use access easement granted to the City.

5. Repairs and Restoration. In the event that City's operations and/or other activities on the Easement Tract result in any damage to or destruction of any improvements, authorized by section 3 of this instrument, constructed or installed on the Easement Tract by Owner (or their successors and assigns), then City agrees to repair or replace, as necessary, at City's expense, any such improvements so damaged or destroyed.

6. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the rights granted. Any oral representations or modifications concerning this Agreement shall be of no force and effect except in a subsequent modification in writing, signed by the party to be charged.

7. Assignment. The Easement may be assigned by City, its successors or assigns, without the prior written consent of Owner as long as the proposed successor or assign is a governmental entity that expressly assumes City's obligations under this Agreement.

8. Attorney's Fees. In the event of any controversy, claim, or dispute relating to this Agreement or the breach, the prevailing party shall be entitled to recover from the non-prevailing party reasonable expenses, attorney's fees, and costs.

9. Binding Effect. This Agreement, and the terms, covenants, and conditions shall be covenants running with the Easement Tract and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties.

10. No Waiver. Except for a written waiver signed by the party to be charged, any action or inaction by any party with respect to any provision of this Agreement, including, but not limited to, a party's failure to enforce any provision of this Agreement, shall not constitute a wavier of that provision or any other provision of this Agreement. Any waiver by any party of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement.

11. Headings. Any section headings in this Agreement are for reference only and shall not modify or affect the interpretation of this Agreement in any manner whatsoever.

IN WITNESS WHEREOF, this Agreement is executed this _____ day of _____, 2012 (the "Effective Date").

OWNER:

First National Bank

Address:

By: _____
Sean Denton, Region 11 President

CITY:

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

Address:

City of Pflugerville
Attn: City Manager
P.O. Box 589
Pflugerville, Texas 78691

By: _____
Brandon Wade, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2012, by
_____ (owner's name)_____.

Notary Public Signature

(seal)

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2012, by
_____ (owner's name)_____.

Notary Public Signature

(seal)

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2012, by
Brandon Wade, 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: Karen Thompson, City Secretary
P.O. Box 589
Pflugerville, Texas 78691