

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.

**PUBLIC UTILITY EASEMENT AGREEMENT**

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

**GRANT OF EASEMENT:**

**FRANK CALDWELL, RONALD F. BEYER, MIKE MARSH, BARRY L. CLARK, AND JOHN S. LLOYD** (together, the "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, with offices located at 100 East Main Street, Pflugerville, Travis County, Texas 78691 ("Grantee"), an 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"),

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 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 Utility" shall mean water, wastewater, electricity, fiber optic, gas, television cable, and telecommunication infrastructure.
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 utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of Public Utility facilities and related appurtenances, or making connections thereto. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the Public Utility facilities and related appurtenances.
4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.

*Reservation of Rights (Surface use only).* Save and except Grantor's retain right to surface use, Holder's right to use the Easement Property is exclusive and Grantor shall not convey to others any right to use all or part of the Easement Property. Grantor and Grantor's heirs, successors, and assigns shall retained 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. Specifically, 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.

5. *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.

6. *Maintenance of Surface Easement Property/Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall retain the obligation to maintain the surface of the Easement Property, including the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Property free of litter, debris, or trash.
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. *Exceptions to Warranty.* This grant is subject to any and all encumbrances and easements of record, to the extent the same are valid and enforceable.
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.

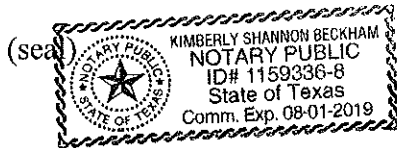
IN WITNESS WHEREOF, this instrument is executed this 17<sup>th</sup> day of January, 2017.

**GRANTOR:**

  
Frank Caldwell

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on January 17, 2017, by Frank Caldwell.

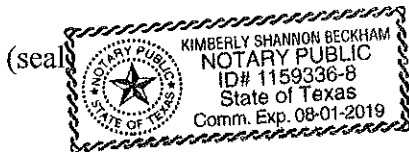


[Signature]  
Notary Public Signature

Ronald F. Beyer  
Ronald F. Beyer

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on January 17, 2017, by Ronald F. Beyer.

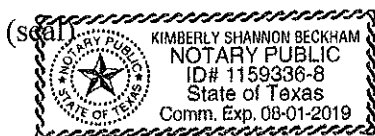


[Signature]  
Notary Public Signature

Mike Marsh  
Mike Marsh

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on January 17, 2017, by Mike Marsh.

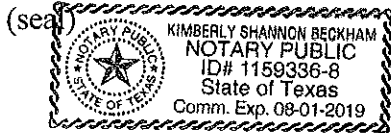


[Signature]  
Notary Public Signature

Barry L. Clark  
Barry L. Clark

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on January 17, 2017, by  
Barry L. Clark.

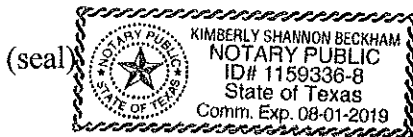


[Signature]  
Notary Public Signature

[Signature]  
John S. Lloyd

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on January 17, 2017, by  
John S. Lloyd.



[Signature]  
Notary Public Signature

**GRANTEE:**

**AGREED AND ACCEPTED:**

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

By: \_\_\_\_\_  
Brandon Wade, City Manager

ATTEST:

\_\_\_\_\_  
Karen Thompson, City Secretary

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on \_\_\_\_\_, 2017, 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)

**EXHIBIT "A"**



Exhibit "\_\_\_\_\_"  
Page 1 of 2  
January 12, 2017

2904 Sq. Ft. Public Utility Easement Dedication  
John Bray Survey No. 10,  
Abstract -73  
Travis County, Texas

### DESCRIPTION

DESCRIPTION OF A 2,904 SQUARE FEET TRACT OF LAND SITUATED IN THE JOHN BRAY SURVEY NO. 10, ABSTRACT 73, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THE REMAINDER OF THAT CERTAIN 1.00 ACRE TRACT OF LAND DESCRIBED IN A DEED TO FRANK CALDWELL, et al OF RECORD IN DOCUMENT NO. 2006232242, DOCUMENT NO. 2006232496, DOCUMENT NO. 2013015322, DOCUMENT NO. 2013015325 AND DOCUMENT NO. 2013036004, OF THE OFFICIAL PUBLIC RECORDS, OF TRAVIS COUNTY, TEXAS, SAID 2,904 SQUARE FEET TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at an iron rod found stamped "PAPE DAWSON" for the most westerly corner of the remainder of said 1.00 acre tract of land, being also the southeast corner of that certain 0.150 acre tract of land as described in a deed to the City of Pflugerville of record in Document No. 2016192649 of the Official Public Records of Travis County, Texas, being also in the north line of Jessie Bohls Road, a variable width right-of-way and being the most westerly corner of the herein described tract;

**THENCE** North 27°33'15" East, with the southeast line of said 0.150 acre City of Pflugerville tract, the northwest line of the remainder of said 1.00 acre tract and the northwest line of the herein described tract, for a distance of 193.68 feet to an iron rod found with cap stamped "PAPE DAWSON", being the most northerly corner of the remainder of said 1.00 acre tract, being the most easterly corner of said 0.150 acre tract, being the most southerly corner of that certain 1.243 acre tract of land as described in a deed to the City of Pflugerville of record in Document No. 2016199032 of the Official Public Records of Travis County, Texas, being also an angle point in the west line of the remainder of that certain 237.56 acre tract described as Tract 2 in a deed to Sorento Holdings 2012, LLC of record in Document No. 2012164042 of the Official Public Records of Travis County, Texas and being the most northerly corner of the herein described tract;

**THENCE** South 62°16'53" East, with the northeast line of the remainder of said 1.00 acre tract, the west line of the remainder of said 237.56 acre tract and the northeast line of the herein described tract, for a distance of 15.00 feet to an angle point for the most easterly corner of the herein described point and being North 62°16'53" West at a distance of 180.05 feet from an iron rod found stamped "PAPE DAWSON" for the most easterly corner of the remainder of said 1.00 acre tract;

**THENCE** South 27°33'15" West, departing the west line of the remainder of said 237.56 acre tract and over and across the remainder of said 1.00 acre tract, with the southeast line of the herein described tract, for a distance of 193.58 feet to an angle point for the most southerly corner of the herein described tract, being also in the southwest line of the remainder of said 1.00 acre tract and being in the northeast line of said Jessie Bohls Road, said point being North 62°41'21" West at a distance of 143.84 feet from an iron rod found stamped "CS LTD" for the most southerly corner of the remainder of said 1.00 acre tract;

Exhibit " \_\_\_\_\_"  
Page 2 of 2  
January 11, 2017

2904 Sq. Ft. Public Utility Easement Dedication  
John Bray Survey No. 10,  
Abstract -73  
Travis County, Texas

**THENCE**, North 62°41'21" West, with the southwest line of the remainder of said 1.00 acre tract, the northeast line of said Jessie Bohls Road and the southwest line of the herein described tract, for a distance of 15.00 feet to the **POINT OF BEGINNING** and containing 2,904 square feet of land.

Reference is herein made to the sketch of this tract accompanying this metes and bounds description.

Subject tract described herein is an easement. No monumentation set for corners.

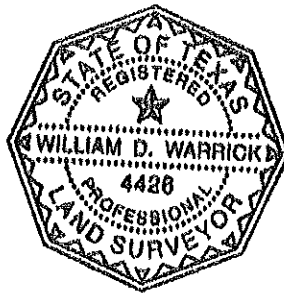
Bearings are based on the Texas Coordinate System of 1983, Central Zone (NAD\_83 (2011)). All distances were adjusted to the surface using a Surface Adjustment Factor of 1.00010. (Surface = Grid X Surface Adjustment Factor)

I certify that this description was prepared from a survey made on the ground from July, 2015 to August, 2016.

COBB, FENDLEY & ASSOCIATES

*William D. Warrick* 01-11-2017

William D. Warrick, RPLS  
Texas Registration No. 4426





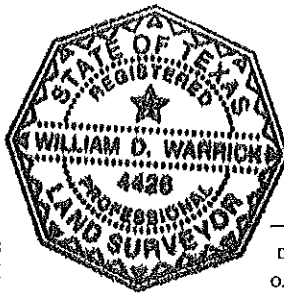
Dwg Info: C:\Survey\PROJECTS\2015\1512-028-01-Weiss Ln\Cod\1512-028-01-esmnt-pue-Coldwell-REV.dwg - Tab: SHEET 2 OF 2 - Plotted: 1/11/2017 7:25 AM By: BILL WARRICK

BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (NAD 83 (2011)). ALL DISTANCES AND COORDINATES WERE ADJUSTED TO THE SURFACE USING A SURFACE ADJUSTMENT FACTOR OF 1.00010. (SURFACE = GRID X SURFACE ADJUSTMENT FACTOR)

THE SYMBOLS REFLECTED IN THE LEGEND AND ON THIS SURVEY MAY HAVE BEEN ENLARGED FOR CLARITY. THE SYMBOLS HAVE BEEN PLOTTED AT THE CENTER OF THE FIELD LOCATION AND MAY NOT REPRESENT THE ACTUAL SIZE OR SHAPE OF THE FEATURE.

REFERENCE IS HEREON MADE TO THE METES AND BOUNDS DESCRIPTION OF THIS TRACT ACCOMPANYING THIS PLAT.

THE SUBJECT TRACT SHOWN HEREON IS AN EASEMENT, THEREFORE NO MONUMENTS WERE SET FOR CORNERS.



I CERTIFY THAT THIS DESCRIPTION WAS PREPARED FROM A SURVEY MADE ON THE GROUND FROM JULY, 2015, TO AUGUST, 2016.

COBB, FENDLEY & ASSOCIATES, INC.

*William D. Warrick*  
01-11-2017

WILLIAM D. WARRICK, R.P.L.S.  
TEXAS REG NO. 4426

#### LEGEND

- D.R. - DEED RECORDS OF TRAVIS COUNTY, TEXAS
- O.P.R. - OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS
- C.C.R.B. - COMMISSIONER'S COURT ROAD BOOK, TRAVIS COUNTY, TEXAS
- R.P.R. - REAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS
- P.U.E. - PUBLIC UTILITY EASEMENT
- P.O.C. - POINT OF COMMENCEMENT
- P.O.B. - POINT OF BEGINNING
- - 1/2" IRON PIPE, FOUND EXCEPT AS NOTED
- - 1/2" IRON ROD, FOUND EXCEPT AS NOTED
- - 1/2" IRON ROD WITH CAP STAMPED "CFA INC", SET EXCEPT AS NOTED
- ▲ - MAG NAIL FOUND IN FENCE POST

TBPLS FIRM REG 10046701

PROJECT: WEISS LN WTR TRANS  
JOB NUMBER: 1512-028-01  
DATE: 2017-01-10  
SURVEYOR: W.WARRICK  
PARTY CHIEF: N/A

**CobbFendley**

505 East Huntland Drive, Suite 100  
Austin, Texas 78754-5136  
512.834.9798 | fax 512.834.7727

Exhibit "A"  
Easement Description