

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:

THE CITY OF PFLUGERVILLE, TEXAS, a Texas home-rule city, with offices located at 100 East Main Street, Pflugerville, Travis County, Texas 78691 (“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** (“Grantee”), a Public Utility 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 when the claim is by, through, or under Grantor, but not otherwise, except as to the reservations from conveyance and the exceptions to conveyance and warranty.

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, 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 intent of this Easement is to specifically disclaim and negate the Doctrine of Merger for all purposes. 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 ("Facilities"), 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 rights granted herein shall be in perpetuity, subject to the following reservations.

Reservation of Rights (Surface use only). Grantor and Grantor's heirs, successors, and assigns shall retain the right to use the surface and subsurface of all or part of the Easement Property for Permitted Improvements purposes in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose.
5. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 6, 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 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, provided that Holder shall replace any landscaping, driveways or parking areas to their original condition that 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 Tract and Permitted Improvements, including the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Tract 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. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
9. *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.
10. *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.
11. *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.
12. *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.
13. *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.
14. *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.

15. *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.
16. *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 _____ day of _____, 2017.

GRANTOR:

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

By: _____
Brandon Wade, City Manager

ATTEST:

Karen Thompson, City Secretary

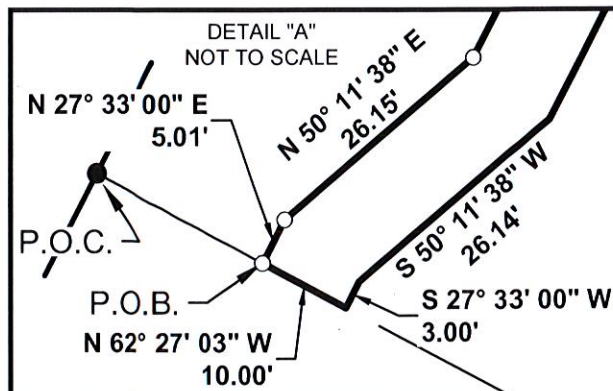
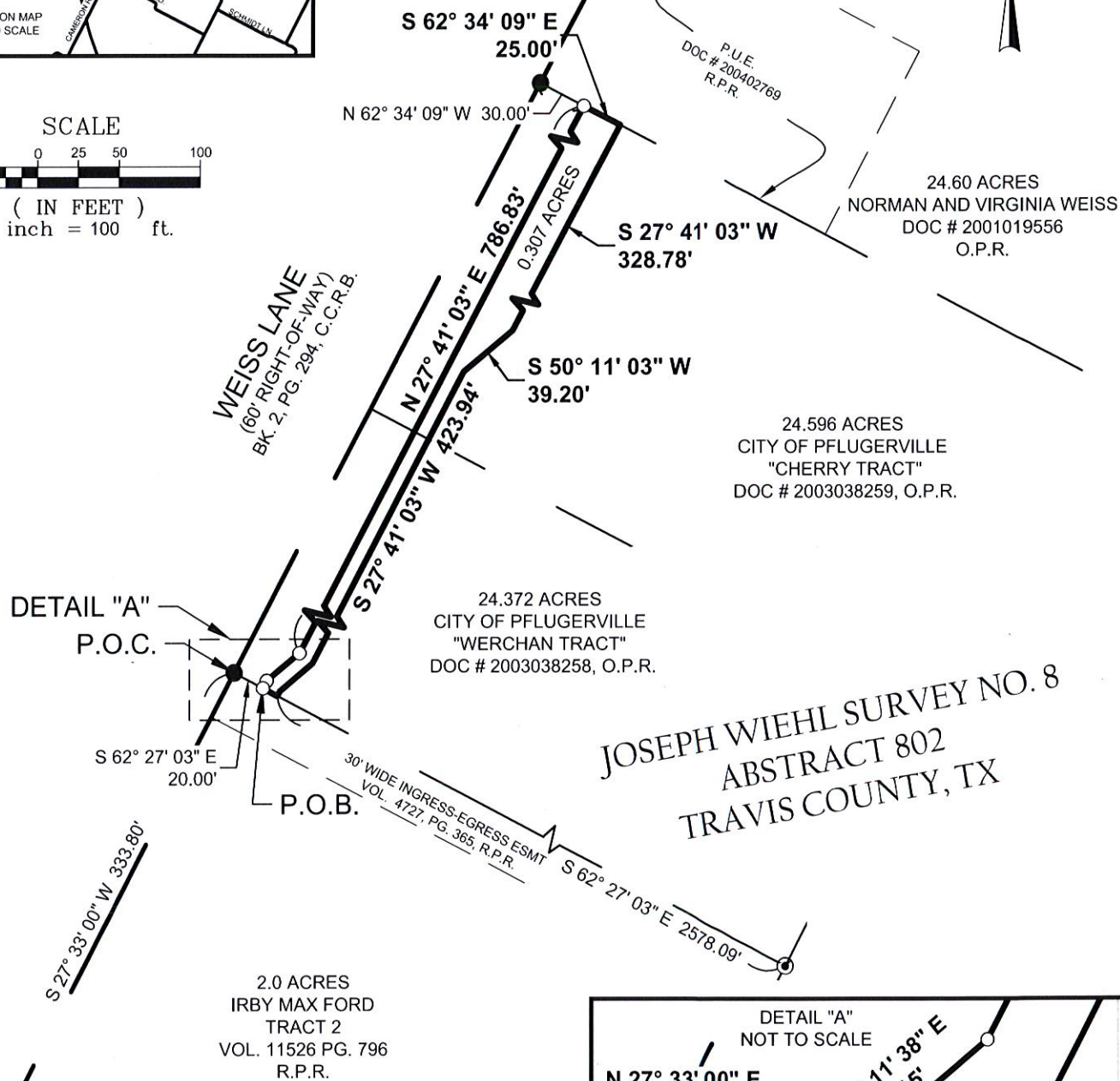
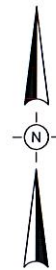
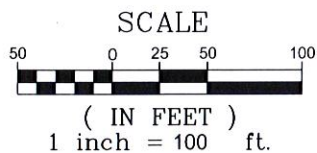
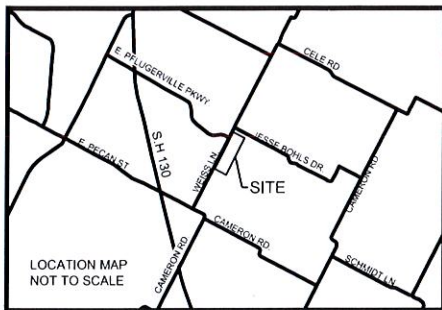
THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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.

(seal)

Notary Public Signature

Dwg Info: C:\Survey\PROJECTS\2015\1512-028-01-Weiss Ln\Cod\1512-028-01-esmt-pue-City of Pflugerville.dwg - Tab: SHEET 1 OF 2 - Plotted: 10/7/2015 6:25 PM By: MIGUEL A. ESCOBAR



TBPLS FIRM REG 10046701

PROJECT: WEISS LN WTR TRANS
JOB NUMBER: 1512-028-01
DATE: 2015-10-07
SURVEYOR: M.A. ESCOBAR
PARTY CHIEF: N/A



CobbFendley

505 East Huntland Drive, Suite 485
Austin, Texas 78754-5136
512.834.9798 | fax 512.834.9553

Exhibit " A "
Public Utility Easement
Description

PAGE 1 OF 2

M.A. Escobar
7 Oct 2015

Dwg. Info: G:\Survey\PROJECTS\2015\1512-028-01-Weiss Ln\Cod\1512-028-01-esmnt-pue-City of Pflugerville.dwg - Tab: SHEET 2 OF 2 - Plotted: 10/7/2015 6:25 PM By: MIGUEL A. ESCOBAR

FLOOD NOTE:

BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS IN ZONE X (NOT SHADED) - AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS DEFINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 48453C0290J, THAT BEARS AN EFFECTIVE/REVISED DATE OF 8/18/2014. THE SURVEYOR MAKES NO ASSURANCE AS TO THE ACCURACY OF THE DELINEATIONS SHOWN ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP. THIS STATEMENT IS FOR INSURANCE PURPOSES ONLY AND IS NOT AN OPINION THAT THE PROPERTY WILL OR WILL NOT FLOOD. A FLOOD STUDY WAS NOT CONDUCTED ON THE PROPERTY.

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 USE OF THE WORD "CERTIFY" OR "CERTIFICATION" ON THIS DOCUMENT ONLY CONSTITUTES AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THOSE FACTS OR FINDINGS WHICH ARE THE SUBJECT OF THE CERTIFICATION, AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EITHER EXPRESSED OR IMPLIED.

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.

THIS SURVEY WAS MADE WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE, NOR A TITLE COMMITMENT, OR TITLE POLICY, THERE MAY BE ADDITIONAL EASEMENT OR RESTRICTIONS, NOT SHOWN HEREON, WHICH MAY AFFECT THE PROPERTY.




I CERTIFY THAT THIS DESCRIPTION WAS PREPARED FROM A SURVEY MADE ON THE GROUND FROM JULY, 2015, TO OCTOBER, 2015, UNDER MY SUPERVISION.

COBB, FENDLEY & ASSOCIATES, INC.


MIGUEL A. ESCOBAR, LSLS, RPLS
TEXAS REG NO. 5630



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
-  - 5/8" IRON ROD WITH CAP STAMPED "CF INC", SET EXCEPT AS NOTED

TBPLS FIRM REG 10046701

PROJECT: WEISS LN WTR TRANS
JOB NUMBER: 1512-028-01
DATE: 2015-10-07
SURVEYOR: M.A. ESCOBAR
PARTY CHIEF: N/A



CobbFendley

505 East Huntland Drive, Suite 485
Austin, Texas 78754-5136
512.834.9798 | fax 512.834.9553

Exhibit " A "
Public Utility Easement
Description

PAGE 2 OF 2

Exhibit " A "
Page 1 of 3
October 7, 2015

0.307 Acre Public Utility Easement
Joseph Wiehl Survey No. 8
Abstract - 802
Travis County, Texas

DESCRIPTION

DESCRIPTION OF A 0.307 ACRE TRACT OF LAND SITUATED IN THE JOSEPH WEIHL SURVEY NO. 8, ABSTRACT 802, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 24.372 ACRE TRACT DESCRIBED AS "WERCHAN TRACT" IN A SPECIAL WARRANTY DEED CONVEYED TO THE CITY OF PFLUGERVILLE, OF RECORD IN DOCUMENT NO. 2003038258, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND A PORTION OF THAT CERTAIN 24.596 ACRE TRACT DESCRIBED AS "CHERRY TRACT" IN A SPECIAL WARRANTY DEED CONVEYED TO THE CITY OF PFLUGERVILLE, OF RECORD IN DOCUMENT NO. 2003038259, OF SAID OFFICIAL PUBLIC RECORDS, SAID 0.307 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2 inch iron rod found on the east right-of-way line of that certain 60 foot wide roadway know as Weiss Lane, as dedicated in Book 2, Page 294, of the Commissioner's Court Road Book, Travis County, Texas, for the southwest corner of said Werchan Tract, same point being the northwest corner of that certain 2.0 acre tract of land conveyed to Irby Max Ford, of record in Volume 11526, Page 796, of the Real Property Records of Travis County, Texas, from which a 1/2 inch iron pipe found for the southwest corner of said Ford Tract, bears, South 27° 33' 00" West, with said east right-of-way line, a distance of 333.80 feet;

THENCE, South 62° 27' 03" East, with the north boundary line of said Ford Tract, same line being the south boundary line of said Werchan Tract, a distance of 20.00 feet to a 5/8 inch iron rod with cap stamped "CF INC" set, for the southwest corner and **POINT OF BEGINNING** of the herein described tract;

THENCE, over and across said Werchan Tract and said Cherry Tract the following three (3) courses:

1. North 27° 33' 00" East, a distance of 5.01 feet to a 1/2 inch iron rod with cap stamped "CF INC" set for a corner of the herein described tract;
2. North 50° 11' 38" East, a distance of 26.15 feet to a 1/2 inch iron rod with cap stamped "CF INC" set for a corner of the herein described tract;

10/7/15
700/2015

3. North 27° 41' 03" East, a distance of 786.83 feet to a 1/2 inch iron rod with cap stamped "CF INC" set on the north boundary line of said Cherry Tract, same line being the south boundary line of that 24.60 acre tract of land conveyed to Norman and Virginia Weiss, of record in Document No. 2001019556, of said Official Public Record, for the northwest corner of the herein described tract, from which point a 1/2 inch iron rod found on said east right-of-way line of Weiss Lane, for the southwest corner of said Weiss Tract, same point being the northwest corner of said Cherry Tract, bears North 62° 34' 09" West, a distance of 30.00 feet;

THENCE, South 62° 34' 09" East, with said common boundary line a distance of 25.00 feet, to a point for the northeast corner of the herein described tract;

THENCE, over and across said Cherry Tract and said Werchan Tract the following five (5) courses and distances;

1. South 27° 41' 03" West, a distance of 328.78 feet to a point;
2. South 50° 11' 03" West, a distance of 39.20 feet to a point;
3. South 27° 41' 03" West, a distance of 423.94 feet to a point;
4. South 50° 11' 38" West, a distance of 26.14 feet to a point;
5. South 27° 33' 00" West, a distance of 3.00 feet to a point on the south boundary line of said Werchan Tract, same line being the north boundary line of said Ford Tract, to a point for the southeast corner of the herein described tract, from which point a 1/2 inch iron pipe found for the southeast corner of said Werchan Tract, bears South 62° 27' 03" East, a distance of 2578.09 feet;

Mds
7 Oct 2015

THENCE, North 62° 27' 03" West, with the common boundary line of said Werchan Tract and said Ford Tract, a distance of 10.00 feet to the **POINT OF BEGINNING** and containing 0.307 acres of land within these metes and bounds.

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

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)

The subject tract is an easement, therefore no monuments have been set for corners.

I certify that this description was prepared from a survey made on the ground from July, 2015, to October, 2015, under my supervision.

COBB, FENDLEY & ASSOCIATES, INC


70 J 2015

Miguel A. Escobar, LSLS, RPLS
Texas Registration No. 5630



G:\Survey_PROJECTS\2015\1512-028-01-Weiss Ln\Data\Metes&Bounds\1512-028-01-PUE-City of Pflugerville.docx