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**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

EXHIBIT 'A'



**MITCHELL & ASSOCIATES, INC.**  
**ENGINEERING & SURVEYING**  
 102 N. COLLEGE ST., KILLEEN, TEXAS (254) 634-5541  
 T. B. P. L. S. FIRM REGISTRATION NO. 100204-00

● = CORNERS ARE 1/2" IR SET W/ CAP STAMPED "M&A" UNLESS OTHERWISE NOTED.  
 ○ = CORNERS ARE CHISELED "X" SET IN CONCRETE UNLESS OTHERWISE NOTED.

SCALE:  
 1" = 100'

CB=S86°06'25"E  
 CHORD=991.29'  
 ARC=1017.67'  
 DELTA=45°22'34"  
 RADIUS=1285.00'  
 TAN=537.21'

**PFENNIG LANE**  
 (R.O.W. WIDTH VARIES)

1/2" FND. W/  
 CHAPARRAL BNDY.

1/2" FND. W/  
 CHAPARRAL BNDY.

0.368 ACRES  
 (16,034 SQ. FT.)

S38°49'52"E  
 10.59'

MATCH LINE  
 SEE SHEET 1

CB=N86°11'28"W  
 CHORD=1002.33'  
 ARC=1029.21'  
 DELTA=45°32'10"  
 RADIUS=1295.00'  
 TAN=543.52'

City of Pflugerville  
 - Called 5.3611 Acres -  
 (Doc.# 2007186712)

City of Pflugerville  
 - Called 18.68 Acres -  
 (Doc.# 2005064592)

**EXHIBIT A**  
**SHEET 2 OF 3**

\*\*\* SEE FIELD NOTES \*\*\*

0.368 Acres of land out of the  
 H.W. FARLEY SURVEY NO. 4, Abstract No. 288 and  
 the E/ BEBEE SURVEY NO. 5, Abstract No. 53  
 in Pflugerville, Travis County, Texas



1/2" FND.

ONCOR ELECTRIC  
 DELIVERY COMPANY, L.L.C

BEARINGS ARE BASED ON THE TEXAS COORDINATE  
 SYSTEM, CENTRAL ZONE, NAD 83 (CORS 96). WAS  
 DETERMINED BY LEICA TEXAS SMARTNET GPS  
 OBSERVATIONS.



MITCHELL & ASSOCIATES, INC.  
ENGINEERING & SURVEYING  
102 N. COLLEGE ST., KILLEEN, TEXAS (254) 634-5541  
T. B. P. L. S. FIRM REGISTRATION NO. 100204-00



SCALE:  
1"=100'

CB=N71°41'48"E  
CHORD=35.32'  
ARC=39.22'  
DELTA=89°53'32"  
RADIUS=25.00'  
TAN=24.95'

●=CORNERS ARE 1/2" IR SET W/ CAP STAMPED "M&A" UNLESS OTHERWISE NOTED.  
○=CORNERS ARE CHISELED "X" SET IN CONCRETE UNLESS OTHERWISE NOTED.

N26°48'11"E-78.70'

CB=N20°21'31"E  
CHORD=284.18'  
ARC=284.51'  
DELTA=9°40'44"  
RADIUS=1684.22'  
TAN=142.60'

S60°28'54"W-17.99'

S26°48'11"W-78.51'

PFENNIG LANE  
(R.O.W. WIDTH VARIES)

MATCH LINE  
SEE SHEET 2

SWENSON FARMS  
BLVD.  
(70.0' R.O.W.)

0.368 ACRES  
(16,034 SQ. FT.)

CB=S20°26'23"W  
CHORD=276.53'  
ARC=276.84'  
DELTA=9°30'09"  
RADIUS=1669.22'  
TAN=138.74'

City of Pflugerville  
- Called 18.68 Acres -  
(Doc.# 2005064592)

S87°20'27"W  
15.80'

P.O.B.  
EX 10.0' P.U.E.  
(Doc.# 200700340)

Lot 2,  
Replat of  
Swenson Farms, Phase II  
(Doc.# 201500190)

EXHIBIT A  
SHEET 1 OF 3

\*\*\* SEE FIELD NOTES \*\*\*

0.368 Acres of land out of the  
H.W. FARLEY SURVEY NO. 4, Abstract No. 288 and  
the E/ BEBEE SURVEY NO. 5, Abstract No. 53  
in Pflugerville, Travis County, Texas



ONCOR ELECTRIC  
DELIVERY COMPANY, L.L.C.

BEARINGS ARE BASED ON THE TEXAS COORDINATE  
SYSTEM, CENTRAL ZONE, NAD 83 (CORS 96), AS  
DETERMINED BY LEICA TEXAS SMARTNET GPS  
OBSERVATIONS.

**EXHIBIT A  
SHEET 3 OF 3**

FIELD NOTES for a proposed variable width Oncor electric easement in Travis County, Texas, and the easement herein described being part of a called 18.68 acre tract conveyed to the City of Pflugerville, of record in Document #2005064592, Official Public Records of Travis County, Texas (O.P.R.T.C.T.), and being part of a called 5.3611 acre tract conveyed to the City of Pflugerville, of record in Document #2007186712, O.P.R.T.C.T., and being more particularly described as follows:

BEGINNING at an "X" set in concrete in a curve to the right on the east right-of-way line of Swenson Farms Road (70' R.O.W.) at the northwest corner of an existing 10 feet wide Public Utility Easement of record in Document #200700340, O.P.R.T.C.T., same being the southwest corner of said 18.68 acre tract and the northwest corner of Lot 2, Replat of Swenson Farms, Phase II, of record in Document #201500190, O.P.R.T.C.T., for the southwest corner of this easement;

THENCE in a northeasterly direction with the east right-of-way line of said Swenson Farms Road and the west line of said 18.68 acre tract, the following three (3) calls:

1. Along said curve to the right, having a radius of 1684.22 feet, an arc length of 284.51 feet and a long chord bearing N. 20° 21' 31" E., 284.18 feet, to an "X" set in concrete at the end of said curve, for a corner of this easement;
2. N. 26° 48' 11" E., 78.70 feet, to an "X" set in concrete at the beginning of a curve to the right, for a corner of this easement;
3. Along said curve to the right, having a radius of 25.00 feet, an arc length of 39.22 feet and a long chord bearing N. 71° 41' 48" E., 35.32 feet, to a 1/2" iron rod with cap stamped "M&A" set at the end of said curve on the south right-of-way line of Pfenning Lane (R.O.W. varies), being the beginning of a curve to the left, for a corner of this easement;

THENCE in an easterly direction with the south right-of-way line of said Pfenning Lane, the north line of said 18.68 acre tract, the north line of said 5.3611 acre tract and along said curve to the left, having a radius of 1285.00 feet, an arc length of 1017.67 feet and a long chord bearing S. 86° 06' 25" E., 991.29 feet, to a 1/2" iron rod with cap stamped "M&A" set at the west side of concrete lay-down curb at parking entrance, for the northeast corner of this easement;

THENCE S. 38° 49' 52" E., 10.59 feet, over and across said 5.3611 acre tract, to a 1/2" iron rod with cap stamped "M&A" set for the southeast corner of this easement;

THENCE over and across said 5.3611 acre tract and said 18.68 acre tract, the following four (4) calls:

1. Along a curve to the right, having a radius of 1295.00 feet, an arc length of 1029.21 feet and a long chord bearing N. 86° 11' 28" W., 1002.33 feet, to a 1/2" iron rod with cap stamped "M&A" set at the end of said curve, for a corner of this easement;
2. S. 60° 28' 54" W., 17.99 feet, to a 1/2" iron rod with cap stamped "M&A" set for a corner of this easement;
3. S. 26° 48' 11" W., 78.51 feet, to a 1/2" iron rod with cap stamped "M&A" set at the beginning of a curve to the left, for a corner of this easement;
4. Along said curve to the left, having a radius of 1669.22 feet, an arc length of 276.84 feet and a long chord bearing S. 20° 26' 23" W., 276.53 feet, to a 1/2" iron rod with cap stamped "M&A" set on the south line of said 18.68 acre tract and the north line of said Replat of Swenson Farms, Phase II, for the southeast corner of this easement;

THENCE S. 87° 20' 27" W., 15.80 feet, with the south line of said 18.68 acre tract and the north line of said Replat of Swenson Farms, Phase II, to the POINT OF BEGINNING and containing 0.368 acre of land.

The bearings for the above description are based on a north line of the Texas Coordinate System, Central Zone, NAD 83 (CORS 96), as determined by Leica Texas SmartNet GPS observations.

See accompanying drawings.

IN WITNESS THEREOF, my hand and seal this the 21st day of April, 2017.

  
Rex D. Haas  
Registered Professional  
Land Surveyor, No. 4378

