# **EASEMENT PURCHASE AGREEMENT** TIMMERMAN COMMERCIAL INVESTMENTS, LP (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 Timmermann Commercial Investments, LP, a Texas limited partnership ("Seller"), hereafter collectively referred to as the "Parties," upon the premises and for the purposes set our herein, and is effective as stated in this Agreement.

#### INTRODUCTION

A. Seller is the current owner thereof of +/- 130 acre parent tract of land located along the northwest corner of FM 685 and E. Pflugerville Parkway, Pflugerville, Texas out of the Thomas G. Survey No. 6, Abstract No. 689, Pflugerville, Travis County, Texas.

B. Buyer requires acquisition of portions of this tract for a Wastewater Pipeline Easement (Exhibit "A") and an Access Easement (Exhibit "B") for the Highland Park Interceptor System hereafter collectively referred to as the "Easement."

C. Seller is willing to convey and Buyer to purchase the Wastewater Pipeline Easement and the Access Easement for the appraised value of \$150,871.00

NOW, THEREFORE, in exchange for the mutual promises provided herein, the Parties agree as follows:

Purchase and Sale Agreement. For the Purchase Price, Seller agrees to sell and convey an easement to Buyer, and Buyer agrees to buy and pay Seller for the Wastewater Pipeline Easement as described in Exhibit "A-1" for public drainage purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of a drainage channel and related drainage facilities, and related appurtenances, or making connections for that certain City of Pflugerville Highland Park Interceptor System. Seller also agrees to sell and convey to Buyer, and Buyer agrees to pay Seller for the Access Easement as described in Exhibit "B-1". 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 Easement. In the event the City Council does not approve the acceptance of the Easement, 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.

#### The Purchase Price. ONE HUNDRED FIFTY THOUSAND EIGHT HUNDRED SEVENTY-ONE AND NO/100 (\$150,871.00) to be paid at closing.

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The Property. A Wastewater Pipeline Easement and an Access Easement over and across, under and through a +/- 130 acre parent tract of land located along the northwest corner of FM 685 and E. Pflugerville Parkway, Pflugerville, Texas out of the Thomas G. Stuart Survey No. 6, Abstract No. 689, Pflugerville, Travis County, Texas as more particularly described in Exhibit "A-1" and Exhibit "B-1", attached hereto and incorporated by reference for all purposes.

Easement Instrument. The Instrument(s) of Conveyance shall be in substantial conformance with the form and substance as stated in the Wastewater Pipeline Easement and Access Easement

Highland Park Interceptor System Parcel 1 – Timmermann

(Exhibit "A", Exhibit "B") attached hereto and incorporated by reference for all purposes.

#### Miscellaneous.

- A. Closing Date. The parties shall close on this transaction by December 31, 2021 with City Council's approval and acceptance of the Easement.
- 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:	Timmermann Commercial Investments, LP 501 Vale Street Austin, TX 78746

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 provisions, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

- C. 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.
- D. 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.
- E. Exhibits and Counterparts. All exhibits referred to in or attached to this Agreement are

#### V.

Highland Park Interceptor System Parcel 1 – Timmermann

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, Agreement may be executed in any 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.

- F. 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-1" and Exhibit "B-1" and 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.
- G. 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.
- H. 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.
- I. 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.

IN	WITNESS	WHEREOF, 2021.	this	instrument	is	executed	this		day	of	
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Highland Park Interceptor System Parcel 1 – Timmermann

**GRANTOR:** Timmermann Commercial Investments, LP, a Texas limited partnership

By: Kut 2m-Title: Manager of 6.P.

THE STATE OF TEXAS

§ §

COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day appeared <u>Barry</u>, <u>Timmemann</u> for Timmermann Commercial Investments, LP, a Texas limited partnership to certify which witness my hand and seal of office.



AGREED AND ACCEPTED:	
CITY OF PFLUGERVIL	LE.
TEXAS, a Texas home-	
nunicipality 3y:	
ereniah Breland, City Manager	

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.

#### ACCESS EASEMENT AGREEMENT

THE STATE OF TEXAS § COUNTY OF TRAVIS §

This Access Easement Agreement ("Agreement") is made by Geraldine Timmermann, Individually and as Independent Executor of the Estate of Terrell Timmermann, Deceased and Barth Dwight Timmermann, ("Owner") and the CITY OF PFLUGERVILLE, TEXAS, a Texas home-rule municipality ("City"), and is as follows:

#### RECITALS

A. Owners are the owners of certain real property located in Travis County, Texas, which is more particularly described on <u>Exhibit "A"</u>, attached hereto and incorporated herein by reference (the "Easement Tract");

B. Owners 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. <u>Character of Easement</u>. The Easement is an easement in gross.

2. <u>Duration of Easement</u>. The Easement is perpetual.

3. <u>Exclusiveness of Easement</u>. The Easement is non-exclusive and City's use shall be in common with Owners and their successors and assigns. Owners 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, Owners 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. <u>Purpose of Easement</u>. 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, and members for the purpose of obtaining access to maintain, operate and/or repair the wastewater facilities described in that certain Wastewater Pipeline Easement Agreement granted by Grantor to Grantee on or about the date hereof recorded as Instrument No. \_\_\_\_\_\_, in the Official Public Records of Travis County, Texas.

5. <u>Repairs and Restoration</u>. 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 constructed or installed on the Easement Tract by Owners (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. In the event that Owners' construction, repairs, operations and/or other activities on the Easement Tract result in any damage to or destruction of any improvements constructed or installed on the Easement Tract by City (or its successors and assigns), then Owners agree to repair or replace, as necessary, at Owners' expense, any such improvements so damaged or destroyed.

6. <u>Entire Agreement</u>. 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. <u>Assignment</u>. 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. <u>Attorney's Fees</u>. 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.** <u>**Binding Effect**</u>. 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. <u>No Waiver</u>. 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 waiver 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.** <u>**Headings**</u>. 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 instrument is executed this \_\_\_\_\_ day of 20 .

**GRANTOR:** Geraldine Timmermann, Individually and as Independent Executor of the Estate of Terrell Timmermann

By:\_\_\_\_\_

# THE STATE OF TEXAS § COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared Geraldine Timmermann, Individually and as Independent Executor of the Estate of Terrell Timmermann, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he 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 \_\_\_\_\_20\_\_.

Notary Public Signature

(seal)

Barth Dwight Timmermann

By:\_\_\_\_\_

# THE STATE OF TEXAS § COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared **Barth Timmermann**, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he 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
20 .	-	

Notary Public Signature

#### AGREED AND ACCEPTED:

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

By:

Sereniah Breland, City Manager

ATTEST:

Karen
Ixaron

Thompson, City Secretary

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on \_\_\_\_\_\_, 20\_\_\_, 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)

(seal)

#### AFTER RECORDING, RETURN TO:

City of Pflugerville Attn.: Emily Barron, Planning Director Development Services Center P.O. Box 589 Pflugerville, Texas 78691

Page 1 of 4 December 2, 2020

A METES AND BOUNDS DESCRIPTION OF 0.137 ACRE (APPROX. 5,976 SQ. FT.) IN THE THOMAS G. STUART SURVEY NO. 6, ABSTRACT NO. 689, IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THE CALLED 166.19 ACRE TRACT OF LAND CONVEYED TO TERRELL TIMMERMANN IN VOLUME 12483, PAGE 71, REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.137 ACRE OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING** at a 1/2-inch iron rod found at the intersection of the existing northwest right-of-way line of Farm to Market (F.M.) Road 685 (100 foot right-of-way width) and the existing north right-of-way line of East Pflugerville Parkway (115 foot right-of-way width) being the southeast corner of a remainder portion of the said 166.19 acre tract, having Texas State Plane (NAD 83/Central Zone) Surface Coordinate values of N:10141249.26 and E:3157366.84, and from which a 1/2-inch iron rod with "Chaparral" cap found in the curving existing northerly right-of-way line of East Pflugerville Parkway, same being the most southerly common corner of a remainder portion of the said 166.19 acre Timmermann tract and a remainder portion of a called 136.450 acre conveyed to Terrell Timmermann in Document No. 1999104396 of the Official Public Records of Travis County, Texas, bears South 72°44'04" West, a distance of 55.33 feet and with a curve to the left, having a radius of 1310.14 feet, a delta angle of 45°04'05", an arc length of 1030.54 feet and a chord which bears North 82°45'33" West, a distance of 1004.18 feet;

**THENCE** with the existing northwest right-of-way line of F.M. 685, being the east line of a remainder portion of the said 166.19 acre Timmermann tract, the following two (2) courses and distances:

- 1. with a curve to the right, having a radius of 5779.58 feet, a delta angle of 02°10'58", an arc length of 220.17 feet and a chord which bears North 26°32'02" East, a distance of 220.16 feet to a calculated point for endpoint of curve;
- North 27°37'31" East, a distance of 414.39 feet to a calculated point to the **POINT OF** BEGINNING and a southerly corner of the herein described tract of land, having Texas State Plane (NAD 83/Central Zone) Surface Coordinate values of N: 10141931.23 and E: 3157719.01;

**THENCE** over and across the said 166.19 acre Timmermann tract, with the lines of the herein described proposed Access Easement, the following eight (8) courses and distances:

- with a curve to the left, having a radius of 25.00 feet, a delta angle of 46°32'09", an arc length of 20.31 feet, and a chord which bears North 39°07'06" West, a distance of 19.75 feet to a calculated point;
- with a compound curve to the left, having a radius of 25.00 feet, a delta angle of 90°00'00", an arc length of 39.27 feet, and a chord which bears South 72°36'49" West, a distance of 35.36 feet to a calculated point;
- South 27°36'49" West, a distance of 209.16 feet to a calculated point in the northeast line of a proposed 45' Wastewater Easement for the most southerly corner of the herein described tract of land;

Page 2 of 4 December 2, 2020

- North 47°10'51" West, with a northeast line of the said proposed Wastewater Easement, a distance of 20.71 feet to a calculated point for the most westerly corner of the herein described tract of land;
- 5. North 27°36'49" East, a distance of 223.73 feet to a calculated point;
- with a curve to the right, having a radius of 25.00 feet, a delta angle of 90°00'00", an arc length of 39.27 feet, and a chord which bears North 72°36'49" East, a distance of 35.36 feet to a calculated point;
- 7. South 62°23'11" East, a distance of 19.99 feet to a calculated point;
- with a curve to the left, having a radius of 25.00 feet, a delta angle of 46°33'35", an arc length of 20.32 feet, and a chord which bears South 85°39'59" East, a distance of 19.76 feet to a calculated point;

**THENCE** South 27°37'31" West, with the existing northwest right-of-way line of F.M. 685, being the southeast line of a remaining portion of the said 166.19 acre Timmermann tract, a distance of 35.61 feet to the **POINT OF BEGINNING** and containing 0.137 acre of land, more or less, within these metes and bounds.

NOTE: Basis of bearings is the Texas Coordinate System of 1983, Central Zone 4203 (NAD83/2011). All distances shown hereon are surface and may be converted to grid by dividing by the surface adjustment factor of 1.0001. Units: U.S. Survey Feet. Last day of Field Survey: August 12, 2020.

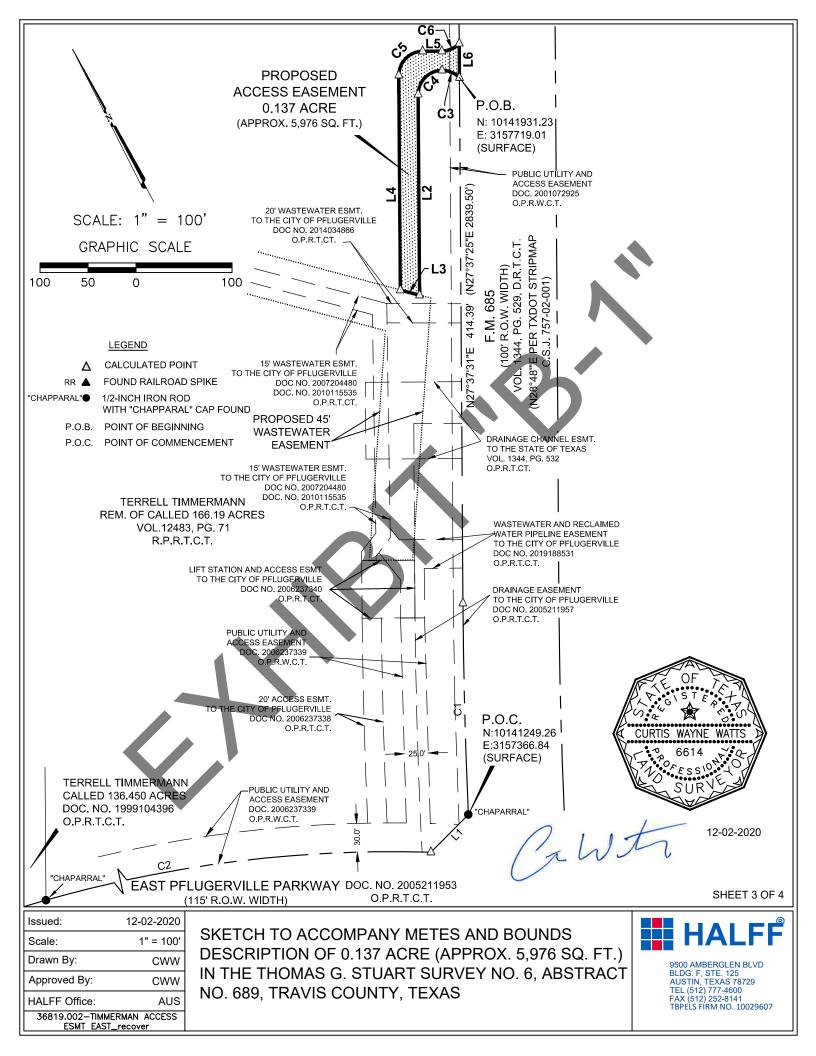
I, Curtis Wayne Watts, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

12/02/2020

Date



Curtis Wayne Watts, R.P.L.S. Registered Professional Land Surveyor Texas Registration No. 6614 Halff Associates, Inc., TBPLS Firm No. 10029607 9500 Amberglen Blvd., Bldg. F, Suite 125 Austin, Texas 78729 512-777-4600



LINE	BEARING	DISTANCE	
L1	S72°44'04"W	55.33'	(S72°43'58"E 55.32')
L2	S27°36'49"W	209.16'	
L3	N47°10'51"W	20.71'	
L4	N27°36'49"E	223.73'	
L5	S62°23'11"E	19.99'	
L6	S27°37'31"W	35.61'	

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	220.17'	5779.58'	2°10'58"	N26°32'02"E	220.16
		{5779.58'}			
	(220.17')	(5781.05')	(2°10'56")	(N26°31'57"E)	(220.16')'
C2	1030.54'	1310.14'	45°04'05"	N82°45'33"W	1004.18'
	(1030.52')	(1310.14')	(45°04'03")	(N82°45'39"W)	(1004.16')
C3	20.31'	25.00'	46°32'09"	N39°07'06"W	19.75'
C4	39.27'	25.00'	90°00'00"	S72°36'49"W	35.36'
C5	39.27'	25.00'	90°00'00"	S72°36'49"W	35.36'
C6	20.32'	25.00'	46°33'35"	\$85°39'59"E	19.76'
-					

# { } = DATUM DERIVED FROM TXDOT C.S.J. 757-02-001}

#### TITLE COMMITMENT NOTE:

THE ADDRESSMENT BY THE SURVEYOR OF THE COMMITMENT FOR TITLE INSURANCE PREPARED BY TITLE RESOURCES GUARANTY COMPANY, REFERENCED BY G.F. NO.: 2063974-KFO HAVING AN EFFECTIVE DATE OF NOVEMBER 13, 2020 AND A DATE OF ISSUANCE OF NOVEMBER 24, 2020, WAS PROVIDED BY SEPARATE TITLE COMMITMENT ADDRESSMENT LETTER. SCHEDULE BITEMS THAT CAN BE PLOTTED AND ARE WITHIN THE VICINITY OF THE PROPOSED EASEMENT ARE SHOWN.

THIS IS A SURFACE DRAWING.

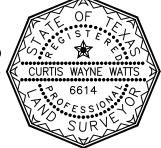
BEARING BASIS: THE TEXAS COORDINATE SYSTEM OF 1983 (NAD83), CENTRAL ZONE 4203, BASED ON MULTIPLE, REPEATED GPS OBSERVATIONS.

COMBINED SCALE FACTOR = 0.9999000099990 (FOR SURFACE TO GRID CONVERSION)

**INVERSE SCALE FACTOR = 1.0001** (FOR GRID TO SURFACE CONVERSION)

SCALED ABOUT 0,0

AW.



#### Issued: 12-02-2020 1" = 100' Scale: Drawn By: CWW Approved By: CWW HALFF Office: AUS 36819.002-TIMMERMAN ACCESS ESMT EAST\_recover

SKETCH TO ACCOMPANY METES AND BOUNDS DESCRIPTION OF 0.137 ACRE (APPROX. 5,976 SQ. FT.) IN THE THOMAS G. STUART SURVEY NO. 6, ABSTRACT NO. 689, TRAVIS COUNTY, TEXAS



SHEET 4 OF 4

12-02-2020

Page 1 of 4 December 2, 2020

A METES AND BOUNDS DESCRIPTION OF 1.450 ACRES (APPROX. 63,169 SQ. FT.) IN THE THOMAS G. STUART SURVEY NO. 6, ABSTRACT NO. 689, IN TRAVIS COUNTY, TEXAS, BEING A PORTION OF THE CALLED 166.19 ACRE TRACT OF LAND CONVEYED TO TERRELL TIMMERMANN IN VOLUME 12483, PAGE 71, REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS AND A PORTION OF THE CALLED 136.450 ACRE TRACT OF LAND CONVEYED TO TERRELL TIMMERMANN IN DOCUMENT NO. 1999104396 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 1.450 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING** at a 1/2-inch iron rod found at the intersection of the existing northwest right-of-way line of Farm to Market (F.M.) Road 685 (100 foot right-of-way width) and the existing north right-of-way line of East Pflugerville Parkway (115 foot right-of-way width) being the southeast corner of a remainder portion of the said 166.19 acre tract, having Texas State Plane (NAD 83/Central Zone) Surface Coordinate values of N:10141249.26 and E:3157366.84, and from which a 1/2-inch iron rod with "Chaparral" cap found in the curving existing northerly right-of-way line of East Pflugerville Parkway, same being the most southerly common corner of a remainder portion of the said 136.450 acre Timmermann tract and a remainder portion of the said 166.19 acre Timmermann tract bears South 72°44'04" West, a distance of 55.33 feet and with a curve to the left, having a radius of 1310.14 feet, a delta angle of 45°04'05", an arc length of 1030.54 feet and a chord which bears North 82°45'33" West, a distance of 1004.18 feet;

**THENCE** with existing northwest right-of-way line of F.M. 685, being the east line of a remainder portion of the said 166.19 acre tract, the following two (2) courses and distances:

- 1. with a curve to the right, having a radius of 5779.58 feet, a delta angle of 02°10'58", an arc length of 220.17 feet and a chord which bears North 26°32'02" East, a distance of 220.16 feet to a calculated point for endpoint of curve;
- 2. North 27°37'31" East, a distance of 45.21 feet to a calculated point;

**THENCE** North 62°28'59" West, over and across the said 166.19 acre tract, a distance of 50.15 feet to a calculated point at the most easterly corner of the Lift Station and Access Easement recorded in Document No. 2006237340, Official Public Records of Travis County, Texas;

**THENCE** North 62°28'59" West, continuing over and across the said 166.19 acre tract, with the northeasterly line of the said Lift Station and Access Easement, a distance of 1.86 feet to a calculated point for the **POINT OF BEGINNING** and most southerly corner of the herein described tract of land, having Texas State Plane (NAD 83/Central Zone) Surface Coordinate values of N: 10141510.32 E: 3157440.02;

**THENCE** North 62°28'59" West, continuing over and across the said 166.19 acre tract, with the northeasterly line of the said Lift Station and Access Easement, also being the southerly line of the herein described Proposed Wastewater Easement, a distance of 45.14 feet to a calculated point;

Page 2 of 4 December 2, 2020

**THENCE** leaving the northeasterly line of the said Lift Station and Access Easement, over and across the said 166.19 acre tract and the said 136.450 acre tract, with lines of the herein described proposed Wastewater Easement, the following eleven (11) courses and distances:

- 1. North 31°57'39" East, a distance of 239.81 feet to a calculated point;
- 2. North 47°06'06" West, a distance of 473.73 feet to a calculated point;
- 3. North 67°02'06" West, a distance of 285.68 feet to a calculated point;
- 4. North 79°30'05" West, at a distance of 163.35 passing a calculated point in the common line of the said 166.19 acre Timmermann Tract and the said 136.450 acre Timmermann tract, from which a railroad spike found at an angle point in said common line bears South 27°33'18" West, a distance of 49.23 feet, continuing, in all, a distance of 339.40 feet to a calculated point;
- 5. North 06°33'56" East, a distance of 64.28 feet to a calculated point;
- 6. South 87°06'41" East, a distance of 27.02 feet to a calculated point;
- 7. South 05°50'35" East, a distance of 23.31 feet to a calculated point;
- 8. South 79°26'25" East, a distance of 315,40 feet to a calculated point;
- 9. South 67°02'06" East, a distance of 298.53 feet to a calculated point;
- 10. South 47°06'21" East, a distance of 518.73 feet to a calculated point;
- 11. South 31°57'39" West, a distance of 273.51 feet to the **POINT OF BEGINNING** and containing 1.450 acres of land, more or less, within these metes and bounds.

NOTE: Basis of bearings is the Texas Coordinate System of 1983, Central Zone 4203 (NAD83/2011). All distances shown hereon are surface and may be converted to grid by dividing by the surface adjustment factor of 1.0001. Units: U.S. Survey Feet. Last day of Field Survey: August 12, 2020.

I, Curtis Wayne Watts, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

"awt

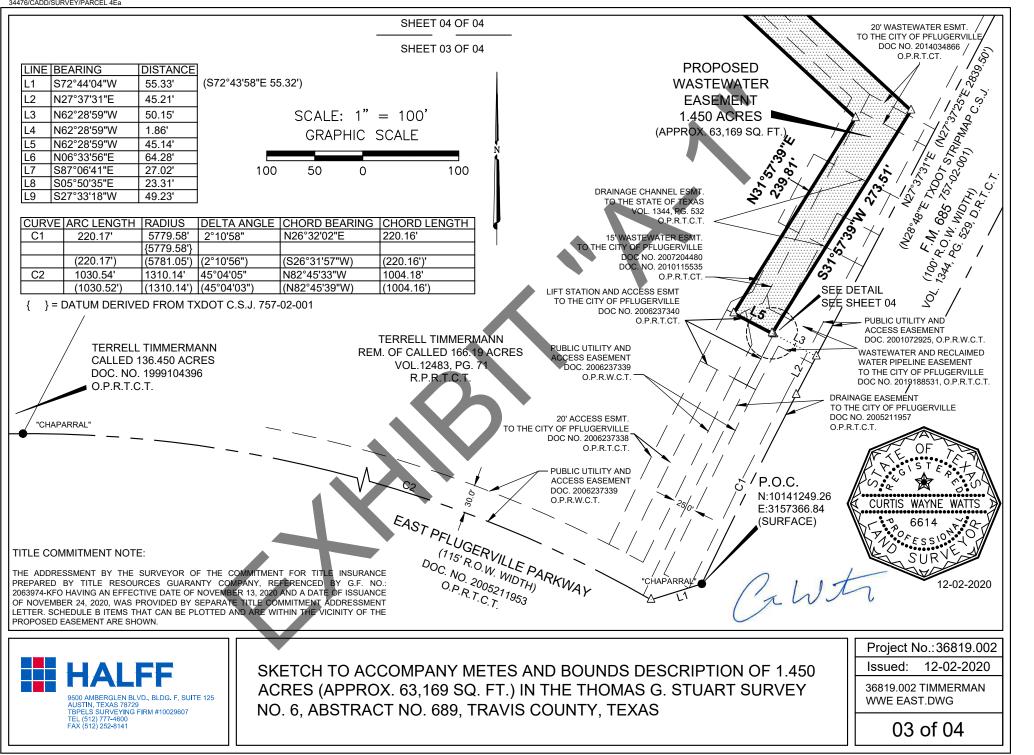
12/02/2020

Date

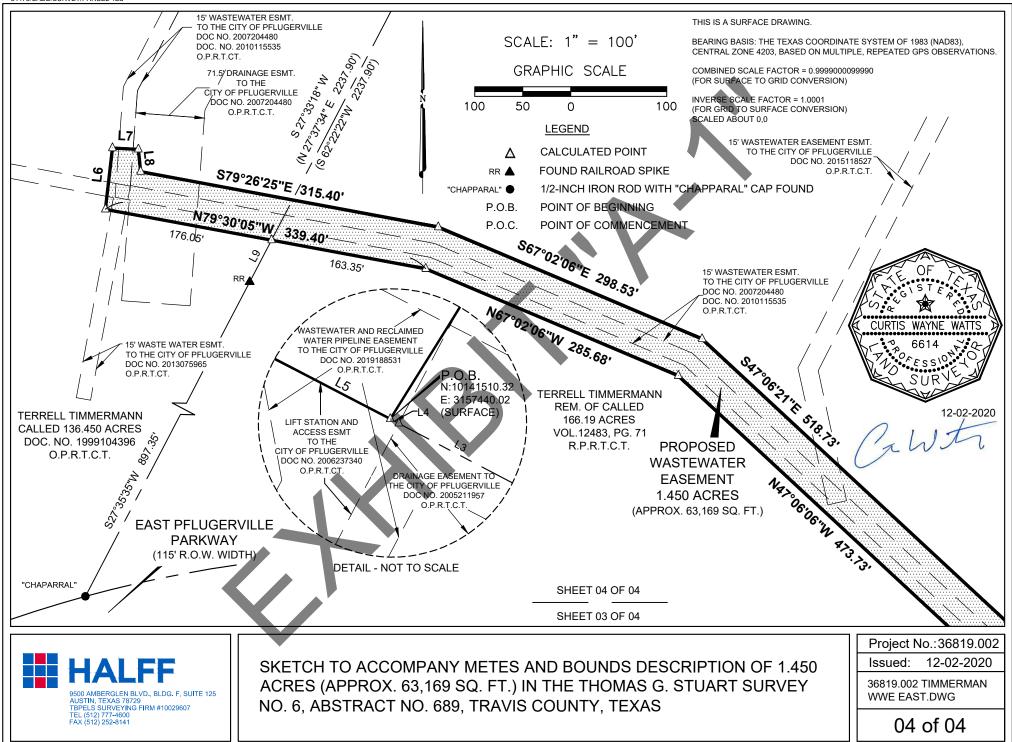


Curtis Wayne Watts, R.P.L.S. Registered Professional Land Surveyor Texas Registration No. 6614 Halff Associates, Inc., TBPLS Firm No. 10029607 9500 Amberglen Blvd., Bldg. F, Suite 125 Austin, Texas 78729 512-777-4600

34476/CADD/SURVEY/PARCEL 4Ea



34476/CADD/SURVEY/PARCEL 4Ea



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.

#### WASTEWATER PIPELINE EASEMENT AGREEMENT

THE STATE OF TEXAS § COUNTY OF TRAVIS §

#### **GRANT OF EASEMENT:**

Geraldine Timmermann, Individually and as Independent Executor of the Estate of Terrell Timmermann, Deceased and Barth Dwight Timmermann ("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 easement and right-of-way ("Easement") upon and across the property of Grantor which is more particularly described on <u>Exhibit "A"</u>, attached hereto and incorporated herein by reference ("Easement Property"). 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. Grantor 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 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) "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 wastewater pipeline" shall mean a pipeline designed and operated to transport wastewater and its associated appurtenances.
- 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 wastewater utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of public wastewater pipelines 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 nor conflicts 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 repair or replace to their original condition any landscaping, driveways, parking areas, or Permitted Improvement on the Easement Property that are damaged in connection with the placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of the Facilities.

- 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 nondefaulting 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.
- 19. *Assignability*. The Easement may be assigned by Grantee, its successors or assigns, without the prior written consent of Grantor.

**GRANTOR:** Geraldine Timmermann, Individually and as Independent Executor of the Estate of Terrell Timmermann

By:\_\_\_\_\_

THE STATE OF TEXAS COUNTY OF TRAVIS

§ § §

BEFORE ME, a Notary Public, on this day personally appeared Geraldine Timmermann, Individually and as Independent Executor of the Estate of Terrell Timmermann, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he 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 \_\_\_\_\_ 20\_.

Notary Public Signature

(seal)

Barth Dwight Timmermann

By:\_\_\_\_\_

THE STATE OF TEXAS § COUNTY OF TRAVIS §

BEFORE ME, a Notary Public, on this day personally appeared **Barth Timmermann**, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon his oath stated that he 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 \_\_\_\_\_ 20\_.

(seal)

Notary Public Signature

#### **AGREED AND ACCEPTED:**

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

By:\_\_\_\_\_ Sereniah Breland, City Manager

ATTEST:

Karen Thompson, City Secretary

## THE STATE OF TEXAS

## COUNTY OF TRAVIS

This instrument was acknowledged before me on \_\_\_\_\_\_, 20\_\_, 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:

City of Pflugerville Attn.: Emily Barron, Planning Director Development Services Center P.O. Box 589 Pflugerville, Texas 78691