

CITY OF BASTROP, TX
RESOLUTION NO. 2020-107

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A RIGHT OF ENTRY AGREEMENT AND A POSSESSION AND USE AGREEMENT WITH JOHN A. NIXON AND TINA T. NIXON, FOR THE SOUTH SEGMENT WASTEWATER COLLECTION AND WASTEWATER TREATMENT PLANT PROJECT.

WHEREAS, the City of Bastrop and John A. Nixon and Tina T. Nixon desire to enter into a right of entry agreement and a possession and use agreement to allow the City to proceed with construction of the project South Segment Wastewater Collection and Wastewater Treatment Plant, prior to the final purchase of the property described on Exhibit A; and

WHEREAS, the City Council finds that it is in the best interest of the City to enter into this agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bastrop:

Section 1: The City Council hereby authorizes the City Manager, or his designee, to sign a right of entry agreement substantially in the form attached as Exhibit 1, and a possession and use agreement substantially in the form attached as Exhibit B, all of which are attached hereto and incorporated herein as if copied verbatim.


Section 2: All forms shall be approved by the City Attorney.

Section 3: This resolution shall be effective immediately upon adoption.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop, TX, on this, the 13th day of October 2020.

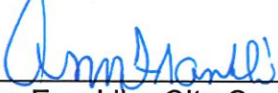
[Signatures on next page]

APPROVED:




Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

Exhibit "1"

*Right of Entry Agreement for West Side Collection System Construction.
(John A. & Tina T. Nixon, Parcel 6S)*

(see attachments that follow)

Exhibit "A"

*Legal Descriptions and Survey Plat
(John A. and Tina T. Nixon, Parcel 6S)*

(see attachments that follow)

Exhibit "B"

*Possession and Use Agreement
(John A. and Tina T. Nixon, Parcel 6S)*

(see attachments that follow)

SKETCH TO ACCOMPANY FIELD NOTES

EXHIBIT A

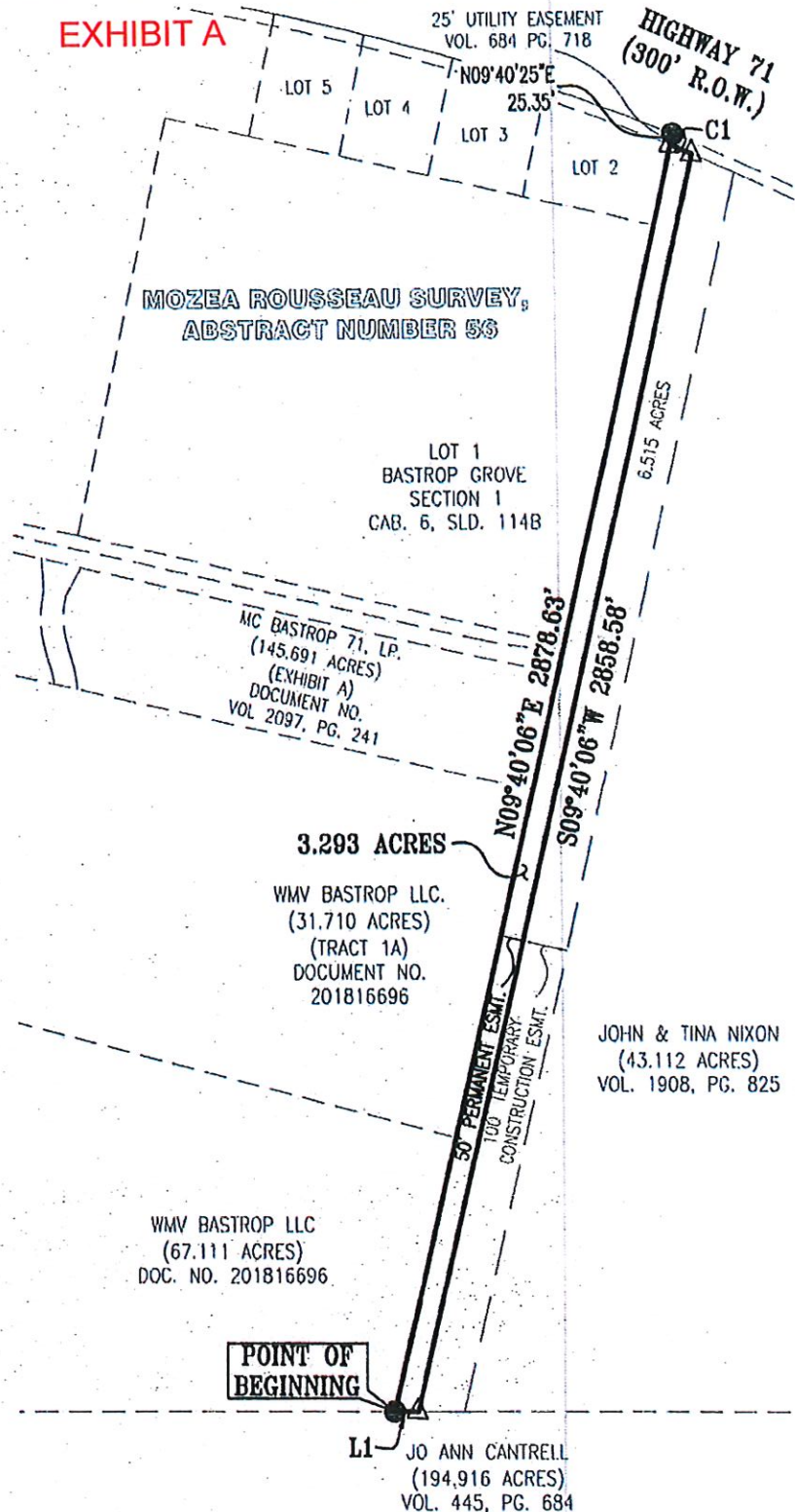
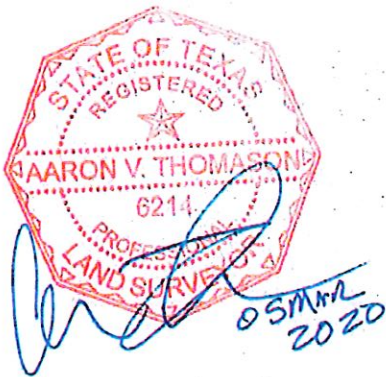


SCALE: 1" = 200'

LEGEND

- CONCRETE MONUMENT FOUND
- 1/2" IRON ROD FOUND
- CALCULATED POINT

Line Table		
Line #	Length	Direction
L1	51.25	S86°59'03"W



Curve Table						
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C1	50.77	5033.89	S70°21'01"E	50.77	25.38	0°34'40"

BEARING BASIS: TEXAS COORDINATE SYSTEM, CENTRAL ZONE (4203), NAD83

Carlson, Brigance & Doering, Inc.
 FIRM ID #P3791 REG. # 10924900
 Civil Engineering Surveying
 5501 West William Cannon Austin, Texas 78749
 Phone No. (512) 280-5160 Fax No. (512) 280-5165

PATH:- J:\AC3D\5080-032\DWG\FN - JOHN & TINA NIXON EASEMENT.DWG

EXHIBIT A

EXHIBIT A

FIELD NOTES

BEING ALL OF THAT CERTAIN 3.293 ACRE TRACT OF LAND SITUATED IN THE MOZEA ROUSSEAU SURVEY, ABSTRACT NUMBER 56, BASTROP COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED AS BEING A PORTION OF A CALLED 43.112 ACRE TRACT OF LAND CONVEYED TO JOHN & TINA NIXON IN VOLUME 1908, PAGE 825, OFFICIAL PUBLIC RECORDS OF BASTROP COUNTY, TEXAS, SAID 3.293 ACRE TRACT OF LAND BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron rod found at the southwest corner of said 43.112 acre tract of land, being at the southeast corner of a called 67.111 acre tract of land conveyed to WMV Bastrop, LLC. in Document Number 201816696, Official Public Records of Bastrop County, Texas, same being in the north line of a called 194.916 acre tract of land conveyed to Jo Ann Cantrell in Volume 445, Page 684, Deed Records of Bastrop County, Texas, for a southwest corner and the **POINT OF BEGINNING** of the herein described tract,

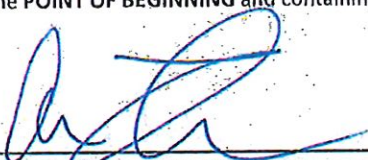
THENCE, N09°40'06"E, with the northwest line of said 43.112 acre tract, the southeast line of said 67.111 acre tract, the southeast line of a called 31.710 acre tract conveyed to WMV Bastrop, LLC. in Document Number 201816696, Official Public Records of Bastrop county, Texas, the southeast line of a called 145.691 acre tract conveyed to MC Bastrop 71, LP. in Volume 2097, Page 241, Official Public Records of Bastrop county, Texas, the southeast line of Lot 1, Bastrop Grove, a subdivision recorded in Cabinet 6, Slide 114B, Plat Records of Bastrop County, Texas, and the southeast line of Lot 2, of said Bastrop Grove, Section 1, a distance of 2878.63 feet to a calculated point in the northwest line of said 43.112 acre tract, being in the southeast line of said Lot 2, same being at the beginning of a curve to the right, for the northwest corner of the herein described tract of land, from which a 1/2 Inch iron rod found at the northeast corner of said Lot 2, being at the northwest corner of said 43.112 acre tract, same being in the south right-of-way line of Highway 71 (300' R.O.W.), bears N09°40'25"E, a distance of 25.35 feet,

THENCE, over and across said 43.112 acre tract, the following two (2) courses and distances, numbered 1 and 2,

- 1) Along said curve to the right, having a radius of 5033.89 feet, an arc length of 50.77 feet, and a chord that bears S70°21'01"E, a distance of 50.77 feet to a calculated point for the northeast corner of the herein described tract of land, and
- 2) S09°40'06"W, a distance of 2858.58 feet to a calculated point for the southeast corner of the herein described tract of land, being in the south line of said 43.112 acre tract, same being in the north line of said 194.916 acre tract,

THENCE, S86°59'03"W, with the north line of said 194.916 acre tract and the south line of said 43.112 acre tract, a distance of 51.25 feet to the **POINT OF BEGINNING** and containing 3.293 acres of land.

Surveyed by:


28 FEB 2020
AARON V. THOMASON, R.P.L.S. NO. 6214
Carlson, Brigance and Doering, Inc.
5501 West William Cannon
Austin, TX 78749
Ph: 512-280-5160 Fax: 512-280-5165
aaron@cbdeng.com



BEARING BASIS: TEXAS COORDINATE SYSTEM CENTRAL ZONE (4203)

THE STATE OF TEXAS §
§
COUNTY OF BASTROP §

**POSSESSION AND USE AGREEMENT
FOR SOUTH SIDE COLLECTION SYSTEM**

This Possession and Use Agreement For the South Side Collection System, (the "Agreement") between the City of Bastrop, a Texas Home Rule municipal corporation, and John A. Nixon and Tina T. Nixon, (the "Grantors" whether one or more), grants to the City, its contractors, agents and all others deemed necessary by the City, an irrevocable right to possession and use of the Grantor's property for the purpose of constructing a wastewater collection system and necessary infrastructure (the "South Side Collection System Project"). The property subject to this Agreement is described more fully in field notes and plat map, attached as "Exhibit A" and made a part of this Agreement by reference (the "Property").

1. For the consideration paid by the City which is set forth in Paragraphs 2 below, the receipt and sufficiency of which is acknowledged, Grantor grants, bargains, sells and conveys to the City of Bastrop the right of entry and exclusive possession and use of the Property for the purpose of constructing a wastewater plant and appurtenances thereto and the right to remove any improvements. Authorized activities include surveying, inspection, environmental studies, archeological studies, clearing, demolition, construction of permanent improvements, relocating, replacing, and improving existing utility facilities, locating new utility facilities, and other work required to be performed in connection with the South Side Collection Project. This Possession and Use Agreement will extend to the City, its contractors and assigns, owners of any existing utilities on the Property and those which may be lawfully permitted on the Property by the City in the future, and all others deemed necessary by the City for the purpose of the South Side Collection Project. This grant will allow the construction, relocation, replacement, repair, improvement, operation and maintenance of utilities on the Property.
2. In full consideration for this irrevocable grant of possession and use and other Grantor covenants, warranties, and obligations under this Agreement, the City will tender to the Grantor the sum of Five Hundred Sixty One Thousand Six Hundred and Nineteen dollars (\$561,619.00). The Grantor agrees that this sum represents adequate and full compensation for the possession and use of the Property. The City will be entitled to take possession and use of the Property upon tender of payment. The parties agree that the sum tendered represents 100 percent of the City's approved value, which assumes no adverse environmental conditions affecting the value of the Property. The approved value is the City's determination of the just compensation owed to the Grantor for the real property interest to be acquired by the City in the Property, encumbered with the improvements thereon, if any, and damages to the remainder, if any, save and except all oil, gas and sulphur. The parties agree that the sum tendered to Grantor will be deducted from any final settlement amount, Special Commissioners' award or court judgment. In the event the amount of the final settlement or judgment for acquisition of the Property is less than the amount the City has paid for the possession and use of the Property, then the Grantor agrees that the original amount tendered represents an overpayment for the difference and, upon written notice from the City, the

Grantor will promptly refund the overpayment to the City.

3. The effective date of this Agreement will be the date on which payment pursuant to Paragraph 2 above was tendered to the Grantor by the City, or disbursed to the Grantor by a title company acting as escrow agent for the transaction, (the "Effective Date").
4. Grantor warrants and represents that the title to the Property is free and clear of all liens and encumbrances or that proper releases will be executed for the Property prior to funds being disbursed under this Agreement. The Grantor further warrants that no other person or entity owns an interest in the fee title to the Property and further agrees to indemnify the City from all unreleased or undisclosed liens, claims or encumbrances affecting the Property.
5. The parties agree that the valuation date for determining the amount of just compensation for the real property interest proposed to be acquired by the City in the Property, for negotiation or eminent domain proceeding purposes, will be the Effective Date of this Agreement.
6. This Agreement is made with the understanding that the City will continue to proceed with acquisition of a real property interest in the Property. The Grantor reserves all rights of compensation for the title and interest in and to the Property which the Grantor holds as of the time immediately prior to the Effective Date of this Agreement. This Agreement shall in no way prejudice the Grantor's rights to receive full and just compensation as allowed by law for all of the Grantor's interests in and to the Property to be acquired by the City, encumbered with the improvements thereon, if any, and damages, if any, to the remainder of the Grantor's interest in any larger tract of which the Property is a part (the "Remainder"), if any; all as the Property exists on the Effective Date of this Agreement. The City's removal or construction of improvements on the Property shall in no way affect the fair market value of the Property in determining compensation due to the Grantor in the eminent domain proceedings. There will be no project impact upon the appraised value of the Property. This grant will not prejudice the Grantor's rights to any relocation benefits for which Grantor may be eligible.
7. In the event the City institutes or has instituted eminent domain proceedings, the City will not be liable to the Grantor for interest upon any award or judgment as a result of such proceedings for any period of time prior to the date of the award. Payment of any interest may be deferred by the City until entry of judgment.
8. The purpose of this Agreement is to allow the City to proceed with its South Side Collection System Project without delay and to allow the Grantor to have the use at this time of the estimated compensation for the City's acquisition of a real property interest in the Property. The Grantor expressly acknowledges that the proposed South Side Collection System Project is for a valid public use and voluntarily waives any right the Grantor has or may have, known or unknown, to contest the jurisdiction of the court in any condemnation proceeding for acquisition of the Property related to the South Side Collection System Project, based upon claims that the condemning authority has no authority to acquire the Property through eminent domain, has no valid public use for the Property, or that acquisition of the Property is not necessary for the public use.

9. Grantor reserves all of the oil, gas and sulphur in and under the land herein conveyed but waives all right of ingress and egress to the surface for the purpose of exploring, developing, mining or drilling. The extraction of oil, gas and minerals may not affect the geological stability of the surface. Nothing in this reservation will affect the title and rights of the City to take and use all other minerals and materials thereon, and thereunder.
10. The undersigned Grantor agrees to pay as they become due, all ad valorem property taxes and special assessments assessed against Property, including prorated taxes for the year in which the City takes title to the Property.
11. Notwithstanding the acquisition of right of possession to the Property by the City in a condemnation proceeding by depositing the Special Commissioners' award into the registry of the court, less any amounts tendered to the Grantor pursuant to Paragraph 2 above, this Agreement shall continue to remain in effect until the City acquires title to the Property either by negotiation, settlement, or final court judgment.
12. This Agreement will also extend to and bind the heirs, devisees, executors, administrators, legal representatives, successors in interest and assigns of the parties.
13. It is agreed that the City will record this document.
14. Other conditions: N/A

To have and to hold the Agreement herein described and conveyed, together with all the rights and appurtenances belonging to the City of Bastrop and its successors and assigns forever, for the purposes and subject to the limitations set forth above.

(See signatures on next page)

GRANTOR:

Tina T. Nixon

Tina T. Nixon

Date: 2/4/21

THE STATE OF TEXAS §
 §
COUNTY OF Bastrop §

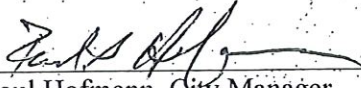
BEFORE ME, a Notary Public, on this day personally appeared Tina T. Nixon, known to me to be the person whose name is subscribed to the foregoing instrument, and having been sworn, upon her oath stated that she is authorized to execute such instrument; and that said instrument is executed as the free and voluntary act and deed for the purposes and consideration expressed therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 4th day of February 2020.

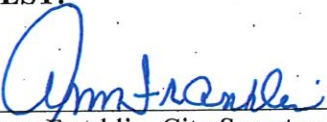


Staci Calvert
Notary Public In and For
The State of Texas

THE CITY OF BASTROP, TEXAS

by: 
Paul Hofmann, City Manager

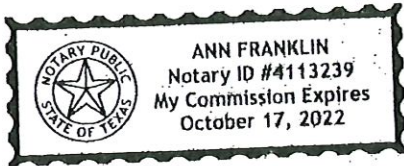
ATTEST:

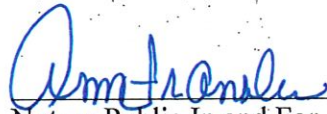
by: 
Ann Franklin, City Secretary

THE STATE OF TEXAS §
§
COUNTY OF BASTROP §

BEFORE ME, a Notary Public, on this day personally appeared Paul Hofmann, a person known to me, in his capacity as City Manager of the City of Bastrop, Texas, and having been sworn, upon his oath stated that he is authorized to execute such instrument on behalf of said municipality.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 14th day of April 2020. 2021




Notary Public In and For
The State of Texas

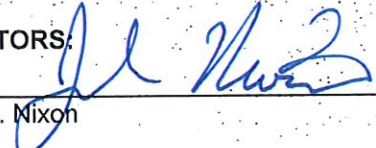
**AGREEMENT TO GRANT RIGHT OF ENTRY FOR
SOUTH SEGMENT WASTEWATER SYSTEM AND
WASTEWATER TREATMENT PLANT CONSTRUCTION**


THIS AGREEMENT is made by and between John A. Nixon and Tina T. Nixon, property owners in Bastrop County, Texas ("Grantors"), and City of Bastrop, Texas, Bastrop, Texas, a political subdivision of the State of Texas ("City").

1. The City is in the process of acquiring property for the expansion of the wastewater collection system for the City of Bastrop wastewater utility. Grantors own property located within the area designated by the City for the extension of the South Segment Wastewater Collection System and location of the Wastewater Treatment Plant ("Capital Improvements").
2. The Property to be acquired from Grantors is more fully described in Exhibit A, and is needed by the City for construction of the Capital Improvements.
3. The City and Grantors have not agreed upon a final value for purchase of the Property.
4. The City has filed a petition in eminent domain, which is currently pending in Bastrop County.
5. In order for the City to proceed with bidding and construction of the Capital Improvements, the City has requested that Grantors grant a right-of-entry to the Property prior to final resolution on the value to be paid by the City for the Property.
6. Grantors, in consideration of the mutual agreements herein, agree to grant to the City right-of-entry upon, under, across and through the Property, through a Possession and Use Agreement in the form attached as Exhibit B ("PUA").
7. The City will pay to Grantors the amount of the City's appraised value upon granting of the PUA, specifically five hundred sixty one thousand six hundred and nineteen dollars (\$561,619.00). Grantors retain the right to seek additional compensation in a Commissioners' Hearing and trial.
8. All exhibits are incorporated herein as if copied verbatim.
9. The mailing address of Mr. Nixon is in care of his attorney, Dareld Ray Morris III, The Morris Law Firm, 219 Main Street, Smithville, TX 78957. The mailing address of Ms. Nixon is P.O. Box D, Bastrop, Texas 78602. The mailing address of the City is City of Bastrop, P.O. Box 427, Bastrop, Texas 78602.

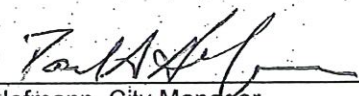
SIGNED this 14th day of April, 2021.

GRANTORS:

by: 
John A. Nixon

by: 
Tina T. Nixon

CITY:

by: 
Paul Hofmann, City Manager

Attest:

by: 
Ann Franklin, City Secretary