

RESOLUTION NO. R-2020-67

A RESOLUTION AUTHORIZING THE INTERIM CITY
MANAGER TO SIGN A TEMPORARY ACCESS AND
CONSTRUCTION EASEMENT PURCHASE AGREEMENT
WITH HELEN L. SIMMONS, FOR THE WEST SEGMENT
WASTEWATER COLLECTION AND WASTEWATER
TREATMENT PLANT PROJECT.

WHEREAS, the City of Bastrop and Helen Simmons desire to enter into a temporary access and construction easement purchase agreement to allow the City to proceed with construction of the project; and

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

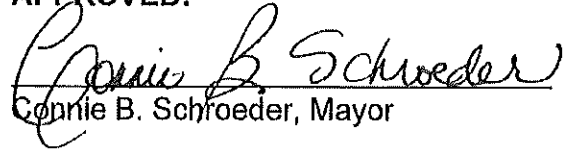
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bastrop:

Section 1. The City Council hereby authorizes the Interim City Manager, or his designee, temporary access and construction easement purchase agreement on a form approved by the City Attorney substantially in the form attached as Exhibit 1, which is attached hereto and incorporated herein as if copied verbatim.

Section 2. 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 14th day of July 2020.

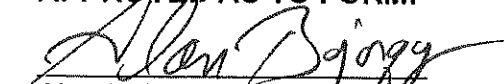
APPROVED:


Connie B. Schroeder, Mayor

ATTEST:


Ann Franklin, City Secretary

APPROVED AS TO FORM:


Alan Bojorquez, City Attorney

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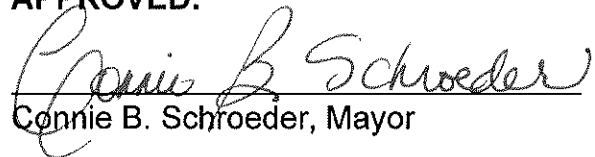
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APPROVED:


Connie B. Schroeder, Mayor

ATTEST:


Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Exhibit "1"

**TEMPORARY ACCESS AND CONSTRUCTION EASEMENT PURCHASE
AGREEMENT
HELEN L. SIMMONS (SELLER)**

This Purchase Agreement (this "Agreement") is made and entered into by and between the **CITY OF BASTROP, TEXAS**, a Texas home rule municipality ("Buyer"), and HELEN L. SIMMONS ("Seller"), hereafter collectively referred to as the "Parties," upon the premises and for the purposes set out herein, and is effective as stated in this Agreement.

INTRODUCTION

A. Seller is the current owner thereof of 4.794 acre tract recorded in Document 200201729, Official Public Records of Bastrop County, Texas.

B. Buyer requires acquisition of portions of this tract for a Temporary Access & Construction Easement (**Exhibit "A"**) for the West Side Collection System hereafter collectively referred to as the "Easement."

C. Seller is willing to convey and Buyer to purchase the Temporary Access & Construction Easement for the appraised value of **\$72,192.00**.

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

I.

Temporary Access & Construction Agreement. For the Purchase Price, Seller agrees to sell and convey a Temporary Access & Construction Easement to Buyer, and Buyer agrees to buy and pay Seller for the Temporary Access & Construction Easement as described in **Exhibit "A"**, for construction as part of the West Side Collection Capital Improvement Project. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract. The obligations of the Buyer contained in this agreement are conditional on City of Bastrop, Council'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.

II.

The Purchase Price. **SEVENTY TWO THOUSAND ONE HUNDRED NINETY TWO AND NO/100 (\$72,192.00)** to be paid at closing.

III.

The Property. A 50 foot wide temporary access and construction easement over, across, under and through a 4.794 acre tract recorded in Document 200201729, Official Public Records of Bastrop County, Texas as more particularly described in **Exhibit "A"**,

attached hereto and incorporated by reference for all purposes.

IV.

Easement Instrument. The Instrument of Conveyance shall be in substantial conformance with the form and substance as stated in the Temporary Access & Construction Easement Agreement in Exhibit "B", attached hereto and incorporated by reference for all purposes.

V.

Miscellaneous.

- A. *Closing Date.* The parties shall close on this transaction within 90 days of City Council's approval and acceptance of the Easement.
- B. *Title Commitment, Review, and Title Policy.* City of Bastrop will secure a title commitment (the "Commitment") for the Easement Property from Independence Title (the "Title Company"), agent for Title Resources Guaranty Company, binding the Title Company to issue a Texas Owner's Policy of Title Insurance on the standard form prescribed by the Texas State Board of Insurance at the Closing in the full amount of the Sales Price, subject only to any exceptions approved by City of Bastrop. The Commitment will be accompanied by copies of all instruments referred to in the Commitment as exceptions on the title. Within 10 days, the City will review the Commitment and notify the Owners of any objections the City has to any exceptions in the Commitment. Any matters to which the City does not object will be deemed to be accepted. The Owners and the City will cooperate in good faith to cure any objections made by the City within 15 days. If the Owners are unable to cure the objections, the City may either waive the objections, or terminate this Agreement by written notice to the Owners. The City, at its expense, will prepare the necessary conveyance documents and will pay all cost related to the closing, including but not limited to the cost of the title insurance premium and of recording all conveyance documents.
- C. *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 Bastrop
P.O. Box 427
Bastrop, TX 78602

Seller: Helen L. Simmons
234 SH 304
Bastrop, TX 78602

- D. 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 provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.
- E. No Waiver of Immunities.* Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to the parties hereto, their past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. Neither party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- F. 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 Bastrop County, Texas.
- G. 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.
- H. Amendments.* 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.
- I. Exhibits and Counterparts.* All exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes.

- J. Headings, Cooperative Drafting.* 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, the terms of this Agreement will control.
- K. Counterparts and Effective Date.* This Agreement may be executed in any number of counterparts, each of which will be 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.
- L. 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"**, 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 Bastrop as provided by Chapter 38 of the City's Code of Ordinances.
- M. 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.
- N. Payment of Debt or Delinquency to the State or Political Subdivision of the State.* Pursuant to Chapter 38, City of Bastrop 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 Bastrop, 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.
- O. 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.

EXECUTED this the 16th day of June, 2020.

SELLER:

Helen L. Simmons

By: Helen L. Simmons

PURCHASER:

CITY OF BASTROP,
a Texas home rule municipality

By: Paul A. Hotmann
City Manager

Printed Name: Paul A. Hotmann

ATTEST

Ann Franklin
Ann Franklin, City Secretary

0.921 ACRES (40,106 SQUARE FEET)
ROUSSEAU MOZEA SURVEY
ABSTRACT NUMBER 56
BASTROP COUNTY, TX

EXHIBIT "A"
FIELD NOTES

BEING ALL OF THAT CERTAIN 0.921 ACRE (40,106 SQUARE FEET) TRACT OF LAND SITUATED IN THE ROUSSEAU MOZEA SURVEY, ABSTRACT NUMBER 56, BASTROP COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED AS BEING A PORTION OF A CALLED 3.800 ACRE TRACT OF LAND (TRACT 1), AND A PORTION OF A CALLED 0.994 ACRE TRACT OF LAND (TRACT 2) CONVEYED TO HELEN SIMMONS IN VOLUME 1200, PAGE 460, OFFICIAL PUBLIC RECORDS OF BASTROP COUNTY, TEXAS, SAID 0.921 ACRE (40,106 SQUARE FEET) TRACT OF LAND BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 Inch Iron rod found at the northwest corner of said 3.800 acre tract of land, being at the northeast corner of a called 126.297 acre tract of land conveyed to Reid & Cindy Sharp in Volume 580, Page 770, Official Public Records of Bastrop County, Texas, same being in the south line of Hunters Crossing, Section Three C, recorded in Cabinet 4, Slide 159-B, Plat Records of Bastrop County, Texas, for the northwest corner and the **POINT OF BEGINNING** of the herein described tract,

THENCE, N87°51'42"E, with the north line of said 3.800 acre tract and the south line of said Hunters Crossing, Section Three C, a distance of 443.90 feet to a calculated point at the southwest corner of Lot 19, Block A, Hunters Crossing, Section Three E, recorded in Cabinet 5, Slide 143-A, Plat Records of Bastrop County, Texas, for a northern corner of the herein described tract of land,

THENCE, N87°33'23"E, with the north line of said 3.800 acre tract, and the south line of said Lot 19, Block A, a distance of 15.62 feet to a calculated point at a northeast corner of said 3.800 acre tract, being at the northwest corner of said 0.994 acre tract, same being in the south line of said Lot 19, Block A, for a northeast corner of the herein described tract of land, from which a 1/2 Inch Iron rod found at the northeast corner of said 0.994 acre tract, being in the west line of Highway 304 (120' R.O.W.), bears N87°33'23"E, a distance of 229.79 feet,

THENCE, S01°46'25"E, with the common line of said 3.800 acre tract and said 0.994 acre tract, a distance of 150.11 feet to a calculated point for an interior corner of the herein described tract of land,

THENCE, N89°21'10"E, over and across said 0.994 acre tract, a distance of 198.09 feet to a calculated point in the east line of said 0.994 acre tract, being in the west line of said Highway 304, for the easternmost corner of the herein described tract of land,

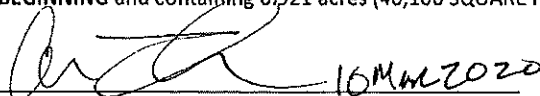
THENCE, S09°40'28"W, with the common line of said 0.994 acre tract and said Highway 304, a distance of 50.82 feet to a calculated point for the southeast corner of the herein described tract of land,

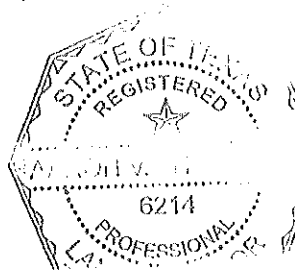
THENCE, over and across said 0.994 acre tract and said 3.800 acre tract, the following three (3) course and distances, numbered 1 through 3,

- 1) S89°21'10"W, a distance of 238.01 feet to a calculated point for an exterior corner of the herein described tract of land,
- 2) N01°46'12"W, a distance of 148.81 feet to a calculated point for an interior corner of the herein described tract of land, and
- 3) S87°51'05"W, a distance of 410.45 feet to a calculated point in the west line of said 3.800 acre tract, being in the east line of said 126.297 acre tract, for a west corner of the herein described tract of land,

THENCE, N00°42'48"W, with the common line of said 126.297 acre tract and said 3.800 acre tract, a distance of 50.02 feet to the **POINT OF BEGINNING** and containing 0.921 acres (40,106 SQUARE FEET) of land.

Surveyed by:


AARON V. THOMASON, R.P.L.S. NO. 6214
Carlson, Briganee 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)

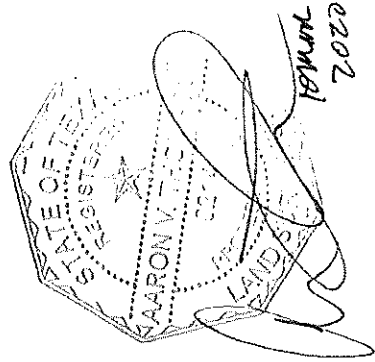
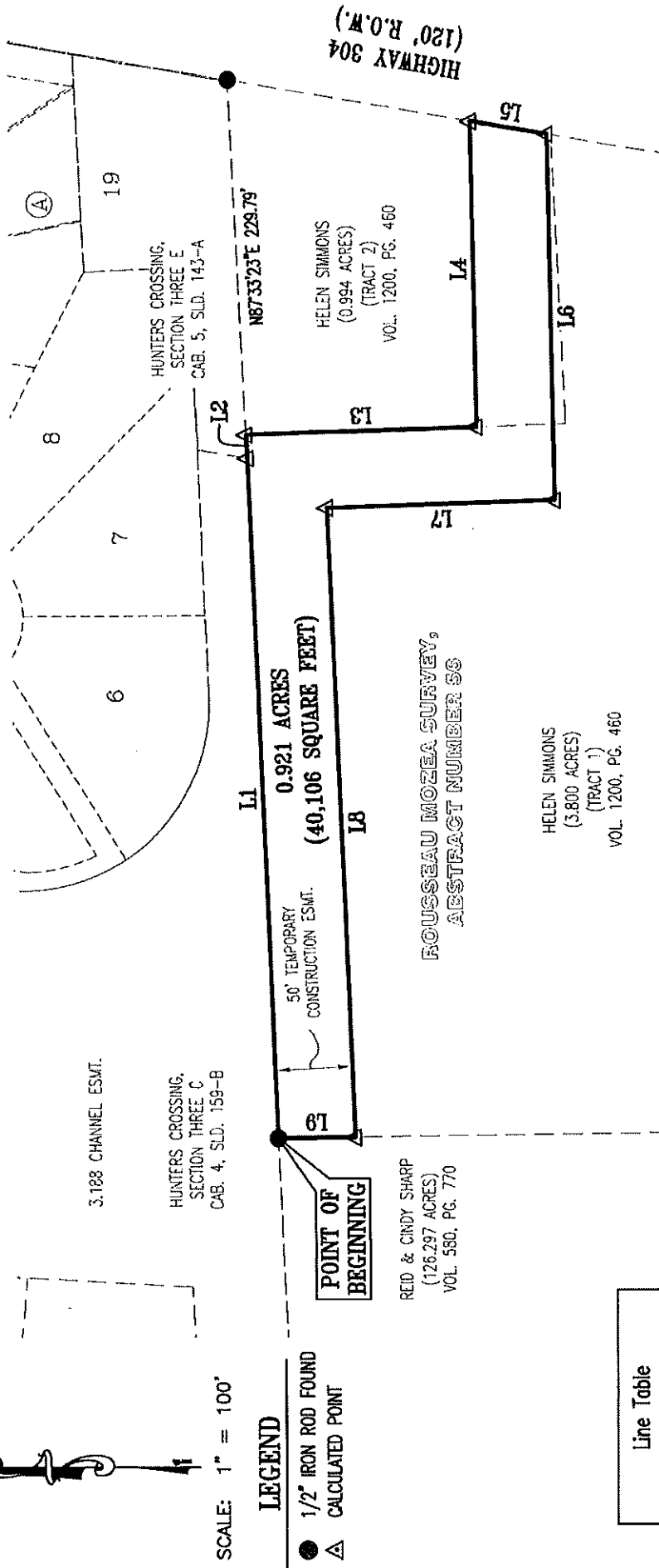
SKETCH TO ACCOMPANY FIELD NOTES



SCALE: 1" = 100'

LEGEND

- 1/2" IRON ROD FOUND
- △ CALCULATED POINT



Line Table	
Line #	Direction
L1	N87°51'42"E
L2	N87°33'23"E
L3	S01°46'25"E
L4	N89°21'10"E
L5	S09°40'28"W
L6	S89°21'10"W
L7	N01°46'12"W
L8	S87°51'05"W
L9	N00°42'48"W

BEARING BASISTEXAS COORDINATE SYSTEM, CENTRAL ZONE (+203), NAD83

CBD

Carlson, Brigrance & Doering, Inc.

Surveying REG. # 10026900

Civil Engineering REG. # 10026900

5501 West William Cannon Phone No. (512) 290-5160 Fax No. (512) 286-5165

15/ITC/ 2021164 -BAS/CKC

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.

TEMPORARY ACCESS & CONSTRUCTION EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

GRANT OF EASEMENT:

HELEN L. SIMMONS ("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 BASTROP, TEXAS**, a home-rule municipality located in Bastrop County, Texas ("Grantee"), a temporary access and construction easement ("TACE" or "Easement") across a variable width area upon and across the property of Grantor, which is more particularly described on Exhibit "A", attached hereto and incorporated herein by reference ("Easement Property") , together with rights of ingress and egress across the property of the Grantor if necessary to access the TACE. Grantor and Grantee may jointly be referred to by "the parties."

TO HAVE AND TO HOLD the same onto 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 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 infrastructure" shall mean water, reclaimed water and/or wastewater pipelines and associated appurtenances to be constructed by the Holder or its agents, contractors and assigns.
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 are irrevocable until the termination of the TACE in accordance with the terms herein.
 3. *Purpose of Easement.* The Easement shall be used to facilitate the construction of Public infrastructure, which shall include use of the Easement Property for access, construction staging and storage, and other construction activities.
 4. *Term.* The variable width TACE granted herein shall terminate automatically upon completion of the construction of the Public infrastructure included in Grantee's Public infrastructure project.
 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.
 6. *Use and Maintenance of Easement Property.* Holder has the right to remove or relocate any encroachments into the Easement Property as necessary to utilize the same for the purpose of this Easement. Upon completion of the construction of the Public infrastructure, *Holder shall restore the Easement Property to the condition of the Easement Property immediately before the Grantee's use of the same.*
 7. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting

interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

8. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.
9. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
10. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.
11. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.
12. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.
13. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.
14. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.
15. *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.

IN WITNESS WHEREOF, this instrument is executed this 4th day of November 2020.

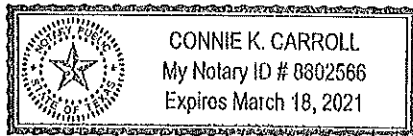
GRANTOR:

Helen L. Simmons

By: *Helen Simmons*

THE STATE OF TEXAS §
 §
COUNTY OF BASTROP §

This Instrument was acknowledged before me on 11-04-2020 by Helen L. Simmons.



Connie Carroll
Notary Public Signature

(seal)

GRANTEE:

AGREED AND ACCEPTED:

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

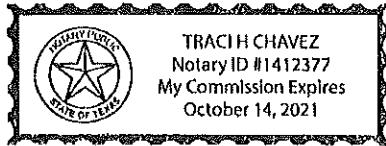
By: Paul A. Hoffman
City Manager
Printed Name: Paul A. Hoffman

ATTEST:
Ann Franklin
Ann Franklin, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF BASTROP §

This instrument was acknowledged before me on November 10th,
2020 by Paul A. Hoffman City Manager of the City of Bastrop, Texas, a Texas
home-rule municipality, on behalf of said municipality.

(seal)



Traci H Chavez
Notary Public Signature

AFTER RECORDING, RETURN TO:

City of Bastrop
P.O. Box 427
Bastrop, TX 78602