

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.

WATER UTILITY EASEMENT AND RIGHT-OF-WAY AGREEMENT

Date: April 1, 2013

Grantor: Tom Green County, a political subdivision of the State of Texas (hereinafter "County")

Grantor's Mailing Address: 122 West Harris, San Angelo, Tom Green County, Texas 76903

Grantee: City of San Angelo, a Texas home rule municipality (hereinafter "City")

Grantee's Mailing Address: 72 W. College Ave, San Angelo, Tom Green County, Texas 76903

Easement and Right-of-Way Property: A non-exclusive perpetual water utility easement and right-of-way for two water pipelines and related appurtenances over, on, under and across Grantor's property as more particularly described in **Exhibit "A"**, attached hereto and incorporated herein by reference for all purposes.

Consideration: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor.

Easement Purpose: The purpose for this easement and right-of-way shall be for the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of two water pipelines and related appurtenances (collectively, the "Facilities") within the Easement and Right of Way Property.

RECITAL

WHEREAS, City obtained a certain thirty-five foot (35') Easement for Right of Way (Pipeline), for a fifty-year term as recorded in Vol. 557, Page 366, et. seq., Deed Records of Office of the County Clerk, Tom Green County, Texas, (hereinafter "Original Easement") for placement of a thirty-three inch (33") water pipeline; and,

WHEREAS, in addition to the 33" water pipeline described above, City installed a second, thirty-six inch (36") water pipeline within County's property, and outside of the easement area for the 33" water pipeline; and,

WHEREAS, it is the intention of the parties to execute one water utility easement and right-of-way agreement providing for the perpetual right to install, construct, operate, maintain, replace, repair, upgrade and remove two (2) water pipelines and related appurtenances within a single easement and right-of-way across County property and to terminate and declare void that

portion of the Easement for Right of Way (Pipeline) which traverses Grantor's property as recorded in Vol. 557, Page 366, et. seq, Deed Records of the Office of the County Clerk, Tom Green County, Texas.

NOW, THEREFORE, County, for the Consideration of the sum of Ten Dollars (\$10.00), the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by County, the Parties do hereby agree as follows:

AGREEMENT

1. **Grant of Easement and Right of Way.** County, for the Consideration, grants, sells and conveys to City and City's successors, and assigns a perpetual non-exclusive water utility easement over, on, under and across the Easement and Right-of-Way Property for the Easement Purpose set forth hereinabove, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement and Right-of-Way to City and City's successors and assigns forever.

2. **Duration of Easement.** The duration of the Easement shall be non-exclusive and is perpetual.

3. **Reservation of Rights.** All rights not specifically granted to City are reserved to County and County shall have the right to full use and enjoyment of the surface, subsurface, mineral, and airspace estates of the Easement so long as such does not unreasonably interfere with City's enjoyment of the rights conferred under this Water Utility Easement and Right-of-Way Agreement. The rights reserved to County include, but are not limited to the following: (1) all mineral (including for oil, gas and other hydrocarbons) exploration, mining, drilling, development, and production; (2) constructing or laying of pipe, cable, electric lines, water lines, or other utilities whether buried, on the surface, or overhead; (3) existing and new fencing and roads; (4) water rights; (5) wind and wind power rights; and (6) any other surface, air, or subsurface property use. No permanent structures may be constructed upon the surface of the Easement.

The rights and privileges granted by County to City hereby are non-exclusive, and County reserves the right to convey similar rights and privileges to other persons and entities so long as such does not unreasonably interfere with City's enjoyment of the rights conferred to City hereunder.

4. **Access.** City's access for authorized purposes shall be limited by ingress and egress over the Easement. City shall stay inside the Easement at all times and shall have no access over any other part of County's property unless agreed upon prior to City's actions.

5. **Secondary Easement.** City shall have the right (the "Secondary Easement") to use as much of the surface of the County's property that is adjacent to the Easement ("Adjacent Property") as may be reasonably necessary for the exercise of City's rights under this instrument.

However, City shall be responsible for all damages and harm to Adjacent Property and improvements and must promptly restore Adjacent Property and improvements to its previous physical condition if changed by City in the exercise of City's rights hereunder.

6. **Improvement and Maintenance of Easement Property.** Improvement and maintenance of the Easement and the Facilities will be at the sole expense of City. City shall have the right to remove or relocate any fences, roads, improvements or obstructions within the Easement and Right-of-Way Property or along or near its boundary lines if reasonably necessary to maintain, replace, or remove the Facilities, subject to replacement by the City of fences, roads, improvements and structures to substantially their original condition on the completion of the work, except permanent structures constructed on the surface of the Easement in violation of paragraph 3 above.

7. **Prohibitions.** City shall prohibit anyone acting under City from coming on Easement with firearms, explosives, alcohol, or drugs either on person or in vehicles or equipment and shall enforce this prohibition to the extent that there shall be full compliance herewith.

8. **Damages.** City shall be liable to County in Tom Green County, Texas, for (i) all damages resulting from City's operation of the Facilities including but not limited to loss, injury, damage to personal property, loss or damage to improvements, and loss or damage to structures; (ii) all loss and damages resulting from City's construction, operation, maintenance, repair, replacement, management, or removal of the Facilities thereafter; and (iii) all damages to County's property and improvements adjoining the Easement provided such is a consequence of City's actions.

9. **Default.** In the event of either party defaulting hereunder, the other party shall be entitled to all remedies and damages provided for by law. The non-defaulting party shall also be entitled to recover all reasonable costs and expenses incurred as a result of or arising out of the other party's default, including but not limited to reasonable attorneys' fees, court costs, expert witness fees and expenses of litigation.

10. **Choice of Law.** This agreement shall be construed under the laws of the State of Texas, without regard to choice of law rules of any jurisdiction; and venue shall lie in Tom Green County, Texas.

11. **Termination.** Upon the termination of this Water Utility Easement and Right-of-Way Agreement, City shall, within six months thereafter, remove the Facilities located on the Easement. City shall restore the Easement to its natural state. City shall pay to County all damages caused to the Easement by the removal of the Facilities.

12. **Taxes, Assessments, etc.** City shall pay all taxes, assessments and charges, general and specific, that may be levied or assessed by reason of City's use of the Easement and improvements and equipment situated thereon, including, without limitation, any and all taxes, assessments, and charges of any nature levied or assessed against City's interest hereunder or any improvements on the easement and right-of-way constructed by or belonging to City.

13. **Authority.** County represents it has the authority to grant the rights conveyed by the Water Utility Easement and Right-of-Way Agreement by virtue of County's interest in the property. Grantee accepts this easement without express or implied warranty and subject to all rights of third persons or parties existing prior to the date hereof. All warranties that may arise in common law and the warranties in §5.023 of the Texas Property Code (or its successors) are excluded.

14. **Obligations Survive.** The terms, conditions, obligations, and provisions of this Water Utility Easement and Right-of-Way Agreement shall survive the termination of the Water Utility Easement and Right-of-Way Agreement.

15. **Remedies.** Pursuit of any remedy set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

16. **Recitals.** The foregoing recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement.

This Water Utility Easement and Right-of-Way Agreement shall be binding upon and shall inure to the benefit of Grantor and Grantee and their respective heirs, successors, assigns, and representatives forever or until terminated by a recordable instrument or as may otherwise be provided herein or by law.

IN WITNESS WHEREOF, this Water Utility Easement and Right-of-Way Agreement has been executed to be effective as of the 1st day of April, 2013.

[Signature Page to Follow]

APPROVED AS TO CONTENT:

Ricky Dickson, Water Utilities Director

After recording, return to:
Wm. Keith Davis
Attorney at Law
P.O. Box 271
San Angelo, TX 76902

EXHIBIT "A"

Tom Green County
to
City of San Angelo

Description
Water Line Easement

Being an easement over, under and across Llano County School Land Survey 964, Abstract 1609, Tom Green County, Texas and also being part of that "17.66 Ac." tract described in Deed from U.S.A. to Tom Green County dated January 26, 1978 and recorded in Volume 669 at page 152 of the Deed Records of Tom Green County, Texas. Said easement being described by metes and bounds as follows:

Beginning at a point in a NE line of said "17.66 Ac." tract for the north corner of this easement from which a concrete monument with brass disk marked "C-202-4" found for the most northerly corner of said "17.66 Ac." tract bears N.65°58'50"W. 1390.67 feet.

Thence with said NE line of "17.66 Ac." tract, S.65°58'50"E. 57.88 feet to a point for the east corner this easement from which the position of a concrete monument with brass disk marked "C-202-5" previously found, now gone, for an east corner of said "17.66 Ac." tract bears S.65°58'50"E. 1315.53 feet.

Thence crossing said "17.66 Ac." tract, S.31°49'06"W. 116.45 feet to a point in the SW line of said "17.66 Ac." tract and the NE line of U.S. Highway 87 for the south corner of this tract.

Thence with said SW line of "17.66 Ac." tract and said NE line of Highway 87 and being a curve to the left having a central angle of 0°35'31", radius of 5829.58 feet, length of 60.23 feet and long chord course and distance of N.56°37'20"W. 60.23 feet, a curve length distance of 60.23 feet to a point for the west corner of this easement.

Thence crossing said "17.66 Ac." tract N.33°20'56"E. 106.99 feet to the place of beginning and containing 0.151 acre of land.

NOTE: Courses and distances recited herein are of the Texas Coordinate System of 1927- Central Zone.

Surveyed on the ground February 13 and 21, 2013.



Thomas J. Houston

Registered Professional Land Surveyor No. 4261

