Instrument # 18020182 Number of Pages: 9
Filed and Recorded: 6/8/2018 10:34 AM
Liz Q. Gonzalez, Hays County Clerk, Texas
Rec $58.00 Deputy Clerk: PFLORES

RESOLUTION NO. 11-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, AUTHORIZING ACCEPTANCE OF AN EASEMENT AGREEMENT FOR UTILITIES TO BE LOCATED AT 13201 RANCH ROAD 12, WIMBERLEY, HAYS COUNTY, TEXAS, ON A PROPERTY OWNED BY JOHN KENNETH MORGAN

WHEREAS, the City of Wimberley has been in negotiations with various property owners to acquire property for the construction, placement and maintenance of wastewater connection and pipelines for the Central Wimberley Wastewater Project as approved by this City Council; and

WHEREAS, it is necessary for the City to acquire certain easements in connection with this Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS:

SECTION 1. That the City Council of Wimberley accepts the dedication of the easement made by John Kenneth Morgan to the City, a description of said property being fully set forth in the attached Exhibit "A" for the purposes provided therein.

SECTION 2. The Mayor is hereby authorized to execute the dedication instrument and all related documents on behalf of the City to formalize this acceptance.

PASSED, APPROVED, AND ADOPTED on this 29th day of March, 2018, at a special meeting of the City Council of the City of Wimberley, Texas, which meeting was held in compliance with the Open Meetings Act, *Tex. Gov't Code*, §551.001, et.seq. at which meeting a quorum was present and voting.

Herschel P. "Mac" McCullough, Mayor

ATTEST:

Laura J. Calcote, City Secretary

APPROVED AS TO FORM:

City Attorney
Denton, Navarro, Rocha & Bernal, P.C.

OFFICIAL SEAL OF THE CITY
City of Wimberley
OFFICIAL SEAL OF THE CITY

Easement Agreement for Utilities

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.

Date: April 24, 2018

Grantor: JOHN KENNETH MORGAN

Grantor's Mailing Address: 349 Crabapple Road, Blanco, Texas 78606

Grantee: CITY OF WIMBERLEY

Grantee's Mailing Address: P.O. Box 2027, Wimberley, TX 78676

Easement Property: The easement shall be at the property located at 13201 Ranch Road 12, Wimberley, Hays County, Texas, described as 1.13 acres out of the Amasa Turner Survey, Abstract No. 461, and generally shown on the attached Exhibit A, with the Final Easement Location to be determined in accordance with Section 5 under the Terms and Conditions hereunder. Thereafter, the Easement Property shall be defined as the property as determined thereunder.

Easement Purpose: The Easement shall be used for public utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of public wastewater collection lines and pipelines, public utility facilities, and related appurtenances, or making connections thereto (herein collectively, the "Facilities") and for the purpose of access for the operation, repair, maintenance, replacement and expansion of the Facilities and as may from time to time be deemed necessary by the Grantee in connection with the use, operation, transportation and furnishing of wastewater service to customers in Grantee's service area, including Grantor as hereinafter provided.

Consideration: 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, including the Grantee's agreement that Grantee shall be solely responsible for the cost of constructing the Facilities and for physically connecting Grantor's subject property to the Facilities. Grantor shall not be required to pay for such installation or separate connection fees in relation to such connection, however, Grantor shall be obligated to pay any impact fees and LUE's to which the property is subject.

Reservations from Conveyance: None.

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement and right-of-way for the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of a wastewater collection

line, wastewater pipeline and facilities in, under, over, across, and through the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and Exceptions to Warranty.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is nonexclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors, and assigns.

2. *Duration of Easement.* The duration of the Easement is perpetual unless relinquished or abandoned by ordinance or resolution by Grantee.

3. *Reservation of Rights.* Grantee's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to use all or part of the Easement Property in conjunction with Grantee as long as such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Grantee for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Grantee, as long as such further conveyance is subject to the terms of this agreement. Grantor shall not construct any building, structure or obstruction on the Easement Property without the written approval of Grantee. Any improvement made by Grantor (Permitted Improvement) must comply with the terms included under such approval.

4. *Secondary Easement.* Grantee has the right (the "Secondary Easement") to use as much of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") as may be reasonably necessary to install and maintain the Facilities within the Easement Property that are reasonably suited for the Easement Purpose. However, Grantee must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.

5. *Final Easement Location.* Grantor and Grantee acknowledge and agree that the Easement Property is larger than the easement necessary for the Facilities (the "Facility Easement") to allow the Grantee reasonable flexibility in determining a suitable and feasible location and alignment over and across the Easement Property for the Facility Easement, which such location shall be determined solely by Grantee. After the Facilities are constructed, the Easement Property shall be considered to be only the location of the Facility Easement, provided, however, Grantee shall retain an easement for ingress and egress over the Easement Property as described herein. Grantee agrees to supply Grantor a surveyed metes and bound description of the Facility Easement and an amended easement agreement defining the Easement Property to adjust the Facility Easement, such description to be filed as an addendum to this Easement in the deed records of Hays County, Texas.

6. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Grantee. Grantee has the right to eliminate any encroachments into the Easement Property. Grantee must maintain the Easement Property in a neat and clean condition. Grantee 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 Grantee's sole discretion, subject to performance of Grantee's obligations under this agreement. Grantee has the right to remove trees or other vegetation, or obstructions, or to remove or relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, subject to replacement of the fences to their original condition on the completion of the work.

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 nondefaulting party fails to declare immediately a 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. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property, and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not expressly set forth in this agreement and any exhibits.

15. *Legal Construction.* If 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.

GRANTOR:

By: John Kenneth Morgan
John Kenneth Morgan

STATE OF TEXAS)

COUNTY OF HAYS)

This instrument was acknowledged before me on April 24th, by John Kenneth Morgan, the grantor

KATHERINE COLE
Notary Public, State of Texas
Comm. Expires 03-02-2022
Notary ID 131473626

Katherine Cole
Notary Public, State of Texas
My commission expires: 03/02/2022

00957825;1

GRANTEE:

CITY OF WIMBERLEY, TEXAS

By: _____
Herschel P. "Mac" McCullough
Mayor _____

STATE OF TEXAS)

COUNTY OF HAYS)

This instrument was acknowledged before me on April 20, 2018, by Herschel P. "mac" McCullough, the grantee

LAURA CALCOTE
Notary Public, State of Texas
Comm. Expires 05-05-2020
Notary ID 130650909

Laura Calcote
Notary Public, State of Texas
My commission expires: 5-5-2020

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT "A"

Instrument # 18020182 Number of Pages: 9
Filed and Recorded: 6/8/2018 10:34 AM
Liz Q. Gonzalez, Hays County Clerk, Texas
Rec $58.00 Deputy Clerk: PFLORES