

**RESOLUTION NO. 28-2018**



**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, AUTHORIZING ACCEPTANCE OF AN EASEMENT AGREEMENT FOR UTILITIES TO BE LOCATED AT 13301 RANCH ROAD 12, WIMBERLEY, HAYS COUNTY, TEXAS, ON A PROPERTY OWNED BY MYSTIC HILL, LLC**

**WHEREAS**, the City of Wimberley has been in negotiations with the property owner to acquire property for the construction, placement and maintenance of a wastewater lift station 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 easement made by MYSTIC HILL, LLC 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 9<sup>th</sup> day of October 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.

\_\_\_\_\_  
Susan Jagers, Mayor

**ATTEST:**

\_\_\_\_\_  
Laura J. Calcote, City Secretary

**APPROVED AS TO FORM:**

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



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.

**PUBLIC UTILITY EASEMENT AGREEMENT**

THE STATE OF TEXAS     §  
  §  
COUNTY OF HAYS         §

**GRANT OF EASEMENT:**

**MYSTIC HILL, LLC, 13301 RANCH ROAD 12, WIMBERLEY, HAYS COUNTY, TEXAS** (“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 WIMBERLEY, TEXAS**, a Texas type A general law municipality with offices located at 221 Stillwater, Wimberley, Hayes County, Texas (“Grantee”), an easement and right-of-way (“Easement”) upon and across the property of Grantor which is a parcel of land containing 748 square feet out of and part of a called 3.295 acre tract in the Amasa Turner Survey in Hays County, Texas and being more particularly described on the Survey, attached hereto as **Exhibit “A”**, and the Metes and Bounds Description, attached hereto as **Exhibit “B”**. Exhibits “A” and “B” are incorporated herein by reference for all purposes and collectively describe what henceforth may be referenced as the “Easement Tract”, with **Exhibit “B”** prevailing over **Exhibit “A”** in the case of a conflict between the two.

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; and Grantor, subject to the Exceptions, to Warranty, 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.

**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) "Public Utility" shall mean a sanitary sewer lift station and related surface and subsurface 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 are exclusive and irrevocable. The Easement is for the benefit of Holder.
  3. *Purpose of Easement.* The Easement shall be used for Public Utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of Public Utility facilities and related surface and subsurface appurtenances, or making connections thereto. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the public utility facilities and related appurtenances.
  4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
  5. *Reservation of Rights.* As the Easement Tract shall be contained within a fence, as described herein, Grantor shall reserve no rights of use of the Easement Tract.
  6. *Secondary Easement.* Holder has the right (the "Secondary Easement") to use the surface of the \_\_\_\_\_ square foot area adjacent to the Easement Property, and is more fully described in **Exhibit "C"**, to assist in the initial installation and as may be reasonably necessary to maintain, repair and replace the Facilities within the Easement Property of the Facilities within the Easement Property. However, Holder must promptly restore the area of the Temporary Construction Easement to its previous physical condition if changed by use of the rights granted by this Secondary Easement.
  7. *Improvement and Maintenance of Easement Property.* 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.
  8. *Special Conditions.* Notwithstanding any contrary provision, Grantee shall construct a privacy fence of stone or masonry materials around the Public Utility. The entry gate of the fence shall be made of \_\_\_\_\_. The privacy

fence shall be six (6) feet in height and shall be of such design as to cause the Public Utility not to be visible from the remainder of Grantor's property save and except through the fence. A diagram of the design of the fence that has been approved by Grantor is attached hereto as Exhibit "D", and is incorporated by reference herein for all purposes.

9. *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.
10. *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.
11. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
12. *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.
13. *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.
14. *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.
15. *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.
16. *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.

17. *Exceptions to Warranty.* This grant is subject to any and all encumbrances and easements of record, to the extent the same are valid and enforceable.
18. *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.
19. *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.
20. *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.
21. *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.

IN WITNESS WHEREOF, this instrument is executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**GRANTOR:**

\_\_\_\_\_  
(Grantor's Name)

By: \_\_\_\_\_  
(Grantor's Signature)

**GRANTOR:**

**AGREED AND ACCEPTED:**

**CITY OF WIMBERLEY, TEXAS,**  
a Texas type A general law municipality

By: \_\_\_\_\_  
Susan Jagers, Mayor

**ATTEST:**

\_\_\_\_\_  
Laura Calcote, City Secretary

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_, by  
\_\_\_\_\_, an individual residing in \_\_\_\_\_ County, Texas.

\_\_\_\_\_  
Notary Public Signature

(seal)

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by  
Susan Jagers, Mayor of the City of Wimberley, Texas, a Texas type A general law  
municipality, on behalf of said municipality.

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Notary Public Signature

(seal)

The preparer of this document has made no investigation of the following matters: The accuracy of the legal description used herein; whether or not the Grantor is the correct owner of the property; whether or not the party signing on behalf of the Grantor is authorized to sign on behalf of the Grantor; or any title matters whatsoever.

**PREPARED IN THE LAW OFFICE OF:**

Denton, Navarro, Rocha, Bernal, & Zech, P.C.  
2517 N. Main Avenue  
San Antonio, Texas 78212

Wimberley, TX 78676

**AFTER  
RECORDING RETURN  
TO:**

City of Wimberley  
Attn. City Secretary  
P.O. Box 2027



# ***HAYES SURVEYING LLC***

202 SUNFLOWER DRIVE  
KYLE, TEXAS 78640

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## **EXHIBIT A**

### **METES & BOUNDS DESCRIPTION A FOR 1,369 SQ. FT. EASEMENT**

A parcel of land containing 1,369 sq. ft. out of and part of a called 3.295 acre tract in the Amasa Turner Survey in Hays County, Texas, said 3.295 acre tract being that same tract as conveyed by a Special Warranty Deed in April of 2011 to Mystic Hill LLC as recorded and described in Volume 4096, Page 194 of the Official Public Records of Hays County, said 484 sq. ft. easement being more particularly described as follows;

COMMENCING at a ¾" iron pipe found in the south right-of-way of Ranch Road # 12 for the northeast corner of the Meeks Tract as described in Volume 5407, Page 261 of the Official Public Records of Hays County and for the northwest corner of the aforementioned Mystic Hill LLC tract, from which for reference a ¾" iron pipe found for the northeast corner of the Mystic Hill LLC tract bears S 70° 09' 39" e, a distance of 100.70 feet;

THENCE S 70° 09' 39" E, along the Ranch Road # 12 right-of-way, a distance of 32.8 feet to a calculated point;

THENCE S 19° 50' 21" W, leaving the right-of-way, a distance of 8.6 feet to a calculated point for the northwest corner of this 1,369 sq. ft. tract and the POINT OF BEGINNING;

THENCE S 70° 09' 39" E, a distance of 37.00 feet to the southeast corner of this tract;

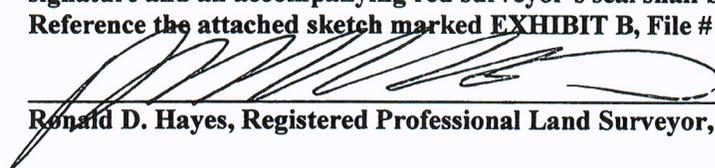
THENCE S 19° 50' 21" W, a distance of 37.00 feet to the northeast corner of this tract;

THENCE N 70° 09' 39" W, a distance of 37.00 feet to the southwest corner of this tract;

THENCE N 19° 50' 21" E, a distance of 37.00 feet to the POINT OF BEGINNING, containing 1,369 sq. ft.

All bearings and distances are based upon Texas State Plane Coordinate System, Texas South Central Zone, NAD 1983 datum.

This is to certify that this description of land represents an actual survey made on the ground under my supervision in October of 2018. Only those documents with a red surveyor's signature and an accompanying red surveyor's seal shall be deemed reliable and authentic. Reference the attached sketch marked EXHIBIT B, File # RR1214.

  
Ronald D. Hayes, Registered Professional Land Surveyor, No. 5703



# Exhibit B

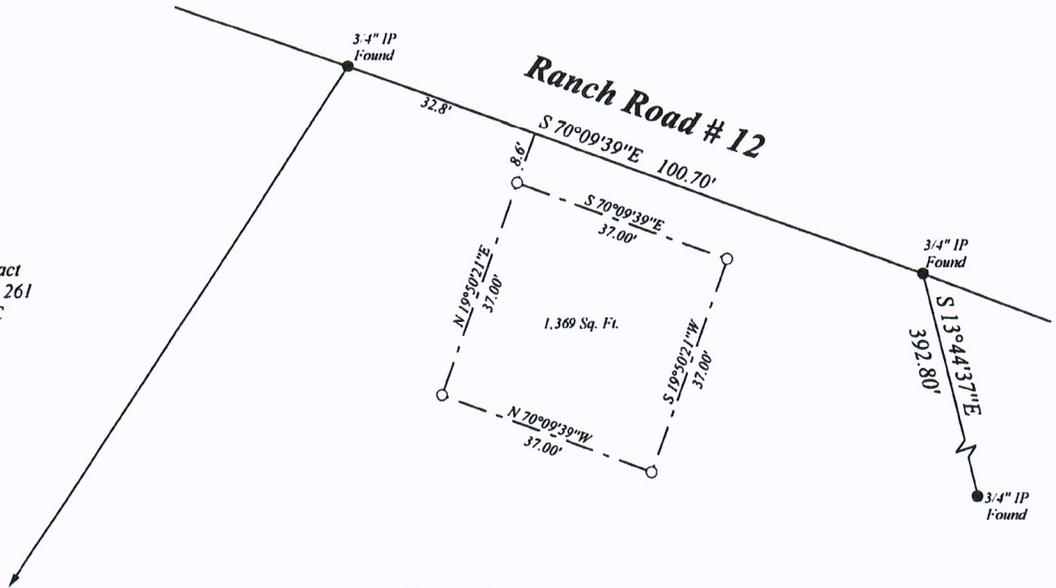
## Amasa Turner Survey

Scale  
1" = 30'

Reference attached metes  
and bounds description  
marked Exhibit A



Meeks Tract  
V. 5407/ P. 261  
OPRHC



Mystic Hill LLC  
3.295 Acre Tract  
V. 4096/ P. 194  
OPRHC

### Legend

OPRHC  
Official Public Records of Hays County  
Calculated point for corner  
○

Surveyor's Notes: All bearings and distances are based upon Texas State  
Plane Coordinate System, Texas South Central Zone, NAD 1983 datum.

**PLAT SHOWING SURVEY OF A 1,369 SQ. FT. EASEMENT TO BE  
USED FOR A LIFT STATION IN THE CITY OF WIMBERLEY, TEXAS.**

**FOR: The City of Wimberley**