RESOLUTION NO. 30-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, AUTHORIZING THE ACCEPTANCE OF AN EASEMENT AGREEMENT FOR UTILITIES TO BE LOCATED ON A TRACT OF LAND BEING LOT 30, BREEZEWAY SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREFORE RECORDED IN VOLUME 138, PAGE 160-A, HAYS COUNTY DEED RECORDS, A PROPERTY OWNED BY PAISLEY JEROME E (LIFE ESTATE).

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 Paisley Jerome E (Life Estate) 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 15th day of November, 2018, at a regular 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 Jaggers, Mayor

ATTEST:

Laura J. Calcote, City Secretary

APPROVED AS TO FORM:

City Attorney

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: _____, 2018

GRANTOR: Kent Paisley and Kimberly Paisley

GRANTOR'S MAILING ADDRESS:

Kent Paisly
18812 Manga Way
Pflugerville, Texas 78660

Kimberly Paisly
221 Linden Lane
San Marcos, Texas 78666

GRANTEE: City of Wimberley

GRANTEE'S MAILING ADDRESS: P. O. Box 2027, Wimberley, Texas 78676

GRANT: Grantor has GRANTED, SOLD, and CONVEYED, and does hereby GRANT, SELL, and CONVEY, unto Grantee, an easement and right-of-way for the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of a wastewater collection line, appurtenances and facilities in, on, under, over and through that tract of land being Lot 30, Breezeway Subdivision, according to the map or plat thereof recorded in Volume 138, Page 160-A, Hays County Deed Records.

DESIGNATION OF COURSE: The easement and right-of-way hereby granted (the "Easement") shall be limited to Fifteen feet (15') in width and generally follow the north line of Lot 30, extending from Blue Heron Run, to a point to be determined during installation of the wastewater collection line. Grantee is hereby authorized to designate the course of the Easement herein conveyed subject to the approval of Grantor, except that when the wastewater collection line is installed, the Easement herein granted shall be limited to a strip of land fifteen (15') feet in width the centerline of such Easement being the wastewater collection line as installed. Upon completion of construction of the wastewater collection line, Grantee will have the easement area surveyed at Grantee's expense, and an Amendment to this Easement will be executed by Grantor and Grantee and recorded in the Official Public Records of Hays County, Texas, designating the exact location of the wastewater collection line easement as it installed in the ground. The easement will.

TEMPORARY CONSTRUCTION EASEMENT: During the period of construction of the wastewater collection line, the Easement will be extended an additional twenty (20') feet in width. Upon completion of all construction and the restoration of the surface to its preconstruction condition, the construction easement (the extra 20 feet) will revert to Grantor and will not be available to Grantee without future consent of Grantor, which consent will not be

unreasonably withheld if the easement is necessary for future construction to maintain, repair or replace the wastewater collection line.

CONSIDERATION: Ten dollars ($10.00) and other good and valuable consideration paid to Grantor by Grantee, the receipt and sufficiency of which is hereby acknowledged by Grantor.

PURPOSE: The Easement may be used for the purpose of laying, constructing, installing, maintaining, inspecting, operating, protecting, repairing, replacing, altering, changing the size of, relocating (but only within the existing easement), substituting and/ or removing the wastewater collection line and any appurtenant materials (including, but not limited to, associated valves, fittings, casings, and structural supports), apparatuses and/ or facilities common to and as may from time to time be deemed necessary by the Grantee in connection with the use, operation, transportation and furnishing of wastewater services to customers in Grantee's service area, including Grantor, as hereinafter provided.

RESERVATIONS FROM CONVEYANCE: None

TERMS AND SPECIAL CONDITIONS:

1. Restoring the Surface of the Easement: By acceptance of this grant and utilization of any rights granted hereby, Grantee agrees that it will at all times, after doing any work pursuant to the rights hereby granted, restore the surface of the Easement (including the asphalting of any roads or drives affected) to substantially the same condition as existed prior to such work; that it shall bury the wastewater collection line and service lines (but not those surface appurtenances, including valve stems, signs, and other facilities as are reasonably necessary for operation of the collection line) located within the Easement so that such lines will not create a nuisance; and that Grantee will not do any act, or fail to do any act, that will be detrimental or create a hazard to the surface of the lands covered thereby or to the use thereof.

2. Duration of Easement. The duration of the Easement is perpetual.

3. Reservation of Rights. Grantee's right to use the Easement is nonexclusive, and Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to use all or part of the Easement 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 by Grantee for the Easement Purpose.

4. Improvement and Maintenance of Easement and Facilities. Improvement and maintenance of the Easement and the Facilities will be at the sole expense of Grantee. Grantee has the right to eliminate any encroachments into the Easement. Grantee must maintain the Easement 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. 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 (except for any pecan tree, oak tree or cypress tree which will require the approval of Grantor) or other vegetation, or obstructions, or to remove or relocate any fences within the Easement 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.

5. Waiver of Property: Given the significance of this Easement coupled with the fact that the house located on the Property is not occupied, Grantor is hereby granted a waiver ("Waiver") from the mandatory hook-up to remain in effect as long as Grantor owns the Property. Grantor's Property subject to this waiver is identified as Tract One, Tract Two and Tract Three as described in that certain Special Warranty Deed dated December 8, 2015, executed by Jerome E. Paisley to Kent Paisley and Kimberly Paisley recorded in Volume 5403, Page 465, Official Public Records, Hays County, Texas. The Waiver is personal to Grantor and is only in effect while Grantor owns the Property.

6. Indemnity: To the extent permitted by law, Grantee, its successors and assigns, will defend and indemnify Grantor against any liabilities, claims, demands or damages to the extent such loss or damages are caused by any wrongful of negligent act or admission of Grantee, its agents or employees in the course of its exercise of rights granted by this Easement.

7. Right to Grant Additional Use Within Easement. Grantor, their heirs, successors and assigns, will have the right to grant to others the right to place, install, and maintain utilities within the easement as long as it does not interfere with or impede the use of the easement by the City for the wastewater collection line. In such event, written notice will be given to Grantee by Grantor detailing the purpose for which the easement will be used, the facilities to be placed within the easement, the spacing from the wastewater collection line and any other information necessary to protect the interest of the City and to allow for proper coordination.

HABENDUM AND WARRANTY: TO HAVE AND HOLD the Easement and all and singular the rights and appurtenances thereunto belonging unto Grantee, its successors and assigns for so long as any wastewater collection line or facilities are located and operated thereon. 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 successors and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement by, through or under Grantor but not otherwise, except as to the Reservations from Conveyance and Exceptions to Warranty.

SUCCESSORS AND ASSIGNS: The Easement granted hereby and all of the rights, agreements, and burdens pertaining thereto shall constitute a covenant running with the land and inure to the benefit of and shall be binding upon the Grantor, any other owner in the future on any part of the property across which the Easement runs, and the Grantee, and all of their respective successors, legal representatives, and assigns. Grantee's rights hereunder may be assigned in whole or in part to one or more assignees.

CONVENANT OF GRANTOR: Grantor covenants that Grantor is the owner of the above-described lands and that the person signing this easement is authorized to execute the same on behalf of the owner or all the owners of the property.

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.

ATTORNEY'S FEES: If [either/any] 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.

BINDING EFFECT: This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

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.

COUNTERPOINTS: 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.

WAIVER OF DEFAULT: It is not a waiver of or consent to default if the non-defaulting 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.

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.

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.

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.

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.

RECITALS: Any recitals in this agreement are represented by the parties to be accurate and constitute a part of the substantive agreement.

GRANTOR:

_____

Kent Paisley

_____

Kimberly Paisley

GRANTEE:

City of Wimberley

By: _____

Mayor Susan Jaggers

ACKNOWLEDGMENT

THE STATE OF TEXAS

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 2018, by Kent Paisley.

_____
Notary Public, State of

ACKNOWLEDGMENT

THE STATE OF TEXAS

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 2018, by Kimberly Paisley.

_____
Notary Public, State of

ACKNOWLEDGMENT

STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me on this 16th day of November, 2018 by Susan Jaggers, Mayor of the City of Wimberley, on behalf of said City.

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

Laura Calcote
Notary Public, State of Texas