

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.

CITY OF ROLLINGWOOD ACCESS EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

Date: May 20, 2020

Grantor: William and Sarah Teten

Grantor's Address: 301 Inwood Road, Rollingwood, Texas 78746 (Travis County)

Grantee: City of Rollingwood, a Texas general law Type A municipality

Grantee's Address: 403 Nixon, Rollingwood, TX 78746 (Travis County)

Subject Property: Being that certain real property located in Lot 5 Block K, ROLLINGWOOD, SECTION ONE a subdivision in Travis County, Texas. According to the map or plat thereof recorded in Volume 7, Page157, of the Official Public Records of Travis County, Texas, and being more particularly described as 301 Inwood Road, Rollingwood, Texas 78746 (the "Subject Property").

Access Easement Area: Being 0.019 of an acre access easement located on and within the Subject Property, as more particularly described in **Exhibit A** (the "Access Easement Area").

Consideration: Good and valuable consideration, including the grant of rights and privileges set forth in the Encroachment Agreement (as defined below), the receipt and sufficiency of which is hereby acknowledged and confessed by Grantor.

1. *Grant of Easement.* Subject to the terms and conditions provided for herein, Grantor does hereby grant and convey unto Grantee a non-exclusive easement in, under, upon, about, over, and through the Access Easement Area (the "Access Easement") solely for the purpose as set forth herein.
2. *Definitions.* For the purposes of this agreement certain terms shall have the meanings that follow:
 - (a) "Encroachment Agreement" shall mean that certain Easement Encroachment License Agreement, by and between the Grantee and Grantor, dated of even date herewith, which is attached hereto as Exhibit B.

- (b) “Holder” shall mean Grantee and Grantee’s heirs, successors and permitted assigns who at any time own any interest in the conveyance is subject to the terms of this agreement.
 - (c) “Storm Water facilities” shall mean the 48” concrete culvert (and related limestone façade) constructed to convey storm water beneath Hatley Drive in a natural drainage area which area includes a steep drop-off from Hatley Drive.
- 3. *Character of Easement.* The Access Easement granted herein is “in gross,” in that there is no “Benefitted Property.” Nevertheless, the Access Easement rights herein granted shall pass to Grantee’s successors and assigns, subject to all of the terms hereof. The Access Easement rights of use granted herein are nonexclusive. The Access Easement is for the benefit of Holder.
- 4. *Purpose of Easement.* Holder may use the Access Easement Area to access the Subject Property for the sole purpose of replacing, repairing or maintaining the Storm Water facilities. Holder may only access the Access Easement Area upon providing at least twenty-four hours notice to Grantor and between the hours of 8:00 a.m. CST and 5:00 p.m. CST, Monday through Friday, unless in the case of an emergency (as determined by the Holder in its reasonable discretion) or otherwise consented to in writing by Grantor. Holder agrees not to disturb Grantor’s use of the Subject Property, and if such interruption is necessary, such interruption shall be temporary in nature and designed to limit any interruption of access to and from the remaining lands of Grantor.
- 5. *Term.* The Easement shall be in perpetuity unless and until maintenance obligations of Holder as to the Storm Water facilities are relinquished or abandoned by ordinance or resolution by Holder; provided, however, the Easement is subject to termination pursuant to the terms and conditions of the Encroachment Agreement. In the event Holder relinquishes or abandons its maintenance obligations as to the Storm Water facilities by ordinance or resolution, said ordinance or resolution shall also provide for the abandonment of the Easement.
- 6. *Reservation of Rights.* Grantor reserves all right, title, and interest in and to the Access Easement Area that may be used and enjoyed without materially interfering with the rights conveyed by this agreement.
- 7. *Improvement and Maintenance of Storm Water Facilities.* The improvement and maintenance of the Storm Water facilities will be at the sole expense of Holder. If the surface of any portion of the Access Easement Area (or the Subject Property) is disturbed by Holder’s exercise of any of its easement rights under this agreement, such area shall be restored to the condition in which it existed as of the commencement of such activity at the sole cost of Holder. In addition to the foregoing, Holder shall perform necessary maintenance to keep the Access

Easement Area and the Storm Water facilities at all times in the same condition in all material respects as existed on the effective date of this agreement. If Holder shall fail to maintain or repair the Access Easement Area or the Storm Water facilities as required by this section, then Grantor shall have the right, but not the obligation, to perform said maintenance and repair at the sole cost and expense of Holder. All costs of such maintenance or repair shall be due and payable to Grantor by Holder on demand.

8. *Equitable Rights of Enforcement.* This Access 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.
9. *Grantor not Liable; Indemnification; Limitation of Damages.* In no event shall Grantor be liable for any damage to, or loss of, personal property or equipment sustained by Holder within the Access Easement Area, whether or not it is insured, even if such loss is caused by the negligence of Grantor. Holder shall indemnify, defend, and hold Grantor harmless from and against any and all losses, costs, damages, liens, claims, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees, court costs, and disbursements) incurred by Grantor arising from or by reason of Holder's access to, or use of the Access Easement Area. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN THE EVENT OF A DEFAULT BY GRANTOR HEREUNDER, OR FOR ANY OTHER REASON, GRANTOR SHALL NOT BE LIABLE TO HOLDER FOR ANY INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING LOSS OF GOODWILL OR LOSS OF PROFITS.
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; provided, however, the City is only entitled to assign its rights and obligations hereunder to another Texas general law Type A municipality (or similar Texas municipality) without obtaining the prior written consent of the Grantor.
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 Access Easement Area 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 and the Encroachment Agreement contain 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.

(Signature Pages to Follow)

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2020.

GRANTOR:

(Grantor's Name)

By: _____
(Grantor's Signature)

(Grantor's Name)

By: _____
(Grantor's Signature)

GRANTEE:

AGREED AND ACCEPTED:

CITY OF ROLLINGWOOD, TEXAS,
a Texas general law Type A municipality

By: _____
Michael Dyson, Mayor

ATTEST:

Ashley Wayman, City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 2020, by _____, an individual residing in _____ County, Texas.

Notary Public Signature

(seal)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2020, by Michael Dyson, Mayor of the City of Rollingwood, Texas general law Type A municipality, on behalf of said municipality.

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.
2500 W. William Cannon, Suite 609
Austin, Texas 78745

AFTER RECORDATION

RETURN TO:

City Administrator
403 Nixon
Rollingwood, Texas 78746

EXHIBIT "A"

ACCESS EASEMENT AREA

METES AND BOUNDS

FOR

A 0.019 of an acre drainage easement, 827 square feet, being out of the Henry P Hill League Survey No 21, Abstract No 14, Travis County, Texas being a portion of Lot 5, Block K, Rollingwood Subdivision Sec. 1 as described in deed to William T Tenten, Jr. and Sarah S Tenten recorded in document 2014145200 of the Real Property Records of Travis County, Texas. Said 0.019 of an acre easement being more fully described as follows with bearings based on the North American Datum of 1983 (CORS 1996) from the Texas State Plane Coordinate System, Texas Central Zone:

COMMENCING at a ½” iron rod found for on the southwest right of way of Hatley Drive and the east corner of said Lot 5;

THENCE: N 49° 25’26” W, along said southwest right of way of Hatley Drive and the northeast line of Lot 5 a distance of 8.81 feet to the **POINT OF BEGINNING** and east corner of this herein described tract, said point also having state plane coordinate values of, X= 3,102,326.32, Y= 10,072,774.11;

Thence: the following courses and distances over and across said Lot 5;

S 40° 34’37” W, a distance of 20.0 feet to a point for the south corner of this herein described tract;

S 49° 25’26” W, a distance of 41.33 feet to a point for the west corner of this herein described tract;

N 40° 34’37” E, a distance of 20.0 feet to a point on the southwest right of way of Hatley Drive and the northeast line said Lot 5 for the north corner of this herein described tract;

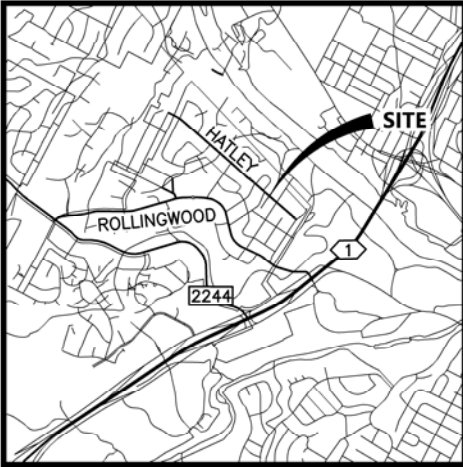
THENCE: S 49° 25’26” E, along southwest right of way of Hatley Drive and the northeast line said lot 5 a distance of 41.33 feet to the **POINT OF BEGINNING** and containing 0.019 of an acre in Travis County, Texas.



Donald L. White

Donald L. White, R.P.L.S.
Fernandez Frazer White, Inc.
January 7, 2019
FFW TBPLS No. 10048900

Prepared by: FFW Inc.
Job No.: 170226
File: <\\atxserver1\Projects\Rollingwood\180184 Hatley Culvert Drainage Improvements\000\00-Project Management\Deliverables\Easement\301 Inwood 0-019ac.pdf>
Date: January 7, 2019
TBPLS Firm No.: 10048900



LOCATION MAP
(NOT TO SCALE)

LINE	BEARING	DISTANCE
L1	S 40°34'37" W	20.00'
L2	N 49°25'26" W	41.33'
L3	N 40°34'37" E	20.00'
L4	S 49°25'26" E	41.33'
L5	N 49°25'26" W	8.81'

NOTES:

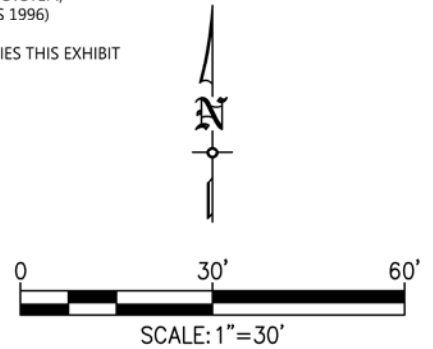
1. BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE (4203), NORTH AMERICAN DATUM OF 1983 (CORS 1996)
2. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS EXHIBIT

REFERENCES:

- P.R.T.C.T. PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS
 R.P.R.T.C.T. REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS
 P.O.B. POINT OF BEGINNING
 P.O.C. POINT OF COMMENCING

LEGEND:

- 1/2-INCH IRON ROD FOUND
UNLESS NOTED OTHERWISE
- EASEMENT CORNER



**PROPOSED VARIABLE WIDTH
DRAINAGE EASEMENT**
0.019 OF AN ACRE
827 SQ. FT.

TETEN WILLIAM T JR & SARAH S
DOCUMENT I.D. 2014145200TR
R.P.R.T.C.T.
LOT 5 BLK K
ROLLINGWOOD SEC 1

P.O.B.
X=3,102,326.32
Y=10,072,774.11

P.O.C.
FOUND
IRON ROD

RRS ICE MANAGEMENT TRUST
DOCUMENT I.D. 2018057471
R.P.R.T.C.T.
LOT 1 BLK A
SEIDERS ICE SUBD



I HEREBY CERTIFY THAT:

THIS EXHIBIT WAS PREPARED BASED ON
A SURVEY MADE ON THE GROUND
UNDER MY DIRECT SUPERVISION.

THIS 7TH DAY OF JANUARY, 2019 A.D.

Donald L White

DONALD L. WHITE
REGISTERED PROFESSIONAL LAND
SURVEYOR NO. 3635



FERNANDEZ FRAZER, WHITE AND
ASSOCIATES, INC CONSULTING
ENGINEERS LAND SURVEYORS
8918 TESORO DR., SUITE 403 SAN ANTONIO, TEXAS 78217
210.377.0774 WWW.FFWINC@FFWINC.COM
TBPLS NO. 10048900 TBPE# F-896



TBPE FIRM NO. F-366
TBPLS FIRM NO. 10126502

engineers | architects | surveyors

8918 TESORO DR., SUITE 401
SAN ANTONIO, TX 78217

PH. (210) 822-2232
FAX (210) 822-4032

WWW.LNVINC.COM

**EXHIBIT
OF**

A 0.019 OF AN ACRE DRAINAGE EASEMENT, 827 SQUARE FEET, BEING OUT OF THE HENRY P HILL LEAGUE SURVEY NO 21, ABSTRACT NO 14, TRAVIS COUNTY, TEXAS BEING A PORTION OF LOT 5, BLOCK J, ROLLINGWOOD SUBDIVISION SEC. 1 AS DESCRIBED IN DEED TO WILLIAM T TETEN, JR. AND SARAH S TETEN RECORDED IN DOCUMENT 2014145200 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS.

DRAWN BY: DPS
SCALE: 1"=30'
DATE: 01-07-19
SHEET

1 OF 1

\\ATXSERV\PROJECTS\ROLLINGWOOD\180184 HATLEY CULVERT DRAINAGE IMPROVEMENTS\000\90-SURVEY DRAWINGS\EX180184_301INWOOD.DWG PLOT DATE:1/7/2019 10:43 AM PLOT BY: DSULTENFUSS

Lot Report
2019

Wed Jan 2 14:43:59

Lot File: \\atxserver1\Projects\Rollingwood\180184 Hatley Culvert Drainage
Improvements\000\90-Survey\Drawings\CRD\EX180184_2501HATLEY.lot
CRD File: \\atxserver1\Projects\Rollingwood\180184 Hatley Culvert Drainage
Improvements\000\90-Survey\Drawings\CRD\180184_grid.crd

Lot: 301INWOOD , Block: , Type: LOT
PNT# Bearing Distance Northing Easting
24212 S 40°34'37" W 20.00 10072774.110 3102326.319
24213 N 49°25'26" W 41.33 10072758.919 3102313.309
24214 N 40°34'37" E 20.00 10072785.801 3102281.919
24215 S 49°25'26" E 41.33 10072800.992 3102294.928
24212 10072774.110 3102326.319
Closure Error Distance> 0.0000
Total Distance> 122.66
Area: 826.56, 0.0190

Block Total Area: 826.56, 0.0190

EXHIBIT "B"

ENCROACHMENT AGREEMENT