

RESOLUTION NO. 2024-04-09-02

A RESOLUTION AUTHORIZING THE ACCEPTANCE OF A WATER LINE UTILITY EASEMENT GRANTED BY ICARUS CONSTRUCTION, LLC, AND LOCATED AT 4814 ROLLINGWOOD DRIVE; AUTHORIZING SIGNATORIES; AND ADDRESSING RELATED MATTERS

WHEREAS, the City of Rollingwood, Texas (the “City”), is a political subdivision duly organized under the Constitution and laws of the State of Texas; and

WHEREAS, it is hereby determined that a true and real need exists for the acquisition of certain real property interests in order to carry out the municipal purposes of providing water services to City residents; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Texas to take, hold, purchase, manage, and control real property to carry out municipal purposes; and

WHEREAS, the City Council finds that the passage of this resolution accepting the grant of a water line easement as provided herein is in the best interests of the citizens of the City.

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

Section 1. That the City of Rollingwood hereby accepts the water line utility easement granted to the City by Icarus Construction, LLC, on real property located at 4814 Rollingwood Drive in the City of Rollingwood, Texas, for the municipal purposes of providing water services to City residents, and as provided in substantial form in the Easement Agreement for Water Utilities included as Exhibit “A” to this Resolution.

Section 2. That the City of Rollingwood designates the City Administrator as an authorized signatory of the Easement Agreement, as well as for any other documentation required to effectuate the purposes of the Easement.

Section 3. That this Resolution shall become effective from and after its date of passage.

PASSED AND APPROVED by the City Council of the City of Rollingwood by a vote of _____ ayes, _____ nays and _____ abstentions on this, the 9th day of April, 2024.

Gavin Massingill, Mayor

ATTEST:

Desiree Adair, City Secretary

Exhibit A: Easement Agreement for Water Utilities

Easement Agreement for Water 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 __, 2024

Grantor: Icarus Construction, LLC

Grantor's Mailing Address: 9317 McNeil Road, Austin, Texas 78758

Grantee: City of Rollingwood

Grantee's Mailing Address: 403 Nixon Drive, Rollingwood, TX, 78746

Grantor Property: That certain real property located at 4814 Rollingwood Drive in Rollingwood, Texas; consisting of approximately 0.3854 acres/16,788.90 Square Feet; and otherwise known as Lot 9 Block A, Timberline Terrace Section 3, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 9, page 158 of the Plat Records of Travis County, Texas (the "Servient Tract").

Easement Property: The area of the Grantor Property consisting of approximately 684 square feet, and as generally and approximately depicted in Exhibit "A."

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of water utility lines and related facilities (collectively, the "Facilities").

Consideration: Good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor.

Reservations from Conveyance: None.

Exceptions to Warranty: Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing instruments that affect the Property.

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 over, on, under, through, and across 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.* This Easement is in gross, exclusive, perpetual, and irrevocable; it is for the benefit of Grantee and Grantee's heirs, successors, and assigns who at any time own any interest in the Grantor Property.

2. *Definition of Easement.* Upon the completion of a survey indicating the location of the Facilities, and the installation of the Facilities by Grantee, Grantee agrees to define the location of the Facilities within the Easement Property, provide Grantor with a "Definition of Easement" establishing said location, and releasing other portions of the Easement Property which are not necessary to fulfill the Easement Purpose.

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.

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, construct, operate, replace, repair, upgrade, remove, and maintain the Facilities within the Easement Property that are reasonably suited for the Easement Purpose; however, Grantee will give at least 72 hours' advance notice to Grantor prior to such use and must promptly restore the Adjacent Property to its previous physical condition if changed by use of the rights granted by this Secondary Easement.

5. *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 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.

6. *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.

7. *Binding Effect.* This agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

8. *Choice of Law.* This agreement will be construed under the laws of the state of Texas. Venue is in Travis County, Texas.

9. *Counterparts.* This agreement may be executed in multiple counterparts. All counterparts taken together constitute this agreement.

10. *Waiver of Default.* A default is not waived if the nondefaulting party fails to declare default immediately or delays in taking any action with respect to the default. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

11. *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.

12. *Survival.* The obligations of the parties in this agreement that cannot be or were not performed before termination of this agreement survive termination of this agreement.

13. *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 the other party or any agent of the other party, that are not expressly set forth in this agreement and any exhibits.

14. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being 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, or email and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

(Signature page follows)

GRANTOR:

Icarus Construction, LLC

By:
Its:

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me, _____, on this day personally appeared _____, proved to me through _____ (nature of identification) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____, 2024.

Notary Public, State of Texas
My commission expires: _____

METES AND BOUNDS DESCRIPTION
OF A
0.016 ACRE WATERLINE EASEMENT

A 0.016 ACRE TRACT OF LAND, LYING WITHIN LOT 9, BLOCK A, TIMBERLINE TERRACE SEC. 3, AS SHOWN IN BOOK 9, PAGE 158, PLAT RECORDS OF TRAVIS COUNTY, TEXAS, AND DESCRIBED BY DEED TO ICARUS CONSTRUCTION, LLC, RECORDED IN DOC NO. 2021119450, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS

BEGINNING AT A FOUND 1/2 INCH IRON ROD ON THE SOUTHWEST RIGHT-OF-WAY LINE OF ROLLINGWOOD DRIVE, BEING THE NORTHEAST CORNER OF SAID LOT 9, ALSO BEING THE NORTHWEST CORNER OF LOT 10, BLOCK A, TIMBERLINE TERRACE SEC. 3, AS RECORDED IN BOOK 9, PAGE 158, PLAT RECORDS OF TRAVIS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

THENCE WITH THE COMMON BOUNDARY LINE OF SAID LOT 9 AND LOT 10, BLOCK A, TIMBERLINE TERRACE SEC. 3, AS SHOWN IN BOOK 9, PAGE 158, PLAT RECORDS OF TRAVIS COUNTY, TEXAS, S 07°19'00" W, A DISTANCE OF 136.76 FEET (RECORD = N 07°26' E - 136.98 FEET), TO A CALCULATED CORNER FOR THE COMMON CORNER OF LOT 9, LOT 10, LOT 21 AND LOT 22, ALL BEING OUT BLOCK A, TIMBERLINE TERRACE SEC. 3, AS RECORDED IN BOOK 9, PAGE 158, PLAT RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING THE SOUTHEAST CORNER OF THIS HEREIN DESCRIBED EASEMENT;

THENCE WITH THE COMMON BOUNDARY LINE OF SAID LOT 9 AND LOT 22, N 85°33'06" W, A DISTANCE OF 5.00 FEET (RECORD = N 85°10' E), TO THE SOUTHWEST CORNER OF THIS HEREIN DESCRIBED EASEMENT;

THENCE N 07°19'00" E, A DISTANCE OF 137.02 FEET, TO A POINT ON THE SOUTHWEST RIGHT-OF-WAY LINE OF ROLLINGWOOD DRIVE, FOR THE BEGINNING OF A CURVE TO THE RIGHT, FOR THE NORTHWEST CORNER OF THIS HEREIN DESCRIBED EASEMENT;

THENCE ALONG AND WITH THE SOUTHWEST RIGHT-OF-WAY LINE OF ROLLINGWOOD DRIVE, FOLLOWING A CURVE TO THE RIGHT WITH A RADIUS OF 409.26 FEET, AN ARC LENGTH OF 5.00 FEET, A CHORD BEARING OF S 82°36'23" E, A CHORD DISTANCE OF 5.00 FEET, TO THE POINT OF BEGINNING AND CONTAINING WITHIN THESE METES AND BOUNDS 0.016 ACRES OF LAND, MORE OR LESS.

Bearings cited hereon are based on Timberline Terrace Sec. 3, recorded in Bk. 9, Page 158, Plat Records, Travis County, Texas.



Andrew Jimenez
Registered Professional Land Surveyor No. 6270
April 5, 2024

