

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.

EASEMENT AGREEMENT

(Waterlines)

1. Grant of Easement. The **BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM**, as grantor (“**GRANTOR**”), on behalf of the State of Texas, acting by and through its duly authorized officer, under authority of System Policy 41.01, and by virtue of authority granted to the Board of Regents by Texas Education Code §85.26, for Ten Dollars (\$10) and other good and valuable consideration, hereby **GRANTS, BARGAINS, SELLS and CONVEYS** to the **CITY OF STEPHENVILLE**, as grantee (“**GRANTEE**”), its permitted successors and assigns, a nonexclusive easement (the “Easement”) for installing, constructing, operating, maintaining, repairing, replacing, and rebuilding an eight inch (8”) and a fourteen inch (14”) diameter underground waterline (both collectively the “Line”). The Easement is ten feet (10’) in width across and under certain property of **GRANTOR** (the “Property”), located in Erath County, Texas, more particularly described in Exhibit A attached hereto and made a part of this Easement Agreement (this “Agreement”).

2. Purpose and Location of Easement. The Easement is granted for the purpose of installing, constructing, operating, maintaining, repairing, replacing, and rebuilding the Line. A plat of the Property showing the surface area affected by the Easement and the location of the Line and **GRANTEE**’s right-of-way is depicted on Exhibit B attached and made a part of this Agreement.

3. Right of Access. **GRANTEE** has the right of ingress and egress across the Property for the purpose of installing, constructing, operating, maintaining, repairing, replacing, and rebuilding the Line. **GRANTEE** agrees to occupy the surface of the Property only to the extent and for the length of time necessary for installing, constructing, operating, maintaining, repairing, replacing, and rebuilding the Line. Any gate or opening used by **GRANTEE** for ingress or egress in the exercise of its rights must be kept in proper condition and closed at all times.

4. Duties. **GRANTEE** will clearly mark the location of the Line in a manner and to the extent such lines are generally marked by companies in the industry or as required by law. **GRANTEE** must bury the Line not less than forty-two inches (42”) below the surface. **GRANTEE** agrees to notify **GRANTOR** no later than three (3) business days after completion of the initial construction of the Line, and to cooperate with **GRANTOR**’s personnel in an onsite inspection to assess any damages resulting from **GRANTEE**’s activities. **GRANTEE** agrees to notify **GRANTOR** at least five (5) business days prior to commencement of any repairs or replacements, unless the repairs are due to an emergency, in which case the **GRANTEE** will notify as soon as reasonable.

During the Term of this Agreement, if **GRANTEE** damages or destroys any fence, road, bridge, culvert, building, or other improvement, or any real or personal property, other than its

own property, **GRANTEE** must, within a reasonable period of time, repair or replace the improvement or property to the extent that such improvement or property will, as nearly as practicable, be in like condition as before such damage or destruction. In lieu of requiring repair or replacement, **GRANTOR** may, at its option, require that **GRANTEE** pay money damages, including without limitation, those damages incurred as a result of **GRANTEE** or its agents or employees entering or departing the Property, or by reason of being present on the Property.

5. No Fee Interest Granted. This is a grant of a nonexclusive easement only, and does not grant any fee interest to the surface, subsurface, or any interest in the minerals on or under the Property. The conveyance is made subject to any and all outstanding restrictions, reservations, covenants, conditions, leases, easements and other encumbrances filed of record or apparent on the ground. **GRANTOR** expressly retains all rights to grant, control and renew all restrictions, reservations, covenants, conditions, leases, easements and other encumbrances, of every kind and character, on, over or under the Property.

6. Duration of Easement. In accordance with Texas Education Code §85.26(c), this grant is for a term of three (3) years from the Effective Date and may be renewed only at the election of **GRANTOR**. **GRANTEE** agrees to provide **GRANTOR** written notice requesting renewal of the term at least six (6) months prior to the expiration date of this Easement. **GRANTOR** will respond in writing indicating whether the term will be renewed. **GRANTEE** expressly understands that its continued possession of the Property under this Agreement after expiration of its term, without first obtaining a renewal from **GRANTOR**, is a violation of state law that subjects **GRANTEE** to a penalty of One Hundred Dollars (\$100) for each day of such violation. **GRANTEE** agrees to pay **GRANTOR** such penalty within ten (10) business days after receipt of notice from **GRANTOR** sent in compliance with Section 14 of this Agreement.

7. Removal of Equipment and Improvements. Provided all obligations to **GRANTOR** under this Agreement are fully satisfied, unless otherwise directed by **GRANTOR** in writing, **GRANTEE** must remove any of its above-ground or below-ground equipment and improvements, including the Line (hereinafter, the "Improvements") from the Property within sixty (60) calendar days following the date of termination or abandonment of the Easement granted by this Agreement.

With respect to any Improvements, **GRANTOR** can elect the following by giving **GRANTEE** written notice: (a) **GRANTOR** may require **GRANTEE** to remove and dispose of all or any part of the Improvements, within sixty (60) calendar days following the date of the written notice; (b) require **GRANTEE** to cut and/or, as appropriate, cap the Line at **GRANTOR**'s property line(s) within thirty (30) calendar days following the date of the written notice and leave it in place in a safe condition, in compliance with all applicable laws and regulations related thereto, and **GRANTOR** will thereafter have all rights, title, ownership and possession to the Line and its appurtenances, including the right to sell, assign, grant, and/or use the Line; or (c) **GRANTOR** can undertake to remove and dispose of the Improvements at the expense of **GRANTEE**.

If removal causes injury to the Property or to any interests of **GRANTOR**, **GRANTEE** will restore the Property or interests or, at **GRANTOR**'s option, pay for such damage within sixty (60) calendar days after completion of such removal. If **GRANTEE** fails to perform as required in this Section 7 within the time set forth above, **GRANTOR** will have the right to retain the Improvements or remove and dispose of same and collect on demand all costs of removal and disposal from **GRANTEE**, plus interest at the lesser of ten percent (10%) per annum or the highest rate permitted by Texas law from the date such costs are incurred until the date of payment.

8. Nonexclusive Easement. The Easement is nonexclusive. **GRANTOR** reserves for **GRANTOR** and **GRANTOR**'s successors and assigns the right to full use and enjoyment of the Property and the right to convey the Property or other rights or easements to others, so long as such use or conveyance does not unduly interfere with **GRANTEE**'s rights and use as set forth herein.

9. Hold Harmless. **TO THE EXTENT ALLOWED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, GRANTEE AGREES TO INDEMNIFY AND HOLD GRANTOR HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, AND CAUSES OF ACTION FOR PERSONAL INJURY OR DEATH AND/OR DAMAGE TO OR DESTRUCTION OF PROPERTY OR IMPROVEMENTS CAUSED BY, ARISING OUT OF, OR RESULTING FROM THE EXERCISE OF RIGHTS GRANTED TO GRANTEE, ITS EMPLOYEES, AGENTS, OR OTHER PERSONS ACTING UNDER GRANTEE'S DIRECTION. GRANTEE FURTHER AGREES TO PAY ALL EXPENSES, COSTS, AND ATTORNEYS' FEES ASSOCIATED WITH SUCH CLAIMS, DEMANDS, LIABILITIES, AND CAUSES OF ACTION, AS WELL AS THOSE INCURRED BY GRANTOR IN THE ENFORCEMENT OF THIS INDEMNITY PROVISION.**

10. Antiquities. **GRANTEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966 (PB-89-66, 80 STATUTE 915; 16 U.S.C.A. §470) AND THE ANTIQUITIES CODE OF TEXAS, CHAPTER 191, TEX. NAT. RES. CODE ANN. BEFORE BREAKING GROUND AT THE PROPERTY, GRANTEE MUST NOTIFY THE TEXAS HISTORICAL COMMISSION ("THC"). AN ARCHEOLOGICAL SURVEY, AT GRANTEE'S SOLE COST AND EXPENSE, MIGHT BE REQUIRED BY THE THC BEFORE CONSTRUCTION OR INSTALLATION OF ANY IMPROVEMENTS CAN COMMENCE. FURTHER, IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS EASEMENT, GRANTEE WILL IMMEDIATELY CEASE SUCH ACTIVITIES AND WILL IMMEDIATELY NOTIFY GRANTOR SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN BY GRANTEE TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE. GRANTOR will not be liable for any costs of GRANTEE, GRANTEE's contractors, subcontractors or any other person or entity as a result of any encounter described in this Section 10. GRANTEE agrees that title to all archaeological objects and artifacts, if any, discovered in or on the Property will remain with GRANTOR.**

11. Use of Property; Compliance. **GRANTEE** will not commit or suffer to be committed waste upon the Property and will keep the Property, the improvements, and its equipment in good working order and repair and in a clean, safe, and healthful condition. Before breaking ground and during the term of this Agreement, **GRANTEE** must comply with and obtain any permits or licenses which may be required by federal, state or local statute in connection with the use of the Property.

12. Hazardous Waste. **GRANTEE** will not use the Property or permit the Property to be used so as to cause, suffer, or allow any contamination of soils, ground water, surface water, or natural resources on or adjacent to the Property resulting from, but not limited to, spills or leaks of oil, gasoline, hazardous materials, hazardous wastes, or other chemical compounds. **GRANTEE** is solely responsible for cleanup of any contamination resulting from violation of this provision.

IF THE PRESENCE OF HAZARDOUS MATERIALS ON THE PROPERTY IS CAUSED OR PERMITTED BY GRANTEE AND SUCH MATERIALS RESULT IN CONTAMINATION OF THE PROPERTY OR IF CONTAMINATION OF THE PROPERTY BY HAZARDOUS MATERIAL OTHERWISE OCCURS AND IS CAUSED BY GRANTEE'S USE, THEN TO THE EXTENT ALLOWED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, GRANTEE WILL INDEMNIFY, DEFEND, AND HOLD GRANTOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, JUDGMENTS, DAMAGES, PENALTIES, FINES, COSTS, LIABILITIES, OR LOSSES (INCLUDING DIMINUTION IN VALUE OF THE PROPERTY, DAMAGES FOR THE LOSS OF OR RESTRICTION ON USE OF THE PROPERTY OR OF ANY AMENITY OF THE PROPERTY, AND SUMS PAID IN SETTLEMENT OF CLAIMS, ATTORNEYS' FEES, CONSULTANTS' FEES AND EXPERTS' FEES) WHICH ARISE DURING OR AFTER THE EASEMENT TERM AS A RESULT OF SUCH CONTAMINATION. THIS INDEMNIFICATION OF GRANTOR BY GRANTEE INCLUDES COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS AND ANY CLEANUP, REMEDIATION, REMOVAL, OR RESTORATION WORK REQUIRED BY ANY FEDERAL, STATE, OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION BECAUSE OF THE PRESENCE OF HAZARDOUS MATERIAL.

13. Default and Termination. It is agreed that upon default by **GRANTEE** of any of the covenants and conditions set forth in this Agreement, **GRANTOR** has the right, and such right is expressly reserved, to declare the Easement forfeited, without prejudice to any claim **GRANTOR** may have against **GRANTEE**; provided, however, **GRANTOR** will give **GRANTEE** written notice of its intention to terminate the Easement and the reasons for termination, and, except as otherwise provided in Section 21, **GRANTEE** will have thirty (30) calendar days after receipt of notice to rectify the default or violation; provided further however, if such condition cannot reasonably be cured within said thirty (30) day period, **GRANTEE** shall commence to cure such condition within said thirty (30) day period and shall thereafter prosecute such action diligently and continuously to completion within a reasonable time period following **GRANTOR's** notice. Upon timely correction, as determined by **GRANTOR** in its sole discretion, the Easement will remain in full force and effect. Termination or abandonment of the

Easement for any cause is automatic and all rights granted revert to **GRANTOR** without the necessity of any further action or suit on the part of **GRANTOR**. Upon termination or abandonment, **GRANTEE** agrees to file a Release of Easement in the Deed Records of the County in which the Property is located, but if it fails to do so within ten (10) days following termination or abandonment, then **GRANTOR** will have the right to file the Release of Easement. Abandonment will be deemed to have occurred when the Easement is not used for the purposes granted for a continuous period of one (1) calendar year, unless such non-use is caused by force majeure or other cause outside the reasonable control of **GRANTEE**.

14. Notices. Any notice required or permitted under this Agreement must be in writing, and 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 set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonable means and will be effective when actually received. **GRANTOR** and **GRANTEE** may change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

GRANTOR: The Texas A&M University System
Office of General Counsel
Attn: System Energy Resource Office
301 Tarrow St., 6th Floor
College Station, Texas 77840-7896
Phone: (979) 458-6350
Fax: (979) 458-6359
Email: energy@tamus.edu

GRANTEE: City of Stephenville
Attn: Nick Williams
298 W. Washington St.
Stephenville, Texas 77401
Phone: (254) 918-1220

15. Waiver. The failure of **GRANTEE** or **GRANTOR** to insist in any particular instance on a strict performance of any of the covenants of this Agreement will not be construed as a waiver or relinquishment of such covenants in future instances, but the same will continue and remain in full force and effect.

16. Privileges and Immunities. **GRANTEE** acknowledges that **GRANTOR** is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by **GRANTOR** of its right to claim exemptions, privileges, and immunities as may be provided by law.

17. Governing Law and Venue. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance,

non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, will be governed and determined by the Constitution and the laws of the State of Texas. Pursuant to Texas Education Code §85.18, venue for any suit filed against **GRANTOR** must be in Brazos County, Texas.

18. Grammatical Interpretation. When the singular number is used, it also includes the plural, and the masculine gender includes the feminine and neuter gender.

19. Headings. Headings are for reference and will not be construed to limit or alter the meaning of the provisions of this Agreement.

20. Saving Clause. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions will remain in full force and effect and will not be affected, impaired or invalidated.

21. Assignment. **GRANTEE** may not sell, assign, encumber or convey the Easement without the prior written consent of **GRANTOR**, which consent will not be unreasonably withheld, and any attempt by **GRANTEE** to sell, assign, encumber or convey the Easement without such consent will cause this Agreement to terminate, provided however, that upon notice to **GRANTOR**, **GRANTEE** shall be free to assign without the written consent of **GRANTOR** to any affiliate, to any entity which may purchase all or substantially all of **GRANTEE**'s assets, or to any entity that may survive by merger or consolidation of **GRANTEE**. Any permitted sale, assignment, encumbrance or conveyance may be subject to payment of an administrative fee to **GRANTOR**.

22. Successors and Assigns. This Agreement and each and all of its covenants, obligations, and conditions will inure to the benefit of and be binding upon the heirs, personal representatives, successors, and permitted assigns of the parties.

23. Entire Agreement. This Agreement constitutes the complete agreement of the parties and supersedes any prior understanding or agreement, written or oral, between them regarding the issues covered by this Agreement. This Agreement may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their permitted successors or assigns.

24. Renewal. This Agreement is a renewal of a prior Easement Agreement between **GRANTOR** and **GRANTEE** recorded as Document Number 2019-05213 of the Official Public Records of Erath County, Texas. As provided in Section 23, this Agreement is intended to replace and supersede any prior agreement.

25. Effective Date. This Agreement is deemed to be in force as of the 7th day of October, 2019, regardless of the date actually signed.

[SIGNATURE PAGES FOLLOW]

BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM, an agency of the State of Texas

By: _____

GINA JOSEPH
Managing Counsel, Property & Construction
The Texas A&M University System

APPROVED AS TO FORM:

KIP I. PLANKINTON
Assistant General Counsel
System Energy Resource Office
Office of General Counsel
The Texas A&M University System

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me this ____ day of _____, 2021 by **GINA JOSEPH**, Managing Counsel, Property and Construction of The Texas A&M University System, on behalf of the Board of Regents of The Texas A&M University System, an agency of the State of Texas.

Notary Public in and for
The State of Texas

TERMS AND CONDITIONS EXPRESSLY ACKNOWLEDGED AND ACCEPTED:

CITY OF STEPHENVILLE

By: _____
DOUG SVIEN
Mayor
City of Stephenville

ATTEST:

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF ERATH §

This instrument was acknowledged before me this ___ day of _____, 2021 by **DOUG SVIEN**, as Mayor of the City of Stephenville, on behalf of said municipality.

Notary Public in and for The State of Texas

EXHIBIT "A"

**City of Stephenville, Texas - Two Water Collector Lines
Fourteen-Inch (14") and Eight-Inch (8")**

An easement for a strip ten (10') feet in width across the Poultry and Horticultural Farm for the purpose of operating two water collector lines. The centerline of said easement being described as follows:

BEGINNING at a point in the South right-of-way line of U.S. Highway No. 377. Said South right-of-way line of U.S. Highway No. 377 being the North property line of said tract of land owned by Tarleton State University. Said point of beginning being five feet (5') in a westerly direction along said South right-of-way line of U.S. Highway No. 377 from the northeast corner of said Tarleton State University tract of land. Said Northeast corner of the Tarleton State University tract of land be the Northern most West corner of the West End Cemetery.

THENCE in a Southerly direction five feet (5') West of and parallel to the East property line of said Tarleton State University tract of land; said East line of the Tarleton State University, to a point of exit in the South line of said Tarleton State University tract of land being a North line of the West End Cemetery. Said point of exit being five feet (5') in a westerly direction along said South line of the Tarleton State University tract of land and the said North line of the West End Cemetery from the Southeast corner of said Tarleton State University tract of land. Said Southeast corner of the Tarleton State University tract of land being an inside Northwest corner of the West End Cemetery.

EXHIBIT "B"

