

RESOLUTION NO. 24-R-47

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, APPROVING AND AUTHORIZING A WATER AND WASTEWATER EASEMENT AGREEMENT WITH SCHERTZ BANK & TRUST, ON LOT 1, BLOCK 1 OF THE SCHERTZ BANK & TRUST SUBDIVISION, AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City staff of the City of Schertz (the “City”) has recommended that the City enter into an agreement for a Water and Wastewater Easement with Schertz Bank & Trust (the “Grantor”), in the form attached hereto as Exhibit A (the “Agreement”); and

WHEREAS, the City needs the Waterline Easement in connection with the construction, operation, and maintenance of a water main situated on Lot 1, Block 1, Schertz Bank & Trust Subdivision located on the northbound frontage road of IH-35; and

WHEREAS, the City Council has determined that it is in the best interest of the City to accept the Waterline Easement in accordance with the terms of the Agreement.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the Agreement with the Grantor in substantially the form set forth on Exhibit A and to accept the Water and Wastewater Easement in accordance with the terms of the Agreement.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this ____th day of _____, 2024.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Sheila Edmondson, City Secretary

EXHIBIT A

WATER AND WASTEWATER EASEMENT AGREEMENT

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.

WATER AND WASTEWATER EASEMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

GRANT OF EASEMENT:

SCHERTZ BANK & TRUST, 519 Main Street, Schertz, Texas 78154 (“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 SCHERTZ, TEXAS**, a Texas home-rule city, with offices located at 1400 Schertz Parkway, Schertz, Texas 78154 (“Grantee”), a non-exclusive easement (“Easement”) upon and across the property of Grantor which is more particularly described on **Exhibit ”A”**, attached hereto and incorporated herein by reference (“Easement Tract”) for the Easement Purpose, 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.

WARRANTY: This conveyance is made without express or implied warranty. All warranties which might arise by common law or by statute, including but not limited to § 5.023 of the Texas Property Code (or its successor) are excluded.

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 Easement Tract.
 - (b) “Grantor” shall mean Grantor and Grantor’s successors and assigns who at any time own any interest in the Easement Tract.
 - (c) “Facilities” shall mean one public water line and one public wastewater line.
 - (d) “Grantor’s Property” shall mean Lot 1, Block 1, Subdivision Plat of Schertz Bank & Trust recorded in Volume 5, Page 358A of the Plat Records of Guadalupe County, Texas.

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 nonexclusive and irrevocable. The Easement is for the benefit of Holder.
3. *Purpose of Easement.* The Easement shall be used for placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of the Facilities, and making connections thereto. The Easement shall also be used for the purpose of providing access to the Facilities. The Facilities shall be located entirely underground. Other than set forth above the Easement shall be used for no other purpose.
4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
5. *Reservation of Rights.* Holder’s right to use the Easement Property is nonexclusive, and Grantor and Grantor’s heirs, successors, and assigns retain the right to use all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor’s heirs, successors, and assigns does not
(i) interfere with the use of the Easement Property by Holder for the Easement Purpose, nor (ii) may Grantor construct any new building, structure or obstruction on the Easement Property. The right to convey to others the right to use all or part of the Easement Property in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement. Written approval of Holder must be obtained prior to any new use or new improvement of Easement Property. Notwithstanding the foregoing, Grantor and Grantor’s successors and assigns may without Holder’s approval, use, maintain, repair, and replace the pylon sign(s), sidewalk, driveways, entryways, parking lots, landscaping, and improvements located on the Easement Property as of the date of execution of this agreement (“Current Easement Improvements”). The right to replace includes replacing the Current Easement Improvements with like improvements having width, depth, height, and footprint substantially similar to the Current Easement Improvements. Grantor shall not be required to pay a pro-rat fee to connect to the future water line located in the Easement. For avoidance of doubt, Grantor shall never be required to remove or relocate any Current Easement Improvements, including but not limited to its sign.
6. *Temporary Construction Easement.* Holder has the right (the “Temporary Construction Easement”) to use the surface of the 20-foot wide area adjacent to the Easement Property, to assist in the initial installation and as may be reasonably necessary to maintain, repair, and replace 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 Temporary Construction Easement.

7. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 8., immediately below, 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 other than Current Easement Improvements. 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, other than the Current Easement Improvements (but excluding landscaping) if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder will also replace to their original condition any Current Easement Improvements that are damaged in connection with the work.
8. *Maintenance of Surface Easement Property/Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall retain the obligation to maintain the surface of the Easement Property, including the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Property free of litter, debris, or trash. Any permitted improvement made by Grantor must comply with applicable ordinances, development codes and engineering guidelines of the City of Schertz, and must not conflict with use of the easement for its intended purpose as described herein.
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 conveyance is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests and royalty interests, if any, relating to the Easement Property, to the extent, and only to the extent, that the same may still be in force and effect, and either shown of record in the office of the County Clerk of the County in which any part of the Easement Property is located, or that may be apparent on the Easement Property.
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.
22. *Governmental Responsibility.* To the extent allowed by the Constitution and the laws of the State of Texas, Grantee assumes the entire responsibility for the construction and maintenance of the Facilities to be constructed in the Easement Property, and nothing contained herein shall ever be construed to place upon Grantor any manner of liability for injury to or death of persons or for damage to or loss of property arising from or in any manner connected with the acts, conduct, or negligence of Grantee in the exercise of its rights or performance (or non-performance) of its duties under this agreement.
23. *Insurance by Contractor.* Grantee agrees to name Grantor as an additional insured on all liability or other insurance policies to be provided to Grantee by its contractors for the construction of the Facilities contemplated to be constructed in the Easement Property, and to furnish Grantor a copy of all such policies.
24. *Enforcement by Owners of Grantor's Property.* The obligations of Grantee under the terms of this agreement are covenants running with the land of Grantor's Property, and shall inure to the benefit of, and be enforceable by, Grantor and Grantor's successors and assigns; and the owners of all or any part of Grantor's Property.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2024.

GRANTOR:

(Grantor's Name)

By: _____
(Grantor's Signature)

THE STATE OF TEXAS §
 §
COUNTY OF _____§

This instrument was acknowledged before me on _____, 20____, by _____, an individual residing in _____ County, Texas.

Notary Public Signature

(seal)

GRANTEE:

AGREED AND ACCEPTED:

CITY OF SCHERTZ, TEXAS,
a Texas home-rule municipality

By: _____
Mr. Steve Williams, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on _____, 20 , by
Mr. Steve Williams, City Manager of the City of Schertz, Texas, a Texas home-rule municipality,
on behalf of said municipality.

Notary Public Signature

(seal)

EXHIBIT "A"

EASEMENT TRACT