

RESOLUTION NO. R2020-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ACCEPT A PUBLIC UTILITY EASEMENT FROM RICK AND RHONDA COLEMAN FAMILY TRUST.

BE IT RESOLVED BY THE CITY COUNCIL OF BURNET, TEXAS:

Section one. That the Public Utility Easement described in the Instrument attached hereto is hereby accepted.


Section two. That the mayor is hereby authorized to execute the attached Easement Instrument; and, execute such other documents and take such other actions reasonably necessary to facilitate the purpose of this Resolution.

Section three. That the City Secretary is hereby authorized and directed to have the executed Easement Instrument recorded in the Public Records of the Office of the Burnet County Clerk and the official records of the City.

Section four. Open Meetings. That it is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, as modified by the governor's orders in response to the COVID-19 pandemic.

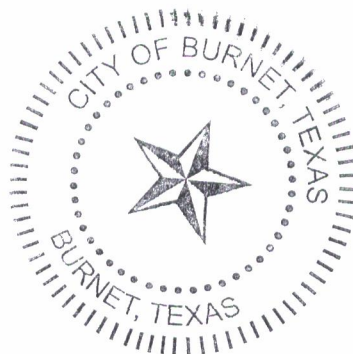
PASSED AND APPROVED to be effective this the 10th day of November, 2020.

CITY OF BURNET


Crista Goble Bromley, Mayor

ATTEST:


Kelly Dix, City Secretary





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.

PUBLIC UTILITY EASEMENT AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS
COUNTY OF BURNET §

GRANT OF EASEMENT:

Richard J. JR and Rhonda Coleman, Trustees for the **COLEMAN RICK AND RHONDA FAMILY TRUST**, mailing address is 429 Meadowlakes Dr, Meadowlakes, Texas 78654, 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 BURNET, TEXAS**, a Texas home-rule city, with offices located at, P.O. Box 1369, 1001 Buchanan Drive, Suite 4, Burnet, Burnet County, Texas, ("Grantee"), an easement and right-of-way ("Easement") upon, under, over and across the property of Grantor being a 0.616 acre, 20 foot wide Utility Easement, out of the Francisco Ybarbo Sr. Survey No. 39, Abstract 1018, in Burnet County, Texas, being out of a called tract 1 (2.40 acres), tract 2 (104.22 acres), and tract 3 (43.39 acres), described in Deed to Rick and Rhonda Coleman Family Trust, recorded in Document No. 201909218 of the Official Public Records of Burnet County, Texas, said 20' wide Utility Easement being more particularly described in the metes and bounds and survey attached hereto, and incorporated herein as **Exhibits "A" and "B"** respectively.

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; and Grantor, subject to the Reservations and Exceptions, to Warranty, does hereby covenant and agree to **WARRANT AND FOREVER DEFEND** title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

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 conveyance is subject to the terms of this agreement.

City of Burnet Public Utility Easement

- (a) "Public Utility" shall mean electric distribution, wire, fiber and radio communications, water, sanitary sewer and stormwater drainage facilities.
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 Public Utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of public utility facilities and related appurtenances (the "Facilities"), or making connections thereto. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the Facilities and related appurtenances.
 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 under the following conditions: such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose; and provided, Grantor does not construct any building, structure or obstruction on the Easement Property. With written approval of Holder, Grantor shall have the right to allow other subsurface utilities to cross over the Easement Property perpendicularly, but not parallel to the Public Utility. Any permitted improvement made by Grantor within the Easement Property must comply with applicable ordinances, development codes and engineering guidelines of the City of Burnet and must not conflict with use of the Easement for its intended purpose as described herein. Written approval of Holder must be obtained prior to any use or improvement of Easement Property not permitted herein.
 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 south side of the Easement Property ("Temporary Construction Area"), 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 Area 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 installed on the Easement Property in violation of the terms set forth in this instrument. Holder has the right to construct, install, maintain,

replace, and remove the Facilities under, over, above and/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 its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder will also replace to their original condition any landscaping, driveways or parking areas that were in existence prior to the granting of the Easement Property and 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.
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 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 3rd day of November, 2020.

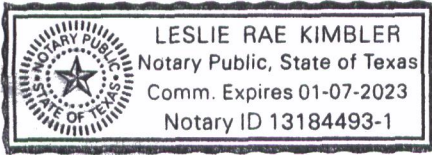
GRANTOR:
COLEMAN RICK AND RHONDA FAMILY TRUST

Signature: [Handwritten Signature]
Richard J Coleman Jr, Trustee

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on November 3, 2020, by Richard J. Coleman Jr., as Trustee for, and on behalf of the Coleman Rick and Rhonda Family Trust.

(seal)



[Handwritten Signature]
Notary Public Signature

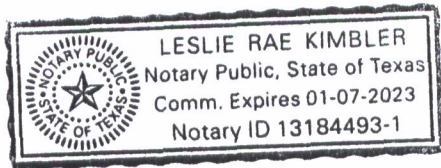
GRANTOR:
COLEMAN RICK AND RHONDA FAMILY TRUST

Signature: [Handwritten Signature]
Rhonda I. Coleman Jr, Trustee

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on November 3, 2020, by Rhonda I. as Trustee for, and on behalf of the Coleman Rick and Rhonda Family Trust.

(seal)



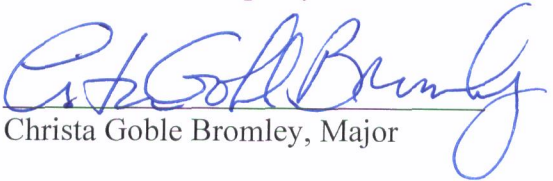
[Handwritten Signature]
Notary Public Signature

Acceptance Page to follow.

GRANTEE:

AGREED AND ACCEPTED:

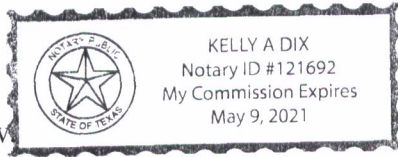
CITY OF BURNET, TEXAS,
a Texas home-rule municipality

By: 
Christa Goble Bromley, Major

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on November 16, 2020, by, Christa Goble Bromley as Mayor of the City of Burnet, a Texas home rule municipality, on behalf of said entity.

(seal)





Notary Public Signature

Exhibits to follow

EXHIBIT "A"



Prepared For: Rick Coleman
Project No. 201704
Date: 10/18/2020

BEING A 0.616 ACRE, 20 FOOT WIDE UTILITY EASEMENT, OUT OF THE FRANCISCO YBARBO SR. SURVEY NO. 39, ABSTRACT 1018, IN BURNET COUNTY, TEXAS, BEING OUT OF A CALLED TRACT 1 (2.40 ACRES) , TRACT 2 (104.22 ACRES), AND TRACT 3 (43.39 ACRES), DESCRIBED IN DEED TO RICK AND RHONDA COLEMAN FAMILY TRUST, RECORDED IN DOCUMENT NO. 201909218 OF THE OFFICIAL PUBLIC RECORDS OF BURNET COUNTY, TEXAS, SAID 20' WIDE UTILITY EASEMENT LYING 10' EACH SIDE OF AND PARALLEL WITH THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING at a point along the west right-of-way line of Honey Rock Drive, whence a spindle found at the northeast corner of said Tract 1 bears North 14°35'38" West, a distance of 71.34';

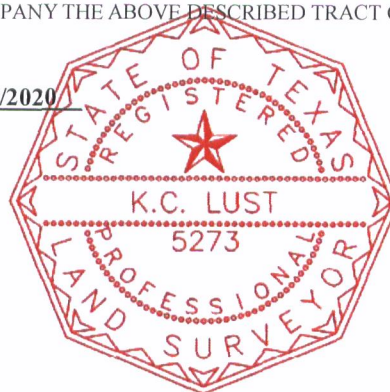
THENCE along the following described centerline, over and across said Tract 1, Tract 2, and Tract 3, the following 9 courses and distances:

- 1) South 44°43'20" West, a distance of 55.71' to a calculated point,
- 2) South 87°10'52" West, a distance of 473.03' to a calculated point,
- 3) South 76°36'12" West, a distance of 246.95' to a calculated point,
- 4) South 68°40'06" West, a distance of 82.23' to a calculated point,
- 5) South 85°53'58" West, a distance of 16.07' to a calculated point,
- 6) South 78°05'59" West, a distance of 86.13' to a calculated point,
- 7) South 76°29'11" West, a distance of 178.39' to a calculated point,
- 8) South 76°08'50" West, a distance of 154.81' to a calculated point,
- 9) South 75°52'35" West, a distance of 48.76' to a calculated point at the end of this easement.

I HEREBY CERTIFY EXCLUSIVELY TO RICK COLEMAN THAT THIS SURVEY WAS PERFORMED ON THE GROUND AND WAS SURVEYED BY ME OR UNDER MY DIRECT SUPERVISION SUPERVISION. CUPLIN & ASSOCIATES, INC. ACCEPTS NO RESPONSIBILITY FOR THE USE OF THIS SURVEY BY ANYONE OTHER THAN THE ABOVE REFERENCED PARTIES HEREBY CERTIFIED TO FOR THIS SPECIFIC TRANSACTION ONLY. COPYRIGHT 2020, CUPLIN & ASSOCIATES, INC. ©. BASIS OF BEARINGS ARE TO THE NORTH AMERICAN DATUM OF 1983, TEXAS COORDINATE SYSTEM, CENTRAL ZONE. A PLAT OF SURVEY OF EVERY DATA WAS PREPARED AS IS INTENDED TO ACCOMPANY THE ABOVE DESCRIBED TRACT OF LAND.

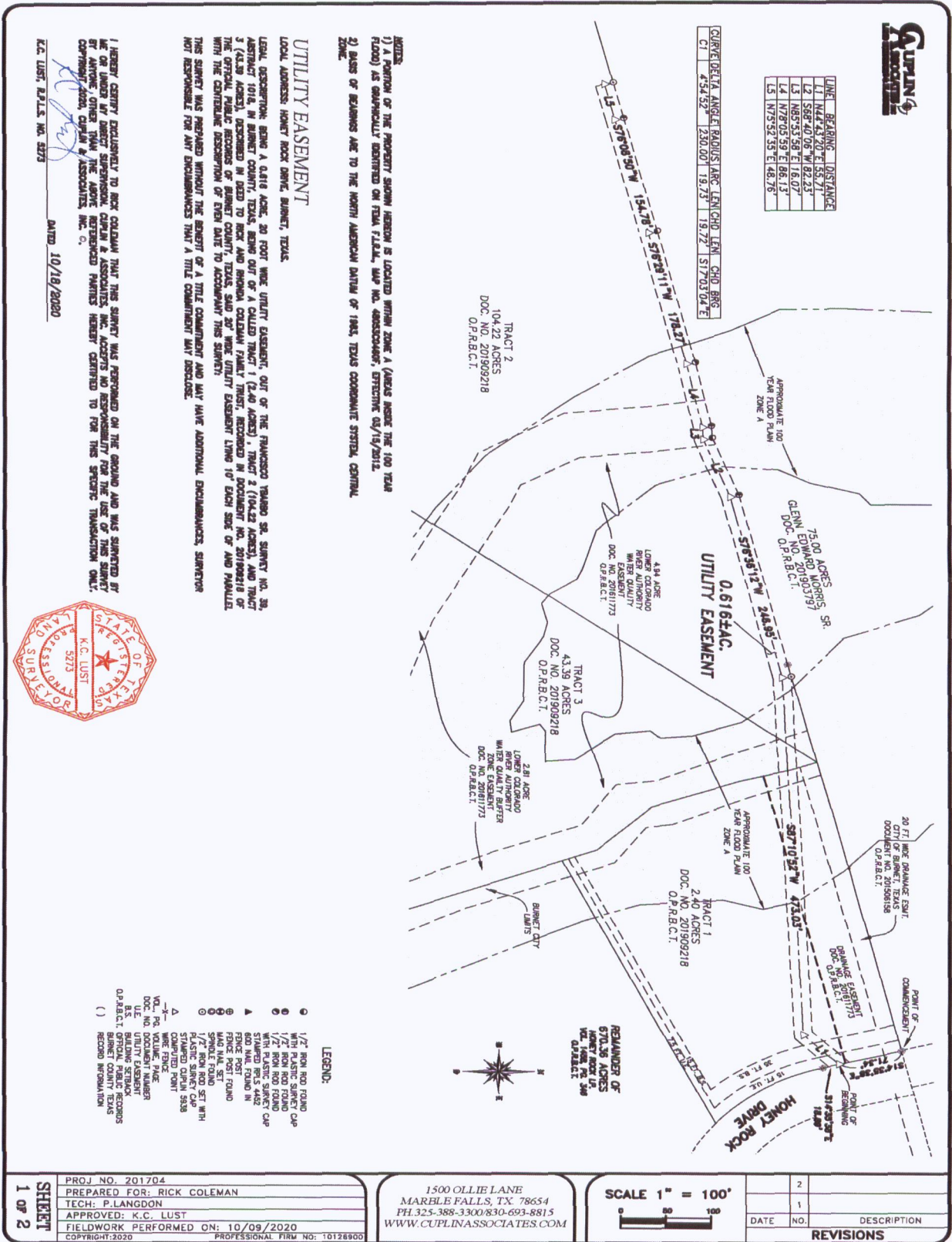
Dated: 10/18/2020

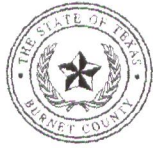
K.C. LUST
Registered Professional Land Surveyor No. 5273



1500 Ollie Lane, Marble Falls, Texas 78654
PH: 325.388.3300 Fax: 325.388.3320 Prof.
Firm No. 10126900
www.cuplinassociates.com

EXHIBIT "B"





FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Janet Parker

Janet Parker, County Clerk

Burnet County Texas

11/16/2020 2:54:31 PM

FEE: \$54.00

202015151

ESMT