

RESOLUTION NO. R-2011-17

A RESOLUTION FINDING A NECESSITY FOR THE ACQUISITION OF CERTAIN LAND FOR SANITARY SEWER EASEMENT PURPOSES; DECLARING SUCH ACQUISITION FOR A PUBLIC PURPOSE; AUTHORIZING CONDEMNATION FOR THE RIGHT-OF-WAY INTEREST IN SAID PROPERTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, engineering studies heretofore conducted have determined that acquisition of the hereinafter described property is necessary for the public purpose of locating, establishing, constructing, testing, inspecting, installing, operating, renewing, maintaining, repairing, replacing, altering, changing of the size of, reconstructing, restoring and possible future removal of a certain sanitary sewer line or lines and all necessary and convenient valves, connections, fittings, manholes, cleanouts and appurtenances, known as the Highway 69 / Interstate 20 Corridor Sanitary Sewerage System Improvements Project (the "Project"), to provide for sanitary sewer service to the City of Tyler, Texas; and

WHEREAS, the City Council has found that a public necessity requires such land acquisition; and

WHEREAS, the City Council has found and determined that the easement interest in and to the hereinafter described property is suitable for such purpose and that it is necessary to acquire same for locating, establishing, constructing, testing, inspecting, installing, operating, renewing, maintaining, repairing, replacing, altering, changing of the size of, reconstructing, restoring and possible future removal of a certain sanitary sewer line or lines and all necessary and convenient valves, connections, fittings, manholes, cleanouts and appurtenances on said property; and

WHEREAS, the City of Tyler, through its duly authorized representatives, has negotiated with the owners of such land and has been unable to agree with such owners as to the fair cash market value thereof:

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

PART 1: The City of Tyler has offered Felton Erwin Jr., Keith Minor, Rex Anton Davis, Danny Ray Davis, Jr., Dorothy Horton and Rita Yvette Lee, landowners, a final offer in writing of \$50.00 each (\$300.00 total), a reasonable sum of money to compensate them for the value of the easement and damages, if any, to the remainder of this property, the offer of which is hereby confirmed.

PART 2: That acquisition of an easement interest in and to the following described property, is hereby found to be necessary for the public purpose of locating, establishing, constructing, testing, inspecting, installing, operating, renewing, maintaining, repairing, replacing, altering, changing of the size of, reconstructing, restoring and possible future removal of a certain sanitary sewer line or lines and all necessary and convenient valves, connections, fittings, manholes, cleanouts and appurtenances:

140.00 acres, more or less, in the H. Nelson Survey, Abstract No. 739, Smith County, Texas and being the same land described in a Warranty Deed with Vendor's Lien from Jerry

Erwin and wife to Alex Erwin dated June 25, 2899 and recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

PART 3: That it is hereby determined that the City of Tyler has in fact transmitted bona fide offers to the property owners, in accordance with the laws of the State of Texas, for the property described herein, and the owners of the property and the City of Tyler have been unable to agree and cannot agree upon the value of the land or the damages, if any, to be paid and further settlement negotiations have become futile and impossible. A true and complete copy of the Right-of-Way Agreement offered by the City of Tyler as its last and final offer is attached hereto as Exhibit "A". The final monetary offer of the City of Tyler is hereby confirmed and approved.

PART 4: That the City Attorney of the City of Tyler, or an attorney authorized by him be and is hereby authorized and directed to file and cause to be filed against the owner, proceedings in eminent domain to acquire the easement interest in and to the above described property and to conduct all parts of the condemnation in accordance with the laws and procedures of the State of Texas.

PART 5: That this Resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED this 11th day of May, A.D. 2011.


BARBARA BASS, MAYOR

ATTEST:

APPROVED:


CASSANDRA BRAGER
CITY CLERK




GARY C. LANDERS, CITY ATTORNEY

Exhibit "A" to Resolution R-2011-17

Page 1 of 42



**Larry R. Dixon, CPL
President**

Mailing address: P.O. Box 6602
Physical address: 12559 CR 192
Tyler, Tx 75711 Tyler, Tx 75703
903-579-9300 (office) 903-579-9399 (fax)

Certified Mail #7009 2250 0000 8800 2948

May 2, 2011

Felton Erwin, Jr.
426 Grace Ave., Apt-6
Inglewood, CA 90301

Re: City of Tyler
Sanitary Water/Sewer pipeline
H. Nelson Survey, A-739
Smith County, Texas

Dear Mr. Erwin:

This letter is to confirm negotiations between, Dixon Services, Inc. as Right-of-Way Agent, and you for the acquisition by The City of Tyler, Texas of the permanent right-of-way easement and temporary workspace for the expansion of the installation of a sanitary water/sewer pipeline across property owned by you and the other heirs of the Alex Erwin in a 140 acre tract of land in the H. Nelson Survey, A-739, Smith County, Texas.

Pursuant to our previous telephone conversations and our inability to reach and acceptable agreement for the purchase of a Right-of-Way Agreement, the City of Tyler hired a real estate appraiser to appraise the subject property that will be affected by the said sanitary water/sewer pipeline. The total distance of the proposed pipeline across the subject tract is 3560.12 feet. The Right of Way Agreement will be for a thirty (30) foot wide permanent easement and an additional twenty (20) foot wide temporary construction easement to be used during construction of the line. Mr. Jim Justice of Real Estate Appraisal Services has appraised the subject property and has determined the appraised value of the 2.45 acre permanent easement to be \$3,675.00 and the appraised value of the 1.63 acre temporary easement to be \$1,223.00 for a total of \$4,898.00 for the entire area that will be used for permanent and temporary easement across the subject property.

Based on research from the Official Public Records of Smith County, Texas, the Probate Records of Smith County, Texas, the District Court Records of Smith County, Texas and heirship information gathered from other heirs of Alex Erwin it appears that you own an undivided 1/132 interest in the subject property. Therefore, your portion of the \$4,898.00 total consideration would be \$37.11. The City of Tyler has agreed to increase this offer to a \$50.00 minimum payment in attempt to compensate you for your time in handling this matter.

Your careful consideration of this final offer will be sincerely appreciated. Additional copies of the original Right of Way Agreement and a copy for your

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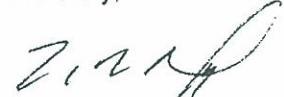
May 2, 2011

records are enclosed for your review. Upon execution of the original Right of Way Agreement in the presence of a Notary Public and upon receipt of the fully executed document we will send you a check in the amount of \$50.00.

If you have not accepted this final offer within seven (7) days from the date you receive this letter, condemnation proceedings will be initiated to acquire the necessary permanent right-of-way and temporary workspace.

You may call this office to communicate your acceptance within the allotted time. Thank you for your concern and cooperation in this matter. I look forward to hearing from you soon and completing this process so the City can focus on beginning construction of the new sanitary water/sewer pipeline.

Sincerely,



Larry R. Dixon

Exhibit "A" to Resolution R-2011-17
Page 3 of 42



Larry R. Dixon, CPL
President
Mailing address: P.O. Box 6602
Physical address: 12559 CR 192
Tyler, Tx 75711
Tyler, Tx 75703
903-579-9300 (office) 903-579-9399 (fax)

Certified Mail #7009 1410 0000 7440 4841

May 2, 2011

Keith Minor
3003 Toney Drive
Decatur, GA 30032

Re: City of Tyler
Sanitary Water/Sewer pipeline
H. Nelson Survey, A-739
Smith County, Texas

Dear Mr. Minor:

This letter is to confirm negotiations between, Dixon Services, Inc. as Right-of-Way Agent, and you for the acquisition by The City of Tyler, Texas of the permanent right-of-way easement and temporary workspace for the expansion of the installation of a sanitary water/sewer pipeline across property owned by you and the other heirs of the Alex Erwin in a 140 acre tract of land in the H. Nelson Survey, A-739, Smith County, Texas.

Pursuant to our previous telephone conversations and our inability to reach and acceptable agreement for the purchase of a Right-of-Way Agreement, the City of Tyler hired a real estate appraiser to appraise the subject property that will be affected by the said sanitary water/sewer pipeline. The total distance of the proposed pipeline across the subject tract is 3560.12 feet. The Right of Way Agreement will be for a thirty (30) foot wide permanent easement and an additional twenty (20) foot wide temporary construction easement to be used during construction of the line. Mr. Jim Justice of Real Estate Appraisal Services has appraised the subject property and has determined the appraised value of the 2.45 acre permanent easement to be \$3,675.00 and the appraised value of the 1.63 acre temporary easement to be \$1,223.00 for a total of \$4,898.00 for the entire area that will be used for permanent and temporary easement across the subject property.

Based on research from the Official Public Records of Smith County, Texas, the Probate Records of Smith County, Texas, the District Court Records of Smith County, Texas and heirship information gathered from other heirs of Alex Erwin it appears that you own an undivided 1/2016 interest in the subject property. Therefore, your portion of the \$4,898.00 total consideration would be \$2.43. The City of Tyler has agreed to increase this offer to a \$50.00 minimum payment in attempt to compensate you for your time in handling this matter.

Your careful consideration of this final offer will be sincerely appreciated. Additional copies of the original Right of Way Agreement and a copy for your

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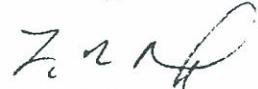
May 2, 2011

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You may call this office to communicate your acceptance within the allotted time. Thank you for your concern and cooperation in this matter. I look forward to hearing from you soon and completing this process so the City can focus on beginning construction of the new sanitary water/sewer pipeline.

Sincerely,



Larry R. Dixon

Exhibit "A" to Resolution R-2011-17
Page 5 of 42



Larry R. Dixon, CPL
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Tyler, Tx 75703
903-579-9300 (office) 903-579-9399 (fax)

Certified Mail #7009 1410 0000 7440 4858

May 2, 2011

Rex Anton Davis
2950 Monticello Lane
Lancaster, Texas 75134

Re: City of Tyler
Sanitary Water/Sewer pipeline
H. Nelson Survey, A-739
Smith County, Texas

Dear Mr. Davis:

This letter is to confirm negotiations between, Dixon Services, Inc. as Right-of-Way Agent, and you for the acquisition by The City of Tyler, Texas of the permanent right-of-way easement and temporary workspace for the expansion of the installation of a sanitary water/sewer pipeline across property owned by you and the other heirs of the Alex Erwin in a 140 acre tract of land in the H. Nelson Survey, A-739, Smith County, Texas.

Pursuant to our previous telephone conversations and our inability to reach and acceptable agreement for the purchase of a Right-of-Way Agreement, the City of Tyler hired a real estate appraiser to appraise the subject property that will be affected by the said sanitary water/sewer pipeline. The total distance of the proposed pipeline across the subject tract is 3560.12 feet. The Right of Way Agreement will be for a thirty (30) foot wide permanent easement and an additional twenty (20) foot wide temporary construction easement to be used during construction of the line. Mr. Jim Justice of Real Estate Appraisal Services has appraised the subject property and has determined the appraised value of the 2.45 acre permanent easement to be \$3,675.00 and the appraised value of the 1.63 acre temporary easement to be \$1,223.00 for a total of \$4,898.00 for the entire area that will be used for permanent and temporary easement across the subject property.

Based on research from the Official Public Records of Smith County, Texas, the Probate Records of Smith County, Texas, the District Court Records of Smith County, Texas and heirship information gathered from other heirs of Alex Erwin it appears that you own an undivided 1/2016 interest in the subject property. Therefore, your portion of the \$4,898.00 total consideration would be \$2.43. The City of Tyler has agreed to increase this offer to a \$50.00 minimum payment in attempt to compensate you for your time in handling this matter.

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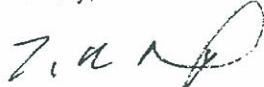
May 2, 2011

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You may call this office to communicate your acceptance within the allotted time. Thank you for your concern and cooperation in this matter. I look forward to hearing from you soon and completing this process so the City can focus on beginning construction of the new sanitary water/sewer pipeline.

Sincerely,



Larry R. Dixon

Exhibit "A" to Resolution R-2011-17
Page 7 of 42



**Larry R. Dixon, CPL
President**

Mailing address: P.O. Box 6602
Physical address:
Tyler, Tx 75711 12559 CR 192
903-579-9300 (office) 903-579-9399 (fax)
Tyler, Tx 75703

Certified Mail #7009 1410 0000 7440 4872

May 2, 2011

Danny Ray Davis, Jr.
2950 Monticello Lane
Lancaster, Texas 75134

Re: City of Tyler
Sanitary Water/Sewer pipeline
H. Nelson Survey, A-739
Smith County, Texas

Dear Mr. Davis:

This letter is to confirm negotiations between, Dixon Services, Inc. as Right-of-Way Agent, and you for the acquisition by The City of Tyler, Texas of the permanent right-of-way easement and temporary workspace for the expansion of the installation of a sanitary water/sewer pipeline across property owned by you and the other heirs of the Alex Erwin in a 140 acre tract of land in the H. Nelson Survey, A-739, Smith County, Texas.

Pursuant to our previous telephone conversations and our inability to reach and acceptable agreement for the purchase of a Right-of-Way Agreement, the City of Tyler hired a real estate appraiser to appraise the subject property that will be affected by the said sanitary water/sewer pipeline. The total distance of the proposed pipeline across the subject tract is 3560.12 feet. The Right of Way Agreement will be for a thirty (30) foot wide permanent easement and an additional twenty (20) foot wide temporary construction easement to be used during construction of the line. Mr. Jim Justice of Real Estate Appraisal Services has appraised the subject property and has determined the appraised value of the 2.45 acre permanent easement to be \$3,675.00 and the appraised value of the 1.63 acre temporary easement to be \$1,223.00 for a total of \$4,898.00 for the entire area that will be used for permanent and temporary easement across the subject property.

Based on research from the Official Public Records of Smith County, Texas, the Probate Records of Smith County, Texas, the District Court Records of Smith County, Texas and heirship information gathered from other heirs of Alex Erwin it appears that you own an undivided 1/2016 interest in the subject property. Therefore, your portion of the \$4,898.00 total consideration would be \$2.43. The City of Tyler has agreed to increase this offer to a \$50.00 minimum payment in attempt to compensate you for your time in handling this matter.

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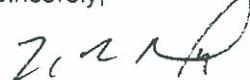
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You may call this office to communicate your acceptance within the allotted time. Thank you for your concern and cooperation in this matter. I look forward to hearing from you soon and completing this process so the City can focus on beginning construction of the new sanitary water/sewer pipeline.

Sincerely,



Larry R. Dixon

Exhibit "A" to Resolution R-2011-17
Page 9 of 42



Larry R. Dixon, CPL

President

Mailing address: P.O. Box 6602
Physical address:
12559 CR 192
Tyler, Tx 75711
Tyler, Tx 75703
903-579-9300 (office) 903-579-9399 (fax)

Certified Mail #7009 1410 0000 7440 4865

May 2, 2011

Dorothy Horton
2425 Bickers Street, Apt. 423
Dallas, Texas 75212

Re: City of Tyler
Sanitary Water/Sewer pipeline
H. Nelson Survey, A-739
Smith County, Texas

Dear Mrs. Horton:

This letter is to confirm negotiations between, Dixon Services, Inc. as Right-of-Way Agent, and you for the acquisition by The City of Tyler, Texas of the permanent right-of-way easement and temporary workspace for the expansion of the installation of a sanitary water/sewer pipeline across property owned by you and the other heirs of the Alex Erwin in a 140 acre tract of land in the H. Nelson Survey, A-739, Smith County, Texas.

Pursuant to our previous telephone conversations and our inability to reach and acceptable agreement for the purchase of a Right-of-Way Agreement, the City of Tyler hired a real estate appraiser to appraise the subject property that will be affected by the said sanitary water/sewer pipeline. The total distance of the proposed pipeline across the subject tract is 3560.12 feet. The Right of Way Agreement will be for a thirty (30) foot wide permanent easement and an additional twenty (20) foot wide temporary construction easement to be used during construction of the line. Mr. Jim Justice of Real Estate Appraisal Services has appraised the subject property and has determined the appraised value of the 2.45 acre permanent easement to be \$3,675.00 and the appraised value of the 1.63 acre temporary easement to be \$1,223.00 for a total of \$4,898.00 for the entire area that will be used for permanent and temporary easement across the subject property.

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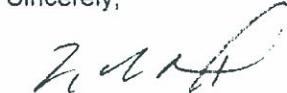
May 2, 2011

records are enclosed for your review. Upon execution of the original Right of Way Agreement in the presence of a Notary Public and upon receipt of the fully executed document we will send you a check in the amount of \$50.00.

If you have not accepted this final offer within seven (7) days from the date you receive this letter, condemnation proceedings will be initiated to acquire the necessary permanent right-of-way and temporary workspace.

You may call this office to communicate your acceptance within the allotted time. Thank you for your concern and cooperation in this matter. I look forward to hearing from you soon and completing this process so the City can focus on beginning construction of the new sanitary water/sewer pipeline.

Sincerely,



Larry R. Dixon

Exhibit "A" to Resolution R-2011-17
Page 11 of 42



**Larry R. Dixon, CPL
President**
Mailing address: P.O. Box 6602
Physical address: 12559 CR 192
Tyler, Tx 75711 Tyler, Tx 75703
903-579-9300 (office) 903-579-9399 (fax)

May 2, 2011

Ritha Yvette Lee
Address Unknown

Re: City of Tyler
Sanitary Water/Sewer pipeline
H. Nelson Survey, A-739
Smith County, Texas

Dear Ms. Lee:

This letter is to confirm negotiations between, Dixon Services, Inc. as Right-of-Way Agent, and you for the acquisition by The City of Tyler, Texas of the permanent right-of-way easement and temporary workspace for the expansion of the installation of a sanitary water/sewer pipeline across property owned by you and the other heirs of the Alex Erwin in a 140 acre tract of land in the H. Nelson Survey, A-739, Smith County, Texas.

Pursuant to our previous telephone conversations and our inability to reach and acceptable agreement for the purchase of a Right-of-Way Agreement, the City of Tyler hired a real estate appraiser to appraise the subject property that will be affected by the said sanitary water/sewer pipeline. The total distance of the proposed pipeline across the subject tract is 3560.12 feet. The Right of Way Agreement will be for a thirty (30) foot wide permanent easement and an additional twenty (20) foot wide temporary construction easement to be used during construction of the line. Mr. Jim Justice of Real Estate Appraisal Services has appraised the subject property and has determined the appraised value of the 2.45 acre permanent easement to be \$3,675.00 and the appraised value of the 1.63 acre temporary easement to be \$1,223.00 for a total of \$4,898.00 for the entire area that will be used for permanent and temporary easement across the subject property.

Based on research from the Official Public Records of Smith County, Texas, the Probate Records of Smith County, Texas, the District Court Records of Smith County, Texas and heirship information gathered from other heirs of Alex Erwin it appears that you own an undivided 1/672 interest in the subject property. Therefore, your portion of the \$4,898.00 total consideration would be \$7.29. The City of Tyler has agreed to increase this offer to a \$50.00 minimum payment in attempt to compensate you for your time in handling this matter.

Your careful consideration of this final offer will be sincerely appreciated. Additional copies of the original Right of Way Agreement and a copy for your records are enclosed for your review. Upon execution of the original Right of Way

Exhibit "A" to Resolution R-2011-17
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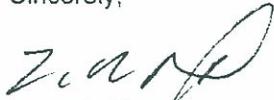
May 2, 2011

Agreement in the presence of a Notary Public and upon receipt of the fully executed document we will send you a check in the amount of \$50.00.

If you have not accepted this final offer within seven (7) days from the date you receive this letter, condemnation proceedings will be initiated to acquire the necessary permanent right-of-way and temporary workspace.

You may call this office to communicate your acceptance within the allotted time. Thank you for your concern and cooperation in this matter. I look forward to hearing from you soon and completing this process so the City can focus on beginning construction of the new sanitary water/sewer pipeline.

Sincerely,



Larry R. Dixon

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Tract No. 40

RIGHT-OF-WAY AGREEMENT

STATE OF TEXAS §
COUNTY OF SMITH §

KNOW ALL MEN BY THESE PRESENTS:

That, **Felton Erwin, Jr.** herein called GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration in hand paid, receipt and sufficiency of which is hereby confessed and acknowledged, does hereby grant, bargain, sell and convey unto the **CITY OF TYLER, TEXAS**, whose address is 212 N. Bonner, Tyler, Texas 75702, herein called GRANTEE, and its successors and assigns, a permanent right of way and easement for the purposes of laying, constructing, maintaining, operating, altering, repairing, replacing, changing the size of, and removing one (1) pipeline with all necessary and convenient valves, connections, fittings and appurtenances for the transportation of water, and/or sanitary sewer, on, over, under through and across a strip of land described on Exhibit "A" attached hereto and made a part hereof, and being part of that certain property described as follows, to wit:

140.00 acres, more or less, in the H. Nelson Survey, Abstract No. 739, Smith County, Texas and being the same land described in a Warranty Deed with Vendor's Lien from Jerry Erwin and wife to Alex Erwin dated June 25, 1899 and recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

TO HAVE AND TO HOLD unto said CITY OF TYLER, TEXAS, its successors and assigns, for the purposes granted herein, in whole or in part, at the will of Grantee, for as long as said pipeline is operated and maintained by Grantee, its successors and/or assigns.

This Right of Way Agreement is made subject to the following terms and conditions:

(1) Grantee, its successors and assigns, shall have the rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free right of ingress and egress over and across said lands to and from said right of way and easement and the free right of ingress and egress over and across adjacent lands owned by Grantor for the purposes of entering or leaving said tract.

(2) Grantee, its successors and assigns, is hereby expressly given and granted the right to assign this right of way and easement, or any part thereof, or interest therein, and the same shall be divided among two or more owners, as to any right or rights created hereunder, so that each assignee or owner shall have the full rights and privileges herein granted, to be owned and enjoyed either in common or severally.

(3) Grantor, its heirs, successors or assigns may continue to use the surface of the easement strip conveyed hereby for all agricultural purposes, pasturage or other purposes for which the land was used prior to the construction of the water/sewer pipeline provided for herein; provided, however, Grantor shall not construct or permit to be constructed any houses, structures, lakes, ponds, dams or other obstructions within the bounds of the easement strip, except for fences, which would interfere with Grantee's exercise of the rights hereby conveyed and the safe

Exhibit "A" to Resolution R-2011-17
Page 14 of 42

Tract No. 40

operation of its pipeline. It is understood that brick, stone or masonry walls shall not be used in the construction of fences, except at points of driveway entrances or exits to the property.

(4) That during construction, maintenance or removal of the pipeline, Grantee may utilize a strip of land fifty (50) feet in width except at locations such as roads, streams, ditches, or specific areas requiring additional space, all to revert to a thirty (30) foot permanent right of way and easement strip, as described in Exhibit "A" attached hereto, for normal operations of the pipeline.

(5) Grantee will install proper bracing for crossing of all fences, leaving said bracing after construction, and install locked gates or repair the fence to as near its condition as when crossed by the pipeline as is reasonably practical. If there are gates or roadways now existing along the pipeline route Grantor grants to Grantee permission to use such existing gates and roadways in the exercise of all rights conferred herein, damages and/or repairs to the facilities to be promptly addressed.

(6) Grantee shall have the right from time to time to cut and keep clear all trees, undergrowth and other obstructions on said right of way and easement that may injure, endanger or interfere with the use, operation and maintenance of said pipeline or appurtenances to said pipeline.

(7) Grantee agrees to bury the said pipeline so as to have a minimum thirty-six (36) inches ground cover except if solid rock is encountered the minimum cover shall be eighteen (18) inches through that area.

(8) Grantee shall pay for any damages to crops, fences, timber, pasture, grasses, terraces and waterways which may arise from laying, constructing, maintaining, operating, altering, repairing, replacing, removing or changing the size of said pipeline. Grantee shall promptly backfill any excavation required during maintenance, operation, alteration, repair, replacement, size change, and removal so that the surface of the land shall be in the same or better condition as existed prior to said excavation. Grantee shall not be required to pay for damages resulting from keeping clear the right of way and easement strip, which may include the removal of trees (see clause 6).

(9) It is further understood and agreed that the consideration recited above and receipt of which has been acknowledged by GRANTOR, is also full, complete and final payment for any and all injuries and damages of whatsoever nature and character to land, crops, timber, fences and improvements on, over and across the premises and for the enjoyment and use by GRANTEE of its rights hereunder and GRANTOR hereby covenants that any and all claims that they have or may have because of the GRANTEE'S initial construction operations upon said right-of-way and within the permanent easement area described in Exhibit "A" and the temporary construction area have been paid and satisfied in full.

(10) This instrument may be executed in counterparts and each Grantor shall receive payment hereunder in such proportion as his respective interest bears to the entire fee simple title.

(11) The undersigned hereby acknowledges receipt of Form ERW 4-0 (1997) promulgated by the Texas Real Estate Commission for mandatory use by registered easement or right-of-way agents.

(12) This right of way and easement grant as originally written covers all of the agreements and stipulations between the parties and no representations or statements verbal or written have been made, modifying, adding to, or changing the terms of said original Right of Way Agreement.

This instrument and the covenants and agreements herein contained shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Exhibit "A" to Resolution R-2011-17
Page 15 of 42

Tract No. 40

IN TESTIMONY WHEREOF the Grantor herein has executed this conveyance this _____ day of _____, 2010.

Felton Erwin, Jr.

ACKNOWLEDGMENT

STATE OF CALIFORNIA §

COUNTY OF §

This instrument was acknowledged before me this _____ day of _____, 2010, by Felton Erwin, Jr.

Notary Public in and for the State of California

Exhibit "A" to Resolution R-2011-17
Page 16 of 42

EXHIBIT "A" Page 1 of 2

CITY OF TYLER, TEXAS
Alex Erwin, et ux
Horacio Nelson Survey, A-739
Smith County, Texas
North Tyler Sewer Line

Called 140 Acres

CENTERLINE DESCRIPTION FOR PROPOSED 30-FOOT WIDE EASEMENT

BEING a centerline description of a 30-foot wide easement, situated in the Horacio Nelson Survey, A-739, over and across a called 140 acre tract of land described to Alex Erwin, et ux, as recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

Said easement being 15 feet each side of the following described centerline, the limits of which shall extend to their points of intersection:

BEGINNING at a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the beginning of the herein described easement, being in the West boundary line of said called 140 acre tract of land, and being in the East boundary line of a called 15.744 acre tract of land described in a deed to Jacqueline Sweiven, as recorded in Volume 1637, Page 494 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for a Southwest corner of said called 140 acre tract of land bears South 01 degrees 00 minutes 30 seconds East, a distance of 498.90 feet;

THENCE North 16 degrees 47 minutes 16 seconds East, a distance of 422.71 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 44 degrees 10 minutes 50 seconds East, a distance of 419.17 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 12 degrees 47 minutes 15 seconds East, a distance of 491.51 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 27 degrees 21 minutes 53 seconds East, a distance of 493.35 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

Exhibit "A" to Resolution R-2011-17
Page 17 of 42

EXHIBIT "A" Page 2 of 2

THENCE North 45 degrees 59 minutes 22 seconds East, a distance of 449.81 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 35 degrees 54 minutes 45 seconds East, a distance of 206.59 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 31 degrees 39 minutes 30 seconds East, a distance of 499.68 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 37 degrees 55 minutes 15 seconds East, a distance of 489.85 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 51 degrees 41 minutes 55 seconds East, a distance of 87.55 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the **end of same**, being in the North boundary line of said called 140 acre tract of land, and being in the South boundary line of a called 44.246 acre tract of land described in a deed to Lura Stone, as recorded in Volume 3155, Page 32 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for the Northeast corner of said called 140 acre tract of land bears North 88 degrees 00 minutes 50 seconds East, a distance of 377.81 feet.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83 (Feet) (1993 adjustment of NAD 83 System).

I, Roland Navarro, Registered Professional Land Surveyor No. 5876, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2010.

GIVEN UNDER MY HAND AND SEAL this 12th day of May, 2010.

Roland Navarro
Roland Navarro
Registered Professional Land Surveyor
State of Texas No. 5876

Prepared by:
K. L. KILGORE & COMPANY, INC.
6712 PALUXY DRIVE
TYLER, TX. 75703 PH. (903) 581-7800



Exhibit "A" to Resolution R-2011-17
Page 18 of 42

Tract No. 40

RIGHT-OF-WAY AGREEMENT

STATE OF TEXAS §
COUNTY OF SMITH §

KNOW ALL MEN BY THESE PRESENTS:

That, **Keith Minor** herein called GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration in hand paid, receipt and sufficiency of which is hereby confessed and acknowledged, does hereby grant, bargain, sell and convey unto the **CITY OF TYLER, TEXAS**, whose address is 212 N. Bonner, Tyler, Texas 75702, herein called GRANTEE, and its successors and assigns, a permanent right of way and easement for the purposes of laying, constructing, maintaining, operating, altering, repairing, replacing, changing the size of, and removing one (1) pipeline with all necessary and convenient valves, connections, fittings and appurtenances for the transportation of water, and/or sanitary sewer, on, over, under through and across a strip of land described on Exhibit "A" attached hereto and made a part hereof, and being part of that certain property described as follows, to wit:

140.00 acres. more or less, in the H. Nelson Survey, Abstract No. 739, Smith County, Texas and being the same land described in a Warranty Deed with Vendor's Lien from Jerry Erwin and wife to Alex Erwin dated June 25, 1899 and recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

TO HAVE AND TO HOLD unto said CITY OF TYLER, TEXAS, its successors and assigns, for the purposes granted herein, in whole or in part, at the will of Grantee, for as long as said pipeline is operated and maintained by Grantee, its successors and/or assigns.

This Right of Way Agreement is made subject to the following terms and conditions:

(1) Grantee, its successors and assigns, shall have the rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free right of ingress and egress over and across said lands to and from said right of way and easement and the free right of ingress and egress over and across adjacent lands owned by Grantor for the purposes of entering or leaving said tract.

(2) Grantee, its successors and assigns, is hereby expressly given and granted the right to assign this right of way and easement, or any part thereof, or interest therein, and the same shall be divided among two or more owners, as to any right or rights created hereunder, so that each assignee or owner shall have the full rights and privileges herein granted, to be owned and enjoyed either in common or severally.

(3) Grantor, its heirs, successors or assigns may continue to use the surface of the easement strip conveyed hereby for all agricultural purposes, pastureage or other purposes for which the land was used prior to the construction of the water/sewer pipeline provided for herein; provided, however, Grantor shall not construct or permit to be constructed any houses, structures, lakes, ponds, dams or other obstructions within the bounds of the easement strip, except for fences, which would interfere with Grantee's exercise of the rights hereby conveyed and the safe

Exhibit "A" to Resolution R-2011-17
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Tract No. 40

operation of its pipeline. It is understood that brick, stone or masonry walls shall not be used in the construction of fences, except at points of driveway entrances or exits to the property.

(4) That during construction, maintenance or removal of the pipeline, Grantee may utilize a strip of land fifty (50) feet in width except at locations such as roads, streams, ditches, or specific areas requiring additional space, all to revert to a thirty (30) foot permanent right of way and easement strip, as described in Exhibit "A" attached hereto, for normal operations of the pipeline.

(5) Grantee will install proper bracing for crossing of all fences, leaving said bracing after construction, and install locked gates or repair the fence to as near its condition as when crossed by the pipeline as is reasonably practical. If there are gates or roadways now existing along the pipeline route Grantor grants to Grantee permission to use such existing gates and roadways in the exercise of all rights conferred herein, damages and/or repairs to the facilities to be promptly addressed.

(6) Grantee shall have the right from time to time to cut and keep clear all trees, undergrowth and other obstructions on said right of way and easement that may injure, endanger or interfere with the use, operation and maintenance of said pipeline or appurtenances to said pipeline.

(7) Grantee agrees to bury the said pipeline so as to have a minimum thirty-six (36) inches ground cover except if solid rock is encountered the minimum cover shall be eighteen (18) inches through that area.

(8) Grantee shall pay for any damages to crops, fences, timber, pasture, grasses, terraces and waterways which may arise from laying, constructing, maintaining, operating, altering, repairing, replacing, removing or changing the size of said pipeline. Grantee shall promptly backfill any excavation required during maintenance, operation, alteration, repair, replacement, size change, and removal so that the surface of the land shall be in the same or better condition as existed prior to said excavation. Grantee shall not be required to pay for damages resulting from keeping clear the right of way and easement strip, which may include the removal of trees (see clause 6).

(9) It is further understood and agreed that the consideration recited above and receipt of which has been acknowledged by GRANTOR, is also full, complete and final payment for any and all injuries and damages of whatsoever nature and character to land, crops, timber, fences and improvements on, over and across the premises and for the enjoyment and use by GRANTEE of its rights hereunder and GRANTOR hereby covenants that any and all claims that they have or may have because of the GRANTEE'S initial construction operations upon said right-of-way and within the permanent easement area described in Exhibit "A" and the temporary construction area have been paid and satisfied in full.

(10) This instrument may be executed in counterparts and each Grantor shall receive payment hereunder in such proportion as his respective interest bears to the entire fee simple title.

(11) The undersigned hereby acknowledges receipt of Form ERW 4-0 (1997) promulgated by the Texas Real Estate Commission for mandatory use by registered easement or right-of-way agents.

(12) This right of way and easement grant as originally written covers all of the agreements and stipulations between the parties and no representations or statements verbal or written have been made, modifying, adding to, or changing the terms of said original Right of Way Agreement.

This instrument and the covenants and agreements herein contained shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

**Exhibit "A" to Resolution R-2011-17
Page 20 of 42**

Tract No. 40

IN TESTIMONY WHEREOF the Grantor herein has executed this _____ day of _____, 2011.

Keith Minor

ACKNOWLEDGMENT

STATE OF §

COUNTY OF §

This instrument was acknowledged before me this _____ day of _____, 2011, by Keith Minor.

Notary Public in and for the State of _____

Exhibit "A" to Resolution R-2011-17
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EXHIBIT "A" Page 1 of 2

CITY OF TYLER, TEXAS
Alex Erwin, et ux
Horacio Nelson Survey, A-739
Smith County, Texas
North Tyler Sewer Line

Called 140 Acres

CENTERLINE DESCRIPTION FOR PROPOSED 30-FOOT WIDE EASEMENT

BEING a centerline description of a 30-foot wide easement, situated in the Horacio Nelson Survey, A-739, over and across a called 140 acre tract of land described to Alex Erwin, et ux, as recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

Said easement being 15 feet each side of the following described centerline.
the limits of which shall extend to their points of intersection:

BEGINNING at a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the beginning of the herein described easement, being in the West boundary line of said called 140 acre tract of land, and being in the East boundary line of a called 15.744 acre tract of land described in a deed to Jacqueline Sweiven, as recorded in Volume 1637, Page 494 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for a Southwest corner of said called 140 acre tract of land bears South 01 degrees 00 minutes 30 seconds East, a distance of 498.90 feet;

THENCE North 16 degrees 47 minutes 16 seconds East, a distance of 422.71 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 44 degrees 10 minutes 50 seconds East, a distance of 419.17 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 12 degrees 47 minutes 15 seconds East, a distance of 491.51 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 27 degrees 21 minutes 53 seconds East, a distance of 493.35 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

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Page 22 of 42

EXHIBIT "A" Page 2 of 2

THENCE North 45 degrees 59 minutes 22 seconds East, a distance of 449.81 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 35 degrees 54 minutes 45 seconds East, a distance of 206.59 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 31 degrees 39 minutes 30 seconds East, a distance of 499.68 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 37 degrees 55 minutes 15 seconds East, a distance of 489.85 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 51 degrees 41 minutes 55 seconds East, a distance of 87.55 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the **end of same**, being in the North boundary line of said called 140 acre tract of land, and being in the South boundary line of a called 44.246 acre tract of land described in a deed to Lura Stone, as recorded in Volume 3155, Page 32 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for the Northeast corner of said called 140 acre tract of land bears North 88 degrees 00 minutes 50 seconds East, a distance of 377.81 feet.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83 (Feet) (1993 adjustment of NAD 83 System).

I, Roland Navarro, Registered Professional Land Surveyor No. 5876, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2010.

GIVEN UNDER MY HAND AND SEAL this 12th day of May, 2010.

Roland Navarro
Roland Navarro
Registered Professional Land Surveyor
State of Texas No. 5876

Prepared by:
K. L. KILGORE & COMPANY, INC.
6712 PALUXY DRIVE
TYLER, TX. 75703 PH. (903) 581-7800



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Tract No. 40

RIGHT-OF-WAY AGREEMENT

STATE OF TEXAS §
CITY OF SMITH §

KNOW ALL MEN BY THESE PRESENTS:

That, **Rex Anton Davis** herein called GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration in hand paid, receipt and sufficiency of which is hereby confessed and acknowledged, does hereby grant, bargain, sell and convey unto the **CITY OF TYLER, TEXAS**, whose address is 212 N. Bonner, Tyler, Texas 75702, herein called GRANTEE, and its successors and assigns, a permanent right of way and easement for the purposes of laying, constructing, maintaining, operating, altering, repairing, replacing, changing the size of, and removing one (1) pipeline with all necessary and convenient valves, connections, fittings and appurtenances for the transportation of water, and/or sanitary sewer, on, over, under through and across a strip of land described on Exhibit "A" attached hereto and made a part hereof, and being part of that certain property described as follows, to wit:

140.00 acres, more or less, in the H. Nelson Survey, Abstract No. 739, Smith County, Texas and being the same land described in a Warranty Deed with Vendor's Lien from Jerry Erwin and wife to Alex Erwin dated June 25, 1899 and recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

TO HAVE AND TO HOLD unto said CITY OF TYLER, TEXAS, its successors and assigns, for the purposes granted herein, in whole or in part, at the will of Grantee, for as long as said pipeline is operated and maintained by Grantee, its successors and/or assigns.

This Right of Way Agreement is made subject to the following terms and conditions:

(1) Grantee, its successors and assigns, shall have the rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free right of ingress and egress over and across said lands to and from said right of way and easement and the free right of ingress and egress over and across adjacent lands owned by Grantor for the purposes of entering or leaving said tract.

(2) Grantee, its successors and assigns, is hereby expressly given and granted the right to assign this right of way and easement, or any part thereof, or interest therein, and the same shall be divided among two or more owners, as to any right or rights created hereunder, so that each assignee or owner shall have the full rights and privileges herein granted, to be owned and enjoyed either in common or severally.

(3) Grantor, its heirs, successors or assigns may continue to use the surface of the easement strip conveyed hereby for all agricultural purposes, pasturage or other purposes for which the land was used prior to the construction of the water/sewer pipeline provided for herein; provided, however, Grantor shall not construct or permit to be constructed any houses, structures, lakes, ponds, dams or other obstructions within the bounds of the easement strip, except for fences, which would interfere with Grantee's exercise of the rights hereby conveyed and the same

Exhibit "A" to Resolution R-2011-17
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Tract No. 40

operation of its pipeline. It is understood that brick, stone or masonry walls shall not be used in the construction of fences, except at points of driveway entrances or exits to the property.

(4) That during construction, maintenance or removal of the pipeline, Grantee may utilize a strip of land fifty (50) feet in width except at locations such as roads, streams, ditches, or specific areas requiring additional space, all to revert to a thirty (30) foot permanent right of way and easement strip, as described in Exhibit "A" attached hereto, for normal operations of the pipeline.

(5) Grantee will install proper bracing for crossing of all fences, leaving said bracing after construction, and install locked gates or repair the fence to as near its condition as when crossed by the pipeline as is reasonably practical. If there are gates or roadways now existing along the pipeline route Grantor grants to Grantee permission to use such existing gates and roadways in the exercise of all rights conferred herein, damages and/or repairs to the facilities to be promptly addressed.

(6) Grantee shall have the right from time to time to cut and keep clear all trees, undergrowth and other obstructions on said right of way and easement that may injure, endanger or interfere with the use, operation and maintenance of said pipeline or appurtenances to said pipeline.

(7) Grantee agrees to bury the said pipeline so as to have a minimum thirty-six (36) inches ground cover except if solid rock is encountered the minimum cover shall be eighteen (18) inches through that area.

(8) Grantee shall pay for any damages to crops, fences, timber, pasture, grasses, terraces and waterways which may arise from laying, constructing, maintaining, operating, altering, repairing, replacing, removing or changing the size of said pipeline. Grantee shall promptly backfill any excavation required during maintenance, operation, alteration, repair, replacement, size change, and removal so that the surface of the land shall be in the same or better condition as existed prior to said excavation. Grantee shall not be required to pay for damages resulting from keeping clear the right of way and easement strip, which may include the removal of trees (see clause 6).

(9) It is further understood and agreed that the consideration recited above and receipt of which has been acknowledged by GRANTOR, is also full, complete and final payment for any and all injuries and damages of whatsoever nature and character to land, crops, timber, fences and improvements on, over and across the premises and for the enjoyment and use by GRANTEE of its rights hereunder and GRANTOR hereby covenants that any and all claims that they have or may have because of the GRANTEE'S initial construction operations upon said right-of-way and within the permanent easement area described in Exhibit "A" and the temporary construction area have been paid and satisfied in full.

(10) This instrument may be executed in counterparts and each Grantor shall receive payment hereunder in such proportion as his respective interest bears to the entire fee simple title.

(11) The undersigned hereby acknowledges receipt of Form ERW 4-0 (1997) promulgated by the Texas Real Estate Commission for mandatory use by registered easement or right-of-way agents.

(12) This right of way and easement grant as originally written covers all of the agreements and stipulations between the parties and no representations or statements verbal or written have been made, modifying, adding to, or changing the terms of said original Right of Way Agreement.

This instrument and the covenants and agreements herein contained shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Exhibit "A" to Resolution R-2011-17
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Tract No. 40

IN TESTIMONY WHEREOF the Grantor herein has executed this conveyance this _____ day of _____, 2011.

Rex Anton Davis

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me this _____ day of _____, 2011, by Rex Anton Davis.

Notary Public in and for the State of Texas

Exhibit "A" to Resolution R-2011-17
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EXHIBIT "A" Page 1 of 2

CITY OF TYLER, TEXAS
Alex Erwin, et ux
Horacio Nelson Survey, A-739
Smith County, Texas
North Tyler Sewer Line

Called 140 Acres

CENTERLINE DESCRIPTION FOR PROPOSED 30-FOOT WIDE EASEMENT

BEING a centerline description of a 30-foot wide easement, situated in the Horacio Nelson Survey, A-739, over and across a called 140 acre tract of land described to Alex Erwin, et ux, as recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

Said easement being 15 feet each side of the following described centerline, the limits of which shall extend to their points of intersection:

BEGINNING at a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the beginning of the herein described easement, being in the West boundary line of said called 140 acre tract of land, and being in the East boundary line of a called 15.744 acre tract of land described in a deed to Jacqueline Sweiven, as recorded in Volume 1637, Page 494 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for a Southwest corner of said called 140 acre tract of land bears South 01 degrees 00 minutes 30 seconds East, a distance of 498.90 feet;

THENCE North 16 degrees 47 minutes 16 seconds East, a distance of 422.71 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 44 degrees 10 minutes 50 seconds East, a distance of 419.17 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 12 degrees 47 minutes 15 seconds East, a distance of 491.51 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 27 degrees 21 minutes 53 seconds East, a distance of 493.35 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

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EXHIBIT "A" Page 2 of 2

THENCE North 45 degrees 59 minutes 22 seconds East, a distance of 449.81 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 35 degrees 54 minutes 45 seconds East, a distance of 206.59 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 31 degrees 39 minutes 30 seconds East, a distance of 499.68 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 37 degrees 55 minutes 15 seconds East, a distance of 489.85 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 51 degrees 41 minutes 55 seconds East, a distance of 87.55 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the **end of same**, being in the North boundary line of said called 140 acre tract of land, and being in the South boundary line of a called 44.246 acre tract of land described in a deed to Lura Stone, as recorded in Volume 3155, Page 32 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for the Northeast corner of said called 140 acre tract of land bears North 88 degrees 00 minutes 50 seconds East, a distance of 377.81 feet.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83 (Feet) (1993 adjustment of NAD 83 System).

I, Roland Navarro, Registered Professional Land Surveyor No. 5876, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2010.

GIVEN UNDER MY HAND AND SEAL this 12th day of May, 2010.

Roland Navarro

Roland Navarro
Registered Professional Land Surveyor
State of Texas No. 5876

Prepared by:
K. L. KILGORE & COMPANY, INC.
6712 PALUXY DRIVE
TYLER, TX. 75703 PH. (903) 581-7800



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Tract No. 40

RIGHT-OF-WAY AGREEMENT

STATE OF TEXAS §
CITY OF SMITH §

KNOW ALL MEN BY THESE PRESENTS:

That, **Danny Ray Davis, Jr.** herein called GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration in hand paid, receipt and sufficiency of which is hereby confessed and acknowledged, does hereby grant, bargain, sell and convey unto the **CITY OF TYLER, TEXAS**, whose address is 212 N. Bonner, Tyler, Texas 75702, herein called GRANTEE, and its successors and assigns, a permanent right of way and easement for the purposes of laying, constructing, maintaining, operating, altering, repairing, replacing, changing the size of, and removing one (1) pipeline with all necessary and convenient valves, connections, fittings and appurtenances for the transportation of water, and/or sanitary sewer, on, over, under through and across a strip of land described on Exhibit "A" attached hereto and made a part hereof, and being part of that certain property described as follows, to wit:

140.00 acres, more or less, in the H. Nelson Survey, Abstract No. 739, Smith County, Texas and being the same land described in a Warranty Deed with Vendor's Lien from Jerry Erwin and wife to Alex Erwin dated June 25, 1899 and recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

TO HAVE AND TO HOLD unto said CITY OF TYLER, TEXAS, its successors and assigns, for the purposes granted herein, in whole or in part, at the will of Grantee, for as long as said pipeline is operated and maintained by Grantee, its successors and/or assigns.

This Right of Way Agreement is made subject to the following terms and conditions:

(1) Grantee, its successors and assigns, shall have the rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free right of ingress and egress over and across said lands to and from said right of way and easement and the free right of ingress and egress over and across adjacent lands owned by Grantor for the purposes of entering or leaving said tract.

(2) Grantee, its successors and assigns, is hereby expressly given and granted the right to assign this right of way and easement, or any part thereof, or interest therein, and the same shall be divided among two or more owners, as to any right or rights created hereunder, so that each assignee or owner shall have the full rights and privileges herein granted, to be owned and enjoyed either in common or severally.

(3) Grantor, its heirs, successors or assigns may continue to use the surface of the easement strip conveyed hereby for all agricultural purposes, pasturage or other purposes for which the land was used prior to the construction of the water/sewer pipeline provided for herein; provided, however, Grantor shall not construct or permit to be constructed any houses, structures, lakes, ponds, dams or other obstructions within the bounds of the easement strip, except for fences, which would interfere with Grantee's exercise of the rights hereby conveyed and the safe

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Tract No. 40

operation of its pipeline. It is understood that brick, stone or masonry walls shall not be used in the construction of fences, except at points of driveway entrances or exits to the property.

(4) That during construction, maintenance or removal of the pipeline, Grantee may utilize a strip of land fifty (50) feet in width except at locations such as roads, streams, ditches, or specific areas requiring additional space, all to revert to a thirty (30) foot permanent right of way and easement strip, as described in Exhibit "A" attached hereto, for normal operations of the pipeline.

(5) Grantee will install proper bracing for crossing of all fences, leaving said bracing after construction, and install locked gates or repair the fence to as near its condition as when crossed by the pipeline as is reasonably practical. If there are gates or roadways now existing along the pipeline route Grantor grants to Grantee permission to use such existing gates and roadways in the exercise of all rights conferred herein. damages and/or repairs to the facilities to be promptly addressed.

(6) Grantee shall have the right from time to time to cut and keep clear all trees, undergrowth and other obstructions on said right of way and easement that may injure, endanger or interfere with the use, operation and maintenance of said pipeline or appurtenances to said pipeline.

(7) Grantee agrees to bury the said pipeline so as to have a minimum thirty-six (36) inches ground cover except if solid rock is encountered the minimum cover shall be eighteen (18) inches through that area.

(8) Grantee shall pay for any damages to crops, fences, timber, pasture, grasses, terraces and waterways which may arise from laying, constructing, maintaining, operating, altering, repairing, replacing, removing or changing the size of said pipeline. Grantee shall promptly backfill any excavation required during maintenance, operation, alteration, repair, replacement, size change, and removal so that the surface of the land shall be in the same or better condition as existed prior to said excavation. Grantee shall not be required to pay for damages resulting from keeping clear the right of way and easement strip, which may include the removal of trees (see clause 6).

(9) It is further understood and agreed that the consideration recited above and receipt of which has been acknowledged by GRANTOR, is also full, complete and final payment for any and all injuries and damages of whatsoever nature and character to land, crops, timber, fences and improvements on, over and across the premises and for the enjoyment and use by GRANTEE of its rights hereunder and GRANTOR hereby covenants that any and all claims that they have or may have because of the GRANTEE'S initial construction operations upon said right-of-way and within the permanent easement area described in Exhibit "A" and the temporary construction area have been paid and satisfied in full.

(10) This instrument may be executed in counterparts and each Grantor shall receive payment hereunder in such proportion as his respective interest bears to the entire fee simple title.

(11) The undersigned hereby acknowledges receipt of Form ERW 4-0 (1997) promulgated by the Texas Real Estate Commission for mandatory use by registered easement or right-of-way agents.

(12) This right of way and easement grant as originally written covers all of the agreements and stipulations between the parties and no representations or statements verbal or written have been made, modifying, adding to, or changing the terms of said original Right of Way Agreement.

This instrument and the covenants and agreements herein contained shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Exhibit "A" to Resolution R-2011-17
Page 30 of 42

Tract No. 40

IN TESTIMONY WHEREOF the Grantor herein has executed this conveyance this _____ day of _____, 2011.

Danny Ray Davis, Jr.

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF §

This instrument was acknowledged before me this _____ day of _____, 2011, by Danny Ray Davis, Jr.

Notary Public in and for the State of Texas

Exhibit "A" to Resolution R-2011-17
Page 31 of 42

EXHIBIT "A" Page 1 of 2

CITY OF TYLER, TEXAS
Alex Erwin, et ux
Horacio Nelson Survey, A-739
Smith County, Texas
North Tyler Sewer Line

Called 140 Acres

CENTERLINE DESCRIPTION FOR PROPOSED 30-FOOT WIDE EASEMENT

BEING a centerline description of a 30-foot wide easement, situated in the Horacio Nelson Survey, A-739, over and across a called 140 acre tract of land described to Alex Erwin, et ux, as recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

Said easement being 15 feet each side of the following described centerline, the limits of which shall extend to their points of intersection:

BEGINNING at a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the beginning of the herein described easement, being in the West boundary line of said called 140 acre tract of land, and being in the East boundary line of a called 15.744 acre tract of land described in a deed to Jacqueline Sweiven, as recorded in Volume 1637, Page 494 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for a Southwest corner of said called 140 acre tract of land bears South 01 degrees 00 minutes 30 seconds East, a distance of 498.90 feet;

THENCE North 16 degrees 47 minutes 16 seconds East, a distance of 422.71 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 44 degrees 10 minutes 50 seconds East, a distance of 419.17 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 12 degrees 47 minutes 15 seconds East, a distance of 491.51 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 27 degrees 21 minutes 53 seconds East, a distance of 493.35 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

Exhibit "A" to Resolution R-2011-17
Page 32 of 42

EXHIBIT "A" Page 2 of 2

THENCE North 45 degrees 59 minutes 22 seconds East, a distance of 449.81 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 35 degrees 54 minutes 45 seconds East, a distance of 206.59 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 31 degrees 39 minutes 30 seconds East, a distance of 499.68 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 37 degrees 55 minutes 15 seconds East, a distance of 489.85 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 51 degrees 41 minutes 55 seconds East, a distance of 87.55 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the **end of same**, being in the North boundary line of said called 140 acre tract of land, and being in the South boundary line of a called 44.246 acre tract of land described in a deed to Lura Stone, as recorded in Volume 3155, Page 32 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for the Northeast corner of said called 140 acre tract of land bears North 88 degrees 00 minutes 50 seconds East, a distance of 377.81 feet.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83 (Feet) (1993 adjustment of NAD 83 System).

I, Roland Navarro, Registered Professional Land Surveyor No. 5876, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2010.

GIVEN UNDER MY HAND AND SEAL this 12th day of May, 2010.

Roland Navarro
Roland Navarro
Registered Professional Land Surveyor
State of Texas No. 5876

Prepared by:
K. L. KILGORE & COMPANY, INC.
6712 PALUXY DRIVE
TYLER, TX. 75703 PH. (903) 581-7800



Exhibit "A" to Resolution R-2011-17
Page 33 of 42

Tract No. 40

RIGHT-OF-WAY AGREEMENT

STATE OF TEXAS \$
COUNTY OF SMITH \$

KNOW ALL MEN BY THESE PRESENTS:

That, **Dorothy Horton** herein called GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration in hand paid, receipt and sufficiency of which is hereby confessed and acknowledged, does hereby grant, bargain, sell and convey unto the **CITY OF TYLER, TEXAS**, whose address is 212 N. Bonner, Tyler, Texas 75702, herein called GRANTEE, and its successors and assigns, a permanent right of way and easement for the purposes of laying, constructing, maintaining, operating, altering, repairing, replacing, changing the size of, and removing one (1) pipeline with all necessary and convenient valves, connections, fittings and appurtenances for the transportation of water, and/or sanitary sewer, on, over, under through and across a strip of land described on Exhibit "A" attached hereto and made a part hereof, and being part of that certain property described as follows, to wit:

140.00 acres, more or less, in the H. Nelson Survey, Abstract No. 739, Smith County, Texas and being the same land described in a Warranty Deed with Vendor's Lien from Jerry Erwin and wife to Alex Erwin dated June 25, 1899 and recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

TO HAVE AND TO HOLD unto said CITY OF TYLER, TEXAS, its successors and assigns, for the purposes granted herein, in whole or in part, at the will of Grantee, for as long as said pipeline is operated and maintained by Grantee, its successors and/or assigns.

This Right of Way Agreement is made subject to the following terms and conditions:

(1) Grantee, its successors and assigns, shall have the rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free right of ingress and egress over and across said lands to and from said right of way and easement and the free right of ingress and egress over and across adjacent lands owned by Grantor for the purposes of entering or leaving said tract.

(2) Grantee, its successors and assigns, is hereby expressly given and granted the right to assign this right of way and easement, or any part thereof, or interest therein, and the same shall be divided among two or more owners, as to any right or rights created hereunder, so that each assignee or owner shall have the full rights and privileges herein granted, to be owned and enjoyed either in common or severally.

(3) Grantor, its heirs, successors or assigns may continue to use the surface of the easement strip conveyed hereby for all agricultural purposes, pastureage or other purposes for which the land was used prior to the construction of the water/sewer pipeline provided for herein; provided, however, Grantor shall not construct or permit to be constructed any houses, structures, lakes, ponds, dams or other obstructions within the bounds of the easement strip, except for fences, which would interfere with Grantee's exercise of the rights hereby conveyed and the safe

Exhibit "A" to Resolution R-2011-17
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Tract No. 40

operation of its pipeline. It is understood that brick, stone or masonry walls shall not be used in the construction of fences, except at points of driveway entrances or exits to the property.

(4) That during construction, maintenance or removal of the pipeline, Grantee may utilize a strip of land fifty (50) feet in width except at locations such as roads, streams, ditches, or specific areas requiring additional space, all to revert to a thirty (30) foot permanent right of way and easement strip, as described in Exhibit "A" attached hereto, for normal operations of the pipeline.

(5) Grantee will install proper bracing for crossing of all fences, leaving said bracing after construction, and install locked gates or repair the fence to as near its condition as when crossed by the pipeline as is reasonably practical. If there are gates or roadways now existing along the pipeline route Grantor grants to Grantee permission to use such existing gates and roadways in the exercise of all rights conferred herein, damages and/or repairs to the facilities to be promptly addressed.

(6) Grantee shall have the right from time to time to cut and keep clear all trees, undergrowth and other obstructions on said right of way and easement that may injure, endanger or interfere with the use, operation and maintenance of said pipeline or appurtenances to said pipeline.

(7) Grantee agrees to bury the said pipeline so as to have a minimum thirty-six (36) inches ground cover except if solid rock is encountered the minimum cover shall be eighteen (18) inches through that area.

(8) Grantee shall pay for any damages to crops, fences, timber, pasture, grasses, terraces and waterways which may arise from laying, constructing, maintaining, operating, altering, repairing, replacing, removing or changing the size of said pipeline. Grantee shall promptly backfill any excavation required during maintenance, operation, alteration, repair, replacement, size change, and removal so that the surface of the land shall be in the same or better condition as existed prior to said excavation. Grantee shall not be required to pay for damages resulting from keeping clear the right of way and easement strip, which may include the removal of trees (see clause 6).

(9) It is further understood and agreed that the consideration recited above and receipt of which has been acknowledged by GRANTOR, is also full, complete and final payment for any and all injuries and damages of whatsoever nature and character to land, crops, timber, fences and improvements on, over and across the premises and for the enjoyment and use by GRANTEE of its rights hereunder and GRANTOR hereby covenants that any and all claims that they have or may have because of the GRANTEE'S initial construction operations upon said right-of-way and within the permanent easement area described in Exhibit "A" and the temporary construction area have been paid and satisfied in full.

(10) This instrument may be executed in counterparts and each Grantor shall receive payment hereunder in such proportion as his respective interest bears to the entire fee simple title.

(11) The undersigned hereby acknowledges receipt of Form ERW 4-0 (1997) promulgated by the Texas Real Estate Commission for mandatory use by registered easement or right-of-way agents.

(12) This right of way and easement grant as originally written covers all of the agreements and stipulations between the parties and no representations or statements verbal or written have been made, modifying, adding to, or changing the terms of said original Right of Way Agreement.

This instrument and the covenants and agreements herein contained shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Exhibit "A" to Resolution R-2011-17
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Tract No. 40

IN TESTIMONY WHEREOF the Grantor herein has executed this conveyance this _____ day of _____, 2011.

Dorothy Horton

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF §

This instrument was acknowledged before me this _____ day of _____, 2011, by Dorothy Horton.

Notary Public in and for the State of Texas

EXHIBIT "A" Page 1 of 2

CITY OF TYLER, TEXAS
Alex Erwin, et ux
Horacio Nelson Survey, A-739
Smith County, Texas
North Tyler Sewer Line

Called 140 Acres

CENTERLINE DESCRIPTION FOR PROPOSED 30-FOOT WIDE EASEMENT

BEING a centerline description of a 30-foot wide easement, situated in the Horacio Nelson Survey, A-739, over and across a called 140 acre tract of land described to Alex Erwin, et ux, as recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

Said easement being 15 feet each side of the following described centerline,
the limits of which shall extend to their points of intersection:

BEGINNING at a 1/2" iron rod with plastic cap stampcd K.L.K. #4687 set for the beginning of the herein described easement, being in the West boundary line of said called 140 acre tract of land, and being in the East boundary line of a called 15.744 acre tract of land described in a deed to Jacqueline Sweiven, as recorded in Volume 1637, Page 494 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for a Southwest corner of said called 140 acre tract of land bears South 01 degrees 00 minutes 30 seconds East, a distance of 498.90 feet;

THENCE North 16 degrees 47 minutes 16 seconds East, a distance of 422.71 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 44 degrees 10 minutes 50 seconds East, a distance of 419.17 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 12 degrees 47 minutes 15 seconds East, a distance of 491.51 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 27 degrees 21 minutes 53 seconds East, a distance of 493.35 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

Exhibit "A" to Resolution R-2011-17
Page 37 of 42

EXHIBIT "A" Page 2 of 2

THENCE North 45 degrees 59 minutes 22 seconds East, a distance of 449.81 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 35 degrees 54 minutes 45 seconds East, a distance of 206.59 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 31 degrees 39 minutes 30 seconds East, a distance of 499.68 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 37 degrees 55 minutes 15 seconds East, a distance of 489.85 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 51 degrees 41 minutes 55 seconds East, a distance of 87.55 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the **end of same**, being in the North boundary line of said called 140 acre tract of land, and being in the South boundary line of a called 44.246 acre tract of land described in a deed to Lura Stone, as recorded in Volume 3155, Page 32 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for the Northeast corner of said called 140 acre tract of land bears North 88 degrees 00 minutes 50 seconds East, a distance of 377.81 feet.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83 (Feet) (1993 adjustment of NAD 83 System).

I, Roland Navarro, Registered Professional Land Surveyor No. 5876, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2010.

GIVEN UNDER MY HAND AND SEAL this 12th day of May, 2010.

Roland Navarro
Roland Navarro
Registered Professional Land Surveyor
State of Texas No. 5876

Prepared by:
K. L. KILGORE & COMPANY, INC.
6712 PALUXY DRIVE
TYLER, TX. 75703 PH. (903) 581-7800



Exhibit "A" to Resolution R-2011-17
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Tract No. 40

RIGHT-OF-WAY AGREEMENT

STATE OF TEXAS §
COUNTY OF SMITH §

KNOW ALL MEN BY THESE PRESENTS:

That, **Ritha Yvette Lee** herein called GRANTOR, for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration in hand paid, receipt and sufficiency of which is hereby confessed and acknowledged, does hereby grant, bargain, sell and convey unto the **CITY OF TYLER, TEXAS**, whose address is 212 N. Bonner, Tyler, Texas 75702, herein called GRANTEE, and its successors and assigns, a permanent right of way and easement for the purposes of laying, constructing, maintaining, operating, altering, repairing, replacing, changing the size of, and removing one (1) pipeline with all necessary and convenient valves, connections, fittings and appurtenances for the transportation of water, and/or sanitary sewer, on, over, under through and across a strip of land described on Exhibit "A" attached hereto and made a part hereof, and being part of that certain property described as follows, to wit:

140.00 acres, more or less, in the H. Nelson Survey, Abstract No. 739, Smith County, Texas and being the same land described in a Warranty Deed with Vendor's Lien from Jerry Erwin and wife to Alex Erwin dated June 25, 1899 and recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

TO HAVE AND TO HOLD unto said CITY OF TYLER, TEXAS, its successors and assigns, for the purposes granted herein, in whole or in part, at the will of Grantee, for as long as said pipeline is operated and maintained by Grantee, its successors and/or assigns.

This Right of Way Agreement is made subject to the following terms and conditions:

(1) Grantee, its successors and assigns, shall have the rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including, but without limiting the same to, the free right of ingress and egress over and across said lands to and from said right of way and easement and the free right of ingress and egress over and across adjacent lands owned by Grantor for the purposes of entering or leaving said tract.

(2) Grantee, its successors and assigns, is hereby expressly given and granted the right to assign this right of way and easement, or any part thereof, or interest therein, and the same shall be divided among two or more owners, as to any right or rights created hereunder, so that each assignee or owner shall have the full rights and privileges herein granted, to be owned and enjoyed either in common or severally.

(3) Grantor, its heirs, successors or assigns may continue to use the surface of the easement strip conveyed hereby for all agricultural purposes, pasturage or other purposes for which the land was used prior to the construction of the water/sewer pipeline provided for herein; provided, however, Grantor shall not construct or permit to be constructed any houses, structures, lakes, ponds, dams or other obstructions within the bounds of the easement strip, except for fences, which would interfere with Grantee's exercise of the rights hereby conveyed and the safe

Exhibit "A" to Resolution R-2011-17
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Tract No. 40

operation of its pipeline. It is understood that brick, stone or masonry walls shall not be used in the construction of fences, except at points of driveway entrances or exits to the property.

(4) That during construction, maintenance or removal of the pipeline, Grantee may utilize a strip of land fifty (50) feet in width except at locations such as roads, streams, ditches, or specific areas requiring additional space, all to revert to a thirty (30) foot permanent right of way and easement strip, as described in Exhibit "A" attached hereto, for normal operations of the pipeline.

(5) Grantee will install proper bracing for crossing of all fences, leaving said bracing after construction, and install locked gates or repair the fence to as near its condition as when crossed by the pipeline as is reasonably practical. If there are gates or roadways now existing along the pipeline route Grantor grants to Grantee permission to use such existing gates and roadways in the exercise of all rights conferred herein, damages and/or repairs to the facilities to be promptly addressed.

(6) Grantee shall have the right from time to time to cut and keep clear all trees, undergrowth and other obstructions on said right of way and easement that may injure, endanger or interfere with the use, operation and maintenance of said pipeline or appurtenances to said pipeline.

(7) Grantee agrees to bury the said pipeline so as to have a minimum thirty-six (36) inches ground cover except if solid rock is encountered the minimum cover shall be eighteen (18) inches through that area.

(8) Grantee shall pay for any damages to crops, fences, timber, pasture, grasses, terraces and waterways which may arise from laying, constructing, maintaining, operating, altering, repairing, replacing, removing or changing the size of said pipeline. Grantee shall promptly backfill any excavation required during maintenance, operation, alteration, repair, replacement, size change, and removal so that the surface of the land shall be in the same or better condition as existed prior to said excavation. Grantee shall not be required to pay for damages resulting from keeping clear the right of way and easement strip, which may include the removal of trees (see clause 6).

(9) It is further understood and agreed that the consideration recited above and receipt of which has been acknowledged by GRANTOR, is also full, complete and final payment for any and all injuries and damages of whatsoever nature and character to land, crops, timber, fences and improvements on, over and across the premises and for the enjoyment and use by GRANTEE of its rights hereunder and GRANTOR hereby covenants that any and all claims that they have or may have because of the GRANTEE'S initial construction operations upon said right-of-way and within the permanent easement area described in Exhibit "A" and the temporary construction area have been paid and satisfied in full.

(10) This instrument may be executed in counterparts and each Grantor shall receive payment hereunder in such proportion as his respective interest bears to the entire fee simple title.

(11) The undersigned hereby acknowledges receipt of Form ERW 4-0 (1997) promulgated by the Texas Real Estate Commission for mandatory use by registered easement or right-of-way agents.

(12) This right of way and easement grant as originally written covers all of the agreements and stipulations between the parties and no representations or statements verbal or written have been made, modifying, adding to, or changing the terms of said original Right of Way Agreement.

This instrument and the covenants and agreements herein contained shall inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors and assigns of the parties hereto.

**Exhibit "A" to Resolution R-2011-17
Page 40 of 42**

Tract No. 40

IN TESTIMONY WHEREOF the Grantor herein has executed this conveyance this _____ day of _____, 2011.

ACKNOWLEDGMENT

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me this _____ day of _____, 2011, by Ritha Yvette Lee.

Notary Public in and for the State of Texas

Exhibit "A" to Resolution R-2011-17
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EXHIBIT "A" Page 1 of 2

CITY OF TYLER, TEXAS

Alex Erwin, et ux

Horacio Nelson Survey, A-739

Smith County, Texas

North Tyler Sewer Line

Called 140 Acres

CENTERLINE DESCRIPTION FOR PROPOSED 30-FOOT WIDE EASEMENT

BEING a centerline description of a 30-foot wide easement, situated in the Horacio Nelson Survey, A-739, over and across a called 140 acre tract of land described to Alex Erwin, et ux, as recorded in Volume 92, Page 358 of the Deed Records of Smith County, Texas.

Said easement being 15 feet each side of the following described centerline, the limits of which shall extend to their points of intersection:

BEGINNING at a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the beginning of the herein described easement, being in the West boundary line of said called 140 acre tract of land, and being in the East boundary line of a called 15.744 acre tract of land described in a deed to Jacqueline Sweiven, as recorded in Volume 1637, Page 494 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for a Southwest corner of said called 140 acre tract of land bears South 01 degrees 00 minutes 30 seconds East, a distance of 498.90 feet;

THENCE North 16 degrees 47 minutes 16 seconds East, a distance of 422.71 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 44 degrees 10 minutes 50 seconds East, a distance of 419.17 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 12 degrees 47 minutes 15 seconds East, a distance of 491.51 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

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Exhibit "A" to Resolution R-2011-17
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EXHIBIT "A" Page 2 of 2

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THENCE North 35 degrees 54 minutes 45 seconds East, a distance of 206.59 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

THENCE North 31 degrees 39 minutes 30 seconds East, a distance of 499.68 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set;

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THENCE North 51 degrees 41 minutes 55 seconds East, a distance of 87.55 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set for the **end of same**, being in the North boundary line of said called 140 acre tract of land, and being in the South boundary line of a called 44.246 acre tract of land described in a deed to Lura Stone, as recorded in Volume 3155, Page 32 of the Deed Records of Smith County, Texas, from which a 1" iron pipe found for the Northeast corner of said called 140 acre tract of land bears North 88 degrees 00 minutes 50 seconds East, a distance of 377.81 feet.

Bearing basis is the Texas State Plane Coordinate System, Grid North Central Zone, NAD 83 (Feet) (1993 adjustment of NAD 83 System).

I, Roland Navarro, Registered Professional Land Surveyor No. 5876, Texas, do hereby certify that the above field note description was prepared from an actual on-the-ground survey made under my direction and supervision during the month of April, 2010.

GIVEN UNDER MY HAND AND SEAL this 12th day of May, 2010.

Roland Navarro
Roland Navarro
Registered Professional Land Surveyor
State of Texas No. 5876

Prepared by:
K. L. KILGORE & COMPANY, INC.
6712 PALUXY DRIVE
TYLER, TX. 75703 PH. (903) 581-7800

