

RESOLUTION NO. R-2011-18

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 Billy Raibon and Robert Raibon, landowners, a final offer in writing of \$132.50 each (\$265.00 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:

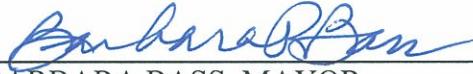
10 acres of land, more or less, in the G.A. Bass Survey, Abstract No. 66, Smith County, Texas and being the same land described in a Warranty Deed from Ruth Crawford to Arnett Raibon and wife, Everline Raibon, dated October 31, 1953 and recorded in Volume 757, Page 103 of the Deed Records of Smith County, 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

APPROVED:

ATTEST:



CASSANDRA BRAGER
CITY CLERK



GARY C. LANDERS, CITY ATTORNEY


The seal is circular with a dotted border. The words "CITY OF TYLER" are at the top and "TEXAS" are at the bottom. In the center, the word "SEAL" is written in a stylized font with two small circles above it.

Exhibit "A" To Resolution R-2011-18
Page 1 of 14



**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 7441 1221

May 2, 2011

Billy Raibon, Sr.
2322 Red Maple Road
Big Sandy, Texas 75755

Re: City of Tyler
Sanitary Water/Sewer pipeline
G.A. Bass Survey, A-66
Smith County, Texas

Dear Mr. Raibon:

This letter is to confirm negotiations between, Dixon Services, Inc. as Right-of-Way Agent, and you individually and as Independent Administrator of the Estate of Arnett Raibon 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 Arnett and Everline Raibon in a 10 acre tract of land in the G.A. Bass Survey, A-66, 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 290 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 0.20 acre permanent easement to be \$400.00 and the appraised value of the 0.13 acre temporary easement to be \$130.00 for a total of \$530.00 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 and the District Court Records of Smith County, Texas it appears that the estates of Arnett Raibon and Everline Raibon have been passed on to their heirs. According to these records, it appears that you individually own a one-fourth interest in the said 10 acre tract and that you are the Independent Administrator of the Arnett Raibon, Estate. Therefore, your portion of the \$530.00 total consideration would be \$132.50.

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● Page 2

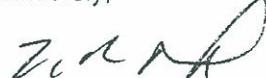
May 2, 2011

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 Agreement in the presence of a Notary Public we can meet you to exchange that document for a check in the amount of \$132.50.

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-2011-18
Page 3 of 14



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 7441 1214

May 2, 2011

Robert Raibon, Sr.
15191 County Road 45
Tyler, Texas 75704

Re: City of Tyler
Sanitary Water/Sewer pipeline
G.A. Bass Survey, A-66
Smith County, Texas

Dear Mr. Raibon:

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 Arnett and Everline Raibon in a 10 acre tract of land in the G.A. Bass Survey, A-66, 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 290 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 0.20 acre permanent easement to be \$400.00 and the appraised value of the 0.13 acre temporary easement to be \$130.00 for a total of \$530.00 for the entire area that will be used for permanent and temporary easement across the subject property.

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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

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● Page 2

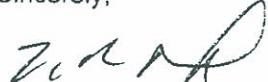
May 2, 2011

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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

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Page 5 of 14

Tract No. 11

RIGHT-OF-WAY AGREEMENT

STATE OF TEXAS §
CITY OF SMITH §

KNOW ALL MEN BY THESE PRESENTS:

That, **Billy Raibon, Sr., Individually, and as Independent Administrator of the estate of Arnett Raibon, deceased**, 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:

10 acres of land, more or less, in the G.A. Bass Survey, Abstract No. 66, Smith County, Texas and being the same land described in a Warranty Deed from Ruth Crawford to Arnett Raibon and wife, Everline Raibon dated October 31, 1953 and recorded in Volume 757, Page 103 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. 11

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.

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

Billy Raibon, Sr., Individually and as Independent Administrator of the estate of Arnett Raibon, deceased

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me this _____ day of _____, 2011, by Billy Raibon, Sr., Individually and as Independent Administrator of the estate of Arnett Raibon, deceased.

Notary Public in and for the State of Texas

**Exhibit "A" To Resolution R-2011-18
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EXHIBIT "A" Page 1 of 2

CITY OF TYLER, TEXAS
Arnett Raibon, et ux
George. A. Bass Survey, A-66
Smith County, Texas
North Tyler Sewer Line

Called 10 Acres

CENTERLINE DESCRIPTION FOR PROPOSED 30-FOOT WIDE EASEMENT

BEING a centerline description of a 30-foot wide easement, situated in the George A. Bass Survey, A-66, over and across a called 10 acre tract of land described in a deed to Arnett Raibon and wife, Everline Raibon, as recorded in Volume 757, Page 103 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 East boundary line of said 10 acre tract of land, and being in the West boundary line of a 5.153 acre residue of a called 41.87 acre tract of land described in a deed to Ronald Sheffield, as recorded in Volume 4781, Page 178 of the Land Records of Smith County, Texas, from which a 1/2" iron rod found for the Southwest corner of said 5.153 acre residue bears South 03 degrees 40 minutes 45 seconds East, a distance of 331.12 feet;

THENCE South 81 degrees 48 minutes 14 seconds West, a distance of 283.67 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 South 77 degrees 27 minutes 41 seconds West, a distance of 6.28 feet along the centerline of said herein described easement to a 1/2" iron rod with plastic cap stamped K.L.K. #4687 set in the West boundary line of said 10 acre tract of land for the **end of same**, from which a 5/8" iron rod found in the centerline of County Road 45 for the Northwest corner of said called 10 acre tract of land, and being the Northeast corner of a called 30 acre tract of land described in a deed to David Abner Thomas, et ux, as recorded in Volume 1272, Page 469 of the Land Records of Smith County, Texas, bears North 04 degrees 09 minutes 25 seconds West, a distance of 27.45 feet.

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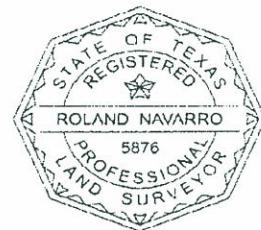
EXHIBIT "A" Page 2 of 2

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

2009011SMT_ARNETTRAIBON_TR11.doc

RIGHT-OF-WAY AGREEMENT

STATE OF TEXAS §
COUNTY OF SMITH §

KNOW ALL MEN BY THESE PRESENTS:

That, **Robert Raibon** 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:

10 acres of land, more or less, in the G.A. Bass Survey, Abstract No. 66, Smith County, Texas and being the same land described in a Warranty Deed from Ruth Crawford to Arnett Raibon and wife, Everline Raibon dated October 31, 1953 and recorded in Volume 757, Page 103 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-2011-18
Page 11 of 14

Tract No. 11

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.

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(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.

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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-2011-18
Page 12 of 14**

Tract No. 11

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

Robert Raibon

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF SMITH §

This instrument was acknowledged before me this _____ day of _____, 2011, by Robert Raibon.

Notary Public in and for the State of Texas

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EXHIBIT "A" Page 1 of 2

CITY OF TYLER, TEXAS
Arnett Raibon, et ux
George. A. Bass Survey, A-66
Smith County, Texas
North Tyler Sewer Line

Called 10 Acres

CENTERLINE DESCRIPTION FOR PROPOSED 30-FOOT WIDE EASEMENT

BEING a centerline description of a 30-foot wide easement, situated in the George A. Bass Survey, A-66, over and across a called 10 acre tract of land described in a deed to Arnett Raibon and wife, Everline Raibon, as recorded in Volume 757, Page 103 of the Deed Records of Smith County, Texas.

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EXHIBIT "A" Page 2 of 2

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

200901ESMT_ARNETTRAIBON_TR11.doc