

NOTICE OF CONFIDENTIALITY RIGHTS; IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

TEMPORARY CONSTRUCTION EASEMENT

This TEMPORARY CONSTRUCTION EASEMENT (this "Agreement"), is made effective as of the ____ day of _____ 2019, by and between Liberty Partnership, Ltd., a Texas limited partnership ("Grantor"), and **the City of New Braunfels**, a municipal corporation situated in the County of Comal, State of Texas ("Grantee"), having a mailing address of 381 E. Austin Street, New Braunfels, TX 78130.

Recitals

WHEREAS, Grantor is the owner of certain real property located in Comal County, Texas, legally described on Exhibit A attached hereto (the "Grantor Property"); and

WHEREAS, Grantee and its contractors will be engaging in construction activities related to the San Antonio Street Bridge project, and Grantee wishes to have the right to access and use a certain portion of the Grantor Property, as specifically depicted on Exhibit B attached hereto (the "Easement Area").

Agreement

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee and Grantee's employees, agents, consultants, and contractors a temporary, non-exclusive easement over, upon, and across the Easement Area for purposes of engaging in construction activities related to the San Antonio Street Bridge project, provided, however, that the easement rights conveyed hereby shall be exercised in accordance with all applicable laws and matters of record (collectively, the "Easement"). Grantor retains and reserves to themselves, their employees, tenants, subtenants, invitees, licensees and agents the right to use the Easement Area for any and all legal purposes not inconsistent with the grant of the Easement herein. Grantee accepts the Easement Area subject to all easements, rights of way, leases, encumbrances and instruments of record affecting the Easement Area. The rights granted herein are personal to Grantee and its employees, agents, consultants and contractors and the Easement may not be used by any other party.

2. **Restoration of Property.** To the extent required as a direct result of Grantee's exercise of the rights granted herein, Grantee hereby agrees to restore any portion of Grantor's Property, including, without limitation, all sidewalks, utility lines, fencing, retaining walls,

landscaping, to substantially the same physical condition that existed at the time Grantee and its contractors first entered upon the Easement Area, unless otherwise agreed to by Grantor.

3. **Indemnity.** To the extent allowed by law, Grantee agrees to indemnify, defend and hold harmless Grantor from and against any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property resulting from the use of the Easement by Grantee, its agents, contractors or employees, or arising out of the performance or nonperformance of any of the obligations set forth in this Agreement except to the extent caused by the negligent or willful act or omission of Grantor, its agents, contractors or employees.

4. **Cooperation.** Grantor and Grantee shall cause their respective contractors to cooperate and coordinate with regard to use of the Easement Area, provided, in the event of a conflict of the use of the area, Grantor's rights with respect to such area shall take priority.

- a. **Grantor Parking and Use:** For the period from April 1 to September 30, 2020 (the "Operational Period"), the Eastern Area may be used for Grantor employee parking and other operational activities of Grantor.
- b. **Construction Staging:** To the extent construction staging in the Easement Area is necessary, staging shall occur in the portion of Easement Area located to the west of the San Antonio Street Bridge.
- c. **Service Drive Access:** For the Operational Period, Grantee shall cause its contractors to coordinate in advance for all Service Drive access/use with Grantor's operational needs taking priority. Grantee shall cause its contractors to limit access to the Service Drive portion of the Easement Area to times outside of the Operational Period.
- d. **Perimeter, Safety, and Security:** Grantee shall cause its contractor to maintain perimeter fencing, barrier, or security in the Easement Area for the safety and security of the Easement Area and Grantor Property.
- e. **Riverfront:** Grantee shall cause its contractor to permit access and use of the sidewalks and river entrance when not directly impacted by the project during the Operational Period.

5. **Termination.** This Agreement shall terminate on April 30, 2021 at 11:59 p.m. local time at the location of the Grantor Property.

6. **Miscellaneous.** This Agreement shall be governed by the substantive laws of the State of Texas. If any portion of this Agreement shall be invalid or unenforceable to any extent, the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and may be modified or amended only in a

writing signed by both of the parties hereto, or their successors or assigns, as the case may be. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. A facsimile or scanned copy of an executed counterpart shall have the same legal effect as an original ink-signed counterpart. If any litigation occurs under this Agreement, then the prevailing party shall be entitled to recover from the nonprevailing party the amount of the prevailing party's reasonable attorneys' fees and other expenses of litigation; and the parties hereby authorize and direct the judge in any such litigation to make an award of such expenses consistent with the foregoing. All recitals and exhibits to this Agreement are incorporated herein by reference.

[Signature Page and Exhibits Follow]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement to be effective as of the day and year first above written.

GRANTOR:

LIBERTY PARTNERSHIP, LTD.,
a Texas limited partnership,

By: _____
Name: _____
Title: _____

STATE OF _____)
)
COUNTY OF _____)

I, _____ a notary public in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me to be the _____ of Liberty Partnership, Ltd., a Texas limited partnership, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such of such entity, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act and deed of such entity, for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 2019.

Notary Public

My Commission Expires: _____

GRANTEE:

City of New Braunfels, Texas,
a municipal corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS

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COUNTY OF COMAL

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On _____, _____, personally appeared ROBERT CAMARENO, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity as City Manager of the CITY OF NEW BRAUNFELS, TEXAS.

WITNESS my hand and official seal.

Notary Public, State of Texas

APPROVED AS TO FORM:

By: _____
Valeria M. Acevedo, City Attorney