

CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 10-2023

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO AUTHORIZE A UTILITY, PRIVATE OR FRANCHISE ON PROPERTY CONSISTING OF APPROXIMATELY 0.011 ACRES, OUT OF THE JOHN A. SOUTHMAYD SURVEY NO. 148, ABSTRACT NO. 288 IN KERR COUNTY, TEXAS; SAID PROPERTY BEING WITHIN THE 517.2 TRACT KNOWN AS KERRVILLE-SCHREINER PARK LOCATED AT 2385 STATE HIGHWAY 173; SAID PROPERTY IS LOCATED WITHIN THE PUBLIC AND INSTITUTIONAL (PI) ZONING DISTRICT; AND MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

WHEREAS, the City of Kerrville, Texas (“City”), as owner of the property graphically depicted in the location map in **Exhibit A** (the “Property”), being attached hereto and made a part hereof for all purposes, is requesting approval of a Conditional Use Permit (CUP) to allow an approximate 0.011-acre tract of land located within a Public and Institutional (PI) Zoning District to be used for a utility, private or franchise, as that term is defined within the City’s Zoning Code (Ch. 60, Code of Ordinances) (the “Zoning Code”); and

WHEREAS, the City Planning and Zoning Commission and the City Council, in compliance with state law and the Zoning Code, and in particular, the approval of Conditional Use Permits, and the official zoning map; having given the requisite notices by United States mail, publication, and otherwise; and after holding due public hearings and affording a full and fair hearing to all of property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, City Council, finds that the health, safety, and general welfare will be best served by the granting of a Conditional Use Permit, subject to the special conditions and restrictions set out hereinafter on the Property;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. A Conditional Use Permit is granted to permit the property described below, and located within a Public and Institutional (PI) Zoning District, to be developed and used for utility, private and franchise, and such use is subject to the provisions of this Resolution and other City ordinances and regulations:

Legal Description: Being an approximate 0.011 acre out of the John A. Southmayd Survey No. 148, Abstract No. 288, in Kerr County, Texas; said property being more specifically described and depicted at **Exhibit B**, attached hereto and made a part hereof for all purposes.

General Location: 2385 Highway 173, Kerrville, TX 78028

SECTION TWO. In addition to the development and use regulations currently applicable to the Property, development and use of the Property is subject to the following additional conditions:

- A. Licensing/Easement:** All use shall comply with federal and state laws, including applicable licensing and permit regulations and the easement applicable to the Property.
- B. Installation:** Installation shall occur in strict conformance to the site plan attached as **Exhibit C**.
- C. Inspections:** The operator shall allow and comply with all applicable inspections, to include acquiring building permits from the City.
- D. Fencing:** fencing shall comply with the City's Zoning Code and is subject to an agreement with the City as to the installation on and operation of the Property.
- E. Other Zoning Regulations:** The regulations set forth in this Resolution are in addition to those set forth in the Zoning Code, as may be amended or superseded. In the event of any irreconcilable conflict between this Resolution and the regulations set forth in the Zoning Code, the provisions of this Resolution will prevail.

SECTION THREE. This Resolution and the Conditional Use Permit granted hereby is subject to termination in accordance with the Zoning Code.

SECTION FOUR. City Council finds and determines that its adoption of this Resolution promotes the health, safety, and general welfare of the public and is a proper valid exercise of the City's police powers.

SECTION FIVE. If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION SIX. This Resolution is effective upon adoption.

PASSED AND APPROVED ON this the 28 day of MARCH, A.D., 2023.

Judy Eychner
Judy Eychner, Mayor

APPROVED AS TO FORM:

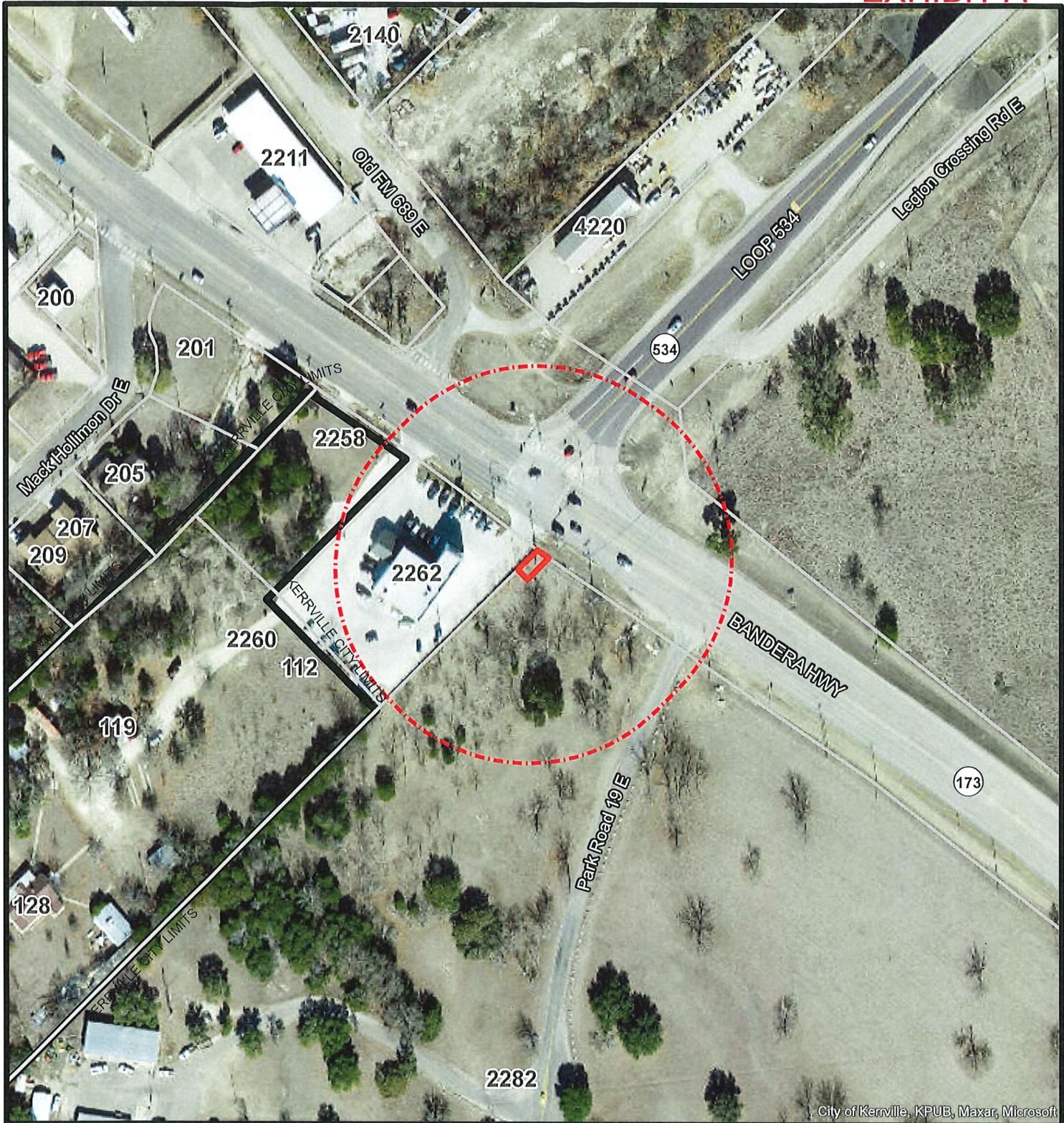
Michael Hayes

Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon

Shelley McElhannon, City Secretary



City of Kerrville, KPUB, Maxar, Microsoft

Location Map

Case # PZ-2023-1

Location:

Proposed HCTC Easement

Legend

- Subject Properties
- 200 Feet Notification Area



01/10/2023

0 50 100 200

Scale In Feet

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only approximate relative locations.

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EXHIBIT B

FIELD NOTE DESCRIPTION OF A 0.011 ACRE PARCEL
BEING WITHIN A 517.2 ACRE (CALLED 500 ACRE) TRACT
KNOWN AS THE "KERRVILLE-SCHREINER PARK"

Being all of a certain tract or parcel of land containing 0.011 acres more or less, out of the John A. Southmayd Survey No. 148, Abstract No. 288 in Kerr County, Texas; said tract being within a 517.2 acre (called 500 acre) tract conveyed to the City of Kerrville by Deed as recorded in Volume 1334, Page 43, Deed Records of Kerr County, Texas; more particularly described by its metes and bounds as follows:

(NOTE: The following courses are based on an RTK/GNSS survey conducted on the ground, N.A.D.83 datum, Texas State Plane Coordinates, S. Central Zone reduced to horizontal ground distances expressed in U.S. Survey feet. Where record or deed courses differ from the surveyed values, the record value is shown in parenthesis)

BEGINNING at a 1 inch square steel stake found in the south Right-of-Way line of State Highway No. 173 known as "Bandera Highway" marking the northwest corner of the herein described parcel identical to the northwest corner of said 517.2 acre tract, and northeast corner of a 0.91 acre tract to L. Howard by Warranty Deed recorded in file No. 12-4841, Deed Records of Kerr County, Texas from which point a 1/2 inch steel rod purportedly marking the northwest corner of said Survey 0.91 acre tract bears N56°24'17"W, 193.84 feet;

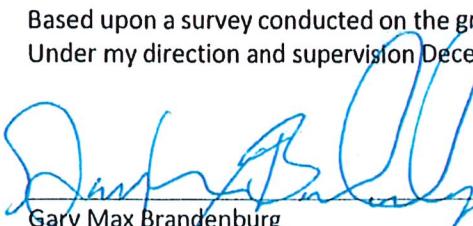
THENCE southeasterly and running parallel more or less approximately 3 feet north of a wire fence line between said Right-of-Way and the herein described parcel S55°56'27"E, 15.28 feet, to a 5/8 inch diameter iron rod with plastic cap stamped "WES 10194410" set firmly in the ground adjacent to said fence line marking the northeast corner of the herein described parcel;

THENCE southwesterly over and across open land, S45°04'10"W, at approximately 3 feet crossing said wire fence, in total 32.91 feet to a 5/8 inch diameter steel rod with plastic cap stamped "WES 10194410" set firmly in the ground marking the southeast corner of the herein described parcel;

THENCE northwesterly continuing across open land, N44°55'50"W, 15.0 feet to a chiseled "X" in a stone wall, at a point of intersection with the east line a said 0.91 acre tract for the southwest corner of the herein described parcel;

THENCE northeasterly along said stone wall and east line of said 0.91 acre tract, N45°04'10"E, 29.99 feet, to the POINT of BEGINNING containing 471.83 square feet or 0.011 acres more or less.

Based upon a survey conducted on the ground
Under my direction and supervision December 13, 2022



Dated: 12/14/2022

Gary Max Brandenburg
Registered Professional Land Surveyor
State of Texas
Registration No. 5164



WELLBORN
ENGINEERING &
SURVEYING

TBPLS FIRM NO. 10194410
PHONE: 830.217.7100
WWW.WELLBORNENGINEERING.COM

631 WATER STREET
KERRVILLE, TX 78028

EASEMENT: CITY OF KERRVILLE TO HCTC

PG. [1]

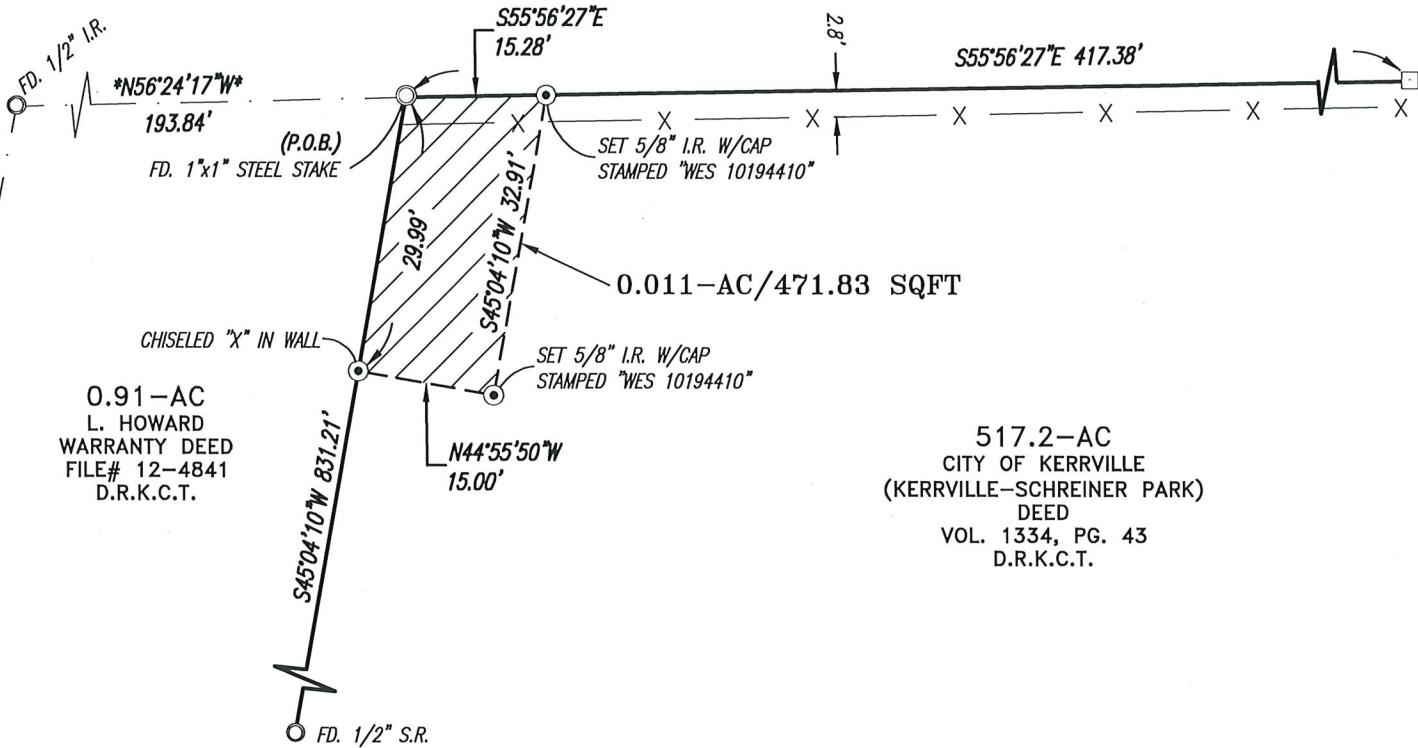
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EXHIBIT B



SH 173/BANDERA HWY.
(120' WIDE R.O.W.)

GRID
SCALE: 1"=20'



* SURVEYOR'S CERTIFICATION *

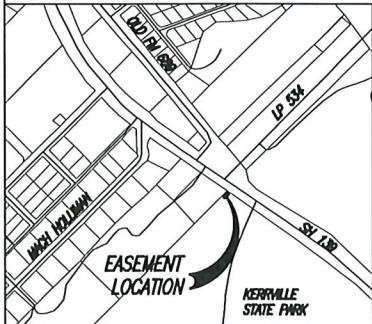
I, THE UNDERSIGNED, HEREBY CERTIFY THAT THIS EXHIBIT CORRECTLY REPRESENTS A SURVEY MADE UPON THE GROUND OF THIS PROPERTY IN THE MONTH OF DECEMBER, 2022 UNDER MY DIRECTION AND SUPERVISION, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.


Gary Max Brandenburg, R.P.L.S.
Registration No. 5164

DATED: DECEMBER 14, 2022

* LEGEND *

- SET CORNER AS NOTED
- FOUND CORNER AS NOTED
- FOUND CONCRETE TXDOT MONUMENT
- PROPERTY LINE
- WIRE FENCE LINE
- EASEMENT LINE
- VARIABLE WIDTH EASEMENT



PROJECT: WES: 20-172	SCALE: 1" = 20'	SHEET NO. 1 of 1
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VICINITY MAP
1"=2000'
SOURCE: KERRVILLE GIS

631 WATER STREET
KERRVILLE, TX 78028
830-217-7100
wellbornengineering.com
FIRM# 10194410
T.B.P.E.L.S.

WELLBORN
ENGINEERING &
SURVEYING

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EXHIBIT C

VICINITY MAP
1"=1000'
SOURCE: KERRVILLE GIS



GRID

* LEGEND *

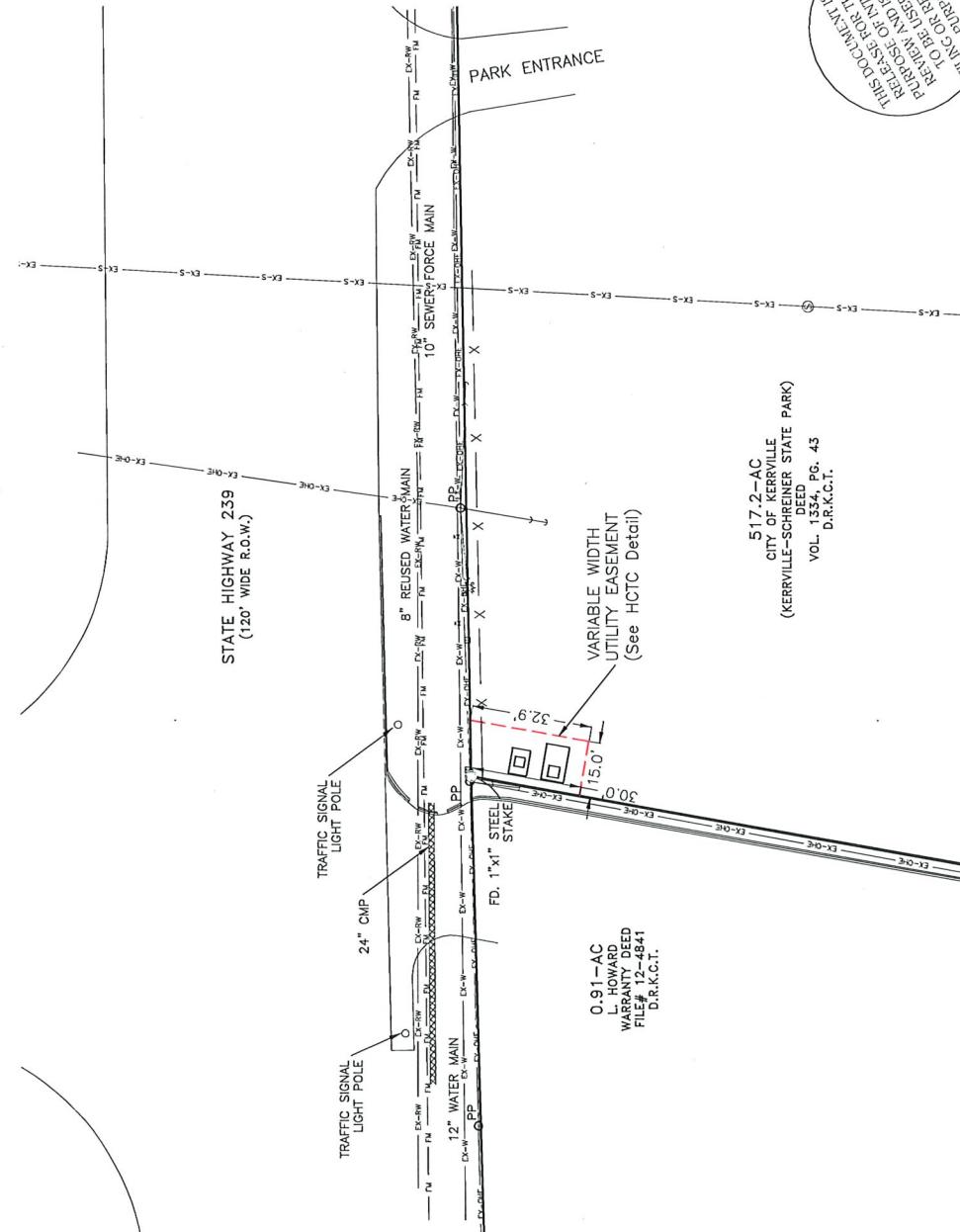
- FOUND CORNER AS NOTED
- PROPERTY LINE
- SANITARY SEWER MANHOLE
- TELEPHONE PEDESTAL
- X FIRE HYDRANT
- X WATER VALVE
- PROPOSED EASEMENT
- Curb & Gutter
- Barbed Wire Fence
- OVERHEAD ELECTRIC LINE
- WATER LINE
- SEWER LINE
- FORCE MAIN SEWER LINE
- REUSE WATER LINE
- ROCK WALL



SCALE: 1"=30'

SITE PLAN EXHIBIT

WELLBORN ENGINEERING & SURVEYING	631 WATER STREET KERRVILLE, TX 78028 830-217-7700			
	PROJECT: WES-20-172	SCALE: 1"=30'	FIELD: JSBM	DRAFTING: RSM CHECKED: RSM SHEET NO. 1 of 1
	LAST FIELD VISIT: 12.04.2020	LAST DRAFT REVISION: 12.15.2020		



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

**EASEMENT AGREEMENT
(Broadband Communication Equipment)**

Date: March 24, 2023

Grantor: City of Kerrville, Texas, a Texas home-rule municipal corporation

Grantor's Mailing Address: City Hall
701 Main St.
Kerrville, TX 78028
Attn: City Manager and
Director of Parks and Recreation

Grantee: Hill Country Telephone Cooperative, Inc.

Grantee's Mailing Address: P.O. Drawer D
Ingram, TX 78025
Attn: Construction and Engineering Director

Dominant Estate Property: 500 acres of land, more or less, in Kerr County, Texas, known as Kerrville-Schreiner Park ("KSP"), and as more particularly described in that certain deed recorded in Volume 1334, Page 43 et seq., Real Property Records of Kerr County.

Easement Property: A 0.011 of an acre (600 square feet) of land, twenty feet (20.0') in width by thirty (30.0') feet in length, and adjacent to the north and east property line of the Dominant Estate Property, said easement being more particularly described and depicted in **Exhibit A**, attached hereto and incorporated herein for all purposes.

Easement Purpose: To install, construct, operate, maintain, replace, repair, upgrade, and remove, telecommunications cable and related telecommunications equipment (collectively, the "Equipment").

Consideration: Good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor, to include a twenty-five percent (25%) discount of all charges and fees associated with Grantee providing communication and information services to Grantor at Dominant Estate Property (aka Kerrville-Schreiner Park).

Grant of Easement: Grantor, for the Consideration, grants, sells, and conveys to Grantee

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and Grantee's successors and assigns an easement over, on, and across the Easement Property for the Easement Purpose (collectively, the "Easement").

Terms and conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is an easement in gross. The Easement is for the benefit of Grantee and Grantee's successors and assigns.

2. *Duration of Easement.* The duration of the Easement is perpetual, unless and until it is terminated by Grantee's City Council.

3. *Reservation of Rights.* Grantee's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's successors and assigns the right to use all or part of the Easement Property in conjunction with Grantee as long as such use by Grantor and Grantor's successors and assigns does not interfere with the use of the Easement Property by Grantee for the Easement Purpose.

4. *Restricted Use.* As to the Dominant Estate Property, Grantee understands, acknowledges, and agrees:

a) that it consists of Grantor's Kerrville-Schreiner Park, which is restricted in its use to public and recreational purposes;

b) that the Equipment will and shall not impact such use but will enhance the use of KSP by increasing communication and information services for users and patrons of the Dominant Estate Property;

c) that the primary function of the Dominant Estate Property is to serve the public and that the interests of Grantee are at all times superseded by the public health, safety, and welfare of Grantee's citizens and patrons.

5. *Compliance with Laws.* Grantee shall at all times comply with federal, state, and local laws with respect to its use of the Easement Property, to include applying for and receiving applicable permits from federal, state, and local authorities. Grantee is solely responsible for all costs and expenses associated with its use of the Easement Property for the Easement Purposes.

6. *Access.* Grantor shall permit Grantee to access the Easement Property during KSP's regular operating hours or, with at least 24 hours' prior notice to Grantor if outside regular operating hours, to conduct repairs, maintenance, and/or replacement of Grantee's Equipment. Notwithstanding the foregoing, Grantee may access the Easement Property without 24 hours' notice in the event of an emergency, but shall provide Grantor with immediate notice of such emergency. Grantee may access the Easement Property directly

from and through the Dominant Estate Property. Following Grantee's installation of a walk-through gate up to four feet (4.0') in width, which prior to installation must be approved in writing by Grantor, Grantee may access the Easement Property directly from State Highway 173.

7. *Utilities.* Grantee requires an electrical connection to the Easement Property for its use. Grantor is neither responsible nor liable to Grantee for anything related to the provision of such service or any other utility services. Grantee shall seek Grantor's approval prior to the connection of any utility service to the Easement Property and any such service shall not use any part of Grantor's property outside of the Easement Property without the prior written approval of Grantor.

8. *Initial Construction/Installation.* Prior to Grantee providing for and causing the installation and placement of the Equipment, Grantee shall provide written notice to Grantor of the date(s) of such activities and the name and contact information as to the person or firm conducting such activities. The installation and placement shall be a) performed by a qualified contractor; b) subject to and approved by the Grantee (City of Kerrville, TX) in accordance with City's building codes, to include inspections during and upon completion of the work.

9. *Landscaping.* Grantee shall have the right to do whatever may be requisite for the enjoyment of the rights herein granted, including the right to clear the Easement Property of brush and timber. With the exception of the authority to access the Easement Property as provided above, Grantee shall have no right to and shall not use any other part of the Dominant Estate Property outside of the Easement Property. Grantee shall restore any and all of Grantor's landscaping on the Dominant Estate Property and beyond the Easement Property that is damaged as a result of Grantee's installation of the Equipment. Such landscaping shall promptly be restored after completion of the installation of the Equipment and shall be restored to substantially the same condition, and with the same material, as the original landscaping.

10. *Fence/Screening.* Subject to prior written approval from Grantor and/or any other property owner, Grantee may temporarily remove a portion(s) of the boundary fence to the Dominant Estate Property as a means of providing access to the Easement. However, Grantee shall thereafter, and as soon as possible following such access, restore the fence(s) to its prior condition. Grantee shall install a fence along the southern and eastern boundaries of the Easement Property for both security purposes and aesthetics. Such fence shall be at least five feet (5.0') in height, consist of wrought iron or its equivalent, with the fence subject to written approval from Grantor prior to installation.

11. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property and the Equipment will be at the sole expense of Grantee. Grantee will be solely responsible to pay Grantor (City of Kerrville, TX) the permit fees related to its construction and installation of the Equipment. Grantee must maintain the Easement

Property in a neat and clean condition during construction. All matters concerning the Equipment and their configuration, construction, installation, maintenance, replacement, and removal on the Easement Property are at Grantee's sole discretion, subject to performance of Grantee's obligations under this agreement. Grantee has the right to remove any fences within the Easement Property or along or near the boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Equipment, subject to replacement of the fences to their original condition on the completion of the work. Grantee has the right to remove, trim, or cut down trees or shrubbery or parts thereof within the Easement Property or any other obstructions which may endanger, interfere, or impair the efficiency, safety or convenient operation of the Equipment. Grantee expressly agrees that upon completion of construction performed by Grantee it will generally cause the Easement Property to be left as nearly as possible in the condition as it existed prior to construction.

12. *Assignment.* Grantee may not assign the Easement unless prior written consent is granted by Grantor, such consent not to be unreasonably withheld. Where such assignment occurs, such successor and assign shall enjoy the same rights, benefits, and privileges herein conveyed.

13. *Equitable Rights of Enforcement/Litigation.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity. Where either Grantor or Grantee finds it necessary to enforce any term provided herein through the filing of litigation, the prevailing party in such action is entitled to recover its costs and reasonable attorney fees.

14. *Warranties.* All warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded.

15. *Indemnification.* GRANTEE WILL INDEMNIFY AND HOLD HARMLESS GRANTOR FROM AND AGAINST ALL DAMAGES, LOSSES, CLAIMS, SUITS OR ACTIONS OF ANY KIND AND NATURE WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, ASSOCIATED WITH GRANTEE'S USE OF THE EASEMENT OR THE EASEMENT PROPERTY.

16. *Insurance.* Grantee, at its sole cost, shall keep in full force and effect a policy of standard form commercial general liability insurance, including coverage for contractual liability and personal injury with a single combined liability limit of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence. The liability insurance policy required herein shall insure Grantee's performance of the indemnity provisions of this Agreement and Grantee shall be named as an additional insured with cross-liability

endorsements. Grantee by reason of its inclusion under said policy, shall not incur liability for payment of any premium for any policy of insurance required herein. Any policy of insurance required herein shall contain a provision requiring the insurer to give Grantee thirty (30) days prior written notice before canceling or changing any such coverage. Grantee agrees that if it does not maintain the required insurance policy or fails to pay any premiums when due, Grantee may terminate this Agreement and relinquish and release the Easement.

17. *Contact Information.* Grantor and Grantee shall provide the other with a telephone number and email address through which that party may contact a representative of the other, with such information periodically confirmed or updated based upon any changes.

18. *Entire Agreement.* This Agreement represents the entire agreement between the parties with respect to, and supersedes any and all previous oral or written agreements concerning, the subject matter hereof.

19. *Governing Law.* The validity of this agreement and any of its terms or provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas. Exclusive venue for any action concerning this Agreement shall be in Kerr County, Texas.

20. *Amendment.* This agreement may only be amended by mutual written agreement signed by the parties.

21. *Legal Construction; Severability.* In the event that any provision contained in the agreement shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the other provisions and the agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

22. *No waiver.* No covenant or condition of this agreement may be waived without consent of the parties. It is further agreed that one (1) or more instances of forbearance by Grantee in the exercise of its rights herein shall in no way constitute a waiver thereof.

23. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

24. *Relationship.* Nothing herein shall be construed as creating a partnership or joint enterprise between Grantor and Grantee.

TO HAVE AND TO HOLD the Easement, together with all the rights and appurtenances thereto in anywise belonging unto Grantee for the purposes hereinabove recited.

WITNESS THE EXECUTION HEREOF on this 29 day of MARCH, 2023.

GRANTOR:

CITY OF KERRVILLE, TEXAS

By:

E.A. Hoppe, City Manager

Acknowledgment

THE STATE OF TEXAS

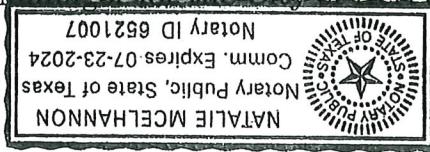
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COUNTY OF KERR

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This instrument was acknowledged before me on MARCH 29, 2023, by E.A. Hoppe, City Manager for the City of Kerrville, TX.



Natalie McElhanon
Notary Public, State of Texas

GRANTEE:

HILL COUNTRY TELEPHONE COOPERATIVE, INC.

By: Michael Freeman
MICHAEL FREEMAN, DIRECTOR-CONSTRUCTION + ENGINEERING

Acknowledgment

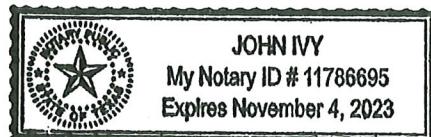
THE STATE OF TEXAS

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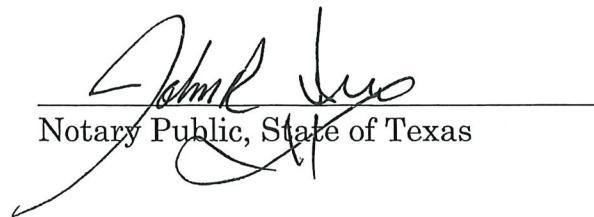
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COUNTY OF KERR

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This instrument was acknowledged before me on MARCH 24, 2023, by John Ivy, Notary for Hill Country Telephone Cooperative, Inc.



John L. Lee
Notary Public, State of Texas

After Recording Return To:

**Office of the City Secretary
City of Kerrville, TX
City Hall, 701 Main Street
Kerrville, Texas 78028**