

## **ASSIGNMENT AND ASSUMPTION OF EASEMENTS**

This Assignment and Assumption of Easements (this "Assignment") is executed and delivered on this the 14<sup>th</sup> day of December 2017 (the "Effective Date"), by Crosswinds Municipal Utility District, a conservation and reclamation district and political subdivision of the State of Texas ("Assignor"), to and in favor of the City of Kyle, a municipal corporation located in Hays County, Texas ("Assignee"). Assignor and Assignee are collectively referred to herein as the "Parties."

### **RECITALS**

A. Assignor has been granted the easements described in the attached **Exhibit A** (collectively, the "Easements" and each individually an "Easement"), said exhibit being incorporated herein for all purposes; and

B. In connection with Assignor's conveyance of certain facilities to Assignee, Assignor desires to assign, transfer and convey to Assignee all of Assignor's rights, title and interest in and to the Easements, and Assignee desires to acquire the same from Assignor and assume all obligations thereunder.

### **ASSIGNMENT AND ASSUMPTION**

NOW, THEREFORE, for and in consideration of these premises, the terms, conditions, covenants and agreements made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated herein for all purposes.
2. Assignment and Conveyance. Subject to the terms, conditions, covenants and agreements set forth herein, Assignor has ASSIGNED, TRANSFERRED AND CONVEYED and by these premises does hereby ASSIGN, TRANSFER AND CONVEY to Assignee all of Assignor's rights, title and interest in and to the Easements, together with all of Assignor's rights thereunder.
3. Acceptance and Assumption. Assignee, by its acceptance hereof, hereby: (i) accepts and agrees to all terms, conditions, covenants and agreements set forth in the Easements; (ii) covenants and agrees to assume and perform all duties, liabilities and obligations to be discharged or performed by Assignor and its successors and assigns under the Easements; and (iii) covenants and agrees to utilize each Easement solely as contemplated in such Easement and for the purposes stated in such Easement. Assignor shall have no further duties, liabilities or obligations under any of the Easements, and Assignee hereby releases and forever discharges Assignor duties, liability and obligations under the Easements.

4. Present Condition. IT IS UNDERSTOOD AND AGREED THAT ASSIGNOR HAS NOT MADE, IS NOT MAKING, AND SPECIFICALLY DISCLAIMS, ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE EASEMENTS OR THE REAL PROPERTY TO WHICH THE EASEMENTS APPLY. BY ITS ACCEPTANCE OF THIS ASSIGNMENT, ASSIGNEE ACCEPTS EACH OF THE EASEMENTS IN ITS PRESENT CONDITION, **"AS IS, WHERE IS" AND WITH ALL FAULTS.**

5. Further Assurances. Assignor agrees to execute such other instruments as are reasonably necessary to evidence transfer of title in and to the Easements to Assignee, but only to the extent that such instruments are consistent with the terms, conditions, covenants and agreements set forth herein.

6. Recordation. Upon execution, Assignor and Assignee shall take such actions as are reasonably necessary to cause this Assignment to be promptly recorded in the official public records of Hays County, Texas.

7. Entire Agreement; Binding Effect. This Assignment constitutes the entire agreement and understanding between the Parties and supersedes all prior written or oral agreements and understandings, if any, concerning the subject matter hereof. All of the terms, conditions, covenants, agreements and provisions set forth in this Assignment will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.

8. Authority to Execute. Assignee represents and warrants that this Assignment has been approved by the City Council of the City of Kyle in accordance with all applicable public meeting and public notice requirements (including notices required by the Texas Open Meetings Act) and that the individual executing this Assignment on behalf of Assignee has full right and authority to do so. Assignor represents and warrants that this Assignment has been approved by the Board of Directors of the Crosswinds Municipal Utility District in accordance with all applicable public meeting and public notice requirements (including notices required by the Texas Open Meetings Act) and that the individual executing this Assignment on behalf of Assignor has full right and authority to do so.

9. Multiple Counterparts; Facsimile Signatures. Multiple copies of this Assignment may be executed by the handwritten signatures of the Parties hereto. Each such executed copy shall have the full force and effect of an original executed instrument. To facilitate the execution of this Agreement, the Parties may execute and exchange by email or facsimile transmission scanned or facsimile counterparts of this Agreement with handwritten signatures, and such scans or facsimiles shall be deemed original and effective for all purposes.

*[Remainder of Page Intentionally Left Blank; Execution Pages Follow]*



EXECUTED to be effective as of the Effective Date set forth in the foregoing.

**ASSIGNOR:**

**CROSSWINDS MUNICIPAL UTILITY  
DISTRICT,**  
a political subdivision of the State of Texas

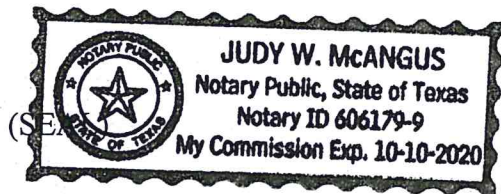
ATTEST:

Edwards  
Name: Elizabeth Edwards  
Title: Secretary

By: Amy Blakely  
Name: Amy Blakely  
Title: President  
Date: December 14, 2017

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 14<sup>th</sup> day of December 2017, by Amy Blakely, as President of CROSSWINDS MUNICIPAL UTILITY DISTRICT, a political subdivision of the State of Texas, on behalf of said political subdivision.



Judy W. McAngus  
NOTARY PUBLIC, State of Texas

EXECUTED to be effective as of the Effective Date set forth in the foregoing.

**ASSIGNEE:**

**CITY OF KYLE,**  
a Texas municipal corporation

**ATTEST:**

Grace Niño

Name: GRACE NIÑO  
Title: EXEC. ASSISTANT

By: [Signature]

Name: J. Scott Sellers

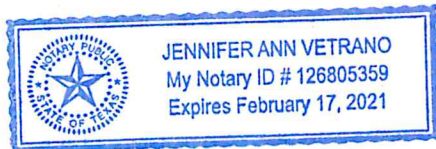
Title: City Manager

Date: 1-24-18

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 25<sup>th</sup> day of January, 2018, by J. Scott Sellers, as City Manager of the CITY OF KYLE, a Texas municipal corporation, on behalf of said municipal corporation.

(SEAL)



Jennifer A. Vetrano  
NOTARY PUBLIC, State of Texas

## **EXHIBIT A**

### **Descriptions of the Easements**

1. That certain utility easement dated November 6, 2015, granted by the City of Kyle to Crosswinds Municipal Utility District, and recorded as Instrument No. 2015-15036554;
2. That certain utility easement dated November 16, 2015, granted by the Hays Consolidated Independent School District to Crosswinds Municipal Utility District, and recorded as Instrument No. 2015-15038963 in the official public records of Hays County, Texas;
3. That certain utility easement dated December 12, 2016, granted by Steven Bruce Thomas, as Trustee of the Thomas Marital Trust and the Thomas Survivor's Trust to Crosswinds Municipal Utility District, and recorded as Instrument No. 17001308 in the official public records of Hays County, Texas;
4. That certain utility easement dated December 20, 2016, granted by Evelyn B. Franke to Crosswinds Municipal Utility District, and recorded as Instrument No. 17001339 in the official public records of Hays County, Texas;
5. That certain utility easement dated February 2, 2017, granted by Dacy Lane, LLC to Crosswinds Municipal Utility District, and recorded as Instrument No. 17005134 in the official public records of Hays County, Texas;
6. That certain utility easement dated May 15, 2017, granted by Development Solutions CW, LLC to Crosswinds Municipal Utility District, and recorded as Instrument No. 17018084 in the official public records of Hays County, Texas; and
7. That certain utility easement dated May 15, 2017, granted by Amy Blakely, Michael Gideon, Anthony Dell'Abate, Lee Weber and Elizabeth P. Edwards to Crosswinds Municipal Utility District, and recorded as Instrument No. 17018085 in the official public records of Hays County, Texas.



## **ASSIGNMENT AND ASSUMPTION OF EASEMENTS**

This Assignment and Assumption of Easements (this "Assignment") is executed and delivered on this the 20<sup>th</sup> day of December, 2017 (the "Effective Date"), by Development Solutions CW, LLC, a Delaware limited liability company ("Assignor"), on behalf of Crosswinds Municipal Utility District ("Crosswinds MUD"), to and in favor of the City of Kyle, a municipal corporation located in Hays County, Texas ("Assignee"). Assignor and Assignee are collectively referred to herein as the "Parties."

### **RECITALS**

A. Assignor has been granted the easements described in the attached **Exhibit A** (collectively, the "Easements" and each individually an "Easement"), said exhibit being incorporated herein for all purposes; and

B. In connection with Assignor's conveyance of certain facilities to Assignee, Assignor desires to assign, transfer and convey to Assignee all of Assignor's rights, title and interest in and to the Easements, and Assignee desires to acquire the same from Assignor and assume all obligations thereunder.

### **ASSIGNMENT AND ASSUMPTION**

NOW, THEREFORE, for and in consideration of these premises, the terms, conditions, covenants and agreements made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated herein for all purposes.
2. Assignment and Conveyance. Subject to the terms, conditions, covenants and agreements set forth herein, Assignor, on behalf of Crosswinds MUD, has ASSIGNED, TRANSFERRED AND CONVEYED and by these premises does hereby ASSIGN, TRANSFER AND CONVEY to Assignee all of Assignor's rights, title and interest in and to the Easements, together with all of Assignor's rights thereunder.
3. Acceptance and Assumption. Assignee, by its acceptance hereof, hereby: (i) accepts and agrees to all terms, conditions, covenants and agreements set forth in the Easements; (ii) covenants and agrees to assume and perform all duties, liabilities and obligations to be discharged or performed by Assignor and its successors and assigns under the Easements; and (iii) covenants and agrees to utilize each Easement solely as contemplated in such Easement and for the purposes stated in such Easement. Assignor shall have no further duties, liabilities or obligations under any of the Easements, and Assignee hereby releases and forever discharges Assignor of all duties, liability and obligations under the Easements.

4. No Warranties or Representations. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IT IS UNDERSTOOD AND AGREED THAT ASSIGNOR HAS NOT MADE, IS NOT MAKING, AND SPECIFICALLY DISCLAIMS, ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE EASEMENTS OR THE REAL PROPERTY TO WHICH THE EASEMENTS APPLY. BY ITS ACCEPTANCE OF THIS ASSIGNMENT, ASSIGNEE ACCEPTS EACH OF THE EASEMENTS IN ITS PRESENT CONDITION, "AS IS, WHERE IS" AND WITH ALL FAULTS.

5. Further Assurances. Assignor agrees to execute such other instruments as are reasonably necessary to further evidence transfer of Assignor's rights, title and interest in and to the Easements to Assignee, and Assignee's assumption of all duties, liabilities and obligations under the Easements, but only to the extent that such instruments are consistent with the terms, conditions, covenants and agreements set forth herein.

6. Recordation. Upon execution, Assignor and Assignee shall take such actions as are reasonably necessary to cause this Assignment to be promptly recorded in the official public records of Hays County, Texas.

7. Entire Agreement; Binding Effect. This Assignment constitutes the entire agreement and understanding between the Parties and supersedes all prior written or oral agreements and understandings, if any, concerning the subject matter hereof. All of the terms, conditions, covenants, agreements and provisions set forth in this Assignment will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.

8. Authority to Execute. Assignee represents and warrants that this Assignment has been approved by the City Council of the City of Kyle in accordance with all applicable public meeting and public notice requirements (including notices required by the Texas Open Meetings Act) and that the individual executing this Assignment on behalf of Assignee has full right and authority to do so. Assignor represents and warrants that the individual executing this Assignment on behalf of Assignor has full right and authority to enter into this Assignment and that he or she has been fully authorized to do so by all necessary action on the part of Assignor.

9. Multiple Counterparts; Facsimile Signatures. Multiple copies of this Assignment may be executed by the handwritten signatures of the Parties hereto. Each such executed copy shall have the full force and effect of an original executed instrument. To facilitate the execution of this Agreement, the Parties may execute and exchange by email or facsimile transmission scanned or facsimile counterparts of this Agreement with handwritten signatures, and such scans or facsimiles shall be deemed original and effective for all purposes.

*[Remainder of Page Intentionally Left Blank; Execution Pages Follow]*



EXECUTED to be effective as of the Effective Date set forth in the foregoing.

**ASSIGNOR:**

**DEVELOPMENT SOLUTIONS CW, LLC,**  
a Delaware limited liability company

By: [Signature]  
Name: Kevin Hiniker  
Title: Vice President  
Date: 12/20/17

STATE OF Minnesota §  
COUNTY OF Hennepin §

This instrument was acknowledged before me on the 20<sup>th</sup> day of December 2017, by KEVIN HINIKER, as Vice President of DEVELOPMENT SOLUTIONS CW, LLC, a Delaware limited liability company, on behalf of said company.

[Signature]  
NOTARY PUBLIC, State of ~~Texas~~ Minnesota

(SEAL)





EXECUTED to be effective as of the Effective Date set forth in the foregoing.

**ASSIGNEE:**

**CITY OF KYLE,**  
a Texas municipal corporation

By: J. Scott Sellers

Name: J. Scott Sellers

Title: City Manager

Date: 1-24-18

STATE OF TEXAS

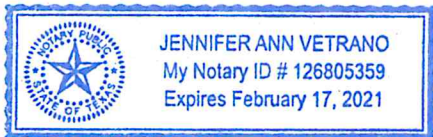
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COUNTY OF HAYS

§

§

This instrument was acknowledged before me on the 25<sup>th</sup> day of January, 2018,  
by J. Scott Sellers, as City Manager of the CITY OF KYLE, a Texas  
municipal corporation, on behalf of said municipal corporation.



Jennifer A. Vetrano  
NOTARY PUBLIC, State of Texas

(SEAL)

**CONSENT OF DISTRICT:**

The undersigned municipal utility district hereby consents to the foregoing Assignment and Assumption  
of Easements:

**CROSSWINDS MUNICIPAL UTILITY DISTRICT**

By: Amy Blakely  
Amy Blakely, President

**ATTEST:**

Elizabeth P. Edwards  
Elizabeth P. Edwards, Secretary

## **EXHIBIT A**

### **Descriptions of the Easements**

1. That certain utility easement dated March 25, 2016, granted by Jimmy Charles Owen and Diane Louise Owen to Development Solutions CW, LLC, and recorded as Instrument No. 2016-16009400;
2. That certain utility easement dated March 25, 2016, granted by Joseph P. Salmon to Development Solutions CW, LLC, and recorded as Instrument No. 2016-16009404 in the official public records of Hays County, Texas;
3. That certain utility easement dated May 25, 2016, granted by Jeffrey L. Steele to Development Solutions CW, LLC, and recorded as Instrument No. 2016-16016719 in the official public records of Hays County, Texas; and
4. That certain utility easement dated April 19, 2017, granted by John Kimbro to Development Solutions CW, LLC, and recorded as Instrument No. 17013257 in the official public records of Hays County, Texas.