

**BOARD OF TRUSTEES
AGENDA**

<input type="checkbox"/> Workshop	<input type="checkbox"/> Regular	<input type="checkbox"/> Special
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- (A) Report Only Recognition

Presenter(s):

Briefly describe the subject of the report or recognition presentation.

- (B) Action Item
Presenter(s): MR. GILBERTO GONZALEZ, SUPERINTENDENT

Briefly describe the action required.

CONSIDER AND TAKE APPROPRIATE ACTION ON THE REQUEST TO APPROVE AND EASEMENT AS REQUESTED BY THE CITY OF EAGLE PASS WATER WORKS SYSTEM.

- (C) **Funding source: Identify the source of funds if any are required.**

- (D) **Clarification: Explain any question or issues that might be raised regarding this item.**



May 1, 2018

Gilberto Gonzalez, Superintendent
Eagle Pass Independent School District
1420 Eidson Road
Eagle Pass, Texas 78852

Dear Mr. Gonzalez:

The City of Eagle Pass Water Works System is respectfully requesting an easement from the Eagle Pass Independent School District by Glass Elementary. A house was built on a water line and the line has to be rerouted. In order to do this, we will have to reroute the line through school property. We would truly appreciate your help with this matter. Thank you.

I have attached the metes and bounds of the property and the line alignment. If you have any questions please do not hesitate to call me. Once again, thank you.

Sincerely,

Jorge Barrera
General Manager, Eagle Pass Water Works System

Easement Agreement

Date: _____, 2018
Grantor: Eagle Pass I.S.D.
Grantor's Mailing Address: 1420 Eidson Road
Eagle Pass, Maverick County, Texas 78852
Grantee: Eagle Pass Water Works System
Grantee's Mailing Address: 2107 N. Veterans Blvd.
Eagle Pass, Maverick County, Texas 78852

Easement Property: One tract of land as described in the Field Notes and shown in the corresponding exhibits as follows: EPISD, WW 20 feet easement = 0.03 acres.

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of water and sewer utility system facilities (collectively, the "Facilities").

Consideration: The sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledge by Grantor.

Reservations from Conveyance and Exceptions to Warranty: Easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the property, rights of adjoining owners in any walls or boundary lines; any encroachments or overlapping of improvements; and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

Grant of Easement: Grantor, for the consideration and subject to the Reservations for Conveyance and Exceptions to Warranty, grants, sells and conveys top Grantee's heirs, successors and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantees heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, except as to the Reservations from Conveyance and Exceptions to Warranty, to the extent that such claim arises by, through, or under Grantor but not otherwise.

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

1. *Character of Easement.* The Easement is in gross and nonexclusive. The Easement is for the benefit if the Grantee and Grantee's successors (as applicable, the "Holder"), and Holder may use the Easement Property for the Easement Purpose as long as such use does not interfere with or otherwise affect Grantor's present or future uses of the Easement Property as set out in this agreement.
2. *Duration of Easement and Automatic Termination.* The duration of the Easement is for so long as constructed, cease to use said facilities for a period of twelve consecutive months, all rights granted hereunder shall thereupon automatically and without further notice or demand, cease and revert to the Grantors, their heirs and assigns.
3. *Reservation of Rights.* Holder's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to use all or part of the Easement Property in conjunction with Holder so long as that use does not unduly interfere with Holder's intended use of the Easement, including by way of description and not limitation, to

cross said Easement, to plant crops and to harvest the same, to install irrigation ditches, to graze livestock thereupon, to construct roads, sidewalks, fences, gates, culverts, driveways thereupon, to use portions as may necessary for controlling, maintaining and regulating irrigation, drainage, or erosion of Grantor's property, to install, maintain, repair, replace gas transmission lines, to install, maintain, repair, replace utility lines and services, including water transmission lines, electric, storm drainage, and sanitary sewer lines, and connect the Holder's water and sewer system facilities. Grantor further reserves for Grantor and Grantor's heirs, successors, and assigns the right to convey to others the right to use all or part of the Easement Property without the joinder of Holder, as long as further conveyance is subject to terms of this agreement.

4. *Secondary Easement.* Holder has the right (the "Secondary Easement") to use, if available, twenty feet of the surface of the property that is adjacent to the Easement Property ("Adjacent Property") to install and maintain the facilities within the Easement Property that are reasonably suited for the Easement Purpose. However, this use may not interfere with the Grantor's use of such property. Furthermore, Holder must promptly restore the Adjacent Property to its previous physical condition if changed by Holder exercising the rights granted by this Secondary Easement.
5. *Improvement and Maintenance of Easement Property.*
 - A. Improvement and Maintenance of the Easement Property and the Facilities will be at the sole expense of the Holder. The top of the water and sewer utility system facilities shall in all respects be installed and maintained at all times with the minimum settled cover of at least forty-eight inches. Holder may not create any above-ground improvements on the Easement Property without the consent of the Grantor.
 - B. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's discretion, subject to this agreement.
 - C. Holder shall never penetrate the bank for any passageway for water, included but not limited to any lateral, any siphon or other pipe, irrigation or drainage ditch, pond or other place where water collects, or arroyo, without first securing Grantor's approval, and at each instance where the water and sewer utility system facilities passes beneath any such location, Holder shall place the top of the water and sewer utility system facilities at a depth approved by Grantor.
 - D. In all respects, Holder's rights are subject to Holder's performance of its obligations under this agreement.
 - E. Holder must maintain the Easement Property in a neat and clean condition. Holder shall perform all work in a good and workmanlike manner. Holder shall conduct all work timely, without any delay. Holder shall not permit any unsafe conditions to exist on the Easement Property. Holder shall clearly designate and secure all construction sites so that all persons in the vicinity are clearly warned of and protected from the risks.
 - F. Holder shall mark the line at each fence, ditch or lateral, road crossing, and property line.
 - G. During construction or maintenance of the Facilities, Holder may temporarily store equipment, materials, and supplies of the Easement Property, but shall remove the same upon completion of such construction or maintenance.
 - H. Holder shall be responsible for restoring to original or better condition any damages done to any authorized present or future improvements.
 - I. Holder may relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, repair, replace, or remove the Facilities, but shall again relocate the fences to their original condition and

location of the condition of the work. Holder may not eliminate any encroachments into the Easement Property without the consent of the Grantor. Any encroachments moved by the Holder from the Easement Property shall be replaced in their original condition unless otherwise mandated by the Grantor.

6. *Equitable Rights of Enforcement.* 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 or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraint 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.
7. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other cost.
8. *Binding Effect.* The terms, provisions, conditions and obligations of the easement shall bind, inure to the benefit of, and be exercised by the parties, their heirs, representatives, successors in interest, and permitted assigns. Holder, its heirs, successors in interest, and permitted assigns shall be jointly and severally liable for the performance of this agreement. The acceptance hereof shall be sufficient evidence of the agreement by Holder with all terms and provisions hereof.
9. *Choice of Law.* This agreement will be constructed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is the county or counties in which the Easement Property is located.
10. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one in the same instrument.
11. *Waiver of Default.* It is not a waiver or a consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.
12. *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.
13. *Indemnity.* Holder agrees to indemnify, defend and hold harmless Grantor and ay adjacent landowner from any loss, attorney's fees, expenses, or claims attributable to performance, breach, or default of any provision of this agreement by the Holder.
14. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties.
15. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the enforceable provision had never been part of this agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorable between the parties by reason of authorship or origin of language.

16. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient of the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be change by written notice delivered as provided herein.

17. *Time.* Time is of the essence. Unless otherwise specified, all references to “days” mean calendar days. Business days exclude Saturday, Sundays, and legal public holidays. If the date for performance of any obligation falls on Saturday, Sunday, or legal public holiday, the day for performance will be the next following regular business day.

Gilberto González, Superintendent of Schools
Eagle Pass I.S.D.

Jorge Barrera, General Manager
Eagle Pass Water Works System

STATE OF TEXAS
COUNTY OF MAVERICK

This instrument was acknowledged before me on _____, 2018, by Jorge Barrera, General Manager of the Eagle Pass Water Works System, on behalf of the Eagle Pass Water Works System.

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF MAVERICK

This instrument was acknowledged before me on _____, 2018, by _____.

Notary Public, State of Texas

