



## Filing Receipt

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**PUC DOCKET NO. 53299**

<b>CRYSTAL BLUFF GOAT RANCHES, LLC’S APPEAL OF THE COST OF OBTAINING SERVICE FROM POSSUM KINGDOM WATER SUPPLY CORPORATION</b>	<b>§ § § § §</b>	<b>BEFORE THE PUBLIC UTILITY  COMMISSION OF TEXAS</b>
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**CRYSTAL BLUFF GOAT RANCHES, LLC’S PROPOSED LIST OF ISSUES**

To: Commission Staff, by and through its attorneys of record, Merritt Lander and Bradley Reynolds, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas 78711.

COMES NOW, Crystal Bluff Goat Ranches, LLC, and serves the following Proposed List of Issues pursuant to the Commission Counsel’s *Order Requesting List of Issues* entered on July 28, 2022.

**I. BACKGROUND**

On February 22, 2022, Crystal Bluff Goat Ranches, LLC, (“CBGR”) filed an Appeal of the Cost of Obtaining Service from a Water Supply Corporation against Possum Kingdom Water Supply Corporation (“PKWSC”). On July 18, 2022, after considering all filings of both parties, the Commission recommended that a hearing be set before the State Office of Administrative Hearings due to “unresolved questions of fact regarding the cost estimate given to Crystal Bluff and an evidentiary record needs to be developed.”<sup>1</sup>

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<sup>1</sup> Commission Staff’s Request for Hearing and Referral to the State Office of Administrative Hearings.

## II. LIST OF ISSUES

1. Is PKWSC's refusal to honor its prior course of dealing with CBGR unreasonably preferential, prejudicial, or discriminatory as prohibited by Texas Water Code §13.043(j)
2. Has PKWSC engaged in inconsistent and unreasonably preferential application of the contribution in aid of construction (CIAC) fee as prohibited by Texas Water Code §13.043(j) shown by the contract entered into between PKWSC and Patterson Constatin Partners, LLC, entered into on September 23, 2021 – months after the April 2021 rate increase?<sup>2</sup>
3. Can PKWSC lawfully assess the CIAC fee if PKWSC's tariff and subsequent revisions on file with the Commission fail to include the current CIAC fee as required by Texas Water Code §13.136 and 16 Tex. Admin. Code § 24.163.<sup>3</sup>
4. Does the proposed expansion of the water treatment facility funded by the CIAC fee benefit existing customers who were not assessed the CIAC fee?

Dated: August 17, 2022.

{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.}  
{ATTORNEY SIGNATURE TO FOLLOW.}

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<sup>2</sup> Attached as Exhibit 1 is the contract referenced was produced on August 4, 2022, in response to a Request for Information propounded by CBGR. PKWSC's prior disclosure of contracts entered into after the April 2021 rate increase in response to a Request for Information propounded by the Commission Staff omitted this contract, which proves that the CIAC fee is not applied consistently as PKWSC had led the Commission to believe.

<sup>3</sup> This issue is stated upon information and belief of undersigned counsel who conducted a search of the Public Utility Commission of Texas website: <https://interchange.puc.texas.gov/> on August 16, 2022.

Respectfully submitted,

**DORSETT JOHNSON & SWIFT, LLP**

By: /s/ C. Justin Broome

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**ATTORNEYS FOR CRYSTAL BLUFF GOAT  
RANCHES, LLC**

**CERTIFICATE OF SERVICE**

I certify that on August 17, 2022, a true and correct copy of the foregoing instrument was served on all parties and the Commission via electronic mail.

/s/ C. Justin Broome

C. Justin Broome

# EXHIBIT 1

## NON-STANDARD SERVICE CONTRACT

THE STATE OF TEXAS  
COUNTY OF PALO PINTO

THIS CONTRACT is made and entered into by and between Patterson Constantin Partners, LLC hereinafter referred to as "Developer", and Possum Kingdom Water Supply Corporation, hereinafter referred to as "PKWSC" or "Corporation".

WHEREAS, Developer is engaged in developing that certain 3.374 acres in Palo Pinto, County, Texas, more particularly known as the Patterson Constantin Plat subdivision, according to the plat thereof recorded at Vol. 11, Page 143 of the Plat Records of Palo Pinto County, Texas, said land being hereinafter referred to as "the Property"; and,

WHEREAS, PKWSC owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area; and,

WHEREAS, the Property is located within PKWSC's state-certificated service area which obligates PKWSC to provide it with retail public water utility service subject to the terms and conditions of PKWSC's lawful tariff and the regulations of the Texas Commission on Environmental Quality ("TCEQ"); and, the Public Utility Commission (PUC).

WHEREAS, Developer has requested PKWSC to provide such water service to the Property through an extension of PKWSC's water system, such extension being hereinafter referred to as "the Water System Extension"; NOW THEREFORE:

KNOW ALL MEN BY THESE PRESENTS:

THAT for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, Developer and PKWSC agree and contract as follows:

### 1. Contribution-in-aid-of-Construction.

- (a) The parties recognize the Developer's obligation to compensate PKWSC for service capacities that will be dedicated to serve the Property. The Developer and PKWSC have negotiated a mutually agreeable CIAC payment for the Developer to reimburse PKWSC for that portion of its existing service capacities being reserved for the Property plus increased capacity to be created by an upgrade(s) to the Water Treatment Plant ("WTP") to increase production in .5 MGD increments, a portion of which will be dedicated to the Developer's service area. The agreed CIAC amount is \$3,765.00 per lot. This CIAC payment scale will only cover the first five (5) lots for which capacity the Developer will pay \$18,825.00 with the execution of this agreement. Three lots are deemed commercial and should they require more than an  $5/8 \times 3/4$  inch meter, additional funds will be required. The cost of future expansions to PKWSC's WTP and distribution system will be apportioned between the Developer and PKWSC in proportion to the amount of the new service capacities that will be dedicated to each, and at construction costs then current to be determined by PKWSC at the time of the new expansion.
- (b) Additional service requests for future phases shall be made not less than twelve (12) months before the time the Developer wants to commence accepting delivery of the additional water. PKWSC shall complete any necessary improvements and provide service within twelve (12) months after receiving a timely request and payment of the applicable CIAC. If the Developer does not make a request for additional water

- at least twelve (12) months in advance, PKWSC shall make reasonable efforts to provide additional service capacity when requested but PKWSC makes no guarantee or covenant that such additional water will be available on the date requested.
- (c) No additional fees shall be paid except as stated in Sections 1(a). As provided in PKWSC's lawful tariff, the owner of individual lots or tracts connected to or able to receive service from the Water System Extension within the Property with the installation of a properly sized meter will pay monthly service or reserve service fees effective on the closing date of the sale from the Developer to the buyer. These fees will be based on the rates in effect from the corporation's Tariff at the time of closing and will include the following fees: Membership, Equity Buy-In, Administration, Meter Installation and Inspection of Meter Connection.
  - (d) Water service to be used by the Developer will be subject to monthly service fees based on the rates in effect from the corporation's Tariff at the time that water service is available to the specified property. Developer shall not be entitled to a membership in PKWSC for any connection serving property owned or being developed for resale to the public. Developer may obtain and hold memberships for service connections to be held permanently by Developer, i.e., to sales offices, common area irrigation meters, and Property maintenance buildings.

**2. Service from the Water System.**

- (a) Service Capacity Reservation. PKWSC's agreement to provide long-term water service capacity to the Developer and the cost to be paid for such capacity is materially conditioned upon the Developer's projections of the service area's demands. It is agreed that if the Developer is not taking and paying for at least 60% of the water capacity contracted for herein at the end of the first four (4) years of this Agreement and 100% within seven (7) years, the parties shall renegotiate the terms of the Agreement or, at its option, the Developer shall surrender all unused reserved water service capacity so PKWSC may use it to serve other customers, wholesale or retail. PKWSC will notify the Developer at the end of the seventh (7th) year and the Developer must notify PKWSC within 60 days of intent to renegotiate or surrender the service capacity. Should the Developer not respond within the 60 days as required by the notice from PKWSC, the Developer shall surrender all unused reserved water service capacity to PKWSC.
- (b) The Developer shall not be reimbursed for any surrendered service capacity. Surrendering that capacity will only release the Developer from the continued payment of monthly reservation.
- (c) The existing WTP and distribution lines of PKWSC do not support fire flow. "Fire hydrants" installed within PKWSC's water distribution system are provided at the convenience of PKWSC and do not imply any responsibility on the part of PKWSC to meet fire flow requirements of local, county, state, or federal governmental agencies. Such fire hydrants are support facilities only meant to be used as flush and control valves in the public drinking water system. State public health and safety regulations require public drinking water systems to be flushed on a routine basis and metallic flush valves (commonly referred to a "fire hydrant") are a preferred manner of complying with these regulations. PKWSC makes no representation that it is offering fire protection or fire flows under any fire code or fire fighting standard. PKWSC has no obligation at law to provide water for fire related activities because this is not a public water PKWSC or potable domestic water service as defined by the Texas Water Code and/or the Texas Health and Safety Code.

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PKWSC, at its sole option, may permit local area fire departments to use water from its public drinking water system on an "AS IS, AS AVAILABLE" basis and will in no manner be liable for damages caused by its inability to supply sufficient water for the prevention or suppression of fire. Any fire department or other person using PKWSC's water system to take water for fire fighting purposes shall be liable to PKWSC for damage caused to PKWSC's plant and equipment during such use, especially for, but not limited to, damage to pumps caused by improperly opening and closing hydrants/valves under pressure or damage for driving heavy vehicles over water lines. PKWSC reserves the right to remove any fire hydrant (metallic flush valve), due to improper use or detriment to the system as determined by PKWSC, at any time without notice, refund, or compensation to the contributors. Any water taken from PKWSC's water system for any purpose, including fire fighting, without prior knowledge and consent of the Board of Directors and/or the General Manager shall be deemed to be theft and shall be prosecuted. Fire Departments may obtain advanced consent for emergency usage on an "AS IS, AS AVAILABLE" basis.


It is understood that the Developer anticipates providing fire flow service within the development. PKWSC does not accept liability for fire-related injuries or damages to persons or property caused or aggravated by the availability (or lack thereof) of water or water pressure (or lack thereof) during fire emergencies. PKWSC neither possesses nor claims to possess knowledge or expertise in fire fighting or the requirements of fire fighting. No statement or action of PKWSC shall ever be implied or meant to suggest that any facilities of PKWSC comply with any state or local fire code. On-site storage of water reserved for fire fighting shall preferably be accomplished through elevated storage; however, if permitted to achieve Developer's desired ISO rating, reserved water may be stored in ground storage tanks with an emergency back up generator(s) if such water can be injected into the public drinking supply without contamination or significant degradation of drinking water quality during mixing.

- (d) It is understood and agreed by the parties that the obligation of PKWSC to provide water service in the manner contemplated by this Contract is subject to the issuance by the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction of all permits, certificates or approvals required to lawfully provide such service.
- (e) Unless the prior approval of PKWSC is obtained, the Developer shall not:
  - (1) construct or install additional water lines or facilities to service areas outside the Property;
  - (2) add any additional lands to the Property for which water service is to be provided pursuant to this Agreement; or
  - (3) Connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.

### 3. **Effect of Force Majeure.**

In the event either party is rendered unable by force majeure to carry out any of its obligations under this Contract, in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however, that due diligence is exercised to resume performance

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at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party.

The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, and any other inability's of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement or strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty.

**4. Notices.**

Any notice to be given hereunder by either party to the other party shall be in writing and may be affected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed. Any notice mailed to PKWSC shall be addressed:

Pecussum Kingdom Water Supply Corporation  
1170 Willow Road  
Graford, TX 76449

Any notice mailed to Applicant shall be addressed:

Parkinson Constantin Partners I, LLC  
2310 W. I 70 #100  
Arlington, TX 76017

Either party may change the address for notice to it by giving written notice of such change in accordance with the provisions of this paragraph

**5. Breach of Contract and Remedies.**

- (a) If either party breaches any term or condition of this Contract, the non-breaching party may, at its sole option, provide the breaching party with a notice of the breach within sixty (60) days of discovery of the breach by the non-breaching party. Upon notice of breach, the breaching party shall have sixty (60) days to cure the breach. If the breaching party does not cure the breach within the sixty (60) days, the non-breaching party, below, shall have all rights at law and in equity including the right to enforce specific performance of this Contract by the breaching party, the right to

EXHIBIT A

perform the obligation in question and to seek restitution for all damages incurred in connection therewith. It should be noted that PKWSC's willingness to enter into this contract is expressly and materially dependent upon Developer's timely and full payments of all sums due hereunder. Developer's failure to perform under this agreement shall expressly be grounds for PKWSC to exercise its statutory right to refuse water utility service to the Property as provided by Texas Water Code §13.2502. Such an election by PKWSC shall not deprive it of any other rights or remedies it may have at law or in equity.

- (b) In the event of termination of this Contract by a non-breaching party, such action shall not affect any previous conveyance unless PKWSC has the statutory right to refuse service to such conveyed property under Texas Water Code §13.2502.
- (c) The rights and remedies of the parties provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law and under this Contract.

6. **Third Parties.**

It is the express intention of the parties that the terms and conditions of this Contract may be enforced by either party but not by any third party or alleged third-party beneficiary.

7. **Captions.**

Captions are included solely for convenience of reference and if there is any conflict between captions and the text of the Contract, the text shall control.

8. **Context.**

Whenever the context requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and the plural.

9. **Mediation.**

Prior to the institution of legal action by either party related to any dispute arising under this Contract, said dispute shall be referred to non-binding mediation by an independent mediator mutually agreed upon by both parties. The cost of the mediator shall be shared equally by both parties.

10. **Litigation Expenses.**

Either party to this Contract who is the prevailing party in any legal proceeding against the other party, brought in relation to this Contract, shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

11. **Intent.**

The parties hereto covenant and agree that they shall execute and deliver such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Contract.

12. **Multiple Originals.**

This Contract may be executed in multiple originals, any copy of which shall be considered to be an original.

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**13. Authority.**

The signatories hereto represent and affirm that they are authorized to execute this Contract on behalf of the respective parties hereto.

**14. Severability.**

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.

**15. Entire Agreement.**

This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

**16. Amendment.**

No amendment of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of PKWSC and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

**17. Governing Law.**

This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Palo Pinto County, Texas.

**18. Venue.**

Any civil action at law or in equity brought to enforce or interpret any provision of this Contract shall be brought in a state court of competent jurisdiction with venue in Palo Pinto County, Texas. Any administrative action shall be brought before the TCEQ and the courts of competent jurisdiction in Travis County, Texas.

**19. Successors and Assigns.**

This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.

**20. Assignability.**

The rights and obligations of the Developer hereunder may not be assigned without the prior written consent of PKWSC.

**21. Effective Date.**

This Agreement shall be effective from and after the date of due execution by all parties.

IN WITNESS WHEREOF each of the parties has caused this Agreement to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

Possum Kingdom Water Supply Corporation

By: William M. Jasper

Name: William M. Jasper

Title: President, Board of Directors

Date: 9/15/21

DEVELOPER

By: [Signature]

Name: Janet Cox

Title: VP

Date: 9/23/2021

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## ADDENDUM 1

### Patterson Constantin Partners, LLC

#### DETAIL OF FEES:

The following is a detail listing of fees to be paid by the buyer of the developer's property / lot. Upon the sale of the property the developer will notify PKWSC of name and address of buyer.

- Membership in PKWSC of \$300.00
- Equity Buy-In of \$1,731.00 as of June 1, 2021 (If purchased after September 1, 2021)
- Meter Installation \$800.00
- Administration \$40.00
- Inspection of meter connection \$40.00

All fees listed are subject to the PKWSC Tariff and are subject to change with 30 days' notice. The amount billed will be the fee that is in effect at the time of closing and the meter will be installed at that time and billing will be initiated.

#### DEVELOPER WILL PAY:

- \$18,825.00 Capital in aid of Construction (CIAC) which will reserve capacity for the five (5) meters to be installed.
- \$750.00 for Engineering Investigation. THIS HAS BEEN PAID IN FULL.

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## RIGHT OF WAY EASEMENT (General Type Easement)

KNOW ALL MEN BY THESE PRESENTS, that Patterson Constantin Partners I, LLC, (hereinafter called "Grantors"), in consideration of one dollar (\$1.00) and other good and valuable consideration paid by Possum Kingdom Water Supply Corporation, (hereinafter called "Grantee"), the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell, transfer, and convey to said Grantee, its successors, and assigns, a perpetual exclusive easement with the right to erect, construct, install, and lay and thereafter access and use, operate, inspect, repair, maintain, replace, upgrade, parallel and remove water distribution lines and appurtenances and any other facilities necessary to serve Grantors' property [including that property's water meter(s) if the easement is located at or near the property line] as well as the Grantee's current and future system-wide customers, under, over and across 3.374 acres of land, more particularly described as (911 Address) Patterson Constantin Place, (Lot), (Block/Area) \_\_\_\_\_, (Sub-Division/Tract) J.D. Alston Survey, or (Abstract) 2 in instrument recorded in Vol. 11, Page 143, Deed Records, Palo Pinto / Stephens County, Texas, together with the right of ingress and egress over Grantor's adjacent lands for the purpose for which the above mentioned rights are granted. The easement hereby granted shall not exceed twenty feet (20') in width, and Grantee is hereby authorized to designate the course of the easement herein conveyed except that when the pipeline(s) is installed, the easement herein granted shall be limited to a strip of land 20' in width the center line thereof being the pipeline as installed.

Grantee shall have such other rights and benefits necessary and/or convenient for the full enjoyment and use of the rights herein granted, including without limitation, (1) the reasonable right of ingress and egress over and across lands owned by Grantor which are contiguous to the easement for the purpose of accessing the easement in the most efficient and effective manner but not to use Grantor's contiguous property for other purposes; (2) the reasonable right from time to time to remove any and all paving, undergrowth and other obstructions that may injure Grantee's facilities and appurtenances or interfere with the construction, maintenance, inspection, operation, protection, repair, alteration, testing, replacement, upgrading, paralleling, relocation (as above limited), substitution or removal thereof; and (3) the right to abandon-in-place any and all water supply lines, service lines and associated appurtenances, such that Grantee shall have no obligation or liability to Grantor or their successors or assigns to move or remove any such abandoned lines or appurtenances.

In the event the easement hereby granted abuts on a public road and the county or state hereafter widens or relocates the public road so as to require the relocation of this water line as installed, Grantor further grants to Grantee an additional easement over and across the land described above for the purpose of laterally relocating said water line as may be necessary to clear the road improvements, which easement hereby granted shall be limited to a strip of land 20' in width the center line thereof being the pipeline as relocated.

Grantor shall have the right to construct and maintain a driveway across the easement so long as it crosses the easement at an approximate ninety-degree (90°) angle and does not cover the easement for a protracted or unreasonable distance. Grantor takes this action with the full knowledge and understanding that Grantee may, at some unknown date, without or without advance notice, have to excavate its water line for maintenance or repair. Thereafter, Grantee shall be charged only with a reasonable duty to restore the drive to a working condition without guarantee or warranty of aesthetic or pre-existing condition.

Grantor shall have the right to erect a fence(s) across the easement for the purpose of containing livestock and domesticated animals. However, if Grantor erects a fence(s), Grantor shall install a gate at each end of the easement (if the total easement exceeds 300 feet or if it crosses a watercourse). These gates may be locked but the locking combinations must be given to the Grantee and not changed without its prior knowledge. The Grantor's water meter shall be located in proximity to a gate for ease of reading if maintained behind the fence. One gate may be replaced by a stile capable of bearing a 300-pound person to be located at the site of the water meter. This requirement for gates and fence stiles may be waived in writing by Grantee on a landowner-by-landowner basis as the property passes in chain of title in recognition of Grantee's above-recited right of access across Grantor's contiguous lands if the waiver does not place an undue burden on meter readers.

The consideration recited herein shall constitute payment in full for all damages sustained by Grantors by reason of the installation of the structures referred to herein and the Grantee will maintain such easement in a state of good repair and efficiency so that no unreasonable damages will result from its use to Grantors' premises. This agreement together with other provisions of this grant shall constitute a covenant running with the land for the benefit of the Grantee, its successors, and assigns. The Grantors covenant that they are the owners of the above described land and that said lands are free and clear of all encumbrances and liens except the following:

Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND, all and singular, the easement herein granted to Grantee, or Grantee's successors and assigns, against every person whomsoever claiming, or to claim, the same or any part thereof.

The easement conveyed herein was obtained or improved through Federal financial assistance. This easement is subject to the provisions of the Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the easement continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the Grantee owns it, whichever is longer.

IN WITNESS WHEREOF the said Grantors have executed this instrument this 23<sup>rd</sup> day of Sep, 2021.

Signature

Printed Name

#### ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF Tarrant

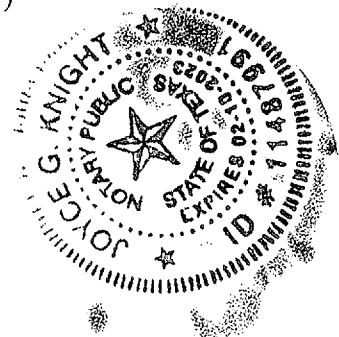
BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Jared Cox VP of PPT, LLC known to me to be the person(s) whose name(s) is(are) subscribed to the foregoing instrument, and acknowledged to me that he (she) (they) executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS THE 23 day of September 2021.

(Seal)

(Notary Public in and for)

County, Texas.



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