

## REAL ESTATE CONTRACT

THIS CONTRACT OF SALE is made by and between R. COKE MILLS, TRUSTEE ("SELLER"), and the CITY OF COLLEGE STATION, TEXAS, a Texas Home Rule Municipal Corporation, 1101 Texas Avenue, College Station, Brazos County, Texas ("BUYER"), upon the terms and conditions set forth herein.

### ARTICLE I PURCHASE AND SALE

1.1 SELLER agrees to sell and convey and BUYER agrees to purchase and pay for the following interests in the PROPERTY described in this Article I:

#### TRACT ONE:

An exclusive permanent public utility easement encompassing all that certain tract or parcel of land containing 0.97 acres of land, more or less, lying and being situated in the Zeno Phillips League, Abstract No. 45, in Bryan, Brazos County, Texas, being a part of that 17.359 acre tract conveyed to R. Coke Mills, Trustee, by deed recorded in Volume 1215, Page 232, of the Official Records of Brazos County, Texas, lying along the southwest line of that ten foot (10') wide telephone easement described in Volume 1628, Page 176, of the Official Records of Brazos County, Texas, parallel to and ten feet (10') from the southwest right-of-way line of Harvey Mitchell Parkway (F.M. 2818), along the northwest and southwest line of that ten foot (10') wide public utility easement described in Volume 3418, Page 335, of the Official Records of Brazos County, Texas, said 0.97 acre tract being more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof for all intents and purposes.

#### TRACT TWO:

A temporary construction easement encompassing all that certain tract or parcel of land containing 1.26 acres of land, acres of land, more or less, lying and being situated in the Zeno Phillips League, Abstract No. 45, in Bryan, Brazos County, Texas, being a part of that 17.359 acre tract conveyed to R. Coke Mills, Trustee, by deed recorded in Volume 1215, Page 232, of the Official Records of Brazos County, Texas, parallel to and forty (40') from the southwest right-of-way line of Harvey Mitchell Parkway (F.M. 2818), aparallel to and forty feet (40') from the northwest and southwest lines of the Cabo Subdivision described by plat recorded in Volume 3720, Page 329, of the Official

Records of Brazos County, Texas, said 1.26 acre tract being more particularly described by metes and bounds on Exhibit "B" attached hereto and made a part hereof for all intents and purposes.

the above described tracts hereinafter called "PROPERTY", together with all and singular the rights and appurtenances pertaining to the PROPERTY, including all right, title and interest of SELLER in and to adjacent roads, streets, alleys or rights-of-way and right of ingress and egress (all of such real property, rights, and appurtenances, being herein referred to as the "PROPERTY"), together with SELLER's interest in any improvements and fixtures situated on and attached to the PROPERTY, for the consideration and subject to the terms, provisions, and conditions set forth herein. The Temporary Construction Easement will be released within thirty (30) days of final completion of the construction.

1.2 This Contract by BUYER to purchase the foregoing interests in the above property (collectively referred to herein as the "PROPERTY") is subject to approval by the City Council of the City of College Station, Texas; such approval indicated by signature of BUYER's representatives to this REAL ESTATE CONTRACT.

1.3 BUYER has requested BRAZOS COUNTY ABSTRACT COMPANY furnish a Commitment for Title Insurance (the "Title Commitment") to insure title to the BUYER for BUYER's review together with legible copies of all instruments referred to in the Title Commitment. The BUYER shall request the title company to furnish these items to BUYER within fifteen (15) calendar days of the date of this Contract. BUYER shall have until the date of closing (the "Title Review Period") notify SELLER of BUYER's objection to any item shown on or referenced by those documents (the "Reviewable Matters"). Any Reviewable Matter to which BUYER does not object within the Title Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at its election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case the earnest money shall be refunded to BUYER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.

1.4 (a) The City of College Station, Texas, at its expense, has obtained a survey of the PROPERTY attached hereto as Exhibits A and B, showing, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of-way and other encumbrances of record. The survey will reflect any encroachments onto or by the PROPERTY onto adjoining properties. BUYER shall have



a period of five (5) business days (the "Survey Review Period") after execution of this contract by BUYER within which to notify SELLER of BUYER's objection to any item shown on or referenced on the Survey. Any Reviewable Matter to which BUYER does not object within the Survey Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at its election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case any earnest money shall be refunded to BUYER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.

(b) The survey drawing shall be addressed to and certified in favor of the BUYER and the Title Company. The field notes description, as prepared by the surveyor, are attached to this Real Estate Contract and shall be used in the Public Utility and Temporary Construction Easements.

1.5 The parties agree that general real estate taxes on the PROPERTY for the then current year, interest on any existing indebtedness, and rents, if any, shall be prorated as of the closing date and shall be adjusted in cash at the closing. SELLER alone shall be liable for any taxes assessed and levied for prior years resulting from any change in use subsequent to the conveyance to BUYER. If the closing shall occur before the tax rate is fixed for the current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation. All installments that have matured prior to the closing date on any special taxes or assessments shall be paid by SELLER; and any installments that are provided in the special assessment to mature after closing shall be assumed by BUYER.

1.6 The sale and conveyance of TRACT ONE and the temporary use of TRACT TWO shall be made by Public Utility and Temporary Construction Easement from SELLER to BUYER in the form prepared by BUYER attached hereto as Exhibit "C".

## ARTICLE II PURCHASE PRICE

2.1 The total purchase price for said PROPERTY shall be the total sum of EIGHTY-THREE THOUSAND SEVEN HUNDRED SIXTY-EIGHT AND NO/100 DOLLARS (\$83,768.00). The purchase price shall be payable in full at closing.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 SELLER hereby represents and warrants to BUYER as follows:

(a) SELLER has the full right, power, and authority to enter into and perform its obligations under this Contract.

(b) SELLER has no actual knowledge of any parties in possession of any portion of the PROPERTY, either as lessees, tenants at sufferance, trespassers, or other persons in possession. Additionally, SELLER has no actual knowledge of any action by adjacent landowners, or any natural or artificial conditions upon the PROPERTY, or any significant adverse fact or condition relating to the PROPERTY, which has not been disclosed in writing to BUYER by SELLER, which would prevent, limit, impede or render more costly BUYER's contemplated use of the PROPERTY.

(c) SELLER has no actual knowledge of any pending or threatened condemnation or similar proceedings or assessment affecting the PROPERTY or any part thereof. SELLER has no actual knowledge of any such proceedings or assessments contemplated by any governmental entity.

(d) SELLER has no actual knowledge that the PROPERTY does not have full and free access to and from public highways, streets, or roads. SELLER has no actual knowledge that there are pending or threatened governmental proceedings that would impair or result in the termination of such access. If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Contract and receiving back its earnest money, in which case neither party shall have any further obligation to the other.

(e) The PROPERTY has not been illegally subdivided or otherwise held, managed, or maintained in violation of any federal, state, or local law.

(f) SELLER has no actual knowledge that SELLER has not complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the PROPERTY or any part thereof.

(g) If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the



Contract and receiving back its earnest money, in which case neither party shall have any further obligation to the other.

(h) SELLER has no knowledge that the PROPERTY contains any environmental hazard not shown on the environmental assessment provided by SELLER to BUYER.

(i) SELLER is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., SELLER is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(j) To the best of SELLER's knowledge there are no unpaid charges, debts, liabilities, claims or obligations arising from any construction, occupancy, ownership, use or operation of the PROPERTY, or the business operated thereon, if any, which could give rise to any mechanic's or materialmen's or other statutory lien against the PROPERTY, or any part thereof, or for which BUYER will be responsible.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

4.1 BUYER represents and warrants to SELLER as of the effective date and as of the closing date that:

(a) BUYER has the full right, power, and authority to purchase the PROPERTY from SELLER as provided in this Contract and to carry out BUYER's obligations under this Real Estate Contract, and all requisite action necessary to authorize BUYER to enter into this Real Estate Contract and to carry out BUYER's obligations hereunder has been obtained or on or before closing will have been taken.

#### ARTICLE V CLOSING

5.1 The closing shall be held at BRAZOS COUNTY ABSTRACT COMPANY, within forty-five (45) calendar days from the execution and tender of this Real Estate Contract by BUYER, at such time and date as SELLER and BUYER may agree upon (the "closing date").

5.2 At the closing, SELLER shall:

(a) Deliver to BUYER the duly executed and acknowledged Public Utility and Temporary Construction Easement prepared by BUYER conveying good and marketable title in the PROPERTY, free and clear of any and all liens, encumbrances, except for the Reviewable Matters and subject to the BUYER's election to terminate this Real Estate Contract in the event BUYER disapproves of any Reviewable Matter, which objection is to be cured by SELLER on or prior to the closing as provided by Article I of this Real Estate Contract.

(b) Deliver possession of the PROPERTY to BUYER.

(c) Deliver to BUYER, at BUYER's expense, a Title Policy insuring indefeasible title issued by BRAZOS COUNTY ABSTRACT COMPANY, in BUYER's favor in the full amount of the purchase price, insuring BUYER's easement interest in the PROPERTY subject only to such exceptions as shown on the Title Commitment and not objected to by BUYER prior to closing.

(d) Pay any and all required property taxes and prorated taxes for the year 2005.

(e) Pay the SELLER's expenses and attorney fees.

5.3 Upon such performance by SELLER at closing, BUYER shall:

(a) Pay the balance of the purchase price.

(b) Pay the escrow fees.

(c) Prepare, at its cost, the Public Utility and Temporary Construction Easement document.

(d) Pay the title insurance.

(e) Pay the costs to obtain, deliver and record all documents other than those to be recorded at SELLER's expense.

(f) Pay the BUYER's expenses or attorney fees.

(g) Pay the additional premium for the survey/boundary deletion in the title policy, if the deletion is requested by BUYER.

(h) Pay the costs of work required by BUYER to have the survey reflect matters other than those required under this Real Estate Contract.

ARTICLE VI  
SPECIAL CONDITIONS

NONE

ARTICLE VII  
BREACH BY SELLER

7.1 In the event SELLER fails to fully and timely perform any of its obligations under this Real Estate Contract or fails to consummate the sale of the PROPERTY for any reason except BUYER's default, BUYER may:

- (a) Enforce specific performance of this agreement;
- (b) Bring suit for damages against SELLER; and/or
- (c) Terminate this Real Estate Contract and initiate condemnation proceedings. In such instance, the parties hereto agree to stipulate that the fair market value of the property is the contract price herein. Further, SELLER agrees to waive her right to contest the value at any administrative hearing and to waive her right to appeal any Commissioners' Award.

ARTICLE VIII  
BREACH BY BUYER

8.1 In the event BUYER fails to consummate the purchase of the PROPERTY (BUYER being in default and SELLER not being in default hereunder), SELLER shall have the right to bring suit against BUYER only for expectancy and incidental damages, if any.

ARTICLE IX  
MISCELLANEOUS

9.1 Survival of Covenants: Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the closing date, shall survive the closing and shall not be merged by deed or otherwise be extinguished.

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Contract No. 05-\_\_\_\_\_

*Bg/legal...group(o)/ projects/parallel phase III/25-r coke mills/real estate contract.doc*  
02/08/2005

9.2 Notice: Any notice required or permitted to be delivered by this Real Estate Contract shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to SELLER or BUYER, as the case may be, at the addresses set forth below:

SELLER: R. COKE MILLS, TRUSTEE  
Attorney at Law  
801 Washington Avenue  
Waco, Texas 76701  
Telephone: (254) 753-1991

BUYER: City of College Station  
Legal Department  
1101 Texas Avenue  
College Station, Texas 77840

9.3 Texas Law to Apply: This Real Estate Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Real Estate Contract are to be performed in Brazos County, Texas.

9.4 Parties Bound: This Real Estate Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. The persons executing this Real Estate Contract do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Real Estate Contract in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative.

9.5 Invalid Provision: In case any one or more of the provisions contained in this Real Estate Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Real Estate Contract, and this Real Estate Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Real Estate Contract. In lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Real Estate Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

9.6 Construction: The parties acknowledge that each party and its counsel have reviewed and revised this Real Estate Contract and that the normal rule of construction to the effect that any

ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Real Estate Contract or any amendments or exhibits hereto.

9.7 Prior Agreements Superseded: This Real Estate Contract embodies the entire agreement of the parties and supersedes any and all prior understandings or written or oral agreements between the parties respecting subject matter within and may only be amended or supplemented by an instrument in writing executed by the party against whom enforcement is sought.

9.8 Time of Essence: Time is of the essence to this Real Estate Contract.

9.9 Gender: Words of any gender used in this Real Estate Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

9.10 Multiple Counterparts: This Real Estate Contract may be executed in a number of identical counterparts. If so executed, each of the counterparts shall, collectively, constitute but one agreement. In making proof of this Real Estate Contract it shall not be necessary to produce or account for more than one counterpart.

9.11 Memorandum of Real Estate Contract: Upon request of either party, both parties shall promptly execute a memorandum of this agreement suitable for filing of record.

EXECUTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2005

SELLER:

BUYER:

CITY OF COLLEGE STATION

R. Coke Mills  
R. COKE MILLS, TRUSTEE  
Date: March 10, 05

By: \_\_\_\_\_  
RON SILVIA, Mayor  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CONNIE HOOKS, City Secretary  
Date: \_\_\_\_\_

*cm*

APPROVED:

\_\_\_\_\_  
THOMAS E. BRYMER, City Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
JEFF KERSTEN

Finance and Strategic Planning Director

Date: \_\_\_\_\_

*Rochanne Demark*

\_\_\_\_\_  
CITY ATTORNEY

Date: 5-4-05

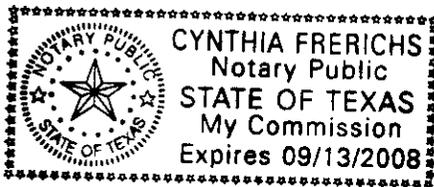
THE STATE OF TEXAS

§  
§  
§

COUNTY OF McLennan

ACKNOWLEDGMENT

This instrument was acknowledged before me on the 10<sup>th</sup> day of March, 2005,  
by R. COKE MILLS, TRUSTEE.



*Cynthia Frerichs*  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of TEXAS

*ma*

THE STATE OF TEXAS    §  
                                  §       ACKNOWLEDGMENT  
COUNTY OF BRAZOS    §

This instrument was acknowledge before me on the \_\_\_\_ day of \_\_\_\_\_, 2005,  
by RON SILVIA, as Mayor of the CITY OF COLLEGE STATION, a Texas Home Rule  
Municipal Corporation, on behalf of said municipality.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of TEXAS

**Joe Orr, Inc.**  
*Surveyors & Engineers*  
2167 Post Oak Circle  
College Station, TX 77845  
(979) 690-3378

Proposed Easement  
R. Coke Mills Trustee Tract  
Zeno Phillips League  
Bryan, Brazos County, Texas  
7 October 2003

All that certain tract or parcel of land lying and being situated in the Zeno Phillips League, Abstract No. 45, in Bryan, Brazos County, Texas, being a part of that 17.359 acre tract conveyed to R. Coke Mills, Trustee by deed recorded in Volume 1215, Page 232 of the Official Public Records of Brazos County, Texas, lying along the southwest line of that ten foot (10') wide telephone easement described in Volume 1628, Page 176 of the Official Public Records of Brazos County, Texas, parallel to and ten feet (10') from the southwest right-of-way line of Harvey Mitchell Parkway (F.M. 2818), along the northwest and southwest line of that ten foot (10') wide public utility easement described in Volume 3418, Page 335 of the Official Public Records of Brazos County, Texas, and being more particularly described as follows:

Beginning at a ½" iron rod with a blue plastic cap stamped "College Station Easement" set in the line between the said R. Coke Mills, Trustee 17.359 acre tract and the 13.10 acre tract conveyed to Johnny Lyon by deed recorded in Volume 3134, Page 271 of the Official Public Records of Brazos County, Texas, S 53° 17' 10" W – 10.20 feet from a ½" iron rod with an orange plastic cap stamped "H.P. Mayo RPLS 5045" set at the common corner of said tracts, from which a 1" pipe was found S 53° W – 0.95 feet at a fence corner post.

Thence S 25° 18' 29" E – 693.33 feet through the said R. Coke Mills, Trustee tract, parallel to and ten feet (10') from the southwest right-of-way line of F.M. 2818, to a ½" iron rod with a blue plastic cap stamped "College Station Easement" set at an angle point;

Thence S 70° 34' 22" W – 231.74 feet continuing through the said R. Coke Mills, Trustee tract, parallel to and ten feet (10') from the northwest line of the Cabo Subdivision as described by plat recorded in Volume 3720, Page 329 of the Official Public Records of Brazos County, Texas, to a ½" iron rod with a blue plastic cap stamped "College Station Easement" set at an angle point;

Thence S 19° 31' 50" E – 482.14 feet continuing through the said R. Coke Mills, Trustee tract, parallel to and ten feet (10') from the southwest line of the said Cabo Subdivision, to a ½" iron rod with a blue plastic cap stamped "College Station Easement" set in the

northwest line of Villa Maria Road (F.M. 1179), from which a 5/8" iron rod with a yellow plastic cap stamped "KERR RPLS 4502" was found N 76° 16' 22" E – 10.05 feet at the south corner of the said Cabo Subdivision;

Thence S 76° 16' 22" W – 30.15 feet along the northwest line of Villa Maria Road to the most southerly corner of this tract;

Thence N 19° 31' 50" W – 509.15 feet through the said R. Coke Mills, Trustee tract, parallel to and forty feet (40') from the southwest line of the said Cabo Subdivision, to an angle point;

Thence N 70° 34' 22" E – 208.54 feet continuing through the said R. Coke Mills, Trustee tract, parallel to and forty feet (40') from the northwest line the said Cabo Subdivision, to an angle point;

Thence N 22° 37' 57" E – 26.80 feet continuing through the said R. Coke Mills, Trustee tract to an angle point;

Thence N 25° 18' 29" W – 634.02 feet through the said R. Coke Mills, Trustee tract, parallel to and forty feet (40') from the southwest right-of-way line of F.M. 2818, to the line between the said R. Coke Mills, Trustee tract and the said Johnny Lyon 13.10 acre tract;

Thence N 53° 17' 10" E – 30.60 feet along the line between Johnny Lyon 13.10 acre tract and the said R. Coke Mills, Trustee tract to the Point of Beginning and containing 0.97 acres of land more or less.

Bearings are TX State Plane, central zone, NAD-83 datum, based on City of CS GPS monument no. 107 and GPS observations.



*CM*

**Joe Orr, Inc.**  
*Surveyors & Engineers*  
2167 Post Oak Circle  
College Station, TX 77845  
(979) 690-3378

Proposed Temporary Easement  
R. Coke Mills Trustee Tract  
Zeno Phillips League  
Bryan, Brazos County, Texas  
6 April 2004

All that certain tract or parcel of land lying and being situated in the Zeno Phillips League, Abstract No. 45, in Bryan, Brazos County, Texas, being a part of that 17.359 acre tract conveyed to R. Coke Mills, Trustee by deed recorded in Volume 1215, Page 232 of the Official Public Records of Brazos County, Texas, parallel to and forty feet (40') from the southwest right-of-way line of Harvey Mitchell Parkway (F.M. 2818), parallel to and forty feet (40') from the northwest and southwest lines of the Cabo Subdivision described by plat recorded in Volume 3720, Page 329 of the Official Public Records of Brazos County, Texas, and being more particularly described as follows:

Beginning in the line between the said R. Coke Mills, Trustee 17.359 acre tract and the 13.10 acre tract conveyed to Johnny Lyon by deed recorded in Volume 3134, Page 271 of the Official Public Records of Brazos County, Texas, S 53° 17' 10" W – 40.80 feet from a ½" iron rod with an orange plastic cap stamped "H.P. Mayo RPLS 5045" set at the common corner of said tracts.

Thence S 53° 17' 10" W – 40.81 feet along the line between the said R. Coke Mills, Trustee tract and the said Johnny Lyon 13.10 acre tract to the most westerly corner of this tract;

Thence S 25° 18' 29" E – 601.62 feet through the said R. Coke Mills, Trustee tract, parallel to and eighty feet (80') from the southwest right-of-way line of F.M. 2818 to an angle point;

Thence S 70° 34' 22" W – 224.28 feet continuing through the said R. Coke Mills, Trustee tract parallel to and eighty feet (80') from the northwest line of the said Cabo Subdivision, to an angle point;

Thence S 19° 31' 50" E – 545.15 feet continuing through the said R. Coke Mills, Trustee tract, parallel to and eighty feet (80') from the southwest line of the said Cabo Subdivision, to the northwest line of Villa Maria Road;

Thence N 76° 16' 22" E – 40.21 feet along the northwest line of Villa Maria Road to the most easterly corner of this tract;

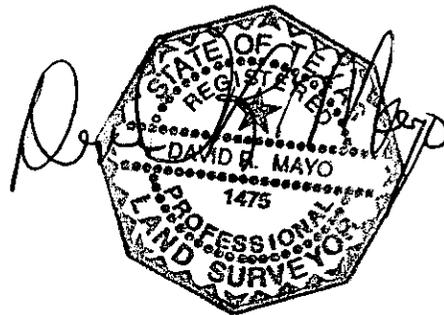
Thence N 19° 31' 50" W – 509.15 feet through the said R. Coke Mills, Trustee tract, parallel to and forty feet (40') from the southwest line of the said Cabo Subdivision, to an angle point;

Thence N 70° 34' 22" E – 208.54 feet through the said R. Coke Mills, Trustee tract, parallel to and forty feet (40') from the northwest line of the said Cabo Subdivision, to an angle point;

Thence N 22° 37' 57" E – 26.80 feet continuing through the said R. Coke Mills, Trustee tract to an angle point;

Thence N 25° 18' 29" W – 634.02 feet through the said R. Coke Mills, Trustee tract, parallel to and forty feet (40') from the southwest right-of-way line of F.M. 2818, to the Point of Beginning and containing 1.26 acres of land more or less.

Bearings are TX State Plane, central zone, NAD-83 datum, based on City of CS GPS monument no. 107 and GPS observations.



*DRM*



**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.**

**PUBLIC UTILITY AND  
TEMPORARY CONSTRUCTION EASEMENT**

**DATE:** April 28, \_\_\_\_\_, 2004

**GRANTORS:** R. COKE MILLS, TRUSTEE

**GRANTOR'S MAILING ADDRESS:** 801 Washington Avenue  
(including County) McLennan County  
Waco, Texas 76701

**GRANTEE:** CITY OF COLLEGE STATION, TEXAS

**GRANTEE'S MAILING ADDRESS:** 1101 Texas Avenue  
(including County) Brazos County  
College Station, Texas 77840

**CONSIDERATION:** Ten Dollars (\$10.00) and other good and valuable consideration.

**PROPERTY:**

**Tract One (Exclusive Permanent Public Utility Easement):**

All that certain tract or parcel of land containing 0.97 acres of land, more or less, lying and being situated in the Zeno Phillips League, Abstract No. 45, in Bryan, Brazos County, Texas, being a part of that 17.359 acre tract conveyed to R. Coke Mills, Trustee, by deed recorded in Volume 1215, Page 232, of the Official Records of Brazos County, Texas, lying along the southwest line of that ten foot

(10') wide telephone easement described in Volume 1628, Page 176, of the Official Records of Brazos County, Texas, parallel to and ten feet (10') from the southwest right-of-way line of Harvey Mitchell Parkway (F.M. 2818), along the northwest and southwest line of that ten foot (10') wide public utility easement described in Volume 3418, Page 335, of the Official Records of Brazos County, Texas, said 0.97 acre tract being more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof for all intents and purposes.

**Tract Two (Temporary Construction Easement):**

All that certain tract or parcel of land containing 1.26 acres of land, more or less, lying and being situated in the Zeno Phillips League, Abstract No. 45, in Bryan, Brazos County, Texas, being a part of that 17.359 acre tract conveyed to R. Coke Mills, Trustee, by deed recorded in Volume 1215, Page 232, of the Official Records of Brazos County, Texas, parallel to and forty (40') from the southwest right-of-way line of Harvey Mitchell Parkway (F.M. 2818), parallel to and forty feet (40') from the northwest and southwest lines of the Cabo Subdivision described by plat recorded in Volume 3720, Page 329, of the Official Records of Brazos County, Texas, said 1.26 acre tract being more particularly described by metes and bounds on Exhibit "B" attached hereto and made a part hereof for all intents and purposes.

This conveyance shall grant the rights herein specified only as to that portion of the above-described **Tract One** more particularly described on the attached Exhibit "A" known as the "Public Utility Easement Area", and any additional area outside the Public Utility Easement Area necessary to erect, construct, install, and thereafter use, operate, inspect, repair, maintain, reconstruct, modify and remove the following:

Water lines, connecting lines, access facilities,  
and related equipment;  
Television, telephone, and communications lines;

under, upon, over, and across the said **Tract One** as described and any ways, streets, roads, or alleys abutting same; and to cut, trim, and control the growth of trees and other vegetation on and in the Public Utility Easement Area or on adjoining property of GRANTORS, which might interfere with or threaten the operation and maintenance of any public utility equipment, accessories, or operations. It being understood and agreed that any and all equipment and facilities placed upon said **Tract One** shall remain the property of GRANTEE.

GRANTORS grant to GRANTEE a temporary construction easement only as to the above-described **Tract Two** more particularly described by metes and bounds on the attached Exhibit "B", known as the "Temporary Construction Easement Area", which area is necessary for the construction of various improvements and utilities in connection with the City of College Station Parallel Transmission Phase III Project. It being understood and agreed that any and all equipment and facilities placed upon said **Tract Two** shall remain the property of GRANTEE.

It is further understood and agreed that the temporary construction easement shall exist from the date construction begins on this project until completion of the project.

GRANTEE expressly agrees to return the Temporary Construction Easement Area to its original condition, or as close thereto as is reasonably possible.

It is expressly understood that the GRANTORS or future Owners of this property reserve the right to use this Temporary Construction Easement Area for all purposes which do not interfere with or prevent its use by the GRANTEE.

GRANTORS expressly subordinate all rights of surface use incident to the mineral estate to the above described uses of said surface by GRANTEE, and agrees to lenders' subordinations on behalf of GRANTEE, if any. GRANTORS will provide GRANTEE with the names and addresses of all lenders, if any.

#### **RESERVATIONS AND RESTRICTIONS:**

1. From the granting of this easement, GRANTORS reserve unto themselves, the right to locate, construct, maintain, operate, and use one or more driveways over, across, and upon the easement way hereby granted so as to provide access, ingress and egress, to and from the public streets and roadways which adjoin GRANTORS' property, upon which this easement is located. Such driveways over and across said public utility easement way may be paved and have curbs and gutters installed thereon, provided GRANTORS shall not change the grade over said easement without the prior written consent of GRANTEE'S Director of Water and Wastewater Department and that such improvements do not in any way impair or interfere with GRANTEE'S use of said easement and the construction and operation of the public utilities installed thereon.
2. *INSERT APPLICABLE EXCEPTIONS TO TITLE HERE.*

TO HAVE AND TO HOLD, the rights and interests herein described unto the CITY OF COLLEGE STATION, TEXAS, and its successors and assigns, forever, and Grantor does hereby bind himself, his heirs, executors, and administrators, to warrant and forever defend, all and

