

**RIGHT-OF-WAY EASEMENT  
CITY OF COLLEGE STATION  
(LUTHER STREET)**

1. Grant of Easement. The **BOARD OF REGENTS (the "Board") OF THE TEXAS A&M UNIVERSITY SYSTEM** (hereafter, "**TAMUS**"), on behalf of the State of Texas, acting by and through its duly authorized officer, under authority of the Board granted May 26, 2005, and by virtue of authority granted to the Board by TEX. EDUC. CODE § 85.26 (Vernon 2002), in consideration of the mutual benefits to be derived by both parties, **GRANTS, SELLS AND CONVEYS** to the **CITY OF COLLEGE STATION, TEXAS**, a governmental entity, as grantee (hereafter, "**COLLEGE STATION**"), its successors and permitted assigns, a non-exclusive conditional right-of-way easement (the "Easement") for roadway purposes across certain property of **TAMUS** (hereafter "the Property") located in Brazos County, Texas, more particularly described as follows:

See Exhibits "A" and "B" attached hereto and incorporated for all purposes.

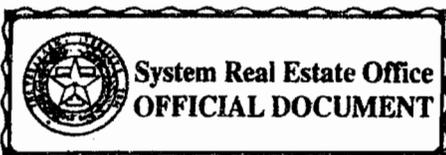
2. Purpose and Location of Easement. The Easement is granted for the purpose of constructing, operating and maintaining a public roadway (Luther Street) located on the Property. A plat of the Property showing the surface area affected by the Easement and the location of **COLLEGE STATION's** right-of-way is depicted on Exhibit "B" attached hereto and incorporated for all purposes.

3. Right of Access. **COLLEGE STATION** has the right of ingress and egress across the Property for the purpose of constructing, maintaining, repairing, replacing and rebuilding a public roadway. The term "public roadway" as used in this agreement shall mean the paving, curb, gutter and surface drainage facilities for a public street, but shall not include the right to install utilities or to use the subsurface for any purpose.

4. Duties. **COLLEGE STATION** is responsible for any damage to the Property and to any other real or personal property of **TAMUS** adjacent to the Property. **COLLEGE STATION** must, within a reasonable period of time, repair or replace **TAMUS'** property to the extent it will, as nearly as practicable, be in like condition as before such damage or destruction. At the option of **TAMUS**, in lieu of repairing or replacing, money damages will be paid.

5. No Fee Interest Granted. This is a grant of a non-exclusive right-of-way easement for roadway purposes only, and does not grant any fee interest to the surface or any interest in the minerals, on or under the Property. This conveyance is made subject to any and all outstanding easements and surface leases covering the Property.

6. Duration of Easement. In accordance with the TEX. EDUC. CODE § 85.26 (Vernon 2002), this grant is for so long as the Property is used as a public roadway. If the Property ever ceases to be used as a public roadway, the Easement will automatically terminate. If required by **TAMUS**, **COLLEGE STATION** shall remove all improvements within two (2) years following the date of termination or abandonment of the Easement. Notwithstanding the foregoing,



TAMUS may demand removal of the improvements in writing at any time following termination or abandonment of the Easement, and if the improvements are not removed within sixty (60) days following such demand, TAMUS shall have the right to remove the improvements at the expense of COLLEGE STATION, which agrees to pay the actual costs incurred by TAMUS for removal of the improvements within sixty (60) days following written notice from TAMUS accompanied by reasonable supporting documentation. If any removal causes injury to the Property or adjacent property, COLLEGE STATION will restore or pay for such damage within sixty (60) calendar days after completion of such removal.

7. Reservation of Use. TAMUS expressly reserves:

A. The right to use the Property for its own benefit or the benefit of any of its components, including without limitation the right to grant permits, licenses, and easement rights in the Property to other parties, so long as the use does not interfere with the use of the Property as a public roadway. If the use is subsurface, TAMUS agrees to contact the appropriate utility department of COLLEGE STATION prior to any subsurface excavation in order to avoid damage to existing utilities.

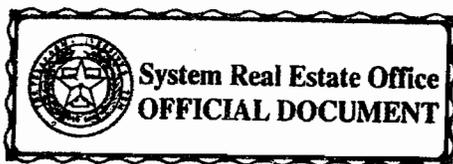
B. The right to grant permits, licenses and easements covering the Property to other parties for the benefit of third parties or the public, so long as (i) the third party or public use does not interfere with the use of the Property as a public roadway, and (ii) the permit, license or easement is approved in writing by COLLEGE STATION.

C. COLLEGE STATION will comply with the Antiquities Code of Texas, TEX. NAT. RES. CODE ANN. § 191 et seq., and COLLEGE STATION further agrees title to archaeological objects or artifacts, if any, in or on the Property remain with TAMUS.

8. Hold Harmless. COLLEGE STATION and TAMUS, to the extent allowed by the Constitution and Laws of the State of Texas, each agree to hold the other harmless from any and all claims, demands, liabilities and causes of action for personal injury or death and/or damage to or destruction of property or improvements caused by, arising out of, or resulting from the exercise of each parties rights and obligations under this agreement.

9. Hazardous Waste. COLLEGE STATION will not commit or suffer to be committed waste upon the Property; will keep the Property and the improvements in good working order and repair and in a clean, safe and healthful condition; and comply with all state, federal and local laws, rules and regulations with regard to the use and condition of the improvements on the Property.

COLLEGE STATION will not use the Property or permit the Property to be used so as to cause, suffer, or allow any contamination of soils, ground water, surface water, or natural resources on or adjacent to the Property resulting from, but not limited to, spills or leaks of oil, gasoline, hazardous materials, hazardous wastes, or other chemical compounds. COLLEGE STATION is solely responsible for cleanup of any contamination resulting from violation of this provision.



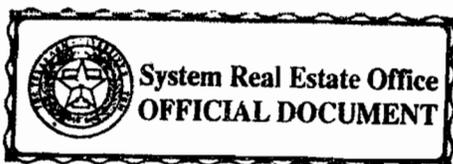
**IF THE PRESENCE OF HAZARDOUS MATERIALS ON THE PROPERTY IS CAUSED OR PERMITTED BY COLLEGE STATION AND SUCH MATERIALS RESULT IN CONTAMINATION OF THE PROPERTY OR IF CONTAMINATION OF THE PROPERTY BY HAZARDOUS MATERIAL OTHERWISE OCCURS AND IS RELATED TO COLLEGE STATION'S USE, THEN COLLEGE STATION, TO THE EXTENT ALLOWED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, SHALL INDEMNIFY, DEFEND AND HOLD TAMUS HARMLESS FROM ANY AND ALL CLAIMS, JUDGMENTS, DAMAGES, PENALTIES, FINES, COSTS, LIABILITIES OR LOSSES (INCLUDING DIMINUTION IN VALUE OF THE PROPERTY, DAMAGES FOR THE LOSS OF OR RESTRICTION ON USE OF THE PROPERTY OR OF ANY AMENITY OF THE PROPERTY, AND SUMS PAID IN SETTLEMENT OF CLAIMS, ATTORNEYS' FEES, CONSULTANTS' FEES AND EXPERTS FEES) WHICH ARISE DURING OR AFTER THE EASEMENT TERM AS A RESULT OF SUCH CONTAMINATION. COLLEGE STATION'S HOLD HARMLESS INCLUDES COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS FOR ANY CLEANUP, AND REMEDIAL, REMOVAL OR RESTORATION WORK REQUIRED BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION BECAUSE OF HAZARDOUS MATERIAL PRESENT IN THE SOIL OR GROUND WATER ON OR UNDER THE PROPERTY.**

10. Default and Termination. It is agreed upon default by COLLEGE STATION of any of these covenants, conditions and agreements, TAMUS has the right, and such right is expressly reserved, to declare the Easement forfeited, without prejudice to any claim TAMUS may have against COLLEGE STATION; provided, however, TAMUS will give COLLEGE STATION written notice of its intention to terminate the Easement and the reasons for termination, and COLLEGE STATION will have thirty (30) calendar days after receipt of notice to rectify the default or violation. Upon timely correction, the Easement will remain in full force and effect. Upon termination or abandonment of the Easement all rights granted in the Easement revert to TAMUS without the necessity of any further action or suit on the part of TAMUS, and COLLEGE STATION agrees to file a Release of Easement in the Deed Records of Brazos County, Texas. Abandonment will be deemed to have occurred when the Property is not used as a public roadway for a continuous period of one calendar year.

11. Waiver. No waiver by TAMUS or COLLEGE STATION of any default or breach of any term, condition, or covenant of the Easement will be a waiver of any other breach of any other term, condition, or covenant.

12. Privileges and Immunities. COLLEGE STATION acknowledges TAMUS is an agency of the State of Texas and nothing in this agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim exemptions, privileges, and immunities as may be provided by law.

13. Texas Law to Apply. This agreement is construed under and in accordance with the laws of the State of Texas and is performable in Brazos County, Texas; however, by statute, mandatory venue for all suits against TAMUS is to be in the county in which the principal office



of the chief executive officer is located. At execution of this agreement, such county is Brazos County, Texas.

14. Grammatical Interpretation. When the singular number is used, it also includes the plural, and the masculine gender includes the feminine and neuter gender.

15. Headings. Headings are for reference and will not be construed to limit or alter the meaning of the provisions of this agreement.

16. Parties Bound. This agreement is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors in interest or office, and assigns (but this Section does not constitute permission for an assignment).

17. Saving Clause. Should any clause in this agreement be found invalid by a court of law, the remainder of this agreement will not be affected and all other provisions in this agreement remain valid and enforceable to the fullest extent permitted by law.

18. Assignment. This agreement is personal to **COLLEGE STATION**. **COLLEGE STATION** may not sell, assign, encumber, or convey its interest in this agreement or the Easement without the prior written consent of **TAMUS**, and any attempt by **COLLEGE STATION** to sell, assign, encumber, or convey its interest in this agreement or the Easement without such consent will cause the Easement to terminate.

19. Notices. Notices to either party will be signed by a representative of the party, or its successors in interest or office, and delivered personally or sent by U.S. certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to **TAMUS**:

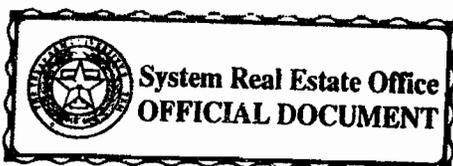
Associate Vice Chancellor for Real Estate  
System Real Estate Office  
The Texas A&M University System  
A&M System Building, Suite 1151  
200 Technology Way  
College Station, Texas 77845-3424

If to **COLLEGE STATION**:

City Manager  
City of College Station  
P. O. Box 9960  
College Station, Texas 77842

Notice will be deemed given on the date it is hand delivered or deposited in the U.S. mail.

20. Entire Agreement. This agreement constitutes the entire agreement between **TAMUS** and **COLLEGE STATION** with respect to the subject matter hereof and will not be explained, modified, or contradicted by any prior or contemporaneous negotiations, representations, or agreements, either written or oral. This agreement may only be amended by a subsequent written instrument executed by both parties.



21. Effective Date. This agreement is deemed to be in force on the \_\_\_\_\_ day of \_\_\_\_\_ 2005.

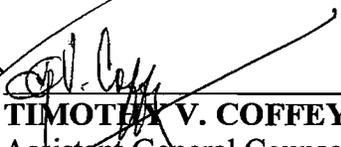
**BOARD OF REGENTS OF THE TEXAS A&M  
UNIVERSITY SYSTEM**

By: \_\_\_\_\_  
**JAMES G. HOOTON**  
Executive Vice Chancellor for Finance

**RECOMMEND APPROVAL:**

\_\_\_\_\_  
**DAN K. BUCHLY**  
Associate Vice Chancellor for Real Estate  
System Real Estate Office

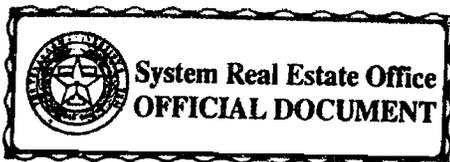
**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
**TIMOTHY V. COFFEY**  
Assistant General Counsel  
Office of General Counsel

**TERMS AND CONDITIONS EXPRESSLY ACKNOWLEDGED AND ACCEPTED:**

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_  
**RON SILVIA**  
Mayor



ATTEST:

\_\_\_\_\_  
**CONNIE HOOKS**

City Secretary

**APPROVED AS TO FORM:**

*Roxanne Hemel for*  
\_\_\_\_\_  
**HARVEY CARGILL, JR.**  
City Attorney

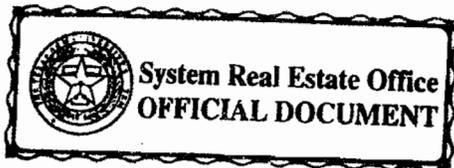
**ACKNOWLEDGEMENT**

**STATE OF TEXAS           §**  
  **§**  
**COUNTY OF BRAZOS       §**

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **JAMES G. HOOTON**, Executive Vice Chancellor for Finance, The Texas A&M University System, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it as the act and deed of the Board of Regents, The Texas A&M University System for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2005.

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires: \_\_\_\_\_



**ACKNOWLEDGEMENT**

**STATE OF TEXAS           §**  
**§**  
**COUNTY OF BRAZOS       §**

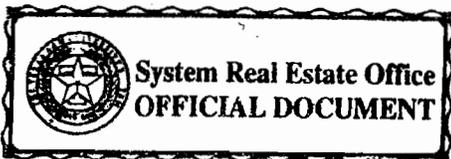
BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **RON SILVIA**, Mayor for the City of College Station, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2005.

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires: \_\_\_\_\_

AFTER RECORDING RETURN TO:

City of College Station  
P. O. Box 9960  
College Station, Texas 77842



METES AND BOUNDS DESCRIPTION FOR  
A 1.969 ACRE RIGHT-OF-WAY EASEMENT  
J.E. SCOTT SURVEY, ABSTRACT 50  
BRAZOS COUNTY, TEXAS

METES AND BOUNDS DESCRIPTION of all that certain tract or parcel of land lying and being situated in the J.E. SCOTT SURVEY, ABSTRACT 50, BRAZOS COUNTY, TEXAS, and being a portion of a called 150 acre tract of land conveyed to Texas A&M University, in Volume 81, Page 180, of the Deed Records of Brazos County, Texas (DRBCT), and being more particularly described by metes and bounds as follows, to wit:

BEGINNING at a ½-inch iron rod set at the south corner of a called 108 acre tract, conveyed to Texas A&M University and recorded in Volume 49, Page 340, DRBCT;

THENCE S 48°24'31" E, for a distance of 25 feet to a point on the common line between the Crawford Burnett Survey, A-7 and the J.E. Scott Survey, A-50, said point also lying within the pavement of Luther Street (variable width Right-of-Way (ROW));

THENCE S 41°35'29" W, along the approximate common line between said Crawford Burnett and J.E. Scott Surveys for a distance of 2,557.07 feet to a point in said Luther Street ROW;

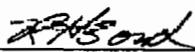
THENCE N48°24'31" W, for a distance of 42.09 feet to a concrete ROW marker found for an angle point in the northeast ROW line of Harvey Mitchell Parkway (variable width ROW) near the intersection of said Harvey Mitchell Parkway with Luther Street, same being the westernmost corner of the herein described ROW easement;

THENCE N 42°02'52" E, across the aforementioned called 150 acre Texas A&M University tract, for a distance of 1,779.5 feet, to a chain link fence corner found at the south corner of the fenced location pad of U.P.R.C. TAMU unit # 1;

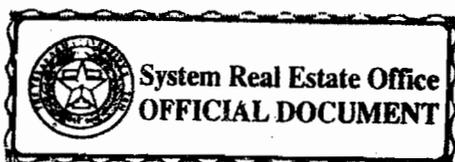
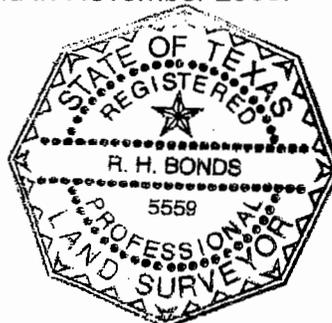
THENCE N 42°09'57" E, continuing across said Texas A&M University called 150 acre tract for a distance of 238.12 feet, to a chain link fence corner at the east corner of said oil well location pad;

THENCE N 41°38'53" E, continuing across said Texas A&M University called 150 acre tract for a distance of 539.52 feet, to the POINT OF BEGINNING and containing in all 1.969 acres, more or less, as surveyed on the ground in November 2003.

GOODWIN-LASITER, INC.

  
R.H. Bonds  
College Station, Texas

R.P.L.S. No. 5559  
January 2, 2004



**Exhibit A**

