

**PERMANENT EASEMENT AND
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TARRANT §

DATE: March _____, 2015

GRANTOR: **THE HISTORIC HANDLEY DEVELOPMENT CORPORATION**

GRANTOR’S MAILING ADDRESS:

3024 FOREST AVENUE
FORT WORTH, TEXAS, TARRANT COUNTY, TX 76112

GRANTEE: **CITY OF FORT WORTH**

GRANTEE’S MAILING ADDRESS:

**1000 THROCKMORTON STREET
FORT WORTH, TEXAS, TARRANT COUNTY, TX 76102**

CONSIDERATION: Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

PROPERTY: A portion of Block C, Handley, an addition in the City of Fort Worth deeded to The Historic Handley Development Corporation as recorded in County Clerk File No. D206411251, also known as 6600-6700 blocks E. Lancaster, Fort Worth, TX 76112 or 1001 South Handley in Fort Worth Texas 76112, which is more particularly described in Exhibits A and B.

Grantor, for the consideration paid to Grantor, hereby grant, bargain, sell and convey unto Grantee its successors and assigns, all of the following:

Easement. A permanent, exclusive easement on and right-of-way to a section of land approximately thirteen-feet-by-thirteen-feet (13’ X 13’) in the northern part of the property of the Historic Handley Development Corporation, located at 6600-6700 blocks E. Lancaster, Block C Avenue, Fort Worth, Texas, (1001 South Handley in Fort Worth Texas 76112) a description of which is more particularly described in the attached Exhibits A and B, which is incorporated herein for all purposes (hereinafter called the “Easement”), together with all improvements located thereon, on, in, over, through and across Grantor’s land for the purpose of locating, establishing, constructing, laying, installing, using, maintaining, inspecting, protecting, repairing, restoring, renewing, reconstructing, replacing, substituting, changing, altering, converting, relocating, and exhibiting within the Easement for the use and enjoyment of the public, and

removing therefrom public art generally depicted as a Train (“Public Art”), a description of which is set forth in Exhibit C, attached hereto and incorporated herein. This exclusive Easement shall automatically terminate and revert to Grantor, free and clear of any right, title or interest in Grantee, at such time as the Public Art is no longer intended to be permanently located on the Easement.

1. Temporary Construction Easement. A Temporary Exclusive Construction Easement (hereinafter called “Temporary Construction Easement”), together with all improvements located thereon, on, in, over, through and across Grantor’s land for the use by Grantee, its agents, employees, contractors and subcontractors, only in connection with and during the original installation of the Public Art, above, on the Easement. The location of the Temporary Construction Easement shall be the same as the Easement as described in Exhibit A. The Temporary Construction Easement shall automatically terminate and revert to the Grantor, free and clear of any right, title or interest in Grantee, upon whichever first occurs: (i) the completion of installation and continued maintenance of the Public Art piece on the Easement; or (ii) such time as the Public Art is no longer located on the Easement.

2. Grantee Need for Additional Workspace. Grantor hereby expressly agrees that in the placement of the Public Art to be installed should cross any sidewalk, walkway, or pedestrian waiting spaces located on the above described land or other places requiring extra work space, or if the rights granted to Grantee hereunder require extra work space, then Grantee and its contractors shall have the right and temporary access to additional working space which may be necessary therefor, and Grantee agrees to restore or return any damage to the additional workspace caused by Grantee in the performance of the rights granted herein to substantially the same or better condition as existed prior to the Grantee’s use.

3. Grantee and its Contractors’ Access. Grantee and its contractors shall have the right of ingress and egress to and from Grantor’s land, which right of ingress and egress, except as otherwise provided in this paragraph, shall be limited to carrying out the purposes herein stated and to the boundaries of the Easement. Grantee and its contractors shall also have the right, for ingress and egress purposes only, to use any road or roads located now, or in the future, on Grantor’s Land; provided, however, Grantee shall restore such roads or other improvements to substantially the same or better condition as the roads and/or other improvements were in prior to the use thereof by Grantee.

4. Public Access. The public shall have the right of ingress and egress to and from Grantor’s Land and to and from the Easement for the purpose of viewing and appreciating the Public Art.

5. Initial and Future Damages Caused by Grantee. Except as set forth above and after the initial Public Art installation, Grantee agrees to return or restore all damages to improvements, landscaping or other property of Grantor permitted to be located on the Easement by the terms hereof, and caused by Grantee or its agents, servants, employees, contractors or subcontractors in performing such future maintenance of the Public Art and related activities on the Easement to substantially the same or better condition as existed prior the Grantee’s use. Grantor and Grantee agree and understand that Grantee’s consideration herein paid does not include payment caused

by the initial installation of the Public Art, if any, including land surface damages and/or damages to other improvements.

6. Grantor Reservation of Rights to Easement. Grantee does not acquire by this Permanent Easement and Temporary Construction Easement Agreement, but expressly takes subject to, and Grantor reserves to Grantor: all oil, gas, sulphur, uranium, fissionable materials, and other minerals (“Grantor’s Minerals”) under the surface of the Easement, so long as Grantee’s use of the Easement for the purposes set forth herein is not disturbed.

7. Grantee Withholding of Certain Taxes. The Internal Revenue Code provides that a Grantee of a real property interest in the United States must withhold tax if the Grantor is a foreign person. Grantor hereby certifies under oath and subject to penalties of perjury that such Grantor is not a foreign person, foreign corporation, foreign trust or foreign estate, for purposes of Internal Revenue Code compliance.

8. Termination of Easements. The Easement shall automatically terminate and revert to the Grantor, free and clear of any right, title or interest in Grantee, at such time as the Public Art is no longer intended to be permanently located on the Easement.

9. No Grantee Assignment. Grantee, and Grantee’s successors and assigns, will not have the right to assign or transfer this Permanent Easement and Temporary Construction Easement Agreement in whole or in part.

10. Binding Effect. The terms and conditions hereof shall extend to and be binding upon and inure to the benefit of the parties hereto and their respective assigns and successors.

11. Entire Agreement. Subject to the terms hereof, Grantee shall have all other rights and benefits necessary or useful for the full and complete enjoyment and use of the Easement for the purposes stated herein. This document fully sets forth the terms and conditions mutually agreed to by the parties and there are no other oral or written agreements between the Grantor and Grantee which modify, alter or amend this Permanent Easement and Temporary Construction Easement Agreement.

12. Assignment. This Permanent Easement and Temporary Construction Easement Agreement does not constitute either party as the agent or legal representative of the other for any purpose whatsoever. The parties are not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of the other or to bind the other in any manner whatsoever. The Parties shall not assign this Permanent Easement and Temporary Construction Easement Agreement without the prior written consent of the other.

13. Authority. Each party covenants with the other that it has full power and authority to enter into and perform its obligations under this Permanent Easement and Temporary Construction Easement Agreement and the persons executing it on their behalf are duly authorized to do so by all requisite action.

14. Notice. All notices, requests, demands, and other communications that are required or permitted to be given under this Permanent Easement and Temporary Construction Easement Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

Grantee: Fernando Costa, Assistant City Manager
1000 Throckmorton Street
Fort Worth, Texas 76102
(817) 392-8518

Copies to: Martha Peters, Vice President, Public Art
Arts Council of Fort Worth & Tarrant County
1300 Gendy Street
Fort Worth, Texas 76107
(817) 298-3025

and to: City of Fort Worth
Law Department
1000 Throckmorton Street
Fort Worth, Texas 76102
(817) 392-7600

Grantor: Jean McClung, President of the Board
The Historic Handley Development Corporation
3024 Forest Avenue
Fort Worth, TX 76112
(682) 231-2723

15. Amendments. The parties expressly reserve the right to modify this Permanent Easement and Temporary Construction Easement Agreement, from time-to-time, by mutual agreement. No modification or amendment of the provisions of this Permanent Easement and Temporary Construction Easement Agreement shall be effective unless in writing and signed by authorized representatives of the Parties.

16. Invalidity of Particular Provisions. Should any term, provision, condition, or other portion of this Permanent Easement and Temporary Construction Easement Agreement or the application thereof be held to be inoperative, invalid, or unenforceable, the remainder of this Permanent Easement and Temporary Construction Easement Agreement or the application of the term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

17. No Waiver. No waiver of full performance by any party shall be construed, or operate, as a waiver of any subsequent default or breach of any of the terms, covenants, or conditions of this Permanent Easement and Temporary Construction Easement Agreement.

18. Severability. If any provision of this Permanent Easement and Temporary Construction Easement Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

19. Headings not Controlling. Headings and titles used in this Permanent Easement and Temporary Construction Easement Agreement are for reference purposes only and shall not be deemed a part of this Permanent Easement and Temporary Construction Easement Agreement.

20. Waiver of Immunity. Nothing herein shall be deemed to constitute a waiver of any immunity or affirmative defense, which may be asserted by Grantee as to any claim of any third party.

21. Applicable Laws. The laws of the State of Texas shall govern this Permanent Easement and Temporary Construction Easement Agreement and the relationship created hereby. Venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division.

22. Governmental Powers. It is understood that by execution of this Permanent Easement and Temporary Construction Easement Agreement, City does not waive or surrender any of its governmental powers

TO HAVE AND TO HOLD the Permanent Easement and Temporary Construction Easement together with all and singular the privileges and appurtenances thereto in anywise belonging unto Grantor, its successors and assigns. Grantor does hereby bind Grantor, Grantor's heirs, successors and assigns to warrant and forever defend, all and singular, unless earlier terminated in accordance with the provisions herein, the Permanent Easement and Temporary Construction Easement unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED to be effective on this _____ day of _____, 2015.

GRANTOR:

GRANTEE:

THE HISTORIC HANDLEY DEVELOPMENT
CORPORATION

CITY OF FORT WORTH

By: _____
Jean McClung
President of the Board

By: _____
Fernando Costa
Assistant City Manager

APPROVED AS TO FORM
AND LEGALITY:

By: _____
Jessica Sangsvang
Assistant City Attorney

After recording return to:
Jessica Sangsvang
City Attorney's Office
City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Jean McClung, President**, known to me to be the person or officer whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same as the act and deed of The Historic Handley Development Corporation, for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2015.

Notary Public in and for the State of Texas

STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Fernando Costa**, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of the City of Fort Worth, a municipal corporation of Tarrant County, Texas, for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2015.

Notary Public in and for the State of Texas

**Exhibit C
Public Art**

